WSR 19-21-030

EXPEDITED RULES

HEALTH CARE AUTHORITY

[Filed October 7, 2019, 2:46 p.m.]

Title of Rule and Other Identifying Information: WAC 182-533-0600 Planned home births and births in birthing centers.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising this section to correct a cross-reference in subsection (3)(a)(i).

The reference to the department of health (DOH) chapter 246-349 WAC does not exist.

This subsection should reference DOH chapter 246-329 WAC.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Melissa Kunder, P.O. Box 45506, Olympia, WA 98504-2716 [98504-5506], 360-725-5297.

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.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Wendy Barcus, HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, phone 360-725-1306, fax 360-586-9727, email arc@hca.wa.gov, AND RECEIVED BY December 24, 2019.

October 7, 2019

Wendy Barcus

Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-19-122, filed 9/21/15, effective 10/22/15)

WAC 182-533-0600 Planned home births and births in birthing centers. (1) **Client eligibility.** The medicaid agency covers planned home births and births in birthing centers for clients who choose to give birth at home or in an agency-approved birthing center and:

(a) Are eligible for the alternative benefit package under WAC 182-501-0060, categorically needy or medically needy scope of care under WAC 182-533-0400(2);

(b) Have an agency-approved medical provider who has accepted responsibility for the planned home birth or birth in birthing center under this section;

(c) Are expected to deliver the child vaginally and without complication (i.e., with a low risk of adverse birth outcome); and

(d) Pass the agency's risk screening criteria. The agency provides these risk-screening criteria to qualified medical services providers.

(2) **Qualified providers.** Only the following provider types may be reimbursed for planned home births and births in birthing centers:

(a) Physicians licensed under chapters 18.57 or 18.71 RCW;

(b) Nurse midwives licensed under chapter 18.79 RCW; and

(c) Midwives licensed under chapter 18.50 RCW.

(3) **Birthing center requirements.**

(a) Each participating birthing center must:

(i) Be licensed as a childbirth center by the department of health (DOH) under chapter ((~~246-349~~)) 246-329 WAC;

(ii) Be specifically approved by the agency to provide birthing center services;

(iii) Have a valid core provider agreement with the agency; and

(iv) Maintain standards of care required by DOH for licensure.

(b) The agency suspends or terminates the core provider agreement of a birthing center if it fails to maintain DOH standards cited in (a) of this subsection.

(4) **Home birth or birthing center providers.** Home birth or birthing center providers must:

(a) Obtain from the client a signed consent form in advance of the birth;

(b) Follow the agency's risk screening criteria and consult with, or refer the client or newborn to, a physician or hospital when medically appropriate;

(c) Have current, written, and appropriate plans for consultation, emergency transfer and transport of a client or newborn to a hospital;

(d) Make appropriate referral of the newborn for pediatric care and medically necessary follow-up care;

(e) Inform parents of required prophylactic eye ointment and newborn screening tests for heritable or metabolic disorders, and congenital heart defects, and send the newborn's blood sample to the DOH for testing. Parents may refuse these services for religious reasons under RCW 70.83.020. The provider must obtain the signature from the parent(s) on:

(i) The reverse side of the screening card to document refusal of screenings for heritable or metabolic disorders; and

(ii) A waiver form to document refusal of prophylactic eye ointment or a screening for congenital heart defects;

(f) Inform parents of the benefits and risks of Vitamin K injections for newborns; and

(g) Have evidence of current cardiopulmonary resuscitation (CPR) training for:

(i) Adult CPR; and

(ii) Neonatal resuscitation.

(5) **Planned home birth providers.** Planned home birth providers must:

(a) Provide medically necessary equipment, supplies, and medications for each client;

(b) Have arrangements for twenty-four hour per day coverage;

(c) Have documentation of contact with local area emergency medical services to determine the level of response capability in the area; and

(d) Participate in a formal, state-sanctioned, quality assurance improvement program or professional liability review process.

(6) **Limitations.** The agency does not cover planned home births or births in birthing centers for women identified with any of the following conditions:

(a) Previous cesarean section;

(b) Current alcohol or drug addiction or abuse;

(c) Significant hematological disorders or coagulopathies;

(d) History of deep venous thrombosis or pulmonary embolism;

(e) Cardiovascular disease causing functional impairment;

(f) Chronic hypertension;

(g) Significant endocrine disorders including preexisting diabetes (type I or type II);

(h) Hepatic disorders including uncontrolled intrahepatic cholestasis of pregnancy or abnormal liver function tests;

(i) Isoimmunization, including evidence of Rh sensitization or platelet sensitization;

(j) Neurologic disorders or active seizure disorders;

(k) Pulmonary disease;

(l) Renal disease;

(m) Collagen-vascular diseases;

(n) Current severe psychiatric illness;

(o) Cancer affecting the female reproductive system;

(p) Multiple gestation;

(q) Breech presentation in labor with delivery not imminent; or

(r) Other significant deviations from normal as assessed by the provider.

WSR 19-21-043
EXPEDITED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed October 9, 2019, 9:53 a.m.]

Title of Rule and Other Identifying Information: Leave of absence, WAC 192-170-080 (1)(a).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 192-170-080 (1)(a) was determined to be "invalid" by the commissioner of the employment security department under *In re Ausburn*, Empl. Sec. Comm'r Dec.2d 971 (2011). In that decision, the commissioner determined the rule was in "direct conflict" with RCW 50.04.310. Consequently, the department is repealing WAC 192-170-080 (1)(a). The remainder of WAC 192-170-080 will remain in effect.

Reasons Supporting Proposal: WAC 192-170-080 (1)(a) should be repealed so the public does not mistakenly rely on an invalid rule.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department, including the authority to repeal rules.

Statute Being Implemented: RCW 50.04.310(1).

Rule is necessary because of state court decision, *In re Ausburn,* Empl. Sec. Comm'r Dec.2d 971 (2011).

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Michael, Olympia, Washington, 360-890-3448; Implementation and Enforcement: Julie Lord, Olympia, Washington, 360-902-9579.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The employment security department already operates as if WAC 192-170-080 (1)(a) has been repealed. This rule making will officially repeal the rule.

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

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: *In re Ausburn,* Empl. Sec. Comm'r Dec.2d 971 (2011) determined WAC 192-170-080 (1)(a) was in direct conflict with RCW 50.04.310(1) and therefore WAC 192-170-080 (1)(a) is invalid.

NOTICE

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October 9, 2019
Dan Zeitlin
Employment System
Policy Director

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-170-080 Leave of absence. (1) A leave of absence is an absence from work mutually and voluntarily agreed upon by you and your employer or a collective bargaining agent, or leave to which you are entitled under federal or state law, where the employer-employee relationship is continued and you will be reinstated in the same or similar job when the leave expires.

(a) ((~~If you are on a leave of absence, you are not unemployed and thus not eligible for benefits.~~

~~(b)~~)) If you choose not to return to work when the leave of absence ends, the separation is treated as a voluntary quit. The separation date will be the first working day after the leave expires.

(((~~(c)~~))) (b) If no job is available with the employer when the leave of absence ends, the separation is treated as a layoff due to a lack of work.

(((~~(d)~~))) (c) If you have been on medical leave and are released for work by your medical provider, but your employer refuses to permit you to return to work, you are considered to be laid off due to a lack of work and potentially eligible for benefits.

(2) A leave of absence does not exist if the employer offers you only a preference for rehire or a promise of a job if work exists at the end of the leave. An employee-initiated leave that only provides fringe benefits during the leave or preferential status for reemployment is not a leave of absence but a voluntary quit.

(3) A temporary or indefinite disciplinary suspension from work by the employer is not a leave of absence. The department will treat this as a suspension.

WSR 19-21-057
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed October 11, 2019, 9:24 a.m.]

Title of Rule and Other Identifying Information: WAC 458-20-13501 Timber harvest operations.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating WAC 458-20-13501 to include guidance on the preferential business and occupation (B&O) tax rate provided in RCW 82.04.260. The rule will reflect legislative changes to RCW 82.04.260 that extend the expiration date of a preferential B&O tax rate for timber extracting and extracting for hire, timber manufacturing and processing for hire, and timber wholesaling activities to July 1, 2045. The department is also updating WAC 458-20-13501 to reflect legislative changes to RCW 82.04.260 that expand the preferential B&O tax rate to include the activity of manufacturing products defined in RCW 19.24.570(1).

Reasons Supporting Proposal: WAC 458-20-13501 is the department's administrative rule for all timber harvest operational activities. Including language that discusses the preferential B&O tax rate provided in RCW 82.04.260 will assist taxpayers in finding information that is relevant to their industry.

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

Statute Being Implemented: RCW 82.04.260.

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: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendments to WAC 458-20-13501 only incorporate existing statutory provisions in RCW 82.04.260 and are not interpretive. The amendments were completed due to 2019 legislative changes to RCW 82.04.260.

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 47476, Olympia, WA 98504-7476, phone 360-534-1583, fax 360-534-1606, email BrentonM@dor.wa.gov, AND RECEIVED BY December 23, 2019.

October 4, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-02-063, filed 1/4/16, effective 2/4/16)

WAC 458-20-13501 Timber harvest operations. (1) **Introduction.** Timber harvest operations generally consist of a variety of different activities. These activities may be subject to different tax rates or classifications under the business

and occupation tax and public utility tax, depending on the nature of the activity.

(a) **Scope of rule.** This rule explains the application of the business and occupation (B&O), public utility, retail sales, and use taxes to persons performing activities associated with timber harvest operations. This rule explains how the public utility tax deduction provided by RCW 82.16.050 for the transportation of commodities to an export facility applies to the transportation of logs. It also explains how the B&O tax exemption provided by RCW 82.04.333 for small timber harvesters applies.

(b) **Additional information sources for activities associated with timber harvest operations.** In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations. Persons engaged in timber harvest operations should refer to the following rules for additional information:

(i) WAC 458-20-135 Extracting natural products;

(ii) WAC 458-20-136 Manufacturing, processing for hire, fabricating;

(iii) WAC 458-20-13601 Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment;

(iv) Chapter 458-40 WAC Taxation of forest land and timber; and

(v) Chapter 458-61A WAC Real estate excise tax.

(c) **Examples.** This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(d) **Information regarding short-rotation hardwoods.** Persons cultivating short-rotation hardwoods are considered farmers. Refer to WAC 458-20-209 and 458-20-210 for tax-reporting information for farmers and persons selling property to or performing horticultural services for farmers. "Short-rotation hardwoods" are hardwood trees, such as, but not limited to, hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than fifteen years. RCW 84.33.035.

(2) **Timber harvesters.** Timber harvesters may engage in business activities that require them to report under the extracting, manufacturing, wholesaling, or retailing B&O tax classifications. Timber harvesters may qualify for preferential B&O tax rates on certain qualifying business activities. RCW 82.04.260(12).

The definition of "extractor" found in RCW 82.04.100 relates to the harvesting of trees (other than plantation Christmas trees) and is generally identical to the definition of "harvester" found in RCW 84.33.035. An exception is the specific provisions in the definition of "harvester" relating to trees harvested by federal, state, and local government entities. Both definitions include every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts (severs), or takes timber for sale or for commercial or industrial use. Both definitions exclude persons performing under contract the necessary labor or mechanical services for the extractor/harvester.

(a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue (department) purchases of privately owned timber in an amount exceeding two hundred thousand board feet, if purchased in a voluntary sale made in the ordinary course of business. The report must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area; sale name; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements.

This report must be filed on or before the last day of the month following the purchase of the timber. A two hundred fifty dollar penalty may be imposed against a purchaser for each failure to satisfy the requirements for filing this report. These filing requirements are scheduled to expire July 1, 2018. RCW 84.33.088.

(b) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity as defined in RCW 82.04.100. The extracting B&O tax classification applies to the value of the products extracted, which is the value of the severed trees prior to any manufacturing activity.

(i) Until July 1, 2045, timber extractors are eligible for a preferential B&O tax rate for timber extracting activities. RCW 82.04.260 (12)(a). Taxpayers reporting under the preferential Extracting Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(ii) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(c) **Manufacturing.** The cutting into length (bucking), delimbing, and measuring (for bucking) of felled, cut (severed), or taken trees is a manufacturing activity as defined in RCW 82.04.120. The manufacturing B&O tax is measured by the value of the products manufactured, which is generally the gross proceeds of sale. For more information regarding the value of products see RCW 82.04.450 and WAC 458-20-112.

If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product.

Example 1. In each of the following situations presume that the timber harvester delivers the product to the customer at a point outside the state:

(i) If there is no further manufacturing subsequent to manufacturing conducted at the harvest site, the measure of tax is the gross proceeds of the sale of the logs less transportation costs incurred by the seller from the harvest site to delivery to the customer;

(ii) If logs are hauled to a facility for processing into lumber, poles, or piles, the measure of tax is the gross pro-

ceeds of sale of the lumber, poles, or piles less transportation costs incurred by the seller from the facility to delivery to the customer; and

(iii) If logs are hauled to a facility that only removes the bark, the measure of tax is the gross proceeds of sale of the logs less transportation costs incurred by the seller from the harvest site to the customer. This is because the mere removal of bark is not a manufacturing activity.

However, if at that facility the debarking is a part of a manufacturing process (e.g., cutting the logs into lumber), the entire process, including the debarking, is a manufacturing activity. In such a case, the measure of tax is the gross proceeds of sale of the products manufactured from the logs less transportation costs incurred by the seller from the facility to the customer.

(iv) Until July 1, 2045, persons who manufacture (A) timber into timber products or wood products; (B) timber products into other timber products or wood products; or (C) mass timber products defined in RCW 19.27.570(1), are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(b). Taxpayers reporting under the preferential Manufacturing of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(v) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(d) **Selling.** The income from the sale of the logs is subject to tax under either the wholesaling or retailing B&O tax classification, as the case may be, unless exempt by law. The measure of tax is the gross proceeds of sale without any deduction for transportation costs.

(i) When determining the gross proceeds of sale, the timber harvester may not deduct amounts paid to others.

Example 2. A timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, unless exempt by law. For wholesale sales, sellers must obtain and retain copies of their customers' reseller permits to document the wholesale nature of the transaction. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(iii) Until July 1, 2045, persons who sell at wholesale (A) timber extracted by the seller; (B) timber products manufactured by the seller from timber or other timber products; (C) wood products manufactured by the seller from timber or timber products; or (D) mass timber products defined in RCW 19.27.570(1) manufactured by the seller, are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(c). Taxpayers reporting under the preferential Wholesaling of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

(iv) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

(e) **Multiple activities tax credit (MATC).** An extractor or manufacturer who sells the product extracted or manufactured must report under each of the appropriate "production" (extracting or manufacturing) and "selling" (wholesaling or retailing) classifications on the excise tax return. The extractor or manufacturer may then claim a multiple activities tax credit (MATC) as described in RCW 82.04.440 for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services), such as independent contractors, for timber harvesters are subject to tax under the extracting for hire B&O tax classification measured by the gross income from those services. RCW 82.04.280.

Until July 1, 2045, persons who extract timber for hire are eligible for a preferential B&O tax rate for timber extracting for hire activities. RCW 82.04.260 (12)(a). Taxpayers reporting under the preferential Extracting for Hire Timber B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

Example 3. Tree Severing Corporation (TSC) is hired by Timber Harvester to fell trees owned by Timber Harvester. TSC is performing an extracting activity, and is considered an extractor for hire with respect to those services. TSC ((~~owes B&O~~)) is subject to tax under the ((~~extractor~~)) Extracting for Hire Timber B&O tax classification measured by its gross income from the services.

Extracting activities commonly performed by extractors for hire include, but are not limited to:

(a) Cutting or severing trees;

(b) Logging road construction or maintenance;

(c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:

(i) Slash cleanup and burning;

(ii) Scarification;

(iii) Stream and pond cleaning or rebuilding;

(iv) Restoration of logging roadways to a natural state;

(v) Restoration of wildlife habitat; and

(vi) Fire trail work.

(4) **Processors for hire.** Persons performing services as independent contractors for timber harvesters during the manufacturing portion of a timber harvest operation are subject to tax under the processing for hire B&O tax classification measured by the gross income from those services. RCW 82.04.280. For information regarding processors for hire see WAC 458-20-136.

Until July 1, 2045, persons who process for hire (a) timber into timber products or wood products; (b) timber prod-

ucts into other timber products or wood products; or (c) mass timber products defined in RCW 19.27.570(1), are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(b). Taxpayers reporting under the preferential Processing for Hire Timber Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

Example 4. Tree Services Inc. (TSI) is hired to delimb and buck severed trees at the harvest site by the owner of the severed trees, the TTT Company. TSI is a processor for hire and is subject to ((~~B&O~~)) tax under the Processing for Hire Timber Products B&O tax classification. TTT then hires Chopper Services to transport the logs by helicopter from where the logs were delimbed and bucked to a location from which the logs will be transported to a mill. Under these circumstances, Chopper Services is a processor for hire as the manufacturing of the logs has started. However, if the manufacturing process on those logs had not yet begun Chopper Services would be an extractor for hire. In either case, the measure of tax is the gross income from the services.

Persons performing processing for hire or extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law.

(5) **Hauling activities.** Persons performing services for timber harvesters are often required to haul logs by motor vehicle from the harvest site over public roads. The income attributable to this hauling activity is subject to the public utility tax (PUT).

Effective August 1, 2015, RCW 82.16.020 provides a reduced PUT rate for most log transportation businesses. A "log transportation business" means the business of transporting logs by truck, except when the transportation meets the definition of urban transportation business or occurs exclusively on private roads. RCW 82.16.010. The distinction between motor and urban transportation is explained in WAC 458-20-180. If the hauling is exclusively performed over private roads, the gross income from the transportation activity is subject to tax under the service and other activities B&O tax classification, not the PUT.

Example 5. Hauler A hauls logs over private roads from the harvest site to the transfer site where the logs are unloaded. Hauler B hauls these logs over both private and public roads from the transfer site to a mill. The income received by Hauler A is subject to tax under the service and other activities B&O tax classification. The income received by Hauler B is subject to the public utility tax.

(a) **Subcontracting hauls to a third party.** If the person hired to haul logs by motor carrier subcontracts part or all of the hauling to a third party, the amount paid to the third party is subject to the public utility tax if any part of the transportation performed by the third party occurred on a public road, and is subject to the B&O tax if the transportation occurred exclusively on private roads. The person originally hired to haul the logs by motor carrier may be entitled to claim the deduction for jointly furnished services in computing its PUT liability, depending on the circumstances. See WAC 458-20-179 for more information on the PUT deduction for services furnished jointly. No similar deduction is available under the B&O tax.

(b) **Hauls using own equipment.** If the person hauls the product using his or her own equipment, and has established hauling rates that are paid to third-parties for comparable hauls, these rates may be used to establish the measure of tax for the hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor; and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the tax under the motor transportation PUT classification.

(c) **Deduction for hauls to export facilities.** Refer to subsection (13) of this rule for information regarding the deduction available for certain log hauls to export facilities.

(6) **Common timber sale arrangements.** Persons who sell and/or take timber may be subject to various taxes including the B&O tax, timber excise tax, and real estate excise tax. There are a number of ways in which harvesting activities are conducted and timber is sold. The timing of the transfer of ownership of, or the contractual right to sever, standing timber determines which taxes are due and who is liable for remitting tax.

The following examples briefly identify two common types of timber sale arrangements and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur. These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity.

(a) **Example 6. Sale of standing timber (stumpage sales).** In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.

The tax consequences are:

(i) Seller is liable for real estate excise tax. A sale of real property has occurred under RCW 82.45.060. Refer to chapter 458-61 WAC for information on the real estate excise tax.

(ii) Buyer is liable for both timber excise tax and B&O tax. Buyer is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Buyer "from the...land of another under a right or license...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(iii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

(b) **Example 7. Sale of harvested timber (logs).** In this type of sales transaction, Seller (landowner or other owner of the rights to standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and

makes all the arrangements for the sale of the logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are scaled, at which time title transfers to Buyer.

The tax consequences are:

(i) Seller is liable for both timber excise tax and B&O tax. Seller is a "harvester" under RCW 84.33.035 and an "extractor" under RCW 82.04.100 because Seller is "the person who from the person's own land or from the land of another under a right or license granted by lease or contract...fells, cuts (severs), or takes timber for sale or for commercial or industrial use." See subsection (2) of this rule.

(ii) Contractor is liable for B&O tax and possibly public utility tax because Contractor "is performing under contract the necessary labor or mechanical services for the extractor/harvester." See subsections (3), (4), and (5) of this rule.

(iii) There is no real estate excise tax liability because there is no sale of real property under chapter 82.45 RCW.

(7) **Equipment and supplies used in timber harvest operations.** The retail sales tax applies to all purchases of equipment, component parts of equipment, and supplies by persons engaging in timber operations unless a specific exemption applies. Purchases of fertilizer and spray materials (e.g., pesticides) for use in the cultivating of timber are also subject to the retail sales tax, unless purchased for resale as tangible personal property. If the seller fails to collect the appropriate retail sales tax, the buyer is required to remit the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax directly to the department.

If a person using property in Washington incurs a use tax liability, and prior to that use paid a retail sales or use tax on the same property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against the Washington use tax liability.

(a) **Exemption available for certain manufacturing equipment.** RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions for certain machinery and equipment used by manufacturers. Persons engaged in both extracting and manufacturing activities should refer to WAC 458-20-13601 for an explanation of how these exemptions may apply to them.

(b) **Property manufactured for commercial use.** Persons manufacturing tangible personal property for commercial or industrial use are subject to both the manufacturing B&O tax and use tax on the value of the property manufactured, unless a specific exemption applies. WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 describes how to determine the value of products. If the person also extracts the product, B&O tax is due under the extracting tax classification, and a MATC may be taken.

Example 8. ABC Company severs trees, manufactures the logs into lumber, and then uses the lumber to construct an office building. The use of the lumber by ABC in constructing its office building is a commercial or industrial use. ABC is subject to tax under the Extracting Timber and Manufacturing of Timber or Wood Products B&O tax classifications and may claim a MATC. ABC is also responsible for remitting use tax on the value of the lumber incorporated into the office building.

(8) **Seeds and seedlings.** Persons cultivating timber often purchase or collect tree seeds that are raised into tree seedlings. The growing of the seed may be performed by the person cultivating timber, or through the use of a third-party grower. In the case of a third-party grower, the seed is provided to the grower and tree seedlings are received back after a specified growing period.

(a) **Responsibility to remit retail sales or use tax.** The purchase of seeds or seedlings by a person cultivating timber is subject to the retail sales tax. If the seller fails to collect retail sales tax, the buyer must remit retail sales tax (commonly referred to as "deferred sales tax") or use tax, unless otherwise exempt by law. The use of seed collected by a person cultivating timber is subject to use tax. In the case of seed provided to third-party growers in Washington, the seed owner, and not the third-party grower, incurs any use tax liability on the value of the seed. The value of seedlings brought into and used in Washington is subject to the use tax, unless retail sales or use tax was previously paid on the seedlings or on the seed from which the seedlings were grown.

(b) **Limited sales and use tax exemptions for conifer seeds.** RCW 82.08.850 and 82.12.850 provide retail sales and use tax exemptions for certain sales or uses of conifer seeds. A deferral mechanism is also available if the buyer cannot at the time of purchase determine whether the purchase is eligible for the sales tax exemption.

(i) **Retail sales tax exemption.** Retail sales tax does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller if the seed is to be used for growing timber outside Washington. This exemption also applies to the sale of conifer seed to an Indian tribe or member and is to be used for growing timber in Indian country, again only if the seed is immediately placed into freezer storage operated by the seller. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

This exemption applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate to substantiate the exempt nature of these sales.

(ii) **Deferring payment of retail sales tax if unable to determine whether purchase qualifies for the retail sales tax exemption.** If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase. It is important to note that the sales tax liability may be deferred only if the seller immediately places the conifer seed into freezer storage operated by the seller.

(iii) **Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax paid at source deduction may claim a deduction on its excise tax return. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid.

(iv) **Use tax exemption.** Use tax does not apply to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This exemption applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country. If the owner of the conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed qualifies for this exemption, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this exemption, "Indian country" has the meaning given in RCW 82.24.010.

(9) **Activities or income incidental to timber operations.** The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax-reporting requirements apply even if these activities are incidental to the person's primary business activity.

(a) **Taking other natural products from timberland.** The value of natural products such as boughs, mushrooms, seeds, and cones taken for sale or commercial or industrial use is subject to the tax under the extracting B&O tax classification. The sale of these products is subject to B&O tax under the wholesaling or retailing tax classification, as the case may be. Persons both extracting and selling natural products should refer to WAC 458-20-19301 for an explanation of the MATC reporting requirements. The retail sales tax applies to sales to consumers, unless a specific exemption applies.

(b) **Timber cruising, scaling, and access fees.** Gross income from timber cruising, scaling services, and allowing others to use private roads is subject to tax under the service and other activities B&O tax classification. This tax classification also applies to access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing. Charges to allow a person to take an identified quantity of tangible personal property are considered sales of that property. See subsection (9)(d) of this rule.

(c) **Planting, thinning, and spraying.** The service and other activities B&O tax applies to the gross proceeds of sale received for planting trees or other vegetation, precommercial thinning, and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** Sales of firewood, Christmas trees, and other tangible personal property are either wholesale (subject to B&O tax under the wholesaling tax classification) or retail (subject to B&O tax under the retailing tax classification and also to retail sales tax) sales, depending on the nature of the transaction. These sales are often made in the nature of charges allowing the buyer to select and take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees).

(e) **Unloading logs from logging trucks.** Gross income from the unloading of logs from logging trucks onto rail cars at transfer points is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. For more information regarding the rental of equipment with an operator see WAC 458-20-211. If this activity is not a rental of equipment with operator, gross income from the activity is subject to tax under the service and other activities B&O tax classification. The income from unloading of logs from logging trucks is subject to tax under the stevedoring B&O tax classification if performed at an export facility as a part of or to await future movement in waterborne export. For tax-reporting information regarding services associated with interstate or foreign commerce see WAC 458-20-193D.

(f) **Transporting logs by water.** Gross income received for transporting logs by water (e.g., log booming and rafting) or log patrols is subject to tax under the "other public service business" classification of the public utility tax.

This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used while transporting the logs. In many cases logs will be towed to a location specified by the customer for storage. Any charges for boomsticks while the logs are stored are rentals of tangible personal property and subject to the tax under the retailing B&O tax classification and retail sales tax if to a consumer. For information regarding the rental of tangible personal property see WAC 458-20-211.

(g) **Export sorting yard operations.** Export sorting yard operations generally consist of multiple activities. These activities can include, but are not necessarily limited to, services such as weighing, tagging, banding, appraising, and sorting of logs. Other incidental activities, such as the debarking, removal of imperfections such as crooks, knots, splits, and seams, and trimming of log ends to remove defects, are also performed as needed. Income received by persons performing the export sorting yard activities as identified in this subsection is subject to tax under the service and other activities B&O tax classification.

(10) **Harvesting Christmas trees.** Persons growing, producing, or harvesting Christmas trees are either farmers or extractors under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and bailing (packaging) are not manufacturing activities because they are not the "cutting, delimbing, and measuring of felled, cut, or taken trees" under RCW 82.04.120.

(a) **Plantation Christmas tree operations.** Persons growing or producing plantation Christmas trees on their own lands or on lands in which they have a present right of possession are farmers. RCW 82.04.213. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170. This requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. RCW 82.04.035 and 84.33.035.

(i) Gross income from wholesale sales of plantation Christmas trees by farmers is exempt from B&O tax. RCW 82.04.330. Gross income from retail sales of plantation Christmas trees by farmers is subject to the retailing B&O tax and to retail sales tax. For information on sales of agricultural products by farmers see WAC 458-20-210.

(ii) Farmers growing or producing plantation Christmas trees may purchase seeds, seedlings, fertilizer, and spray materials at wholesale. RCW 82.04.050 and 82.04.060.

(iii) Persons performing cultivation or harvesting services for farmers are generally subject to the service and other activities B&O tax on the gross income from those services. See WAC 458-20-209 for information on farming for hire and horticultural services performed for farmers.

(b) **Other Christmas tree operations.** Persons who either directly or by contracting with others for the necessary labor or mechanical services fell, cut, or take Christmas trees other than plantation Christmas trees are extractors. RCW 82.04.100. The tax-reporting instructions regarding extracting and extracting for hire activities provided elsewhere in this rule apply.

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with the clearing of land for the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, and income from each may be subject to different tax liabilities. Income attributable to the timber harvest operations is subject to tax under the tax classifications as described elsewhere in this rule. Income attributable to the clearing of land for the construction of the residential community, golf course, park, or other development is subject to the wholesaling, retailing, retail sales, or public road construction tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting or trimming trees after the land is developed should refer to WAC 458-20-226.

(12) **Logging road construction and maintenance.** Constructing or maintaining logging roads (whether active or inactive) is considered an extracting activity. Income derived from this activity is subject to the extracting or extracting for hire B&O tax, as the case may be. This income is not subject to the retail sales tax. A person constructing or maintaining a logging road is a consumer of all materials incorporated into the logging road. The purchase or use of these materials is subject to either the retail sales or use tax.

(a) **Logging road materials provided without charge.** Landowners/timber harvesters may provide materials (e.g., crushed rock) without charge to persons constructing or maintaining logging roads. In such cases, while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law, tax is due only once on the value of the materials. The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless that person documents that the landowner or timber harvester previously remitted the appropriate retail sales or use tax.

Alternatively, the person may take a written statement from the landowner/timber harvester certifying that the landowner/timber harvester has remitted (for past periods) and/or will remit (for future periods) all applicable retail sales or use taxes due on materials provided without charge. This statement must identify the period of time, not to exceed four years, for which it is effective. The statement must identify the landowner/timber harvester's tax reporting account number and must be signed by a person who is authorized to make such a representation.

(b) **Extracted or manufactured logging road materials.** Persons constructing or maintaining logging roads are subject to the B&O and use taxes on the value of applied materials they extract or manufacture from private pits, quarries, or other locations. The measure of tax is the value of the extracted or manufactured products, as the case may be. See WAC 458-20-112 for additional information regarding how to determine the "value of products."

(i) If the person either directly or by contracting with others extracts and crushes, washes, screens, or blends materials to be incorporated into the road, B&O tax under the extracting classification is due on the value of the extracted product before any manufacturing. B&O tax under the manufacturing classification, and use tax are also due upon the value of manufactured product. If the "cost basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point, but does not include any transportation from the processing point to the road site. A MATC may be taken when computing the B&O tax as explained in WAC 458-20-19301.

(ii) In the case of fill dirt, sand, gravel, or rock that is extracted from a location away from the logging road site, but not further processed, B&O tax under the extracting classification, and use tax are due upon the value of the extracted product. If the "cost of production basis" is the appropriate method for determining the value of products under WAC 458-20-112, this value does not include transportation costs to the road site.

(iii) The mere severance of fill dirt, sand, gravel, or rock from outcroppings at the side of a logging road for placement in the road is a part of the logging road construction or maintenance activity. The person incorporating these materials into the road does not incur a tax liability for either the extracting or the use of these materials.

(13) **Deduction for hauling logs to export yards.** RCW 82.16.050 provides a public utility tax deduction for amounts derived from the transportation of commodities from points of origin within this state to an export elevator, wharf, dock, or shipside ("export facility") on tidewater or navigable tributaries of tidewaters. The commodities must be forwarded from the facility, without intervening transportation, by vessel and in their original form, to an interstate or foreign destination. No deduction is allowed when the point of origin and the point of delivery are located within the corporate limits of the same city or town.

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility, before the logs are put on the

ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if:

(i) The logs eventually go by vessel to another state or country; and

(ii) The form of the logs does not change between the time the logs are delivered to the export facility and the time the logs are put on the ship. The mere removal of bark from the logs (debarking) or the incidental removal of imperfections (see subsection (9)(g), of this rule) while the logs are at the export facility is not itself a manufacturing activity, nor does it result in a change in the "original form" of the logs as contemplated by RCW 82.16.050.

(b) **Documentation requirements for deduction.** The log hauler must prove entitlement to the deduction. Delivery tickets that show delivery to an export facility are not, alone, sufficient proof. A certificate from the export facility operator is acceptable additional proof if it is substantially in the following form. Rather than a certificate covering each haul, a "blanket certificate" may be used for a one-year period of time if no significant changes in operation will occur within this period of time.

Exemption certificate for logs delivered to an export facility

The undersigned export facility operator hereby certifies:

That _____ percentage or more of all logs hauled to the storage facilities at _____, the same located on tidewater or navigable tributaries thereto, will be shipped by vessel directly to an out-of-state or foreign destination and the following conditions will be met:

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.

2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm _____

Trucking Firm Address _____

Trucking Firm UBI# _____

Export Facility Operator _____

Operator UBI# _____

Person Giving Statement _____

Title of Person Giving Statement _____

(c) **Examples.** The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise, presume that the logs are shipped directly to another country from the export facility.

(i) **Example 9.** Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place. Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. The hauler may then claim a deduction for one hundred percent of this haul.

(ii) **Example 10.** Logs are hauled from the harvest site to an export sorting area. At this location further sorting takes place and eighty percent of the logs are hauled approximately one mile on public roads to shipside and shipped to another country. The other twenty percent of the logs are sold to local sawmills. The haul to the sorting yard is subject to tax because there is another haul from the sorting yard to shipside. It is immaterial that the hauler may be paid based on an "export" rate.

The haul from the sorting yard to shipside is deductible if it does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

(iii) **Example 11.** Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

(14) **Small timber harvesters - Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters. A small harvester may take a deduction for an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested. A deduction may not reduce the amount of tax due to less than zero.

A "small harvester" means every person who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding two million board feet in a calendar year. When the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein, who acquires title to or a possessory interest in the timber. Small harvester does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods. RCW 84.33.035.

(a) **Registration - Tax return.** A person whose only business activity is as a small harvester of timber and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not required to register with the department for B&O tax purposes. This person must nonetheless register with the forest tax division of

the department for payment of the timber excise tax. See chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.

An unregistered small harvester of timber is required to register with the department for B&O tax purposes in the month when the gross proceeds received during a calendar year from the timber harvested exceed the exempt amount. The harvester must then file and report on an excise tax return all proceeds received during the calendar year to the time when the filing of the excise tax return is required.

(b) **Examples.** In each of the following examples, the harvester must register with the department's forest tax division for the payment of timber excise tax, and must report under the appropriate tax classifications as described above in this rule.

(i) **Example 12.** A small harvester not currently registered with the department for B&O tax purposes harvests timber in June and again in August, receiving fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.

B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs. The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the one hundred thousand dollars exemption amount. An excise tax return is to be filed in the appropriate period as provided in WAC 458-20-22801.

(ii) **Example 13.** A person is primarily engaged in another business that is currently registered with the department for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is a small harvester as defined in RCW 84.33.035 and receives sixty thousand dollars from the sale of the timber harvested.

B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable.

(iii) **Example 14.** A small harvester not otherwise registered with the department for B&O tax purposes contracts with a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty percent and the logging company forty percent of the log sale proceeds. The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.

For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.035.

WSR 19-21-061
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed October 11, 2019, 12:07 p.m.]

Title of Rule and Other Identifying Information: WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rates of inflation—Publication—Interest rate—Calculation.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes to amend:

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2019, which is used when refunding property taxes paid in 2020, as required by RCW 84.69.100.
- WAC 458-30-262 to provide the interest rate and property tax component used when valuing classified farm and agricultural land during the 2020 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590 to provide the rate of inflation published in 2019, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2020, as required by RCW 84.34.310.

Reasons Supporting Proposal: The department is specifically and explicitly required by statute to annually update these rules to provide the information identified above.

Statutory Authority for Adoption: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100.

Statute Being Implemented: RCW 84.34.055, 84.34.065, 84.34.141, 84.34.310, 84.34.360, 84.68.030, and 84.69.100.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The department is required by Washington state statutes to annually update these rules.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Leslie Mullin, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1589, fax 360-534-1606, email LeslieMu@dor.wa.gov, AND RECEIVED BY December 23, 2019.

October 11, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest apply to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate is applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
2014	2013	0.085%
2015	2014	0.060%
2016	2015	0.085%
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year ((~~2019~~)) 2020, the interest rate and the property tax component that are used to value classified farm and agricultural lands are as follows:

(1) The interest rate is ((~~5.02~~)) 5.47 percent; and

(2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((~~1.39~~)) 1.22	Lewis	((~~1.20~~)) 1.09
Asotin	((~~1.24~~)) 1.02	Lincoln	((~~1.25~~)) 1.09
Benton	((~~1.31~~)) 1.09	Mason	((~~1.24~~)) 1.05
Chelan	((~~1.12~~)) 0.98	Okanogan	((~~1.23~~)) 1.08
Clallam	((~~1.07~~)) 0.96	Pacific	((~~1.40~~)) 1.20
Clark	((~~1.24~~)) 1.01	Pend Oreille	((~~1.05~~)) 0.96
Columbia	((~~1.20~~)) 1.18	Pierce	((~~1.41~~)) 1.19

COUNTY	PERCENT	COUNTY	PERCENT
Cowlitz	((~~1.21~~)) 1.05	San Juan	((~~0.78~~)) 0.73
Douglas	((~~1.12~~)) 1.02	Skagit	((~~1.23~~)) 1.00
Ferry	((~~1.05~~)) 0.98	Skamania	((~~1.12~~)) 0.98
Franklin	((~~1.20~~)) 0.98	Snohomish	((~~1.16~~)) 1.01
Garfield	((~~1.05~~)) 0.90	Spokane	((~~1.36~~)) 1.17
Grant	((~~1.30~~)) 1.12	Stevens	((~~1.06~~)) 0.96
Grays Harbor	((~~1.40~~)) 1.17	Thurston	((~~1.33~~)) 1.14
Island	((~~0.97~~)) 0.88	Wahkiakum	((~~0.97~~)) 0.78
Jefferson	((~~1.09~~)) 0.96	Walla Walla	((~~1.34~~)) 1.15
King	((~~1.06~~)) 0.96	Whatcom	((~~1.22~~)) 1.01
Kitsap	((~~1.17~~)) 1.01	Whitman	((~~1.42~~)) 1.33
Kittitas	((~~1.07~~)) 0.92	Yakima	((~~1.28~~)) 1.11
Klickitat	((~~1.05~~)) 0.94		

AMENDATORY SECTION (Amending WSR 19-02-058, filed 12/27/18, effective 1/1/19)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This rule provides the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's (department) obligation to annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department - Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based ((~~upon~~)) on the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from the farm and agricultural or timber land classifications that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	2013	1.314
2014	1.591	2015	0.251

YEAR	PERCENT	YEAR	PERCENT
2016	0.953	2017	1.553
2018	2.169	2019	1.396

WSR 19-21-119
EXPEDITED RULES
DEPARTMENT OF HEALTH
(Board of Physical Therapy)
[Filed October 18, 2019, 10:29 a.m.]

Title of Rule and Other Identifying Information: WAC 246-915-010, 246-915-085, 246-915-180, 246-915-181, 246-915-310 and 246-915-370, relating to physical therapists and physical therapist assistants. The board of physical therapy (board) is proposing amendments to certain sections of chapter 246-915 WAC to add new requirements for physical therapist supervision of assistive personnel as required under HB 2446 (chapter 222, Laws of 2018).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HB 2446 was passed and was signed into law during the 2018 legislative session. The bill amends RCW 18.74.010 and 18.74.180 to modify the definition of "physical therapy aide." The law also changes when a licensed physical therapist must reevaluate a patient who has received patient care from a physical therapist assistant or other assistive personnel from every fifth visit to every thirty days or fifth visit, whichever is later. Finally, the law changes the supervisor-assistive personnel ratio allowing the licensed physical therapist to supervise three assistive personnel rather than two.

Reasons Supporting Proposal: Rule making is necessary to align rules with the law created by the passage of HB 2446 and to enforce new requirements established by the law.

Statutory Authority for Adoption: RCW 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW and HB 2446 (chapter 222, Laws of 2018).

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

Name of Proponent: Board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4847.

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

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The content of the rules is explicitly and specifically dictated by statute. Also, the rules only correct typographical errors, 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 Kris Waidely, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4847, fax 360-236-2901, email https://fortress.wa.gov/doh/policyreview, kris.waidely@doh.wa.gov, AND RECEIVED BY January 6, 2020.

October 18, 2019
Renee A. Fullerton
Executive Director

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-010 Definitions. The definitions in this section apply throughout this chapter unless the context indicates otherwise:

(1) "Board" means the Washington state board of physical therapy.

(2) "CAPTE" means the commission on accreditation for physical therapy education.

(3) "Close supervision" means that the supervisor has personally diagnosed the condition to be treated and has personally authorized the procedures to be performed. The supervisor is continuously on-site and physically present in the operatory while the procedures are performed and capable of responding immediately in the event of an emergency.

(4) "Consultation" means a communication regarding a patient's evaluation and proposed treatment plan with an authorized health care practitioner.

((~~(4)~~)) (5) "Department" means the Washington state department of health.

((~~(5)~~)) (6) "Direct supervision" means the supervisor shall:

(a) Be continuously on-site and present where the person being supervised is performing services;

(b) Be immediately available to assist the person being supervised in the services being performed; and

(c) Maintain continued involvement in appropriate aspects of each treatment session in which a component of treatment is delegated to assistive personnel or is required to be directly supervised under RCW 18.74.180.

((~~(6)~~)) (7) "Indirect supervision" means the supervisor is not on the premises, but has given either written or oral instructions for treatment of the patient and the patient has been examined by the physical therapist at such time as acceptable health care practice requires, and consistent with the particular delegated health care task.

((~~(7)~~)) (8) "NPTE" means the National Physical Therapy Examination.

((~~(8)~~)) (9) "Other assistive personnel" means other trained or educated health care personnel, not defined in subsection ((~~(12)~~)) (13)(a) or (b) of this section, who perform specific designated tasks that are related to physical therapy and within their license, scope of practice, or formal education, under the supervision of a physical therapist including,

but not limited to, licensed massage therapists, licensed athletic trainers, and exercise physiologists. At the direction of the supervising physical therapist, and if properly credentialed and not prohibited by any other law, other assistive personnel may be identified by the title specific to their license, training or education.

(((~~(9)~~))) (10) "Physical therapist" means a person who meets all the requirements of this chapter and is licensed as a physical therapist under chapter 18.74 RCW.

(((~~(10)~~))) (11) "Sharp debridement" means the removal of devitalized tissue from a wound with scissors, scalpel, and tweezers without anesthesia. Sharp debridement does not mean surgical debridement.

(((~~(11)~~))) (12) "Spinal manipulation" includes spinal manipulation, spinal manipulative therapy, high velocity thrust maneuvers, and grade five mobilizations of the spine and its immediate articulations.

(((~~(12)~~))) (13) "Trained supportive personnel" means:

(a) "Physical therapist assistant((~~." An individual~~))" means a person who meets all the requirements of this chapter and is licensed as a physical therapist assistant and who performs physical therapy procedures and related tasks that have been selected and delegated only by the supervising physical therapist; or

(b) "Physical therapy aide((~~." An individual who is involved in direct physical therapy patient care who does not meet the definition of a physical therapist or physical therapist assistant and receives ongoing on the job training~~)) means an unlicensed person who receives ongoing on-the-job training and assists a physical therapist or physical therapist assistant in providing physical therapy patient care and who does not meet the definition of a physical therapist, physical therapist assistant, or other assistive personnel. A physical therapy aide may directly assist in the implementation of therapeutic interventions, but may not alter or modify the plan of therapeutic interventions and may not perform any procedure or task which only a physical therapist may perform under this chapter.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-085 Continuing competency. (1) Every two years, a physical therapist shall complete thirty-two hours of continuing education (CE) through any of the following means:

	CE Type	Maximum Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Ten hours	The PT shall submit to the department an outline of presentation materials, date, and location of presentation.
e.	Written publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PT shall submit to the department proof of publication which may include poster presentations.
f.	Clinical instruction of physical ((~~therapist~~)) therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.	Five hours	The PT shall submit a copy of the completion certificate to the department.

	CE Type	Maximum Hours Allowed	Documentation Requirements
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to ten hours; one trimester is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.	Two hours	The PT shall submit verification of completion by FSBPT.

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least ten hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant shall complete twenty-four hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media that does not include specific goals and objectives relating to the practice of physical therapy.	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall write and submit a one-page synopsis in twelve-point font for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Ten hours	The PTA shall submit an outline of presentation materials, date, and location of presentation.
e.	Written publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PTA shall submit proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PTA shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. ((~~For~~)) Each thirty-two hours of student mentorship ((~~equaling~~)) equals one hour for purposes of CE credit.
g.	Completion of Option, which is a self-assessment tool created by the Federation of State Boards of Physical Therapy.	Five hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Participation in the use of the Federation of State Boards of Physical Therapy's aptitude continuing competence resource.	Two hours	The PTA shall submit verification of completion by FSBPT.

(4) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

(5) Every two years, each physical therapist and physical therapist assistant shall complete two hundred hours involving the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the nonclinical activities which include, but are not limited to, the following:

	Clinical Activities	Hours Allowed	Documentation
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.

	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
b.	Physical therapy teaching of: • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.

AMENDATORY SECTION (Amending WSR 08-17-026, filed 8/13/08, effective 8/13/08)

WAC 246-915-180 Professional conduct principles. (1) The patient's lawful consent is to be obtained before any information related to the patient is released, except to the consulting or referring authorized health care practitioner ((~~and/or~~)) or an authorized governmental agency(s).

(a) Physical therapists are responsible for answering legitimate inquiries regarding a patient's physical dysfunction and treatment progress, and

(b) Information is to be provided by physical therapists and physical therapist assistants to insurance companies for billing purposes only.

(2) Physical therapists and physical therapist assistants are not to compensate or to give anything of value to a representative of the press, radio, television, or other communication medium in anticipation of, or in return for, professional publicity in a news item. A paid advertisement is to be identified as such unless it is apparent from the context it is a paid advertisement.

(3) It is the physical therapist's and physical therapist assistant's responsibility to report any unprofessional, incompetent or illegal acts that are in violation of chapter 18.74 RCW or any rules established by the board.

(4) It is the physical therapist's and physical therapist assistant's responsibility to recognize the boundaries of his or her own professional competencies and that he or she uses only those in which he or she can prove training and experience.

(5) Physical therapists and physical therapist assistants shall recognize the need for continuing education and shall be open to new procedures and changes.

(6) It is the physical therapist's and physical therapist assistant's responsibility to represent his or her academic credentials in a way that is not misleading to the public.

(7) It is the responsibility of the physical therapist and physical therapist assistant to refrain from undertaking any activity in which his or her personal problems are likely to lead to inadequate performance or harm to a client ((~~and/or~~)) or colleague.

(8) A physical therapist and physical therapist assistant shall not use or allow to be used any form of public communication or advertising connected with his or her profession or in his or her professional capacity as a physical therapist which:

(a) Is false, fraudulent, deceptive, or misleading;

(b) Guarantees any treatment or result; or

(c) Makes claims of professional superiority.

(9) Physical therapists and physical therapist assistants are to recognize that each individual is different from all other individuals and to be tolerant of and responsive to those differences.

(10) Physical therapists shall not receive reimbursement for evaluating or treating him or herself.

(11) Physical therapists shall only delegate physical therapy tasks to trained supportive personnel as defined in WAC 246-915-010 ((~~(4)~~)) (13)(a) and (b).

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-181 Supervision responsibilities. A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

(a) Interpretation of referrals;

(b) Initial examination, problem identification, and diagnosis for physical therapy;

(c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;

(d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and shall be personally rendered by the physical therapist, and which tasks may be delegated;

(e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

(f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;

(g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;

(h) Establishment of a discharge plan.

(2) ((~~Supervision~~)) If patient care given by the physical therapist assistant, or other assistive personnel, supervision by the physical therapist requires that the patient reevaluation is performed:

(a) The later of every fifth visit((~~, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week~~)) or every thirty days if a physical therapist has not treated the patient for any of the five visits or within the thirty days;

(b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.

(3) Patient reexamination means the licensed physical therapist shall physically observe and interview the patient and reexamine the patient as necessary during an episode of care to evaluate progress or change in patient status and modify the plan of care accordingly or discontinue physical therapy services.

(4) For patient reevaluations the licensed physical therapist shall at a minimum visually see the patient.

(5) Supervision of assistive personnel means:

(a) Physical therapist assistants may function under direct or indirect supervision;

(b) Physical therapy aides shall function under direct supervision at all times. Other assistive personnel must function under direct supervision when treating a patient under a physical therapy plan of care;

(c)(i) Except as provided in (c)(ii) of this subsection, at any one time, the physical therapist may supervise up to a total of ((~~two~~)) three assistive personnel, who may be physical therapist assistants, other assistive personnel, or physical therapy aides. If the physical therapist is supervising the maximum of three assistive personnel at any one time((~~;~~

~~(d)~~)), no more than one of the assistive personnel may be a physical therapy aide. The physical therapist has the sole discretion, based on the physical therapist's clinical judgment, to determine whether to utilize assistive personnel to provide services to the patient;

(ii) A physical therapist working in a nursing home as defined in RCW 18.51.010 or in the public schools as defined in RCW 28A.150.010, may supervise a total of only two assistive personnel at any one time;

(iii) In addition to the ((~~two~~)) assistive personnel authorized in (c)(i) and (ii) of this subsection, the physical therapist may supervise a total of two persons who are pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-310 Terms used in WAC 246-915-300 through 246-915-330. (1) "Monitoring contract" is a comprehensive, structured agreement between the recovering physical therapist or physical therapist assistant and WRAMP defining the requirements of the physical therapist or physical therapist assistant program participation.

(2) "Approved treatment facility" is a facility certified by the ((~~division of behavioral health and recovery (DBHR),~~)) department ((~~of social and health services, according to chapters 388-877 through 388-877B WAC that meets the defined standards~~)) under chapter 246-341 WAC. Drug and alcohol treatment facilities located out-of-state must have substantially equivalent standards.

(3) "Substance abuse" or "substance use disorder" means a chronic progressive illness that involves the use of alcohol or other drugs to a degree that it interferes with the functional life of the PT or PTA, as manifested by health, family, job (professional services), legal, financial, or emotional problems.

(4) "Aftercare" means a period of time after intensive treatment that provides the physical therapist or physical therapist assistant and the physical therapist's or physical therapist assistant's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups and ongoing continued support of treatment program staff.

(5) "Support group" is a group of health care professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced health care professional facilitator in which physical therapists or physical therapist assistants may safely discuss drug diversion, licensure issues, return to work and other professional issues related to recovery.

(6) "Recovery-oriented group" means a group such as alcoholics anonymous, narcotics anonymous, and related organizations based on a philosophy of anonymity, belief in a

power outside of oneself, a peer group association, and self-help.

(7) "Random drug screens" are laboratory tests to detect the presence of drugs of abuse in body fluids and other biologic specimens, which are performed at irregular intervals not known in advance by the person being tested.

(8) "Health care professional" is an individual who is licensed, certified or registered in Washington to engage in the delivery of health care to patients.

(9) "WRAMP" is the approved substance abuse monitoring program as described in RCW 18.130.175 that meets criteria established by the board. WRAMP does not provide evaluation or treatment services.

AMENDATORY SECTION (Amending WSR 18-15-067, filed 7/17/18, effective 8/17/18)

WAC 246-915-370 Electroneuromyographic examinations education and training. A physical therapist may perform electroneuromyographic (EMG) examinations, which may include needle EMG and nerve conduction studies, to test neuromuscular function only if the physical therapist has received a referral from an authorized health care practitioner identified in RCW 18.74.010(1) and only upon demonstrating education and training in EMG examinations. The performance of tests of neuromuscular function includes the performance of electroneuromyographic examinations. The board will accept the following as evidence of education and training:

(((~~(1)~~))) A minimum of four hundred hours of instruction in electroneuromyographic examinations including at least two hundred needle EMG studies under direct supervision from a qualified provider. A qualified provider includes a physical therapist with board certification in clinical electrophysiology from the American Board of Physical Therapy Specialties, a neurologist, or a physiatrist((~~; or~~

~~(2) A person who is board certified in clinical electrophysiology from the American Board of Physical Therapy Specialties meets the requirements of this section~~)).

WSR 19-21-137
EXPEDITED RULES
DAIRY PRODUCTS COMMISSION

[Filed October 21, 2019, 11:49 a.m.]

Title of Rule and Other Identifying Information: As required by RCW 42.56.040, the Washington dairy products commission is proposing to publish its public records disclosure procedures in a new chapter of the Washington Administrative Code.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new chapter will establish procedures the dairy products commission will follow to provide full access to public records and to implement the provisions of the Public Records Act (chapter 42.56 RCW). The rule will establish procedures for the commission to follow in response to requests for public records, including the schedule used by the commission for recovering the costs of producing public records.

Reasons Supporting Proposal: RCW 42.56.040 requires agencies to publish its public records procedures and requires rule making regardless of whether the commission proposes to charge actual costs for producing public records, charge in accordance with the statutory schedule, or waive fees for producing public records. To charge statutory fees, the commission must adopt a rule declaring that charging actual costs would be unduly burdensome.

Statutory Authority for Adoption: Chapters 42.56 and 34.05 RCW.

Statute Being Implemented: RCW 42.56.040 and 42.56.120, as amended by chapter 304, Laws of 2017.

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

Name of Proponent: Washington dairy products commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Kinney, Lynnwood, Washington, 425-672-0687.

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

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Using the expedited rule-making process is appropriate because these proposed rules cover internal procedures of the Washington dairy products commission.

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 Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-2043, fax 360-902-2092, email tnorman@agr.wa.gov, AND RECEIVED BY December 24, 2019.

October 21, 2019
Scott Kinney
General Manager

Chapter 142-50 WAC

PUBLIC RECORDS

NEW SECTION

WAC 142-50-010 Purpose. The purpose of this chapter is to ensure compliance by the Washington dairy products commission with chapter 42.56 RCW, Public Records Act. These rules provide information to persons requesting access to the commission's public records and establish procedures for both requestors and commission staff.

NEW SECTION

WAC 142-50-020 Definitions. "Commission" means the Washington dairy products commission.

"Disclosure" means inspection or copying.

"Public records" include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the department regardless of physical form or characteristics.

"Writing" means handwriting, typewriting, printing, photostating, telefaxing, photographing, and every other means of recording any form of communication or representation including, but not limited to, letters, words, pictures, sounds or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents, including existing data compilations from which information may be obtained or translated.

NEW SECTION

WAC 142-50-030 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its executive director may appoint a temporary public records officer to serve during the absence of the designated records officer.

(2) The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

NEW SECTION

WAC 142-50-040 Requests for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at 4201 198th Street S.W., Lynnwood, WA 98036, or by email at PRR@wadairy.org. The written request should include:

(a) The name of the person requesting the record and his or her contact information;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify the records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection.

(b) Inspection of any public records will be conducted in the presence of the public records officer or designee.

(c) Public records may not be marked or altered in any manner during inspection.

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 142-50-050 Response to public records request. (1) The public records officer shall respond to public records requests within five business days by:

(a) Providing the record;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or

(d) Denying the public records request. Responses refusing, in whole or in part, the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the records withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

NEW SECTION

WAC 142-50-060 Fees—Inspection and copying. (1) No fee shall be charged for the inspection of public records.

(2) 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 for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120.

(4) For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington dairy products commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(5) The commission or its designee may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

NEW SECTION

WAC 142-50-070 Processing of public records requests—Electronic records. (1) The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records:

(a) The commission has the discretion to determine whether to provide records electronically or in paper form.

(b) When a requestor requests records in an electronic format, the public records officer will endeavor to provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the commission and is generally commercially available, or in a format that is reasonably translatable from the format in which the commission keeps the record.

NEW SECTION

WAC 142-50-080 Protection of public records. In order to adequately protect the commission's public records, the following will apply:

(1) Public records made available for inspection may not be removed from the area the commission makes available for inspection. The commission has the discretion to designate the means and the location for the inspection of records.

(2) Inspection of any public records will be conducted in the presence of a designated commission employee.

(3) Public records may not be marked or altered in any manner during inspection.

(4) After inspection is complete, the public records officer or designee will make requested copies or arrange for copying.

(5) Public records that are maintained in a file or jacket, or in chronological order, may not be dismantled except by a designated commission employee for purposes of copying.

(6) Whenever a public records request involves an entire file, a group of records, or a large number of records, the commission is allowed a reasonable time to review the records to determine whether information is exempt from disclosure under chapter 42.56 RCW or other law.

NEW SECTION

WAC 142-50-090 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.44 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.44 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070).

(4) Records which are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the department and the office of the attorney general privileged under RCW 5.60.060(2).

NEW SECTION

WAC 142-50-100 Review of denials of public records requests. (1) Any person who objects to the denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's executive director or designee shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within ten business days following receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission 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.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 142-50-110 Records index. The commission shall establish a records index, which shall be made available for public review.

WSR 19-21-141
EXPEDITED RULES
DEPARTMENT OF REVENUE
[Filed October 21, 2019, 4:53 p.m.]

Title of Rule and Other Identifying Information: WAC 458-29A-400 Leasehold excise tax—Exemptions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-29A-400 to reflect 2019 legislation that exempts certain leasehold interests in arenas with a seating capacity of more than two thousand from the leasehold excise tax.

Reasons Supporting Proposal: The rule is being amended to incorporate legislation from 2019 (HB 1301).

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

Statute Being Implemented: RCW 82.29A.030 and 82.29A.040.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Linda King, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1530; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2019 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Linda King, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1530, fax 360-534-1606, email lindak@dor.wa.gov, AND RECEIVED BY December 23, 2019.

October 21, 2019
Atif Aziz
Rules Coordinator

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

WAC 458-29A-400 Leasehold excise tax—Exemptions. (1) **Introduction.**

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, and 82.29A.136. To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

(b) This rule also explains the expiration date for new tax preferences for the leasehold excise tax pursuant to the language found at RCW 82.32.805.

(c) **Rule examples.** This rule includes a number of examples that identify a set of facts and then states a conclusion. The examples should be used only as a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority.

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

(a) "New tax preference" means a tax preference that initially takes effect after August 1, 2013, or a tax preference in effect as of August 1, 2013, that is expanded or extended after August 1, 2013, even if the expanding or extending legislative amendment includes any other changes to the tax preference.

(b) "Tax preference" has the same meaning as in RCW 43.136.021 with respect to any state tax administered by the department, except does not include the Washington estate and transfer tax in chapter 83.100 RCW.

(3) **Operating properties of a public utility.**

(a) All leasehold interests that are part of the operating properties of a public utility are exempt from leasehold excise tax if the leasehold interest is assessed and taxed as part of the operating property of a public utility under chapter 84.12 RCW.

(b) **Example.** Assume ABC Railroad Company is a public utility. Tracks leased to ABC Railroad Company are exempt from leasehold excise tax because ABC Railroad Company is a public utility assessed and taxed under chapter 84.12 RCW and the tracks are part of the railroad's operating properties.

(4) **Student housing at public and nonprofit schools and colleges.**

(a) All leasehold interests in facilities owned or used by a school, college, or university which leasehold provides housing to students are exempt from leasehold excise tax if the student housing is exempt from property tax under RCW 84.36.010 and 84.36.050.

(b) **Example.** Assume State Public University leases a building to use as a dormitory for its students. The leasehold interest associated with this building is exempt from the leasehold excise tax. This is because the dormitory is used to house State Public University's students.

(5) **Subsidized housing.**

(a) All leasehold interests of subsidized housing are exempt from leasehold excise tax if the property is owned in fee simple by the United States, the state of Washington or any of its political subdivisions, and residents of the housing are subject to specific income qualification requirements.

(b) **Example.** Assume an apartment building and the property on which it is located is:

• Owned in fee simple by the state of Washington; and

• Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used

for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Nonprofit fair associations.**

(a) All leasehold interests used for fair purposes of a nonprofit fair association are exempt from leasehold excise tax if the fair association sponsors or conducts a fair or fairs supported by revenues collected under RCW 67.16.100 and allocated by the director of the department of agriculture. The property must be owned in fee simple by the United States, the state of Washington or any of its political subdivisions. However, if a nonprofit association subleases exempt property to a third party, the sublease is a taxable leasehold interest.

(b) **Example.** Assume a leasehold interest held by Local Nonprofit Fair Association is exempt from leasehold excise tax. Local Nonprofit Fair Association subleases some of the buildings on the fairgrounds to private parties for storage during the winter. These subleases are subject to the leasehold excise tax.

(7) **Public employee housing.**

(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

(b) **Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call twenty-four hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

(ii) An employee of the Washington department of fish and wildlife resides in a house furnished by the agency at a fish hatchery although, under the terms of a collective bargaining agreement, the agency may not compel the employee to live in the residence as a condition of employment. In exchange for receiving use of the housing provided by the agency, the employee is required to perform additional duties, including regularly monitoring certain equipment at the hatchery during nights and on weekends and escorting public visitors on tours of the hatchery on weekends. The use of the house is exempt from leasehold excise tax because the lodging enables the employee to properly perform the duties of his employment. The use is exempt even though the employee would continue to be employed by the agency if the additional duties were not performed and even though state employees of an equal job classification are not required to perform the additional duties.

(iii) A professor employed by State University is given the choice of residing in university-owned campus housing free of charge or of residing elsewhere and receiving a cash allowance in addition to her regular salary. If she elects to reside in the campus housing free of charge, the value of the lodging furnished to the professor would be subject to leasehold excise tax because her residence on campus is not required for her to perform properly the duties of her employment.

(8) **Interests held by enrolled Indians.**

(a) Leasehold interests held by enrolled Indians are exempt from leasehold excise tax if the lands are owned or held by any Indian or Indian tribe, and the fee ownership of the land is vested in or held in trust by the United States, unless the leasehold interests are subleased to a lessee which would not qualify under chapter 82.29A RCW, RCW 84.36.451 and 84.40.175 and the tax on the lessee is not preempted due to the balancing test (see WAC 458-20-192).

(b) Any leasehold interest held by an enrolled Indian or a tribe, where the leasehold is located within the boundaries of an Indian reservation, on trust land, on Indian country, or is associated with the treaty fishery or some other treaty right, is not subject to leasehold excise tax.

(c) **Example.** Assume an enrolled member of the Puyallup Tribe leases port land at which the member keeps his or her boat, and the boat is used in a treaty fishery. The leasehold interest is exempt from the leasehold tax. For more information on excise tax issues related to enrolled Indians, see WAC 458-20-192 (Indians—Indian country).

(9) **Leases on Indian lands to non-Indians.**

(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to ninety percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of ninety percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of $900 per month. The fair market value for similar lands used for similar purposes is $975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least ninety percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

(10) **Annual taxable rent is less than two hundred fifty dollars.**

(a) Leasehold interests for which the taxable rent is less than $250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contigu-

ous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a twelve-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) **Examples.**

(i) The yacht club rents property from the Port of Bay City for its clubhouse and moorage. It also rents a parking stall for its commodore. The parking stall is separated from the clubhouse only by a common walkway. The parking stall lease is a part of the clubhouse lease because it is contiguous to the clubhouse, separated only by a necessary walkway.

(ii) Ace Flying Club rents hangars, tie downs, and ramps from the Port of Desert City. It has separate leases for several parcels. The hangars are separated from the tie down space by a row of other hangars, each of which is leased to a different party. Common ramps and roadways also separate the club's hangars from its tie-downs. The hangars, because they are adjacent to one another, create a single leasehold interest. The tie downs are a separate taxable leasehold interest because they are not contiguous with the hangars used by Ace Flying Club.

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays $50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run thirty to forty days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax. They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

(iv) Elizabeth owns a Christmas tree farm. Every year she rents a small lot from the Port of Capital City, adjacent to its airport, to sell Christmas trees. She pays $125 to the port to rent the lot for 6 weeks. It is the only time during the year that she rents the lot. Her lease is exempt from the leasehold excise tax, because it does not exceed $250 per year in taxable rent.

(11) **Leases for a continuous period of less than thirty days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than thirty days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than thirty days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(12) **Month-to-month leases in residential units to be demolished or removed.**

(a) Leasehold interests in properties rented for residential purposes on a month-to-month basis pending destruction or removal for construction of a public highway or public building are exempt from the leasehold excise tax. Thus, if the state or other public entity has acquired private property for purposes of building or expanding a highway, or for the construction of public buildings at an airport, the capitol campus, or some other public facility, and the public entity rents the property for residential purposes on a month-to-month basis pending destruction or removal for construction, these leases do not create taxable leasehold interests. This exemption does not require evidence of imminent removal of the residential units; the term "pending" merely means "while awaiting." The exemption is based upon the purpose for which the public entity holds the units.

(b) **Example.** State University has obtained capital development funding for the construction of new campus buildings, and has purchased a block of residential property adjacent to campus for the sole purpose of expansion. Jim leases these houses from State University pursuant to a month-to-month rental agreement and rents them to students. Construction of the new buildings is not scheduled to begin for two years. Jim is not subject to the leasehold excise tax, because State University is holding the residential properties for the sole purpose of expanding its facilities, and Jim is leasing them pending their certain, if not imminent, destruction.

(13) **Public works contracts.**

(a) Leasehold interests in publicly owned real or personal property held by a contractor solely for the purpose of a public improvements contract or work to be executed under the public works statutes of Washington state or the United States are exempt from leasehold excise tax. To receive this exemption, the contracting parties must be the public owner of the property and the contractor that performs the work under the public works statutes.

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

(14) **Correctional industries in state adult correctional facilities.**

(a) Leasehold interests for the use and possession of state adult correctional facilities for the operation of correctional industries under RCW 72.09.100 are exempt from leasehold excise tax.

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of correc-

tions. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

(ii) Assume ABC Charitable Society, a nonprofit organization, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Charitable Society is exempt from leasehold excise tax for its use and possession of state property.

(15) **Camp facilities for persons with disabilities.**

(a) Leasehold interests in a camp facility are exempt from leasehold excise tax if the property is used to provide organized and supervised recreational activities for persons with disabilities of all ages, and for public recreational purposes, by a nonprofit organization, association, or corporation which would be exempt from property tax under RCW 84.36.030(1) if it owned the property.

(b) **Example.** Assume a county park with camping facilities is leased to Charity Campgrounds, a nonprofit charitable organization that allows the property to be used by the general public for recreational activities throughout the year and as a camp for disabled persons for two weeks during the summer. Charity Campgrounds is exempt from leasehold excise tax because the nonprofit allows the property to be used by the general public for recreational activities throughout the year, and to be used as a camp for disabled persons for two weeks during the summer.

(16) **Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over one million people, with a seating capacity of over forty thousand, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

(b) "Public or entertainment areas" for the purposes of this subsection include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public areas, public rest rooms, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or that are used for the production of the entertainment event or other public usage, and any other personal property used for such purposes. "Public or entertainment areas" does not include locker rooms or private offices used exclusively by the lessee.

(17) **Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection (16) of this rule.

(18) **Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

(19) **State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

(20) **Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

(21) **Interests consisting of three thousand or more residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least three thousand satisfies the requirement of this exemption. RCW 82.29A.136.

(22) **Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

(a) Owned by the United States government or a municipal corporation; and

(b) Wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(23) **Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used predominately by the lessee.

(24) **Military housing.**

(a) All leasehold interests in real property used for the placement of housing that consists of military housing units and ancillary supporting facilities are exempt from leasehold excise tax if the property is situated on land owned in fee by the United States, is used for the housing of military personnel and their families, and is a development project awarded under the military housing privatization initiative of 1996, 10 U.S.C. Sec. 2885, as existing on June 12, 2008.

(b) For the purposes of this subsection, "ancillary supporting facilities" means facilities related to military housing units, including facilities to provide or support elementary or secondary education, child care centers, day care centers, child development centers, tot lots, community centers, housing offices, dining facilities, unit offices, and other similar facilities for the support of military housing.

(25) **Community colleges and technical colleges.**

(a) All leasehold interests in facilities owned or used by a community college or technical college are exempt from leasehold excise tax if the leasehold interest provides:

(i) Food services for students, faculty, and staff;

(ii) The operation of a bookstore on campus; or

(iii) Maintenance, operational, or administrative services to the community college or technical college.

(b) Provisions of RCW 82.32.805 and 82.32.808 do not apply to the exemption specified in this subsection.

(26) **Anaerobic digesters.**

(a) Beginning July 1, 2018, all leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the operation of an anaerobic digester are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) Claims for the exemption described in (a) of this subsection must be filed with the department on the form *Leasehold excise tax exemption to operate an anaerobic digester* available at https://dor.wa.gov. Once filed, the exemption is valid for six assessment years following the date on which the facility or the addition to the existing facility becomes operational and may not be renewed. The department must verify and approve claims as it determines to be justified and in accordance with this subsection. No claims may be filed after December 31, 2024.

(c) For the purposes of this subsection, "anaerobic digester" means a facility that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container as well as the equipment necessary to process biogas or digestate produced by an anaerobic digester into marketable coproducts including, but not limited to, biogas conditioning, compression, nutrient recovery, and electrical generation equipment. See RCW 82.08.900.

(27) **Exemption for public or entertainment areas of certain arenas.** Leasehold interests in the public or entertainment areas of an arena are exempt from the leasehold excise tax if the arena has seating capacity of more than two thousand, and is located on land owned by a city with a population over two hundred thousand within a county with a population of less than one million five hundred thousand. For the purpose of this subsection, the term "public or entertainment areas" has the same meaning as set forth in subsection (23) of this rule.

(28) **Expiration date for new tax preferences.**

(a) RCW 82.29A.025 incorporates the language found at RCW 82.32.805 establishing the expiration date of new tax preferences for the leasehold excise tax.

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is ten years from the effective date of the tax preference.

(ii) A future legislative amendment that expands a tax preference does not extend the tax preference beyond the period provided in this subsection unless an extension is expressly and unambiguously stated in the legislative amendment.

(b) This subsection does not apply if legislation creating a new tax preference includes an expiration date for the new tax preference.

(c) This subsection does not apply to an existing tax preference that is amended to clarify an ambiguity or correct a technical inconsistency. Future enacted legislation intended to make such clarifications or corrections must explicitly indicate that intent.

WSR 19-21-147
EXPEDITED RULES
WASHINGTON STATE PATROL
[Filed October 22, 2019, 10:18 a.m.]

Title of Rule and Other Identifying Information: WAC 204-96-020 Vehicle impound—DUI/PC with twelve hour hold.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: There is a need to remove this rule as it is now covered under RCW 46.55.360 Impoundment, when required—Law enforcement powers, duties, and liability immunity.

Reasons Supporting Proposal: Repeals redundant language.

Statutory Authority for Adoption: RCW 46.55.075.

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

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, 106 11th Avenue S.W., Olympia, WA 98504, 360-596-4017; Implementation and Enforcement: Field Operations Bureau, 103 [106] 11th Avenue S.W., Olympia, WA 98507, 360-596-4017.

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

The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute.

The rule is no longer necessary because of changed circumstances.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate:

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 Ms. Kimberly Mathis, Washington State Patrol, 106 11th Avenue S.W., Olympia, WA 98507, phone 360-596-4017, email wsprules@wsp.wa.gov, AND RECEIVED BY December 23, 2019.

October 21, 2019
John R. Batiste
Chief

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 204-96-020	Vehicle impound—DUI/PC with twelve hour hold.

WSR 19-21-152
EXPEDITED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 22, 2019, 11:25 a.m.]

Title of Rule and Other Identifying Information: Change Log Phase 5, WAC 296-304-02007, 296-800-16055, 296-800-240, 296-800-27010, 296-806-47004, 296-811-099, 296-824-50030, 296-835-11010, 296-863-099, and 296-863-30035.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to fix any outstanding housekeeping issues that are on the department of labor and industries, division of occupational safety and health's (DOSH) change log for the WAC sections listed above. No requirements are being affected during this rule making; changes are only for clarification purposes. Please see below for the amendments being proposed:

Amended Sections:

WAC 296-304-02007 Hot work.
- Update reference in subsection (2)(a)(iv) from (1)(a)(i) to (1)(a)(iv) to be consistent with what is referenced in the Occupational Safety and Health Administration's rule.

WAC 296-800-16055 Make sure your employees use appropriate head protection.
- Update language in subsection (4)(b) regarding flammable liquids. The sentence previously stated "… category 3 flammable liquids with a flashpoint between 100°F (37.8°C)…)["]; to be consistent with language in chapter 296-24 WAC, we updated "between" to "below."

WAC 296-800-240 Summary.
- Update broken link at the bottom of this section from http://www.secondhandsmokesyou.com to https://www.doh.wa.gov/youandyourfamily/tobacco/lawsregulations.

WAC 296-800-27010 Make sure that floors are safe.
- Update language in the Note under subsection (4) for clarity and grammatical purposes. The Note now reads: "This rule applies to all buildings that were built or those that have had complete or major changes or repairs ~~built~~ done after 5/7/74."

WAC 296-806-47004 Safeguard nip points of roll-forming and bending machines.
- Update language in subsection (2) for clarity purposes. There were erroneous brackets around the word "use" that were removed, as well as the phrase "must be used" in the middle of the sentence that was extra and wasn't removed during previous rule making.

WAC 296-811-099 Definitions.
- Update the definition of Self-contained breathing apparatus to match the definition that is used in chapter 296-841 WAC, Airborne contaminants, for consistency purposes.

WAC 296-824-50030 Provide rescue and medical assistance.
- Update the Note at the end of the section for clarification purposes. In the first subsection of the Note, there is a reference to "… the eighteen subjects listed …," in regards to first-aid in WAC 296-800-150, but those eighteen subjects are no longer listed in the language. The reference to those eighteen subjects was removed and the sentence was updated to say: "This rule requires training on basic first aid and any subjects that are specific to your workplace emergency hazards."

WAC 296-835-11010 Provide proper ventilation for the vapor area.
- Update the reference to the air contaminants chapter from chapter 296-62 WAC to chapter 296-841 WAC in the Reference section under subsection (5).

WAC 296-863-099 Definitions.
- Update incorrect reference in the definition of Flashpoint. WAC 296-901-14024 Appendix B—Physical hazard criteria, was incorrectly referenced as "WAC 296-91-14024."

WAC 296-863-30035 Make sure battery charging areas are safe.
- In subsection (1)(c), updated "fumes" to "vapors." The reason for the language change is that "fume" in the industrial hygiene profession refers to metal gases condensing back into a particulate like during welding. This is a more technical term for what would be evolved from the batteries but it also helps identify what respirator cartridge would be used if needed since you use a high-efficiency particulate air cartridge for fume and an acid gas charcoal filter for acid mist.

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

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

Statute Being Implemented: Chapter 49.17 RCW.

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

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

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

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: No requirements are being changed during this rule making, only clarifying language and updating errors, which fits within the parameters of RCW 34.05.353, Expedited rule making.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Chris Miller, Department of Labor and Industries, P.O. Box 44610, Olympia, WA 98504-4610, phone 360-902-5516, fax 360-902-5619, email christopher.miller@Lni.wa.gov, AND RECEIVED BY December 23, 2019.

October 22, 2019
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-304-02007 Hot work. (1) Hot work requiring testing by a marine chemist or Coast Guard authorized person.

(a) You must ensure that hot work is not performed in or on any of the following confined and enclosed spaces and other dangerous atmospheres, boundaries of spaces or pipelines until the work area has been tested and certified by a marine chemist or a U.S. Coast Guard authorized person as "safe for hot work":

(i) Within, on, or immediately adjacent to spaces that contain or have contained combustible or flammable liquids or gases.

(ii) Within, on, or immediately adjacent to fuel tanks that contain or have last contained fuel; and

(iii) On pipelines, heating coils, pump fittings or other accessories connected to spaces that contain or have last contained fuel.

(iv) Exception: On dry cargo, miscellaneous and passenger vessels and in the landside operations within spaces which meet the standards for oxygen, flammability and toxicity in WAC 296-304-02003, but are adjacent to spaces containing flammable gases or liquids, as long as the gases or liquids with a flash point below 150 deg. F (65.6 deg. C) when the distance between such spaces and the work is 25 feet (7.62 m) or greater.

Note: For flammable liquids with flash points above 150 deg. F (65.6 deg. C), see subsection (2) of this section.

Note to (1)(a): The criteria for "safe for hot work" is located in the definition section, WAC 296-304-020(2).

(b) The certificate issued by the marine chemist or Coast Guard authorized person must be posted in the immediate vicinity of the affected operations while they are in progress and kept on file for a period of at least three months from the date of the completion of the operation for which the certificate was generated.

(2) Hot work requiring testing by a competent person.

(a) Hot work is not permitted in or on the following spaces or adjacent spaces or other dangerous atmospheres until they have been tested by a competent person and determined to contain no concentrations of flammable vapors equal to or greater than 10 percent of the lower explosive limit:

(i) Dry cargo holds;

(ii) The bilges;

(iii) The engine room and boiler spaces for which a marine chemist or a Coast Guard authorized person certificate is not required under subsection (1)(a)(i) of this section; ((~~and~~))

(iv) Vessels and vessel sections for which a marine chemist or Coast Guard authorized person certificate is not required under subsection (1)(a)(((~~(i)~~))) (iv) of this section; and

(v) Land-side confined and enclosed spaces or other dangerous atmospheres not covered by subsection (1)(a) of this section.

(b) If the concentration of flammable vapors or gases is equal to or greater than 10 percent of the lower explosive limit in the space or an adjacent space where the hot work is to be done, then the space must be labeled "not safe for hot work" and ventilation must be provided at volumes and flow rates sufficient to ensure that the concentration of flammable vapors or gases is below 10 percent by volume of the lower explosive limit. The warning label may be removed when the concentration of flammable vapors and gases are below 10 percent of the lower explosive limit.

Note to WAC 296-304-02007: See WAC 296-304-02013—Appendix B, for additional information relevant to performing hot work safely.

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

WAC 296-800-16055 Make sure your employees use appropriate head protection. (1) You must make sure employees wear appropriate protective helmets.

(a) Where employees are exposed to hazards that could cause a head injury. Examples of this type of hazard include:

(i) Flying or propelled objects.

(ii) Falling objects or materials.

(b) Where employees are working around or under scaffolds or other overhead structures.

(2) Head protection must comply with any of the following consensus standards:

(a) American National Standards Institute (ANSI) Z89.1-2009, "American National Standard for Industrial Head Protection";

(b) American National Standards Institute (ANSI) Z89.1-2003, "American National Standard for Industrial Head Protection";

(c) American National Standards Institute (ANSI) Z89.1-1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements."

(d) You may use protective helmets that do not meet these ANSI standards if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSIs.

(3) You must make sure employees working near exposed electrical conductors that could contact their head wear a protective helmet designed (that meet the above ANSI standards) to reduce electrical shock hazard.

Caps with metal buttons or metal visors must **not** be worn around electrical hazards.

(4) You must make sure employees working around machinery or in locations that present a hair-catching or fire hazard wear caps or head coverings that completely cover their hair.

(a) Employees must wear a hair net that controls all loose ends when:

(i) Hair is as long as the radius of pressure rolls with exposed in-running nip points.

(ii) Hair is twice as long as the circumference of exposed revolving shafts or tools in fixed machines.

(b) Employees must wear a hair covering of solid material when:

The employee is exposed to an ignition source and may run into an area containing category 1 or 2 flammable liquids, such as ether, benzene, or category 3 flammable liquids with a flashpoint ((~~between~~)) below 100°F (37.8°C), or combustible atmospheres if their hair is on fire.

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

WAC 296-800-240 Summary.

Your responsibility:

You must eliminate exposure to *environmental tobacco smoke* in your *office work environment*.

You must meet the requirements …	in this section:
Prohibit tobacco smoke in your office work environment	WAC 296-800-24005

Note: This rule does not preempt any federal, state, municipal, or other local authority's regulation of indoor smoking that is more protective than this section.

Definition: Office work environment is an indoor or enclosed occupied space where clerical work, administration, or business is carried out. In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.
- Office areas of manufacturing and production facilities, not including process areas.
- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

Link: For work environments outside the office, contact your local health department using the link ((~~http://www.secondhandsmokesyou.com~~)) https://www.doh.wa.gov/YouandYourFamily/Tobacco/LawsRegulations or by calling them directly.

AMENDATORY SECTION (Amending WSR 18-22-116, filed 11/6/18, effective 12/7/18)

WAC 296-800-27010 Make sure that floors are safe. (1) You must make sure that floors including their parts and structural members are safe.

(2) You must make sure floors are of substantial construction and kept in good repair. This includes floors of:

(a) Buildings.

(b) Platforms.

(c) Walks and driveways.

(d) Storage yards.

(e) Docks.

(3) You must make sure that structures are designed, constructed, and maintained to provide a safety factor of 4 times the imposed maximum strain.

(4) If you notice bowing, cracking, or other indications of excessive strain on a structure, you must take action to make sure it is safe.

Note: This rule applies to all buildings that were built or those that have had complete or major changes or repairs ((~~built~~)) done after 5/7/74.

AMENDATORY SECTION (Amending WSR 15-24-102, filed 12/1/15, effective 1/5/16)

WAC 296-806-47004 Safeguard nip points of roll-forming and bending machines. (1) You must safeguard in-running nip points on roll-forming and bending machines with **at least one** of the following:

(a) A point-of-operation guard or device.

(b) An emergency stop device.

(2) You must ((~~[use]~~)) use an emergency stop device ((~~[must be used]~~)) when a point-of-operation guard or device is not feasible.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-811-099 Definitions. Buddy-breathing device. An equipment accessory for self-contained breathing apparatus (SCBA) that permits a second person (a "buddy") to share the air supply used by the SCBA wearer.

Extinguisher classification. The letter classification given an extinguisher to designate the class or classes of fires on which that extinguisher will be effective. For example, use a Class A extinguisher on a Class A fire. See also fire classifications.

Portable fire extinguishers are classified for use on certain classes of fires and are rated within that class for relative extinguishing effectiveness at a temperature of plus 70°F by nationally recognized testing laboratories. This is based upon fire classifications and fire extinguishment potentials as determined by fire tests.

Note: The classification and rating system described in this section is used by Underwriters' Laboratories, Inc., and Underwriters' Laboratories of Canada, and is based on extinguishing preplanned fires of determined size and description as follows:

Extinguisher Class	Fire Test for Classification and Rating
Class A	Wood and excelsior fires excluding deep-seated conditions.
Class B	Two-inch depth gasoline fires in square pans.
Class C	No fire test. Agent must be a nonconductor of electricity.
Class D	Special tests on specific combustible metal fires.

Extinguisher rating (see also "extinguisher classification"). The numerical rating, such as 2A, given to an extinguisher that indicates the extinguishing potential of the unit based on standardized tests developed by Underwriters' Laboratories, Inc.

Fire brigade. An organized group of employees whose primary employment is other than firefighting but who are knowledgeable, trained, and skilled in specialized firefighting operations based on site-specific hazards present at a single commercial facility or facilities under the same management.

Fire classifications. Fires are classified based on the types of burning materials:

Fire Class	Types of Burning Materials
Class A	Fires involving ordinary combustible materials such as paper, wood, cloth, and some rubber and plastic materials.
Class B	Fires involving flammable liquids, flammable gases, greases, and similar materials, and some rubber and plastic materials.
Class C	Fires involving energized (live) electrical equipment where it is important that the extinguishing agent not conduct electricity. (When electrical equipment is deenergized, it is safe to use an extinguisher for Class A or B fires on it, since electricity is not an issue then.)
Class D	Fire involving combustible metals such as magnesium, titanium, zirconium, sodium, lithium, and potassium.

Incipient fire stage. A fire in the beginning stage that can be controlled or put out by portable fire extinguishers, or small hose systems, without the need for protective clothing or breathing apparatus.

Inspection. A visual check of fire protection systems and equipment to ensure they are in place, charged, and ready for use if there is a fire.

Interior structural firefighting. The physical activity of suppressing fire, rescuing people, or both, inside buildings or enclosed structures involved in a fire that is past the incipient stage.

Maintenance. Servicing fire protection equipment and systems to ensure they will perform as expected if there is a fire. Maintenance differs from inspection in that maintenance requires checking internal fittings, devices, and agent supplies, as well as correcting deficiencies found.

Self-contained breathing apparatus (SCBA). ((~~Self-contained breathing apparatus (SCBA) in which the air pressure in the breathing zone is higher than that of the immediate environment during both inhaling and exhaling.~~)) An atmosphere-supplying respirator designed for the breathing air source to be carried by the user.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-824-50030 Provide rescue and medical assistance. (1) You must provide stand-by employees equipped with the same level of personal protective equipment (PPE) as the entrants, for assistance or rescue.

Note: 1. The buddy system applies to stand-by employees (see WAC 296-824-50025).

2. One of the two stand-by employees can be assigned to another task provided it does not interfere with the performance of the stand-by role.

3. Rescue equipment should be selected and provided based on the types of rescue situations that could occur.

(2) You must make sure employees trained in first aid are readily available with necessary medical equipment and have a way to transport the injured.

Note: 1. Employee training is covered by WAC 296-800-150, first aid. This rule requires training on ((~~the eighteen subjects listed in addition to~~)) basic first aid and any subjects that are specific to your workplace emergency hazards (for example: If exposure to corrosive substances could occur, training would need to include first-aid procedures for treating chemical burns).

2. Employers who designate and train their employees to provide first aid are covered by chapter 296-823 WAC, Occupational exposure to bloodborne pathogens.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-835-11010 Provide proper ventilation for the vapor area. (1) You must make sure mechanical ventilation meets the requirements of one or more of the following standards:

(a) NFPA 34-1995, Standard for Dipping and Coating Processes Using Flammable or Combustible Liquids;

(b) ACGIH's "Industrial Ventilation: A Manual of Recommended Practice" (22nd ed., 1995);

(c) ANSI Z9.1-1971, Practices for Ventilation and Operation of Open-Surface Tanks and ANSI Z9.2-1979, Fundamentals Governing the Design and Operation of Local Exhaust Systems.

Note: Some, or all, of the consensus standards (such as ANSI and NFPA) may have been revised. If you comply with a later version of a consensus standard, you will be considered to have complied with any previous version of the same consensus standard.

(2) You must limit the vapor area to the smallest practical space by using mechanical ventilation.

(3) You must keep airborne concentration of any substance below twenty-five percent of its lower flammable limit (LFL).

(4) You must make sure mechanical ventilation draws the flow of air into a hood or exhaust duct.

(5) You must have a separate exhaust system for each dip tank if the combination of substances being removed could cause a:

(a) Fire;

(b) Explosion; or

(c) Potentially hazardous chemical reaction.

Reference: You need to keep employee exposure within safe levels when the liquid in a dip tank creates an exposure hazard. See ((~~Air~~)) Airborne contaminants, WAC ((~~296-62-075 through 296-62-07515~~)) 296-841-099 through 296-841-20025.

Note: You may use a tank cover or material that floats on the surface of the liquid to replace or assist ventilation. The method or combination of methods you choose has to maintain the airborne concentration of the hazardous material and the employee's exposure within safe limits.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-863-099 Definitions. ANSI. The American National Standards Institute.

Authorized person (maintenance). A person who has been designated to perform maintenance on a PIT.

Authorized person (training). A person approved or assigned by the employer to perform training for powered industrial truck operators.

Approved. Listed or approved by a nationally recognized testing laboratory or a federal agency that issues approvals for equipment such as the Mine Safety and Health Administration (MSHA); the National Institute for Occupational Safety and Health (NIOSH); Department of Transportation; or U.S. Coast Guard, which issue approvals for such equipment.

Bridge plate (dock-board). A device used to span the distance between rail cars or highway vehicles and loading platforms.

Classified location or hazardous location. Areas that could be hazardous because of explosive or flammable atmospheres. These locations are broken down into the following categories:

(a) Class I locations are areas where flammable gases or vapors are or may be present in the air in quantities sufficient to produce explosive or ignitable mixtures.

(b) Class II locations are areas where the presence of combustible dust could be sufficient to produce explosions.

(c) Class III locations are areas where the presence of easily ignitable fibers are suspended in the air but are not in large enough quantities to produce ignitable mixtures.

Counterweight. A weight used to counteract or the load being carried by the truck, or to increase the load carrying capacity of a truck.

Designations. A code used to show the different types of hazardous (classified) locations where PITs can be safely used:

(a) **D** refers to trucks that are diesel engine powered that have minimum safeguards against inherent fire hazards.

(b) **DS** refers to diesel powered trucks that, in addition to meeting all the requirements for type D trucks, are provided with additional safeguards to the exhaust, fuel and electrical systems.

(c) **DY** refers to diesel powered trucks that have all the safe-guards of the DS trucks and, in addition, any electrical equipment is completely enclosed. They are equipped with temperature limitation features.

(d) **E** refers to electrically powered trucks that have minimum acceptable safeguards against inherent fire hazards.

(e) **ES** refers to electrically powered trucks that, in addition to all of the requirements for the E trucks, have additional safeguards to the electrical system to prevent emission of hazardous sparks and to limit surface temperatures.

(f) **EE** refers to electrically powered trucks that have, in addition to all of the requirements for the E and ES type trucks, have their electric motors and all other electrical equipment completely enclosed.

(g) **EX** refers to electrically powered trucks that differ from E, ES, or EE type trucks in that the electrical fittings and equipment are designed, constructed and assembled to be used in atmospheres containing flammable vapors or dusts.

(h) **G** refers to gasoline powered trucks that have minimum acceptable safeguards against inherent fire hazards.

(i) **GS** refers to gasoline powered trucks that are provided with additional exhaust, fuel, and electrical systems safeguards.

(j) **LP** refers to liquefied petroleum gas-powered trucks that, in addition to meeting all the requirements for type G trucks, have minimum acceptable safeguards against inherent fire hazards.

(k) **LPS** refers to liquefied petroleum gas powered trucks that in addition to meeting the requirements for LP type trucks, have additional exhaust, fuel, and electrical systems safeguards.

Electrolyte. A chemical, usually acid, that is mixed with water to produce electricity.

Flammable liquid. Any liquid having a flashpoint at or below 199.4°F (93°C). Flammable liquids are divided into four categories as follows:

(a) Category 1 includes liquids having flashpoints below 73.4°F (23°C) and having a boiling point at or below 95°F (35°C).

(b) Category 2 includes liquids having flashpoints below 73.4°F (23°C) and having a boiling point above 95°F (35°C).

(c) Category 3 includes liquids having flashpoints at or above 73.4°F (23°C) and at or below 140°F (60°C). When a Category 3 liquid with a flashpoint at or above 100°F (37.8°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it must be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F (37.8°C).

(d) Category 4 includes liquids having flashpoints above 140°F (60°C) and at or below 199.4°F (93°C). When a Category 4 flammable liquid is heated for use to within 30°F (16.7°C) of its flashpoint, it must be handled in accordance with the requirements for a Category 3 liquid with a flashpoint at or above 100°F (37.8°C).

(e) When liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it must be handled in accordance with the requirements for a Category 4 flammable liquid.

Flashpoint. The minimum temperature at which a liquid gives off vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the liquid, and shall be determined as follows:

(a) For a liquid which has a viscosity of less than 45 SUS at 100°F (37.8°C), does not contain suspended solids, and does not have a tendency to form a surface film while under test, the procedure specified in the Standard Method of Test for Flashpoint by Tag Closed Tester (ASTM D-56-70), WAC 296-901-14024 Appendix B—Physical hazard criteria shall be used.

(b) For a liquid which has a viscosity of 45 SUS or more at 100°F (37.8°C), or contains suspended solids, or has a tendency to form a surface film while under test, the Standard Method of Test for Flashpoint by Pensky-Martens Closed Tester (ASTM D-93-71) or an equivalent method as defined by WAC ((~~296-91-14024~~)) 296-901-14024 Appendix B—Physical hazard criteria, shall be used, except that the methods specified in Note 1 to section 1.1 of ASTM D-93-71 may be used for the respective materials specified in the note.

(c) For a liquid that is a mixture of compounds that have different volatilities and flashpoints, its flashpoint shall be determined by using the procedure specified in (a) or (b) of this subsection on the liquid in the form it is shipped.

(d) Organic peroxides, which undergo auto-accelerating thermal decomposition, are excluded from any of the flashpoint determination methods specified in this section.

Front-end attachment. A device that is attached to the forks or lifting device of the truck.

Lanyard. A flexible line of webbing, rope, or cable used to secure a harness to an anchor point.

Liquefied petroleum gas. Any gas that is composed predominantly of the following hydrocarbons, or mixtures of them; propane, propylene, butanes (normal butane or isobutane), and butylenes.

Listed by report. A report listing the field assembly, installation procedures, or both, for a UL listed product that does not have generally recognized installation requirements.

Load engaging. A device attached to a powered industrial truck and used to manipulate or carry a load.

Motorized hand truck. A powered truck with wheeled forks designed to go under or between pallets and is controlled by a walking or riding operator.

Nationally recognized testing laboratory. An organization recognized by the Occupational Safety and Health Administration that conducts safety tests on equipment and materials.

Order picker. A truck controlled by an operator who is stationed on a platform that moves with the load engaging means.

Powered industrial truck (PIT). A mobile, power-driven vehicle used to carry, push, pull, lift, stack, or tier material.

Rough terrain forklift truck. A truck intended to be used on unimproved natural terrain and at construction sites.

Safety harness (full body harness). A configuration of connected straps to distribute a fall arresting force over at least the thighs, shoulders and pelvis, with provisions for attaching a lanyard, lifeline, or deceleration devices.

Tie-off point (anchorage). A secure point to attach a lanyard that meets the requirements of WAC 296-24-88050, Appendix—C Personal fall arrest systems.

Vertical load backrest extension. A device that extends vertically from the fork carriage frame.

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-863-30035 Make sure battery charging areas are safe. (1) You must make sure battery charging areas are designated and provided with all of the following:

(a) Means to flush and neutralize spilled electrolyte;

(b) Fire protection;

(c) Ventilation that is adequate to disperse ((~~fumes~~)) vapors from gassing batteries.

(2) You must prohibit smoking in battery charging areas.

(3) You must take precautions to prevent open flames, sparks, or electric arcs in battery charging areas.

(4) You must protect battery charging equipment from being damaged by PITs.

(5) You must provide at least one of the following to handle batteries:

(a) Conveyor;

(b) Overhead hoist;

(c) Other equivalent material handling equipment.

WSR 19-21-155
EXPEDITED RULES
BOARD OF ACCOUNTANCY
[Filed October 22, 2019, 11:48 a.m.]

Title of Rule and Other Identifying Information: WAC 4-30-080 How do I apply for an initial individual CPA license?, 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or CPA-Inactive certificate out of retirement?, and 4-30-124 How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner?

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of accountancy proposes amending the rules to update various section and subsection references which have changed due to recently adopted changes in other rules.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 18.04.055.

Statute Being Implemented: RCW 18.04.055, 34.05.353 (1)(c).

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

Name of Proponent: Board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Charles Satterlund, 711 Capitol Way South, Suite 400, Olympia, WA 98501, 360-753-2586.

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 rule proposals are needed to correct section and subsection reference numbers.

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 Kirsten Donovan, Rules Coordinator, Washington State Board of Accountancy, P.O. Box 9131, Olympia, WA 98507-9131, phone 360-664-9191, fax 360-664-9190, email Kirsten.Donovan@acb.wa.gov, AND RECEIVED BY December 23, 2019.

October 22, 2019
Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 13-22-001, filed 10/23/13, effective 1/1/14)

WAC 4-30-080 How do I apply for an initial individual CPA license? (1) To qualify to apply for an initial license you must meet the following criteria and requirements:

(a) Good character requirements of RCW 18.04.105 (1)(a);

(b) Education requirements of WAC 4-30-060;

(c) Examination requirements of WAC 4-30-062;

(d) Experience requirements of WAC 4-30-070;

(e) Achieve and document a passing grade of ninety percent or better on a course covering the complete content of the AICPA Code of Professional Conduct;

(f) Achieve and document a passing grade of ninety percent or better on a board-approved initial course covering the Washington State Public Accountancy Act, related board rules, and board policies.

(2) If more than four years have lapsed since you passed the examination, you must meet the CPE requirements of WAC 4-30-134 ((~~(2)(a)~~)) (5) within the thirty-six month period immediately preceding submission of your license application. That CPE must include CPE hours in ethics and regulation meeting the requirements of WAC ((~~4-30-134(6)~~)) 4-30-132(7). This regulatory ethics portion of the combined one hundred twenty-hour CPE requirement must be completed within the six month period immediately preceding submission of your license application.

(3) You must provide the required information, documents, and fees to the board either by making application through the board's online application system or on a form provided upon request. You must provide all requested information, documents and fees to the board before the application will be evaluated.

(4) Upon assessment of your qualifications and approval of your application, your licensed status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your license can be provided upon request.

(5) Your initial license will expire on June 30 of the third calendar year following initial licensure.

(6) You may not use the title CPA until the date the approval of your license is posted in the board's licensee database and, therefore, made publicly available for confirmation.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-122 If I retire my license or CPA-Inactive certificate, how do I apply to renew my license or a CPA-Inactive certificate out of retirement? If you notify the board that you wish to retire your license or CPA-Inactive certificate prior to the end of your renewal cycle, pursuant to RCW 18.04.215, you may renew your license or CPA-Inactive certificate out of retirement at a later date and are not subject to the requirements of reinstatement; however, you may not use the title CPA or CPA-Inactive or exercise the privileges related to those titles until you renew out of retirement.

If you previously held a license and requested that the license be retired, you are not eligible to apply for CPA-Inactive certificate holder status.

To apply to renew a license or a CPA-Inactive certificate out of retirement, you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information, documents, and fees are submitted to the board.

To apply to renew out of retirement, you must submit to the board:

(1) Complete application information including your certification that you have:

(a) Not used the title CPA or CPA-Inactive during the time in which your license or CPA-Inactive certificate was retired; and

(b) Met the CPE requirements to renew out of retirement in WAC 4-30-134(((~~(4)~~))) (5); and

(2) All applicable fees.

Upon assessment of your continued qualifications and approval of your application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license or CPA-Inactive certificate will expire on June 30th of the third calendar year following the calendar year of the renewal out of retirement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the renewal of your retired license or CPA-Inactive certificate was approved by the board and ends on December 31st of the second calendar year following approval of the renewal out of retirement. CPE credit hours utilized to qualify for renewal of a retired license or CPA-Inactive certificate cannot be utilized for subsequent renewal of your credential renewed out of retirement.

You may not use the title CPA or CPA-Inactive until your renewal out of retirement application has been approved.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-124 How do I reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner? If your individual license, CPA-Inactive certificate, or registration as a resident nonlicensee firm owner has lapsed, you may not use the restricted title(s) until your individual credential has been reinstated by the board.

Individuals who held a valid license on June 30, 2001, and individuals obtaining a license after June 30, 2001, are not eligible to reinstate as CPA-Inactive certificate holders.

To reinstate a lapsed individual license, CPA-Inactive certificate, or registration as a nonlicensee firm owner you must provide certain information to the board either by making application through the board's online application system or on a form provided by the board upon request. An application is not complete and cannot be processed until all required information and documents, and fees have been submitted to the board.

To reinstate, you must submit to the board:

(1) Complete reinstatement information including your certification that you have:

(a) *For those who wish to reinstate a license or CPA-Inactive certificate*: Not used the title CPA or CPA-Inactive during the time in which your individual license or CPA-Inactive certificate was lapsed; or

(b) *For those who wish to reinstate a registration as a resident nonlicensee firm owner*: Not participated as an owner in a CPA firm during the time in which your registration as a resident nonlicensee firm owner was suspended or revoked; and

(c) Met the CPE requirements for reinstatement in WAC 4-30-134(((~~(6)~~))) (5); and

(d) Met the CPE supporting documentation requirements in WAC 4-30-138;

(2) Source documents as evidence of eligibility for CPE credit for all courses claimed in order to meet CPE requirements as defined by WAC 4-30-138;

(3) A listing of all states and foreign jurisdictions in which you hold or have applied for a license, certificate, or practice privileges;

(4) Other required documents; and

(5) All applicable fees.

Upon approval of your reinstatement application, your status will be posted in the board's licensee database and, therefore, made publicly available for confirmation. A hard copy of your credential can be provided upon request.

Your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner will expire on June 30th of the third calendar year following approval of the reinstatement. The CPE reporting period for your next renewal begins on January 1st of the calendar year in which the reinstatement of your license, CPA-Inactive certificate, or registration as a nonlicensee firm owner was approved by the board and ends on December 31st of the second calendar year following approval of the reinstatement. CPE credit hours utilized to qualify for reinstatement cannot be utilized for subsequent renewal of your reinstated credential.

You may not use the restricted title(s) until your reinstatement application has been approved and posted to the board's database.

WSR 19-21-162
EXPEDITED RULES
FRUIT COMMISSION
[Filed October 22, 2019, 3:12 p.m.]

Title of Rule and Other Identifying Information: As required by RCW 42.56.040, the Washington state fruit commission is proposing to publish its public records disclosure procedures in a new chapter of the Washington Administrative Code.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new chapter will establish procedures the Washington state fruit commission will follow to provide full access to public records and to

implement the provisions of the Public Records Act (chapter 42.56 RCW). The rule will establish procedures for the commission to follow in response to requests for public records, including the schedule used by the commission for recovering the costs of producing public records.

Reasons Supporting Proposal: RCW 42.56.040 requires agencies to publish its [their] public records procedures and requires rule making regardless of whether the commission proposes to charge actual costs for producing public records, charge in accordance with the statutory schedule, or waive fees for producing public records. To charge statutory fees, the commission must adopt a rule declaring that charging actual costs would be unduly burdensome.

Statutory Authority for Adoption: Chapters 42.56 and 34.05 RCW.

Statute Being Implemented: RCW 42.56.040 and 42.56.-120.

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

Name of Proponent: Washington state fruit commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: B. J. Thurlby, 105 South 18th Street, Suite 205, Yakima, WA 98901, 509-453-4837.

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

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Using the expedited rule-making process is appropriate because these proposed rules cover internal procedures of the Washington state fruit commission.

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 Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-2043, fax 360-902-2092, email tnorman@agr.wa.gov, AND RECEIVED BY December 24, 2019.

October 22, 2019
B. J. Thurlby
President

NEW SECTION

WAC 224-12-100 Description of commission, address and telephone number of the Washington state fruit commission. Headquartered at 105 S. 18th Street, Suite 205, Yakima, WA 98901, the Washington state fruit commission serves Washington soft tree fruit producers by supporting the industry in the areas of education, research, and marketing. The telephone number is 509-453-4837.

NEW SECTION

WAC 224-12-105 Public records officer. (1) The commission's public records shall be in the charge of the public records officer designated by the commission. The commission or its president may appoint a temporary public records officer to serve during the absence of the designated records officer. The public records officer shall be responsible for implementing the commission's rules regarding disclosure of public records, coordination of staff regarding disclosure of public records, and generally ensuring compliance by staff with public records disclosure requirements.

(2) The name of the commission's current public records officer is on file with the office of the code reviser in accordance with RCW 42.56.580 and is published in the *Washington State Register*.

NEW SECTION

WAC 224-12-110 Request for public records. (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail to Washington State Fruit Commission, 105 S. 18th Street, Suite 205, Yakima, WA 98901. The request may also be submitted by fax to 509-453-4880 or by email to legal@wastatefruit.com. The written request must include:

(a) The name, address, and telephone number or other contact information of the person requesting the records;

(b) The calendar date on which the request is made; and

(c) Sufficient information to readily identify records being requested.

(2) Any person wishing to inspect the commission's public records may make an appointment with the public records officer to inspect the records at the commission office during regular business hours. In order to adequately protect the commission's public records, the following will apply:

(a) Public records made available for inspection may not be removed from the area the commission makes available for inspection;

(b) Inspection of any public record will be conducted in the presence of the public records officer or designee;

(c) Public records may not be marked or altered in any manner during the inspection; and

(d) The commission has the discretion to designate the means and the location for the inspection of records. The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission's office and the availability of authorized staff to operate that equipment.

NEW SECTION

WAC 224-12-115 Response to public records requests. (1) The public records officer shall respond to public records requests within five business days by:

(a) Making the records available for inspection or copying;

(b) Providing a link or address for a record available on the internet under RCW 42.56.520;

(c) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request;

(d) Sending the copies to the requestor if copies are requested and payment of a deposit for the copies is made or terms of payment have been agreed upon; or

(e) Denying the public records request. Responses refusing, in whole or in part, the inspection of a public record shall include a statement of the specific exemption authorizing withholding of the record, or any part of the record, and a brief explanation of how the exemption applies to the record withheld or to any redactions in records produced.

(2) Additional time to respond to the request may be based upon the need to:

(a) Clarify the intent of the request;

(b) Locate and assemble the information requested;

(c) Notify persons or agencies affected by the request; or

(d) Determine whether any of the information requested is exempt from disclosure and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public records request that is unclear, the public records officer may ask the requestor to clarify what records the requestor is seeking. The public records officer is not obligated to provide further response if the requestor fails to clarify the request.

(4) In the event the requested records name a specific person or pertain to a specific person and may be exempt from disclosure, the commission may, prior to providing the records, give notice to others whose rights may be affected by the disclosure. Sufficient notice will be given to allow affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

NEW SECTION

WAC 224-12-120 Fees—Inspection and copying. (1) No fee will be charged for the inspection of public records.

(2) 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 for performing a study to calculate actual costs and the commission lacks the necessary funds to perform a study and calculations; staff resources are insufficient to perform a study and to calculate such actual costs; and a study would interfere with and disrupt other essential agency functions.

(3) The commission may charge fees for production of copies of public records consistent with the fee schedule established in RCW 42.56.120. For all copying or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state fruit commission. The commission may require that all charges be paid in advance of release of the copies of the records.

(4) The commission or its designee may waive any of the foregoing copying costs.

(5) For email requests that encompass more than twenty separate emails the commission may deliver said emails via electronic storage device; the commission works with third-party computer technicians who may be required to help fulfill public record solicitations. The commission may charge actual technician time fees to the requestor.

NEW SECTION

WAC 224-12-125 Exemptions. The commission's public records are available for disclosure except as otherwise provided under chapter 42.56 RCW or any other law. Requestors should be aware of the following exemptions to public disclosure specific to commission records. This list is not exhaustive and other exemptions may apply:

(1) Production or sales records required to determine assessment levels and actual assessment payments to the commission under chapter 15.28 RCW (reference RCW 42.56.380(3)).

(2) Financial and commercial information and records supplied by persons:

(a) To the commission for the purpose of conducting a referendum for the establishment of the commission; or

(b) To the commission under chapter 15.28 RCW with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(3) Lists of individuals requested for commercial purposes (reference RCW 42.56.070).

(4) Records that are relevant to a controversy to which the commission is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts, including records involving attorney-client communications between the commission and the office of the attorney general (reference RCW 5.60.060(2) and 42.56.290).

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230 (5)).

NEW SECTION

WAC 224-12-130 Review of denial of public records requests. (1) Any person who objects to the initial denial of a request to copy or inspect public records may petition the commission for review of such decision by submitting a written request to the commission. The request shall specifically refer to the statement which constituted or accompanied the denial.

(2) The commission's president or designee shall immediately consider the matter and either affirm or reverse the denial within ten business days following the commission's receipt of the written request for review of the original denial.

(3) Under RCW 42.56.530, if the commission 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.

(4) Any person may obtain court review of a denial of a public records request under RCW 42.56.550.

NEW SECTION

WAC 224-12-135 Records index. The commission shall establish a records index, which shall be made available for public review. The index includes the following records:

(1) Commission authorizing statute;

(2) Commission rules;

(3) Minutes of commission meetings; and

(4) Commission board roster.

WSR 19-21-168
EXPEDITED RULES
DEPARTMENT OF REVENUE

[Filed October 22, 2019, 4:36 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-252 Hazardous substance tax.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 458-20-252 to reflect 2019 legislation that (1) establishes a volumetric tax rate for petroleum products that are easily measured on a per barrel basis; (2) requires the department to adjust this rate on an annual basis following 2020; and (3) requires the department to compile a list of petroleum products that are not easily measured on a per barrel basis.

Reasons Supporting Proposal: The rule is being amended to incorporate legislation from 2019 (ESSB 5993).

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

Statute Being Implemented: RCW 82.21.030.

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: Linda King, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1583; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1603.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is applicable to this rule update because the department is incorporating changes resulting from 2019 legislation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Linda King, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, phone 360-534-1530, fax 360-534-1606, email lindak@dor.wa.gov, AND RECEIVED BY December 23, 2019.

October 22, 2019
Atif Aziz
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-22-012, filed 10/25/18, effective 11/25/18)

WAC 458-20-252 Hazardous substance tax. (1) Introduction. Under chapter 82.21 RCW (referred to in this rule as the "law"), a hazardous substance tax is imposed upon the wholesale value of certain substances and products, with specific credits and exemptions provided. The tax is an excise tax upon the privilege of possessing hazardous substances ((~~or products~~)) in this state.

Before July 1, 2019, the tax was imposed upon the wholesale value of the hazardous substance. Starting July 1, 2019, the tax is imposed in one of two ways:

Upon the wholesale value of certain hazardous substances ("value-based tax"); or

Upon the volume of certain hazardous substances ("volumetric tax").

The volumetric tax applies to petroleum products that are easily measured on a per barrel basis. The value-based tax applies to all other hazardous substances, including petroleum products that are not easily measured on a per barrel basis.

(a) Chapter 82.21 RCW defines certain specific substances as being hazardous and includes other substances by reference to federal legislation governing such things. It also provides authority to the director of the state department of ecology to designate by rule any other substance or product as hazardous that could present a threat to human health or the environment. (Chapter 173-342 WAC.)

(b) Chapter 82.21 RCW is administered exclusively under this rule. The law relates exclusively to the possession of hazardous substances and products. The law does not relate to waste, releases or spills of any materials, cleanup, compensation, or liability for such things, nor does tax liability under the law depend upon such factors. The incidence or privilege that incurs tax liability is simply the possession of the hazardous substance or product, whether or not such possession actually causes any hazardous or dangerous circumstance.

(c) The hazardous substance tax is imposed upon any possession of a hazardous substance or product in this state by any person who is not expressly exempt of the tax. However, it is the intent of the law that the economic burden of the tax should fall upon the first such possession in this state. Therefore, the law provides that if the tax has not been paid upon any hazardous substance or product the department of revenue may collect the tax from any person who has had possession. The amount of tax paid then constitutes a debt owed by the first person having had taxable possession to the person who pays the tax.

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

(a) "Tax" means the hazardous substance tax imposed under chapter 82.21 RCW.

(b) "Hazardous substance" means:

(i) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc. These substances consist of chemicals and elements in their purest form. A CERCLA substance that contains water is still considered pure. Combinations of CERCLA substances as ingredients together with nonhazardous substances will not be taxable unless the end product is specifically designated as a hazardous substance by the department of ecology;

(ii) Petroleum products (further defined below);

(iii) Pesticide products required to be registered under section 136a of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(iv) Anything else enumerated as a hazardous substance in chapter 173-342 WAC by the department of ecology.

(c) "Product(s)" means any item(s) containing a combination of ingredients, some of which are hazardous substances and some of which are not hazardous substances.

(d) "Petroleum product" means any plant condensate, lubricating oil, crankcase motor oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual fuel, asphalt base, liquefied or liquefiable gases, such as butane, ethane and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

The term "derived from the refining of crude oil" as used herein, means produced because of and during petroleum processing. "Petroleum processing" includes all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to crude oil or any byproduct of crude oil so that as a result thereof a fuel or lubricant is produced for sale or commercial or industrial use. "Fuel" includes all combustible gases and liquids suitable for the generation of energy. The term "derived from the refining of crude oil" does not mean petroleum products that are manufactured from refined oil derivatives, such as petroleum jellies, cleaning solvents, asphalt paving, etc. Such further manufactured products become hazardous substances only when expressly so designated by the director of the department of ecology in chapter 173-342 WAC.

(e) "Possession" means control of a hazardous substance located within this state and includes both actual and constructive possession.

(i) "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(ii) "Actual possession" occurs when the person with control has physical possession.

(iii) "Constructive possession" occurs when the person with control does not have physical possession.

(f) "Previously taxed hazardous substance" means a hazardous substance upon which the tax has been paid and which has not been remanufactured or reprocessed in any manner.

(i) Remanufacturing or reprocessing does not include the mere repackaging or recycling for beneficial reuse. Rather, these terms embrace activities of a commercial or industrial nature involving the application of skill or labor by hand or machinery so that as a result, a new or different substance or product is produced.

(ii) "Recycling for beneficial reuse" means the recapturing of any used substance or product, for the sole purpose of extending the useful life of the original substance or product in its previously taxed form, without adding any new, different, or additional ingredient or component.

(iii) Example: Used motor oil drained from a crankcase, filtered, and containerized for reuse is not remanufactured or reprocessed. If the tax was paid on possession of the oil before use, the used oil is a previously taxed substance.

(iv) Possessions of used hazardous substances by persons who merely operate recycling centers or collection stations and who do not reprocess or remanufacture the used substances are not taxable possessions.

(g) "Wholesale value" ((~~is the tax measure or base. It~~)) means the fair market value determined by the wholesale selling price.

In cases where no sale has occurred, wholesale value means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character. In such cases the wholesale value shall be the "value of the products" as determined under the alternate methods set forth in WAC 458-20-112.

Before July 1, 2019, the wholesale value was the tax measure or base for all hazardous substances. Starting July 1, 2019, the wholesale value is the tax measure or base for all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(h) "Selling price" means consideration of any kind expressed in terms of money paid or delivered by a buyer to a seller, without any deductions for any costs whatsoever. Bona fide discounts actually granted to a buyer result in reductions in the selling price rather than deductions.

(i) "State," for purposes of the credit provisions of the hazardous substance tax, means:

(i) The state of Washington.

(ii) States of the United States or any political subdivisions of such other states.

(iii) The District of Columbia.

(iv) Territories and possessions of the United States.

(v) Any foreign country or political subdivision thereof.

(j) "Person" means any natural or artificial person, including a business organization of any kind, and has the further meaning defined in RCW 82.04.030.

The term "natural person," for purposes of the tax exemption in subsection (4)(b) of this rule regarding substances used for personal or domestic purposes, means human beings in a private, as opposed to a business sense.

(k) Except as otherwise expressly defined in this rule, the definitions of terms provided in chapters 82.04, 82.08, and 82.12 RCW apply equally for this rule. Other terms not expressly defined in these chapters or this rule are to be given their common and ordinary meanings.

(l) "Barrel" means a container that holds forty-two gallons of a petroleum product, as defined in this rule. Starting July 1, 2019, it is the tax measure or base for petroleum products that are easily measured on a per barrel basis.

(3) Tax rate and measure. The tax is imposed upon the privilege of possessing a hazardous substance in this state.

(a) For value-based tax. The value-based tax rate is seven tenths of one percent (.007). The value-based tax measure or base is the wholesale value of the substance, as defined in this rule. Before July 1, 2019, the value-based tax applied to all hazardous substances. Starting July 1, 2019, the value-based tax rate applies to all hazardous substances other than petroleum products that are easily measured on a per barrel basis.

(b) For volumetric tax. Starting July 1, 2019, the volumetric tax rate is one dollar and nine cents per barrel and applies to petroleum products that are easily measured on a per barrel basis. Starting July 1, 2020, the volumetric tax rate on petroleum products will be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States Department of Commerce, Bureau of Economic Analysis for the most recent twelve-month period ending December 31st of the prior year.

(c) The department of revenue maintains lists of petroleum products that are easily measured, and petroleum products that are not easily measured, on a per barrel basis, on its website at dor.wa.gov. These lists are not exclusive. If additional petroleum products are identified in the future, the department will add them to the applicable list. Products added to the lists will be subject to hazardous substance tax for all periods that the tax applies, even if the product was not on a list at the time.

(4) Exemptions. The following are expressly exempt from the tax:

(a) Any successive possessions of any previously taxed hazardous substances are tax exempt.

(i) Any person who possesses a hazardous substance that has been acquired from any other person who is registered with the department of revenue and doing business in this state may take a written statement certifying that the tax has been previously paid. Such certifications must be taken in good faith and must be in the form provided in subsection (14) of this rule. Blanket certifications may be taken, as appropriate, which must be renewed at intervals not to exceed four years. These certifications may be used for any single hazardous substance or any broad classification of hazardous substances, e.g., "all chemicals."

(ii) In the absence of taking such certifications, the person who possesses any hazardous substance must retain proofs that it purchased or otherwise acquired the substance from a previous possessor in this state. It is not necessary for subsequent possessors to obtain certificates of previously taxed hazardous substances in order to perfect their tax exemption. Documentation that establishes any evidence of previous tax payment by another person will suffice. This includes invoices or billings from in-state suppliers that reflect their payment of the tax or simple bills of lading or delivery documents revealing an in-state source of the hazardous substances.

(iii) This exemption for taxes previously paid is available for any person in successive possession of a taxed hazardous substance even though the previous payment may have been satisfied by the use of credits or offsets available to the previous person in possession.

(iv) Example. Company A brings a substance into this state upon which it has paid a similar hazardous substance tax in another state. Company A takes a credit against its Washington tax liability in the amount of the other state's tax paid. It then sells the substance to Company B, and provides Company B with a certificate of previously taxed substance. Company B's possession is tax exempt even though Company A has not directly paid Washington's tax but has used a credit against its Washington liability.

(b) Any possession of a hazardous substance by a natural person for use of a personal or domestic nature, rather than a business nature, is tax exempt.

(i) This exemption extends to relatives, as well as other natural persons who reside with the person possessing the substance, and also to regular employees of that person who use the substance for the benefit of that person.

(ii) This exemption does not extend to possessions by any independent contractors hired by natural persons, which contractors themselves provide the hazardous substance.

(iii) Examples: Possessions of spray materials by an employee-gardener or soaps and cleaning solvents by an employee-domestic servant, when such substances are provided by the natural person for whose domestic benefit such things are used, are tax exempt. Also, possessions of fuel by private persons for use in privately owned vehicles are tax exempt.

(c) Any possession of any hazardous substance, other than pesticides or petroleum products, possessed by a retailer for making sales to consumers, in an amount that is determined to be "minimal" by the department of ecology. That department has determined that the term "minimal" means less than $1,000.00 worth of such hazardous substances measured by their wholesale value, possessed during any calendar month.

(d) Possessions of alumina or natural gas are tax exempt.

(e) Persons or activities that the state is prohibited from taxing under the United States Constitution are tax exempt.

(i) This exemption extends to the U.S. government, its agencies and instrumentalities, and to any possession the taxation of which has been expressly reserved or preempted under the laws of the United States.

(ii) The tax will not apply with respect to any possession of any hazardous substance purchased, extracted, produced

or manufactured outside this state that is shipped or delivered into this state until the interstate transportation of such substance has finally ended in this state. Thus, out-of-state sellers or producers need not pay the tax on substances shipped directly to customers in this state. The customers must pay the tax upon their first possession unless otherwise expressly exempt.

(iii) Out-of-state sellers or producers will be subject to tax upon substances shipped or delivered to warehouses or other in-state facilities owned, leased, or otherwise controlled by them.

(iv) However, the tax will not apply with respect to possessions of substances that are only temporarily stored or possessed in this state in connection with through, interstate movement of the substances from points of origin to points of destination both of which are outside of this state.

(f) The former exemption for petroleum products for export sale or use outside this state as fuel was effectively repealed by I-97. There are no exemptions under the law for any possessions of hazardous substances in this state simply because such substances may later be sold or used outside this state.

(g) Any possession of an agricultural crop protection product that is solely for use by a farmer or certified applicator as an agricultural crop protection product and is warehoused in this state or transported to or from this state is tax exempt, provided that the person possessing the product does not use, manufacture, package for sale, or sell the product in this state. The following definitions apply throughout this subsection unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.-213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(5) Credits. There are three distinct kinds of tax credits against liability that are available under the law.

(a) A credit may be taken by any manufacturer or processor of a hazardous substance produced from ingredients or components that are themselves hazardous substances, and upon which the hazardous substance tax has been paid by the same person or is due for payment by the same person.

(i) Example. A manufacturer possesses hazardous chemicals that it combines to produce an acid which is also designated as a hazardous substance or product. When it reports the tax upon the wholesale value of the acid it may use a credit to offset the tax by the amount of tax it has already paid or reported upon the hazardous chemical ingredients or components. In this manner the intent of the law to tax hazardous substances only once is fulfilled.

(ii) Under circumstances where the hazardous ingredient and the hazardous end product are both possessed by the same person during the same tax reporting period, the tax on the respective substances must be computed and the former must be offset against the latter so that the tax return reflects the tax liability after the credit adjustment.

(iii) This credit may be taken only by manufacturers who have the first possession in this state of both the hazardous ingredients and the hazardous end product.

(b) A credit may be taken in the amount of the hazardous substance tax upon the value of fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(i) The credit may be claimed only for the amount of tax reported or actually due to be paid on the fuel, not the amount representing the value of the fuel.

(ii) The purpose of this credit is to exclude from taxation any possessions of fuel that remains in the fuel tanks of any carrier vehicles powered by such fuel when they leave this state, regardless of where or from whom such fuel-in-tanks was acquired.

(iii) The nature of this credit is such that it generally has application only for interstate and foreign private or common carriers that carry fuel into this state and/or purchase fuel in this state. The intent is that the tax will apply only to so much of such fuel as is actually consumed by such carriers within this state.

(iv) In order to equitably and efficiently administer this tax credit, any fuel that is brought into this state in carrier vehicle fuel tanks must be accounted for separately from fuel that is purchased in this state for use in such fuel tanks. Formulas approved by the department of revenue for reporting the amount of fuel consumed in this state for purposes of this tax or other excise tax purposes will satisfy the separate accounting required under this subsection.

(v) Fuel-in-tanks brought into this state must be fully reported for tax and then the credit must be taken in the amount of such fuel that is taken back out of this state. This is to be done on the same periodic excise tax return so that the net effect is that the tax is actually paid only upon the portion of fuel consumed here.

(vi) The credit for fuel-in-tanks purchased in this state must be accounted for by using a fuel-in-tanks credit certificate in substantially the following form:

Certificate of Credit for Fuel Carried from this State in Fuel Tanks

I hereby certify that the petroleum products specified herein, purchased by or transferred to the undersigned, from (name of seller or transferor), are entitled to the credit for fuel that is carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle operated by a private or common carrier in interstate or foreign commerce. I will become liable for and pay the taxes due upon all or any part of such fuel that is not so carried from this state. This certification is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion.

Registration No.	. . . . . (if applicable)
Type of Business	. . . . .
Firm Name	. . . . .
Business Address	. . . . .
Registered Name	. . . . . (if different)
Tax Reporting Agent	. . . . . (if applicable)
Authorized Signature	. . . . .
Title	. . . . .
Identity of Fuel	. . . . . (kind and amount by volume)
	Date: . . . . .

(vii) This certificate may be executed and provided to any possessor of fuel in this state, throughout the chain of distribution, with respect to fuel that ultimately will be sold and delivered into any carrier's fuel tanks in this state. Thus, refiners or manufacturers will take such certificates directly from carriers or from their wholesale purchasers who will sell to such carriers. Similarly, fuel dealers and distributors will take such certificates from carriers to whom they sell such fuel. These certificates must be retained as a permanent part of such seller's business records.

(viii) Persons who execute and provide these credit certificates to their fuel suppliers must retain suitable purchase and sales records as may be necessary to determine the amount of tax for which such persons may be liable.

(ix) Blanket certificates may be used to cover recurrent purchases of fuel by the same purchaser. Such blanket certificates must be renewed every two years.

(c) A credit may be taken against the tax owed in this state in the amount of any other state's hazardous substance tax that has been paid by the same person measured by the wholesale value of the same hazardous substance.

(i) In order for this credit to apply, the other state's tax must be significantly similar to Washington's tax in all its various respects. The taxable incident must be possessing the substance; the tax purpose must be that the substance is hazardous; and the tax measure must be stated in terms of the wholesale value of the substance, without deductions for costs of doing business, such that the other state's tax does not constitute an income tax or added value tax.

(ii) This credit may be taken for the amount of any other state's qualifying tax that has actually been paid before Washington state's tax is incurred because the substance was previously possessed by the same person in another taxing jurisdiction.

(iii) The amount of credit is limited to the amount of tax paid in this state upon possession of the same hazardous substance in this state. Also, the credit may not be applied against any tax paid or owed in this state other than the hazardous substance tax imposed under chapter 82.21 RCW.

(iv) Exchange agreements under which hazardous substances or products possessed in this state are exchanged through any accounts crediting system with like substances possessed in other states do not qualify for this credit. The substance taxed in another state, and for which this credit is sought, must be actually, physically possessed in this state.

(v) Persons claiming this credit must maintain records necessary to verify that the credit taking qualifications have been met. Additional information regarding recordkeeping requirements is provided in WAC 458-20-19301. The department of revenue will publish an excise tax bulletin listing other states' taxes that qualify for this credit.

(6) Newly defined hazardous substances. Under chapter 82.21 RCW the director of the department of ecology may identify and designate other substances or products as being hazardous substances for purposes of the tax. The director of the department of ecology may also delete substances or products previously designated as hazardous substances. Such actions are done by amending chapter 173-342 WAC.

(a) The law allows the addition or deletion of substances or products as hazardous substances by rule amendments, no more often than twice in any calendar year.

(b) When such additions or deletions are made, they do not take effect for tax purposes until the first day of the following month that is at least thirty days after the effective date of rule amendment by the department of ecology.

(i) Example. The department of ecology amends chapter 173-342 WAC by adding a new substance and the effective date of the amendment is June 15th. Possession of the substance does not become taxable until August 1st.

(ii) The tax is owed by any person who has possession of the newly designated hazardous substance upon the tax effective date as explained herein. It is immaterial that the person in possession on that date was not the first person in possession of the substance in this state before it was designated as hazardous.

(7) Recurrent tax liability. It is the intent of the law that all hazardous substances possessed in this state should incur this tax liability only once unless they are expressly exempt. This is true of hazardous ingredients of products as well as the manufactured end product itself, if designated as a hazardous substance. The *exemption* for previously taxed hazardous substances does not apply to "products" that have been manufactured or remanufactured simply because an ingredient or ingredients of that product may have already been taxed when possessed by the manufacturer. Instead of an exemption, manufacturers in possession of both the hazardous ingredient(s) and end product(s) should use the *credit* provision explained at subsection (5)(a) of this rule.

(a) However, the term "product" is defined to mean only an item or items that contain a combination of both hazardous substance(s) and nonhazardous substance(s). The term does not include combinations of only hazardous substances. Thus, possessions of substances produced by combining other hazardous substances upon all of which the tax has previously been paid will not again be taxable.

(b) When any hazardous substance(s) is first produced during and because of any physical combination or chemical reaction that occurs in a manufacturing or processing activity, the intermediate possession of such substance(s) within the manufacturing or processing plant is not considered a taxable possession if the substance(s) becomes a component or ingredient of the product being manufactured or processed or is

otherwise consumed during the manufacturing or processing activity.

However, when any intermediate hazardous substance is first produced during a manufacturing or processing activity and is withdrawn for sale or transfer outside of the manufacturing or processing plant, a taxable first possession occurs.

(c) Concentrations or dilutions for shipment or storage. The mere addition or withdrawal of water or other nonhazardous substances to or from hazardous substances designated under CERCLA or FIFRA for the sole purpose of transportation, storage, or the later manufacturing use of such substances does not result in any new hazardous product.

(8) How and when to pay tax. The tax must be reported on a special line of the combined excise tax return designated "hazardous substances." It is due for payment together with the timely filing of the return upon which it is reported, covering the tax reporting period during which the hazardous substance(s) is first possessed within this state. Any person who is not expressly exempt of the tax and who possesses any hazardous substance in this state, without having proof that the tax has previously been paid on that substance, must report and pay the tax.

(a) It may be that the person who purchases a hazardous substance will not have billing information from which to determine the wholesale value of the substance when the tax return for the period of possession is due. In such cases the tax is due for payment no later than the next regular reporting due date following the reporting period in which the substance(s) is first possessed.

(b) The taxable incident or event is the possession of the substance. Tax is due for payment by the purchaser of any hazardous substance whether or not the purchase price has been paid in part or in full.

(c) Special provision for manufacturers, refiners, and processors. Manufacturers, refiners, and processors who possess hazardous substances are required to report the tax and take any available exemptions and credits only at the time that such hazardous substances are withdrawn from storage for purposes of their sale, transfer, remanufacture, or consumption.

(9) How and when to claim credits. Credits should be claimed and offset against tax liability reported on the same excise tax return when possible. The tax return form provides a line for reporting tax on hazardous substances and a line for taking credits as an offset against the tax reported. It is not required that any documents or other evidences of entitlement to credits be submitted with the report. Such proofs must be retained in permanent records for the purpose of verification of credits taken.

(10) Special provision for consumer/first possessors. Under circumstances where the consumer is the first person in possession of any nonexempt hazardous substance (e.g., substances imported by the consumer), or where the consumer is the person who must pay the tax upon substances previously possessed in this state (fuel purchased for export in fuel tanks) the consumer's tax measure will be the wholesale value determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character.

(11) Hazardous substances or products on consignment. Consignees who possess hazardous substances or products in this state with the power to sell such things, in their own name or on behalf of a disclosed or undisclosed consignor are liable for payment of the tax. The exemption for previously taxed substances is available for such consignees only if the consignors have paid the tax and the consignee has retained the certification or other proof of previous tax payment referred to in subsection (4)(a)(i) and (ii) of this rule. Possession of consigned hazardous substances by a consignee does not constitute constructive possession by the consignor.

(12) Hazardous substances untraceable to source. Various circumstances may arise whereby a person will possess hazardous substances in this state, some of which have been previously taxed in this or other states and some of which may not. In such cases formulary tax reporting may be used, only upon a special ruling by the department of revenue.

Example. Fungible petroleum products from sources both within and outside this state are commingled in common storage facilities. Formulary reporting is appropriate based upon volume percentages reflecting the ratio of in-state production to out-of-state production or other form of acquisition.

(13) Administrative provisions. The provisions of chapter 82.32 RCW regarding due dates, reporting periods, tax return requirements, interest and penalties, tax audits and limitations, disputes and appeals, and all such general administrative provisions apply equally to the hazardous substance tax. Special requested rulings covering unique circumstances generally will be issued within sixty days from the date upon which complete information is provided to the department of revenue.

(14) Certification of previously taxed hazardous substance. Certification that the hazardous substance tax has already been paid by a person previously in possession of the substance(s) may be taken in substantially the following form:

I hereby certify that this purchase - all purchases of (omit one) . . . . . .

. . . . . by . . . . . .,
(identify substance(s) purchased) (name of purchaser)

who possesses registration no. . . . . .,
(buyer's number, if registered)

consists of the purchase of hazardous substance(s) or product(s) upon which the hazardous substance tax has been paid in full by a person previously in possession of the substance(s) or product(s) in this state. This certificate is given with full knowledge of, and subject to the legally prescribed penalties for fraud and tax evasion, and with the full knowledge and agreement that the undersigned hereby assumes any liability for hazardous substance tax which has not been previously paid because of possession of the hazardous substance(s) or product(s) identified herein.

. . . . . The registered seller named below personally paid the tax upon possession of the hazardous substances.

. . . . . A person in possession of the hazardous substances prior to the possession of the registered seller named below paid the tax.

(Check the appropriate line.)

Name of registered seller . . . . . Registration No. . . . . .

Firm name . . . . . Address . . . . . .

Type of business . . . . . .

Authorized signature . . . . . Title . . . . . .

Date . . . . . .