WSR 18-04-001
PERMANENT RULES
GAMBLING COMMISSION
[Filed January 24, 2018, 2:34 p.m., effective February 24, 2018]

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

Purpose: This rule change allows staff to request and evaluate equipment during the rule-making process. A review of the gambling equipment as part of the rule-making process allows staff to:

- Have a clear understanding of how the equipment works;
- Address regulatory guidelines during the rule-making process; and
- Draft and implement a more effective rules [rule] as [a] result of understanding how the gambling equipment operates.

A manufacturer would not be required to submit an application or fees for this evaluation during the rule-making process.

Citation of Rules Affected by this Order: New WAC 230-17-192.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 17-24-068 on December 4, 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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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 24, 2018.

Brian J. Considine
Legal and Legislative Manager

NEW SECTION

WAC 230-17-192 Submission of electronic or mechanical gambling equipment during rule making. (1) A manufacturer or its designee is required to submit electronic or mechanical gambling equipment for evaluation during rule making when the commission is considering taking action to adopt, change, or repeal a rule in order to authorize use of the gambling equipment.

(2) When we are ready to begin our equipment evaluation, we will notify the manufacturer or its designee in writing. The manufacturer or its designee will have thirty days from the date of our written request to submit the requested electronic or mechanical gambling equipment to our headquarters, directly or through a designee, or we may administratively close our review and deny the requested rule change.

(3) Manufacturers or their designee must submit:

(a) The gambling equipment, including all relevant software, that is identical or substantially similar to what will be marketed, distributed, and deployed in Washington;

(b) A copy of detailed technical materials and diagrams associated with the equipment and software, and all of the operational procedures and manuals, including relevant hardware and software manuals; and

(c) Other technical specifications as requested by the commission.

(4) The manufacturer or its designee must install, configure, and support the equipment/software to allow us to fully evaluate its operation. Evaluation may include, but is not limited to, interoperability, communication, security, and player protection issues.

(5) We will notify the manufacturer or their designee in writing if we require additional equipment or information for our evaluation. The manufacturer or its designee must provide us with the requested equipment or information within thirty days from the date of our written request or we may administratively close our review and deny the requested rule change.

WSR 18-04-006
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 25, 2018, 1:57 p.m., effective February 25, 2018]

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

Purpose: WAC 458-14-005, 458-14-046, and 458-14-116 are being amended to incorporate language from:

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

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

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

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

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

The rules listed above also include general editing and formatting updates.

Citation of Rules Affected by this Order: Amending WAC 458-14-005, 458-14-046, 458-14-116, 458-16-165, 458-19-070, and 458-19-075.

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

Adopted under notice filed as WSR 17-23-045 on November 8, 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 Nongovernmental 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 25, 2018.

Erin T. Lopez
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) An error in the legal description;

(b) A clerical or posting error;

(c) Double assessments;

(d) Misapplication of statistical data;

(e) Incorrect characteristic data;

(f) Incorrect placement of improvements;

(g) Erroneous measurements;

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

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

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

(15) "Market value" means the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. True and fair value is the same as market value or fair market value.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) **Regularly convened session.**

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

(i) July 15th;

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

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

(b) The board must meet for a minimum of three days during their regular convened twenty-eight day session.

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

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

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

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

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

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

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

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

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

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

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

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

(b) If a taxpayer shows by clear, cogent, and convincing evidence that a specific value within an overall assessed value is incorrect, then the standard of proof shifts to a preponderance of the evidence for all contested issues related to that specific value. For example, the overall assessment of complex industrial properties is often made up of particular values for portions of the property being appraised. An asses-

sor's error on one value decision does not necessarily invalidate the entire property's assessment, and the presumption of correctness in favor of the assessor remains with respect to the remainder of the property.

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

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

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

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

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

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

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

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

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

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

(4) **Board orders.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Nonprofit homeownership development entities under RCW 84.36.049;

(e) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.-250; ((~~or~~

~~(e)~~)) (f) Nonprofit fair associations under RCW 84.36.-480(2); or

(g) Multipurpose senior citizen centers under RCW 84.36.670.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(((~~(7)~~)) (8) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district

established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

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

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

(c) A housing authority created under RCW 35.82.030;

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

(e) A housing authority established under RCW 35.82.-300.

(((~~(8)~~))) (9) **Duty to produce financial records.** In order to determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It must also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement must be made on a form prescribed and furnished by the department.

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

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

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

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

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

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

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

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

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

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

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

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

(a) Levies by the state;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Step six: Subtract from the remaining levy capacity the twenty-five cent per thousand dollars of assessed value

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) **Example.**

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

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

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

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

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

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

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

reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the $5.90 statutory aggregate dollar rate limit is not exceeded.

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

(a) First, add all the regular levy rates, except the rates for port and public utility districts, in the tax code area, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after prorationing under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this computation because they are not subject to the constitutional one percent limit. The rates for the following regular levies are used to calculate the combined levy rate of any particular tax code area:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first fifty cents per thousand dollars of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first fifty cents per thousand dollars of assessed value for public hospital districts under RCW 70.44.060(6).

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

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

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

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.-140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

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

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

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

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

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

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance from step four. There is no

remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WSR 18-04-007
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed January 25, 2018, 2:04 p.m., effective February 25, 2018]

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

Purpose: WAC 458-12-140 is being amended to incorporate language from:

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

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

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

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

- EHB 2242 (2017) that provides for basic education funding and clarifies the part of the state school levy that does not apply to the senior citizen, disabled person, and one hundred percent disabled veteran exemption.

Citation of Rules Affected by this Order: Amending WAC 458-12-140, 458-16-080, 458-16A-100, 458-16A-140, and 458-16A-150.

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

Adopted under notice filed as WSR 17-23-072 on November 13, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 5, 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 25, 2018.

Erin T. Lopez
Rules Coordinator

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

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

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

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

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

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

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

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

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

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

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

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

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

For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts must be modified to recognize the transfer of territory subject to RCW 84.09.030 and subsection (2) of this ((~~section~~)) rule.

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

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

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

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

(a) **Personal property.** Assessors must designate the tax code area on all listings of personal property in accordance

with the applicable rules controlling "taxable situs" as of the assessment date.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) The following examples show how eligibility requirements for this exemption will be applied. These examples should be used only as a general guide and cannot be relied upon for any other purpose.

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

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

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

(5) **Amount of exemption.** The amount of the exemption is the difference between the dwelling's true and fair value before and after improvements, but this amount cannot

exceed thirty percent of the true and fair value of the original unimproved dwelling. In other words, the amount of the exemption is determined by subtracting the true and fair value of the unimproved dwelling from the true and fair value of the dwelling including improvements. The cost of the physical improvements is not the basis for the exemption granted under RCW 84.36.400 and, as a result, the exemption granted is not normally equivalent to the costs incurred by the taxpayer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The application for exemption is denied;

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

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

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

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

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

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

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

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

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

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

(a) Legally prescribed drugs;

(b) Home health care;

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

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

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

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

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

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

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

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

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal

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

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

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

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

(f) Veterans benefits other than:

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

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

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

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

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

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

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

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

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

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

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

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

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

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

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

(18) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

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

(b) Physical therapy received in the home;

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

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

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

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

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

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

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

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her princi-

pal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

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

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

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

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

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

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

(i) The residence is temporarily unoccupied;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) **The exemption described.** This property tax exemption reduces or eliminates property taxes on a senior citizen's, disabled person's, or one hundred percent disabled veteran's principal residence. Except for benefit charges made by a fire protection district, this exemption does not reduce or exempt an owner's payments for special assessments against the property. Local governments impose special assessments on real property because the real property is specially benefitted by improvements made in that area (e.g., local improvement district assessments for roads or curbs, surface water management fees, diking/drainage fees, weed control fees, etc.). All the property owners in that area share in paying for these improvements. The only exceptions related to this program is

for benefit charges made by a fire protection district, a regional fire protection service authority, or by a city or town for enhancement of fire protection services. Fire protection benefit charges are reduced twenty-five, fifty, or seventy-five percent depending upon the combined disposable income of the claimant. RCW 52.18.090, 52.26.270, and 35.13.256.

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

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

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

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

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

The assessor:

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

(ii) Reviews the supporting documents;

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

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

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

(i) Signatures;

(ii) Information upon the form; or

(iii) Supporting documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

dence's market value and its frozen value in the valuation notices sent to the owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) **Change in status form.** The county assessor designs the change in status form or adapts a master form obtained from the department. The county must obtain approval of the final form from the department before it may be distributed. The claimant, the claimant's agent, or a subsequent owner of the residence must use a change in status form from the county where the principal residence is located. The person filing the form must provide true and accurate information on the change in status form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WSR 18-04-011
PERMANENT RULES
SHORELINE COMMUNITY COLLEGE

[Filed January 26, 2018, 7:59 a.m., effective February 26, 2018]

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

Purpose: EHB 1595 (section 3, chapter 304, Laws of 2017) pass in 2017 and effective July 23, 2017, modified the authority for state agencies (including higher education) to charge for costs associated with producing records in response to a public records request. Shoreline Community College has amended the section of our public records rule for compliance with the new requirements.

Citation of Rules Affected by this Order: Amending WAC 132G-276-090.

Statutory Authority for Adoption: RCW 42.56.120 as amended by chapter 304, Laws of 2017 (EHB 1595), RCW 42.56.040 (1)(d) and 28B.50.140(13).

Adopted under notice filed as WSR 17-22-038 on October 24, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 24, 2018.

Cheryl Roberts
President

AMENDATORY SECTION (Amending WSR 00-10-048, filed 4/26/00, effective 5/27/00)

WAC 132G-276-090 ((~~Copying.~~)) Charges for public records. No fee shall be charged for the inspection of public records. The college imposes a charge for providing copies of public records. ((~~Such charges shall not exceed the amount necessary to reimburse the college for the actual cost as allowed by law.~~)) Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating the actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b), as amended by section 3, chapter 304, Laws of 2017. The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

WSR 18-04-017
PERMANENT RULES
SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed January 26, 2018, 2:46 p.m., effective March 1, 2018]

Effective Date of Rule: March 1, 2018.

Purpose: The purpose of the amendments to Spokane Regional Clean Air Agency (SRCAA) Regulation I are to develop a regulatory program for marijuana producers and processors to minimize air contaminants. Amendments to Article IV, Exhibit R 63. and 64. includes marijuana production and processing in SRCAA's registration program, and 9.e.12 to include marijuana processing equipment if it triggers air permitting requirements. Amendments to Article V, Section 5.02.P.2., exempts marijuana producers and processors from air permitting requirements, unless the operations have equipment that triggers permitting requirements. New Section 6.18 in Article VI includes standards to minimize air contaminants from marijuana producers and processors. New Section 10.15 in Article X develops the registration fee structure for marijuana producers and processors. The anticipated effects include reductions in air contaminant emissions, to ensure that marijuana production and processing operations are in compliance with air quality regulations, to maintain an accurate inventory of air contaminants released into Spokane County's air, and to begin receiving revenue to support program costs.

Citation of Rules Affected by this Order: New SRCAA Regulation I, Article VI, Section 6.18; Article X, Section 10.15; and amending SRCAA Regulation I, Article IV, Exhibit R, 9.e.12). 63., 64; Article V, Section 5.02.P.2.

Statutory Authority for Adoption: RCW 70.94.141.

Other Authority: Chapter 70.94 RCW.

Adopted under notice filed as WSR 17-21-073 on October 16, 2017.

Changes Other than Editing from Proposed to Adopted Version: Replaced effective date space savers within the regulatory text to actual rule effective date of March 1, 2018.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, 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: January 4, 2018.

Margee Chambers
Rule Writer/SIP Planner

AMENDATORY SECTION, SRCAA Regulation I, Article IV, Exhibit R, 9.e.12), 63., and 64.

EXHIBIT R - STATIONARY SOURCE AND STATIONARY SOURCE CATEGORIES SUBJECT TO REGISTRATION

NOTE: Emission rates in this Section are based on uncontrolled PTE emissions, unless otherwise noted.

1. Acid production plants, including all acids listed in Chapter 173-460 WAC.

2. Abrasive blasting operations, except portable blasting operations operating at a construction site, or at a site for less than 30 days in any running 12-month period and operations that are inside a building and any associated air pollution control equipment that exhausts inside of the building.

3. Agricultural chemicals, manufacturing, mixing, packaging and/or other related air contaminant emitting operations (fertilizer concentrates, pesticides, etc.).

4. Agricultural drying and dehydrating operations.

5. Alumina processing operations.

6. Ammonium sulfate manufacturing plants.

7. Any stationary source category that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 - New Source Performance Standards (NSPS), effective the date listed in Article II, Section 2.13 of this Regulation; except Part AAA, (New Residential Wood Heaters). Ecology is responsible for regulation of projects subject to BB (Kraft Pulp Mills) and Subpart S (Primary Aluminum Reduction Plants);

8. a. Any stationary source that qualifies as a new or modified stationary source within the meaning of 40 CFR 61.02 - National Emission Standards for Hazardous Air Pollutants (NESHAP), (effective the date listed in Article II, Section 2.13 of this Regulation); except for asbestos on roadways, asbestos demolition or renovation activities subject to 40 CFR 61.145 and;

b. Any stationary source that qualifies as a new stationary source within the meaning of 40 CFR 63.2 - National Emission Standards for Hazardous Air Pollutants for Source Categories (commonly referred to as MACT Standards), effective the date listed in Article II, Section 2.13 of this Regulation;

c. Any stationary source that qualifies as a new major stationary source, or a major modification;

d. Any modification to a stationary source that requires an increase either in a facility-wide emission limit or in a unit specific emission limit.

9. A stationary source listed in 9.e., below that:

a. emits any single criteria pollutant, or its precursors, as defined in 40 CFR § 51.852, exceeding emission rates of 0.5 tons per year, or in the case of lead, emissions rates greater than or equal to .005 tons per year, or

b. emits toxic air pollutants, as defined in Article I, Section 1.04 of this Regulation, with emission rates exceeding the small quantity emission rates established in WAC 173-460-080, or

c. emits combined air contaminants (criteria, VOCs, or TAPs) in excess of 1.0 ton per year, or

d. emits combined toxic air pollutant and volatile organic compound emissions greater than 0.5 tons per year.

e. The above criteria in 9.a. through 9.d. applies to the following stationary source categories:

1) Bakeries,

2) Bed lining or undercoating production or application operations,

3) Degreasers/solvent cleaners, not subject to 40 CFR Part 63, Subpart T (Halogenated Solvent Cleaners); including, but not limited to, vapor, cold, open top and conveyorized cleaner,

4) Evaporators,

5) Graphic art systems including, but not limited to, lithographic and screen printing operations,

6) Organic vapor collection systems within commercial or industrial facilities,

7) Soil and groundwater remediation operations,

8) Sterilizing operations, including, but not limited to EtO and hydrogen peroxide, and other sterilizing operations,

9) Utilities, combination electric and gas, and other utility services (SIC 493/NAICS 221111 through 221210, not in order given),

10) Wood furniture stripping and treatment operations (commercial only), and

11) Any stationary source or stationary source category not otherwise identified in this exhibit.

12) Marijuana processors.

10. Any stationary source with significant emissions as defined in Article I, Section 1.04 of this Regulation.

11. Any stationary source required to obtain an approved *Notice of Construction and Application for Approval* under Article V of this Regulation.

12. Any stationary source (including stationary sources that generate fugitive emissions) for which the Control Officer determines that registration is necessary in order to reduce the potential impact from the stationary source's air emissions on: the health, safety, and/or welfare of the public, or unreasonable interference with any other property owner's use and enjoyment of his property, or damage to other property owner's property or business.

13. Any stationary source where the owner or operator has elected to avoid one or more requirements of the operating permit program established in Chapter 173-401 WAC, by limiting its potential-to-emit (synthetic minor) through an order issued by the Authority.

14. Any stationary source that is required to report periodically to demonstrate nonapplicability to requirements under Sections 111 or 112 of the Federal Clean Air Act.

15. Asphalt and asphalt products production operations (asphalt roofing and application equipment excluded).

16. Brick and clay products manufacturing operations (tiles, ceramics, etc). Noncommercial operations are exempt.

17. Bulk gasoline and aviation gas terminals, bulk gasoline and aviation gas plants, and gasoline and aviation gas loading terminals.

18. Cattle feedlots with operational facilities, which have an inventory of one thousand or more cattle in operation between June 1 and October 1, where vegetation forage growth is not sustained over the majority of the lot during the normal growing season.

19. Chemical manufacturing operations.

20. Coffee roasting operations.

21. Composting operations, including commercial, industrial and municipal, except noncommercial agricultural and noncommercial residential composting activities.

22. Concrete production operations and ready mix plants.

23. Dry cleaning operations, using solvents that emit toxic air pollutants or volatile organic compounds.

24. Materials handling and transfer facilities that generate fine particulate and that exhaust more than 1,000 acfm to the ambient air, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems that exhaust to the atmosphere.

25. Flexible polyurethane foam, polyester resin, and styrene production operations.

26. Flexible vinyl and urethane coating operations.

27. Fuel burning equipment, including but not limited to boilers, building and process heating units (external combustion) with per unit heat inputs greater than or equal to:

a. 500,000 Btu/hr using coal or other solid fuels with $\leq$ 0.5% sulfur;

b. 500,000 Btu/hr using used/waste oil, per the requirements of RCW 70.94.610;

c. 1,000,000 Btu/hr using kerosene, #1, #2 fuel oil, or other liquid fuel, except used/waste oil;

d. 4,000,000 Btu/hr using gaseous fuels, such as, natural gas, propane, methane, LPG, or butane, including but not limited to, boilers, dryers, heat treat ovens and deep fat fryers; and

e. 400,000 Btu/hr, wood, wood waste, or paper.

28. Gasoline dispensing facilities, subject to Chapter 173-491 WAC, and aviation gas dispensing facilities with total tank capacities greater than 10,000 gallons.

29. Grain handling; seed, pea and lentil processing facilities. Registration shall be in accordance with Section 4.03.B.

30. Hay cubing operations and pelletizers, established at a dedicated collection and processing site.

31. Incinerators; as defined in Section 1.04 of this Regulation, including human and pet crematories and other solid, liquid, and gaseous waste incinerators.

32. Insulation manufacturing operations.

33. Metal casting facilities and foundries, ferrous.

34. Metal casting facilities and foundries, nonferrous.

35. Metal plating and anodizing operations.

36. Metallic and nonmetallic mineral processing, including, but not limited to, rock crushing, sand and gravel mixing operations.

37. Metallurgical processing operations.

38. Mills; lumber, plywood, shake, shingle, woodchip, veneer operations, dry kilns, pulpwood insulating board, grass/stubble pressboard, pelletizing, or any combination thereof.

39. Mills; grain, seed, feed and flour production and related operations

40. Mills; wood products manufacturing operations (including, but not limited to, cabinet works, casket works, furniture and wood by-products).

41. Mineralogical processing operations.

42. Natural gas transmission and distribution (SIC 4923/NAICS 486210 and 221210, respectively).

43. Ovens/furnaces, kilns and curing, burnout, (including, but not limited to, ovens/furnaces that heat clean automotive parts, paint hooks, electric motors, etc.) except those that would otherwise be exempt under item 27.

44. Paper manufacturing operations, except Kraft and sulfite pulp mills.

45. Petroleum refineries.

46. Pharmaceuticals production operations.

47. Plastics and fiberglass fabrication, including gelcoat, polyester resin, or vinylester coating operations using more than 55 gallons per year of all materials containing volatile organic compounds or toxic air pollutants.

48. Refuse systems (SIC 4953/NAICS 562213, 562212, 562211, & 562219, respectively), including municipal waste combustors; landfills with gas collection systems and/or flares; hazardous waste treatment, storage, and disposal facilities; and wastewater treatment plants other than private and publicly owned treatment works (POTWs).

49. Rendering operations.

50. Sewerage systems, private and publicly owned treatment works (POTWs) with a rated capacity of more than 1 million gallons per day (SIC 4952/NAICS 221320).

51. Semiconductor manufacturing operations.

52. Internal combustion engines used for standby, back-up operations only, and rated at or above five hundred brake horsepower.

53. Stationary internal combustion engines, other than engines used for standby or back-up operations, that are rated at one hundred brake horsepower or more, that are integral to powering a stationary source or stationary source category, including but not limited to, rock crushing, stump and woodwaste grinding, and hay cubing operations.

54. Stump and woodwaste grinding established at a dedicated collection and processing site.

55. Storage tanks for organic liquids, within commercial or industrial facilities, with capacities greater than 20,000 gallons.

56. Surface coating, adhesive, and ink manufacturing operations.

57. Surface coating operations, including; automotive, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper, and other substrates.

58. Synthetic fiber production operations.

59. Synthetic organic chemical manufacturing operations.

60. Tire recapping operations.

61. Wholesale meat/fish/poultry slaughter and packing plants.

62. Startup of a new air contaminant source at a site where:

a. a previous air contaminant source was located; and

b. the nature of the business or pollutants of the new air contaminant source is different from the previous air contaminant source.

63. Marijuana producers.

64. Marijuana processors with direct processing of the marijuana plant and plant material (dry, cure, extract, compound, convert, package, and label usable marijuana and marijuana concentrates).

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION, SRCAA Regulation I, Article V, Section 5.02.P.2.

SECTION 5.02 NOTICE OF CONSTRUCTION (NOC) - WHEN REQUIRED

A. A Notice of Construction application must be filed by the owner or operator and an order of approval issued by the permitting agency prior to the establishment of any new source or source categories. For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in Article I, Section 1.04, and "new source" shall include any modification to an existing stationary source or source category, as defined in Article I, Section 1.04. Stationary sources or source categories subject to this Section include, but are not limited to, the following:

1. Stationary sources or source categories listed in Exhibit "R" of Article IV of this Regulation, except for those that are below emission thresholds listed therein or are exempted as provided in Section 5.02.P. of this Regulation; or

2. Any modification to an existing stationary source or source category which results in an increase in actual emissions, except for stationary sources or source categories with actual emission increases below emission thresholds listed in Exhibit "R" of Article IV of this Regulation; or

3. Regardless of any other subsection of this section, a notice of construction application must be filed and an order of approval issued by the Authority prior to establishment of any of the stationary sources listed in Items 7 and 8 of Article IV, Exhibit "R"; or

4. a. Establishment of a new major stationary source or source category;

b. Major modifications to an existing stationary source or source category;

c. Establishment of a new major temporary stationary source or source category;

d. Major modification of a temporary stationary source or source category that is located at an existing stationary source or source category; or

5. Any modifications that require an increase either in a facility-wide emission limitation or a unit specific emission limit; or

6. Replacement of existing emissions unit(s) with new or used emissions unit(s); or

7. Restart of a stationary source or source category after "closure or shutdown", as defined in Article I, Section 1.04;

8. Relocation of an existing stationary source or source category, except as provided for in Section 5.02.H and as specified in Section 5.02.I; or

9. Location for the first time of a portable, (or temporary, if applicable) stationary source or source category operates in Spokane County.

10. Determination by the Authority that a Notice of Construction application is necessary in order to reduce the potential impact from any stationary source or source category's air emissions on: the health, safety, and/or welfare of the public, or unreasonable interference with any other property owner's use and enjoyment of his property, or damage to other property owner's property or business.

B. Stationary sources or source categories not subject to Section 5.02.A include those stationary sources or source categories listed in Sections 5.02.H, 5.02.I, 5.02.M and 5.02.N.1 of this Article.

C. The owner, operator, or their agent shall use Authority prepared and furnished application and information request forms when applying for a *Notice of Construction and Application for Approval*.

D. New source review of a modification shall be limited to the emissions unit or units proposed to be added to an existing or modified stationary source or source category and the air contaminants whose actual emissions would increase as a result of the modification. NOTE: Modification, as defined in Article I, Section 1.04 of this Regulation, does not have the same meaning as a Major Modification, defined in WAC 173-400-112 and WAC 173-400-113.

E. New stationary sources' or source categories' emission calculations shall be based on a stationary source or source categories' "potential-to-emit", as defined in Article I, Section 1.04 of this Regulation. Modified stationary source or source category emission calculations shall be based on the increase in "actual emissions", as defined in Article I Section 1.04 of this Regulation.

F. The Authority implements and enforces the requirements of WAC 173-400-114 for replacement or substantial alteration of emission control technology at an existing stationary source.

G. A separate *Notice of Construction and Application for Approval* shall be filed for each new or modified stationary source, source category, or emissions control system, unless identical units are to be constructed, installed, or established and operated in an identical manner at the same facility, except that the owner or operator has the option to file one application for an entire facility, with a detailed inventory of stationary sources or source categories and their emissions related to that facility.

H. A *Notice of Construction and Application for Approval* is not required for construction, installation, establishment, modification, or alteration of stationary sources or source categories, comprised of equipment utilized exclusively in connection with any structure, which is designed for, and used exclusively as, a residence with not more than four dwelling units.

I. A *Notice of Construction and Application for Approval* is required for portable, (or temporary, if applicable) stationary sources or source categories, operating in accordance with Section 5.08 - the first time that it operates in Spokane County. Thereafter, each time that the portable or temporary stationary source or source category relocates and operates at a new site in Spokane County, it must apply for and obtain an approved *Notice of Intent to Install and Operate a Temporary Stationary Source* pursuant to Section 5.08.

J. A person seeking approval to construct or modify an air operating permit source, may elect to integrate review of the air operating permit application or amendment, required under RCW 70.94.161, and the *Notice of Construction and Application for Approval* required by this Article. A *Notice of Construction and Application for Approval* designated for integrated review shall be processed in accordance with the provisions in Chapter 173-401 WAC.

K. A *Notice of Construction and Application for Approval* for a major modification in a nonattainment area, or for a major stationary source in a nonattainment area, is subject to the public notice requirements of Section 5.05.

L. An applicant filing a *Notice of Construction and Application for Approval* for a project described in WAC 173-400-117(2) (Special protection requirements for Class I areas) must send a copy of the application to the responsible federal land manager.

M. De minimis emission levels (based on Potential-To-Emit), below which a new source or stationary source category, is not subject to a *Notice of Construction and Application for Approval*, are listed in Exhibit "R" of Article IV of this Regulation. De minimis emission levels (based on actual emissions increase), below which a modification of an existing stationary source or source category, is not subject to a

Notice of Construction and Application for Approval, are listed in Exhibit "R" of Article IV of this Regulation. The owner or operator shall maintain sufficient documentation, as required by the Authority, to verify that the new or existing stationary source or source category is entitled to continued exemption under this section.

N. Transfer of Ownership

1. If an existing stationary source or stationary source category, with a valid Order of Approval, is transferred to new ownership per Article IV, Section 4.02.D and the stationary source category or stationary source category is unchanged by the transfer, then the existing Order of Approval is transferable to the new ownership, as written.

2. An existing Order of Approval is not transferable to a stationary source or stationary source category that is installed or established at a site where a stationary source category or stationary source category was previously located and the business nature of the new source is different from the previous stationary source.

3. In either of the above cases, if the stationary source or stationary source category did not have a valid Order of Approval under the prior ownership, then the owner or operator of the new source or stationary source category shall apply for, and receive approval of, a Notice of Construction prior to commencing operation.

O. Except where Ecology is the permitting agency pursuant to WAC 173-400-141 (PSD) or Ecology's Industrial Sector has retained specific air pollution stationary sources or source categories exclusively under their jurisdiction, pursuant to RCW 70.94.422, the Authority permits, implements and enforces WAC 173-400-112 (Requirements for new sources in nonattainment areas) and WAC 173-400-113 (Requirements for new sources in attainment areas), in Spokane County.

P. The following new sources are exempt from the requirement to file a *Notice of Construction and Application for Approval*, provided that the source has registered with the Authority (as required per Regulation I, Article IV) prior to placing the source in operation:

1. Batch coffee roasters with a maximum rated capacity of 10 lbs. per batch or less, unless air pollution controls are required because of documented nuisance odors or emissions.

2. Marijuana producers and marijuana processors.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION, SRCAA Regulation I, Article VI, Section 6.18

SECTION 6.18 STANDARDS FOR MARIJUANA PRODUCTION AND MARIJUANA PROCESSING

(A) Purpose. The production and processing of marijuana emits air contaminants. Section 6.18 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

(B) Applicability. This Section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Spokane County, unless exempted under Section 6.18 (H)(1).

(C) Definitions. All definitions in Regulation I, Article I, Section 1.04 apply to Section 6.18, unless otherwise defined in this Section. Unless a different meaning is clearly required by context, words and phrases used in this Section will have the following meaning:

(1) Control of environmental conditions means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 6.18, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

(2) Indoor marijuana production and indoor marijuana processing means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

(3) Joint producers and processors means multiple marijuana production and processing operations on the same parcel.

(4) Marijuana means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

(5) Marijuana concentrates means substances created by extracting oils from marijuana plant material.

(6) Other marijuana production means production that is not indoor or outdoor as defined in this Section. Examples of other marijuana production include production in hoop houses, temporary structures, or other similar structures.

(7) Outdoor marijuana production means production occurring on an expanse of open or cleared ground (no structure of any kind), during Spokane County's customary outdoor growing season, without control of environmental conditions.

(8) Processor (process, processing) means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

(9) Producer (production, producing) means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

(10) Responsible person means any person who owns or controls property on which Section 6.18 is applicable.

(D) Requirements. All persons or entities subject to the requirements of Section 6.18 must comply with the following:

(1) Production must occur indoors or outdoors, as defined in 6.18(C), unless the operation has an Agency granted production exemption under Section 6.18 (H)(2).

(2) All processing must occur indoors as defined in Section 6.18(C).

(3) Indoor production and processing requirements:

(a) Control equipment and facility design:

1. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be

controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or

2. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or

3. Both.

(b) Operations must meet Regulation I, Article VI, Section 6.04.

(4) Outdoor production requirements:

(a) Operations must meet Regulation I, Article VI, Section 6.04.

(5) Other marijuana production requirements:

(a) Other marijuana production, in-operation prior to Section 6.18 effective date (03/01/2018), must have an Agency granted production exemption under Section 6.18 (H)(2), and comply with the conditions of the exemption.

(b) Other marijuana production operations with an Agency granted production exemption must meet the odor standard in Article VI, Section 6.04 (D)(1), at the property line and beyond. This requirement applies to all marijuana production and processing operations at the facility.

(6) Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturer's recommendations. An operation and maintenance plan for the air pollution control equipment must be available on-site. The plan must include written operating instructions and maintenance schedules. Records shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment. Records must be kept on-site for the previous 24 months and provided to the Agency upon request.

(7) Notification of change in operations. Written notification must be submitted to the Agency no later than thirty (30) days after operational changes occur. Operational changes include: change in registration information provided under Article IV, new installation of air pollution control equipment, modification or replacement of existing air pollution control equipment, or change in facility design to control air contaminant emissions.

(8) Harvest schedule. Written notification from outdoor producers and other marijuana producers must be submitted to the Agency no later than thirty (30) days prior to the start of harvest. The written notification must include harvest dates and locations.

(E) Compliance with Other Laws and Regulations. Compliance with Regulation I, Article VI, Section 6.18, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

(F) Joint Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article VI, Section 6.04, a Notice of Violation may be issued to all joint producers and processors on the parcel and all responsible persons.

(G) Compliance Schedule. All persons or entities subject to the requirements of Article VI, Section 6.18 must be in compliance with Section 6.18 requirements as follows:

(1) Existing producers and processors in-operation before the Section 6.18 effective date (03/01/2018), have twelve (12) months from the effective date to achieve compliance with Section 6.18 requirements. Requirements of Article VI, Section 6.04 remain applicable during this twelve (12) month period.

(2) New producers and processors or expansion at existing producers and processors, that begin or expand operations after 03/01/2018, must be in full compliance with Section 6.18 requirements before production and/or processing begins.

(H) Exemptions.

(1) Processing exemption. Processors that purchase only marijuana concentrates (e.g. marijuana oil) to manufacture marijuana-infused products may apply for an exemption to the standards given in Section 6.18. Production and direct processing of marijuana plants and plant material is not allowed at a processor with an Agency granted processing exemption.

(a) A complete processing exemption application must be submitted using Agency forms.

(b) The Agency will review the processing exemption application once all information the Agency deems necessary for a determination is received. The Agency may request additional information necessary to complete the review. Upon completion of the review, the Agency will make a determination to grant or deny the processing exemption in writing. If denied, compliance with Section 6.18 is required.

(c) Once a processing exemption is granted, the processor must comply with the exemption conditions.

(d) Failure to comply with the processor exemption conditions may result in revocation of the processor exemption, issuance of a Notice of Violation, or both. If the processor exemption is revoked, compliance with Section 6.18 is required.

(2) Production exemption. Other marijuana producers, in-operation prior to the Section 6.18 effective date (03/01/2018), may apply for an exemption from Section 6.18 (D)(1). The exemption is not available to producers that begin or expand operations after 03/01/2018.

(a) A production exemption application must be submitted within one hundred-eighty (180) days of the Section 6.18 effective date, using Agency forms. Each application must include the application fee, as listed in the Fee Schedule.

(b) Within thirty (30) days of receipt of a production exemption application the Agency will perform a completeness review. The Agency may request additional information necessary to complete the application. Once the application is determined to be complete, the Agency has sixty (60) days to grant or deny the production exemption in writing, unless the applicant is notified that additional time is needed. If a production exemption is denied, compliance with Section 6.18 (D)(1) is required.

(c) Once a production exemption is granted, the producer must comply with the production exemption conditions.

(d) Failure to comply with the production exemption conditions may result in revocation of the exemption, issuance of a Notice of Violation, or both. If the production exemption is revoked, compliance with Section 6.18 (D)(1) is required.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION, SRCAA Regulation I, Article X, Section 10.15

SECTION 10.15 MARIJUANA PRODUCTION AND MARIJUANA PROCESSING REGISTRATION AND APPLICATION FEES

(A) Initial Registration Fee. Each source required by Article IV, Exhibit R to be registered is required to pay an initial registration fee for the first calendar year or portion of calendar year that the source is part of the Agency registration program. The owner or operator will be responsible for payment of the initial registration fee. After the first year, the owner or operator will pay an annual registration fee under Section 10.15(B).

(1) The initial registration fee is determined by each unique LCB number, license type, and tier level. A separate initial registration fee is required for each unique LCB license number regardless of location. The initial registration fee will be determined by the fee table below:

Registration Fee Categories	LCB Producer Tier Size		
	LCB Tier 1	LCB Tier 2	LCB Tier 3
Producer with processor license	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Processor only	Per the Fee Schedule		
Producer only	Per the Fee Schedule		

LCB = WA State Liquor and Cannabis Board

(B) Annual Registration Fee. Each source required by Article IV, Exhibit R to be registered is required to pay an annual registration fee for each calendar year or portion of each calendar year during which it operates. The owner or operator will be responsible for payment of the annual registration fee. Fees received as part of the marijuana registration program will not exceed the actual costs of program administration.

(1) The annual registration fee is required for each LCB licensed producer and LCB licensed processor. The fee is determined by each unique LCB number, license type, and tier level. A separate registration fee is required for each unique LCB license number regardless of location. The annual fee will be determined by the fee table below:

Registration Fee Categories	LCB Producer Tier Size		
	LCB Tier 1	LCB Tier 2	LCB Tier 3
Producer indoor only	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer outdoor only	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer indoor and outdoor	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Producer w/ Agency granted production exemption	Per the Fee Schedule	Per the Fee Schedule	Per the Fee Schedule
Processor with producer license	Per the Fee Schedule		
Processor only	Per the Fee Schedule		

LCB = WA State Liquor and Cannabis Board

(2) Calculating Marijuana Annual Registration Fee without Required Registration Information. When registration information required in Article IV, Section 4.02 is not provided, the annual registration fee will be based on fees listed in Section 10.15 (B)(1), plus an additional fee equal to two (2) times the amount of original fee assessed. This method will be used:

(a) When registration information is not received within ninety (90) days of request, or

(b) Prior to the registration fee invoice date, whichever is later.

Reviser's note: The unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

WSR 18-04-028

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed January 30, 2018, 10:18 a.m., effective March 2, 2018]

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

Purpose: The agency amended WAC 182-535-1090 to correct a typographical error in a form number.

Citation of Rules Affected by this Order: Amending WAC 182-535-1090.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 17-23-097 on November 15, 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: January 30, 2018.

Wendy Barcus
Rules Coordinator

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

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

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

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

(b) A dental record which identifies:

(i) All missing teeth for both arches;

(ii) Teeth that are to be extracted; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The client has established caries control.

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

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

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

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

(b) Prior authorization is required.

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

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

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

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

(4) **Provider requirements.**

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

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

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

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

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

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

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

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

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

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

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

(b) Repairs:

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

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

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

(d) Laboratory fees, subject to the following:

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

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

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

(B) Moves from the state;

(C) Cannot be located;

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

(E) Dies.

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

WSR 18-04-037
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed January 30, 2018, 4:20 p.m., effective March 2, 2018]

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

Purpose: Chapter 182-516 WAC was revised to align state policy with federal law. The agency added language from Section 1917 of the Social Security Act and other sources regarding life estates, promissory notes, loans, trusts, and annuities. The agency also amended this chapter to align with Title V, Sec. 5007 the 21st Century Cures Act which allows for a person to create his or her own D4A special needs trust. Changes related to the 21st Century Cures Act are found in new WAC 182-516-0120. WAC 182-513-1367 Hardship waivers, was revised because it overlaps with chapter 182-516 WAC as hardship waivers can be used for trusts, annuities, and life states [estates]. This rule making was also done to streamline and clarify language; reconcile self-settled and third party trusts; provide more direction on third party trusts; better distinguish annuities as resources, income, and/or transfers; simplify language for readers who do not have inherent property law knowledge; and add information from the Social Security Administration's Program Operations Manual System.

Citation of Rules Affected by this Order: New WAC 182-516-0105, 182-516-0110, 182-516-0115, 182-516-0120, 182-516-0125, 182-516-0130, 182-516-0135, 182-516-0140, 182-516-0145 and 182-516-0400; and amending WAC 182-513-1367, 182-516-0001, 182-516-0100, 182-516-0200, 182-516-0201, and 182-516-0300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Section 1917 of the Social Security Act; 42 U.S.C. 1396p and Title V - Savings, Sec. 5007 Fairness in Medicaid supplemental needs trusts 21st Century Cures Act.

Adopted under notice filed as WSR 17-24-082 on December 5, 2017.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
Original chapter 182-516 WAC, Trusts, annuities, and life estates—Effects on medical program.		
Proposed	Throughout the chapter, sentences read "The medicaid agency or its designee," or "The agency and its designee."	These changes were made because "agency's designee" is defined under WAC 182-500-0010.
Adopted	In sentences that read "The medicaid agency or its designee," or "The agency and its designee," the word "its" is replaced with "the agency's." This change occurred in these WAC sections: · 182-516-0100 (introduction) · 182-516-0105 (2), (2)(a), and (3) · 182-516-0110 (2) · 182-516-0115 (4) · 182-516-0120 (1) and (3) · 182-516-0125 (1) and (3) · 182-516-0130 (5) · 182-516-0145 (1) and (2) · 182-516-0200 (5)(b)(ii)	

Proposed/ Adopted	WAC Subsection	Reason
	· 182-516-0201 (1), (2)(a) and (b), (3)(d)(ii)(B), and (6)(c) · 182-516-0300 (4)(a) · 182-516-0400 (1)(b), (2)(b) and (c), (3)(c), (4)(a)(i) and (iii)	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 10, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 10, Amended 6, 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 10, Amended 6, Repealed 0.

Date Adopted: January 30, 2018.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-03-116, filed 1/17/17, effective 2/17/17)

WAC 182-513-1367 Hardship waivers. (1) ((~~People who are denied or terminated from~~)) This section defines undue hardship for long-term services and supports (LTSS) ((~~due to a transfer of asset penalty under WAC 182-513-1363, or having excess home equity under WAC 182-513-1350 may apply for an undue hardship waiver. The agency or its designee gives notice of the right to apply for an undue hardship waiver whenever there is a denial or termination based on an asset transfer or excess home equity. This section:~~

~~(a) Defines undue hardship;~~

~~(b) Specifies the approval criteria for an undue hardship request;~~

~~(c) Establishes the process the agency or its designee follows for determining undue hardship; and~~

~~(d) Establishes the appeal process for a client whose request for an undue hardship is denied~~)) and specifies the request, approval, denial, and other processes for hardship waivers.

(2) Undue hardship ((~~exists:~~

~~(a) When a person who transferred the assets or income, or on whose behalf the assets or income were transferred, either personally or through a spouse, guardian, or another person authorized to act on behalf of the person through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or income or the value of the transferred assets or income that have caused a penalty period the person provides sufficient documentation to support the efforts to recover the assets or income; or~~

~~(b) The person is unable to access home equity in excess of the standard under WAC 182-513-1350; and~~

~~(c) When,~~)).

(a) Undue hardship exists when, without LTSS benefits, the ((~~person~~)) client is unable to obtain:

(i) Medical care to the extent that health or life is endangered; or

(ii) Food, clothing, shelter or other basic necessities of life.

(((~~(3) Undue hardship can be approved for an interim period while the client is pursuing recovery of the assets or income.~~

~~(4)~~)) (b) Undue hardship does not exist when:

(((~~(a) When the transfer of asset penalty period or excess home equity provision~~)) (i) The denial or termination of LTSS inconveniences ((~~a person~~)) the client or restricts the ((~~person's~~)) client's lifestyle but does not seriously deprive the ((~~person as defined in subsection (2)(c)(i) and (ii) of this section;~~

~~(b) When the resource is transferred to a person who is handling the financial affairs of the person; or~~

~~(c) When the resource is transferred to another person by the individual that handles the financial affairs of the person.~~

~~(5) Undue hardship may exist under subsection (4)(b) and (c) of this section if the department has found evidence of financial exploitation.~~

~~(6) An undue~~)) client of the items described under (a) of this subsection;

(ii) The denial or termination of LTSS is because of a period of ineligibility under WAC 182-513-1363, and the asset was transferred by a person or entity handling the financial affairs of the client denied or terminated from LTSS, unless the department has found evidence of financial exploitation; or

(iii) The client's situation meets undue hardship under (a) of this subsection because of restrictions placed in a trust by that client, either personally or through a spouse, guardian, court, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact).

(3) A hardship waiver may be requested when a client is denied or terminated from LTSS under the following scenarios:

(a) A period of ineligibility under WAC 182-513-1363 was established for a client, and that client, who transferred the assets, or on whose behalf the assets were transferred, either personally or through a spouse, guardian, or another person authorized to act on behalf of that client through a power of attorney document (attorney-in-fact), has exhausted all reasonable means including legal remedies to recover the assets or the value of the transferred assets that caused the period of ineligibility;

(b) A client was denied or terminated from LTSS due to exceeding the home equity standard under WAC 182-513-1350, and the client cannot legally access the excess equity; or

(c) The client was denied or terminated from LTSS due to the application of rules regarding trusts under chapter 182-516 WAC, except that if the application of rules regarding trusts under chapter 182-516 WAC results in a period of inel-

igibility under WAC 182-513-1363, then (a) of this subsection applies instead of (c) of this subsection.

(4) Process to request a hardship waiver.

(a) A hardship waiver may be requested by:

(((~~a~~))) (i) The ((~~person~~)) client;

(((~~b~~))) (ii) The ((~~person's~~)) client's spouse;

(((~~c~~))) (iii) The ((~~person's~~)) client's authorized representative; or

(((~~d~~))) (iv) With the consent of the ((~~person, the person's guardian, or~~)) client, a representative of the medical institution((~~, as defined in WAC 182-500-0050,~~)) in which ((~~an institutionalized person~~)) the client resides.

(((~~7~~))) (b) The hardship waiver request must:

(((~~a~~))) (i) Be in writing;

(((~~b~~))) (ii) State the reason for requesting the hardship waiver;

(((~~c~~))) (iii) Be signed by the requestor and include the requestor's name, address, and telephone number. If the request is being made on behalf of a ((~~person~~)) client, then ((~~the person's~~)) that client's name, address, and telephone number must be included;

(((~~d~~))) (iv) Be made within thirty days of the date of denial or termination of LTSS; and

(((~~e~~))) (v) Returned to the originating address on the ((~~denial/termination~~)) denial or termination letter.

(((~~8~~))) (c) If additional information is needed to determine whether or not to approve a hardship waiver, then, within fifteen days of receipt of the request for the hardship waiver, the agency or ((~~its~~)) the agency's designee sends the client a written notice ((~~to the person~~)) requesting additional information ((~~within fifteen days of the request for an undue hardship waiver. The person may request additional time to provide the information.~~

~~(9)~~))) under WAC 182-503-0050.

(5) Standards to approve a hardship waiver request.

(a) Period of ineligibility: If a client was denied or terminated from LTSS under WAC 182-513-1363 (the scenario described in subsection (3)(a) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(b) Excess home equity: If a client was denied or terminated from LTSS under WAC 182-513-1350 (the scenario described in subsection (3)(b) of this section) and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(c) Trusts.

(i) The client's home is in a revocable trust: If a client was denied or terminated from LTSS under chapter 182-516 WAC (the scenario described in subsection (3)(c) of this section), then the agency or the agency's designee approves a hardship waiver for up to ninety days if the following conditions are met:

(A) The client is an institutionalized individual;

(B) The home would otherwise meet the exclusion criteria in WAC 182-512-0350 (1)(b), but it is in a revocable trust; and

(C) The client must submit in writing to the agency or the agency's designee that, in order to exclude the home under WAC 182-512-0350 (1)(b), the home will be retitled out of the revocable trust to the client, the client's spouse, or both, within ninety days.

(ii) All other denials or terminations of LTSS due to trusts: If a client was denied or terminated from LTSS under subsection (3)(c) of this section, and undue hardship under subsection (2) of this section is found to exist, then the agency or the agency's designee approves a hardship waiver.

(6) If the hardship is approved:

(a) The agency or the agency's designee sends a notice within fifteen days of receiving all information needed to ((~~determine a~~)) approve the hardship waiver. The hardship waiver approval notice specifies a time period for which the undue hardship waiver is approved.

(b) Any changes in a ((~~person's~~)) client's situation that led to the approval of a hardship waiver must be reported to the agency or ((~~its~~)) the agency's designee within thirty days of the change per WAC 182-504-0110.

(((~~10~~))) (c) If the hardship waiver is approved under subsection (5)(c)(i) of this section, the client must provide verification by the ninetieth day after the hardship waiver approval that the home has been retitled out of the revocable trust to the client, the client's spouse, or both.

(7) If the hardship waiver is denied:

(a) The agency or ((~~its~~)) the agency's designee sends a denial notice within fifteen days of receiving the ((~~requested~~)) hardship waiver request or the request for additional information. The ((~~letter~~)) notice will state the reason ((~~it~~)) why the hardship waiver was not approved.

(b) The denial notice has instructions on how to request an administrative hearing. The agency or ((~~its~~)) the agency's designee must receive an administrative hearing request within ninety days of the date of the adverse action ((~~or denial.~~

~~(11) If there is a conflict between this section and chapter 182-526 WAC, this section prevails~~)).

(((~~12~~))) (8) The agency or ((~~its~~)) the agency's designee may revoke approval of an undue hardship waiver if any of the following occur:

(a) A ((~~person~~)) client, or the ((~~person's~~)) client's authorized representative, fails to provide timely information or resource verifications as it applies to the hardship waiver when requested by the agency or ((~~its~~)) the agency's designee per WAC 182-503-0050 and 182-504-0105;

(b) The lien or legal impediment that restricted access to home equity in excess of the home equity limit is removed; or

(c) Circumstances for which the undue hardship was approved have changed.

(9) If there is a conflict between this section and chapter 182-526 WAC, this section prevails.

Chapter 182-516 WAC

TRUSTS, ANNUITIES, ((~~AND~~)) LIFE ESTATES, AND PROMISSORY NOTES—EFFECT ON MEDICAL PROGRAMS

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0001 Definitions. **"Acquire"** means, in the context of trusts, to gain title to, or to gain ownership interest in an asset in a trust. Receiving payment or benefit from an asset in a trust is not acquiring the asset.

"Annuitant" means a person or entity that receives the ((~~income~~)) stream of payments from an annuity.

"Annuity" means a policy, certificate, or contract that is an agreement between two parties in which one party pays a lump sum to the other, and the other party agrees to guarantee payment of a set amount of money over a set amount of time. ((~~The annuity may be purchased at one time or over a set period of time and may be bought individually or with a group. It may be revocable or irrevocable. The party guaranteeing payment can be an:~~

~~(1) Individual; or~~

~~(2) Insurer or similar body licensed and approved to do business in the jurisdiction in which the annuity is established.~~

~~**"Beneficiary"** means an individual(s) designated in the trust who benefits from the trust. The beneficiary can also be called the grantee. The beneficiary and the grantor may be the same person.~~

~~**"Designated for medical expenses"** means the trustee may use the trust to pay the medical expenses of the beneficiary. The amount of the trust that is designated for medical expenses is considered an available resource to the beneficiary. Payments are a third party resource.~~

~~**"Disbursement"** or **"distribution"** means any payment from the principal or proceeds of a trust, annuity, or life estate to the beneficiary or to someone on their behalf.~~

~~**"Discretion of the trustee"** means the trustee may decide what portion (up to the entire amount) of the principal of the trust will be made available to the beneficiary.~~

~~**"Exculpatory clause"** means there is some language in the trust that legally limits the authority of the trustee to distribute funds from a trust if the distribution would jeopardize eligibility for government programs including medicaid.~~

~~**"For the sole benefit of"** means that for a transfer to a spouse, blind or disabled child, or disabled individual, the transfer is arranged in such a way that no individual or entity except the spouse, blind or disabled child, or disabled individual can benefit from the assets transferred in any way, whether at the time of the transfer or at any time during the life of the primary beneficiary.~~

~~**"Grantor"** means an individual who uses his assets or funds to create a trust. The grantor may also be the beneficiary.~~

~~**"Income beneficiary"** means the person receiving the payments may only get the proceeds of the trust. The principal is not available for disbursements. If this term is used, the principal of the trust is an unavailable resource.~~

~~**"Irrevocable"** means the legal instrument cannot be changed or terminated in any way by anyone.~~

~~**"Life estate"** means an ownership interest in a property only during the lifetime of the person(s) owning the life estate. In some cases, the ownership interest lasts only until the occurrence of some specific event, such as remarriage of the life estate owner. A life estate owner may not have the legal title or deed to the property, but may have rights to possession, use, income and/or selling their life estate interest in the property.~~

~~**"Principal"** means the assets that make up the entity. The principal includes income earned on the principal that has not been distributed. The principal is also called the corpus.~~

~~**"Proceeds"** means the income earned on the principal. It is usually interest, dividends, or rent. When the proceeds are not distributed, they become part of the principal.~~

~~**"Pooled trust"** means a trust meeting all of the following conditions:~~

~~(1) It contains funds of more than one disabled individual, combined for investment and management purposes;~~

~~(2) It is for the sole benefit of disabled individuals (as determined by SSA criteria);~~

~~(3) It was created by the disabled individuals, their parents, grandparents, legal guardians, or by a court;~~

~~(4) It is managed by a nonprofit association with a separate account maintained for each beneficiary; and~~

~~(5) It contains a provision that upon the death of the individual, for any funds not retained by the trust, the state will receive all amounts remaining in the individual's separate account up to the total amount of medicaid paid on behalf of that individual.~~

~~**"Revocable"** means the legal instrument can be changed or terminated by the grantor, or by petitioning the court. A legal instrument that is called irrevocable, but that can be terminated if some action is taken, is revocable for the purposes of this section.~~

~~**"Sole benefit trust"** means an irrevocable trust established for the sole benefit of a spouse, blind or disabled child, or disabled individual. In a sole benefit trust no one but the individual named in the trust receives benefit from the trust in any way either at the time the trust is established or at any time during the life of the primary beneficiary. A sole benefit trust may allow for reasonable costs to trustees for management of the trust and reasonable costs for investment of trust funds.~~

~~**"Special needs trust"** means an irrevocable trust meeting all of the following conditions:~~

~~(1) It is for the sole benefit of a disabled individual (as determined by SSA criteria) under sixty-five years old;~~

~~(2) It was created by the individual's parent, grandparent, legal guardian, or by a court; and~~

~~(3) It contains a provision that upon the death of the individual, the state will receive the amounts remaining in the trust up to the total amount of medicaid paid on behalf of the individual.~~

~~**"Testamentary trust"** means a trust created by a will from the estate of a deceased person. The trust is paid out according to the will.~~

~~**"Trust"** means property (such as a home, cash, stocks, or other assets) is transferred to a trustee for the benefit of the grantor or another party. The department includes in this definition any other legal instrument similar to a trust. For annuities, refer to WAC 388-561-0200.~~

~~**"Trustee"** means an individual, bank, insurance company or any other entity that manages and administers the trust for the beneficiary.~~

~~**"Undue hardship"** means the client would be unable to meet shelter, food, clothing, and health care needs if the department applied the transfer of assets penalty.~~))

"Beneficiary" means, in the context of a trust, a person or entity that is entitled to benefit from a trust.

"Grantor" means the person or entity who owned the asset immediately before establishing a trust with that asset.

"Immediate" means, in the context of annuities, an annuity that is fully funded at purchase with no accumulation or deferral to allow accumulation.

"Income" means, in the context of a trust, the undistributed proceeds that a trust principal generates over a period including, but not limited to, interest, dividends, rents and realized gains on the sale or exchange. Any income not disbursed in one period is principal the next period.

"Irrevocable":

(a) For a trust, "irrevocable" means the grantor or someone acting on behalf of the grantor cannot reacquire any portion of the assets in the trust for the benefit of the grantor or unilaterally change the terms of the trust; and the beneficiary or someone acting on behalf of the beneficiary cannot acquire any portion of the assets in the trust for the benefit of the beneficiary or unilaterally change the terms of the trust. A legal instrument that is called irrevocable, but permits acquisition or reacquisition of any portion of the assets if some action is taken by or on behalf of the grantor or the beneficiary, is revocable for the purposes of this chapter.

(b) A trust or annuity that is not irrevocable is revocable.

(c) A trust is still irrevocable if it meets the definition under (a) of this definition, but allows modifications to the trust to con-form with changes in trust law, which occur after the establishment of the trust.

(d) For an annuity, "irrevocable" means the contract cannot be canceled and the terms of the contract cannot be changed.

"Principal" means the assets, other than income, that make up the trust, promissory note, or loan.

"Revocable" means the instrument is not irrevocable. See the definition of "irrevocable."

"Self-settled trust" means any trust established with assets that were originally owned by the beneficiary, or would have been owned by the beneficiary if they had not been diverted into the trust by the beneficiary, the court, or someone acting on the beneficiary's behalf. Depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"Sole benefit" of a beneficiary means a trust benefits no one but that beneficiary, whether at the time the trust is established or at any time during the lifetime of the beneficiary.

"Third-party trust" means a trust established with assets originally owned by someone other than the beneficiary. However, depending on the date a trust is established, a trust may be self-settled if the assets were originally owned by the beneficiary's spouse, or would have been owned by the beneficiary's spouse if they had not been diverted into the trust by the beneficiary's spouse, the court, or someone acting on the beneficiary's spouse's behalf.

"To or for the benefit of" means that a payment or benefit of any sort from a trust is transferred to the beneficiary, another person, or entity such that the beneficiary derives some benefit from the transfer.

"Trust" means:

(a) Any arrangement in which a grantor transfers property to a trustee with the intention that it be held, managed, or administered by the trustee for the benefit of the grantor or another beneficiary; or

(b) Any legal instrument, device, or arrangement similar to a trust in which:

(i) A grantor transfers an asset to another; and

(ii) The grantor transfers the asset intending that it be held, managed, or administered for the benefit of the grantor or another beneficiary.

"Trustee" means a person or entity that manages and administers a trust for the beneficiary.

"Uncompensated asset transfer" means the entirety of the fair market value of the asset transferred was uncompensated, regardless of any consideration received in return for the asset.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0100 Trust((s)) index. (((~~(1) The department determines how trusts affect eligibility for medical programs.~~

~~(2) The department disregards trusts established, on or before April 6, 1986, for the sole benefit of a client who lives in an intermediate care facility for the mentally retarded (ICMR).~~

~~(3) For trusts established on or before August 10, 1993 the department counts the following:~~

~~(a) If the trust was established by the client, client's spouse, or the legal guardian, the maximum amount of money (payments) allowed to be distributed under the terms of the trust is considered available income to the client if all of the following conditions apply:~~

~~(i) The client could be the beneficiary of all or part of the payments from the trust;~~

~~(ii) The distribution of payments is determined by one or more of the trustees; and~~

~~(iii) The trustees are allowed discretion in distributing payments to the client.~~

~~(b) If an irrevocable trust doesn't meet the conditions under subsection (3)(a) then it is considered either:~~

(i) An **unavailable** resource, if the client established the trust for a beneficiary other than the client or the client's spouse; or

(ii) An **available** resource in the amount of the trust's assets that:

(A) The client could access; or

(B) The trustee distributes as actual payments to the client and the department applies the transfer of assets rules of WAC 388-513-1363, 388-513-1364 or 388-513-1365.

(c) If a revocable trust doesn't meet the description under subsection (3)(a):

(i) The full amount of the trust is an available resource of the client if the trust was established by:

(A) The client;

(B) The client's spouse, and the client lived with the spouse; or

(C) A person other than the client or the client's spouse only to the extent the client had access to the assets of the trust.

(ii) Only the amount of money actually paid to the client from the trust is an available resource when the trust was established by:

(A) The client's spouse, and the client did not live with the spouse; or

(B) A person other than the client or the client's spouse; and

(C) Payments were distributed by a trustee of the trust.

(iii) The department considers the funds a resource, not income.

(4) For trusts established on or after August 11, 1993:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed to the trust by the client are available to the client when part of the trust assets were contributed by any other person.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of distributions from the trust.

(d) For a revocable trust established as described under subsection (4)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (4)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (4)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client is an available resource. When payment is made from such irrevocable trusts, we will consider the payments as:

(A) Income to the client when payment is to or for the client's benefit; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the client's benefit;

(ii) A trust from which a payment cannot be made to or for the client's benefit is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(5) For trusts established on or after August 1, 2003:

(a) The department considers a trust as if it were established by the client when:

(i) The assets of the trust, as defined under WAC 388-470-0005, are at least partially from the client or the client's spouse;

(ii) The trust is not established by will; and

(iii) The trust was established by:

(A) The client or the client's spouse;

(B) A person, including a court or administrative body, with legal authority to act in place of, or on behalf of, the client or the client's spouse; or

(C) A person, including a court or administrative body, acting at the direction of or upon the request of the client or the client's spouse.

(b) Only the assets contributed other than by will to the trust by either the client or the client's spouse are available to the client or the client's spouse when part of the trust assets were contributed by persons other than the client or the client's spouse.

(c) The department does not consider:

(i) The purpose for establishing a trust;

(ii) Whether the trustees have, or exercise, any discretion under the terms of the trust;

(iii) Restrictions on when or whether distributions may be made from the trust; or

(iv) Restrictions on the use of the distributions from the trust.

(d) For a revocable trust established as described under subsection (5)(a) of this section:

(i) The full amount of the trust is an available resource of the client;

(ii) Payments from the trust to or for the benefit of the client are income of the client; and

(iii) Any payments from the trust, other than payments described under subsection (5)(d)(ii), are considered a transfer of client assets.

(e) For an irrevocable trust established as described under subsection (5)(a) of this section:

(i) Any part of the trust from which payment can be made to or for the benefit of the client or the client's spouse is an available resource. When payment is made from such irrevocable trusts, the department will consider the payment as:

(A) Income to the client or the client's spouse when payment is to or for the benefit of either the client or the client's spouse; or

(B) The transfer of an asset when payment is made to any person for any purpose other than the benefit of the client or the client's spouse;

(ii) A trust from which a payment cannot be made to or for the benefit of the client or client's spouse is a transfer of assets. For such a trust, the transfer of assets is effective the date:

(A) The trust is established; or

(B) The client or client's spouse is prevented from receiving benefit, if this is after the trust is established.

(iii) The value of the trust includes any payments made from the trust after the effective date of the transfer.

(6) Trusts established on or after August 11, 1993 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust:

(i) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(ii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(7) Trusts established on or after August 1, 2003 are not considered available resources if they contain the assets of either:

(a) A person sixty-four years of age or younger who is disabled as defined by SSI criteria (as described in WAC 388-475-0050) and the trust:

(i) Is irrevocable;

(ii) Is established for the sole benefit of this person by their parent, grandparent, legal guardian, or a court; and

(iii) Stipulates that the state will receive all amounts remaining in the trust upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(b) A person regardless of age, who is disabled as defined by SSI criteria (as described in WAC 388-475-0050), and the trust meets the following criteria:

(i) It is irrevocable;

(ii) It is established and managed by a nonprofit association;

(iii) A separate account is maintained for each beneficiary of the trust but for purposes of investment and management of funds the trust pools the funds in these accounts;

(iv) Accounts in the trust are established solely for the benefit of the disabled individual as defined by the SSI program;

(v) Accounts in the trust are established by:

(A) The individual;

(B) The individual's spouse, where the spouse is acting in the place of or on behalf of the individual;

(C) The individual's parent, grandparent, legal guardian;

(D) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or

(E) A person, including a court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

(vi) It stipulates that either:

(A) The state will receive all amounts remaining in the client's separate account upon the death of the client, the end of the disability, or the termination of the trust, whichever comes first, up to the amount of medicaid spent on the client's behalf; or

(B) The funds will remain in the trust to benefit other disabled beneficiaries of the trust.

(8) Trusts described in subsection (6)(a) and (7)(a) continue to be considered an unavailable resource even after the individual becomes age sixty-five. However, additional transfers made to the trust after the individual reaches age sixty-five would be considered an available resource and would be subject to a transfer penalty.

(9) The department does not apply a penalty period to transfers into a trust described in subsections (6)(b) and (7)(b) if the trust is established for the benefit of a disabled individual under age sixty-five as described in WAC 388-513-1363 and 388-513-1364 and the transfer is made to the trust before the individual reaches age sixty-five.

(10) The department considers any payment from a trust to the client to be unearned income. Except for trusts described in subsection (6), the department considers any

~~payment to or for the benefit of either the client or client's spouse as described in subsections (4)(c) and (5)(c) to be unearned income.~~

~~(11) The department will only count income received by the client from trusts and not the principal, if:~~

~~(a) The beneficiary has no control over the trust; and~~

~~(b) It was established with funds of someone other than the client, spouse or legally responsible person.~~

~~(12) This section does not apply when a client establishes that undue hardship exists.~~

~~(13) WAC 388-513-1363, 388-513-1364, 388-513-1365, and 388-513-1366 apply under this section when the department determines that a trust or a portion of a trust is a transfer of assets.~~)) The medicaid agency or the agency's designee applies the following rules to determine how trusts affect eligibility for medicaid:

(1) WAC 182-516-0105 General rules that apply to all trusts.

(2) WAC 182-516-0110 Self-settled trusts overview.

(3) WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993.

(4) WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993.

(5) WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993.

(6) WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993.

(7) WAC 182-516-0135 Self-settled trusts established before August 11, 1993.

(8) WAC 182-516-0140 Third-party trusts.

(9) WAC 182-516-0145 Trusts containing both assets of the beneficiary and third-party assets.

NEW SECTION

WAC 182-516-0105 General rules that apply to all trusts. (1) Regardless of treatment under this chapter, all trusts remain subject to Title 182 WAC, which include income and resource rules under chapter 182-512 WAC and asset transfer rules under WAC 182-513-1363, unless specified otherwise.

(2) The medicaid agency or the agency's designee treats the trust or a distribution from the trust as a third-party resource under WAC 182-501-0200 if:

(a) The agency or the agency's designee determines the trust is not an available resource or determines the distributions from a trust are not income; and

(b) The terms of the trust or how the trust is being administered meet the third-party resource rules under WAC 182-501-0200.

(3) The agency or the agency's designee applies the rules under WAC 182-516-0100 to both the language of the trust and how the trust is being administered.

(4) Assets in a trust are available resources to the beneficiary if the beneficiary:

(a) Is a trustee; or

(b) Can direct the use of the trust principal or income, or direct the trustee's use of trust principal or income, for that beneficiary's support and maintenance under the terms of the trust.

(5) Cash distributions from a trust to the beneficiary are unearned income to the beneficiary in the month they are received or should have been received under the trust's terms.

(6) For asset transfer dates for trusts, the transfer date of an asset under WAC 182-513-1363 is the latest of:

(a) The date the trust was established;

(b) The date the asset being evaluated was transferred into the trust; or

(c) The date access to the asset was foreclosed by any action, inaction, or language in the trust, which prevents the beneficiary from accessing the asset.

(7) A client who is denied or terminated from medicaid due to the application of any rules under WAC 182-516-0100 may apply for a hardship waiver under WAC 182-513-1367.

NEW SECTION

WAC 182-516-0110 Self-settled trusts overview. (1) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(2) To determine whether the assets of the self-settled trust should be counted as income, a resource, or an asset transfer, the medicaid agency or the agency's designee applies the following rules based on when the trust was established:

(a) For revocable self-settled trusts, see WAC 182-516-0115.

(b) For irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993, see WAC 182-516-0120.

(c) For irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993, see WAC 182-516-0125.

(d) For all other irrevocable self-settled trusts:

(i) Established on or after August 11, 1993, see WAC 182-516-0130.

(ii) Established before August 11, 1993, see WAC 182-516-0135.

NEW SECTION

WAC 182-516-0115 Revocable self-settled trusts established on or after August 11, 1993. (1) This section applies to revocable trusts that are self-settled and established on or after August 11, 1993.

(2) This section does not apply to assets in a revocable trust established before August 11, 1993.

(3) A revocable trust is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(4) The medicaid agency or the agency's designee treats assets in a revocable self-settled trust under this section as follows:

(a) Assets are subject to the resource exclusions under chapter 182-512 WAC; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply; and

(b) Assets not excluded under chapter 182-512 WAC are available resources.

(5) Payments from assets in the trust under this section to or for the benefit of the beneficiary are unearned income of the beneficiary.

(6) If unearned income under subsection (5) of this section was from an available resource under subsection (4) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (5) of this section.

(7) Any payments from the revocable trust, other than payments under subsections (5) and (6) of this section, are uncompensated asset transfers.

NEW SECTION

WAC 182-516-0120 Irrevocable self-settled trusts for a disabled client under age sixty-five established on or after August 11, 1993. (1) This section governs how the agency or the agency's designee treats self-settled trusts, for a disabled client under age sixty-five established under 42 U.S.C. 1396p (d)(4)(a) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is under age sixty-five and disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) The trust was established for the sole benefit of that beneficiary;

(d) The trust was established by the beneficiary's parent, the beneficiary's grandparent, the beneficiary's legal guardian, by a court, or on or after December 13, 2016, the beneficiary; and

(e) The trust says that the states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust up to the amount of medicaid funds spent for the beneficiary.

(i) For trusts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(ii) For trusts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or the agency's designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0125 Irrevocable pooled self-settled trusts for a disabled client established on or after August 11, 1993. (1) This section governs how the agency or the agency's designee treats pooled self-settled trusts, for a disabled client established under 42 U.S.C. 1396p (d)(4)(c) on or after August 11, 1993, for medicaid eligibility purposes.

(2) A pooled self-settled trust established on or after August 11, 1993, is not an available resource if:

(a) The beneficiary is disabled under WAC 182-512-0050 (1)(c) when the trust is established;

(b) The trust is irrevocable;

(c) An account in the trust was established for the sole benefit of that beneficiary;

(d) An account in the trust was established by that beneficiary, the beneficiary's parent, grandparent, legal guardian, or by a court;

(e) The trust was established by and is managed by a nonprofit association;

(f) A separate account is maintained for each beneficiary of the trust, but, for the purposes of the investment and management of funds, the trust pools these accounts; and

(g) The trust says that:

(i) Upon the death of the beneficiary, or, for trust accounts established on or after August 1, 2003, when the trust account terminates or the beneficiary's disability ends, the funds will remain in the trust to benefit other disabled beneficiaries; or

(ii) The states that have spent medicaid funds for the beneficiary will receive all amounts remaining in the trust account for that beneficiary up to the amount of medicaid funds spent for the beneficiary.

(A) For trust accounts established from August 11, 1993, to July 31, 2003, the trust must pay the states when the beneficiary dies.

(B) For trust accounts established on or after August 1, 2003, the trust must pay the states when the beneficiary dies, the trust terminates, or the beneficiary's disability ends.

(3) The medicaid agency or the agency's designee does not apply a penalty period to a beneficiary for asset transfers into a trust, described under subsection (2) of this section, when the beneficiary is under age sixty-five as of the date of the transfer.

(4) Assets in trusts under subsection (2) of this section continue to be unavailable resources, even after the beneficiary turns age sixty-five.

(5) Asset transfers to the trust from the beneficiary, after the beneficiary turns age sixty-five, may be subject to a transfer penalty under WAC 182-513-1363.

(6) If a trust does not meet the requirements under subsection (2) of this section, see WAC 182-516-0130.

NEW SECTION

WAC 182-516-0130 Irrevocable self-settled trusts established on or after August 11, 1993. (1) This section governs irrevocable self-settled trusts established on or after August 11, 1993, that do not meet the rules under either WAC 182-516-0120 or 182-516-0125.

(2) A trust established on or after August 1, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary or the beneficiary's spouse, or would have been owned by the beneficiary or the beneficiary's spouse unless diverted by the beneficiary, the beneficiary's spouse, the court, or someone acting on behalf of the beneficiary or the beneficiary's spouse;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary or that beneficiary's spouse;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary or that beneficiary's spouse; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary or that beneficiary's spouse.

(3) A trust established from August 11, 1993, to July 31, 2003, is a self-settled trust if:

(a) The assets of the trust are at least partially from the beneficiary, or would have been owned by the beneficiary unless diverted by the beneficiary, the court, or someone acting on behalf of the beneficiary;

(b) The trust is not established by will; and

(c) The trust was established by:

(i) The beneficiary;

(ii) A person, including a court or administrative body, with legal authority to act in place or on behalf of the beneficiary; or

(iii) A person, including a court or administrative body, acting at the direction or upon the request of the beneficiary.

(4) This section applies only to the assets contributed to a trust:

(a) Under subsection (2) of this section, by either the beneficiary or that beneficiary's spouse; or

(b) Under subsection (3) of this section, by the beneficiary.

(5) The medicaid agency or the agency's designee applies the rules of this section without regard to:

(a) The purpose for establishing a trust;

(b) Whether the trustees have or may exercise any discretion under the terms of the trust;

(c) Restrictions on when or whether distributions may be made from the trust; and

(d) Restrictions on the use of distributions from the trust.

(6) Treatment of payments or benefits from trusts established under this section.

(a) Subject to subsection (7) of this section, if there are any circumstances under which payment or benefit from the trust could be made to or for the benefit of the beneficiary, the portion of the principal from which, or the income on the principal from which, payment to the beneficiary could be made is an available resource to the beneficiary, and the payment or benefit from that portion:

(i) Is unearned income when payment or benefit is to or for the benefit of the beneficiary; and

(ii) Is an uncompensated asset transfer, if payment or benefit is for any other purpose.

(b) If there are no circumstances under which any payment or any benefit from the trust could be made to or for the benefit of the beneficiary, the part of the trust or income of that trust, from which payment or benefit cannot be made, is an uncompensated asset transfer.

(7) For the purposes of subsection (6)(a) of this section, "available resource" means a resource after the resource exclusions under chapter 182-512 WAC are applied; however, for an institutionalized individual, the resource exclusion for the home under WAC 182-512-0350 does not apply.

(8) If unearned income under subsection (6)(a)(i) of this section was from an available resource under subsection (6)(a) of this section, then the value of the available resource will be reduced by the amount of unearned income under subsection (6)(a)(i) of this section.

NEW SECTION

WAC 182-516-0135 Self-settled trusts established before August 11, 1993. (1) A revocable or irrevocable self-settled trust established before August 11, 1993, under this section is one:

(a) Established other than by will by a beneficiary or that beneficiary's spouse;

(b) Under which that beneficiary may be the beneficiary of all or part of the payments from the trust; and

(c) Under which the distribution of those payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the beneficiary.

(2) For trusts established under subsection (1) of this section, the maximum value the trustee may distribute, under any circumstances, to the beneficiary is unearned income.

(3) If a trust does not meet subsection (1)(c) of this section:

(a) The trust is an available resource to the extent that trust assets can be used for the beneficiary; and

(b) Any asset that cannot be used for the beneficiary is an uncompensated asset transfer.

(4) This section does not apply to any trust or initial trust decree established before April 7, 1986, for the sole benefit of an intellectually disabled client who resides in an intermediate care facility for the intellectually disabled.

NEW SECTION

WAC 182-516-0140 Third-party trusts. (1) This section governs third-party trust as defined under WAC 182-516-0001.

(2) A trust containing the assets of a beneficiary's spouse may be a self-settled trust based on the date it was established. For specific rules regarding this, see WAC 182-516-0130.

(3) A testamentary trust is a third-party trust created by a will where the trust is in the will and the estate is the grantor.

(4) There is no requirement for a state to be named as a remainder beneficiary in third-party trusts.

(5) If the beneficiary has the power to acquire the assets from the third-party trust, the trust is an available resource.

(6) If the beneficiary has no power to access or control trust assets or distributions, as described under WAC 182-516-0105(4), a third-party trust is not an available resource.

NEW SECTION

WAC 182-516-0145 Irrevocable trusts containing both assets of the beneficiary and third-party assets. (1) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the medicaid agency or the agency's designee treats the assets of the beneficiary under the self-settled trust rule in effect as of the date of the trust's establishment:

(a) After August 11, 1993:

(i) For irrevocable self-settled trusts for a disabled client under age sixty-five, see WAC 182-516-0120;

(ii) For irrevocable pooled self-settled trusts for a disabled client, see WAC 182-516-0130; and

(iii) For all other trusts, see WAC 182-516-0130.

(b) Before August 11, 1993, see WAC 182-516-0135.

(2) For irrevocable trusts that contain both assets of the beneficiary and third-party assets, the agency or the agency's designee treats third-party assets under the third-party trust rules under WAC 182-516-0140.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0200 Annuities established prior to April 1, 2009. (1) ((~~The department determines how annuities affect eligibility for medical programs.~~

~~(2)~~)) A revocable annuity is ((~~considered~~)) an available resource.

(((~~(3)~~))) (2) An irrevocable annuity established prior to May 1, 2001, is not an available resource when issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established.

(((~~(4)~~))) (3) The income from an irrevocable annuity((~~, meeting~~)) that meets the requirements of this section((~~, is considered in~~)) is income for determining eligibility and the amount of participation in the total cost of care. The annuity itself is not ((~~considered~~)) a resource ((~~or income~~)).

(((~~(5)~~))) (4) Subject to subsection (5) of this section, an annuity established on or after May 1, 2001, and before April 1, 2009 ((~~will be considered~~)), is an available resource unless it:

(a) Is irrevocable;

(b) Is paid out in equal monthly amounts within the actuarial life expectancy of the annuitant;

(c) Is issued by an individual, insurer, or other body licensed and approved to do business in the jurisdiction in which the annuity is established; and

(d) Names the ((~~department~~)) state of Washington as the beneficiary of the remaining funds up to the total of medicaid funds spent on the client during the client's lifetime. This subsection only applies if the annuity is in the client's name.

(((~~(6)~~))) (5) If an irrevocable annuity ((~~established on or after May 1, 2001 and before April 1, 2009 that is not scheduled to be paid out in equal monthly amounts, can still be considered~~)) is an available resource under subsection (4) of this section because it does not pay out in equal monthly amounts, it is an unavailable resource if:

(a) The full pay out is within the actuarial life expectancy of the client; and

(b) The client:

(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or

(ii) Requests that the ((~~department~~)) medicaid agency or the agency's designee calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant. The income from the annuity remains unearned income to the annuitant.

(((~~(7)~~))) (6) An irrevocable annuity((~~, established prior to May 1, 2001 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty period of ineligibility, determined according to WAC 388-513-1365, may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy.~~

~~(8) An irrevocable annuity, established on or after May 1, 2001 and before April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource transferred without adequate consideration at the time it was purchased. A penalty may be imposed equal to the amount of the annuity to be paid out in excess of the annuitant's actuarial life expectancy. The penalty for a client receiving:~~

~~(a) Long-term care benefits will be a period of ineligibility (see WAC 388-513-1365).~~

~~(b) Other medical benefits will be ineligible in the month of application.~~

~~(9) An irrevocable annuity is considered unearned income when the annuitant is:~~

~~(a) The client;~~

~~(b) The spouse of the client;~~

~~(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client;~~

~~(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client.~~

~~(10)~~)) is unearned income when the annuitant is:

(a) The client;

(b) The spouse of the client;

(c) The blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client; or

(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child, as defined in WAC 182-512-0050 (1)(b) and (c), of the client.

(7) An annuity is not ((~~considered~~)) an available resource when there is a joint owner, co-annuitant or an irrevocable

beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the ((~~cash surrender~~)) value of the annuity is ((~~considered~~)) an available resource and counts toward the maximum community spouse resource allowance.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0201 Annuities established on or after April 1, 2009. (((~~(1) The department determines how annuities affect eligibility for medical programs. Applicants and recipients of medicaid must disclose to the state any interest the applicant or spouse has in an annuity.~~

~~(2) A revocable annuity is considered an available resource.~~

~~(3) The following annuities are not considered an available resource or a transfer of a resource as described in WAC 388-513-1363, if the annuity meets the requirements described in (4)(d), (e) and (f) of this subsection:~~

~~(a) An annuity described in subsection (b) or (q) of section 408 of the Internal Revenue Code of 1986;~~

~~(b) Purchased with proceeds from an account or trust described in subsection (a), (c), or (p) of section 408 of the Internal Revenue Code of 1986;~~

~~(c) Purchased with proceeds from a simplified employee pension (within the meaning of section 408 of the Internal Revenue Code of 1986); or~~

~~(d) Purchased with proceeds from a Roth IRA described in section 408A of the Internal Revenue Code of 1986.~~

~~(4) The purchase of an annuity not described in subsection (3) established on or after April 1, 2009, will be considered as an available resource unless it:~~

~~(a) Is immediate, irrevocable, nonassignable; and~~

~~(b) Is paid out in equal monthly amounts with no deferral and no balloon payments:~~

~~(i) Over a term equal to the actuarial life expectancy of the annuitant; or~~

~~(ii) Over a term that is not less than five years if the actuarial life expectancy of the annuitant is at least five years; or~~

~~(iii) Over a term not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.~~

~~(iv) Actuarial life expectancy shall be determined by tables that are published by the office of the chief actuary of the social security administration (http://www.ssa.gov/OACT/STATS/table4c6.html).~~

~~(c) Is issued by an individual, insurer or other body licensed and approved to do business in the jurisdiction in which the annuity is established;~~

~~(d) Names the state as the remainder beneficiary when the purchaser of the annuity is the annuitant and is an applicant for or recipient of medicaid, or a community spouse of an applicant for or recipient of long-term care or waiver services:~~

~~(i) In the first position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services; or~~

~~(ii) In the second position for the total amount of medical assistance paid for the individual, including both long-term care services and waiver services, if there is a community spouse, or a minor or disabled child as defined in WAC 388-475-0050 (b) and (c) who is named as the beneficiary in the first position.~~

~~(e) Names the state as the beneficiary upon the death of the community spouse for the total amount of medical assistance paid on behalf of the individual at any time of any payment from the annuity if a community spouse is the annuitant;~~

~~(f) Names the state as the beneficiary in the first position for the total amount of medical assistance paid on behalf of the individual at the time of any payment from the annuity, including both long-term care services and waiver services, unless the annuitant has a community spouse or minor or disabled child, as defined in WAC 388-475-0050 (b) and (c). If the annuitant has a community spouse or minor or disabled child, such spouse or child may be named as beneficiary in the first position, and the state shall be named as beneficiary in the second position:~~

~~(i) If the community spouse, minor or disabled child, or representative for a child named as beneficiary is in the first position as described in (f) and transfers his or her right to receive payments from the annuity for less than fair market value, then the state shall become the beneficiary in the first position.~~

~~(5) If the annuity is not considered a resource, the stream of income produced by the annuity is considered available income.~~

~~(6) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) except that it is not immediate or scheduled to be paid out in equal monthly amounts will not be treated as a resource if:~~

~~(a) The full pay out is within the actuarial life expectancy of the annuitant; and~~

~~(b) The annuitant:~~

~~(i) Changes the scheduled pay out into equal monthly payments within the actuarial life expectancy of the annuitant; or~~

~~(ii) Requests that the department calculate and budget the payments as equal monthly payments within the actuarial life expectancy of the annuitant beginning with the month of eligibility. The income from the annuity remains unearned income to the annuitant.~~

~~(7) An irrevocable annuity, established on or after April 1, 2009 that is scheduled to pay out beyond the actuarial life expectancy of the annuitant, will be considered a resource.~~

~~(8) An irrevocable annuity established on or after April 1, 2009 that meets all of the requirements of subsection (4) or (5) is considered unearned income when the annuitant is:~~

~~(a) The client;~~

~~(b) The spouse of the client;~~

~~(c) The blind or disabled child, as defined in WAC 388-475-0050 (b) and (c), of the client; or~~

~~(d) A person designated to use the annuity for the sole benefit of the client, client's spouse, or a blind or disabled child of the client.~~

~~(9) An annuity is not considered an available resource when there is a joint owner, co-annuitant or an irrevocable~~

~~beneficiary who will not agree to allow the annuity to be cashed, unless the joint owner or irrevocable beneficiary is the community spouse. In the case of a community spouse, the cash surrender value of the annuity is considered an available resource and counts toward the maximum community spouse resource allowance.~~

~~(10) Nothing in this section shall be construed as preventing the department from denying eligibility for medical assistance for an individual based on the income or resources derived from an annuity other than an annuity described in subsections (3), (4), and (5).~~)) (1) The medicaid agency or the agency's designee determines how an annuity, purchased by or on behalf of an annuitant and established on or after April 1, 2009, affects eligibility for medicaid.

(2) General information.

(a) Clients of noninstitutional medicaid must disclose to the agency or the agency's designee any interest that client, or the financially responsible members of that client's assistance unit, has in an annuity.

(b) Clients of institutional or home and community-based (HCB) waiver services must disclose to the agency or the agency's designee any interest that client, or that client's community spouse, has in an annuity.

(c) Subject to (d) of this subsection, this section applies when the annuitant is:

(i) The client of medicaid;

(ii) That client's spouse, if that spouse is financially responsible for that client; or

(iii) That client's community spouse.

(d) If this section does not apply because of (c) of this subsection, but the client of institutional or HCB waiver services, or that client's community spouse, is the owner of the annuity, then the purchase of the annuity is evaluated as an asset transfer under WAC 182-513-1363.

(e) For the definition of "disabled," see WAC 182-512-0050 (1)(b) and (c).

(f) Actuarial life expectancy in this section is rounded up to the nearest whole year.

(3) Annuities as resources.

(a) Subject to (b) of this subsection, a revocable annuity is an available resource.

(b) The following annuities are not available resources, even if revocable:

(i) An annuity described under 26 U.S.C. Sec. 408 (b) or (q); or

(ii) An annuity purchased with proceeds from:

(A) An account or trust described under 26 U.S.C. Sec. 408 (a), (c), or (p);

(B) A simplified employee pension (within the meaning of 26 U.S.C. Sec. 408(k)); or

(C) A Roth IRA described under 26 U.S.C. Sec. 408A.

(c) An annuity not described under (b) of this subsection is an available resource unless the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal monthly amounts with no deferral and no balloon payments, over a term:

(A) Of at least five years, if the actuarial life expectancy of the annuitant is at least five years; or

(B) Not less than the actuarial life expectancy of the annuitant, if the actuarial life expectancy of the annuitant is less than five years.

(d) If an annuity fails either the immediate requirement under (c)(ii) of this subsection or the monthly payout requirement under (c)(iii) of this subsection, the annuity is not a resource if:

(i) The annuity is fully paid out within the actuarial life expectancy of the annuitant; and

(ii) The annuitant:

(A) Changes the scheduled payout to equal monthly payments; or

(B) Asks the agency or the agency's designee to calculate and budget the periodic payments as equal monthly payments beginning the month of eligibility. Periodic payments made before the month of eligibility are not included in the calculation.

(iii) Nothing under (d) of this subsection affects the deferral or balloon payment requirements under (c)(iii) of this subsection, or the payment term requirements under (c)(iii)(A) or (B) of this subsection.

(4) Annuities as income.

(a) If an annuity is not an available resource under subsection (3) of this section, the payments from the annuity are unearned income to the annuitant.

(b) If an annuity is an available resource under subsection (3) of this section, the payments from the annuity are not income to the annuitant.

(5) An annuity as a transfer of assets.

(a) The purchase of an annuity is an uncompensated asset transfer, unless the annuity designates the state of Washington as remainder beneficiary under subsection (6) of this section.

(b) The purchase of an annuity by the client of institutional or HCB waiver services is an uncompensated asset transfer, unless the annuity is an annuity under subsection (3)(b)(i) or (ii) of this section, or the annuity:

(i) Is issued by an entity licensed and approved to issue annuities in the jurisdiction in which the annuity is established;

(ii) Is immediate, irrevocable, nonassignable; and

(iii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term that is actuarially sound (i.e., a term that is not greater than the actuarial life expectancy of that client).

(6) Beneficiary designation requirements.

(a) Subject to (b) of this subsection, to satisfy subsection (5)(a) of this section, when the client of institutional or HCB waiver services, or that client's community spouse, is the annuitant, the annuity must:

(i) Name the states as the remainder beneficiary, for at least the total amount of services covered under medicaid, paid on behalf of the client of institutional or HCB waiver services; and

(ii) The remainder beneficiary must be listed in the annuity in the:

(A) First position;

(B) Next position, after the community spouse, and any minor or disabled children; or

(C) First position, if either the community spouse, or any minor or disabled children, or a representative for such children, named as beneficiary in the first position under (a)(ii)(B) of this subsection, transfers the right to receive payments from the annuity for less than fair market value.

(b) When the community spouse is the annuitant, the community spouse, or the community spouse's estate, cannot be named as remainder beneficiary under (a)(ii)(A) of this subsection.

(c) If a change of circumstance requires a change in beneficiary designation under (a) of this subsection, the agency or the agency's designee reevaluates the annuity's beneficiary designation.

(7) Actuarial life expectancy is determined by tables that are published by the office of the chief actuary of the Social Security Administration.

AMENDATORY SECTION (Amending WSR 13-01-017, filed 12/7/12, effective 1/1/13)

WAC 182-516-0300 Life estates. (((~~(1) The department determines how life estates affect eligibility for medical programs.~~

~~(2) A life estate is an excluded resource when either of the following conditions apply:~~

~~(a) It is property other than the home, which is essential to self-support or part of an approved plan for self-support; or~~

~~(b) It cannot be sold due to the refusal of joint life estate owner(s) to sell.~~

~~(3) Remaining interests of excluded resources in subsection (2) may be subject to transfer of asset penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.~~

~~(4) Only the client's proportionate interest in the life estate is considered when there is more than one owner of the life estate.~~

~~(5) A client or a client's spouse, who transfers legal ownership of a property to create a life estate, may be subject to transfer-of-resource penalties under WAC 388-513-1363, 388-513-1364 and 388-513-1365.~~

~~(6) When the property of a life estate is transferred for less than fair market value (FMV), the department treats the transfer in one of two ways:~~

~~(a) For noninstitutional medical, the value of the uncompensated portion of the resource is combined with other nonexcluded resources; or~~

~~(b) For institutional medical, a period of ineligibility will be established according to WAC 388-513-1363, 388-513-1364 and 388-513-1365.~~)) (1) "Life estate" means an ownership interest in real property only during the lifetime of a specified person.

(2) Subject to subsection (3) of this section, a life estate is an available resource, unless it is either excluded or unavailable under chapter 182-512 WAC.

(3) For someone applying for or receiving long-term services and supports, a life estate interest is subject to the home equity limits under:

(a) WAC 182-513-1350 for institutional and home and community-based (HCB) waiver programs; and

(b) WAC 182-513-1215 for community first choice.

(4) For clients of institutional or HCB waiver services:

(a) If the remainder interest was transferred for less than fair market value, the medicaid agency or the agency's designee will evaluate the transaction as an asset transfer under WAC 182-513-1363. "Remainder interest" is the fair market value of the property at the time the client transferred it and retained a life estate, minus the value of the life estate at the time of that transfer.

(b) If a client purchased a life estate but has not lived in the property for at least one year after the purchase, the purchase price of the life estate is an uncompensated asset transfer under WAC 182-513-1363.

(c) If a client purchased a life estate and has lived in the property for more than one year, it is not an uncompensated transfer, unless the purchase price for the life estate exceeded the value of the life estate. Any amount paid for a life estate in excess of the value of the life estate is an uncompensated transfer under WAC 182-513-1363.

(5) To calculate the value of a life estate:

(a) Identify the person whose life determines the length of the life estate;

(b) Identify whether uncompensated value or home equity is being calculated:

(i) If calculating uncompensated value under subsection (4)(a) or (c) of this section, identify that person's age on the person's last birthday before the transfer; or

(ii) If determining whether home equity requirements are met under subsection (3) of this section, identify that person's age on the person's most recent birthday; and

(c) Multiply the property's fair market value by the life estate factor corresponding to that person's age in the Life Estate and Remainder Interest Tables maintained by the Social Security Administration.

(6) To calculate the remainder interest, subtract the value in subsection (5) of this section from the property's fair market value at the time of the transaction that created the life estate.

NEW SECTION

WAC 182-516-0400 Promissory notes and loans. (1) General.

(a) In this section, note includes promissory note, loan or other obligation to pay.

(b) The medicaid agency or the agency's designee determines the value of outstanding principal and interest payments using amortization schedules, unless otherwise stated in this section.

(2) A note as a resource.

(a) A note is a resource. The value of the note is the fair market value (FMV).

(b) The FMV of a note is the outstanding principal of the note, unless convincing evidence to the contrary is provided to the agency or the agency's designee.

(c) If the note owner provides convincing evidence to the agency or the agency's designee of a legal bar to the sale of the note, the note's FMV is zero.

(3) A note as income.

(a) Interest on a note is unearned income.

(b) If the FMV of the note under subsection (2)(c) of this section is zero, the principal portion of recurring payments is unearned income.

(c) The agency or the agency's designee may budget the unearned income in equal monthly amounts at the request of the note owner, or at the agency's or the agency's designee's discretion. The budgeting period will be the note owner's certification period under chapter 182-504 WAC.

(4) A note as an asset transfer under WAC 182-513-1363.

(a) Subject to (b) of this subsection:

(i) The agency or the agency's designee evaluates the purchase of a note as an asset transfer if the purchase price of the note exceeds the FMV of the note;

(ii) The value of the asset transfer is the difference between the purchase price of the note and the FMV of the note at the time of purchase; and

(iii) The agency or the agency's designee determines the FMV of the note at the time of purchase using subsection (2) of this section, but can also determine the FMV of the note at a time after purchase if the agency or the agency's designee determines FMV of the note has changed since the time it was purchased.

(b) The assets used to purchase a note are an uncompensated asset transfer under WAC 182-513-1363, unless the note:

(i) Prohibits the cancellation of the balance of the note upon death of the note owner; and

(ii) Is paid out, in equal periodic amounts with no deferral and no balloon payments, over a term not greater than the actuarial life expectancy of that note owner.

(c) The value of the uncompensated asset transfer under (b) of this subsection is the outstanding balance of the note due as of the date of the client's application for medical assistance for institutional or home and community-based waiver services.

(d) If the purchase of a note results in a period of ineligibility under both (a) and (b) of this subsection, then the period of ineligibility under WAC 182-513-1363 will be the period that is longer.

WSR 18-04-049
PERMANENT RULES
DEPARTMENT OF FISH AND WILDLIFE

[Order 18-15—Filed January 31, 2018, 4:46 p.m., effective March 3, 2018]

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

Purpose: WAC 220-440-170 Payment for livestock damage and other domestic animals, the purpose of the proposal is to align WAC 220-440-170 with RCW 77.36.110, so that a livestock producer must exhaust all available compensation from nonprofit organizations before receiving payment from the Washington department of fish and wildlife (WDFW). The anticipated effect is to improve consistency in the language between law and rule, and to provide a more streamlined process for assessing submitted claims.

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animals—Procedure, the purpose of the proposal is to clarify that a livestock producer can use an independent assessor, or market sales receipts from their last sale or their next upcoming sale to estimate the value of their damaged livestock, and to align WAC 220-440-180 with the payment schedule in the wolf plan for confirmed/probable wolf depredations on grazing areas greater than/less than one hundred acres.

Citation of Rules Affected by this Order: Amending WAC 220-440-170 and 220-440-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.047, 77.36.170, and 77.36.180.

Adopted under notice filed as WSR 17-21-094 on October 18, 2017.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-440-180:

Change: Under subsection (9)(b) added "if applicable."

Rationale: Subtracting the salvage value when determining the compensation value of a bull only applies if the remains of the carcass is, in fact, salvageable. In many cases, the carcass has been consumed or otherwise deteriorated to the point where it is not salvageable and has no value.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: January 19, 2018.

Brad Smith, Chair
Fish and Wildlife
Comission [Commission]

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

WAC 220-440-170 Payment for livestock damage and other domestic animals—Limitations. Commercial livestock owners who have worked with the department to prevent depredation but continue to experience losses, or who experience unforeseen losses, may be eligible to file a damage claim and receive cash compensation. Cash compensation will only be provided to livestock owners by the department when specifically appropriated by the legislature or other funding entity. Damages payable under this section are limited to the lost or diminished value of livestock caused by wild bears, cougars, or wolves and shall be paid only to the owner of the livestock, without assignment. Cash compensation for livestock losses from bears, cougars, and wolves

shall not include damage to other real or personal property, including other vegetation or animals, consequential damages, or any other damages except veterinarian services may be eligible. However, livestock owners under written agreement with the department will be compensated consistent with their agreement which may extend beyond the limitations in this section. The department is authorized to pay the market value for the eligible livestock or guard dog lost((,)) or the market value of indirect livestock losses as a result of harassment by wolves, including reduced weight gains for livestock, and no more than ten thousand dollars to the livestock owner per claim.

Claims for cash compensation will be denied when:

(1) Funds for livestock compensation have not been specifically appropriated by the legislature or other funding entity;

(2) The claim is for livestock other than sheep, cattle, or horses, when only state funds are available; or any domestic animals not allowed by the funding entity;

(3) The owner fails to provide the department with an approved checklist of the preventative and nonlethal means that have been employed, or the owner failed to comply with the terms and conditions of his or her agreement(s) with the department;

(4) The owner has accepted noncash compensation to offset livestock losses in lieu of cash. Acceptance of noncash compensation will constitute full and final payment for livestock losses within a fiscal year;

(5) Damages to the livestock or other domestic animals claimed are covered by insurance or are eligible for payment from ((~~other entities~~)) nonprofit organizations. However, any portion of the damage not covered by ((~~others~~)) nonprofit organizations is eligible for filing a claim with the department;

(6) The owner fails to provide on-site access to the department or designee for inspection and investigation of alleged attack or to verify eligibility for claim;

(7) The owner has not provided a completed written claim form and all other required information, or met required timelines prescribed within this chapter;

(8) No claim will be processed if the owner fails to sign a statement affirming that the facts and supporting documents are truthful to the best of the owner's knowledge; or

(9) The owner or designee has salvaged or rendered the carcass or allowed it to be scavenged without an investigation completed under the direction of the department.

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

WAC 220-440-180 Application for cash compensation for livestock damage or domestic animal—Procedure. Pursuant to this section, the department may distribute money specifically appropriated by the legislature or other funding entity to pay commercial livestock or guard dog losses caused by wild bear, cougar, or wolves in the amount of up to ten thousand dollars per claim unless, following an appeal, the department is ordered to pay more (see RCW 77.36.130(2)). The department will develop claim procedures and application forms consistent with this section for cash compensation of commercial livestock or guard dog losses. Partnerships with other public and private organizations to assist with completion of applications, assessment of losses, and to provide funding for compensation are encouraged.

Filing a claim:

(1) Claimant must notify the department within twenty-four hours of discovery of livestock or other domestic animal attack or as soon as feasible.

(2) Damage claim assessment of amount and value of ((~~domestic animal~~)) eligible livestock or guard dog loss is the primary responsibility of the claimant.

(3) Investigation of the loss and review and approval of the assessment will be conducted by the department:

(a) The claimant must provide access to department staff or designees to investigate the cause of death or injury to ((~~domestic animals~~)) eligible livestock or guard dogs and use reasonable measures to protect evidence at the depredation site.

(b) Federal officials may be responsible for the investigation when it is suspected that the attack was by a federally listed species.

(4) To be eligible a claimant must submit a written statement, electronic or hard copy, within thirty days of discovery of a loss to indicate his or her intent to file a claim.

(5) A complete((~~, written~~)) claim package must be submitted to the department within ninety days of a discovery of an attack on ((~~domestic animals or~~)) livestock or guard dogs to be eligible for compensation.

(6) A claim form declaration must be signed, affirming that the information provided is factual and truthful, per the certification set out in RCW 9A.72.085 before the department will process the claim.

(7) In addition to a completed claim form, a claimant must provide:

(a) Proof of legal ownership or contractual lease of claimed livestock.

(b) Records documenting the value of the ((~~domestic animal based on either market price or value at the time of loss~~)) livestock or guard dog depending upon the determination for cause of loss.

(c) Declaration signed under penalty of perjury indicating that the claimant is eligible for the claim, meets eligibility requirements listed under this chapter and in RCW 77.36.-100, 77.36.110, and 77.36.120, and all claim evaluation and assessment information in the claim application is to the best knowledge of the claimant true and accurate.

(d) A copy of any insurance policy covering loss claimed.

(e) Copies of applications for other sources of loss compensation and any payment or denial documentation.

(f) The department approved checklist of preventative measures that have been deployed, or documented compliance with the terms and conditions of the claimant's agreement with the department, or the director approved waiver.

Settlement of claims:

(8) Subject to funds appropriated to pay for ((~~domestic animal~~)) livestock or guard dog losses, undisputed claims will be paid up to ten thousand dollars.

(9) Valuation of the lost livestock;

(a) ((~~For losses caused by wolves, livestock~~)) The department may utilize the services of an independent certified appraiser to assist in the evaluation of livestock or guard dog claims.

(b) For losses caused by wolves, the compensation value for livestock or guard dogs will be based on the value at the time the animal would normally be sold at market or the cost to replace the animal, and based on comparable types and/or weight of livestock or guard dogs, such as comparable calves, steers, cows, ewes, and lambs; except bulls will be replaced based on the actual purchase price prorated on a four-year depreciation cycle minus salvage value if applicable. The market or replacement value will be determined by ((~~the market at the time the animals would normally be sold. Livestock will be valued based on the average weight of herd mates at the time of sale multiplied by the cash market price received and depredated cows or ewes will be replaced based on the value of a bred animal of the same age and type as the one lost. Bulls will be replaced using actual purchase price prorated based on a four-year depreciation cycle minus salvage value.~~

~~(b)~~)) an independent certified appraiser, the sales receipts from the most recent sale of comparable animals by the owner, or the sales receipts from the next sale of comparable animals by the owner.

(c) The payment amount for wolf depredations to livestock will be based on the following criteria:

(i) Where the livestock grazing site was greater than or equal to one hundred acres, there is a rebuttable presumption that the number of commercial livestock wolf depredations that are eligible for compensation is twice the number of wolf livestock depredations documented by the department, unless all remaining livestock are accounted for. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for two commercial livestock. The payment for each probable wolf depredation will be half the full market value for two commercial livestock. Payments will be reduced by half if all the remaining livestock are accounted for.

(ii) Where the livestock grazing site was less than one hundred acres, there is a rebuttable presumption that all the commercial livestock wolf depredations are discovered by the livestock owner. On these grazing sites, the payment for each confirmed wolf depredation will be the full market value for one commercial livestock. The payment for each probable wolf depredation will be half the full market value for one commercial livestock.

(d) For losses caused by bear or cougar, livestock value will be determined by the market value((~~s~~)) for an animal of the same breed, sex, and average weight at the time the animal((~~s are~~)) is lost.

(((~~(c) The department may utilize the services of a certified livestock appraiser to assist in the evaluation of livestock claims.~~)))

(10) Claims for higher than normal livestock losses, reduced weight gains, or reduced pregnancy rates due to harassment of livestock caused by wolves must include:

(a) At least three consecutive years of records ((~~prior to~~)) preceding the year of the claim. Claims will be assessed for losses in excess of the ((~~previous~~)) preceding three-year running average;

(b) The losses must occur on large pastures or range land used for grazing, lambing, or calving where regular monitoring of livestock is impractical (and therefore discovery of carcasses infeasible) as determined by the department;

(c) Verification by the department that wolves are occupying the area;

(d) The losses cannot be reasonably explained by other causes;

(e) Compliance with the department's preventative measures checklist, or damage prevention cooperative agreement, or a waiver signed by the director.

(11) Compensation paid by the department combined with any other compensation may not exceed the total assessed value of the ((~~assessed~~)) loss.

(12) Upon completion of an evaluation, the department will notify the claimant of its decision to either deny the claim or make a settlement offer (order). The claimant has sixty days from the date received to accept ((~~the department's~~)), sign, and mail to the department the original offer for settlement of the claim. If the claimant wishes to appeal the offer, they must request an informal resolution or adjudicative proceeding as described in WAC 220-440-230. ((~~The acceptance must be in writing and the signed originals must be mailed in to the department.~~)) The appeal must be in writing and may be mailed or submitted by email. If no written acceptance or request for appeal is received within sixty days of receipt of the settlement offer, the offer is considered rejected and not subject to appeal.

(13) If the claimant accepts the department's offer, the department will ((~~send~~)) provide payment to the claimant within thirty days from receipt of the written acceptance document(s).

(14) The department will prioritize payment for livestock losses in the order the claims were received or upon final adjudication of an appeal. If the department is unable to make a payment for livestock losses during the current fiscal year, the claim shall be held over until the following fiscal year when funds become available. As funding becomes available to the department under this section, RCW 77.36.-170, or any other source, the department must pay claims in ((~~the chronologic~~)) chronological order. Claims that are carried over will take first priority and receive payment before any new claims are paid. The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement.

WSR 18-04-071
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed February 2, 2018, 9:22 a.m., effective March 5, 2018]

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

Purpose: Rule making is needed:

To add a definition for authorized person and delete the numbering of definitions in WAC 4-30-010;

To rename WAC 4-30-024, 4-30-050, 4-30-051, 4-30-140;

To better conform WAC 4-30-024 and 4-30-038 to: (1) Recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC); and (3) current agency practices;

To incorporate aspects of the AICPA Code of Professional Conduct into WAC 4-30-050 and 4-30-051;

To clarify and simplify WAC 4-30-140 by allowing for the establishment of policies to define the responsibilities, process, and procedures for performing investigation and resolving disciplinary matters.

Citation of Rules Affected by this Order: Amending WAC 4-30-010, 4-30-024, 4-30-038, 4-30-050, 4-30-051, and 4-30-140.

Statutory Authority for Adoption: RCW 18.04.055; chapter 304, Laws of 2017.

Adopted under notice filed as WSR 17-23-092 on November 15, 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 Nongovernmental 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 6, 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 6, Repealed 0.

Date Adopted: January 26, 2018.

Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 16-17-036, filed 8/9/16, effective 9/9/16)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

(((~~(1)~~))) **"Act"** means the Public Accountancy Act codified as chapter 18.04 RCW.

(((~~(2)~~))) **"Active individual participant"** means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

(((~~(3)~~))) **"Affiliated entity"** means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.

(((~~(4)~~))) **"Applicant"** means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license, a CPA-Inactive certificate, registration as a resident nonlicensee firm owner, or practice privileges.

(((~~(5)~~))) **"Attest"** means providing the following services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any engagement to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(((~~(6)~~))) **"Audit," "review,"** and **"compilation"** are terms reserved for use by licensees, as defined in ((~~subsection (30) of~~)) this section.

(((~~(7)~~))) **"Authorized person"** means a person who is designated or has held out as the client's representative, such as a general partner, tax matters partner, majority shareholder, spouse, agent, or apparent agent.

"Board" means the board of accountancy created by RCW 18.04.035.

(((~~(8)~~))) **"Breach of fiduciary responsibilities/duties"** means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

(((~~(9)~~))) **"Certificate"** means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

(((~~(10)~~))) **"Certificate holder"** means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

(((~~(11)~~))) **"Client"** means the person or entity that retains a licensee, as defined in ((~~subsection (30) of~~)) this section, a CPA-Inactive certificate holder, a nonlicensee firm owner of a licensed firm, or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

(((~~(12)~~))) **"Commissions and referral fees"** are compensation arrangements where the primary contractual relationship for the product or service is not between the client and licensee, as defined in ((~~subsection (30) of~~)) this section, CPA-Inactive certificate holder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm; and

(a) Such persons are not primarily responsible to the client for the performance or reliability of the product or service; or

(b) Such persons add no significant value to the product or service; or

(c) A third party instead of the client pays the persons for the products or services.

(((~~(13)~~))) **"Compilation"** means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

(((~~(14)~~))) **"Contingent fees"** are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

(((~~(15)~~))) **"CPA"** or **"certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

(((~~(16)~~))) **"CPA-Inactive"** means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

(((~~(17)~~))) **"CPE"** means continuing professional education.

(((~~(18)~~))) **"Fiduciary responsibility/duty"** means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

(((~~(19)~~))) **"Firm"** means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability company or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

(((~~(20)~~))) **"Firm mobility"** means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195 (1)(a)(iii)(A) through (D) exercising practice privileges in this state.

(((~~(21)~~))) **"Generally accepted accounting principles"** (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

(((~~(22)~~))) **"Generally accepted auditing standards"** (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

(((~~(23)~~))) **"Holding out"** means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

(((~~(24)~~))) **"Inactive"** means the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

(((~~(25)~~))) **"Individual"** means a living, human being.

(((~~(26)~~))) **"Independence"** means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

(((~~(27)~~))) **"Interactive self-study program"** means a CPE program that provides feedback throughout the course.

(((~~(28)~~))) **"IRS"** means Internal Revenue Service.

(((~~(29)~~))) **"License"** means a license to practice public accounting issued to an individual or a firm under the act or the act of another state.

(((~~(30)~~))) **"Licensee"** means an individual or firm holding a valid license to practice public accounting issued under the act, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

(((~~(31)~~))) **"Manager"** means a manager of a limited liability company licensed as a firm under the act.

(((~~(32)~~))) **"NASBA"** means the National Association of State Boards of Accountancy.

(((~~(33)~~))) **"Nonlicensee firm owner"** means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

(((~~(34)~~))) **"PCAOB"** means Public Company Accounting Oversight Board.

(((~~(35)~~))) **"Peer review"** means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under ((~~subsection (38) of~~)) this section.

(((~~(36)~~))) **"Person"** means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, cor-

poration, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

(((~~37~~))) **"Practice privileges"** are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

(((~~38~~))) **"Principal place of business"** means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

(((~~39~~))) **"Public practice"** or the **"practice of public accounting"** means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of "reports," or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

(((~~40~~))) **"Quality assurance review or QAR"** is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

(((~~41~~))) **"Reciprocity"** means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

(((~~42~~))) **"Referral fees"** see definition of "commissions and referral fees" in ((~~subsection (12) of~~)) this section.

(((~~43~~))) **"Report,"** when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

(((~~44~~))) **"Representing oneself"** means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a nonlicensee firm owner.

(((~~45~~))) **"Rules of professional conduct"** means rules adopted by the board to govern the conduct of licensees, as defined in ((~~subsection (30) of~~)) this section, while representing themselves to others as licensees. These rules also govern the conduct of CPA-Inactive certificate holders, nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

(((~~46~~))) **"SEC"** means the Securities and Exchange Commission.

(((~~47~~))) **"Sole proprietorship"** means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

(((~~48~~))) **"State"** includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

(((~~49~~))) **"Statements on auditing standards (SAS)"** are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

(((~~50~~))) **"Statements on standards for accounting and review services (SSARS)"** are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

(((~~51~~))) **"Statements on standards for attestation engagements (SSAE)"** are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-024 ((~~What~~)) Public records ((~~are available?~~)). All public records of the agency are available for

public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the office of the Washington State Board of Accountancy at 711 Capitol Way S., Suite 400, Olympia, Washington, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at the agency's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) **Records index.** An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the agency's office.

(3) **Organization of records.** The agency maintains its records in a reasonably organized manner. The agency will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the agency's office. A variety of records are also available on the agency's web site at www.cpaboard.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request in writing by letter, fax, or email addressed to the public records officer. **Written requests must include the following information:**

• Date of the request;

• Name of the requestor;

• Address of the requestor and other contact information, including telephone number and any email address;

• Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should make that preference clear in the request ((~~and make arrangements to make payment for the copies of the records prior to delivery or provide a deposit of the estimated copy costs provided by the agency upon request prior to the copies being made~~)). Copies will be made by the agency's public records officer or designee. ((~~Costs for copying are fifteen cents per page, except that there is no charge for the first fifty pages of records included in any request by one requestor.~~))

(e) When fulfilling public records requests the agency will perform its public records responsibilities in the most expeditious manner consistent with the agency's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the agency's anticipated installment delivery timetable.

(h) In certain instances the agency may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within fifteen days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the fifteen-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations:

In order to obtain a list of individuals under the provisions of RCW 42.56.070(9), educational organizations and professional associations must apply for and receive recognition by the board before requests will be honored. The requesting organization must provide sufficient information to satisfy the approving authority that the requested list of individuals is primarily for educational and professionally related uses. ((~~Fees must be paid in advance before approved requests will be honored.~~))

Board forms are available on the board's web site or upon request for your use.

AMENDATORY SECTION (Amending WSR 14-04-086, filed 2/3/14, effective 3/6/14)

WAC 4-30-038 Fees. RCW 18.04.065 provides that the board shall set fees related to licensure at a level adequate to pay the costs of administering chapter 18.04 RCW. The board has established the following fee schedule:

(1)	Initial application for individual license, individual license through reciprocity, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$330
(2)	Renewal of individual license, CPA-Inactive certificate, CPA firm license (sole proprietorships with no employees are exempt from the fee), or registration as a resident nonlicensee firm owner	$230
(3)	Application for CPA-Inactive certificate holder to convert to a license	$0
(4)	Application for reinstatement of license, CPA-Inactive certificate, or registration as a resident nonlicensee owner	$480

(5)	Quality assurance review (QAR) program fee (includes monitoring reviews for up to two years)	
	Firm submits reports for review	$400
	Firm submits a peer review report for review	$60
	Firm is exempted from the QAR program because the firm did not issue attest reports	$0
(6)	Late fee *	$100
(7)	Amendment to firm license except for a change of firm address (there is no fee for filing a change of address)	$35
(8)	((~~Copies of records, per page exceeding fifty pages . . . . . .~~	~~$0.15~~
~~(9)~~	~~Listing of licensees, CPA-Inactive certificate holders, or registered resident nonlicensee firm owners . . . . . .~~	~~$75~~
~~(10)~~))	Replacement CPA wall document	$50
((~~(11)~~)) (9)	Dishonored check fee (including, but not limited to, insufficient funds or closed accounts)	$35
((~~(12)~~)) (10)	CPA examination. Exam fees are comprised of section fees plus administrative fees. **The total fee is contingent upon which section(s) is/are being applied for and the number of sections being applied for at the same time.** The total fee is the section fee(s) for each section(s) applied for added to the administrative fee for the number of section(s) applied for.	
(a)	Section fees: Section fees for the computerized uniform CPA examination are set by third-party providers for the development and delivery of the exam. These fees are collected and retained by the third-party provider.	
(b)	Administrative fees: Administrative fees for the qualification and application processes are set by a third-party provider. These fees are collected and retained by the third-party provider.	

* The board may waive late filing fees for individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

AMENDATORY SECTION (Amending WSR 13-04-011, filed 1/25/13, effective 2/25/13)

WAC 4-30-050 ((~~What are the requirements concerning~~)) Records and clients confidential information((~~?~~)). (1) **Client:** The term "client" as used throughout WAC 4-30-050 and 4-30-051 includes former and current clients. For purposes of this section, a client relationship has been formed when confidential information has been disclosed by a prospective client or another authorized person in an initial interview to obtain or provide professional services.

(2) **Sale or transfer of client records:** No statement, record, schedule, working paper, or memorandum, including electronic records, may be sold, transferred, or bequeathed without the consent of the client or ((~~his or her personal representative or assignee, to anyone other than one or more surviving partners, shareholders, or new partners or new shareholders of the licensee, partnership, limited liability company, or corporation, or any combined or merged partnership, limited liability company, or corporation, or successor in interest~~)) another authorized person.

(3) **Disclosure of client confidential records and client relationships:**

(a) Confidential client communication or information: Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons must not without the specific consent of the client or ((~~the heirs, successors, or authorized representatives of the client~~)) another authorized person disclose any confidential communication or information pertaining to the client obtained in the course of performing professional services.

(b) Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and employees of such persons who have provided records to a client or another authorized person are not obligated to provide such records to other individuals associated with the client.

(c) When a licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee is engaged to prepare a married couple's joint tax return, both spouses are considered to be clients, even if the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee was engaged by one spouse and deals exclusively with that spouse.

Accordingly, if the married couple is undergoing a divorce and one spouse directs the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee to withhold joint tax information from the other spouse, the licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee shall provide the information to both spouses, in compliance with this rule. The licensee, CPA-Inactive certificate holder, nonlicensee firm owner, or employee should consider reviewing the legal implications of such disclosure with an attorney and any responsibilities under any applicable tax performance standards promulgated by the United States Department of Treasury, Internal Revenue Service.

This rule also applies to confidential communications and information obtained in the course of professional tax compliance services unless state or federal tax laws or regulations require or permit use or disclosure of such information.

Consents may include those requirements of Treasury Circular 230 and IRC Sec. 7216 for purposes of this rule, provided the intended recipients are specifically and fully identified by full name, address, and other unique identifiers.

(4) **Disclosing information to third-party service providers:** Licensees, CPA-Inactive certificate holders, or nonlicensee firm owners must do one of the following before dis-

closing confidential client information to third-party service providers:

(a) Enter into a contractual agreement with the third-party service provider to assist in providing the professional services to maintain the confidentiality of the information and provide a reasonable assurance that the third-party service provider has appropriate procedures in place to prevent the unauthorized release of confidential information to others. The nature and extent of procedures necessary to obtain reasonable assurance depends on the facts and circumstances, including the extent of publicly available information on the third-party service provider's controls and procedures to safeguard confidential client information; or

(b) Obtain specific consent from the client before disclosing confidential client information to the third-party service provider.

(5) Disclosure of client records in the course of a firm sale, or transfer upon death of a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.

A licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, that sells or transfers all or part of a practice to another person, firm, or entity (successor firm) and will no longer retain ownership in the practice must do all of the following:

(a) Submit a written request to each client subject to the sale or transfer, requesting the client's consent to transfer its files to the successor firm or other entity and notify the client that its consent may be presumed if it does not respond to the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner's request within a period of not less than ninety days, unless prohibited by law. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner, or successor in interest of a deceased firm owner, should not transfer any client files to the successor firm until either the client's consent is obtained or the ninety days has lapsed, whichever is shorter. The licensee, CPA-Inactive certificate holder, or nonlicensee firm owner must retain evidence of consent, whether obtained from the client or presumed after ninety days.

(b) It is permissible for the successor in interest of a deceased licensee, CPA-Inactive certificate holder, or nonlicensee firm owner to contract with a responsible custodian to securely store client records until such time as consent or transfer has been obtained.

(6) This rule does not:

(a) Affect in any way the obligation of those persons to comply with a lawfully issued subpoena or summons;

(b) Prohibit disclosures in the course of a quality review of a licensee's attest, compilation, or other reporting services governed by professional standards;

(c) Preclude those persons from responding to any inquiry made by the board or any investigative or disciplinary body established by local, state, or federal law or recognized by the board as a professional association; or

(d) Preclude a review of client information in conjunction with a prospective purchase, sale, or merger of all or part of the professional practice of public accounting of any such persons.

AMENDATORY SECTION (Amending WSR 11-06-062, filed 3/2/11, effective 4/2/11)

WAC 4-30-051 ((~~What are the requirements concerning~~)) Client records((~~, including response to requests by clients and former clients for records?~~)). (1) The following terms are defined below solely for use with this section:

(a) **Client provided records** are accounting or other records belonging to the client that were provided to the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons by or on behalf of the client.

(b) **Client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner** are accounting or other records (for example, tax returns, general ledgers, subsidiary journals, and supporting schedules such as detailed employee payroll records and depreciation schedules) that the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons was engaged to prepare for the client.

(c) **Supporting records** are information not reflected in the client's books and records that are otherwise not available to the client with the result that the client's financial information is incomplete. For example, supporting records include adjusting, closing, combining or consolidating journal entries (including computations supporting such entries), that are produced by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons during an engagement.

(d) **Licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner working papers** include, but are not limited to, audit programs, analytical review schedules, statistical sampling results, analyses, and schedules prepared by the client at the request of the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons.

(2) When a client or former client (client) makes a request for client-provided records, client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner, or supporting records that are in the custody or control of the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner that have not previously been provided to the client, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should respond to the client's request as follows:

(a) Client provided records in the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner custody or control must be returned to the client.

(b) Client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner must be provided to the client, except that client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner may be withheld if the preparation of such records is not complete.

(c) Supporting records relating to a completed and issued work product must be provided to the client.

(d) Persons subject to this subsection developing and maintaining such records, or schedules should make a reasonable effort to provide the required information and data to the client in a format useable by the client to avoid the cost to the

client of duplicate reentry of individual transaction or other information into the client's or successor custodian's record-keeping system.

(3) The licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is not required to convert records that are not in electronic format to electronic format. However, if the client requests records in a specific format and the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner was engaged to prepare the records in that format, the client's request should be honored.

(4) In responding to a records request, it is not permissible for a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner to supplant a client record originally created in an electronic format with one converted to a nonelectronic format, such as a hard copy or a dissimilar electronic format unusable to the client.

(5) Licensees, CPA-Inactive certificate holders, nonlicensee firm owners, and/or employees of such persons must not refuse to return or provide records indicated in subsection (1)(a), (b), and (c) of this section including electronic documents, pending client payment of outstanding fees.

(((~~(5)~~))) (6) Once the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons has complied with the requirements in subsection (2) of this section, he or she is under no ethical obligation to comply with any subsequent requests to again provide such records or copies of such records. However, if subsequent to complying with a request, a client experiences a loss of records due to a natural disaster or an act of war, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should comply with an additional request to provide such records.

(((~~(6)~~))) (7) Licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner working papers are the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner property and need not be provided to the client under provisions of this section; however, such requirements may be imposed by state and federal statutes and regulations, and contractual agreements.

(((~~(7)~~))) (8) In connection with any request for client-provided records, client records prepared by the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner and employees of such persons, or supporting records, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner may:

(a) Charge the client a reasonable fee for the time and expense incurred to retrieve and copy such records and require that such fee be paid prior to the time such records are provided to the client;

(b) Provide the requested records in any format usable by the client;

(c) Make and retain copies of any records returned or provided to the client.

(((~~(8)~~))) (9) Where a licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is required to return or provide records to the client, the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner should comply with the client's request as soon as practicable but, absent extenuating circumstances, no later than forty-five days after the request is made. The fact that the statutes of the state in which the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner practices grants the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner a lien on certain records in his or her custody or control does not relieve the licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner of his or her obligation to comply with this section.

(((~~(9)~~))) (10) A licensee, CPA-Inactive certificate holder, and/or nonlicensee firm owner is under no obligation to retain records for periods that exceed applicable professional standards, state and federal statutes and regulations, and contractual agreements relating to the service(s) performed.

(((~~(10)~~))) (11) Audit and review record retention requirements: For a period of seven years after a licensee concludes an audit or review such persons must retain the following records and documents, including electronic records unless hard copies of such exist:

(a) Records forming the basis of the audit or review;

(b) Records documenting audit or review procedures applied;

(c) Records documenting evidence obtained including financial data, analyses, conclusions, and opinions related to the audit or review engagement; and

(d) Records documenting conclusions reached by the licensee in the audit or review engagement.

AMENDATORY SECTION (Amending WSR 14-22-034, filed 10/28/14, effective 11/28/14)

WAC 4-30-140 ((~~What are the authority, structure, and processes for investigations and sanctions?~~)) Disciplinary authority and process.

((~~**Authority.**~~))

(1) Investigations are responsive to formal complaints received or indications of a potential violation of the Public Accountancy Act, chapter 18.04 RCW and in all proceedings under RCW 18.04.295 or Administrative Procedure Act, chapter 34.05 RCW.

(2) The board ((~~chair may delegate investigative~~)) has delegated authority and responsibility for processing complaints, initiating and directing investigations, resolving certain cases and issuing charging documents to ((~~a designee including~~)) the executive director of the board (((~~(~~)))RCW 18.04.045(7)(((~~)~~))).

((~~**Structure:**~~

~~Investigations must be directed and conducted by individuals sufficiently qualified and knowledgable of the subject matter of an investigation.~~

~~The general responsibilities when directing an investigation are:~~

~~(1) Determine whether the complaint or other source of information is within the authority of the board;~~

~~(2) Determine the most likely sanction the board might impose if the alleged violation is proven;~~

~~(3) Determine the scope and type of evidence needed to reach a conclusion whether a violation occurred;~~

~~(4) Monitor communications to the person(s) affected by the investigative process;~~

(5) Monitor the progress of the evidentiary gathering process to ensure that the scope of inquiry and request for records is limited to that necessary to reach a conclusion whether the violation occurred;

(6) Upon completion of the investigation, evaluate the sufficiency of the evidence to support a conclusion as to whether a violation occurred;

(7) Develop a recommendation for dismissal or sanction for consideration by a consulting board member based upon the accumulated evidence and the board's "fair and equitable" standard for sanctioning.

Processes:

By board delegation, the executive director directs the complaint processes, investigative activities, and case resolution negotiations. The gathering of appropriate evidence should be assigned to staff or contract investigators who have no current or former close relationship to (or with) the complainant or the respondent.

Upon receiving a complaint or otherwise becoming aware of a situation or condition that might constitute a violation of the Public Accountancy Act (act) or board rules, the executive director will make a preliminary assessment.

If the executive director determines:

• The situation or condition is not within the board's authority, the executive director may dismiss the matter, but a record of the event will be documented and maintained in the board office in accordance with the agency's approved retention schedule. A summary of dismissals will be reported regularly to the board.

• The situation or condition requires further evaluation, the executive director assigns the case to a staff or contract investigator.

Details of the additional evidence gathered and the resulting conclusion by the executive director will be documented. If the executive director determines that:

• Sufficient evidence does not exist to merit board action, the executive director may dismiss the case, but a record of the event will be documented and maintained in the board office in accordance with the agency's approved record retention schedule. A summary of dismissals will be reported regularly to the board.

• Sufficient evidence exists to merit board action and it is the first time an individual or firm is notified of a violation of the Public Accountancy Act or board rule, the executive director may impose administrative sanctions approved by the board for a first-time offense.

• Sufficient evidence exists to merit board consideration but the situation or condition, if proven, is not eligible for administrative sanctions, the executive director will discuss a resolution strategy and settlement parameters with a consulting board member. Once the executive director and consulting board member agree on those matters, the executive director and assigned staff or contract investigator will initiate a discussion for resolution with the respondent consistent with that agreed upon strategy and those settlement parameters.

The executive director may request guidance from a consulting board member and/or the assistance of the assigned prosecuting assistant attorney general at any time during the investigative and/or negotiation processes.

If the respondent is amenable to the suggested resolution and terminology of a negotiated proposal, the executive director will forward the proposal to the respondent for written acceptance. If accepted by the respondent, the proposal will be forwarded to the board for approval.

Upon receiving and considering the formal settlement proposal, the respondent may offer a counterproposal. The executive director and assigned staff or contract investigator will discuss the counterproposal with a consulting board member. The executive director and consulting board member may agree to the counterproposal, offer a counter to the counterproposal, or reject the counterproposal.

If the executive director and consulting board member reject the counterproposal or are unable to negotiate what they consider to be an acceptable alternative proposal with the respondent, the executive director will execute a statement of charges and refer the case to the assigned prosecuting assistant attorney general with the request that an administrative hearing be scheduled and the case prosecuted.

At the same time that the assigned prosecuting assistant attorney general is preparing the case for prosecution, the assigned prosecuting assistant attorney general, working with the executive director and consulting board member, will continue to seek a negotiated settlement (consent agreement) in lieu of a board hearing. If the case goes to hearing before the board, the assigned prosecuting assistant attorney general, with the concurrence of the executive director and consulting board member, will present the team's recommended sanction to the board.

Through this process, the consulting board member, the executive director and, when appropriate, the assigned prosecuting assistant attorney general must individually and jointly act objectively and cooperatively to:

• Draw conclusions as to the allegations based solely on the evidence;

• Develop and present to the respondent a suggested settlement proposal that they believe the board will accept because the proposal is fair and equitable and provides public protection; and

• If the case goes to a hearing before the board, recommend an appropriate sanction or sanctions to the board.

No proposed negotiated settlement is forwarded to the board unless the respondent, the executive director, consulting board member and, when appropriate, the assigned prosecuting assistant attorney general concur that the proposal is an acceptable resolution to the matter.

If the participants in the negotiation concur with the negotiated resolution and terminology of the agreement, a proposed consent agreement is to be signed by the respondent, and signed by the assigned prosecuting assistant attorney general if the settlement was negotiated by the assigned prosecuting assistant attorney general, and forwarded to the board members, along with the executive director's, consulting board member's and, when appropriate, assigned prosecuting assistant attorney general's recommendation to accept the proposal for consideration.

The board is not bound by this recommendation.

~~All proposed consent agreements must be approved by a majority vote of the board. Five "no" votes mean the proposed settlement has been rejected by the board. In such circumstances, the case will return to the executive director, consulting board member, and assigned prosecuting assistant attorney general who will determine whether the situation merits additional attempts to negotiate a settlement or to immediately schedule the matter for an administrative hearing before the board.~~

~~All fully executed consent agreements and board orders become effective the date the document is signed by the board's presiding officer unless otherwise specified in the fully executed consent agreement or board order.~~)) (3) The board has established policies and administrative rules to define the responsibilities, process, and procedures for performing the disciplinary process.

(4) The board's investigative team reviews all complaints received to determine if the allegations are within the board's authority. If the complaint is not within the board's jurisdiction, then the executive director may close the complaint without action.

(5) If an investigation produces sufficient evidence for the executive director to conclude that a respondent has violated chapter 18.04 RCW, the executive director will work with a consulting board member (CBM) to review the case and recommend a resolution strategy.

(6) If at any time, the executive director and CBM determines there is not sufficient evidence of a violation, then the executive director may close the complaint without action.

(7) In most cases, the first step in the resolution strategy is to enter into a settlement negotiation. Settlement may be reached at any time.

(8) At any time, the executive director may issue a statement of charges which begins the formal disciplinary process. The executive director may also issue a temporary cease and desist order when deemed necessary to protect public safety and welfare.

(9) The respondent has the opportunity to answer the statement of charges and request administrative review. The board may hold a formal administrative hearing, in accordance with chapter 34.05 RCW. The board may impose a final order as a result of an administrative review.

(10) Any final order issued by the board may be appealed as described in chapter 34.05 RCW.

(11) The disciplinary process shall proceed in a timely manner in keeping with the circumstances of the individual case. There is no specific or absolute timeline for the disciplinary process of a case.

(12) The board has the power and authority to recover investigative and legal costs whether through consent order or final administrative order.

WSR 18-04-080
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed February 2, 2018, 6:49 p.m., effective March 5, 2018]

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

Purpose: WAC 246-827-0200 Medical assistant-certified—Training and examination, the department of health (department) adopts rule amendments to remove the current list of four department-recognized medical assistant (MA)-certified exams from rule. The list of currently recognized exams will be posted and updated on the department's MA webpage in lieu of keeping the list in rule. The adopted rule establishes that a department-approved MA-certification exam must be offered by a [an] MA program accredited by the National Commission on Certifying Agencies and must cover the clinical and administrative duties authorized under RCW 18.360.050(1). The effect of the adopted rule is to establish exam criteria to be used for approval rather than maintaining a list of department-recognized exams in rule. The four currently recognized exams will continue to meet MA-certified exam requirements.

Citation of Rules Affected by this Order: Amending WAC 246-827-0200.

Statutory Authority for Adoption: RCW 18.360.030 and 18.360.070.

Other Authority: RCW 18.360.040.

Adopted under notice filed as WSR 17-20-035 on September 28, 2017.

Changes Other than Editing from Proposed to Adopted Version: For clarity, two commas were added to the sentence, "Pass a medical assistant certification examination approved by the secretary within five years of submitting an initial application." Commas were added to clarify that an applicant must have passed a recognized exam within five years of applying for the credential and not that the secretary had to approve the exam within the last five years. The sentence now reads, "Pass a medical assistant certification examination, approved by the secretary, within five years of submitting an initial application."

A final cost-benefit analysis is available by contacting Brett Cain, P.O. Box 47852, Olympia, WA 98501, phone 360-236-4766, fax 360-236-2901, TTY 360-833-6388 or 711, email brett.cain@doh.wa.gov, web site doh.wa.gov/medicalassistant.

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

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

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

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

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

Date Adopted: February 2, 2018.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-12-045, filed 5/31/13, effective 7/1/13)

WAC 246-827-0200 Medical assistant-certified—Training and examination. ((~~Certification requirements.~~)) An applicant((~~s~~)) for a medical assistant-certified credential must meet the following requirements:

(1) Successful completion of one of the following medical assistant training programs:

(a) Postsecondary school or college program accredited by the Accrediting Bureau of Health Education Schools (ABHES) or the Commission of Accreditation of Allied Health Education Programs (CAAHEP);

(b) Postsecondary school or college accredited by a regional or national accrediting organization recognized by the U.S. Department of Education, which includes a minimum of seven hundred twenty clock hours of training in medical assisting skills, including a clinical externship of no less than one hundred sixty hours;

(c) A registered apprenticeship program administered by a department of the state of Washington unless the secretary determines that the apprenticeship program training or experience is not substantially equivalent to the standards of this state. The apprenticeship program shall ensure a participant who successfully completes the program is eligible to take one or more examinations identified in subsection (2) of this section; or

(d) The secretary may approve an applicant who submits documentation that he or she completed postsecondary education with a minimum of seven hundred twenty clock hours of training in medical assisting skills. The documentation must include proof of training in all of the duties identified in RCW 18.360.050(1) and a clinical externship of no less than one hundred sixty hours.

(2) Pass ((~~one of the following examinations within five years prior to submission of an initial application for this credential:~~

~~(a) Certified medical assistant examination through the American Association of Medical Assistants (AAMA);~~

~~(b) Registered medical assistant certification examination through the American Medical Technologists (AMT);~~

~~(c) Clinical medical assistant certification examination through the National Healthcareer Association (NHA); or~~

~~(d) National certified medical assistant examination through the National Center for Competency Testing (NCCT)~~)) a medical assistant certification examination, approved by the secretary, within five years of submitting an initial application. A medical assistant certification examination approved by the secretary means an examination that:

(a) Is offered by a medical assistant program that is accredited by the National Commission for Certifying Agencies (NCCA); and

(b) Covers the clinical and administrative duties under RCW 18.360.050(1).

WSR 18-04-096
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed February 6, 2018, 10:07 a.m., effective March 9, 2018]

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

Purpose: **Change Log Phase 4,** the purpose of this rule making is to fix any outstanding housekeeping issues that are on the department of labor and industries, division of occupational safety and health's (DOSH) change log. Please see below for the amendments being adopted as proposed:

WAC 296-59-060 Vessel or confined area requirements.
- Updated outdated reference from "WAC 296-62-145 through 296-62-14529, General occupational health standards for permit—Required" to "chapter 296-809 WAC, Confined spaces."

WAC 296-59-125 Ski lift aerial work platforms.
- Updated the reference in the Note at the bottom of the section from "Appendix 2" to "Appendix 1" - no Appendix 2 exists in this chapter.

WAC 296-78-835 Vehicles.
- Updated outdated reference in subsection (1)(b) from "WAC 296-24-230 through 296-24-23035 of the general safety and health standards" to the correct current reference of "chapter 296-863 WAC, Forklifts and other powered industrial trucks."

WAC 296-115-025 Vessel inspection and certification.
- Added "or cargo" to subsection (4) for consistency so it reads "No person will operate a passenger or cargo vessel if the vessel does not have a valid certificate of inspection issued by the department."

WAC 296-304-02005 Cleaning and other cold work.
- Updated reference in subsection (2)(f)(iv) from "206-304-090" to "296-304-090."

WAC 296-304-05001 Scaffolds or staging.
- Removed letter (a) from subsection (7) since there are no other subdivisions to go along with it under (7). Add[ed] word "subsection" in the middle of the sentence before list of "(1), (8) and (9) of this section."

WAC 296-304-05003 Ladders.
- Removed the letter (a) from subsection (3) since there are no other subdivisions to go along with it under (3) and update the roman numerals from (i), (ii) and (iii) to (a), (b) and (c) for consistency.

WAC 296-304-06013 Hazardous materials.
- Removed the number (1) from the definition of "Hazardous material" at the beginning of the section for consistency across all chapters and renumber[ed] the rest of the section. Add[ed] the word "definition" before the actual definition of "Hazardous material" for clarification.

WAC 296-823-17005 Establish and maintain medical records.
- Updated outdated reference in reference at the bottom of the section from "WAC 296-62-052, Access to records"

to "chapter 296-802 WAC, Employee medical and exposure records."

Citation of Rules Affected by this Order: Amending WAC 296-59-060, 296-59-125, 296-78-835, 296-115-025, 296-304-02005, 296-304-05001, 296-304-05003, 296-304-06013, and 296-823-17005.

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

Adopted under notice filed as WSR 17-23-174 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 9, 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: February 6, 2018.

Joel Sacks
Director

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

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

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

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

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

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

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

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

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

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

(d) Guardrails.

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

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

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

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

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

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

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

(e) Platform attachment.

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

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

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

(f) Maintenance.

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

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

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

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

(A) The inspector identification;

(B) All defects found;

(C) The identity of repair personnel;

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

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

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

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

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

(2) Work platform use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Lumber hauling trucks.

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Aisles, passageways, and roadways must be sufficiently wide to provide safe side clearance. One-way aisles may be used for two-way traffic if suitable turnouts are provided.

(9) Where an operator's vision is impaired by the vehicle or load it is carrying, they must move only on signal from someone so stationed as to have a clear view in the direction the vehicle is to travel.

(10) Reserved.

(11) Load limits. No vehicle must be operated with loads exceeding its safe load capacity.

(12) Vehicles with internal combustion engines must not be operated in enclosed buildings or buildings with ceilings less than sixteen feet high unless the buildings have ventilation adequate to maintain air quality as required by the general occupational health standard, chapter 296-62 WAC.

(13) Vehicles must not be refueled while motor is running. Smoking or open flames must not be allowed in the refueling area.

(14) No employee other than trained operators or mechanics must start the motor of, or operate any log or lumber handling vehicle.

(15) All vehicles must be equipped with brakes capable of holding and controlling the vehicle and capacity load upon any grade or incline over which they may operate.

(16) Unloading equipment and facilities.

(a) Machines used for hoisting, unloading, or lowering logs must be equipped with brakes capable of controlling or holding the maximum load in midair.

(b) The lifting cylinders of all hydraulically operated log handling machines, or where the load is lifted by wire rope, must be equipped with a positive device for preventing the uncontrolled lowering of the load or forks in case of a failure in the hydraulic system.

(c) A limit switch must be installed on powered log handling machines to prevent the lift arms from traveling too far in the event the control switch is not released in time.

(d) When forklift-type machines are used to load trailers, a means of securing the loading attachment to the fork must be installed and used.

(e) A-frames and similar log unloading devices must have adequate height to provide safe clearance for swinging loads and to provide for adequate crotch lines and spreader bar devices.

(f) Log handling machines used to stack logs or lift loads above operator's head must be equipped with overhead protection.

(g) Unloading devices must be equipped with a horn or other plainly audible signaling device.

(h) Movement of unloading equipment must be coordinated by audible or hand signals when operator's vision is impaired or operating in the vicinity of other employees.

Lift trucks regularly used for transporting peeler blocks or cores must have tusks or a similar type hold down device to prevent the blocks or cores from rolling off the forks.

(17) Where spinners are used on steering wheels, they must be of the automatic retracting type or must be built into the wheel in such a manner as not to extend above the plane surface of the wheel. Vehicles equipped with positive antikickback steering are exempted from this requirement.

(18) Mechanical stackers and unstackers must have all gears, sprockets and chains exposed to the contact of workers, fully enclosed by guards as required by WAC 296-78-710 of this chapter.

(19) Manually operated control switches must be properly identified and so located as to be readily accessible to the operator. Main control switches must be designed so they can be locked in the open position.

(20) Employees must not stand or walk under loads being lifted or moved. Means must be provided to positively block the hoisting platform when employees must go beneath the stacker or unstacker hoist.

(21) No person must ride any lift truck or lumber carrier unless a suitable seat is provided, except for training purposes.

(22) Unstacking machines must be provided with a stopping device which must be accessible at all times to at least one employee working on the machine.

(23) Floor of the unstacker must be kept free of broken stickers and other debris. A bin or frame must be provided to allow for an orderly storage of stickers.

(24) Drags or other approved devices must be provided to prevent lumber from running down on graders.

(25) Liquified petroleum gas storage and handling. Storage and handling of liquified petroleum gas must be in accordance with the requirements of WAC 296-24-475 through 296-24-47517 of the general safety and health standards.

(26) Flammable liquids must be stored and handled in accordance with WAC 296-24-330 through 296-24-33019 of the general safety and health standards.

(27) Guarding side openings. The hoistway side openings at the top level of the stacker and unstacker must be protected by enclosures of standard railings.

(28) Guarding hoistway openings. When the hoist platform or top of the load is below the working platform, the hoistway openings must be guarded.

(29) Guarding lower landing area. The lower landing area of stackers and unstackers must be guarded by enclosures that prevent entrance to the area or pit below the hoist platform. Entrances should be protected by electrically interlocked gates which, when open, will disconnect the power and set the hoist brakes. When the interlock is not installed, other positive means of protecting the entrance must be provided.

(30) Lumber lifting devices on all stackers must be designed and arranged so as to minimize the possibility of lumber falling from such devices.

(31) Inspection. At the start of each work shift, equipment operators must inspect the equipment they will use for evidence of failure or incipient failure. Equipment found to have defects which might affect the operating safety must not be used until the defects are corrected.

(32) Cleaning pits. Safe means of entrance and exit must be provided to permit cleaning of pits.

(33) Preventing entry to hazardous area. Where the return of trucks from unstacker to stacker is by mechanical power or gravity, adequate signs, warning devices, or barriers must be erected to prevent entry into the hazardous area.

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

WAC 296-115-025 Vessel inspection and certification. (1) The department must inspect all vessels subject to this chapter to ensure they are safe and seaworthy at least once each year.

(2) The department may also inspect a vessel:

(a) If requested to do so by the owner, operator, or master of the vessel;

(b) After an explosion, fire, or any other accident involving the vessel;

(c) Upon receipt of a complaint from any person;

(d) At the discretion of the department.

(3) The department will charge the owner of a vessel a fee for each certification or recertification inspection. See WAC 296-115-120 for fee schedule.

(4) No person will operate a passenger or cargo vessel if the vessel does not have a valid certificate of inspection issued by the department.

(5) After inspecting a vessel and determining it is safe and seaworthy, the department will issue a certificate of inspection for that vessel. The certificate will be valid for one year after the date of inspection and contain:

(a) The certificate must set forth the date of the inspection;

(b) The names of the vessel and the owner;

(c) The number of lifeboats, if required;

(d) The number of life preservers required;

(e) The number of passengers allowed; and

(f) Any other information the department requires by rule.

(6) Any time a vessel is found to be not safe or seaworthy, or not in compliance with the provisions of this chapter:

(a) The department may refuse to issue a certificate of inspection until the deficiencies have been corrected and may cancel any certificate of inspection currently issued.

(b) The department must give the owner a written statement why the vessel was found to be unsafe, unseaworthy, or not in compliance with the provisions of this chapter, including a specific reference to the statute or rule.

(7) Department inspectors may, upon presenting their credentials to the owner, master, operator, or agent in charge of a vessel, board the vessel without delay to make an inspection.

(a) Inspectors must inform the owner, master, operator, or agent in charge that their intent is to inspect the vessel.

(b) During the inspection, inspectors must have access to all areas of the vessel. Inspectors may question privately the owner, master, operator, or agent in charge of the vessel, or any crew member of or passenger on the vessel.

(c) If any person refuses to allow inspectors to board a vessel for an inspection, or refuses to allow access to any areas of the vessel, the department may request a warrant from the superior court for the county in which the vessel is located. The court will grant the warrant if:

(i) There is evidence that the vessel has sustained a fire, explosion, unintentional grounding, or has been involved in any other accident;

(ii) There is evidence that the vessel is not safe or seaworthy; or

(iii) The department shows that the inspection furthers a general administrative plan for enforcing the safety requirements of chapter 88.04 RCW, the Charter Boat Safety Act.

(8) The owner or master of a vessel must post the certificate of inspection behind glass or other suitable transparent material in a conspicuous area of the vessel.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-02005 Cleaning and other cold work. (1) Locations covered by this section. You must ensure that manual cleaning and other cold work are not performed in the following spaces unless the conditions of subsection (2) of this section have been met:

(a) Spaces containing or having last contained bulk quantities of combustible or flammable liquids or gases; and

(b) Spaces containing or having last contained bulk quantities of liquids, gases or solids that are toxic, corrosive or irritating.

(2) Requirements for performing cleaning or cold work.

(a) Liquid residues of hazardous materials must be removed from work spaces as thoroughly as practicable before employees start cleaning operations or cold work in a space. Special care must be taken to prevent the spilling or the draining of these materials into the water surrounding the vessel, or for shore-side operations, onto the surrounding work area.

(b) Testing must be conducted by a competent person to determine the concentration of flammable, combustible, toxic, corrosive, or irritant vapors within the space prior to the beginning of cleaning or cold work.

(c) Continuous ventilation must be provided at volumes and flow rates sufficient to ensure that the concentration(s) of:

(i) Flammable vapor is maintained below 10 percent of the lower explosive limit; and

Note to (2)(c)(i): Spaces containing highly volatile residues may require additional ventilation to keep the concentration of flammable vapors below 10 percent of the lower explosive limit and within the permissible exposure limit.

(ii) Toxic, corrosive, or irritant vapors are maintained within the permissible exposure limits and below IDLH levels.

(d) Testing must be conducted by the competent person as often as necessary during cleaning or cold work to assure that air concentrations are below 10 percent of the lower explosive limit and within the PELs and below IDLH levels. Factors such as, but not limited to, temperature, volatility of the residues and other existing conditions in and about the spaces are to be considered in determining the frequency of testing necessary to assure a safe atmosphere.

Note to (2)(d): See WAC 296-304-02013—Appendix B, for additional information on frequency of testing.

(e) Spills or other releases of flammable, combustible, toxic, corrosive, and irritant materials must be cleaned up as work progresses.

(f) An employee may not enter a confined or enclosed space or other dangerous atmosphere if the concentration of flammable or combustible vapors in work spaces exceeds 10 percent of the lower explosive limit.

Exception: An employee may enter for emergency rescue or for a short duration for installation of ventilation equipment provided:

(i) No ignition sources are present;

(ii) The atmosphere in the space is monitored continuously;

(iii) The atmosphere in the space is maintained above the upper explosive limit; and

(iv) Respiratory protection, personal protective equipment, and clothing are provided in accordance with WAC ((~~206-304-090~~)) 296-304-090 through 296-304-09007.

Note to (2)(f): Other provisions for work in IDLH and other dangerous atmospheres are located in WAC 296-304-090 through 296-304-09007.

(g) A competent person must test ventilation discharge areas and other areas where discharged vapors may collect to determine if vapors discharged from the spaces being ventilated are accumulating in concentrations hazardous to employees.

(h) If the tests required in (g) of this subsection indicate that concentrations of exhaust vapors that are hazardous to employees are accumulating, all work in the contaminated area must be stopped until the vapors have dissipated or been removed.

(i) Only explosion-proof, self-contained portable lamps, or other electric equipment approved by a National Recognized Testing Laboratory (NRTL) for the hazardous location must be used in spaces described in subsection (1) of this section, until such spaces have been certified as "safe for workers."

Note to (2)(i): Battery-fed, portable lamps or other electric equipment bearing the approval of a NRTL for the class, and division of the location in which they are used are deemed to meet the requirements of (i) of this subsection.

(j) You must prominently post signs that prohibit sources of ignition within or near a space that has contained flammable or combustible liquids or gases in bulk quantities:

(i) At the entrance to those spaces;

(ii) In adjacent spaces; and

(iii) In the open area adjacent to those spaces.

(k) All air moving equipment and its component parts, including duct work, capable of generating a static electric discharge of sufficient energy to create a source of ignition, must be bonded electrically to the structure of a vessel or vessel section or, in the case of land-side spaces, grounded to prevent an electric discharge in the space.

(l) Fans must have nonsparking blades, and portable air ducts shall be of nonsparking materials.

Note to (2): See WAC 296-304-02003(3) and applicable requirements of chapter 296-62 WAC, general occupational health standards, for other provisions affecting cleaning and cold work.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-05001 Scaffolds or staging. (1) General requirements.

(a) All scaffolds and their supports whether of lumber, steel or other material, must be capable of supporting the load they are designed to carry with a safety factor of not less than four.

(b) All lumber used in the construction of scaffolds must be spruce, fir, long leaf yellow pine, Oregon pine or wood of equal strength. The use of hemlock, short leaf yellow pine, or short fiber lumber is prohibited.

(c) Lumber dimensions as given are nominal except where given in fractions of an inch.

(d) All lumber used in the construction of scaffolds must be sound, straight-grained, free from cross grain, shakes and large, loose or dead knots. It must also be free from dry rot, large checks, worm holes or other defects which impair its strength or durability.

(e) Scaffolds must be maintained in a safe and secure condition. Any component of the scaffold which is broken, burned or otherwise defective must be replaced.

(f) Barrels, boxes, cans, loose bricks, or other unstable objects must not be used as working platforms or for the support of planking intended as scaffolds or working platforms.

(g) No scaffold must be erected, moved, dismantled or altered except under the supervision of competent persons.

(h) No welding, burning, riveting or open flame work must be performed on any staging suspended by means of fiber rope.

(i) Lifting bridles on working platforms suspended from cranes must consist of four legs so attached that the stability of the platform is assured.

(j) Unless the crane hook has a safety latch or is moused, the lifting bridles on working platforms suspended from cranes must be attached by shackles to the lower lifting block or other positive means must be taken to prevent them from becoming accidentally disengaged from the crane hook.

(2) Independent pole wood scaffolds.

(a) All pole uprights must be set plumb. Poles must rest on a foundation of sufficient size and strength to distribute the load and to prevent displacement.

(b) In light-duty scaffolds not more than 24 feet in height, poles may be spliced by overlapping the ends not less than 4 feet and securely nailing them together. A substantial cleat must be nailed to the lower section to form a support for the upper section except when bolted connections are used.

(c) All other poles to be spliced must be squared at the ends of each splice, abutted, and rigidly fastened together by not less than two cleats securely nailed or bolted thereto. Each cleat must overlap each pole end by at least 24 inches and must have a width equal to the face of the pole to which it is attached. The combined cross sectional area of the cleats must be not less than the cross sectional area of the pole.

(d) Ledgers must extend over two consecutive pole spaces and must overlap the poles at each end by not less than 4 inches. They must be left in position to brace the poles as the platform is raised with the progress of the work. Ledgers must be level and must be securely nailed or bolted to each pole and must be placed against the inside face of each pole.

(e) All bearers must be set with their greater dimension vertical and must extend beyond the ledgers upon which they rest.

(f) Diagonal bracing must be provided between the parallel poles, and cross bracing must be provided between the inner and outer poles or from the outer poles to the ground.

(g) Minimum dimensions and spacing of members must be in accordance with Table E-1 in WAC 296-304-07011.

(h) Platform planking must be in accordance with the requirements of (8) of this section.

(i) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(3) Independent pole metal scaffolds.

(a) Metal scaffold members must be maintained in good repair and free of corrosion.

(b) All vertical and horizontal members must be fastened together with a coupler or locking device which will form a

positive connection. The locking device must be of a type which has no loose parts.

(c) Posts must be kept plumb during erection and the scaffold must be subsequently kept plumb and rigid by means of adequate bracing.

(d) Posts must be fitted with bases supported on a firm foundation to distribute the load. When wooden sills are used, the bases must be fastened thereto.

(e) Bearers must be located at each set of posts, at each level, and at each intermediate level where working platforms are installed.

(f) Tubular bracing must be applied both lengthwise and crosswise as required.

(g) Platform planking must be in accordance with the requirements of (8) of this section.

(h) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(4) Wood trestle and extension trestle ladders.

(a) The use of trestle ladders, or extension sections or base sections of extension trestle ladders longer than 20 feet is prohibited. The total height of base and extension may, however, be more than 20 feet.

(b) The minimum dimensions of the side rails of the trestle ladder, or the base sections of the extension trestle ladder, must be as follows:

(i) Ladders up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 3/4 inch lumber.

(ii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber.

(c) The side rails of the extension section of the extension trestle ladder must be parallel and must have minimum dimensions as follows:

(i) Ladders up to and including 12 feet long must have side rails of not less than 1 5/16 x 2 1/4 inch lumber.

(ii) Ladders over 12 feet long and up to and including those 16 feet long must have side rails of not less than 1 5/16 x 2 1/2 inch lumber.

(iii) Ladders over 16 feet long and up to and including those 20 feet long must have side rails of not less than 1 5/16 x 3 inch lumber. (Rev. 2-17-76)

(d) Trestle ladders and base sections of extension trestle ladders must be so spread that when in an open position the spread of the trestle at the bottom, inside to inside, must not be less than 5 1/2 inches per foot of the length of the ladder.

(e) The width between the side rails at the bottom of the trestle ladder or of the base section of the extension trestle ladder must not be less than 21 inches for all ladders and sections 6 feet or less in length. For longer lengths of ladder the width must be increased at least 1 inch for each additional foot of length. The width between the side rails of the extension section of the trestle ladder must be not less than 12 inches.

(f) In order to limit spreading, the top ends of the side rails of both the trestle ladder and of the base section of the extension trestle ladder must be beveled, or of equivalent construction, and must be provided with a metal hinge.

(g) A metal spreader or locking device to hold the front and back sections in an open position, and to hold the extension section securely in the elevated position, must be a component of each trestle ladder or extension trestle ladder.

(h) Rungs must be parallel and level. On the trestle ladder, or on the base section of the extension trestle ladder, rungs must be spaced not less than 8 inches nor more than 18 inches apart; on the extension section of the extension trestle ladder, rungs must be spaced not less than 6 inches nor more than 12 inches apart.

(i) Platform planking must be in accordance with the requirements of (8) of this section, except that the width of the platform planking must not exceed the distance between the side rails.

(j) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(5) Painters' suspended scaffolds.

(a) The supporting hooks of swinging scaffolds must be constructed to be equivalent in strength to mild steel or wrought iron, must be forged with care, must not be less than 7/8 inch in diameter, and must be secured to a safe anchorage at all times.

(b) The ropes supporting a swinging scaffold must be equivalent in strength to first-grade 3/4 inch diameter manila rope properly rigged into a set of standard 6 inch blocks consisting of at least one double and one single block.

(c) Manila and wire ropes must be carefully examined before each operation and thereafter as frequently as may be necessary to ensure their safe condition.

(d) Each end of the scaffold platform must be supported by a wrought iron or mild steel stirrup or hanger, which in turn is supported by the suspension ropes.

(e) Stirrups must be constructed so as to be equivalent in strength to wrought iron 3/4 inch in diameter.

(f) The stirrups must be formed with a horizontal bottom member to support the platform, must be provided with means to support the guardrail and midrail and must have a loop or eye at the top for securing the supporting hook on the block.

(g) Two or more swinging scaffolds must not at any time be combined into one by bridging the distance between them with planks or any other form of platform.

(h) No more than two persons must be permitted to work at one time on a swinging scaffold built to the minimum specifications contained in this section. Where heavier construction is used, the number of persons permitted to work on the scaffold must be determined by the size and the safe working load of the scaffold.

(i) Backrails and toeboards must be in accordance with the requirements of (9) of this section.

(j) The swinging scaffold platform must be one of the three types described in (k), (l), and (m) of this section.

(k) The ladder-type platform consists of boards upon a horizontal ladder-like structure, referred to herein as the ladder, the side rails of which are parallel. If this type of platform is used the following requirements must be met:

(i) The width between the side rails must be no more than 20 inches.

(ii) The side rails of ladders in ladder-type platforms must be equivalent in strength to a beam of clear straight-grained spruce of the dimensions contained in Table E-2 in WAC 296-304-07011.

(iii) The side rails must be tied together with tie rods. The tie rods must not be less than 5/16 inch in diameter, located no more than 5 feet apart, pass through the rails, and be riveted up tight against washers at both ends.

(iv) The rungs must be of straight-grained oak, ash, or hickory, not less than 1 1/8 inches diameter, with 7/8 inch tenons mortised into the side rails not less than 7/8 inch and must be spaced no more than 18 inches on centers.

(v) Flooring strips must be spaced no more than 5/8 inch apart except at the side rails, where 1 inch spacing is permissible.

(vi) Flooring strips must be cleated on their undersides.

(l) The plank-type platform consists of planks supported on the stirrups or hangers. If this type of platform is used, the following requirements must be met:

(i) The planks of plank-type platforms must not be less than 2 x 10 inch lumber.

(ii) The platform must not be more than 24 inches in width.

(iii) The planks must be tied together by cleats of not less than 1 x 6 inch lumber, nailed on their undersides at intervals of not more than 4 feet.

(iv) The planks must extend not less than 6 inches nor more than 18 inches beyond the supporting stirrups.

(v) A cleat must be nailed across the platform on the underside at each end outside the stirrup to prevent the platform from slipping off the stirrup.

(vi) Stirrup supports must not be more than 10 feet apart.

(m) The beam-type platform consists of longitudinal side stringers with cross beams set on edge and spaced not more than 4 feet apart on which longitudinal platform planks are laid. If this type platform is used the following requirements must be met:

(i) The side stringers must be of sound, straight-grained lumber, free from knots, and of not less than 2 x 6 inch lumber, set on edge.

(ii) The stringers must be supported on the stirrups with a clear span between stirrups of not more than 16 feet.

(iii) The stringers must be bolted to the stirrups by U-bolts passing around the stirrups and bolted through the stringers with nuts drawn up tight on the inside face.

(iv) The ends of the stringers must extend beyond the stirrups not less than 6 inches nor more than 12 inches at each end of the platform.

(v) The platform must be supported on cross beams of 2 x 6 inch lumber between the side stringers securely nailed thereto and spaced not more than 4 feet on centers.

(vi) The platform must not be more than 24 inches wide.

(vii) The platform must be formed of boards 7/8 inch in thickness by not less than 6 inches in width, nailed tightly together, and extending to the outside face of the stringers.

(viii) The ends of all platform boards must rest on the top of the cross beams, must be securely nailed, and at no intermediate points in the length of the platform must there by any cantilever ends.

(6) Horse scaffolds.

(a) The minimum dimensions of lumber used in the construction of horses must be in accordance with Table E-3 in WAC 296-304-07011.

(b) Horses constructed of materials other than lumber must provide the strength, rigidity and security required of horses constructed of lumber.

(c) The lateral spread of the legs must be equal to not less than one-third of the height of the horse.

(d) All horses must be kept in good repair, and must be properly secured when used in staging or in locations where they may be insecure.

(e) Platform planking must be in accordance with the requirements of (8) of this section.

(f) Backrails and toeboards must be in accordance with (9) of this section.

(7) Other types of scaffolds. (((~~(a)~~))) Scaffolds of a type for which specifications are not contained in this section must meet the general requirements of subsection (1), (8) and (9) of this section, must be in accordance with recognized principles of design and must be constructed in accordance with accepted standards covering such equipment.

(8) Scaffold or platform planking.

(a) Except as otherwise provided in (5)(k) and (m), platform planking must not be less than 2 x 10 inch lumber. Platform planking must be straight-grained and free from large or loose knots and may be either rough or dressed.

(b) Platforms of staging must not be less than two 10 inch planks in width except in such cases as the structure of the vessel or the width of the trestle ladders make it impossible to provide such a width.

(c) Platform planking must project beyond the supporting members at either end by at least 6 inches but in no case must it project more than 12 inches unless the planks are fastened to the supporting members.

(d) Table E-4 in WAC 296-304-07011 must be used as a guide in determining safe loads for scaffold planks.

(9) Backrails and toeboards.

(a) Scaffolding, staging, runways, or working platforms which are supported or suspended more than 5 feet above a solid surface, or at any distance above the water, must be provided with a railing which has a top rail whose upper surface is from 42 to 45 inches above the upper surface of the staging, platform, or runway and a midrail located halfway between the upper rail and the staging, platform, or runway.

(b) Rails must be of 2 x 4 inch lumber, flat bar or pipe. When used with rigid supports, taut wire or fiber rope of adequate strength may be used. If the distance between supports is more than 8 feet, rails must be equivalent in strength to 2 x 4 inch lumber. Rails must be firmly secured. Where exposed to hot work or chemicals, fiber rope rails must not be used.

(c) Rails may be omitted where the structure of the vessel prevents their use. When rails are omitted employees working more than 5 feet above solid surfaces must be protected by safety belts and life lines meeting the requirements of WAC 296-304-09021(2), and employees working over water must be protected by personal flotation devices meeting the requirements of WAC 296-304-09017(1).

(d) Employees working from swinging scaffolds which are triced out of a vertical line below their supports or from scaffolds on paint floats subject to surging, must be protected against falling toward the vessel by a railing or a safety belt and line attached to the backrail.

(e) When necessary, to prevent tools and materials from falling on men below, toeboards of not less than 1 x 4 inch lumber must be provided.

(10) Access to staging.

(a) Access from below to staging more than 5 feet above a floor, deck or the ground must consist of well secured stairways, cleated ramps, fixed or portable ladders meeting the applicable requirements of WAC 296-304-05003 or rigid type noncollapsible trestles with parallel and level rungs.

(b) Ramps and stairways must be provided with 36-inch handrails with midrails.

(c) Ladders must be so located or other means must be taken so that it is not necessary for employees to step more than one foot from the ladder to any intermediate landing or platform.

(d) Ladders forming integral parts of prefabricated staging are deemed to meet the requirements of these regulations.

(e) Access from above to staging more than 3 feet below the point of access must consist of a straight, portable ladder meeting the applicable requirements of WAC 296-304-05003 or a Jacob's ladder properly secured, meeting the requirements of WAC 296-304-05007(4).

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-05003 Ladders. (1) General requirements.

(a) The use of ladders with broken or missing rungs or steps, broken or split side rails, or other faulty or defective construction is prohibited. When ladders with such defects are discovered, they must immediately be withdrawn from service. Inspection of metal ladders must include checking for corrosion of interiors of open end, hollow rungs.

(b) When sections of ladders are spliced, the ends must be abutted, and not fewer than 2 cleats must be securely nailed or bolted to each rail. The combined cross sectional area of the cleats must not be less than the cross sectional area of the side rail. The dimensions of side rails for their total length must be those specified in (2) or (3) of this section.

(c) Portable ladders must be lashed, blocked or otherwise secured to prevent their being displaced. The side rails of ladders used for access to any level must extend not less than 36 inches above that level. When this is not practical, grab rails which will provide a secure grip for an employee moving to or from the point of access must be installed.

(d) Portable metal ladders must be of strength equivalent to that of wood ladders. Manufactured portable metal ladders provided by you must be in accordance with the provisions of the United States of America Standard Safety Code for Portable Metal Ladders, A14.2-1972.

(e) Portable metal ladders must not be used near electrical conductors nor for electric arc welding operations.

(f) Manufactured portable wood ladders provided by the employer must be in accordance with the provisions of the United States of America Standard Safety Code for Portable Wood Ladders, A-14.1-1968.

(2) Construction of portable wood cleated ladders up to 30 feet in length.

(a) Wood side rails must be made from west coast hemlock, eastern spruce, Sitka spruce, or wood of equivalent strength. Material must be seasoned, straight-grained wood, and free from shakes, checks, decay or other defects which will impair its strength. The use of low density woods is prohibited.

(b) Side rails must be dressed on all sides, and kept free of splinters.

(c) All knots must be sound and hard. The use of material containing loose knots is prohibited. Knots must not appear on the narrow face of the rail and, when in the side face, must be not more than 1/2 inch in diameter or within 1/2 inch of the edge of the rail or nearer than 3 inches to a tread or rung.

(d) Pitch pockets not exceeding 1/8 inch in width, 2 inches in length and 1/2 inch in depth are permissible in wood side rails, provided that not more than one such pocket appears in each 4 feet of length.

(e) The width between side rails at the base must not be less than 11 1/2 inches for ladders 10 feet or less in length. For longer ladders, this width must be increased at least 1/4 inch for each additional 2 feet in length.

(f) Side rails must be at least 1 5/8 x 3 5/8 inches in cross section.

(g) Cleats (meaning rungs rectangular in cross section with the wide dimension parallel to the rails) must be of the material used for side rails, straight-grained and free from knots. Cleats must be mortised into the edges of the side rails 1/2 inch, or filler blocks must be used on the rails between the cleats. The cleats must be secured to each rail with three 10d common wire nails or fastened with through bolts or other fasteners of equivalent strength. Cleats must be uniformly spaced not more than 12 inches apart.

(h) Cleats 20 inches or less in length must be at least 25/32 x 3 inches in cross section. Cleats over 20 inches but not more than 30 inches in length must be at least 25/32 x 3 3/4 inches in cross section.

(3) Construction of portable wood cleated ladders from 30 to 60 feet in length. (((~~(a)~~))) Ladders from 30 to 60 feet in length must be in accordance with the specifications of (2) of this section with the following exceptions:

(((~~(i)~~))) (a) Rails must not be less than 2 x 6 inch lumber.

(((~~(ii)~~))) (b) Cleats must not be less than 1 x 4 inch lumber.

(((~~(iii)~~))) (c) Cleats must be nailed to each rail with five 10d common wire nails or fastened with through bolts or other fastenings of equivalent strength.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-06013 Hazardous materials. (((~~(1)~~))) Definition.

Hazardous material. A material with one or more of the following characteristics:

(a) Has a flash point below 140°F, closed cup, or is subject to spontaneous heating;

(b) Has a threshold limit value below 500 p.p.m. in the case of a gas or vapor, below 500 mg./m.3 for fumes, and below 25 m.p.p.c.f. in case of a dust;

(c) Has a single dose oral LD50 below 500 mg./kg.;

(d) Is subject to polymerization with the release of large amounts of energy;

(e) Is a strong oxidizing or reducing agent;

(f) Causes first degree burns to skin in short time exposure, or is systematically toxic by skin contact; or

(g) In the course of normal operations, may produce dusts, gases, fumes, vapors, mists, or smokes that have one or more of the above characteristics.

(((~~(2)~~))) (1) No chemical product, such as a solvent or preservative; no structural material, such as cadmium or zinc coated steel, or plastic material; and no process material, such as welding filler metal; which is a hazardous material may be used until you have ascertained the potential fire, toxic, or reactivity hazards which are likely to be encountered in the handling, application, or utilization of such a material.

(((~~(3)~~))) (2) In order to ascertain the hazards, as required by subsection (1) of this section, you must obtain the following items of information which are applicable to a specific product or material to be used:

(a) The name, address, and telephone number of the source of the information specified in this section preferably those of the manufacturer of the product or material.

(b) The trade name and synonyms for a mixture of chemicals, a basic structural material, or for a process material; and the chemical name and synonyms, chemical family, and formula for a single chemical.

(c) Chemical names of hazardous ingredients((~~,~~)) including, but not limited to, those in mixtures, such as those in: (i) Paints, preservatives, and solvents; (ii) alloys, metallic coatings, filler metals and their coatings or core fluxes; and (iii) other liquids, solids, or gases (e.g., abrasive materials).

(d) An indication of the percentage, by weight or volume, which each ingredient of a mixture bears to the whole mixture, and of the threshold limit value of each ingredient, in appropriate units.

(e) Physical data about a single chemical or a mixture of chemicals, including boiling point, in degrees Fahrenheit; vapor pressure, in millimeters of mercury; vapor density of gas or vapor (air=1); solubility in water, in percent by weight; specific gravity of material (water=1); percentage volatile, by volume, at 70°F.; evaporation rate for liquids (either butyl acetate or ether may be taken as 1); and appearance and odor.

(f) Fire and explosion hazard data about a single chemical or a mixture of chemicals, including flashpoint, in degrees Fahrenheit; flammable limits, in percent by volume in air; suitable extinguishing media or agents; special firefighting procedures; and unusual fire and explosion hazard information.

(g) Health hazard data, including threshold limit value, in appropriate units, for a single hazardous chemical or for the individual hazardous ingredients of a mixture as appropriate, effects of overexposure; and emergency and first-aid procedures.

(h) Reactivity data, including stability, incompatibility, hazardous decomposition products, and hazardous polymerization.

(i) Procedures to be followed and precautions to be taken in cleaning up and disposing of materials leaked or spilled.

(j) Special protection information, including use of personal protective equipment, such as respirators, eye protection, and protective clothing, and of ventilation, such as local exhaust, general, special, or other types.

(k) Special precautionary information about handling and storing.

(l) Any other general precautionary information.

(((~~(4)~~))) (3) The pertinent information required by subsection (2) of this section must be recorded either on United States Department of Labor Form LSB 00S-4, Material Safety Data Sheet, or on an essentially similar form which has been approved by the department of labor and industries. Copies of Form LSB 00S-4 may be obtained at any of the following regional offices of the occupational safety and health administration:

(a) Pacific region. (Arizona, California, Hawaii, and Nevada.)

10353 Federal Building, 450 Golden Gate Avenue, Box 36017, San Francisco, Calif. 94102.

(b) Region X, OSHA, (Alaska, Washington, Idaho, and Oregon), 300 Fifth Avenue, Suite 1280, Seattle, Washington 98104-2397.

A completed SDS form must be preserved and available for inspection for each hazardous chemical on the worksite.

(((~~(5)~~))) (4) You must instruct employees who will be exposed to the hazardous materials as to the nature of the hazards and the means of avoiding them.

(((~~(6)~~))) (5) You must provide all necessary controls, and the employees must be protected by suitable personal protective equipment against the hazards identified under ((~~subsection (1) of~~)) this section and those hazards for which specific precautions are required in WAC 296-304-020 through 296-304-04013.

(((~~(7)~~))) (6) You must provide adequate washing facilities for employees engaged in the application of paints or coatings or in other operations where contaminants can, by ingestion or absorption, be detrimental to the health of the employees. You must encourage good personal hygiene practices by informing the employees of the need for removing surface contaminants by thorough washing of hands and face prior to eating or smoking.

(((~~(8)~~))) (7) You must not permit eating or smoking in areas undergoing surface preparation or preservation or where shiprepairing, shipbuilding, or shipbreaking operations produce atmospheric contamination.

(((~~(9)~~))) (8) You must not permit employees to work in the immediate vicinity of uncovered garbage and must ensure that employees working beneath or on the outboard side of a vessel are not subject to contamination by drainage or waste from overboard discharges.

(((~~(10)~~))) (9) Requirements of WAC 296-901-140, Hazard communication, will apply to shiprepairing, shipbuilding, and shipbreaking when potential hazards of chemicals and communicating information concerning hazards and appropriate protective equipment is applicable to an operation.

AMENDATORY SECTION (Amending WSR 15-23-086, filed 11/17/15, effective 12/18/15)

WAC 296-823-17005 Establish and maintain medical records. (1) You must establish and maintain an accurate medical record for each employee with occupational exposure.

(2) You must make sure this record includes ALL of the following that apply:

(a) Name and Social Security number of the employee;

(b) A copy of the employee's hepatitis B vaccination status, including the dates of all the hepatitis B vaccinations;

(c) Any medical records related to the employee's ability to receive vaccinations;

(d) The HBV declination statement;

(e) A copy of all results of examinations, medical testing, and follow-up procedures related to post-exposure evaluations;

(f) Your copy of the health care professional's written opinion;

(g) A copy of the information provided to the health care professional as required.

(3) You must make sure that employee medical records are:

(a) Kept confidential;

(b) Not disclosed or reported to any person, without the employee's written consent, except as required by this section or as may be required by law.

Note: 1. In some industries, a medical record is also known as the employee health file.

2. You may contract with the medical professional responsible for hepatitis B vaccination and post-exposure evaluation to maintain employee records.

Reference: You need to follow additional requirements for medical records found in ((~~WAC 296-62-052, Access to records~~)) chapter 296-802 WAC, Employee medical and exposure records.

WSR 18-04-101
PERMANENT RULES
LAKE WASHINGTON INSTITUTE OF TECHNOLOGY

[Filed February 6, 2018, 12:47 p.m., effective March 9, 2018]

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

Purpose: Lake Washington Institute of Technology proposes amending chapter 495-276 WAC to conform such chapter to (1) recent changes in the law concerning public records; (2) model rules recommended by the attorney general's office (chapter 44-14 WAC), and (3) current agency practices. Lake Washington Institute of Technology proposes adding chapter 495D-142 WAC to establish procedures and reasonable controls for the use of facilities by both noncollege and college groups.

Citation of Rules Affected by this Order: New chapter 495D-142 WAC; and amending chapter 495D-276 WAC.

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

Adopted under notice filed as WSR 18-01-074 on December 15, 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 12, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 9, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, 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 0, Repealed 0.

Date Adopted: February 5, 2018.

Andrea Olson
Special Assistant
to the President

Chapter 495D-142 WAC

FIRST AMENDMENT ACTIVITIES FOR LAKE WASHINGTON INSTITUTE OF TECHNOLOGY

NEW SECTION

WAC 495D-142-010 Title. WAC 495D-142-010 through 495D-142-080 shall be known as use of community and technical College District 26 facilities by college groups and noncollege groups for first amendment activities.

NEW SECTION

WAC 495D-142-015 Definitions. For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Lake Washington Institute of Technology or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Lake Washington Institute of Technology or who are affiliated with a recognized student organization or a recognized employee group of the college.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or parking areas. College buildings, rooms, and parking areas may be rented in accordance with the college's facilities use policy.

NEW SECTION

WAC 495D-142-020 Statement of purpose. Lake Washington Institute of Technology is an educational institution provided and maintained by the people of the state of

Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities and grounds are dedicated and said buildings, facilities and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities and grounds are not available for unlimited use by college groups, it is recognized that Lake Washington Institute of Technology students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

NEW SECTION

WAC 495D-142-030 Request for use of facilities. Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forums for those activities protected by the first amendment. Examples of first amendment activities would include, but not necessarily be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") are encouraged to provide notice to the campus safety and security department no later than forty-eight hours prior to the event along with the following information:

(1) The name, address, and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and

(2) The name, address, and telephone number of a contact person for the sponsoring organization; and

(3) The date, time, and requested location of the event; and

(4) The nature and purpose of the event; and

(5) The type of sound amplification devices to be used in connection with the event, if any; and

(6) The estimated number of people expected to participate in the event.

However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility. Noncollege events are limited to the grounds outside of college buildings.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the campus safety and security department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

Information may be distributed as long as it is not obscene or libelous or incite imminent lawless action. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

All fire, safety, sanitation or special regulations specified for the event are to be obeyed.

The college cannot and will not provide utility connections or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks to college students, employees or invitees to the college.

The event must not materially and substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

The event must not materially infringe on the rights and privileges of college students, employees or invitees to the college.

The event must also be in accordance with any other applicable college policies and regulations, regulations and policies of Lake Washington Institute of Technology, local ordinances and/or state or federal laws.

There shall be no first amendment activities and camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

NEW SECTION

WAC 495D-142-040 Additional requirements for noncollege groups. The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled

classes) where it is reasonably anticipated that more than five hundred people will attend the college event or activity.

NEW SECTION

WAC 495D-142-050 The role of the president in first amendment decisions. The president of the college or designee may at any time, terminate, cancel or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.

NEW SECTION

WAC 495D-142-060 Criminal trespass. Any person determined to be violating these regulations is subject to an order from the college campus public safety department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

NEW SECTION

WAC 495D-142-070 Posting of a bond and hold harmless statement. When using college buildings or athletic fields, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 495D-142-080 First amendment activities and protection of the college mission. The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-010 Purpose. The purpose of this chapter is to ensure that College District 26 complies with the provisions of chapter ((~~42.17~~)) 42.56 RCW and in particular with those sections of that chapter dealing with public records.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-020 Definitions. (1) "Public record" includes 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 any state or local agency regardless of physical form or characteristics.

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds or symbols, combination thereof and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, disks, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

(3) "College District 26" is an agency organized by statute pursuant to RCW 28B.50.040. College District 26 shall hereafter be referred to as the "((~~district~~)) college." Where appropriate, the term "((~~district~~)) college" also refers to the staff and employees of the ((~~district~~)) college.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

WAC 495D-276-030 Description of central and field organization of College District 26. (1) College District 26 is a state agency established and organized under the authority of chapter 28B.50 RCW for the purpose of implementing the educational goals established by the legislature in RCW 28B.50.020. The administrative office of the ((~~district~~)) college is located on the Lake Washington Institute of Technology campus within the city of Kirkland, Washington. The Lake Washington Institute of Technology campus likewise comprises the central headquarters for all operations of the ((~~district~~)) college.

(2) The ((~~district~~)) college is operated under the supervision and control of a board of trustees. The board of trustees consists of five members appointed by the governor. The board of trustees normally meets at least once each month, as provided in WAC 495D-104-010. The board of trustees employs a president, an administrative staff, members of the faculty, and other employees. The board of trustees takes such actions and promulgates such rules and policies in harmony with the rules established by the state board for community and technical colleges, as are necessary to the administration and operation of the ((~~district~~)) college.

(3) The president of the ((~~district~~)) college is responsible to the board of trustees for the operation and administration of the ((~~district~~)) college. A detailed description of the administrative organization of the ((~~district~~)) college is contained within the policies and procedures manual for Lake Washington Institute of Technology, a current copy of which is available for inspection at the administrative office of the ((~~district~~)) college.

AMENDATORY SECTION (Amending WSR 11-19-083, filed 9/20/11, effective 10/21/11)

WAC 495D-276-040 Operations and procedures. (1) Formal decision-making procedures are established by the board of trustees through rules promulgated in accordance with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(2) Informal decision-making procedures at the college, as established by the board of trustees, are set forth in the policies and procedures manual of Lake Washington Institute of Technology, a current copy of which is available for inspection at the administrative office of the ((~~district~~)) college.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-050 Public records available. All public records of the ((~~district~~)) college, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by chapter 42.56 RCW ((~~42.17.310~~)) or other statutes.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-060 Public records officer. ((~~The district's public records shall be in the charge of the public records officer designated by the president. The person so designated shall be located in the district administrative office. The public records officer shall be responsible for the following: Implementation of the district's rules regarding release of public records, coordinating district employees in this regard, and generally ensuring compliance by district employees with the public records disclosure requirements in chapter 42.17 RCW.~~)) The public records officer will oversee compliance with the act but another college staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and Lake Washington Institute of Technology will provide the "fullest assistance" to requestors; create and maintain for use by the public and college officials an index to public records of Lake Washington Institute of Technology; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Lake Washington Institute of Technology.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-080 Requests for public records. In accordance with the requirements of RCW ((~~42.17.290~~)) 42.56.100 that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

(((~~(1) A request shall be made in writing. A form prescribed by the district shall be available at the district administrative office. The completed form shall be presented to the public records officer or, if the public records officer is not available, to any member of the district's staff at the district administrative office during customary office hours. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The time of day and calendar date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;~~

~~(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in identifying the public record requested.~~)) (1) Any person wishing to request access to public records of Lake Washington Institute of Technology, or seeking assistance in making such a request should contact the public records officer of the college at:

Public Records Officer
Attn.: Administrative Services
Lake Washington Institute of Technology
11605 132nd Avenue N.E.
Kirkland, WA 98034
425-739-8201
publicrecords@lwtech.edu

(2) A public records request must be for identifiable records. A request for all or substantially all records prepared, owned, used, or retained by the college is not a valid request for identifiable records, provided that a request for all records regarding a particular topic or containing a particular keyword or name shall not be considered a request for all of the college's records.

(3) A request should be made in writing on the Public Records Request form, or by letter, fax, or email addressed to the public records officer. The request should include the following information:

(a) The name of the person requesting the record;

(b) Address of the requestor;

(c) Other contact information, including telephone number and any email address;

(d) The date and time of day of the request;

(e) Identification of the public records adequate for the public records officer or designee to locate the records;

(f) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested records as it is described in such current index;

(g) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.

(4) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer, or person to whom the request is made, to assist the member of the public in identifying the public records requested.

(5) The college may deny a bot request that is one of multiple requests from the requestor to the college within a twenty-four-hour period, if the college establishes that responding to the multiple requests would cause excessive

interference with other essential functions of the college. For these purposes, "bot request" means a request for public records that the college reasonably believes was automatically generated by a computer program or script.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-090 ((~~Copying.~~)) Charges for public records. ((~~No fee shall be charged for the inspection of public records. The district may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records but such charges shall not exceed the amount necessary to reimburse the district for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate district employee. All charges must be paid by money order, cashier's check, or cash in advance.~~)) (1) **Cost.** Calculating the actual costs of charges for providing public records is unduly burdensome because it will consume scarce college resources to conduct a study of actual costs, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending requested records. Instead of calculating actual costs of charges for records, the college president or designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the college charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120 (2)(b). The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor. The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(2) **Payment.** Payment may be made by cash, check, or money order to Lake Washington Institute of Technology. The college may require a deposit in an amount not to exceed ten percent of the estimated cost of providing copies for a request, including a customized service charge. If the college makes a request available on a partial or installment basis, the college may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed, the college is not obligated to fulfill the balance of the request. The college will close a request upon thirty days when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-100 Determination regarding exempt records. (1) The ((~~district~~)) college reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 495D-276-080 is exempt pursuant to RCW ((~~42.17.310~~)) 42.56.210 or other statute. Such determination may be made in consultation with an assistant attorney general assigned to the district.

(2) Pursuant to RCW ((~~42.17.260~~)) 42.56.230, the ((~~district~~)) college reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy or impair a vital governmental interest: Provided, however, in each case, the justification for the deletion shall be explained fully in writing.

(3) Responses to requests for public records must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is notified within five business days as to whether his request for a public record will be honored.

(4) Every denial of a request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-110 Review of denials of public records requests. ((~~(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for a brief adjudicative proceeding. The written request shall specifically refer to the written statement which constituted or accompanied the denial.~~

~~(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the vice president of administrative services, or his or her designee.~~

~~(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying a public record, the vice president, or his or her designee, shall complete such review.~~

~~(4) During the course of the review the vice president or his or her designee shall consider the obligations of the district to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW 42.17.310 or other pertinent statutes, and the provisions of the statute which require the district to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.~~

~~(5) The vice president or designee's decision shall be final unless the requisition files a written appeal with the president under RCW 34.05.491.~~)) (1) **Petition for internal administrative review of denial of access.** Any person who objects to the denial or partial denial of a records request may petition in writing (including email) to the public records officer for a review of that decision. The petition shall

include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the president or appropriate vice president. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the college's receipt of the petition, or within such other time as mutually agreed upon by the college and the requestor.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if Lake Washington Institute of Technology denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain a court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-130 Records index. (1) The ((~~district~~)) college has available for the use of all persons a current index which provides identifying information as to the following records issued, adopted, or promulgated by the ((~~district~~)) college after September 1, 1991:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or any private party.

(2) The current index maintained by the ((~~district~~)) college shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

AMENDATORY SECTION (Amending WSR 92-15-081, filed 7/16/92, effective 8/16/92)

WAC 495D-276-140 Adoption of form. The ((~~district~~)) college shall adopt an appropriate form for use by all persons requesting inspection and/or copying or copies of its records.

WSR 18-04-106
PERMANENT RULES
PUBLIC DISCLOSURE COMMISSION

[Filed February 6, 2018, 3:33 p.m., effective March 9, 2018]

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

Purpose: Amendments to chapter 42.56 RCW require agencies to adopt new rules establishing fees for producing copies of public records. Amended statute allows the agency to use [the] default copy fee schedule provided for in the new law. The statute also allows an agency to waive any charge assessed for a public record pursuant to a rule.

Citation of Rules Affected by this Order: Amending WAC 390-14-030, 390-14-025, and 390-14-028.

Statutory Authority for Adoption: RCW 42.17A.110(1), 42.56.040 (1)(d), 42.56.120 (as amended by section 3, chapter 304, Laws of 2017).

Adopted under notice filed as WSR 17-23-036 on November 7, 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 3, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, 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: January 25, 2018.

B. G. Sandahl
Deputy Director

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-025 How do I make a public records request for commission records under the Public Records Act? (1) **Making a public records request.** You may make a request to inspect or copy public records in person by completing the public records request form, or by sending the form or a letter, fax or email to the public records officer.

The commission office is located at 711 Capitol Way, Room 206, Evergreen Plaza Building, Olympia, Washington. The mailing address is: Public Disclosure Commission, P.O. Box 40908, Olympia, Washington 98504-0908. Telephone number: 360-753-1111. Toll-free telephone number: 1-877-601-2828. Facsimile number: 360-753-1112. Email: pdc@pdc.wa.gov. Mark your request to the attention of the public

records officer. Include contact information such as your name, address, email address and telephone number, or other contact information. Your request must identify the public records requested, the date of your request, and describe whether you want copies or if you want only to inspect the records. ((~~The public records officer may ask you to confirm that you will pay for the records or ask you for a deposit.~~))

(2) **Form.** A public records request form is available for you at the commission office and online at www.pdc.wa.gov.

(3) **Email requests.**

(a) Send your email request to pdc@pdc.wa.gov. Do not send your request to other commission email addresses. This procedure helps the agency see your request so it can respond timely. Include the information described in subsection (1) of this section. Email requests sent to agency email addresses other than pdc@pdc.wa.gov will not be considered a public records request under chapter 42.56 RCW but will be responded to as an informal routine inquiry or a general request for information.

(b) Public records requests received via email after regular business hours or on nonbusiness days will be considered received the next business day.

(4) **Making oral requests.** To avoid misunderstandings about what records you seek, you are strongly encouraged to make a public records request in writing. If you make an oral request, the public records officer will ask you to confirm it before beginning to process it. Your request will be processed after the agency verifies your request in writing.

(5) **Records posted on the commission web site.** You are strongly encouraged to review the commission's web site at www.pdc.wa.gov prior to making a request to see if the records you seek are already posted.

(6) **Assistance.** Whenever you request assistance in making a public records request, the public records officer will assist you in identifying the appropriate public record.

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-028 How are responsive public records ((~~requests for electronic records processed~~)) produced? (1) ((~~**Requesting electronic records.** The process for you to request an electronic public record is the same as for requesting paper public records. See WAC 390-14-025.~~

~~(2)~~)) **Providing electronic records.** The commission may provide records to you electronically ((~~if you request them to be provided electronically, to the extent feasible and reasonable and within current resources. Given technology and resource changes, the commission may adjust at any time how or in what specific format records may be provided electronically, and those adjustments may not be set out in rule. However,~~)) or may provide paper copies. The following general procedures apply to production of electronic copies:

(a) Records provided on the commission's web site have been provided to you electronically. The commission will not provide those records in another electronic format. The public records officer will identify the link to the web site location of the records you request.

(b) If you request an electronic record that is not on the web site and not reasonably translatable into the format you request, or the commission cannot provide the record in electronic format you request ((~~given the commission's current technology and resources~~)), then at the commission's option either:

(i) Electronic copies will be provided to you in a format currently used by the commission; or

(ii) Paper copies will be provided to you.

(c) The commission does not have an obligation to convert an electronic record to a digital format that is different than a format maintained by the commission.

(d) The commission does not have an obligation to purchase additional software, equipment, licenses or other items to respond to your requests for records.

(((~~(3)~~)) (2) **Exempt information in electronic records.** When electronic records you request require redaction to withhold exempt information and redactions cannot be provided electronically, or the records are contained in a database or program that contains exempt or proprietary information, the commission may provide you paper copies with any redactions noted on those copies.

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-14-030 What are the charges for inspecting or copying public records? (1) The commission does not charge a fee for the inspection of public records made available in the commission office or on the commission web site.

(2) The commission does not charge a fee for locating public records and making them available to you for copying.

(3)(a) The commission may charge ((~~a published fee for copying records, if you order copies. The commission's schedule of charges for copies is published on the commission's web site at www.pdc.wa.gov and is available by contacting the public records officer. The executive director may revise the schedule periodically as needed.~~)) fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.

(b) Pursuant to RCW 42.56.120(2), the 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 by the legislature for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and to calculate costs; and a study would interfere with and disrupt other essential agency functions.

(4) Before beginning to make copies, the public records officer may require you to deposit up to ten percent of the estimated costs of copying and ((~~mailing all~~)) transmitting the records ((~~selected by you~~)) responsive to your request. The public records officer may also require you to pay the remainder of the copying costs before providing you all the records, or require you to pay the costs of ((~~copying~~)) providing an installment of records before providing you that installment. If you do not retrieve or pay for an installment of records within the time frame set by the public records officer, the balance of the request will not be fulfilled and your request will be closed.

(((~~(5) If it is reasonable and feasible to do so, the commission may provide copies of records electronically. See WAC 390-14-028. Charges for electronic records, if any, are provided in the commission's schedule. Electronic disclosure of records includes providing them on the commission's web site.~~))

WSR 18-04-108
PERMANENT RULES
POLLUTION LIABILITY INSURANCE AGENCY

[Filed February 6, 2018, 4:57 p.m., effective March 9, 2018]

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

Purpose: The pollution liability insurance agency (PLIA) intends to repeal chapter 374-60 WAC to be consistent with the 2016 legislation (SHB 2357, section 24, chapter 161, Laws of 2016) which repealed PLIA's statutory authority in chapter 70.148 RCW. PLIA's proposed rule making will align the agency's rule with the change in state law. SHB 2357 became effective on June 9, 2016, at which time chapter 374-60 WAC also became ineffective.

Citation of Rules Affected by this Order: Repealing chapter 374-60 WAC.

Statutory Authority for Adoption: RCW 70.148.120, 70.148.130, 70.148.140, 70.148.150, 70.148.160, 70.148.-170, section 24, chapter 161, Laws of 2016.

Adopted under notice filed as WSR 17-16-147 on August 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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: February 6, 2018.

Cassandra Garcia
Deputy Director

WSR 18-04-109
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed February 6, 2018, 5:25 p.m., effective June 1, 2018]

Effective Date of Rule: June 1, 2018.

Purpose: WAC 246-834-990 Midwifery fees and renewal cycle, the amended rule increases initial application, renewal, and late renewal penalty fees to bring licensing fee revenues into closer alignment with the actual costs of regulating this profession, while bringing year-end fund balances nearer to a level needed to cover unanticipated expenses over a ten-year period. Current licensing revenues are lower than the annual cost of regulating the profession plus an amount needed for an appropriate annual fund balance. The adopted increased fee levels will allow reserves, which are used to cover unanticipated events such as increased disciplinary costs, to rise to a more desirable level, while bringing in additional revenue to assist in covering the expense of administering the program. The rule also updates language, and the duplicate license amount to be consistent with other fee rules.

Citation of Rules Affected by this Order: Amending WAC 246-834-990.

Statutory Authority for Adoption: RCW 43.70.250 and 43.70.280.

Adopted under notice filed as WSR 17-23-121 on 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 0, Repealed 0.

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

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

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

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

Date Adopted: February 5, 2018.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 17-15-024, filed 7/7/17, effective 8/7/17)

WAC 246-834-990 Midwifery fees and renewal cycle. (1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	$((~~500.00~~)) 525.00
State examination (initial/retake)	155.00
Renewal	((~~500.00~~)) 525.00
Late renewal penalty	((~~250.00~~)) 265.00

Title of Fee	Fee
Duplicate license	((~~25.00~~)) 10.00
((~~Certification~~)) Verification of license	25.00
Expired license reissuance	300.00
UW online access fee (HEAL-WA)	16.00
Student midwife permit	175.00
Inactive credential	250.00

WSR 18-04-110
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed February 7, 2018, 10:33 a.m., effective March 15, 2018]

Effective Date of Rule: March 15, 2018.

Purpose: Chapter 246-824 WAC, regarding dispensing optician examination and licensure: New WAC 246-824-035 and 246-824-045; amending 246-824-040 and 246-824-071; and repealing WAC 246-824-060, 246-824-065, and 246-824-070. These adopted rules designate the American Board of Opticianry and National Contact Lens Examiners (ABO-NCLE) as the examination requirement for dispensing optician licensure and repeal WAC 246-824-065, the requirement that the examining committee must administer the state licensing examination. The adopted rules clarify licensure requirements by amending WAC 246-824-040 to add license eligibility and add WAC 246-824-045 to establish application requirements. These adopted rules also remove the requirement of the jurisprudence exam for out-of-state applicants and repeal sections related to the state administered exam. Finally, the adopted rules update the sections to be current and consistent with other rules for health professions under the authority of the secretary of health.

Citation of Rules Affected by this Order: New WAC 246-824-035 and 246-824-045; repealing WAC 246-824-060, 246-824-065 and 246-824-070; and amending WAC 246-824-040 and 246-824-071.

Statutory Authority for Adoption: RCW 43.70.040.

Other Authority: Chapter 18.34 RCW.

Adopted under notice filed as WSR 17-18-088 on September 5, 2017.

Changes Other than Editing from Proposed to Adopted Version: In WAC 246-824-040 a new subsection (5) was added to read "and (5) Meet any other requirements by law." This change was made to inform license applicants that they must meet various other requirements as well as those in chapter 18.34 RCW.

WAC 246-824-040 (3)(c) replaced "Practice as a dispensing optician in a state other than Washington for at least five years; except as provided in WAC 246-824-071;" with, "Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years." to be consistent with RCW 18.34.070.

A final cost-benefit analysis is available by contacting Debra Mendoza, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4841, fax 360-236-2901, TTY 360-833-6388 or 711, email debra.mendoza@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 Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 2, Repealed 3.

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 2, Amended 2, Repealed 3.

Date Adopted: February 6, 2018.

John Wiesman, DrPH, MPH
Secretary

NEW SECTION

WAC 246-824-035 Examination. The examining committee approves the examinations from the American Board of Opticianry and National Contact Lens Examiners (ABO-NCLE) for dispensing optician licensure.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-824-040 ((~~Application for examination.~~)) Licensure eligibility. (((~~(1) An individual shall make application for examination, in accordance with RCW 18.34.070, on an application form prepared and provided by the secretary.~~

~~(2) The apprenticeship training requirement shall be supported with certification by the licensed individual (or individuals) who provided such training.~~

~~(3) If an applicant is unable to attend his or her scheduled examination, and so notifies the secretary in writing at least 7 days prior to the scheduled examination date, the applicant will be rescheduled at no additional charge. Otherwise, the fee will be forfeited. (Emergencies considered.)~~

~~(4) If an applicant takes the examination and fails to obtain a satisfactory grade, he or she may be scheduled to retake the examination by submitting an application and paying the statutory examination fee.~~

~~(5) Applications and fees for examination and all documents required in support of the application must be submitted to the division of professional licensing, department of health, at least sixty days prior to the scheduled examination. Failure to meet the deadline will result in the applicant not being scheduled until the next scheduled examination.~~

~~(6) Apprenticeship training shall be completed prior to the application deadline.~~)) To be eligible for licensure, applicants must:

(1) Be eighteen years or more of age;

(2) Graduate from an accredited high school or receive a general equivalency degree;

(3) Complete one of the following:

(a) At least six thousand hours of certified apprenticeship training that must be completed in no less than three years as required under chapter 18.34 RCW; or

(b) An accredited opticianry course as described in WAC 246-824-050; or

(c) Been principally engaged in practicing as a dispensing optician not in the state of Washington for five years;

(4) Successfully pass one of the following examinations:

(a) The state examination offered on or before August 31, 2017;

(b) On or after June 1, 2015, the basic competency examination, basic contact lens examination, and the practical examinations from ABO-NCLE. This requirement can also be met by successfully passing the ABO-NCLE advanced competency examination, advanced contact lens examination, and the practical examinations on or after June 1, 2015; and

(5) Meet any other requirements in law.

NEW SECTION

WAC 246-824-045 License application. An applicant for a dispensing optician license must submit the following:

(1) A completed application on forms provided by the department;

(2) Proof of eligibility under WAC 246-824-040;

(3) Verification of passing the examination under WAC 246-824-040(4);

(4) Proof of completing four clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8; and

(5) Fees required under WAC 246-824-990.

AMENDATORY SECTION (Amending WSR 02-18-025, filed 8/23/02, effective 9/23/02)

WAC 246-824-071 ((~~Licensure by endorsement.~~)) Applicants currently licensed in other states. (((~~(1) A license~~)) Before licensure to any individual currently licensed to practice as a dispensing optician ((~~may be issued without examination to an individual who is currently licensed in another state that has licensing standards substantially equivalent to those currently applicable in Washington state.~~

~~(2) The department will issue a license by endorsement upon receipt of:~~

~~(a) A completed application and application fee;~~

~~(b) The applicant will provide documentation from the state in which the applicant is currently licensed sufficient to establish that the state's licensing standards are substantially equivalent to the licensing standards currently applicable in Washington state;~~

~~(c) A completed open-book state law questionnaire;~~

~~(d) Documentation of~~)) in another state, as provided in chapter 18.34 RCW, applicants must provide evidence of:

(1) Verification of credential from any state and the state's substantially equivalent licensing standards;

(2) Completion of four clock hours of AIDS education as required in chapter 246-12 WAC, Part 8;

(((~~(c)~~))) (3) Verification from all states in which the applicant has ever held a license, whether active or inactive, indicating that the applicant is not subject to charges or disciplinary action for unprofessional conduct or impairment.

((~~(3) If licensure by endorsement is not granted, and the applicant is otherwise qualified for the licensing examination, he or she may apply for licensure by examination in accordance with RCW 18.34.070 and WAC 246-824-040.~~

~~(4) Endorsement application fees may be applied towards the examination fee if licensure by endorsement is not granted.~~))

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-824-060	Dispensing optician examination.
WAC 246-824-065	Duties and responsibilities of the dispensing optician examining committee.
WAC 246-824-070	Informal review of examination results.

WSR 18-04-116
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed February 7, 2018, 11:48 a.m., effective March 10, 2018]

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

Purpose: Rules are needed to implement 2017 liquor legislation.

Citation of Rules Affected by this Order: New WAC 314-02-092 and 314-38-110; and amending WAC 314-02-060, 314-02-061, 314-02-103, and 314-38-020.

Statutory Authority for Adoption: RCW 66.24.010, 66.24.035, 66.24.330.

Adopted under notice filed as WSR 18-01-056 on December 13, 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 2, Amended 4, Repealed 0.

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

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

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

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

Date Adopted: February 7, 2018.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

WAC 314-02-060 What is a caterer's endorsement? (1) A spirits, beer, and wine restaurant ((~~and~~)), a beer and/or wine restaurant, and a tavern applicant or licensee may apply for a caterer's endorsement, in order to extend the on-premises license privilege to allow the sale and service of liquor at locations other than liquor licensed premises. See RCW 66.24.420(6) ((~~and~~)), 66.24.320(2), and 66.24.330 for more information about this endorsement.

(2) The annual fee for this endorsement is three hundred fifty dollars.

AMENDATORY SECTION (Amending WSR 09-02-012, filed 12/29/08, effective 1/29/09)

WAC 314-02-061 What is required for ((~~offsite~~)) off-site storage of liquor under a caterer's endorsement? A spirits, beer, and wine restaurant licensee with a caterer's endorsement, ((~~or~~)) a beer and/or wine restaurant licensee with a caterer's endorsement, or a tavern licensee with a caterer's endorsement, may store its alcohol at locations described in RCW 66.24.320, 66.24.330, and 66.24.420 that are not on the licensed premises if the following conditions are met:

(1) The licensee must display the approval letter for storing liquor at each location;

(2) Liquor storage must be within the event location where catering services for events are provided;

(3) If the location is one for which the licensee has an on-going contract or agreement to provide liquor service at catered events, the contract or agreement must include the following:

(a) Names of the parties;

(b) Location and address where on-going liquor catering services are provided;

(c) A sketch and description of the facility that includes where the liquor will be stored, how the liquor will be secured to ensure public safety, and the provisions that restrict access to the liquor storage area to the licensee and the licensee's employees; and

(d) Signatures of the parties.

(4) For locations owned or leased by the licensee and for which the licensee provides liquor service at catered events, the licensee must submit copies of documents that evidence the ownership or leasehold interest.

NEW SECTION

WAC 314-02-092 What is a combination spirits, beer, and wine license? (1) Per RCW 66.24.632, a combination spirits, beer, and wine license is a retail license that allows a licensee to sell beer and wine, including strong beer, at retail in bottles, cans, and original containers for off-premises consumption, and to:

(a) Sell spirits in original containers to consumers for off-premises consumption and to permit holders;

(b) Sell spirits in original containers to retailers licensed to sell spirits for consumption on the premises, for resale at their licensed premises according to the terms of their licenses. No single sale may exceed twenty-four liters; and

(c) Export spirits.

(2) A combination spirits, beer, and wine licensee that intends to sell to an on-premises retailer must possess a basic permit under the Federal Alcohol Administration Act. This permit must provide for purchasing distilled spirits for resale at wholesale. A copy of the federal basic permit must be submitted to the board. A federal basic permit is required for each location from which the combination spirits, beer, and wine licensee plans to sell to an on-premises retailer.

(3) A sale by a combination spirits, beer, and wine licensee is a retail sale only if not for resale to an on-premises spirits retailer. On-premises retail licensees that purchase spirits from a combination spirits, beer, and wine licensee must abide by RCW 66.24.630.

(4) A combination spirits, beer, and wine licensee must pay to the board seventeen percent of all spirits sales. (see WAC 314-02-109 for quarterly reporting requirements).

Reporting of spirits sales and payment of fees must be submitted on forms provided by the board.

(5) The board may issue a combination spirits, beer, and wine license:

(a)(i) For premises comprising at least ten thousand square feet of fully enclosed retail space within a single structure, including store rooms and other interior areas. This does not include any area encumbered by a lease or rental agreement; and

(ii) To applicants that the board determines will maintain appropriate systems for inventory management, employee training, employee supervision, and physical security of the product.

(b) For premises of a former contract liquor store; or

(c) To a holder of former state liquor store operating rights sold at auction.

(6) A spirits retail licensee may apply for a sampling endorsement to conduct spirits, beer, and wine sampling if they meet the following criteria:

(a) Be a participant in the responsible vendor program;

(b) Advertising:

(i) For combination spirits, beer, and wine retail licensees that are grocery stores, advertising samplings may not be placed in the windows or outside of the premises that can be viewed from the public right of way;

(ii) For combination spirits, beer, and wine retail licensees that are specialty stores, advertising of sampling may be advertised but not state that sampling is free of charge.

(c) Samplings are to be conducted in the following manner:

(i) Samplings service area and facilities must be located within the licensee's fully enclosed retail area and must be of a size and design that the licensee can observe and control persons in the area;

(ii) The licensee must provide a sketch of the sampling area. For combination spirits, beer, and wine licensees that are grocery stores, fixed or movable barriers are required around the sampling area to ensure that persons under twenty-one years of age and apparently intoxicated persons cannot possess or consume alcohol. For combination spirits, beer, and wine licensees that are specialty stores, barriers are

not required. The sketch is to be included with the application for the spirits sampling endorsement;

(iii) Each sample may be no more than one-half ounce of spirits, and no more than a total of one and one-half ounces of spirits samples per person during any one visit to the premises. Spirits samples may be altered with mixers, water, and/or ice. For combination spirits, beer, and wine licensees that are grocery stores, beer and wine samples must be two ounces or less, up to a total of four ounces per person during any one visit to the premises. For combination spirits, beer, and wine licensees that are specialty stores, each beer and wine sample must be two ounces or less and no more than ten ounces of beer and/or wine may be provided to a customer during any one visit to the premises;

(iv) For combination spirits, beer, and wine licensees that are grocery stores, the licensee must have food available for the sampling participants;

(v) Customers must remain in the service area while consuming samples;

(vi) All employees serving spirits, beer, or wine during sampling events must hold a class 12 server permit;

(vii) For combination spirits, beer, and wine licensees that are grocery stores, there must be at least two employees on duty when conducting sampling events;

(viii) Sampling activities are subject to RCW 66.28.305 and 66.28.040.

(d) Licensees are required to send a list of scheduled sampling events to their regional enforcement office at the beginning of each month. The date and time for each sampling must be included;

(e) The cost for a beer and wine sampling endorsement is two hundred dollars. There is no charge for a spirits sampling endorsement.

(7) A combination spirits, beer, and wine licensee may sell beer in kegs or other containers holding at least four gallons and less than five and one-half gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(8) A combination spirits, beer, and wine licensee may sell spirits, beer, and wine over the internet. See WAC 314-03-020 and 314-03-030 regarding internet sales and delivery.

(9) A combination spirits, beer, and wine applicant or licensee that is a grocery store may apply for an international exporter endorsement for five hundred dollars a year, which allows the sale of beer and wine for export to locations outside the United States.

(10) A combination spirits, beer, and wine licensee may apply for an endorsement to sell beer and cider growlers.

(a) Beer and cider must be sold in sanitary containers provided by the purchaser, licensee or the manufacturer and filled by the employee at the time of purchase.

(b) The taps must be located behind a counter where only employees have access or the taps must have locks preventing use unless unlocked and operated by an employee.

(c) Only employees of the licensee are permitted to operate the taps.

(d) All employees operating a tap must hold a class 12 alcohol server permit.

(e) The cost for the endorsement is one hundred twenty dollars.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-02-103 What is a wine retailer reseller endorsement? (1) A wine retailer reseller endorsement is issued to the holder of a grocery store liquor license ((~~or~~)), the holder of a beer and/or wine specialty shop license, or the holder of a combination spirits, beer, and wine license to allow the sale of wine at retail to on-premises liquor licensees.

(2) For holders of a grocery store license: No single sale to an on-premises liquor licensee may exceed twenty-four liters.

(3) For holders of a beer and/or wine specialty shop license:

(a) No single sale may exceed twenty-four liters, unless the sale is made by a licensee that was formerly a state liquor store or contract liquor store.

(b) May sell a maximum of five thousand liters of wine per day for resale to retailers licensed to sell wine for consumption on the premises.

(4) A grocery store licensee or a beer and/or wine specialty shop licensee with a wine retailer reseller endorsement may accept delivery at its licensed premises or at one or more warehouse facilities registered with the board.

(5) The holder of a wine retailer reseller endorsement may also deliver wine to its own licensed premises from the registered warehouse; may deliver wine to on-premises licensees, or to other warehouse facilities registered with the board. A grocery store licensee or a beer and/or wine specialty shop licensee wishing to obtain a wine retailer reseller endorsement that permits sales to another retailer must possess and submit a copy of their federal basic permit to purchase wine at wholesale for resale under the Federal Alcohol Administration Act. A federal basic permit is required for each location from which the grocery store licensee or beer and/or wine specialty shop licensee holding a wine retailer reseller endorsement plans to sell wine to another retailer.

(6) The annual fee for the wine retailer reseller endorsement for a grocery store licensee is one hundred sixty-six dollars.

(7) The annual fee for the wine retailer reseller endorsement for a beer and/or wine specialty shop licensee is one hundred ten dollars.

(8) Sales made under the reseller endorsement are not classified as retail sales for taxation purposes.

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-38-020 Permits—Fees established. The fees for permits authorized under RCW 66.20.010 are hereby established as follows:

(1) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(1).

(2) The fee for a special permit as authorized by RCW 66.20.010(2) for purchase of five gallons or less is established as five dollars and for purchase of over five gallons is established as ten dollars.

(3) A fee for a banquet permit, as authorized by RCW 66.20.010(3), is established in WAC 314-18-040.

(4) The fee for a special business permit, as authorized by RCW 66.20.010(4), is established in WAC 314-38-010 (2).

(5) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(5).

(6) A fee of five dollars is established for a special permit as authorized by RCW 66.20.010(6).

(7) A special permit as authorized by RCW 66.20.010(7) shall be issued without charge to those eligible entities.

(8) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(8).

(9) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(9).

(10) The fee of thirty dollars is established for a special permit as authorized by RCW 66.20.010(10).

(11) The fee of seventy-five dollars is established for a special permit as authorized by RCW 66.20.010(11).

(12) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(13).

(13) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(14).

(14) The fee of ten dollars is established for a special permit as authorized by RCW 66.20.010(15).

(15) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(16).

(16) The fee of twenty-five dollars is established for a special permit as authorized by RCW 66.20.010(17).

NEW SECTION

WAC 314-38-110 Nonprofit wine auction permit. (1) A nonprofit auction permit is for a nonprofit organization to sell wine through a private auction not open to the public.

(2) The nonprofit organization must complete a nonprofit wine auction permit application and submit the application and fee to the WSLCB.

(a) The date and location of the auction must be specified on the application.

(b) The one-time event fee is twenty-five dollars multiplied by the number of wineries that are selling wine at the auction event.

(c) A list of event attendees must be submitted with the wine auction permit application.

(3) The holder of the permit may conduct wine tastings of the wine to be auctioned at the event.

(4) All wine sold by auction cannot be consumed during the event.

(5) Wine from multiple wineries may be sold at the auction. Each winery must be listed on the application.

(6) The permit must be posted in a conspicuous location at the premises for which the permit was issued during all times the permit is in use.