

WSR 19-05-021
EXPEDITED RULES
DEPARTMENT OF HEALTH
 [Filed February 12, 2019, 11:03 a.m.]

Title of Rule and Other Identifying Information: WAC 246-790-500 Definitions and 246-790-530 WIC participant violations and sanctions, special supplemental nutrition program for women, infants, and children (WIC). The department of health is proposing amendments to comply with federal requirements.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposed rule making is to remove "and breast pumps" from the definition of WAC 246-790-500(26) and to add "one or" to WAC 246-790-530 dual participation sanction. These changes are needed to comply with federal program rules.

Reasons Supporting Proposal: WAC 246-790-500 Definitions related to participant compliance, currently includes the following language: "(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food, formula, and breast pumps." This language is inaccurate, as breast pumps are not a WIC program benefit. To correct the inaccuracy, the phrase "and breast pumps" must be removed from this definition.

WAC 246-790-530 WIC participant violations and sanctions, for dual participation currently reads "participating in and spending WIC food instruments from more than one WIC clinic during the same time period." Per 7 C.F.R. [Sec.] 246, the federal definition specifies that dual participation can occur at one clinic too. Proposed rule will modify the sanction to read "participating in and spending WIC food instruments from one or more than one WIC clinic during the same period." This will align dual participant definition with federal rule.

Statutory Authority for Adoption: RCW 43.70.120.

Statute Being Implemented: 7 C.F.R. [Sec.] 246.

Rule is necessary because of federal law, 7 C.F.R. [Sec.] 246.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Troy Parks, 310 Israel Road, Olympia, WA 98504, 360-236-3610.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Corrects typographical error and clarifies existing rule. Content is not changed from rule adopted December 2018.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE

RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Troy Parks, Department of Health, P.O. Box 47886, Olympia, WA 98504-4788 [98504-7886], phone 360-236-3610, email <https://fortress.wa.gov/doh/policyreview>, AND RECEIVED BY April 22, 2019.

February 8, 2019
 John Wiesman, DrPH, MPH
 Secretary

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

WAC 246-790-500 Definitions related to participant compliance. The definitions in this section apply to this section through WAC 246-790-570 unless the context clearly indicates otherwise.

(1) "Appeal" means a formal proceeding where a participant who has received a notice of violation from the department has the opportunity to present his or her case in an impartial setting and be heard by the department.

(2) "Applicant" means any pregnant woman, postpartum woman, infant, child, or caregiver of an infant or child who is applying to receive WIC program benefits, or a breastfeeding infant of an applicant breastfeeding woman. Applicants include individuals who are currently participating in the program but are applying because their certification period is about to expire.

(3) "Authorized supplemental foods" means those supplemental foods authorized by the department for issuance to a particular participant.

(4) "Certification" means the implementation of criteria and procedures to assess and document each applicant's eligibility for participation in the WIC program.

(5) "C.F.R." means Code of Federal Regulations.

(6) "Claim" means a type of sanction demanding repayment for misuse of WIC/farmers' market nutrition program (FMNP) benefits by a WIC participant.

(7) "Deliberate" means acting intentionally, knowingly and voluntarily.

(8) "Department" means the Washington state department of health.

(9) "Disqualification" means the act of ending the WIC program participation of a participant, whether as a punitive sanction or for administrative reasons.

(10) "Dual participation" means program participation in one or more than one WIC clinic.

(11) "Eligibility criteria" means the reasons people qualify for WIC program benefits as described in 7 C.F.R. Sec. 246.7(c).

(12) "Farmers' market nutrition program (FMNP)" means a program to provide fresh, unprepared, locally grown fruits and vegetables to WIC participants, and to expand the awareness, use of, and sales at farmers' markets.

(13) "Food instrument" means the method of payment used by a participant to obtain WIC-approved foods. These methods may include WIC checks, WIC farmers' market

nutrition program checks, cash value vouchers, or electronic benefit transfer (EBT) payments.

(14) "Local agency" means:

(a) A public or private nonprofit health or human services agency that provides health services either directly or through contract with the department to provide services in accordance with 7 C.F.R. Sec. 245.5;

(b) An Indian health services unit in contract with the department to provide services;

(c) An Indian tribe, band or group recognized by the department; and/or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups.

(15) "Notice of violation" means a written document given to a participant, or caregiver of an infant or child participant, when the department determines a participant or caregiver of an infant or child participant, has not complied with WIC program requirements, federal WIC regulations, this chapter, or the participant rights and responsibilities form. This notice is a type of sanction which explains the violation and provides a warning about repercussions of subsequent violations.

(16) "Nutritional risk" means detrimental or abnormal nutritional conditions detectable by biochemical or anthropomorphic measurements; other documented nutritionally related medical conditions; dietary deficiencies that impair or endanger health; conditions that directly affect the nutritional health of a person, including alcoholism or drug abuse; or conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions including, but not limited to, homelessness and migrancy, as specified in 7 C.F.R. Sec. 246.2.

(17) "Participant" means a woman, infant or child receiving WIC benefits.

(18) "Participant violation" means any deliberate action of a participant, parent or caretaker of an infant or child participant, or proxy that violates federal or state statutes, regulations, policies, or procedures governing the WIC program.

(19) "Proxy" means an individual who is designated by a participant or a child or infant participant's parent, guardian, or caretaker to receive and redeem food instruments for the participant and whose name is filed with the local agency.

(20) "Restitution" means reimbursement to the department of the cash value of WIC program benefits received by a participant as the result of a sanction imposed for a violation.

(21) "Sanction" means a penalty imposed by the department of health WIC program because of a violation. The three types of sanctions are notice of violation, disqualification, and claim.

(22) "SNAP" means the federal Supplemental Nutrition Assistance Program. SNAP was previously known as the Food Stamp Program.

(23) "Vendor" means a sole proprietorship, partnership, cooperative association, corporation, or other business entity operating one or more stores authorized by the state WIC program to provide WIC-approved foods to WIC participants.

(24) "Violation" means any deliberate action of a WIC participant or caregiver of an infant or child participant, including actions listed in WAC 246-790-520 that violate federal or state statutes, regulations, policies, or procedures governing the WIC program.

(25) "WIC" means the federally funded special supplemental nutrition program for women, infants, and children as described in 7 C.F.R. Sec. 246.

(26) "WIC benefits" means benefits a participant receives that include, but are not limited to, food(=) and infant formula(=, ~~and breast pumps~~).

(27) "WIC Participant Rights and Responsibilities form" means a document signed by a WIC participant or proxy showing she or he has been advised of and agrees to WIC program rights and obligations.

AMENDATORY SECTION (Amending WSR 18-23-080, filed 11/19/18, effective 12/20/18)

WAC 246-790-530 WIC participant violations and sanctions. (1) When any WIC participant or caregiver deliberately violates federal or state statutes, regulations, policies or procedures governing the WIC program, the department will initiate appropriate enforcement action, which may include establishment of claims under WAC 246-790-550 or disqualification under WAC 246-790-560. Violations and applicable sanctions are listed below:

Violations	1st Instance	2nd Instance	Subsequent Instances
Attempting to redeem a food instrument for unauthorized foods or formula.	Notice of violation	Notice of violation	6-month disqualification
Redeeming a food instrument for unauthorized foods or formula.	Notice of violation and claim 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Attempting to return foods purchased with a food instrument to a WIC vendor in exchange for money, credit, a different food or food in excess of those on the food instrument.	Notice of violation	Notice of violation	6-month disqualification

Violations	1st Instance	2nd Instance	Subsequent Instances
Returning foods purchased with a food instrument to a WIC vendor in exchange for money, credit, a different food, or food in excess of those on the food instrument.	Notice of violation and claim 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Redeeming a food instrument reported as lost or stolen, and then replaced.	Notice of violation and claim 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Destruction of vendor, farmer or local agency property during a WIC transaction or visit.	Notice of violation if replacement or repair cost is less than \$100 6-month disqualification if replacement or repair cost is \$100 or more Note: Replacement or repair cost will be determined by affected vendor, farmer or local agency	1-year disqualification	1-year disqualification
Destruction of state agency property during a WIC visit.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is \$100 or more	1-year disqualification	1-year disqualification
Altering a food instrument.	6-month disqualification and claim if claim is less than \$100 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Making false or misleading statements or deliberately misrepresenting, concealing or withholding facts to obtain or increase benefits.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Participating in and spending WIC food instruments from <u>one</u> or more than one WIC clinic during the same time period (dual participation).	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim
Threatening to harm or physically harming clinic, farmer or vendor staff during a WIC visit.	6-month disqualification	1-year disqualification	1-year disqualification
Failure to comply with department or local agency request for information during an investigation.	1-year disqualification	1-year disqualification	1-year disqualification

Violations	1st Instance	2nd Instance	Subsequent Instances
Selling, attempting to sell, exchanging, attempting to exchange, or allowing another person to sell food instrument or exchange food or formula purchased with a food instrument for cash, credit, merchandise, favors, or other nonfood items (trafficking) verbally, in print, or online through web sites or social media.	Notice of violation and claim if claim is less than \$100 1-year disqualification and claim if claim is \$100 or more	1-year disqualification and claim	1-year disqualification and claim
Theft of a food instrument by a WIC participant.	1-year disqualification and claim	1-year disqualification and claim	1-year disqualification and claim

(2) During each certification visit, participants will be informed of their rights and responsibilities, program rules, and that there may be potential sanctions should they deliberately violate a program rule.

(3) Whenever the department assesses a claim of misappropriated WIC program benefits of one hundred dollars or more resulting from a participant violation, assesses a claim for dual participation, or assesses a second or subsequent claim of any amount resulting from a participant violation, the department must disqualify the participant for one year.

(4) The department may decide not to impose a disqualification if, within thirty days of the date the letter was mailed demanding repayment, full restitution is made or a repayment schedule is agreed upon. In the case of a violation committed by the parent or caretaker of an infant or child participant, or by a participant under the age of eighteen, the department may approve the designation of a proxy in order to continue program benefits to these participants.

(5) Participants may reapply for benefits at any time after the disqualification period concludes.

(6) The department must consider designating a substitute caregiver instead of disqualification for infants, children, and women under eighteen years of age.

(7) Second and subsequent instances of violations are assessed based on a twelve-month period from the first notice that a violation has occurred.

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

Statute Being Implemented: RCW 82.08.962 and 82.12.962.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Brenton Madison, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: Randy Simmons, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule because the department is correcting a typographical error that impacts the scope of the exemption provided by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Brenton Madison, Department of Revenue, P.O. Box 47543 [47453], Olympia, WA 98504-7453, phone 360-534-1583, fax 360-534-1606, email BrentonM@dor.wa.gov, AND RECEIVED BY April 22, 2019.

**WSR 19-05-068
EXPEDITED RULES
DEPARTMENT OF REVENUE**
[Filed February 19, 2019, 10:55 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-263 Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Being amended to reflect the changes made in 2017, ESSB 5939.

Reasons Supporting Proposal: To clarify only those solar systems generating 500 kilowatts of electricity or more qualify for the partial retail sales and use tax exemption when first put into use after September 30, 2017.

February 19, 2019
Erin T. Lopez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-057, filed 12/27/18, effective 1/27/19)

WAC 458-20-263 Exemptions from retail sales and use taxes for qualifying electric generating systems using renewable energy sources. RCW 82.08.962 and 82.12.962 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into three parts as follows:

PART 1: Exemptions as Applied to Qualified Solar Systems;

PART 2: Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems; and

PART 3: General Provisions.

PART 1

Exemptions as Applied to Qualified Solar Systems

(101) Solar systems that generate ~~((one kilowatt or))~~ more than 500 kilowatts.

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating ~~((at least 1000 watts (one kilowatt))~~) more than 500 kilowatts of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating ~~((1000 watts (one kilowatt) or))~~ more than 500 kilowatts of electricity. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective beginning July 1, 2011, and expires January 1, 2020.

(b) **Required annual tax performance report.** Beginning January 1, 2018, buyers applying for a refund must complete and submit an annual tax performance report. The annual tax performance report must be filed with the department by May 31st of the year immediately following the year for which the refund is claimed. For more information see Part 3, subsection (301)(c) of this rule.

(102)(a) Solar systems that generate at least one kilowatt and no more than 500 kilowatts.

(b) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating at least one kilowatt and no more than 500 kilowatts of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The

nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating at least one kilowatt and no more than 500 kilowatts of electricity. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective beginning July 1, 2011, and expired September 30, 2017.

PART 2

Exemptions as Applied to Qualified Nonsolar Renewable Energy Systems

(201) **Qualified nonsolar renewable energy systems generating one kilowatt or more.**

(a) **Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must have paid to the seller or to the department the total amount of retail sales or use taxes due with respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 3, subsection (301) of this rule for instructions on how to file a claim for refund. This partial exemption is effective beginning July 1, 2011, and expires January 1, 2020.

(b) **Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of qualifying machinery or equipment and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. These exemptions expire on January 1, 2020.

(c) **Required tax performance report.** Beginning January 1, 2018, buyers applying for a refund must complete and submit an annual tax performance report. The annual tax performance report must be filed with the department by May 31st of the year immediately following the year for which the refund is claimed. For more information see Part 3, subsection (301)(c) of this rule.

(202) **Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this rule applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources; and

- Technology that converts otherwise lost energy from exhaust.

(203) **Definitions for these power sources.** For purposes of Part 2 of this rule, the terms below are defined as or include within their definition the following:

(a) **Biomass energy.** "Biomass energy" includes:

(i) By-products of pulping and wood manufacturing processes;

(ii) Animal waste;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Wooden demolition or construction debris;

(vi) Food waste;

(vii) Liquors derived from algae and other sources;

(viii) Dedicated energy crops;

(ix) Biosolids; and

(x) Yard waste.

"Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

(b) **Fuel cell.** "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

PART 3

General Provisions

(301) **Requirements for a refund from the department of taxes paid, referred to as the seventy-five percent remittance.**

(a) **Required application.** This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment*. This form is available through the department's web site at dor.wa.gov under *Get a form or publication*. The application must be completed in full and mailed to the address provided on the form.

(b) **Required records.** The purchaser must provide records that will allow the department to determine whether the purchaser is entitled to a refund. The records include:

- Invoices;
- Proof of tax paid;
- Documents describing the machinery and equipment;

and

- Electrical capacity of the system.

(c) **File annual tax performance report.** Effective January 1, 2018, any person claiming a seventy-five percent refund must electronically file an annual tax performance report with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) **Separate tax performance report for each system.** The buyer must file a separate tax performance report for each system owned or operated in Washington. The annual tax performance report is due by May 31st of the year immediately following the year for which the exemption is claimed. (Systems installed in 2017 require a tax performance report to be completed by May 31, 2018.)

(e) **Limitation on frequency for claiming exemption.** A buyer may not apply to the department for a remittance (refund) more frequently than once per quarter.

(f) **Qualified retail sales and use taxes.** These exemptions apply to both state and local retail sales and use taxes.

(302) **What is "machinery and equipment"?** For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function relative to a fixture or a device. To determine if some portion of a building is a support facility, the department examines those parts of the building. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to a fixture or a device.

"Machinery and equipment" does not include:

(a) The utility grid system;

(b) Hand-powered tools;

(c) Property with a useful life of less than one year;

(d) Repair parts required to restore machinery and equipment to normal working order;

(e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;

(f) Buildings; or

(g) Building fixtures that:

(i) Are permanently affixed to and become a physical part of a building; but

(ii) Are not integral and necessary to the generation of electricity.

(303) **When is machinery and equipment "used directly" in generating electricity?** Machinery and equipment is used directly to generate electricity when it is used to:

(a) Capture the energy of the qualifying source of power;

(b) Convert that energy to electricity; and

(c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(304) **Examples of qualifying machinery and equipment.** This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) **Solar.** Where solar energy is the principal source of power: Solar modules; inverters; Stirling converters; power

conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) **Wind.** Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) **Fuel cells.** Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(305) **Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for:

(a) Charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment;

(b) Tangible personal property, such as a crane or fork-lift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment; or

(c) Services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

WSR 19-05-071

EXPEDITED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed February 19, 2019, 12:26 p.m.]

Title of Rule and Other Identifying Information: Amend WAC 220-101-030 Description of department organization, to update the correct address listed in the rule.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to provide the correct physical address of the southwest Washington - Region 5 office.

Reasons Supporting Proposal: The southwest Washington Region 5 recently moved locations from 2108 Grand Boulevard, Vancouver, WA to 5525 South 11th Street, Ridgefield, WA.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

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

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Bird, 1111 Washington Street

S.E., Olympia, WA 98501, 360-902-2403; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Based on the rationale of RCW 34.05.053 [34.05.353] (1)(c), the department believes that an expedited rule-making process is appropriate because the proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Scott Bird, Rules Coordinator, WDFW, 1111 Washington Street S.E., Olympia, WA 98501, phone 360-902-2403, fax 360-902-2155, email rules.coordinator@dfw.wa.gov, AND RECEIVED BY April 30, 2019.

February 19, 2019

Scott Bird

Rules Coordinator

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

WAC 220-101-030 Description of department organization. The department's central office is located at 1111 Washington Street S.E., Olympia, WA 98501-1091. The mailing address of the department's central office is P.O. Box 43200, Olympia, WA 98504-3200. The department's telephone number is 360-902-2200. The fax number is 360-902-2156.

The department has other offices, including six regional offices, as follows:

Eastern Washington - Region 1 Office
2315 North Discovery Place
Spokane Valley, WA 99216-1566
Telephone: 509-892-1001
Fax: 509-921-2440

North Central Washington - Region 2 Office
1550 Alder Street N.W.
Ephrata, WA 98823-9699
Telephone: 509-754-4624
Fax: 509-754-5257

South Central Washington - Region 3 Office
 1701 South 24th Avenue
 Yakima, WA 98902-5720
 Telephone: 509-575-2740
 Fax: 509-575-2474

North Puget Sound - Region 4 Office
 16018 Mill Creek Boulevard
 Mill Creek, WA 98012-1541
 Telephone: 425-775-1311
 Fax: 425-338-1066

Southwest Washington - Region 5 Office
 ((~~2108 Grand Boulevard~~
~~Vancouver, WA 98661~~))
5525 S. 11th Street
Ridgefield, WA 98642
 Telephone: 360-696-6211
 Fax: 360-906-6776

Coastal Washington - Region 6 Office
 48 Devonshire Road
 Montesano, WA 98563
 Telephone: 360-249-4628
 Fax: 360-664-0689

Current contact information is also available at the department's web site at <http://wdfw.wa.gov>.

WSR 19-05-088

EXPEDITED RULES

DEPARTMENT OF AGRICULTURE

[Filed February 20, 2019, 10:06 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-305 WAC, Industrial hemp research program.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to repeal WAC 16-305-150 to provide an orderly transition to account for changes in federal law. The 2018 Farm Bill, Public Law No. 115-334, took effect December 20, 2018, replacing the 2014 Farm Bill. The 2018 Farm Bill requires the United States Department of Agriculture to assume oversight of hemp production. Previously, oversight was provided by the Federal Drug Enforcement Agency. Additionally, under the 2018 Farm Bill interstate commerce of industrial hemp is no longer prohibited. Repealing WAC 16-305-150 will allow licensees to obtain seed without having to import seed from foreign suppliers. This proposal also repeals WAC 16-305-060(6) to eliminate unnecessarily restrictive setbacks.

Reasons Supporting Proposal: The four mile buffer in WAC 16-305-060(6) did not provide a benefit to either hemp or marijuana crops and it significantly reduced the area available for production. The current rule does not distinguish between indoor growing operations and outdoor growing operations, potential fields for industrial hemp would not qualify if there is an indoor marijuana grower within four miles of their field. Repealing the buffer will allow more

Washingtonians to participate in the industrial hemp research pilot program.

Repealing WAC 16-305-150 will allow licensees to obtain seed for the 2019 growing season. Under current rules, licensees must import certified seed from foreign seed suppliers. This practice is inconsistent with the 2018 Farm Bill which allows interstate commerce of industrial hemp. By repealing this section, Washington state licensees will be able to obtain seed from other sources within the United States as well as utilize foreign suppliers should they choose in time for the 2019 growing season.

Statutory Authority for Adoption: RCW 15.120.030.

Statute Being Implemented: Chapter 15.120 RCW.

Rule is necessary because of federal law, [no further information supplied by agency].

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

Name of Agency Personnel Responsible for Drafting: Rachel Furth, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1997; Implementation and Enforcement: Jessica Allenton, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1828.

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The agency believes the expedited rule-making process is appropriate in order to allow a transition to the 2018 Farm Bill, Public Law No. 115-334, which took effect December 20, 2018.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gloriann Robinson, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email wdsrulescomments@agr.wa.gov, AND RECEIVED BY April 22, 2019.

February 20, 2019
 Jessica Allenton
 Assistant Director

AMENDATORY SECTION (Amending WSR 17-09-034, filed 4/13/17, effective 5/14/17)

WAC 16-305-060 Industrial hemp grower license. (1)

A person must obtain an industrial hemp grower license prior to planting or growing any industrial hemp in this state, including growing any industrial hemp seed crop. A licensed grower may sell or exchange industrial hemp produced under the license to any licensed industrial hemp processor or

grower. A fit for commerce certificate issued by the department under WAC 16-305-130 must be obtained by a grower prior to transporting any industrial hemp from the grower's registered land area.

(2) Any information obtained by the department regarding a grower's growth of industrial hemp may be provided to law enforcement agencies and fire and rescue agencies by the department without further notice to the licensee.

(3) The department may inspect and sample a grower's licensed operations and must have unrestricted access to all industrial hemp plants, plant parts, grain and seeds within a registered land area whether growing or not, and all land and facilities used by a grower for the growing and storage of industrial hemp, pesticide storage or housing, and all documents and records pertaining to the licensee's industrial hemp business operations.

(4) The licensee must pay all applicable fees adopted under this chapter and under the industrial hemp seed rules for any required inspections and testing. Samples may be taken at the department's discretion for testing.

(5) No registered land area or storage area may contain cannabis plants or parts thereof that the licensee knows or has reason to know are of a variety that will produce a plant that when tested will produce more than three-tenths of one percent THC concentration on a dry weight basis. No licensee shall use any such variety for any purpose associated with the growing of industrial hemp.

~~(6) ((Industrial hemp may not be grown within four miles of any field or facility being used to grow marijuana as licensed under chapter 314-55 WAC. For calculation purposes, for outdoor fields licensed under chapter 314-55 WAC, four miles means from any field border of any registered land area, and for indoor facilities licensed under chapter 314-55 WAC, four miles means from any exterior or interior border wall.~~

~~(7))~~ All licenses are valid for one year from date of issuance, and may be renewed in successive years. Each annual renewal shall require the payment of application renewal fees and license renewal fees.

~~((8))~~ (7) Unless approved by the department for continuous licensing, any plant material that is not harvested during the license period in which it was planted must be destroyed.

~~((9))~~ (8) Any licensee that wishes to change the registered land area(s) after issuance of the license, must submit to the department for approval an updated legal description, global positioning system location, and map specifying the proposed changes to the registered land area(s), pay fees and obtain the department's approval documented as an amendment to the license. The department may deny the requested change for good cause. The fee to change the registered land area(s) after issuance of the license is two hundred dollars.

~~((10))~~ (9) A copy of each license issued by the department under this section shall be forwarded by the department to the sheriff of each county where the industrial hemp is licensed to be grown.

~~((11))~~ (10) Signs provided by the department must be posted by each grower stating that the grower is a licensed industrial hemp research program participant. The grower must post such signs on at least each side of every field listed

on the application, including the principal entry point(s) of each field.

~~((12))~~ (11) Licensees growing industrial hemp for seed certification must also follow the requirements in chapter 16-302 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-305-150 Industrial hemp seed and propagules.