

WSR 22-04-012  
PERMANENT RULES  
BOARD OF

PILOTAGE COMMISSIONERS

[Filed January 21, 2022, 11:17 a.m., effective February 21, 2022]

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

Purpose: To comply with legislative intent, through the passage of SSB 5165, which stipulates certain conditions in order for the board of pilotage commissioners to receive state appropriation from the pilotage account solely for self-insurance liability premium expenditures. This revised rule defines the stipulated conditions.

Citation of Rules Affected by this Order: Amending WAC 363-116-301.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Adopted under notice filed as WSR 21-24-020 on November 19, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 20, 2022.

Jaimie C. Bever  
Executive Director

**OTS-3332.1**

AMENDATORY SECTION (Amending WSR 19-20-013, filed 9/20/19, effective 10/21/19)

**WAC 363-116-301 New revenue collection.** With respect to the passage of (~~Engrossed Substitute House Bill No. 1160, Section 108~~) section 107, chapter 333, Laws of 2021 (Substitute Senate Bill No. 5165), the board of pilotage commissioners is appropriated (~~three million one hundred twenty-five thousand dollars~~) \$2,926,000 from the pilotage account state appropriation solely for self-insurance liability premium expenditures. This appropriation is contingent upon two stipulated conditions:

(1) The Puget Sound pilots shall pay to the board, from its tariffs, (~~one hundred fifty thousand dollars~~) \$150,000 annually on July 1, (~~2019~~) 2021, and July 1, (~~2020~~) 2022. These amounts shall be deposited by the board into the pilotage account and used solely for the expenditure of self-insurance premiums; and

(2) A self-insurance premium surcharge of (~~sixteen dollars~~) \$16 shall be added to each Puget Sound pilotage assignment on all vessels requiring pilotage in the Puget Sound pilotage district. The Puget Sound pilots shall remit the total amount of such surcharges generated to the board by the tenth of each month. The surcharge shall be in effect from July 1, (~~2019~~) 2021, through June 30, (~~2021~~) 2023. These amounts shall be in addition to those fees to be paid to the board pursuant to subsection (1) of this section and shall be deposited by the board into the pilotage account solely for the expenditure of self-insurance premiums.

These two directives are in effect beginning May (~~16, 2019~~) 18, 2021, through June 30, (~~2021~~) 2023.

[Statutory Authority: Chapter 88.16 RCW. WSR 19-20-013, § 363-116-301, filed 9/20/19, effective 10/21/19; WSR 17-20-009, § 363-116-301, filed 9/22/17, effective 10/23/17.]

**WSR 22-04-015**  
**PERMANENT RULES**  
**PARAEDUCATOR BOARD**

[Filed January 21, 2022, 1:43 p.m., effective February 21, 2022]

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

Purpose: Amend WAC regarding the in-person training requirement. This amendment will allow school districts to train paraeducators on the fundamental course of study through online synchronous learning. This rule will remain in effect until September 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 179-09-040.

Statutory Authority for Adoption: Chapter 28A.413 RCW.

Adopted under notice filed as WSR 21-24-033 on November 22, 2021.

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

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

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

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

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

Date Adopted: January 19, 2022.

Jack Busbee  
Rules Coordinator

**OTS-3268.1**

AMENDATORY SECTION (Amending WSR 20-20-002, filed 9/23/20, effective 10/24/20)

**WAC 179-09-040 Fundamental course of study.** (1) School districts must implement this section only in school years for which state funding is appropriated specifically for the purposes of this section and only for the number of days that are funded by the appropriation.

(2) (a) School districts must provide a fundamental course of study on the state standards of practice, as defined by the board in WAC 179-09-050 of this chapter, to paraeducators who have not completed the course, either in the district or in another district within the state. At least one day of the fundamental course of study must be provided in person. School districts must use best efforts to provide the fundamental course of study before the paraeducator begins to work with students and their families, and at a minimum by the deadlines provided in subsection (3) of this section.

(b) Beginning March 1, 2020, through September 1, ((2021)) 2022, virtual learning environments that use synchronous learning with an

instructor will meet the one day in-person training requirement of the fundamental course of study.

(3) Except as provided in (b) of this subsection, school districts must provide the fundamental course of study required in subsection (2) of this section by the deadlines provided in (a) of this subsection:

(a) (i) For paraeducators hired on or before September 1st, the first two days of the fundamental course of study must be provided by September 30th of that year and the second two days of the fundamental course of study must be provided within six months of the date of hire, regardless of the size of the district; and

(ii) For paraeducators hired after September 1st:

(A) For districts with ten thousand or more students, the first two days of the fundamental course of study must be provided within four months of the date of hire and the second two days of the fundamental course of study must be provided within six months of the date of hire or by September 1st of the following year, whichever is sooner; and

(B) For districts with fewer than ten thousand students, no later than September 1st of the following year.

(b) (i) For paraeducators hired for the 2018-19 school year, by September 1, 2020; and

(ii) For paraeducators not hired for the 2018-19 school year, but hired for the 2019-20 school year, by September 1, 2021.

(4) School districts may collaborate with other school districts or educational service districts to meet the requirements of this section.

(5) (a) Providers of the fundamental course of study must provide to the paraeducator written documentation of each unit completed by a paraeducator. The documentation is as published by the professional educator standards board.

(b) Upon request, if such request is made within seven calendar years of unit completion, the provider shall provide the paraeducator with documentation of unit completion.

(6) The fundamental course of study must include the training competencies that align with the standards of practice in chapter 179-07 WAC.

(7) The paraeducator shall be responsible for completing filing requirements with the superintendent of public instruction, in accordance with WAC 179-01-020, the completion of the fundamental course of study.

[Statutory Authority: Chapter 28A.413 RCW. WSR 20-20-002, § 179-09-040, filed 9/23/20, effective 10/24/20; WSR 19-21-070, § 179-09-040, filed 10/11/19, effective 11/11/19; WSR 18-16-106, § 179-09-040, filed 7/31/18, effective 8/31/18.]

## WSR 22-04-022

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:24 a.m., effective February 24, 2022]

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

Purpose: This update is being made to WAC 458-20-238 to conform with the changes implemented by SHB 1107. Primarily, the bill expands the circumstances under which a nonresident vessel owner can seek a nonresident vessel permit.

Citation of Rules Affected by this Order: Amending WAC 458-20-238.

Statutory Authority for Adoption: RCW 82.32.865, 82.32.300, 82.01.060.

Adopted under notice filed as WSR 21-23-059 on November 10, 2021.

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

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

**OTS-3470.1**

AMENDATORY SECTION (Amending WSR 16-12-068, filed 5/27/16, effective 6/27/16)

**WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents.** (1) **Introduction.** This rule explains:

- Nonresident temporary use of watercraft in Washington waters for sales and use tax purposes;
- Purchase and delivery of vessels in Washington by nonresidents, and the application or exemption of retail sales and use taxes;
- The vessel use permit, authorized by RCW 82.08.700 and 82.12.700, for one year in Washington waters by nonresident individuals for vessels (~~(thirty)~~) 30 feet or longer;
- The nonresident vessel permit, authorized by RCW 88.02.620, for individual persons extending their stay an additional (~~(sixty)~~) 60 days on Washington waters;
- The nonresident entity vessel permit, authorized by RCW 88.02.620 and 82.32.865, that allows for an additional (~~(sixty)~~) 60 days on Washington waters; and

• The nonresident vessel repair affidavit required when vessels are in Washington exclusively for repair. RCW 88.02.570.

(a) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These 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.

(b) **Other rules that may be relevant.**

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

(ii) WAC 458-20-178 Use tax and the use of tangible personal property;

(iii) WAC 458-20-193 Interstate sales of tangible personal property; ~~((and))~~

(iv) WAC 458-20-19301 Multiple activities tax credits;

(v) WAC 458-20-145 Local sales and use tax; and

(vi) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(2) **Business and occupation (B&O) tax.** Retailing B&O tax is due on all sales of watercraft to consumers if delivery is made within the state of Washington, even though the sale may qualify for an exemption from retail sales tax. If the seller also manufactures the vessel in Washington, the seller must report under both the manufacturing and wholesaling or retailing classifications of the B&O tax, and claim a multiple activities tax credit (MATC). For additional information on manufacturing and the MATC, manufacturers should refer to WAC 458-20-136 and 458-20-19301.

(3) **Retail sales tax.** The retail sales tax generally applies to the sale of watercraft to consumers when delivery is made within the state of Washington. Under certain conditions, however, retail sales tax exemptions are available for sales of watercraft to nonresidents of Washington, even when delivery is made within Washington.

(a) **Exemptions for sales of watercraft, to nonresidents, requiring United States Coast Guard documentation and certain sales of vessels to residents of foreign countries.** RCW 82.08.0266 provides an exemption from retail sales tax for sales of watercraft to residents of states other than Washington for use outside this state, even when delivery is made within Washington. The exemption provided by RCW 82.08.0266 is limited to sales of watercraft requiring United States Coast Guard registration or registration by the state of principal use according to the Federal Boating Act of 1958.

RCW 82.08.02665 provides a retail sales tax exemption for sales of vessels to residents of foreign countries for use outside this state, even when delivery is made in Washington. This exemption is not limited to the types of watercraft qualifying for the exemption provided by RCW 82.08.0266. The term "vessel," for the purposes of RCW 82.08.02665, means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane.

(i) **Exemption requirements.** The following requirements must be met to perfect any claim for exemption under RCW 82.08.0266 and 82.08.02665:

(A) The watercraft must not be used within this state for more than ~~((forty-five))~~ 45 days from delivery;

(B) The seller must examine acceptable proof that the buyer is a resident of another state or a foreign country; and

(C) The seller, at the time of the sale, must retain as a part of its records a completed exemption certificate to document the exempt nature of the sale. This requirement may be satisfied by using the de-

partment's "Buyer's Retail Sales Tax Exemption Certificate," or another certificate with substantially the information as it relates to the exemption provided by RCW 82.08.0266 and 82.08.02665. The certificate must be completed in its entirety, and retained by the seller. A blank certificate is available on the department of revenue's (department) website at dor.wa.gov.

The seller should not accept an exemption certificate if the seller becomes aware of any information prior to the completion of the sale that is inconsistent with the buyer's claim of residency, such as a Washington address on a credit application.

(ii) **Component parts and repairs.** The exemptions provided by RCW 82.08.0266 and 82.08.02665 apply only to sales of watercraft. For the purposes of these exemptions, the term "watercraft" includes component parts which are installed in or on the watercraft prior to delivery to and acceptance by the buyer, but only when these parts are sold by the seller of the watercraft. "Component part" means tangible personal property which is attached to and used as an integral part of the operation of the watercraft, even if the item is not required mechanically for the operation of the watercraft. Component parts include, but are not necessarily limited to, motors, navigational equipment, radios, depthfinders, and winches, whether they are permanently attached to the watercraft or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the watercraft in a definite and secure manner.

These exemptions do not extend to the sale of boat trailers, repair parts, or repair labor. These exemptions also do not extend to a separate seller of unattached component parts, even though these parts may be manufactured specifically for the watercraft and/or permanently installed in or on the watercraft prior to the watercraft being delivered to and accepted by the buyer.

(b) **A one year "use permit" for vessels (~~(thirty)~~) 30 feet or longer.** RCW 82.08.700 and 82.12.700 provide the retail sales and use tax exemptions for sales of vessels (~~(thirty)~~) 30 feet or longer to individuals who are nonresidents of Washington.

(i) **Exemption requirements.** The following requirements must be met (~~(in order)~~) for an individual to claim these exemptions:

(A) The individual must provide valid proof of nonresidency at the time of purchase;

(B) The vessel purchased must measure at least (~~(thirty)~~) 30 feet in length; and

(C) The individual must obtain a valid use permit from the vessel dealer authorized to sell use permits.

(ii) **Valid proof of nonresidency.** An individual may prove nonresidency with identification that:

(A) Includes a photograph of the individual;

(B) Is issued by the jurisdiction in which the individual claims residency;

(C) Includes the individual's residential address; and

(D) Is issued for the purpose of establishing an individual's residency in a jurisdiction outside Washington state.

Acceptable identification includes a valid out-of-state driver's license.

(iii) **Use permits.** A use permit is not renewable. It costs (~~(five hundred dollars)~~) \$500 for vessels (~~(thirty to fifty)~~) 30 to 50 feet, and (~~(eight hundred dollars)~~) \$800 for vessels greater than (~~(fifty)~~) 50 feet in length. The permit includes an affidavit (~~(+affidavit)~~) from the buyer declaring that the purchased vessel will be used in a

manner consistent with this exemption. The use permit also includes an adhesive sticker (sticker) that must be displayed on the purchased vessel and is valid for (~~twelve~~) 12 consecutive months from the date of purchase. The sticker serves as proof of a validly issued use permit. Vessel dealers are not obligated to issue use permits to any individual. Buyers must elect this exemption irrevocably and may not elect additional exemptions under RCW 82.08.0266 and 82.08.02665 for the same period. Individuals must wait (~~twenty-four~~) 24 months from the expiration of a use permit before claiming the use tax exemption for their vessel pursuant to RCW 82.12.0251.

(iv) **What are the obligations of vessel dealers?** A vessel dealer electing to issue a use permit under this subsection must:

(A) Examine and determine, in good faith, whether the individual has valid proof of nonresidency.

(B) Use the department's approved use permits. Use permits are available on the department's website at dor.wa.gov.

(C) Retain copies of issued use permits in their records for the statutory period. For information about the statutory period and maintaining records, please refer to WAC 458-20-254.

(D) Provide copies of issued use permits to the department on a quarterly basis. Copies of issued permits must be sent to: Taxpayer Account Administration Division, Department of Revenue, P.O. Box 47476, Olympia, Washington 98504-7476.

(E) Collect, remit, and report use permit fees. Dealers report use permit fees on their excise tax returns and remit in accordance with RCW 82.32.045.

(F) Electronically file all returns, as described in RCW 82.32.080, with the department. Nonelectronically filed returns are not deemed filed unless approved by the department for good cause shown.

(v) **Liability for retail sales tax.**

(A) A nonresident individual may purchase a vessel in Washington without paying retail sales tax and remain in the state for (~~twelve~~) 12 consecutive months, from the date of issuance, by obtaining a use permit under RCW 82.08.700 from the vessel dealer. If the nonresident individual uses that vessel in Washington after the use permit expires, the individual will be liable for retail sales tax on the original selling price of that vessel (along with interest from the date of purchase at the rate provided in RCW 82.32.050).

(B) Vessel dealers are personally liable for retail sales tax if the dealer either does not collect retail sales tax when making sales to individuals without valid identification establishing nonresidency, or fails to maintain records of sales as provided under (b)(iv) of this subsection.

(4) **Deferred retail sales or use tax.** If Washington retail sales tax has not been paid, persons using watercraft on Washington waters are required to report and remit to the department sales tax (commonly referred to as deferred retail sales tax) or use tax, unless the use is specifically exempt by law. A credit against Washington's use tax is allowed for retail sales or use tax previously paid by the user or the user's bailor or donor with respect to the property to any other state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of the property in Washington. For additional information on use tax refer to WAC 458-20-178.

(a) **Purchased and used within Washington for more than (~~forty-five~~) 45 days.** Tax is due on the use by any nonresident of watercraft

purchased from a Washington seller and first used within this state for more than (~~forty-five~~) 45 days if retail sales or use tax was not paid by the user. Tax is due notwithstanding the watercraft qualified for a retail sales tax exemption at the time of purchase.

(b) **Temporary use.** Use tax does not apply, for the first (~~sixty~~) 60 days, for temporary use or enjoyment of watercraft brought into this state by nonresidents while temporarily within this state.

(i) For watercraft owned by nonresident entities (i.e., corporations, limited liability companies, trusts, partnerships, etc.), it will be presumed that use within Washington exceeding (~~sixty~~) 60 days in any (~~twelve-month~~) 12-month period is more than temporary use and use tax is due, except as otherwise provided in this rule. For vessels at least (~~thirty~~) 30 feet in length, but no more than (~~one hundred sixty-four~~) 200 feet in length, see subsection (e) of this subsection.

(ii) Nonresident individuals (whether residents of other states or foreign countries) may temporarily bring watercraft into this state for (~~sixty~~) 60 days before they are required to obtain a nonresident vessel permit, from the department of licensing, to continue their use or enjoyment without incurring liability for the use tax. RCW 88.02.620. Such use may not exceed a total of six months in any (~~twelve-month~~) 12-month period. (~~To qualify~~) Eligibility for this six-month exemption period(~~r~~) is conditioned on the following requirements:

(A) The watercraft must be issued a valid number under federal law or by an approved authority of the state or county of principal operation, be documented under the laws of a foreign country, or have a valid United States customs service cruising license issued under 19 C.F.R. Sec. 4.94. Failure to meet the applicable documentation and identification requirements will result in a loss of the exemption.

(B) The watercraft must be used in Washington only for the following purposes:

(I) Personal use;

(II) Chartering a vessel with a captain or crew, as long as individual charters are for at least three or more consecutive days in duration, excluding the transit time described in (b) (ii) (B) (III) of this subsection; or

(III) Necessary transit to or from the start or end point of a charter described in (b) (ii) (B) (II) of this subsection.

(c) **Repair, alteration, or reconstruction of watercraft in Washington.** Watercraft owned by nonresidents and in this state exclusively for repair, alteration, or reconstruction are exempt from the use tax if removed from this state within (~~sixty~~) 60 days. RCW 88.02.570 and 82.12.0251. If repair, alteration, or reconstruction cannot be completed within this period, the exemption may be extended by filing with the department's compliance division an affidavit as required by RCW 88.02.570 verifying the vessel is located on the waters of this state exclusively for repair, alteration, reconstruction, or testing. This document, titled "Nonresident Vessel Repair Affidavit," is effective for (~~sixty~~) 60 days. If additional extensions of the exemption period are needed, additional affidavits must be sent to the department prior to the expiration date. Failure to file this affidavit can result in requiring that the vessel be registered in Washington and subject to the use tax.

(d) **One year "use permit" for nonresident individuals - Use tax exemption for vessels (~~thirty~~) 30 feet or longer.** RCW 82.12.700 provides an exemption from use tax for the purchase of vessels (~~thirty~~)

30 feet or longer used in Washington by nonresident individuals. This exemption is available to nonresident individuals in any of the three following situations: The vessel is purchased from a vessel dealer and a use permit is obtained in accordance with subsection (3)(b) of this rule; the vessel is purchased in Washington from someone other than a vessel dealer and within ~~((fourteen))~~ 14 days of purchase the nonresident individual obtains a use permit under this subsection; the vessel is acquired outside Washington and the nonresident individual, within ~~((fourteen))~~ 14 days of bringing the vessel into Washington, buys a use permit as provided under this subsection. Any vessel dealer that issues permits under subsection (3)(b) of this rule must also issue permits under this subsection.

(i) **What are the obligations of vessel dealers?** Vessel dealers that issue use permits have the same obligations as those described in subsection (3)(b)(iv) of this rule. Vessel dealers may not issue use permits under this subsection where a nonresident individual has already obtained a use permit under subsection (3)(b) of this rule.

(ii) **Valid proof of nonresidency.** Nonresident individuals must meet the same identification requirements described in subsection (3)(b)(ii) of this rule.

(iii) **Use permits.** The use permit is not renewable and costs ~~((five hundred dollars))~~ \$500 for vessels ~~((thirty to fifty))~~ 30 to 50 feet and ~~((eight hundred dollars))~~ \$800 for vessels greater than ~~((fifty))~~ 50 feet in length. This use permit must be displayed on the vessel and is valid for ~~((twelve))~~ 12 consecutive months from the date of issuance. Nonresident individuals must obtain a use permit from a vessel dealer; however, vessel dealers are not obligated to issue these use permits. Nonresident individuals must elect this exemption irrevocably and may not elect exemption under RCW 82.08.0266 and 82.08.02665 for the same period. The nonresident individual must wait ~~((twenty-four))~~ 24 consecutive months from the expiration of a use permit before claiming exemption for a vessel under RCW 82.12.0251.

(iv) **Liability for use tax.**

(A) If a nonresident individual's vessel is in Washington after their use permit expires, that individual is liable for use tax under RCW 82.12.020. Liability for use tax will be based on the value of the vessel at the time it was either purchased or first brought into Washington. Interest will accrue from the date of purchase or first use in Washington at a rate set by RCW 82.32.050.

(B) Vessel dealers are personally liable for use tax where a dealer either issues a use permit to a nonresident individual who does not hold valid proof of nonresidency, or fails to maintain records for each use permit issued showing the type of identification accepted, the identification numbers, and expiration date.

(e) **Permits for nonresident entity owned vessels 30 feet - ~~((164))~~ 200 feet.** ~~((Effective September 1, 2015,))~~ A nonresident entity vessel owner that is not a natural person, or a nonresident vessel owner who is a natural person who intends to charter the vessel with a captain or crew as described in (b)(ii)(B)(II) of this subsection, may qualify to receive a nonresident vessel permit from the department of licensing under RCW 88.02.620.

(i) This permit applies only to vessels at least ~~((thirty))~~ 30 feet in length, but no more than ~~((one hundred sixty-four))~~ 200 feet in length.

(ii) An application must be filed, prior to the ~~((sixty-first))~~ 61st day of use in this state, to obtain a nonresident vessel permit.

Application must be made directly to the department for written approval in accordance with RCW 82.32.865.

(iii) To qualify, no Washington resident may own the vessel or be a principal of the nonresident entity. For the purpose of this subsection, "principal" means a natural person that owns, directly or indirectly, including through any tiered ownership structure, more than a one percent interest in the nonresident person applying for a nonresident vessel permit.

(iv) The "Nonresident Vessel Permit Approval Application" can be found on the department's website at dor.wa.gov.

(5) **Examples.** In all applicable examples, retailing B&O tax is due from the seller for all sales of watercraft and parts, and all charges for repair parts and labor.

(a) **Example 1.** Mr. Kelley, a resident of California, pilots his cabin cruiser that is registered in that state into Puget Sound for his enjoyment. On the (~~sixtieth~~) 60th day of his stay, Mr. Kelley obtains a 60-day nonresident vessel permit for the cabin cruiser under RCW 88.02.620 from the department of licensing. To further extend his stay in Washington waters, he applies for a second permit within the prescribed period. In the middle of his fifth month on Puget Sound, Mr. Kelley departs and returns the cabin cruiser to its home port in California. The stay would not subject Mr. Kelley to use tax. The same would be true if Mr. Kelley were a resident of Vancouver, British Columbia, with a cabin cruiser registered in Canada, as long as he timely obtains and displays the permit required by RCW 88.02.570 and 88.02.620 to allow his temporary use of the cabin cruiser in Washington.

(b) **Example 2.** Company A sells a yacht to John Doe, an Oregon resident, who takes delivery in Washington. The yacht is required to be registered by the state of Oregon. The vessel is removed from Washington waters within (~~forty-five~~) 45 days of delivery. Company A examines a driver's license confirming John Doe is an Oregon resident, and records this information in the sales file. Company A does not complete and retain the required exemption certificate.

The sale of the yacht is subject to the retail sales tax. The exclusive authority for granting a retail sales tax exemption for this sale is provided by RCW 82.08.0266. Completion of an exemption certificate is a statutorily imposed condition for obtaining this exemption. Company A has not satisfied the conditions and requirements necessary to grant an exemption under this statute. The exemption provisions under RCW 82.08.0273 for sales to nonresidents of states having less than three percent retail sales tax may not be used for purchases of vessels which require United States Coast Guard documentation, or registration in the state of principal use. If the exemption certificate had been properly completed at the time of sale, this sale would have qualified for the retail sales tax exemption.

(c) **Example 3.** Mr. Jones, a California resident, contracts Company B to manufacture a pleasure yacht. Mr. Jones purchases a boat motor from Company Y with instructions that delivery be made to Company B for installation on the yacht. The yacht is required to be registered with the state of California, which has assumed the registration and numbering function under the Federal Boating Act of 1958. Company B examines Mr. Jones' driver's license to verify Mr. Jones is a nonresident of Washington, and retains the proper exemption certificate at the time of sale. Delivery is made in Washington, and Mr. Jones removes the yacht from Washington waters within (~~forty-five~~) 45 days of delivery.

The sale of the yacht by Company B to Mr. Jones is not subject to the retail sales tax, as the requirements and conditions for exemption have been satisfied. Retail sales tax does apply to the sale of the motor by Company Y to Mr. Jones. The exemption provided by RCW 82.08.0266 does not extend to a separate seller of unattached component parts, even though the parts are installed in the yacht prior to delivery.

(d) **Example 4.** Mr. Smith, a resident of British Columbia, Canada, brings his yacht into Washington with the intention of temporarily using the yacht for personal enjoyment. Mr. Smith obtains the required 60-day nonresident vessel permit issued by the department of licensing. After four months of personal use, the yacht experiences mechanical difficulty. The yacht is taken to a repair facility and due to the extensive nature of the damage the yacht remains at the repair facility for six months being repaired. As explained in subsection (4)(c) of this rule, Mr. Smith timely files each required "Nonresident Vessel Repair Affidavit." An employee of the repair facility is on board the yacht during all testing, and there is no personal use by Mr. Smith during this period. Upon completion of the repairs and testing, Mr. Smith takes delivery at the repair facility.

Mr. Smith obtains a second 60-day nonresident vessel permit so he may personally use the yacht in Washington waters for up to two months after taking delivery of the repaired yacht. He will not incur liability for use tax because the in-state use of the yacht for personal enjoyment will not exceed six months in a (~~twelve-month~~) 12-month period. The time the yacht is at the repair facility exclusively for repair does not count against the period of time Mr. Smith is considered to be "temporarily" using the yacht in Washington for personal enjoyment because he properly filed the repair affidavit with the department. Retail sales tax is due, and must be paid, on all charges for repair parts and labor. The exemption from sales tax for purchases of vessels does not extend to repairs.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 16-12-068, § 458-20-238, filed 5/27/16, effective 6/27/16. Statutory Authority: RCW 82.32.300, 82.01.060(2), 82.08.0266, and 82.08.02665. WSR 08-14-022, § 458-20-238, filed 6/20/08, effective 7/21/08. Statutory Authority: RCW 82.32.300. WSR 00-23-003, § 458-20-238, filed 11/1/00, effective 12/2/00; WSR 95-24-103, § 458-20-238, filed 12/6/95, effective 1/6/96; WSR 83-21-061 (Order ET 83-7), § 458-20-238, filed 10/17/83; WSR 83-08-026 (Order ET 83-1), § 458-20-238, filed 3/30/83; Order ET 70-3, § 458-20-238 (Rule 238), filed 5/29/70, effective 7/1/70.]

## WSR 22-04-023

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:31 a.m., effective February 24, 2022]

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

Purpose: The department is amending:

- WAC 458-19-005, 458-19-020, 458-19-060, and 458-19-065 to incorporate 2021 legislation, ESHB 1189. This legislation authorizes local governments to establish local tax increment finance areas to fund public improvements.
- WAC 458-19-070 and 458-19-075 to incorporate 2021 legislation, HB 1034. This legislation revised the aggregate levy limitations for park and recreation districts located on an island in a county with a population greater than two million.

Citation of Rules Affected by this Order: Amending WAC 458-19-005 Definitions, 458-19-020 Levy limit—Method of calculation, 458-19-060 Emergency medical service levy, 458-19-065 Levy limit—Protection of future levy capacity, 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation, and 458-19-075 Constitutional one percent limit calculation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.55.060

Adopted under notice filed as WSR 21-23-085 on November 16, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

**OTS-3483.1**

AMENDATORY SECTION (Amending WSR 20-24-065, filed 11/24/20, effective 12/25/20)

**WAC 458-19-005 Definitions.** (1) **Introduction.** This rule contains definitions of the terms used throughout chapters 84.52 and 84.55 RCW and chapter 458-19 WAC in the administration of the system used to levy property taxes on taxable property within the state of Washington.

(2) Unless the context clearly requires otherwise, the following definitions apply:

(a) **"Annexation"** means one taxing district is adding territory or another dissimilar taxing district from outside the annexing taxing district's boundary and includes a merger of a portion of a fire protection district under chapter 52.06 RCW with another fire protection district.

(b) **"Assessed value"** means the value of taxable property placed on the assessment rolls. The term is often abbreviated with the initials "A.V."

(c) **"Certified property tax levy rate"** means the tax rate calculated by the county assessor in accordance with law to produce the lawful amount of the certified property tax levy.

(d) **"Consolidated levy rate"** means:

(i) For purposes of the statutory aggregate dollar rate levy limit, the sum of all regular levy rates set for collection, not including the rates for the state levy, ports, public utility districts, financing affordable housing under RCW 84.52.105, acquiring conservation futures under RCW 84.34.230, criminal justice purposes under RCW 84.52.135, emergency medical care or emergency medical services under RCW 84.52.069, county ferry districts under RCW 36.54.130, the portions of the fire protection and regional fire protection service authority levies protected under RCW 84.52.125, the portion of metropolitan park district levies protected under RCW 84.52.120, transit-related purposes under RCW 84.52.140, the protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts, and levies imposed by a regional transit authority under RCW 81.104.175; and

(ii) For purposes of the constitutional one percent limit, the sum of all regular levy rates set for collection, including the rates for the state levy, but not including the rates for port and public utility districts.

(e) **"Consolidation"** means the act of combining two or more similar taxing districts into one taxing district; for example, the combination of two fire protection districts into one fire protection district.

(f) **"Constitutional one percent limit"** means the levy limit established by Article VII, section 2 of the state Constitution, which prohibits the aggregate of all tax levies on real and personal property from exceeding one percent (\$10 per \$1,000) of the true and fair value of property. This limit does not apply to excess levies, levies by port districts, and levies by public utility districts. This limit is also set forth in RCW 84.52.050.

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

(h) **"Excess property tax levy"** or **"excess levy"** means a voter-approved property tax levy by or for a taxing district, other than a port or public utility district, that is subject to neither the statutory aggregate dollar rate limit set forth in RCW 84.52.043 nor the constitutional one percent limit set forth in Article VII, section 2 of the state Constitution and in RCW 84.52.050. It does not include regular levies allowed to exceed the levy limit with voter approval.

(i) **"Improvement"** means any valuable change in or addition to real property, including the subdivision or segregation of parcels of real property or the merger of parcels of real property.

(j) **"Inflation"** means the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent (~~twelve-month~~) 12-month period by

the Bureau of Economic Analysis of the Federal Department of Commerce by September 25th of the year before the taxes are payable; see RCW 84.55.005.

(k) **"Joint taxing district"** means a taxing district that exists in two or more counties; the term does not include the state nor does it include an intercounty rural library district.

(l) **"Junior taxing district"** means a taxing district other than the state, a county, a county road district, a city, a town, a port district, or a public utility district.

(m) **"Levy limit"** means:

(i) The statutorily established limit that prohibits a taxing district, other than the state, from levying regular property taxes for a particular year that exceed the limit factor multiplied by the highest amount of regular property taxes that could have been lawfully levied in the taxing district in any year since 1985, excluding any increase due to (m)(i)(E) of this subsection, unless the highest levy was the statutory maximum rate amount, plus an additional dollar amount calculated by multiplying the regular property tax levy rate of that district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value in the taxing district resulting from:

(A) New construction;

(B) Improvements to property;

(C) Increases in the assessed value of state assessed property;

((and))

(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and

(E) Increases in assessed value of real property within an increment area designated by a local government pursuant to chapter 39.114 RCW, provided the increase is not included elsewhere in the levy limit calculation. This subsection does not apply to:

(I) Levies by the state;

(II) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and

(III) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.

(ii) For purposes of the levy limit, the phrase "highest amount of regular property taxes that could have been lawfully levied" means the maximum amount that could have been levied by a taxing district under the limitation set forth in chapter 84.55 RCW unless the highest amount that could have been levied was actually restricted by the taxing district's statutory dollar rate limit. If the taxing district's levy was restricted by the statutory dollar rate limit, the highest amount that could have been lawfully levied is the amount produced by multiplying the assessed value of the taxing district by the statutory dollar rate.

(iii) For purposes of the levy limit, the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, may reflect a reduced rate due to the \$5.90 statutory aggregate limitation and/or the constitutional one percent limitation, if prorating occurred in the district.

The regular property tax levy rate of the district for the preceding year may also reflect a levy error or a levy error correction.

If this occurs, the rate used will be the rate had the levy error or levy error correction not occurred. RCW 84.52.085.

(iv) The levy limit for the state is the amount calculated under WAC 458-19-550.

(n) **"Levy rate"** means the dollar amount per thousand dollars of assessed value applied to taxable property within a taxing district and is calculated by dividing the total amount of a statutorily authorized levy of a taxing district by the total assessed value of that district and is expressed in dollars and cents per thousand dollars of assessed value.

(o) **"Limit factor"** means:

(i) For taxing districts with a population of less than (~~ten thousand~~) 10,000 in the calendar year immediately prior to the assessment year, (~~one hundred one~~) 101 percent;

(ii) For taxing districts, other than the state, having made a finding of substantial need in accordance with RCW 84.55.0101, the lesser of the substantial need factor or (~~one hundred one~~) 101 percent;

(iii) For all other taxing districts, excluding the state, the lesser of (~~one hundred one~~) 101 percent or (~~one hundred~~) 100 percent plus inflation; or

(iv) For the state, the limits described in WAC 458-19-550.

(p) **"New construction"** means the construction or alteration of any property for which a building permit was issued, or should have been issued, under chapter 19.27, 19.27A, or 19.28 RCW or other laws providing for building permits, which results in an increase in the value of the property.

(q) **"Regular property tax levy"** or **"regular levy"** means a property tax levy by or for a taxing district that is subject to the statutory aggregate dollar rate limit set forth in RCW 84.52.043, the constitutional one percent limit set forth in RCW 84.52.050, or is a levy imposed by or for a port district or a public utility district.

(r) **"Regular property taxes"** means those taxes resulting from regular property tax levies.

(s) **"Senior taxing district"** means the state (for support of common schools), a county, a county road district, a city, or a town.

(t) **"Statutory aggregate dollar rate limit"** or **"statutory aggregate limit"** means the maximum aggregate regular property tax levy rate within a county established by law for senior and junior taxing districts, other than the state. The current limit is \$5.90 per \$1,000 of assessed valuation. See RCW 84.52.043 and WAC 458-19-070.

(u) **"Statutory dollar rate limit"** means the maximum regular property tax levy rate established by law for a particular type of taxing district.

(v) **"Substantial need limit factor"** means a limit factor approved by a taxing district's legislative authority that exceeds (~~one hundred~~) 100 percent plus inflation. This limit cannot exceed (~~one hundred one~~) 101 percent.

(w) **"Super majority"** means a majority of at least three-fifths of the registered voters of a taxing district approving a proposition authorizing a levy, at which election the number of persons voting "yes" on the proposition constitutes three-fifths of a number equal to (~~forty~~) 40 percent of the total votes cast in the taxing district in the last preceding general election; or by a majority of at least three-fifths of the registered voters of the taxing district voting on the proposition when the number of registered voters voting on the

proposition exceeds (~~forty~~) 40 percent of the total votes cast in the taxing district in the last preceding general election.

(x) **"Tax code area"** means a geographical area made up of one or more taxing districts, which is established for the purpose of properly calculating, collecting, and distributing taxes. Only one tax code area will have the same combination of taxing districts, with limited exceptions.

(y) **"Taxing district"** means the state and any county, city, town, port district, school district, road district, metropolitan park district, regional transit authority, water-sewer district, or other municipal corporation, having the power or legal authority to impose burdens upon property within the district on an ad valorem basis, for the purpose of obtaining revenue for public purposes, as distinguished from municipal corporations authorized to impose burdens, or for which burdens may be imposed for public purposes, on property in proportion to the increase in benefits received.

[Statutory Authority: RCW 84.52.0502 and 84.55.060. WSR 20-24-065, § 458-19-005, filed 11/24/20, effective 12/25/20; WSR 18-14-095, § 458-19-005, filed 7/3/18, effective 8/3/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-005, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. WSR 06-02-008, § 458-19-005, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-005, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-005, filed 3/14/94, effective 4/14/94.]

AMENDATORY SECTION (Amending WSR 18-14-095, filed 7/3/18, effective 8/3/18)

**WAC 458-19-020 Levy limit—Method of calculation.** (1) **Introduction.** This rule explains the general method used to calculate the levy limit for regular property tax levies for taxing districts, other than the state, in accordance with RCW 84.55.092 and 84.55.120. Except for the state levy, the same method is generally used to calculate the amount of regular property taxes that can be levied by a taxing district in any year. This rule also describes what occurs when a taxing district makes a finding of substantial need in accordance with RCW 84.55.0101 to use a limit factor in excess of (~~one hundred~~) 100 percent plus inflation. This rule does not attempt to include all special circumstances, such as the reduction in the levy limit for cities and towns that form a fire protection district under RCW 52.02.160, which may affect the applicable limit under chapter 84.55 RCW.

(2) **Increase in tax revenues - Ordinance or resolution required.** The following describes the ordinance or resolution required by taxing districts when requesting increases in tax revenues.

(a) Except by holding a public hearing and adopting an ordinance or resolution, no taxing district, other than the state, may authorize an increase in property tax revenue, other than one resulting from an increase in assessed value of the district attributable to:

(i) New construction;

(ii) Improvements to property;  
 (iii) Increases in the assessed value of state assessed property;  
 ((and))  
 (iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property;  
 and

(v) Increases in assessed value of real property within an increment area designated by a local government pursuant to chapter 39.114 RCW, provided the increase is not included elsewhere in the levy limit calculation. This subsection (2) (a) (v) does not apply to:

(A) Levies by the state;

(B) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and

(C) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.

(b) The ordinance or resolution may cover a period of up to two years, but the ordinance or resolution must specifically state for each year the dollar increase and percentage change in the levy from the previous year. The dollar increase and percentage change should reflect everything included in the levy limit and should not reflect anything excluded under chapter 84.55 RCW (such as, but not limited to, a levy for property tax refunds paid under the provisions of chapter 84.68 or 84.69 RCW).

(c) A majority of the legislative authority of a taxing district must approve the ordinance or resolution authorizing an increase in the taxing district's levy as calculated in subsection (3) of this rule.

(d) Upon making a finding of substantial need to increase its levy by an amount greater than the rate of inflation, the legislative authority of a taxing district may adopt a second ordinance or resolution establishing a limit factor greater than ~~((one hundred))~~ 100 percent plus inflation. But the substantial need limit factor can never exceed ~~((one hundred one))~~ 101 percent.

(i) In districts with legislative authorities of four members or less, two-thirds of the members must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

(ii) In districts with more than four members, a majority plus one must approve an ordinance or resolution supporting a substantial need to increase the limit factor.

**(3) Calculation of levy limit for all taxing districts other than the state.** The amount of regular property taxes that can be levied by a taxing district, other than the state, in any year is limited to an amount that will not exceed the amount resulting from the following calculation, except as otherwise provided by statute:

(a) The highest amount that could have been lawfully levied by the taxing district in any year since 1985 for 1986 collection, multiplied by the limit factor ~~((+))~~, excluding any increase due to (b) (v) of this subsection, unless the highest levy was the statutory maximum rate amount, plus;

(b) A dollar amount calculated by multiplying the regular property tax levy rate of the district for the preceding year, or the last year the taxing district levied taxes, by the increase in assessed value of the district resulting from:

(i) New construction;

- (ii) Improvements to property;
- (iii) Increases in the assessed value of state assessed property;
- ((and))
- (iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property; and
- (v) Increases in assessed value of real property within an increment area designated by a local government pursuant to chapter 39.114 RCW, provided the increase is not included elsewhere in the levy limit calculation. This subsection (3) (b) (v) does not apply to:
  - (A) Levies by the state;
  - (B) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and
  - (C) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.
- (4) **Calculation of levy limit for the state levy.** The levy limit for the state is calculated according to WAC 458-19-550.

[Statutory Authority: RCW 84.52.0502 and 84.55.060. WSR 18-14-095, § 458-19-020, filed 7/3/18, effective 8/3/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-020, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-020, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-020, filed 3/14/94, effective 4/14/94.]

AMENDATORY SECTION (Amending WSR 18-24-104, filed 12/4/18, effective 1/4/19)

**WAC 458-19-060 Emergency medical service levy.** (1) **Introduction.** This rule explains the criteria described in RCW 84.52.069 regarding a taxing district imposing a limited or permanent regular levy for emergency medical care or emergency medical services. This rule also describes the duration of this levy, the ballot title and measure that must be presented to and approved by the voters, the maximum levy rate, and the applicable levy limits.

Definitions. The definitions in WAC 458-19-005 apply to this rule.

(2) **Purpose - Voter approval required - Who may levy.** An emergency medical service (EMS) levy is a regular voter approved levy. Any taxes collected from this levy can only be used to provide emergency medical care or emergency medical services, including related personnel costs, training for such personnel and related equipment, supplies, vehicles, and structures needed to provide this care or service.

(a) Initial approval of EMS levy. A permanent EMS levy, or the initial imposition of a six-year or (~~ten-year~~) 10-year EMS levy must be approved by a super majority of registered voters at a general or special election. However, if an area comprising a newly formed regional fire protection service authority was subject to an EMS levy

immediately prior to the creation of the authority, the initial imposition of a six-year or (~~ten-year~~) 10-year EMS levy may be approved by a majority of the registered voters who approved the creation of the authority and the related service plan.

(b) Subsequent approval of EMS levy. The subsequent approval of a six-year or (~~ten-year~~) 10-year EMS levy only requires the authorization of a majority of the registered voters at a general or special election. Only a county, emergency medical service district, city, town, public hospital district, urban emergency medical service district, regional fire protection service authority, or fire protection district is authorized to impose an EMS levy.

(3) **Duration - Maximum levy rate.** An EMS levy is imposed each year for six consecutive years, each year for (~~ten~~) 10 consecutive years, or permanently. Except as provided in subsection (11) of this rule, a taxing district may impose an EMS levy in an amount that cannot exceed (~~fifty~~) 50 cents per (~~thousand dollars~~) \$1,000 of assessed value of the property in the taxing district.

(4) **Contents of ballot title and measure.** Any ballot title and measure seeking authorization of an EMS levy must conform to the requirements of RCW 29A.36.210. A taxing district cannot submit to the voters, at the same election, multiple propositions to impose an EMS levy under RCW 84.52.069. If the approved ballot title and measure did not authorize the maximum allowable levy rate (~~fifty~~) 50 cents per (~~thousand dollars~~) \$1,000 of assessed value) for the EMS levy, any future proposition to increase the rate up to the maximum allowable levy rate must be specifically authorized by voters at a general or special election. Therefore, a taxing district may impose an EMS levy rate up to, but no greater than, the rate in the approved ballot measure without obtaining additional voter approval. The ballot title and measure authorizing a taxing district to impose:

(a) An EMS levy for a limited duration must state the name of the taxing district, the maximum levy rate per (~~thousand dollars~~) \$1,000 of assessed value to be imposed, and the maximum number of years the levy is allowed; or

(b) A permanent EMS levy must state the name of the taxing district and the maximum levy rate per (~~thousand dollars~~) \$1,000 of assessed value to be permanently imposed. A ballot title for this type of levy must include wording to indicate that it is a permanent EMS levy. A taxing district that seeks to impose a permanent levy must also provide for a referendum procedure to apply to the ordinance or resolution imposing the tax. For additional information regarding the referendum procedures, see RCW 84.52.069.

(5) **County-wide EMS levy.** A county-wide EMS levy proposal cannot be placed on the ballot without first obtaining the approval from the legislative authority of a majority of at least (~~seventy-five~~) 75 percent of all cities within the county having a population exceeding (~~fifty thousand~~) 50,000. No other taxing district within the county may hold an election on a proposed EMS levy at the same time as the election on a proposed county-wide EMS levy. To the extent feasible, emergency medical care and services must be provided throughout the county whenever the county levies an EMS levy.

(6) **Additional requirements.** When a county levies an EMS levy, the following conditions apply:

(a) Other taxing districts within the county authorized to levy an EMS levy may do so, but only if the taxing district's EMS levy rate does not exceed the difference between the county's EMS levy rate and

~~((fifty))~~ 50 cents per ~~((thousand dollars))~~ \$1,000 of assessed value of the property in the taxing district;

(b) If a taxing district within the county levies an EMS levy and the voters of the county subsequently approve a county-wide EMS levy, then the taxing district must reduce its EMS levy rate so the combined EMS levy rate of the county and the taxing district does not exceed ~~((fifty))~~ 50 cents per ~~((thousand dollars))~~ \$1,000 of assessed value of the property in the taxing district;

(c) A taxing district within a county having an EMS levy of limited duration that was authorized by the voters subsequent to a county-wide EMS levy of limited duration, will expire at the same time as the county EMS levy; and

(d) A fire protection district having annexed an area described in subsection (11) of this rule may levy the maximum amount of tax allowed, taking into consideration any limitations in this subsection.

(7) **EMS levy of a taxing district other than a county.** When a taxing district levies an EMS levy within the county, only the county may, at the same time, levy an EMS levy within the boundaries of that taxing district; all other taxing districts are prohibited from levying an EMS levy within that taxing district's boundaries while it collects an EMS levy.

(a) If a regional fire protection service authority imposes an EMS levy under this rule, no other taxing district that is a participating fire protection jurisdiction in the regional fire protection service authority may impose an EMS levy under this rule.

(b) For purposes of this subsection, a "participating fire protection jurisdiction" means a fire protection district, city, town, Indian tribe, or port district that is represented on the governing board of a regional fire protection service authority.

(8) **Constitutional one percent limit.** An EMS levy is subject to the constitutional one percent limit for regular property taxes. If a reduction of the rate of an EMS levy is required because this limit is exceeded, it is reduced according to RCW 84.52.010 and WAC 458-19-075.

(9) **Statutory aggregate dollar rate limit.** An EMS levy is not subject to the statutory aggregate dollar rate limit of ~~((five dollars and ninety cents per thousand dollars))~~ \$5.90 per \$1,000 of assessed value as described in RCW 84.52.043.

(10) **Applicability of limit factor to EMS levy.** The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.

(a) The first year an EMS levy is made following voter approval, the levy limit in chapter 84.55 RCW does not apply. ~~((However, after the first year an EMS levy is subject to this limit. Therefore,))~~

(b) In the second year, the EMS levy cannot exceed the limit factor multiplied by the highest amount of regular property taxes that could have lawfully been levied since the voters last approved the levy, plus an additional amount calculated by multiplying the regular property tax levy rate of the district from the preceding year by the increase in assessed value in the taxing district resulting from:

~~((a))~~ (i) New construction;

~~((b))~~ (ii) Improvements to property;

~~((c))~~ (iii) Increases in the assessed value of state assessed property; ~~((and~~

~~((d))~~ (iv) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional

dollar amount. The property may be classified as real or personal property((-

~~The EMS levy is calculated separately from any other levies made by the taxing district for purposes of calculating the levy limit.))~~; and

(v) Increases in assessed value of real property within an increment area designated by a local government pursuant to chapter 39.114 RCW, provided the increase is not included elsewhere in the levy limit calculation. This subsection (10)(b)(v) does not apply to:

(A) Levies by the state;

(B) Levies by a port district for purposes of making required payments of principal and interest on general indebtedness; and

(C) Levies by a public utility district for purposes of making required payments of principal and interest on general indebtedness.

(c) In the third year, and thereafter, the EMS levy limit is calculated according to WAC 458-19-005 (2)(m).

(11) **County boundaries.** For purposes of imposing an EMS levy, the boundary of a county with a population greater than ~~((one million five hundred thousand))~~ 1,500,000 does not include the area of the county that is located within a city that has a boundary in two counties. This only applies if the locally assessed value of all property in the area of the city within the county having a population greater than ~~((one million five hundred thousand))~~ 1,500,000 is less than ~~((two hundred fifty million dollars))~~ \$250,000,000.

[Statutory Authority: RCW 84.08.010, 84.08.070, and 84.55.060. WSR 18-24-104, § 458-19-060, filed 12/4/18, effective 1/4/19. Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-060, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060. WSR 14-14-023, § 458-19-060, filed 6/23/14, effective 7/24/14. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-060, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-060, filed 3/14/94, effective 4/14/94.]

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

**WAC 458-19-065 Levy limit—Protection of future levy capacity.**

(1) **Introduction.** This rule explains what occurs when a taxing district levies taxes in an amount less than the maximum allowed under the levy limit for any year and how future levies of the district will be calculated.

(2) **Use of maximum lawful levy amount.** In any year when a taxing district, other than the state, levies taxes in an amount less than the maximum amount allowed by the levy limit, whether voluntarily or as a result of the operation of the statutory aggregate dollar rate limit or constitutional one percent limit reducing or eliminating the taxing district's levy rate, the levy limit for succeeding years after 1985 will be calculated as though the maximum lawful levy amount al-

lowed by the levy limit or the taxing district's statutory dollar rate limit had been levied.

(3) **Examples.** These examples do not include any amounts for new construction, improvements to property, increases in the assessed value of state assessed property, ~~((or))~~ increases in the assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, or increases in assessed value of real property within an increment area designated by a local government pursuant to chapter 39.114 RCW.

(a) In ~~((2013))~~ 2022, the highest amount of regular property taxes that could have been lawfully levied by taxing district "A" as restricted by the levy limit was \$100,000. But in ~~((2013))~~ 2022 taxing district "A" was otherwise limited by the statutory aggregate dollar rate limit to a maximum levy of \$95,000. The levy limit for the ~~((2014))~~ 2023 levy will be calculated on the basis of what could have been the highest levy amount since 1985, ~~((that))~~ which is \$100,000 multiplied by the limit factor. The amount actually levied in ~~((2013))~~ 2022 is not controlling.

(b) Using the same basic facts from the previous example, if the levy amount of district "A" had been limited by the statutory dollar rate limit in ~~((2013))~~ 2022 to \$95,000, and \$95,000 was the highest amount of regular property taxes that could have been lawfully levied since 1985, then the levy limit for ~~((2014))~~ 2023 will be calculated on the basis of \$95,000, that is \$95,000 multiplied by the limit factor.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.08.080, 84.48.200, 84.52.0502, and 84.55.060. WSR 15-03-087, § 458-19-065, filed 1/21/15, effective 2/21/15. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-065, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-065, filed 3/14/94, effective 4/14/94.]

## OTS-3440.1

AMENDATORY SECTION (Amending WSR 20-24-065, filed 11/24/20, effective 12/25/20)

**WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation.** (1) **Introduction.** This rule describes the process used to reduce or eliminate a levy rate when the assessor finds the statutory aggregate dollar rate limit exceeds ~~((five dollars and ninety cents))~~ \$5.90. The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed ~~((five dollars and ninety cents per thousand dollars))~~ \$5.90 per \$1,000 of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recalculates the levy rates and establishes a new consolidated levy rate as described in RCW 84.52.010. The ~~((five dollar and ninety cents))~~ \$5.90 statutory aggregate dollar rate limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.**

The following levies are not subject to the statutory aggregate dollar rate limit of (~~five dollars and ninety cents per thousand dollars~~) \$5.90 per \$1,000 of assessed value:

- (a) Levies by the state;
- (b) Levies by or for port or public utility districts;
- (c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;
- (d) Levies by or for county ferry districts under RCW 36.54.130;
- (e) Levies for acquiring conservation futures under RCW 84.34.230;
- (f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;
- (g) Levies for financing affordable housing under RCW 84.52.105;
- (h) The portion of metropolitan park district levies protected under RCW 84.52.120;
- (i) The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;
- (j) Levies for criminal justice purposes under RCW 84.52.135;
- (k) Levies for transit-related purposes by a county under RCW 84.52.140;
- (l) The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts; (~~and~~)
- (m) Levies imposed by a regional transit authority under RCW 81.104.175; and
- (n) Levies imposed under RCW 36.69.145, by a park and recreation district located on an island and within a county with a population exceeding 2,000,000, for collection in calendar years 2022 through 2026.

(3) **Consolidated levy rate limitation.** RCW 84.52.010 explains the order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of (~~five dollars and ninety cents per thousand dollars~~) \$5.90 per \$1,000 of assessed value. The order in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of (~~five dollars and ninety cents~~) \$5.90.

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

(a) Step one: Total the aggregate regular levy rates requested by all affected taxing districts in the tax code area. If this total is less than (~~five dollars and ninety cents per thousand dollars~~) \$5.90 per \$1,000 of assessed value, no levy rate reduction or elimination is

necessary. If this total levy rate is more than (~~five dollars and ninety cents~~) \$5.90, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from \$5.90 the levy rates of the county, including the rate of any separate property tax levy as described in RCW 84.55.135, and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first (~~fifty cents per thousand dollars~~) 50 cents per \$1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first (~~fifty cents per thousand dollars~~) 50 cents per \$1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

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

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

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

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125, a fire protection district or regional fire protection service authority may protect up to (~~twenty-five cents per thousand dollars~~) 25 cents per \$1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination.

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

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to (~~twenty-five cents per thousand dollars~~) 25 cents per \$1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination under RCW 84.52.043(2), if the total levies would otherwise be reduced or eliminated under RCW 84.52.010 (3)(a)(iii) with respect to the (~~five-dollar and ninety-cent per thousand dollars~~) \$5.90 per \$1,000 of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

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

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first (~~(fifty cents per thousand dollars)~~) 50 cents per \$1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

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

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

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

(f) Step six: Subtract from the remaining levy capacity the (~~(twenty-five cent per thousand dollars)~~) 25 cent per \$1,000 of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the (~~(twenty-five cent per thousand dollars)~~) 25 cent per \$1,000 of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

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

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

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

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

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

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

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

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

recreation district described in subsection (2) (n) of this rule, and cultural arts, stadium, and convention districts under RCW 67.38.130.

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

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

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

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

(4) **Example.**

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

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

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

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

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

[Statutory Authority: RCW 84.52.0502 and 84.55.060. WSR 20-24-065, § 458-19-070, filed 11/24/20, effective 12/25/20. Statutory Authority: RCW 84.08.010, 84.08.070, 84.36.389, 84.52.0502, and 84.55.060. WSR 18-04-006, § 458-19-070, filed 1/25/18, effective 2/25/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010. WSR 16-02-126, § 458-19-070, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060. WSR 14-14-023, § 458-19-070, filed 6/23/14, effective

7/24/14. Statutory Authority: RCW 84.08.070, 84.34.141, 84.36.865, 84.52.0502. WSR 09-19-010, § 458-19-070, filed 9/3/09, effective 10/4/09. Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. WSR 06-02-008, § 458-19-070, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-070, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-070, filed 3/14/94, effective 4/14/94.]

AMENDATORY SECTION (Amending WSR 20-24-065, filed 11/24/20, effective 12/25/20)

**WAC 458-19-075 Constitutional one percent limit calculation.**

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

(2) **Preliminary calculations.** After reducing or eliminating the levy rates under RCW 84.52.043 (the \$5.90 statutory aggregate dollar rate limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add together all regular levy rates in the tax code area, including the rates for the state levy, but not the rates for port and public utility districts, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after reduction or elimination under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this calculation because they are not subject to the constitutional one percent limit.

(b) Second, divide (~~ten dollars~~) \$10 by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

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

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy

rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

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

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

(b) Step two: Subtract the levy rates for the county, including the rate of any separate property tax levy as described in RCW 84.55.135, county road district, regional transit authority, and for city or town purposes ~~((+))~~.

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first ~~((fifty cents per thousand dollars))~~ 50 cents per \$1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first ~~((fifty cents per thousand dollars))~~ 50 cents per \$1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

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

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

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

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

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

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

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

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first ~~((fifty cents per thousand dollars))~~ 50 cents per \$1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

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

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

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

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

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

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

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

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

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

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

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

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district located on an island and within a county with a population exceeding 2,000,000, and cultural arts, stadium, and convention districts under RCW 67.38.130.

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

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

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

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

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

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

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

(j) Step ten: Subtract from the remaining levy capacity the levy rate for the first (~~(thirty cents per thousand dollars)~~) 30 cents per \$1,000 for emergency medical care or emergency medical services under RCW 84.52.069.

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

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

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

(k) Step eleven: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of (~~(thirty cents per thousand dollars)~~) 30 cents per \$1,000 of assessed value.

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

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

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

(l) Step twelve: Subtract from the remaining levy capacity the (~~(portion of the levy by a metropolitan park district with a population of one hundred fifty thousand or more that is protected under RCW 84.52.120)~~) levies imposed under RCW 36.69.145 for a park and recreation district located on an island and within a county with a population exceeding 2,000,000.

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

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

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

(m) Step thirteen: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of 150,000 or more that is protected under RCW 84.52.120.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~((q))~~ (r) Step ~~((seventeen))~~ eighteen: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 84.52.816 by a flood control zone district until the remaining levy capacity equals zero.

[Statutory Authority: RCW 84.52.0502 and 84.55.060. WSR 20-24-065, § 458-19-075, filed 11/24/20, effective 12/25/20. Statutory Authority: RCW 84.08.010, 84.08.070, 84.36.389, 84.52.0502, and 84.55.060. WSR 18-04-006, § 458-19-075, filed 1/25/18, effective 2/25/18. Statutory Authority: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010. WSR 16-02-126, § 458-19-075, filed 1/6/16, effective 2/6/16. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.48.200, 84.52.0502, 84.55.060. WSR 14-14-023, § 458-19-075, filed 6/23/14, effective 7/24/14. Statutory Authority: RCW 84.08.070, 84.34.141, 84.36.865, 84.52.0502. WSR 09-19-010, § 458-19-075, filed 9/3/09, effective 10/4/09. Statutory Authority: RCW 84.52.010, 84.52.043, and 84.52.0502. WSR 06-02-008, § 458-19-075, filed 12/22/05, effective 1/22/06. Statutory Authority: RCW 84.08.010, 84.08.070, 84.48.080, 84.55.060, 84.52.0502, chapters 84.52 and 84.55 RCW, and RCW 34.05.230(1). WSR 02-24-015, § 458-19-075, filed 11/25/02, effective 12/26/02. Statutory Authority: RCW 84.55.060 and 84.08.070. WSR 94-07-066, § 458-19-075, filed 3/14/94, effective 4/14/94.]

## WSR 22-04-024

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:34 a.m., effective February 24, 2022]

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

Purpose: The department is amending both WAC 458-07-010 and 458-07-015 to incorporate 2021 legislation, EHB 1271, section 3. This legislation instructs county assessors to review taxable real property characteristics in accordance with the International Association of Assessing Officers standards for physical inspections.

Citation of Rules Affected by this Order: Amending WAC 458-07-010 Valuation and revaluation of real property—Introduction, and 458-07-015 Revaluation of real property.

Statutory Authority for Adoption: RCW 84.41.090 and 84.41.120.

Adopted under notice filed as WSR 21-23-058 on November 10, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

**OTS-3374.1**

AMENDATORY SECTION (Amending WSR 16-08-115, filed 4/5/16, effective 5/6/16)

**WAC 458-07-010 Valuation and revaluation of real property—Introduction.** The Washington state Constitution requires that all taxes be uniform upon the same class of property within the territorial limits of the authority levying the tax. In order to comply with this constitutional mandate and ensure that all taxes are uniform, all real property must be valued in a manner consistent with this principle of uniformity. Also, to comply with statutory and case law, the county assessor must value all taxable real property in the county on a regular, systematic, and continuous basis. All taxable real property within a county must be valued or revalued annually, and each county assessor must review all taxable real property characteristics in accordance with the International Association of Assessing Officers' standards for physical inspections. All taxable real property within a county must also be physically inspected at least once every six

years, per RCW 84.41.030. The assessor must adhere to a revaluation plan that will ensure equality and uniformity in the valuation of real property, and must use proper appraisal methods. The administrative rules in this chapter describe and explain the processes to be used by the county assessor in valuing and revaluing real property for purposes of taxation.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010. WSR 16-08-115, § 458-07-010, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 84.08.070. WSR 00-01-043, § 458-07-010, filed 12/7/99, effective 1/7/00.]

AMENDATORY SECTION (Amending WSR 16-08-115, filed 4/5/16, effective 5/6/16)

**WAC 458-07-015 Revaluation of real property.** (1) **Appropriate statistical data defined.** The assessor must revalue ((the)) real property at its current true and fair value using appropriate statistical data. RCW 84.41.041. For purposes of this chapter, "appropriate statistical data" means the data required to accurately adjust real property values and includes, but is not limited to, data reflecting costs of new construction and real property market trends.

(2) **Comparable sales data.** In gathering appropriate statistical data and determining real property market trends, the assessor must consider current sales data. "Current sales data" means sales of real property that occurred within the past five years of the date of appraisal and may include sales that occur in the assessment year. To the extent feasible, and in accordance with generally accepted appraisal practices, the assessor shall compile the statistical data into categories of comparable properties. Comparability is most often determined by similar use and location and may be based upon the following use classifications:

- (a) Single family residential;
- (b) Residential with from two to four units;
- (c) Residential with more than four units;
- (d) Residential hotels, condominiums;
- (e) Hotels and motels;
- (f) Vacation homes and cabins;
- (g) Retail trade;
- (h) Warehousing;
- (i) Office and professional service;
- (j) Commercial other than listed;
- (k) Manufacturing;
- (l) Agricultural; and
- (m) Other classifications as necessary.

(3) **Appraisal processes.** Appropriate statistical data shall be applied to revalue real property to current true and fair value using one or more of the following processes:

- (a) Multiple or linear regression;
- (b) Sales ratios;
- (c) Physical inspection; or

(d) Any other appropriate statistical method that is recognized and accepted with respect to the appraisal of real property for purposes of taxation.

- (4) **Physical inspection cycles.**

(a) For purposes of this chapter, "physical inspection" means, at a minimum, an exterior observation of the property to determine whether there have been any changes in the physical characteristics that affect value. The property improvement record must be appropriately documented in accordance with the findings of the physical inspection. The assessor must physically inspect all taxable real property at least once within a six-year time period, and review all taxable real property characteristics in accordance with the International Association of Assessing Officers' physical inspection standards.

(b) Physical inspection of all the property in the county shall be accomplished on a proportional basis in cycle, with approximately equal portions of taxable property of the county inspected each year. Physical inspections of properties outside of the areas scheduled for physical inspection under the plan filed with the department (~~(see)~~), in accordance with WAC 458-07-025(~~+~~) Revaluation of real property—Plan submitted to department of revenue, may be conducted for purposes of validating sales, reconciling inconsistent valuation results, calibrating statistical models, valuing unique or nonhomogeneous properties, administering appeals or taxpayer reviews, documenting digital images, or for other purposes as necessary to maintain accurate property characteristics and uniform assessment practices. All properties shall be placed on the assessment rolls at current true and fair value as of January 1st of the assessment year.

(c) In any year, when the area of the county being physically inspected is not completed in that year, the portion remaining must be completed before beginning the physical inspection of another area in the succeeding year. All areas of the county must be physically inspected within the cycle established in the revaluation plan filed with the department.

(5) **Revaluation after a value is certified for the current year.** In certain circumstances the assessor is authorized to revalue real property, using appraisal judgment, after a value is certified for the current year. These revaluations must not be arbitrary or capricious, nor violate the equal protection clauses of the federal and state Constitutions, nor the uniformity clause of the state Constitution. The assessor may disregard the certified value for the current year and change a property valuation, as appropriate, in the following situations:

(a) If requested by a property owner, when a notice of decision pertaining to the value of real property is received under RCW 36.70B.130 (~~(+)~~)Notice of decision—Distribution; local project review(~~+~~), chapter 35.22 RCW (~~(+)~~)First\_class cities(~~+~~), chapter 35.63 RCW (~~(+)~~)Planning commissions(~~+~~), chapter 35A.63 RCW (~~(+)~~)Planning and zoning in code cities(~~+~~), or chapter 36.70 RCW (~~(+)~~)Planning Enabling Act(~~+~~);

(b) When the owner or person responsible for payment of taxes on any real property petitions the assessor for a reduction in the assessed value in accordance with RCW 84.40.039, within three years of adoption of a restriction by a government entity;

(c) When there has been a "definitive change of land use designation" by an authorized land use authority, and the revaluation is in accordance with RCW 84.48.065;

(d) When a bona fide mistake has been made by the assessor in a prior valuation made within the current valuation cycle. The change in property valuation is not retroactive to the prior year;

(e) When property has been destroyed, in whole or in part, and is entitled to a reduction in value in accordance with chapter 84.70 RCW; or

(f) When property has been subdivided or merged.

(6) **Change of value notice.** Revaluation, or change of value notices, must be mailed or transmitted electronically by the assessor to the taxpayer when there is any change in the assessed value of real property, not later than thirty days after an appraisal or adjustment in value.

[Statutory Authority: RCW 84.08.010, 84.08.070, 84.52.0502, and 84.55.010. WSR 16-08-115, § 458-07-015, filed 4/5/16, effective 5/6/16. Statutory Authority: RCW 84.08.070. WSR 00-01-043, § 458-07-015, filed 12/7/99, effective 1/7/00.]

## WSR 22-04-025

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:39 a.m., effective February 24, 2022]

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

Purpose: The department is amending WAC 458-18-010 to incorporate 2021 legislation, ESSB 5251, section 24. This section of the legislation clarified the use of the seasonally adjusted consumer price index as a method to calculate the income thresholds.

Citation of Rules Affected by this Order: Amending WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions.

Statutory Authority for Adoption: RCW 84.38.180.

Adopted under notice filed as WSR 21-23-054 on November 10, 2021.

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

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

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

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

**OTS-3439.1**

AMENDATORY SECTION (Amending WSR 20-04-016, filed 1/24/20, effective 2/24/20)

**WAC 458-18-010 Deferral of special assessments and/or property taxes—Definitions.** (1) **Introduction.** This rule provides definitions of the terms used to administer the deferral program in chapter 84.38 RCW and this section through WAC 458-18-100 for special assessments and/or property taxes on residential housing.

(2) **"Boarding house"** means a residence in which lodging and meals are provided. Each resident of a boarding house is charged a lump sum to cover the costs of lodging and meals with no separate accounting for the fair selling price of the meals.

(3) **"Claimant"** means a person who either elects under chapter 84.38 RCW or is required under RCW 84.64.050, to defer payment of special assessments and/or real property taxes accrued on their residence by filing a declaration to defer as allowed under chapter 84.38 RCW. Only one individual per household may file a declaration to defer.

(4) "**Cooperative housing**" means any existing structure, including surrounding land and improvements, which contains one or more dwelling units and is owned by:

(a) An association with resident shareholders who are granted renewable leasehold interests in dwelling units in the building. Unlike owners of a condominium, the resident shareholders who hold a renewable leasehold interest do not own their dwelling units; or

(b) An association organized under the Cooperative Association Act (chapter 23.86 RCW).

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

(6) "**Devisee**" has the same meaning as provided in RCW 21.35.005: Any person designated in a will to receive a disposition of real or personal property.

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

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

(9) "**Equity value**" means the amount by which the true and fair value of a residence exceeds the total amount of all liens, obligations, and encumbrances against the property, excluding deferral liens. As used in this context, the "true and fair value" of a residence is the value shown on the county tax rolls maintained by the assessor for the assessment year in which the deferral claim is made.

(10) "**Fire and casualty insurance**" means a policy with an insurer that is authorized by the state insurance commission to insure property in this state.

(11) "**Heir**" has the same meaning as provided in RCW 21.35.005: Any person, including the surviving spouse, who is entitled under the statutes of intestate succession to the property of a decedent.

(12) "**Income threshold**" means:

(a) For taxes levied for collection in calendar years prior to 2020, a combined disposable income equal to (~~forty five thousand dollars~~) \$45,000; and

(b) For taxes levied for collection in calendar year 2020 and thereafter, a combined disposable income equal to the greater of the income threshold for the previous year, or (~~seventy five~~) 75 percent of the county median household income, adjusted every five years beginning August 1, 2019, and by March 1st every fifth year thereafter, as provided in RCW 84.36.385.

(i) Beginning with the adjustment made by March 1, 2024, and every second adjustment thereafter, if the income threshold in a county is not adjusted based on percentage of county median income, then the income threshold must be adjusted based on the growth of the seasonally adjusted consumer price index for all urban consumers (CPI-U) for the prior (~~twelve-month~~) 12-month period as published by the United States Bureau of Labor Statistics.

(ii) In no case may the adjustment be greater than one percent and if the income threshold adjustment is negative, the income threshold for the prior year continues to apply. The adjusted threshold must be rounded to the nearest one dollar.

(13) "**Irrevocable trust**" means a trust that may not be revoked after its creation by the trustor.

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

(15) "**Lien**" means any interest in property given to secure payment of a debt or performance of an obligation, including a deed of trust. A lien includes the total amount of special assessments and/or property taxes deferred and the interest. It also may include any other outstanding balances owed to local governments for special assessments.

(16) "**Life estate**" means an estate that consists of total rights to use, occupy, and control real property but is limited to the lifetime of a designated party; this party is often called a "life tenant."

(17) "**Local government**" means any city, town, county, water-sewer district, public utility district, port district, irrigation district, flood control district, or any other municipal corporation, quasi municipal corporation, or other political subdivision authorized to levy special assessments.

(18) "**Perjury**" means the willful assertion as to a matter of fact, opinion, belief, or knowledge made by a claimant upon the declaration to defer that the claimant knows to be false.

(19) "**Real property taxes**" means ad valorem property taxes levied on a residence in this state. The term includes foreclosure costs, interest, and penalties accrued as of the date the declaration to defer is filed.

(20) "**Residence**" is defined as:

(a) A single-family dwelling unit whether the unit is separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands. Residence also includes any additional property up to a total of five acres that comprises the residential parcel if local land use regulations require this larger parcel size; or

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

(21) "**Revocable trust**" means an agreement that entitles the trustor to have the full right to use the real property and to revoke the trust and retake complete ownership of the property at any time during their lifetime. The trustee of a revocable trust holds only bare legal title to the real property. Full equitable title to the property remains with the trustor; the original property owner.

(22) "**Rooming house**" means a residence where persons may rent rooms.

(23) "**Special assessment**" means the charge or obligation imposed by a local government upon real property specially benefited by improvements.

[Statutory Authority: RCW 84.38.180. WSR 20-04-016, § 458-18-010, filed 1/24/20, effective 2/24/20; WSR 13-08-031, § 458-18-010, filed 3/27/13, effective 4/27/13. Statutory Authority: RCW 84.38.180, 84.38.020. WSR 08-16-080, § 458-18-010, filed 8/1/08, effective 9/1/08; WSR 99-21-044, § 458-18-010, filed 10/15/99, effective 11/15/99. Statutory Authority: RCW 84.38.180. WSR 92-15-057, § 458-18-010, filed 7/13/92, effective 8/13/92; WSR 88-13-042 (Order PT 88-9), § 458-18-010, filed 6/9/88; WSR 84-21-010 (Order PT 84-4), §

458-18-010, filed 10/5/84; WSR 81-05-020 (Order PT 81-8), §  
458-18-010, filed 2/11/81; Order PT 76-1, § 458-18-010, filed 4/7/76.]

## WSR 22-04-026

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:44 a.m., effective February 24, 2022]

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

Purpose: The department is amending WAC 458-20-134 to incorporate 2021 legislation, ESSB 5251, section 11. This section of the legislation provides a written definition of "biofuel" to replace an outdated statutory reference.

Citation of Rules Affected by this Order: Amending WAC 458-20-134 Commercial or industrial use.

Statutory Authority for Adoption: RCW 82.01.060 and 82.32.300.

Adopted under notice filed as WSR 21-23-055 on November 10, 2021.

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

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

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

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

## OTS-3426.1

AMENDATORY SECTION (Amending WSR 18-05-011, filed 2/8/18, effective 3/11/18)

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

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

(i) Any use as a consumer; and

(ii) The manufacturing of articles, substances, or commodities.

((~~u~~)) (RCW 82.04.130.)

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

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

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

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

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

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

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

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

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

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

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

(c) ~~((Effective July 1, 2009,))~~ Hog fuel used to produce electricity, steam, heat, or biofuel is exempt from use tax. RCW 82.12.956. For the purposes of this exemption, "hog fuel" means wood waste and other wood residuals including forest derived biomass, but not including firewood or wood pellets. "Biofuel" ~~((has the same meaning as provided in RCW 43.325.010))~~ means a liquid or gaseous fuel derived from organic matter intended for use as a transportation fuel including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

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

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

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

~~((+))~~ (i) The retail selling price of such new or improved product when first offered for sale; or

~~((+))~~ (ii) The value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

[Statutory Authority: RCW 82.32.300 and 82.01.060(2). WSR 18-05-011, § 458-20-134, filed 2/8/18, effective 3/11/18; WSR 10-10-031, § 458-20-134, filed 4/26/10, effective 5/27/10. Statutory Authority: RCW

82.32.300. WSR 86-20-027 (Order 86-17), § 458-20-134, filed 9/23/86;  
WSR 83-07-032 (Order ET 83-15), § 458-20-134, filed 3/15/83; Order ET  
70-3, § 458-20-134 (Rule 134), filed 5/29/70, effective 7/1/70.]

## WSR 22-04-027

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:47 a.m., effective February 24, 2022]

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

Purpose: The department is amending WAC 458-29A-600 to incorporate 2021 legislation, EHB [ESSB] 5251, section 17, and 2017 legislation, SSB 5977, section 1302, which is effective January 1, 2022.

Citation of Rules Affected by this Order: Amending WAC 458-29A-600 Leasehold excise tax—Collection and administration.

Statutory Authority for Adoption: RCW 82.29A.140.

Adopted under notice filed as WSR 21-23-056 on November 10, 2021.

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

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

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

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

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

## OTS-3427.1

AMENDATORY SECTION (Amending WSR 14-14-034, filed 6/24/14, effective 7/25/14)

**WAC 458-29A-600 Leasehold excise tax—Collection and administration.** (1) **Introduction.** Leasehold excise tax is levied by the state under RCW 82.29A.030 and by counties and/or cities under RCW 82.29A.040. The administrative procedures contained in chapters 82.02 and 82.32 RCW apply to the administration and collection of the leasehold excise tax.

(2) **Tax imposed.** The rates at which leasehold excise tax is levied are contained in RCW 82.29A.030 and 82.29A.040. The department publishes documents containing the applicable rates, credits, and formulas. These documents are updated as necessary and are available upon request.

(3) **Separate listing requirement.** The amount of leasehold excise tax due must be listed separately from the amount of contract rent on any statement or other document provided to the lessee by the lessor. If the leasehold excise tax is not stated separately from the contract rent, it is assumed that the leasehold excise tax is not included in the amount stated as due.

(4) **Credits allowed against leasehold excise tax.** Because the leasehold excise tax is intended only to equalize treatment between private property owners and lessees of public entities, the amount of leasehold excise tax should not exceed the amount of property tax that would be due if the leased property was privately owned. Therefore, in calculating the taxes imposed under RCW 82.29A.030 and 82.29A.040, RCW 82.29A.120 authorizes the following credits:

(a) ~~((Leasehold interests created after April 1, 1986, or situations where the department has established taxable rent. Where a leasehold interest other than a product lease was created after April 1, 1986, or where the department has established taxable rent in accordance with RCW 82.29A.020 (2) (b), and the amount of leasehold excise tax due is greater than the amount of property tax that would be due if the property was privately owned by the lessee, without regard to any property tax exemption under RCW 84.36.381, a credit equal to the difference between the leasehold excise tax and the comparable property tax will be allowed. This credit expires at midnight, July 27, 2013.~~

~~If the property is subleased, any allowable credit must be passed on to the sublessee.))~~ **Property tax exemption under RCW 84.36.381.** Lessees and sublessees of residential property who would qualify for either a partial or total exemption from property tax under RCW 84.36.381 if they owned the property in fee are eligible for a corresponding reduction in the amount of leasehold excise tax due. The leasehold excise tax for the qualifying lessees or sublessees is reduced by the same percentage as the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381.

(b) **Product leases.** A credit of ~~((thirty-three))~~ 33 percent of the total leasehold excise tax due is allowed for product leases.

(c) **Real property owned by a state university.** For a leasehold interest in real property owned by a state university, a credit is allowed equal to the amount of leasehold excise tax due under chapter 82.29A RCW that exceeds the amount of property tax that would be due if the property was privately owned by the taxpayer. The credit is available only if the tax parcel that is subject to the leasehold interest has a market value in excess of \$10,000,000. If the leasehold interest attaches to two or more parcels, the credit is available if at least one of the tax parcels has a market value in excess of \$10,000,000. In either case, the market value must be determined as of January 1st of the year prior to the year for which the credit is claimed. This credit may not be claimed for tax reporting periods beginning on or after January 1, 2032, and the credit may not be claimed or approved on or after January 1, 2032. For purposes of this subsection (4) (c), the following definitions apply:

(i) "Market value" means the true and fair value of the property as that term is used in RCW 84.40.030, based on the property's highest and best use and determined by any reasonable means approved by the department;

(ii) "Real property" has the same meaning as in RCW 84.04.090, and also includes all improvements upon the land the fee of which is still vested in the public owner; and

(iii) "State university" has the same meaning as provided in RCW 28B.10.016.

(5) **When payment is due.** The leasehold excise taxes are due on the same date that the contract rent is due to the lessor. If the contract rent is paid to someone other than the lessor, the leasehold tax is due at the time the payment is made to that other person or entity.

Any prepaid contract rent will be deemed to have been paid in the year due and not in the year in which it was actually paid if the prepayment is for more than one year's rent. If contract rent is prepaid, the leasehold tax payment may be prorated over the number of years for which the contract rent is prepaid. The prorated portion of the tax will be due in two installments per year, with no less than one-half due on or before May 31<sup>st</sup> and the second half due no later than November 30<sup>th</sup> of each year.

(6) **Collection and distribution of tax by the department.** The department collects and distributes the leasehold excise taxes authorized by RCW 82.29A.030 and 82.29A.040.

(a) **Taxes levied by the state.** All money received by the department from leasehold taxes levied under RCW 82.29A.030 is transmitted to the state treasurer for deposit in the general fund.

(b) **Taxes levied by counties and cities.** Prior to the effective date of the ordinance imposing a leasehold excise tax, the county or city imposing the tax must contract with the department for administration and collection services. The department may deduct a percentage, not to exceed two percent, of the taxes collected as reimbursement for administration and collection expenses. RCW 82.29A.080. The department deposits the balance of the taxes collected in the local leasehold excise tax account with the state treasury, and the state treasurer (~~bimonthly~~) distributes those moneys to the counties and cities on a monthly basis.

County treasurers must proportionately distribute the moneys they receive in the same manner they distribute moneys collected from property tax levies in accordance with RCW 84.56.230, provided that no moneys are to be distributed to the state or any city, and the pro rata calculation for proportionate distribution cannot include any levy rates by the state or any city.

(7) **Leasehold interests in federally owned land or federal trust land.** Lessees with a leasehold interest in federally owned lands or federal trust lands must report and remit the leasehold tax due directly to the department on an annual reporting basis.

[Statutory Authority: RCW 82.01.060 and 82.29A.140. WSR 14-14-034, § 458-29A-600, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 82.29A.140. WSR 99-20-053, § 458-29A-600, filed 10/1/99, effective 11/1/99.]

## WSR 22-04-028

## PERMANENT RULES

## DEPARTMENT OF REVENUE

[Filed January 24, 2022, 8:53 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because, per statute, these rules provide rates used for refunds and property valuations during 2022.

Purpose: The department is amending:

- WAC 458-18-220 to provide the rate of interest for treasury bill auction year 2021, which is used when refunding property taxes paid in 2022, 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 2022 assessment year, as required by RCW 84.34.065.
- WAC 458-30-590 to provide the rate of inflation published in 2021, which is used in calculating interest for deferred special benefit assessments of land removed or withdrawn from classification during 2022, as required by RCW 84.34.310.

Citation of Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

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

Adopted under notice filed as WSR 21-23-011 on November 4, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: January 24, 2022.

Atif Aziz  
Rules Coordinator

OTS-3380.1

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

**WAC 458-18-220 Refunds—Rate of interest.** (1) **Introduction.** Interest applies to refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. Interest also applies to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030.

(2) **Calculation of interest rate.** The interest rate is calculated 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.

(3) **Interest rates.** The following rates are 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%

Year tax paid	Auction Year	Rate
2017	2016	0.340%
2018	2017	1.130%
2019	2018	2.085%
2020	2019	2.040%
2021	2020	0.165%
<u>2022</u>	<u>2021</u>	<u>0.050%</u>

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-18-220, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-18-220, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-18-220, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-18-220, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-18-220, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-18-220, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-18-220, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-18-220, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-18-220, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-18-220, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.69.100. WSR 11-02-017, § 458-18-220, filed 12/29/10, effective 1/1/11; WSR 10-07-038, § 458-18-220, filed 3/10/10, effective 4/10/10; WSR 08-24-094, § 458-18-220, filed 12/2/08, effective 1/2/09; WSR 07-24-037, § 458-18-220, filed 11/30/07, effective 12/31/07; WSR 06-21-059, § 458-18-220, filed 10/16/06, effective 11/16/06; WSR 05-22-096, § 458-18-220, filed 11/1/05, effective 12/2/05; WSR 04-24-101, § 458-18-220, filed 12/1/04, effective 1/1/05; WSR 03-24-014, § 458-18-220, filed 11/20/03, effective 12/21/03; WSR 02-23-081, § 458-18-220, filed 11/19/02, effective 12/20/02; WSR 02-03-039, § 458-18-220, filed 1/8/02, effective 2/8/02; WSR 00-24-106, § 458-18-220, filed 12/6/00, effective 12/31/00; WSR 99-24-033, § 458-18-220, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.69.100. WSR 99-01-066, § 458-18-220, filed 12/14/98, effective 1/1/99; WSR 98-01-177, § 458-18-220, filed 12/23/97, effective 1/1/98; WSR 97-02-068, § 458-18-220, filed 12/31/96, effective 1/1/97; WSR 96-01-093, § 458-18-220, filed 12/19/95, effective 1/1/96; WSR 95-06-044, § 458-18-220, filed 2/24/95, effective 3/27/95; WSR 94-05-063, § 458-18-220, filed 2/11/94, effective 3/14/94. Statutory Authority: RCW 84.08.010 and 84.69.100. WSR 93-06-096, § 458-18-220, filed 3/3/93, effective 4/3/93; WSR 92-17-027, § 458-18-220, filed 8/11/92, effective 9/11/92; WSR 91-15-024, § 458-18-220, filed 7/11/91, effective 8/11/91. Statutory Authority: RCW 84.69.100 and 84.08.010(2). WSR 89-10-067 (Order PT 89-6), § 458-18-220, filed 5/3/89; WSR 88-07-003 (Order PT 88-3), § 458-18-220, filed 3/3/88. Statutory Authority: RCW 84.69.100 as amended by 1987 c 319 and 84.08.010(2). WSR 87-19-141 (Order PT 87-7), § 458-18-220, filed 9/23/87.]

**OTS-3381.1**

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year (~~(2021)~~) 2022, 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 (~~(5.70)~~) 5.62 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	<del>((1.24))</del> <u>1.25</u>	Lewis	<del>((1.09))</del> <u>0.97</u>
Asotin	<del>((1.07))</del> <u>1.15</u>	Lincoln	1.15
Benton	<del>((1.15))</del> <u>1.09</u>	Mason	<del>((1.15))</del> <u>1.04</u>
Chelan	0.99	Okanogan	<del>((1.15))</del> <u>1.17</u>
Clallam	<del>((1.01))</del> <u>1.03</u>	Pacific	<del>((1.20))</del> <u>1.10</u>
Clark	1.08	Pend Oreille	<del>((1.01))</del> <u>0.98</u>
Columbia	<del>((1.19))</del> <u>1.16</u>	Pierce	<del>((1.27))</del> <u>1.22</u>
Cowlitz	<del>((1.05))</del> <u>1.07</u>	San Juan	<del>((0.73))</del> <u>0.72</u>
Douglas	<del>((1.09))</del> <u>1.11</u>	Skagit	<del>((1.08))</del> <u>1.06</u>
Ferry	<del>((1.02))</del> <u>1.06</u>	Skamania	<del>((1.07))</del> <u>1.04</u>
Franklin	0.99	Snohomish	<del>((1.03))</del> <u>0.97</u>
Garfield	<del>((1.02))</del> <u>1.25</u>	Spokane	<del>((1.21))</del> <u>1.17</u>
Grant	<del>((1.15))</del> <u>1.10</u>	Stevens	<del>((0.95))</del> <u>0.91</u>
Grays Harbor	<del>((1.22))</del> <u>1.19</u>	Thurston	<del>((1.26))</del> <u>1.24</u>
Island	0.90	Wahkiakum	<del>((0.82))</del> <u>0.79</u>
Jefferson	<del>((1.00))</del> <u>0.99</u>	Walla Walla	1.24
King	<del>((0.99))</del> <u>1.01</u>	Whatcom	<del>((1.05))</del> <u>1.01</u>
Kitsap	<del>((1.03))</del> <u>1.02</u>	Whitman	<del>((1.41))</del> <u>1.42</u>
Kittitas	<del>((0.90))</del> <u>0.91</u>	Yakima	<del>((1.20))</del> <u>1.14</u>
Klickitat	<del>((1.01))</del> <u>0.97</u>		

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-30-262, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-262, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-30-262, filed 12/27/18, effective 1/1/19; WSR

18-01-147, § 458-30-262, filed 12/20/17, effective 1/1/18; WSR  
 17-01-162, § 458-30-262, filed 12/21/16, effective 1/1/17; WSR  
 16-01-035, § 458-30-262, filed 12/9/15, effective 1/1/16; WSR  
 15-01-166, § 458-30-262, filed 12/23/14, effective 1/1/15; WSR  
 14-01-059, § 458-30-262, filed 12/13/13, effective 1/1/14; WSR  
 13-02-053, § 458-30-262, filed 12/26/12, effective 1/1/13; WSR  
 12-01-040, § 458-30-262, filed 12/13/11, effective 1/1/12. Statutory  
 Authority: RCW 84.34.065 and 84.34.141. WSR 11-02-015, § 458-30-262,  
 filed 12/29/10, effective 1/1/11. Statutory Authority: RCW 84.34.055  
 and 84.34.141. WSR 10-09-049, § 458-30-262, filed 4/15/10, effective  
 5/16/10. Statutory Authority: RCW 84.34.065 and 84.34.141. WSR  
 10-02-025, § 458-30-262, filed 12/29/09, effective 1/1/10; WSR  
 08-24-093, § 458-30-262, filed 12/2/08, effective 1/2/09; WSR  
 08-04-051, § 458-30-262, filed 1/31/08, effective 3/2/08; WSR  
 07-01-011, § 458-30-262, filed 12/7/06, effective 1/1/07; WSR  
 05-24-028, § 458-30-262, filed 11/30/05, effective 1/1/06; WSR  
 05-01-051, § 458-30-262, filed 12/7/04, effective 1/1/05; WSR  
 03-24-013, § 458-30-262, filed 11/20/03, effective 12/21/03; WSR  
 02-23-080, § 458-30-262, filed 11/19/02, effective 12/20/02; WSR  
 02-03-040, § 458-30-262, filed 1/8/02, effective 2/8/02. Statutory Au-  
 thority: RCW 84.34.065, 84.34.360. WSR 00-24-105, § 458-30-262, filed  
 12/6/00, effective 1/1/01; WSR 99-24-034, § 458-30-262, filed  
 11/23/99, effective 1/1/00. Statutory Authority: RCW 84.34.065,  
 84.34.360 and 84.08.010. WSR 99-01-067, § 458-30-262, filed 12/14/98,  
 effective 1/1/99. Statutory Authority: RCW 84.34.065, 84.34.141 and  
 84.08.010. WSR 98-01-178, § 458-30-262, filed 12/23/97, effective  
 1/1/98. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and  
 84.34.070. WSR 97-02-066, § 458-30-262, filed 12/31/96, effective  
 1/1/97. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and  
 84.34.070. WSR 96-01-095, § 458-30-262, filed 12/19/95, effective  
 1/1/96. Statutory Authority: RCW 84.34.065, 84.34.141, 84.08.010 and  
 84.08.070. WSR 95-09-041, § 458-30-262, filed 4/14/95, effective  
 5/15/95. Statutory Authority: RCW 84.08.010, 84.08.070 and 84.34.065.  
 WSR 94-05-062, § 458-30-262, filed 2/11/94, effective 3/14/94. Statu-  
 tory Authority: RCW 84.08.010 and 84.08.070. WSR 93-07-067, §  
 458-30-262, filed 3/17/93, effective 4/17/93; WSR 92-03-068, §  
 458-30-262, filed 1/14/92, effective 2/14/92; WSR 91-04-001, §  
 458-30-262, filed 1/24/91, effective 2/24/91; WSR 90-24-087, §  
 458-30-262, filed 12/5/90, effective 1/5/91. Statutory Authority: RCW  
 84.08.010(2) and 84.34.141. WSR 90-02-080 (Order PT 90-1), §  
 458-30-262, filed 1/2/90, effective 2/2/90.]

**OTS-3382.1**

AMENDATORY SECTION (Amending WSR 21-01-210, filed 12/23/20, effective 1/1/21)

**WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.** (1) **Introduction.** This rule provides the rates of inflation discussed in RCW 84.34.330 and WAC 458-30-550 Exemption—Removal or withdrawal. 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 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 2010 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 2017, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 2010 through 2017. 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

YEAR	PERCENT	YEAR	PERCENT
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
2016	0.953	2017	1.553
2018	2.169	2019	1.396
2020	0.602	<u>2021</u>	<u>3.860</u>

[Statutory Authority: RCW 84.34.065, 84.34.141, 84.34.360, and 84.69.100. WSR 21-01-210, § 458-30-590, filed 12/23/20, effective 1/1/21; WSR 20-02-056, § 458-30-590, filed 12/24/19, effective 1/1/20; WSR 19-02-058, § 458-30-590, filed 12/27/18, effective 1/1/19; WSR 18-01-147, § 458-30-590, filed 12/20/17, effective 1/1/18; WSR 17-01-162, § 458-30-590, filed 12/21/16, effective 1/1/17; WSR 16-01-035, § 458-30-590, filed 12/9/15, effective 1/1/16; WSR 15-01-166, § 458-30-590, filed 12/23/14, effective 1/1/15; WSR 14-01-059, § 458-30-590, filed 12/13/13, effective 1/1/14; WSR 13-02-053, § 458-30-590, filed 12/26/12, effective 1/1/13; WSR 12-01-040, § 458-30-590, filed 12/13/11, effective 1/1/12. Statutory Authority: RCW 84.34.360. WSR 11-02-016, § 458-30-590, filed 12/29/10, effective 1/1/11; WSR 10-02-027, § 458-30-590, filed 12/29/09, effective 1/1/10; WSR 08-24-115, § 458-30-590, filed 12/3/08, effective 1/3/09; WSR 08-04-050, § 458-30-590, filed 1/31/08, effective 3/2/08. Statutory Authority: RCW 84.34.360 and 84.34.310. WSR 07-01-012, § 458-30-590, filed 12/7/06, effective 1/1/07; WSR 05-24-119, § 458-30-590, filed 12/7/05, effective 1/1/06; WSR 05-01-052, § 458-30-590, filed 12/7/04, effective 1/1/05; WSR 03-24-076, § 458-30-590, filed 12/2/03, effective 1/2/04; WSR 02-24-058, § 458-30-590, filed 12/3/02, effective 1/3/03; WSR 02-03-041, § 458-30-590, filed 1/8/02, effective 2/8/02; WSR 00-24-107, § 458-30-590, filed 12/6/00, effective 1/1/01; WSR 99-24-035, § 458-30-590, filed 11/23/99, effective 12/24/99; WSR 99-01-068, § 458-30-590, filed 12/14/98, effective 1/1/99; WSR 98-01-179, § 458-30-590, filed 12/23/97, effective 1/1/98; WSR 97-02-067, § 458-30-590, filed 12/31/96, effective 1/1/97; WSR 96-01-094, § 458-30-590, filed 12/19/95, effective 1/1/96; WSR 95-06-043, § 458-30-590, filed 2/24/95, effective 3/27/95. Statutory Authority: RCW 84.34.360. WSR 94-11-098, § 458-30-590, filed 5/17/94, effective 6/17/94; WSR 92-22-061, § 458-30-590, filed 10/29/92, effective 11/29/92. Statutory Authority: RCW 84.08.010 and 84.08.070. WSR 90-24-087, § 458-30-590, filed 12/5/90, effective 1/5/91. Statutory Authority: Chapter 84.34 RCW and RCW 84.34.360. WSR 89-05-010 (Order PT 89-3), § 458-30-590, filed 2/8/89. Statutory Authority: RCW 84.34.360. WSR 88-07-004 (Order PT 88-4), § 458-30-590, filed 3/3/88; WSR 87-07-009 (Order PT 87-3), § 458-30-590, filed 3/10/87.]

## WSR 22-04-031

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed January 24, 2022, 11:36 a.m., effective February 24, 2022]

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

Purpose: WAC 246-322-025 Private psychiatric hospitals—Responsibilities and rights—Licensee and department. The department of health (department) is adopting a severity matrix for civil fines related to private psychiatric hospital enforcement in order to implement SHB 2426 (chapter 115, Laws of 2020). SHB 2426 allows the department, under RCW 43.70.095, to assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of one million dollars, on a licensed hospital, when the department determines the psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the psychiatric hospital has failed to correct noncompliance with a statute or rule by a date established or agreed to by the department. The rule establishes when and how fines will be assessed in relation to the severity and scope of the violation of noncompliance.

Citation of Rules Affected by this Order: Amending WAC 246-322-025.

Statutory Authority for Adoption: RCW 71.12.670, 71.12.710.

Other Authority: SHB 2426 (chapter 115, Laws of 2020); RCW 43.70.095.

Adopted under notice filed as WSR 21-21-106 on October 19, 2021.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made to the proposed rule upon adoption, as a result of suggestions received during the public comment period as well as additional internal review.

In subsection (6)(b), Table 1, the maximum fine amount for high-severity, limited violations was changed from \$10,000 to \$8,000.

In subsection (6)(b), Table 1, the maximum fine amount for high-severity, pattern violations was changed from \$10,000 to \$9,000.

Added subsection (6)(f), which states: "When determining the scope of the violation, the department will also consider the duration of time that has passed between violations that relate to the same or similar circumstances.

In subsection (6)(a)(i), removed the words "or similar" prior to "statute or rule."

In subsections (6)(e)(i), (6)(e)(ii) and (6)(e)(iii), added the coordinating conjunction "or" between the words "visitors" and "staff" in the first sentence.

A final cost-benefit analysis is available by contacting Dan Overton, P.O. Box 47843, Olympia, WA 98504, phone 360-236-2953, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

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

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

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

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

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

Date Adopted: January 20, 2022.

Kristin Peterson, JD  
Deputy Secretary  
Policy and Planning  
for Umair A. Shah, MD, MPH  
Secretary

#### OTS-3339.4

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

**WAC 246-322-025 Responsibilities and rights—Licensee and department.** (1) The licensee shall:

(a) Comply with the provisions of chapter 71.12 RCW and this chapter;

(b) Post the private psychiatric hospital license in a conspicuous place on the premises;

(c) Maintain the bed capacity at or below the licensed bed capacity;

(d) Cooperate with the department during on-site surveys and investigations;

(e) Respond to a statement of deficiencies by submitting to the department, according to the dates specified on the statement of deficiencies form:

(i) A written plan of correction for each deficiency stated in the report and date to be completed; and

(ii) A progress report stating the dates deficiencies were corrected.

(f) Obtain department approval before changing the bed capacity;

(g) Obtain department approval before starting any construction or making changes in department-approved plans or specifications;

(h) Notify the department immediately upon a change of administrator or governing body;

(i) When assuming ownership of an existing hospital, maintain past and current clinical records, registers, indexes, and analyses of hospital services, according to state law and regulations; and

(j) Obtain department approval of a plan for storing and retrieving patient records and reports prior to ceasing operation as a hospital.

(2) An applicant or licensee may contest a disciplinary decision or action of the department according to the provisions of RCW 43.70.115, chapter 34.05 RCW and chapter 246-10 WAC.

(3) The department shall:

(a) Issue or renew a license when the applicant or licensee meets the requirements in chapter 71.12 RCW and this chapter;

(b) Conduct an on-site inspection of the hospital prior to granting an initial license;

(c) Conduct on-site inspections at any time to determine compliance with chapter 71.12 RCW and this chapter;

(d) Give the administrator a written statement of deficiencies of chapter 71.12 RCW and this chapter observed during on-site surveys and investigations; and

(e) Comply with RCW 43.70.115, chapter 34.05 RCW and chapter 246-10 WAC when denying, suspending, modifying, or revoking a hospital license.

(4) The department may deny, suspend, or revoke a private psychiatric hospital license if the department finds the applicant, licensee, its agents, officers, directors, or any person with any interest therein:

(a) Is unqualified or unable to operate or direct operation of the hospital according to chapter 71.12 RCW and this chapter;

(b) Makes a misrepresentation of, false statement of, or fails to disclose a material fact, to the department:

(i) In an application for licensure or renewal of licensure;

(ii) In any matter under department investigation; or

(iii) During an on-site survey or inspection;

(c) Obtains or attempts to obtain a license by fraudulent means or misrepresentation;

(d) Fails or refuses to comply with the requirements of chapter 71.12 RCW or this chapter;

(e) Compromises the health or safety of a patient;

(f) Has a record of a criminal or civil conviction for:

(i) Operating a health care or mental health care facility without a license;

(ii) Any crime involving physical harm to another individual; or

(iii) Any crime or disciplinary board final decision specified in RCW 43.43.830;

(g) Had a license to operate a health care or mental health care facility denied, suspended or revoked;

(h) Refuses to allow the department access to facilities or records, or fails to promptly produce for inspection any book, record, document or item requested by the department, or interferes with an on-site survey or investigation;

(i) Commits, permits, aids or abets the commission of an illegal act on the hospital premises;

(j) Demonstrates cruelty, abuse, negligence, assault or indifference to the welfare and well-being of a patient;

(k) Fails to take immediate appropriate corrective action in any instance of cruelty, assault, abuse, neglect, or indifference to the welfare of a patient;

(l) Misappropriates the property of a patient;

(m) Fails to exercise fiscal accountability and responsibility toward individual patients, the department, or the business community; or

(n) Retaliates against a staff person, patient or other individual for reporting suspected abuse or other alleged improprieties.

(5) The department may summarily suspend a license pending proceeding for revocation or other action if the department determines a deficiency is an imminent threat to a patient's health, safety or welfare.

(6) The department may assess civil fines on a psychiatric hospital according to RCW 71.12.710.

(a) The department may assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of \$1,000,000, on a psychiatric hospital when:

(i) The psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule; or

(ii) The psychiatric hospital has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule; or

(iii) The psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(b) The department will assess a civil fine in accordance with Table 1 of this section:

**Table 1**

<b>Fine Amounts in Relation to the Severity of the Violation</b>			
<b>Scope</b>	<b>Impact of Potential or Actual Harm</b>		
	<b>Low</b>	<b>Moderate</b>	<b>High</b>
<b>Limited</b>	<b>Up to \$1,000</b>	<b>\$1,000 - \$4,000</b>	<b>\$2,000 - \$8,000</b>
<b>Pattern</b>	<b>Up to \$2,000</b>	<b>\$2,000 - \$5,500</b>	<b>\$3,500 - \$9,000</b>
<b>Widespread</b>	<b>Up to \$3,000</b>	<b>\$3,000 - \$7,000</b>	<b>\$6,500 - \$10,000</b>

(c) The "severity of the violation" will be considered when determining fines. Levels of severity are categorized as low, moderate, or high, and defined as:

(i) "Low" means harm could happen but would be rare. The violation undermines safety or quality or contributes to an unsafe environment but is very unlikely to directly contribute to harm;

(ii) "Moderate" means harm could happen occasionally. The violation could cause harm directly, but is more likely to cause harm as a continuing factor in the presence of special circumstances or additional failures. If the deficient practice continues, it would be possible that harm could occur but only in certain situations or patients;

(iii) "High" means harm could happen at any time or did happen. The violation could directly lead to harm without the need for other significant circumstances or failures. If the deficient practice continues, it would be likely that harm could happen at any time to any patient.

(d) Factors the department will consider when determining the severity of the violation include, but are not limited to:

(i) Whether harm to the patient has occurred, or could occur including, but not limited to, a violation of patient's rights;

(ii) The impact of the actual or potential harm on the patient;

(iii) The degree to which the hospital failed to meet the patient's highest practicable physical, mental, and psychosocial well-being;

(iv) Whether a fine at a lower severity has been levied and the condition or deficiency related to the violation has not been adequately resolved; and

(v) Whether the hospital has been offered, or requested, and received and implemented technical assistance from the department.

(e) The scope of the violation is the frequency, incidence or extent of the occurrence of the violation(s). The levels of scope are defined as follows:

(i) "Limited" means a unique occurrence of the deficient practice that is not representative of routine or regular practice and has the potential to impact only one or a very limited number of patients, visitors, or staff. It is an outlier. The scope of the violation is limited when one or a very limited number of patients are affected or one or a very limited number of staff are involved, or the deficient practice occurs in a very limited number of locations.

(ii) "Pattern" means multiple occurrences of the deficient practice, or a single occurrence that has the potential to impact more than a limited number of patients, visitors, or staff. It is a process variation. The scope of the violation becomes a pattern when more than a very limited number of patients are affected, or more than a very limited number of staff are involved, or the situation has occurred in several locations, or the same patient(s) have been affected by repeated occurrences of the same deficient practice.

(iii) "Widespread" means the deficient practice is pervasive in the facility or represents a systemic failure or has the potential to impact most or all patients, visitors, or staff. It is a process failure. Widespread scope refers to the entire organization, not just a subset of patients or one unit.

(f) When determining the scope of the violation, the department will also consider the duration of time that has passed between violations that relate to the same or similar circumstances.

(g) A hospital may appeal the department's action of assessing civil fines under RCW 43.70.095.

[Statutory Authority: Chapter 71.12 RCW and RCW 43.60.040. WSR 95-22-012, § 246-322-025, filed 10/20/95, effective 11/20/95.]

## WSR 22-04-040

## PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed January 26, 2022, 9:23 a.m., effective February 26, 2022]

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

Purpose: The adopted rule implements section 7, chapter 112, Laws of 2021 (SHB 1323), as codified under RCW 50B.04.095. The bill, among other things, provides a pathway for federally recognized tribes to elect WA Cares program coverage. The bill also requires the employment security department to adopt rules to implement the section. Consistent with the elective coverage administrative rules for tribes under the paid family and medical leave program, the adopted rule states that any employees are considered employees as that term is defined under the law. The adopted rule provides guidance to federally recognized tribes that may be interested in electing program coverage.

Citation of Rules Affected by this Order: New WAC 192-910-025 Election of coverage for federally recognized tribes.

Statutory Authority for Adoption: RCW 50B.04.020, 50B.04.080, 50B.04.095.

Adopted under notice filed as WSR 21-24-098 on December 1, 2021.

A final cost-benefit analysis is available by contacting April Amundson, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-485-2816, Washington relay 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/ltss>.

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

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

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

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

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

Date Adopted: January 26, 2022.

April Amundson  
Policy and Rules Manager  
Leave and Care Division

**OTS-3496.1**

NEW SECTION

**WAC 192-910-025 Election of coverage for federally recognized tribes.** (1) A federally recognized tribe that elects coverage under RCW 50B.04.095 is an employer as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

(2) An employee of a federally recognized tribe that elects coverage under RCW 50B.04.095 is an employee as defined in RCW 50A.05.010 and is subject to all rights and responsibilities under Title 50B RCW.

[]

**WSR 22-04-043**  
**PERMANENT RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**

[Filed January 26, 2022, 10:16 a.m., effective February 26, 2022]

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

Purpose: Legal references were updated and grammatical changes were made. Specifically, the RCW references throughout the regulations were changed from chapter 70.94 RCW to chapter 70A.15 RCW. Several references to WAC were deleted or updated. The term "Control Officer" was replaced with "Executive Director" throughout the regulations. The term "shall" is mostly replaced throughout the regulations. Grammar was updated throughout the regulations. Typographical errors were corrected throughout the regulations. Definitions were deleted that were not used in the regulations. A few of the definitions were modified to reference existing definitions in RCW and/or WAC.

Citation of Rules Affected by this Order: New ORCAA Regulations Rules 1.12 and 6.4; repealing ORCAA Regulations Rule 4.5; and amending ORCAA Regulations - Regulation 1 General Provisions - Rules 1.1-1.2, 1.4-1.11; Regulation 2 Enforcement Procedures and Penalties; Regulation 3 Fees; Regulation 4 Registration; Regulation 5 Operating Permit Program; Regulation 6 Permits Required - Rules 6.1-6.1.12, 6.2, 6.2.2-6.2.3, 6.2.5-6.2.8, 6.3-6.3.11; Regulation 7 Prohibitions; Regulation 8 Performance Standards - Rules 8.1.1-8.1.5, 8.1.7-8.1.8, 8.2-8.7, 8.9-8.11, 8.12.1-8, 8.12.2, 8.12.4-8.12.6, 8.13-8.15, and 8.17.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 21-21-112 on October 20, 2021.

Changes Other than Editing from Proposed to Adopted Version: Changes were made to Rule 8.4. The terms cremation and crematory were deleted in the final version. Several typographical errors were corrected.

Date Adopted: January 12, 2022.

Francea L. McNair  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 22-06 issue of the Register.

**WSR 22-04-049**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Filed January 27, 2022, 8:50 a.m., effective February 27, 2022]

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

Purpose: Amending current land boundary survey standards, updating the definition and use of error analysis and relative accuracy as they relate to land boundary surveys' positioning. Removing the graphic depiction requirement of auditor indexing information for records of survey.

Citation of Rules Affected by this Order: Amending WAC 332-130-020, 332-130-050, 332-130-060, and 332-130-080.

Statutory Authority for Adoption: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160.

Adopted under notice filed as WSR 21-24-093 on November 30, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: January 25, 2022.

Angus W. Brodie  
Deputy Supervisor State Uplands

### OTS-3079.3

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

**WAC 332-130-020 Definitions.** The following definitions shall apply to this chapter:

(1) **Local geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, also known as the National Spatial Reference System (NSRS), but not submitted to the National Geodetic Survey for inclusion in the NSRS.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the vertical or horizontal boundary of any easement, right of way, lot, tract, or parcel of real

property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **Redundant measurements:** Independent observations of a quantity that are collected under different conditions. Horizontal angles measured to a point from multiple backsights, observing reciprocal zenith angles and backsight distances, "closing the horizon," and GNSS positions for a point that are computed using different satellite constellations are examples of redundant measurements.

(8) **Parcel:** A part or portion of real property including but not limited to GLO and BLM segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington plane coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

(11) **Intelligent interpretation:** A land boundary survey capable of intelligent interpretation will provide, either on the face of the document or by reference to other pertinent surveys of record, information that is sufficient in kind and quality to explain the rationale for the boundary locations shown thereon and to allow for the accurate and unambiguous retracement or re-creation thereof without requiring oral testimony for clarification. Includes, but is not limited to, information required in RCW 58.09.060(1) and WAC 332-130-050.

(12) **Relative accuracy:** Relative accuracy is the theoretical uncertainty in the horizontal position of any subordinate point or corner with respect to other controlling points or corners, whether set, found, reestablished, or established. Relative accuracy is not related to uncertainties due to differences between measured values and record values (~~(or uncertainties in the geodetic position)~~).

(13) **Relative precision:** An expression of linear misclosure, e.g., 1 part in 5000, in a closed traverse. Relative precision is computed after azimuths in a traverse have been adjusted. Relative precision is not a reliable predictor of relative accuracy.

(14) **Controlling point or corner:** Those points, whose horizontal positions are used to compute, establish or reestablish the horizontal positions of other subordinate points or corners. Subordinate points or corners are therefore dependent upon the positions of controlling points or corners.

(15) **GNSS:** Global navigation satellite system.

(16) **Signature:** A handwritten identification, or a scanned image of a handwritten identification, that represents the act of signing the person's name on a document to attest to its validity. This must be made with black ink on the document being certified; applied to the document by the identified person; and under the exclusive control of the person.

[Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 20-23-021, § 332-130-020, filed 11/6/20, effective 12/7/20. Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-020, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 09-03-084, §

332-130-020, filed 1/20/09, effective 7/1/09. Statutory Authority: Chapter 58.24 RCW. WSR 05-13-104, § 332-130-020, filed 6/17/05, effective 7/18/05. Statutory Authority: RCW 58.09.050 and 58.24.040(1). WSR 92-03-007 (Order 597), § 332-130-020, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). WSR 91-19-013 (Order 581), § 332-130-020, filed 9/9/91, effective 10/10/91; WSR 89-11-028 (Order 561), § 332-130-020, filed 5/11/89; Order 275, § 332-130-020, filed 5/2/77.]

AMENDATORY SECTION (Amending WSR 20-23-021, filed 11/6/20, effective 12/7/20)

**WAC 332-130-050 Survey map requirements.** The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

(a) They shall display a county recording official's information block which shall be located along the bottom or right edge of the document unless there is a local requirement specifying this information in a different format. The county recording official's information block shall contain:

(i) The title block, which shall be on all sheets of maps, plats or plans, and shall identify the business name of the firm and/or land surveyor that performed the survey. For documents not requiring ((a)) the surveyor's certificate ((and seal)) required by RCW 58.09.080, the title block shall show the name and business address of the preparer and the date prepared. Every sheet of multiple sheets shall have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which shall be on the first sheet of multiple sheets; however, the county recording official shall enter the appropriate volume and page and/or the auditor's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which shall be on the first sheet of multiple sheets and shall show the name, license number, signed seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets shall have the signed seal of the land surveyor and the date signed;

(iv) The following indexing information on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation (~~(—A graphic representation of the section divided into quarter-quarters~~

~~must also be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked);~~

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivision plat or short plat with the related recording data;

(b) They shall contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, shall be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on..."). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements.

(c) They shall show the scale for all portions of the map, plat, or plan provided that detail not drawn to scale shall be so identified. A graphic scale for the main body of the drawing, shown in feet, shall be included. The scale of the main body of the drawing and any enlargement detail shall be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document shall, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming;

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than 0.008 inches (equivalent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and certificates.

(e) They shall not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they shall:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed or a reference to an instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing shall be made with permanent black ink.

(3) The following criteria shall be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps, plats, or plans:

(a) Such maps, plats, or plans filed or recorded shall comply with the applicable local requirements and/or the recording statute under which the original map, plat, or plan was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map, plat, or plan shall only be made by filing or recording a new map, plat, or plan;

(c) All such maps, plats, or plans filed or recorded shall contain the following information:

(i) A title or heading identifying the map, plat, or plan as an alteration, amendment, change, or correction to a previously filed or recorded map, plat, or plan along with, when applicable, a cross-reference to the volume and page and auditor's file number of the altered map, plat, or plan;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original map, plat, or plan. Each item shall explicitly state what the change is and where the change is located on the original;

(d) The county recording official shall file, index, and cross-reference all such maps, plats, or plans received in a manner sufficient to provide adequate notice of the existence of the new map, plat, or plan to anyone researching the county records for survey information;

(e) The county recording official shall send to the department of natural resources, as per RCW 58.09.050(3), a legible copy of any map, plat, or plan filed or recorded which alters, amends, changes, or corrects survey information on any map, plat, or plan that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps, plats and plans filed with the county shall be an original that is legibly drawn in black ink and is suitable for producing legible prints through scanning, microfilming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) Any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5);

(b) An electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the

other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

**CHECKLIST FOR SURVEY MAPS BEING RECORDED**  
(Adopted in WAC 332-130)

The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.

**ACCEPTABLE MEDIA:**

- Acceptable media are:
  - [ ] Any standard material compatible with county processes; or, an electronic version of the original.
  - [ ] All signatures must be made with black ink.
  - [ ] The media submitted for filing must not have any material on it that is affixed by adhesive.

**LEGIBILITY:**

- [ ] The documents submitted, including paper copies, must have a uniform contrast throughout the document.
- [ ] The documents submitted must be legible and reproducible by the auditor's recording system regardless of media used for recording.
- [ ] No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).
- [ ] Signatures, date, and seals must be legible on the prints or the party placing the seal must be otherwise identified.
- [ ] Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).

**INDEXING:**

- [ ] The recording officer's information block must be on the bottom or right edge of the map.
  - [ ] A title block (shows the name of the preparer and is on each sheet of multiple sheets).
  - [ ] An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).
  - [ ] A surveyor's certificate (on the first sheet of multiple sheets; seal, date, and signature on multiple sheets).
- The map filed must provide the following indexing data:
  - [ ] S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies (~~and a graphic representation of the section divided into quarter-quarters in which the surveyed parcel lies are clearly marked~~).

**MISCELLANEOUS:**

- If the function of the document submitted is to change a previously filed record, it must also have:
  - [ ] A title identifying it as a correction, amendment, alteration or change to a previously filed record.
  - [ ] A note itemizing the changes.
- For records of survey:
  - [ ] The sheet size must be 18" x 24".
  - [ ] The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.
  - [ ] In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the auditor, may be allowed.

[Statutory Authority: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160. WSR 20-23-021, § 332-130-050, filed 11/6/20, effective 12/7/20. Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-050, filed 12/13/18, effective 1/13/19. Statutory Authority: RCW 58.24.040(1) and 58.09.110. WSR 00-17-063 (Order 704), § 332-130-050, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 58.24.040(1). WSR 89-11-028 (Order 561), § 332-130-050, filed 5/11/89; Order 275, § 332-130-050, filed 5/2/77.]

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 19-01-045, filed 12/13/18, effective 1/13/19)

**WAC 332-130-060 Local geodetic control survey standards.** The following standards shall apply to local geodetic control surveys:  
 The datum for the horizontal control network in Washington shall be the Washington plane coordinate system as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce as established in accordance with chapter 58.20 RCW. ~~((The datum tag and coordinate epoch date shall be reported on all documents prepared, which show local geodetic control.))~~ All final documents, as defined in WAC 196-23-020(1), listing Washington plane coordinate system information must comply with RCW 58.20.180 requirements for recording.

[Statutory Authority: RCW 58.24.040(1). WSR 19-01-045, § 332-130-060, filed 12/13/18, effective 1/13/19. Statutory Authority: Chapter 58.24 RCW. WSR 05-13-104, § 332-130-060, filed 6/17/05, effective 7/18/05. Statutory Authority: RCW 58.24.040(1). WSR 91-19-013 (Order 581), § 332-130-060, filed 9/9/91, effective 10/10/91; WSR 89-11-028 (Order 561), § 332-130-060, filed 5/11/89; Order 275, § 332-130-060, filed 5/2/77.]

AMENDATORY SECTION (Amending WSR 90-06-028, filed 3/1/90, effective 4/1/90)

**WAC 332-130-080 Relative accuracy—Principles.** The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a ~~((ninety-five))~~ 95 percent probability of achieving the accuracy required.

~~(2) ((Relative accuracy is not related to uncertainties due to differences between measured values and record values or uncertainties in the geodetic position.~~

~~(3))~~ In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of precision are expected to be used in situations necessitating higher accuracy.

~~((4))~~ (3) Each land boundary survey should contain a statement identifying the method of mathematical analysis used in achieving a stated relative accuracy.

[Statutory Authority: RCW 58.24.040(1). WSR 90-06-028 (Order 568), § 332-130-080, filed 3/1/90, effective 4/1/90; WSR 89-11-028 (Order 561), § 332-130-080, filed 5/11/89; Order 275, § 332-130-080, filed 5/2/77.]

## WSR 22-04-051

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed January 27, 2022, 9:57 a.m., effective February 27, 2022]

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

Purpose: The agency is amending subsection (3)(c) of this rule, which states that the agency does not pay separately for certain services provided within one calendar day of an inpatient hospital admission. The agency is adding to this section to state that separate payments are not made for certain services provided within one calendar day of discharge.

The agency is also removing subsections (6) and (7). These subsections reference the maximum allowable fee schedule and the hospital outpatient rate for payment of certain services. The agency is making these changes because it does not use these payment methods, but instead uses the enhanced ambulatory payment group method to determine payments, consistent with WAC 182-550-7200.

Citation of Rules Affected by this Order: Amending WAC 182-550-6000.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-01-045 on December 7, 2021.

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

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

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

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

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

Date Adopted: January 27, 2022.

Wendy Barcus  
Rules Coordinator

### OTS-3462.1

AMENDATORY SECTION (Amending WSR 15-18-065, filed 8/27/15, effective 9/27/15)

**WAC 182-550-6000 Outpatient hospital services—Conditions of payment and payment methods.** (1) The medicaid agency pays hospitals for covered outpatient hospital services provided to eligible clients when the services meet the provisions in WAC 182-550-1700. All professional medical services must be billed according to chapter 182-531 WAC.

(2) To be paid for covered outpatient hospital services, a hospital provider must:

(a) Have a current core provider agreement with the agency;

(b) Bill the agency according to the conditions of payment under WAC 182-502-0100;

(c) Bill the agency according to the time limits under WAC 182-502-0150; and

(d) Meet program requirements in other applicable WAC and the agency's published issuances.

(3) The agency does not pay separately for any services:

(a) Included in a hospital's room charges;

(b) Included as covered under the agency's definition of room and board (e.g., nursing services). See WAC 182-550-1050; or

(c) Related to an inpatient hospital admission and provided within one calendar day of a client's inpatient admission or discharge.

(4) The agency does not pay:

(a) A hospital for outpatient hospital services when a managed care plan is contracted with the agency to cover these services;

(b) More than the "acquisition cost" ("A.C.") for HCPCS (health care common procedure coding system) codes noted in the outpatient fee schedule; or

(c) For cast room, emergency room, labor room, observation room, treatment room, and other room charges in combination when billing periods for these charges overlap.

(5) The agency uses the outpatient weighted costs-to-charges (OWCC) rate to pay for covered outpatient services provided in a critical access hospital (CAH). See WAC 182-550-2598.

~~(6) ((The agency uses the maximum allowable fee schedule to pay non-OPPS hospitals and non-CAH hospitals for the following types of covered outpatient hospital services listed in the agency's current published outpatient hospital fee schedule and billing instructions:~~

~~(a) EKG/ECG/EEG and other diagnostics;~~

~~(b) Imaging services;~~

~~(c) Immunizations;~~

~~(d) Laboratory services;~~

~~(e) Occupational therapy;~~

~~(f) Physical therapy;~~

~~(g) Sleep studies;~~

~~(h) Speech/language therapy;~~

~~(i) Synagis; and~~

~~(j) Other hospital services identified and published by the agency.~~

~~(7) The agency uses the hospital outpatient rate as described in WAC 182-550-4500 to pay for covered outpatient hospital services when:~~

~~(a) A hospital provider is a non-OPPS or a non-CAH provider; and~~

~~(b) The services are not included in subsection (6) of this section.~~

~~(8)) Hospitals must provide documentation as required or requested by the agency.~~

~~((9)) (7) All hospital providers must present final charges to the agency within ((three hundred sixty-five)) 365 days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond ((three hundred sixty-five)) 365 days from the "statement covers period from date" shown on the claim.~~

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-18-065, § 182-550-6000, filed 8/27/15, effective 9/27/15. WSR 11-14-075, recodified as § 182-550-6000, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500. WSR 07-13-100, § 388-550-6000,

filed 6/20/07, effective 8/1/07; WSR 04-20-060, § 388-550-6000, filed 10/1/04, effective 11/1/04. Statutory Authority: RCW 74.04.050, 74.04.057, 74.08.090, and Public Law 104-191. WSR 03-19-044, § 388-550-6000, filed 9/10/03, effective 10/11/03. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.035(1), and 43.88.290. WSR 02-21-019, § 388-550-6000, filed 10/8/02, effective 11/8/02. Statutory Authority: RCW 74.09.090, 42 U.S.C. 1395x(v), 42 C.F.R. 447.271 and 42 C.F.R. 11303. WSR 99-14-028, § 388-550-6000, filed 6/28/99, effective 7/1/99. Statutory Authority: RCW 74.08.090, 42 U.S.C. 1395 x(v), 42 C.F.R. 447.271, 447.11303, and 447.2652. WSR 99-06-046, § 388-550-6000, filed 2/26/99, effective 3/29/99. Statutory Authority: RCW 74.08.090, 74.09.730, 74.04.050, 70.01.010, 74.09.200, [74.09.]500, [74.09.]530 and 43.20B.020. WSR 98-01-124, § 388-550-6000, filed 12/18/97, effective 1/18/98.]

**WSR 22-04-058**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed January 27, 2022, 2:12 p.m., effective February 27, 2022]

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

Purpose: Law enforcement officers' and firefighters' (LEOFF) Plan 2 return from disability: To clarify the process when a LEOFF Plan 2 disability retiree returns to work.

Citation of Rules Affected by this Order: Amending WAC 415-104-486 When does my disability benefit end?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 22-01-126 on December 13, 2021.

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

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

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

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

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

Date Adopted: January 26, 2022.

Tracy Guerin  
Director

**OTS-3264.2**

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

**WAC 415-104-486 When does my disability benefit end?** The department may require comprehensive medical or psychological examinations to reevaluate your continued eligibility for disability benefits. For catastrophic benefits the department may also require or offer to provide comprehensive vocational examinations and/or submission of earnings information to evaluate your continued eligibility. You are required to contact the department if your medical/vocational or financial situation changes.

(1) Your duty or nonduty disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position; or

(b) Medical examination reveals that you are no longer totally incapacitated for employment in a LEOFF-eligible position and you are no longer entitled to workers' compensation benefits under Title 51 RCW.

(2) Your catastrophic disability benefit will cease if:

(a) You return to work in a LEOFF-eligible position;

(b) Medical/vocational examination, or other information commonly available or provided to the department by an employer, reveals that your disability no longer prevents you from performing substantial gainful activity; or

(c) Your earnings exceed the threshold for substantial gainful activity.

If you believe you are capable of returning from your disability to work for your former employer and your employer agrees that you have met their requirements (examples could include a fit for duty test or polygraph), your disability benefit will end on the date you start working, as reported to the department by your employer. If you do not meet the requirements of your employer, you may challenge your employer's decision through the collective bargaining process, or other legal process against your employer.

[Statutory Authority: RCW 41.50.050. WSR 18-13-078, § 415-104-486, filed 6/15/18, effective 7/16/18.]

WSR 22-04-073  
PERMANENT RULES  
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)  
[Filed January 31, 2022, 7:02 a.m., effective March 3, 2022]

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

Purpose: The developmental disabilities administration (DDA) amended WAC 388-829C-131 to remove the daily rate multiplier from rule, to remove the DSHS 10-234 form requirement, and to establish requirements for clients who require a behavior support plan and receive services from a companion home provider.

DDA removed the multiplier because it changes too frequently for the permanent rule to remain accurate. Instead of codifying the multiplier in rule, DDA will publish companion home provider rates on the office of rates management's website under developmental disabilities rates.

Typically, DSHS 10-234 was only completed at the time of a client's referral to a companion home. Removing the requirement that a client have a challenging behavior documented on form DSHS 10-234 will allow providers supporting a client who develops a need for behavior support after referral to potentially become eligible for a higher rate.

DDA added behavior support plan requirements to a new section to align with plan requirements in DDA policy.

Citation of Rules Affected by this Order: New WAC 388-829C-135; and amending WAC 388-829C-131.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.040.

Adopted under notice filed as WSR 21-23-010 on November 4, 2021.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1500, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

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

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

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

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

Date Adopted: January 27, 2022.

Jilma Meneses  
Secretary

SHS-4891.2

AMENDATORY SECTION (Amending WSR 20-13-091, filed 6/16/20, effective 7/17/20)

**WAC 388-829C-131 How does DDA determine the daily rate?** (1) A companion home daily rate ~~((equals the sum of))~~ is based on the client's ((support)) DDA assessment ((scale scores multiplied by 14.2)) under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

~~(2) ((The residential algorithm under chapter 388-828 WAC determines the level of services and supports a companion home client may receive.~~

~~(3))~~ The ((CARE)) following support assessment ((assigns)) scales are used to calculate a companion home daily rate. Each support ((levels)) assessment scale is assigned an acuity level of "none," "low," "medium," or "high" ((to each support)) by the DDA assessment ((scale that correspond)) algorithm and corresponds to the values below:

((Category)) Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

~~((4))~~ (3) DDA assigns a behavior score of four if ((the client has a)):

(a) The client has an acuity level of "high" for behavior ((score of three)) on the support assessment scale; and

~~(b) ((Challenging behavior documented on form DSHS 10-234; and~~

~~(c) Current positive))~~ The client has a behavior support plan that meets requirements under WAC 388-829C-135.

(4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.

~~(5) ((DDA reviews a))~~ DSHS publishes companion home daily rate ((annually and if a significant change assessment occurs during the plan year)) on the office of rates management's website.

~~(6) DDA may adjust a companion home daily rate if:~~

~~(a) ((Any of))~~ The sum of the client's support assessment ((scale)) acuity levels ((change)) changes; or

~~(b) ((The multiplier changes due to a vendor rate change; or~~

~~(c) The annual cost of respite services increased because))~~ DDA ((approved)) approves additional respite hours under WAC 388-829C-234(3) ((and the client's assessed support needs remain unchanged since the most recent CARE assessment)).

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-13-091, § 388-829C-131, filed 6/16/20, effective 7/17/20. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-131, filed 11/6/18, effective 12/7/18.]

NEW SECTION**WAC 388-829C-135 What requirements must a behavior support plan**

**meet?** (1) A client's behavior support plan must:

- (a) Be based on a functional assessment; and
- (b) Describe:
  - (i) The target behavior;
  - (ii) Actions that may be taken to prevent the target behavior;
  - (iii) Actions that may be taken in response to the target behavior;
  - (iv) Actions that may be taken if the target behavior increases in frequency, duration, intensity, or impact;
  - (v) The replacement behavior that matches the target behavior's function;
  - (vi) How to teach the replacement behavior;
  - (vii) How to respond to the replacement behavior; and
  - (viii) Benchmarks to evaluate the behavior support plan's effectiveness.

(2) If the client has a behavior support plan, the provider must collect data on:

- (a) The target behavior's:
  - (i) Frequency;
  - (ii) Intensity;
  - (iii) Duration; and
  - (iv) Impact;
- (b) The replacement behavior's:
  - (i) Frequency;
  - (ii) Intensity;
  - (iii) Duration; and
  - (iv) Impact.

(3) The provider must analyze the data collected under subsection (2) of this section at least every six months to determine the effectiveness of the behavior support plan.

(4) If the analysis under subsection (3) of this section indicates the target behavior is not decreasing in frequency, intensity, duration, or impact, the provider must:

- (a) Revise the behavior support plan; or
- (b) Document the reason revising the support plan is not indicated.

[]

## WSR 22-04-074

## PERMANENT RULES

## BOARD OF ACCOUNTANCY

[Filed January 31, 2022, 8:03 a.m., effective March 3, 2022]

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

Purpose: Rule making is needed to reformat the title, add a RCW reference, remove an outdated section, and add a board decision to which this rule applies so that the process is more efficient.

Citation of Rules Affected by this Order: Amending WAC 4-30-028.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 21-23-013 on November 4, 2021.

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

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

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

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

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

Date Adopted: January 28, 2022.

David E. Trujillo, CPA  
Executive Director

## OTS-3469.1

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

**WAC 4-30-028 ((What rules govern the)) Rules governing the formal adjudicative proceedings and the brief adjudicative proceedings before the board(?)**. Except where they are inconsistent with the rules in this chapter and subject to additional rules that the board may adopt from time to time, ((practice and procedure)) adjudicative proceedings in and before the board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and the uniform procedural rules codified in the Washington Administrative Code, chapter 10-08 WAC.

For certain types of decisions, the board has adopted an appeal process authorized by RCW 34.05.482 through 34.05.494 which is called a brief adjudicative proceeding. Decisions to which this appeal process will be applied are:

- (1) ((Staff)) Denials of initial individual license applications, renewals, or applications for reinstatement;
- (2) ((Staff)) Denials of CPA-Inactive certificate renewals or applications for reinstatement;
- (3) ((Staff denials of practice privilege reinstatements;

~~(4) Staff~~) Denials of initial resident nonlicensee firm owner registration applications, renewals, or applications or requests for reinstatement;

~~((5) Staff)~~ (4) Denials of initial firm license applications, renewals, and amendments;

~~((6) Staff)~~ (5) Denials of exam applications; ((and

~~(7))~~ (6) A proposed suspension as a result of a determination by a lending agency of nonpayment or default on a federally or state-guaranteed student loan or service conditional scholarship; and

(7) Lifts of stays of suspension from a board order.

To appeal a decision you must submit your request for a brief adjudicative proceeding, **in writing**, to the board **within ((thirty)) 30 days** after the decision by board staff is posted in the U.S. mail. The board chair or the board vice chair, if the board chair is unavailable, will appoint one member of the board as the presiding officer for brief adjudicative proceedings. The presiding officer renders a decision either upholding or overturning the denial. This decision, called an order, will be provided to you at the last address you furnished to the board.

If you are dissatisfied with the order in the brief adjudicative proceeding, you may appeal to the board's vice chair, or designee. This appeal process is called an administrative review. Your appeal must be received by the board, **orally or in writing, within ((twenty-one)) 21 days** after the brief adjudicative proceedings order is posted in the U.S. mail. The vice chair, or designee, considers your appeal and either upholds or overturns the brief adjudicative proceeding order. The vice chair's, or designee's, decision, also called an order, will be provided to you at the last address you furnished to the board.

[Statutory Authority: RCW 18.04.055(1), 34.05.220, and 34.05.482. WSR 10-24-009, amended and recodified as § 4-30-028, filed 11/18/10, effective 12/19/10; WSR 08-18-016, § 4-25-540, filed 8/25/08, effective 9/25/08; WSR 05-01-137, § 4-25-540, filed 12/16/04, effective 1/31/05; WSR 02-04-064, § 4-25-540, filed 1/31/02, effective 3/15/02. Statutory Authority: RCW 18.04.055(1) and 34.05.482. WSR 00-11-070, § 4-25-540, filed 5/15/00, effective 6/30/00; WSR 98-12-022, § 4-25-540, filed 5/27/98, effective 6/27/98. Statutory Authority: RCW 18.04.055. WSR 93-12-074, § 4-25-540, filed 5/27/93, effective 7/1/93.]

## WSR 22-04-082

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)  
[Filed January 31, 2022, 11:07 a.m., effective May 13, 2022]

Effective Date of Rule: May 13, 2022.

Purpose: WAC 246-840-010, 246-840-840, and 246-840-850. The adopted amendments update the definition of nursing technician and the nursing technician rules by providing licensed practical nurse (LPN) students, the same opportunity as registered nurse (RN) students to obtain a nursing technician credential.

The nursing care quality assurance commission (commission) has determined that granting the same opportunity to LPN students will provide a positive impact on the students and allow for a better transition into the nursing workforce. The proposed rule amendments will reduce barriers, improve access to student nursing clinical experience, and contribute to patient safety by better preparing nursing students with clinical experience. These amendments will contribute to an increase in a proficient and safe nursing population, ultimately meeting the commission's goal of providing a competent nursing workforce to address the health care needs of the Washington state population. Improving the efficiency of nursing education programs to produce clinically prepared future nurses meets the overarching intent of the commission described in RCW 18.79.010. The amendments make the nursing technician credential available to LPN students in approved nursing educational programs. This will improve transition into the nursing workforce for LPN students and allow them to gain valuable judgment and knowledge through expanded work opportunities.

The amendments to WAC 246-840-010 and 246-840-840 are currently under emergency rules, filed on January 14, 2022, as WSR 22-03-056. When effective, this permanent filing will supersede the emergency rules on those two sections.

Citation of Rules Affected by this Order: Amending WAC 246-840-010, 246-840-840, and 246-840-850.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.340.

Adopted under notice filed as WSR 21-20-058 on September 28, 2021.

Changes Other than Editing from Proposed to Adopted Version: One editing change was made to conform to WAC style guide standards in WAC 246-840-010(15) the phrase "thirty" was changed to "30."

A final cost-benefit analysis is available by contacting Shad Bell, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-4711, fax 360-236-4738, TTY 711, email NCQAC.rules@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: November 12, 2021.

Paula R. Meyer, RN, MSN, FRE  
Executive Director

#### OTS-2755.4

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

**WAC 246-840-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Advanced clinical practice" means practicing at an advanced level of nursing in a clinical setting performing direct patient care.

(2) "Advanced nursing practice" means the delivery of nursing care at an advanced level of independent nursing practice that maximizes the use of graduate educational preparation, and in-depth nursing knowledge and expertise in such roles as autonomous clinical practitioner, professional and clinical leader, expert practitioner, and researcher.

(3) "Advanced registered nurse practitioner (ARNP)" is a registered nurse (RN) as defined in RCW 18.79.050, 18.79.240, 18.79.250, and 18.79.400 who has obtained formal graduate education and national specialty certification through a commission approved certifying body in one or more of the designations described in WAC 246-840-302, and who is licensed as an ARNP as described in WAC 246-840-300. The designations include the following:

- (a) Nurse practitioner (NP);
- (b) Certified nurse midwife (CNM);
- (c) Certified registered nurse anesthetist (CRNA); and
- (d) Clinical nurse specialist (CNS).

(4) "Associate degree registered nursing education program" means a nursing education program which, upon successful completion of course work, that includes general education and core nursing courses that provide a sound theoretical base combining clinical experiences with theory, nursing principles, critical thinking, and interactive skills, awards an associate degree in nursing (ADN) to prepare its graduates for initial licensure and entry level practice as an RN.

(5) "Bachelor of science degree registered nursing education program" means a nursing education program which, upon successful completion of course work taught in an associate degree nursing education program, as defined in subsection (28) of this section, plus additional courses physical and social sciences, nursing research, public and community health, nursing management, care coordination, and the humanities, awards a bachelor of science in nursing (BSN) degree, to prepare its graduates for a broader scope of practice, enhances professional development, and provides the nurse with an understanding of the cultural, political, economic, and social issues that affect patients and influence health care delivery.

(6) "Certifying body" means a nongovernmental agency using predetermined standards of nursing practice to validate an individual nurse's qualifications, knowledge, and practice in a defined functional or clinical area of nursing.

(7) "Client advocate" means a licensed nurse who actively supports client's rights and choices, including the client's right to receive safe, high quality care, and who facilitates the client's ability to exercise those rights and choices by providing the client with adequate information about their care and options.

(8) "Commission" means the Washington state nursing care quality assurance commission.

(9) "Competency" means demonstrated knowledge, skill and ability in the practice of nursing.

(10) "Conditional approval" is the approval given a nursing education program that has not met the requirements of the law and the rules of the commission. Conditions are specified that must be met within a designated time to rectify the deficiency.

(11) "Dedicated education unit" means a clinical learning experience within a health care facility, as part of the curriculum of a nursing education program.

(12) "Delegation" means the licensed nurse transfers the performance of selected nursing tasks to competent individuals in selected situations. The nurse delegating the task is responsible and accountable for the nursing care of the client. The nurse delegating the task supervises the performance of the unlicensed person. Nurses must follow the delegation process following the RCW 18.79.260. Delegation in community and in-home care settings is defined by WAC 246-840-910 through 246-840-970.

(13) "Distance education" or "distance learning" means instruction offered by any means where the student and faculty are in separate physical locations. Teaching methods may be synchronous, where the teacher and student communicate at the same time, or asynchronous, where the student and teacher communicate at different times, and shall facilitate and evaluate learning in compliance with nursing education rules.

(14) "Full approval" of a nursing education program is the approval signifying that a nursing program meets the requirements of the law and the rules of the commission.

(15) "Good cause" as used in WAC 246-840-860 for extension of a nurse technician registration means that the nurse technician has had undue hardship such as difficulty scheduling the examination through no fault of their own; receipt of the examination results after ~~((thirty))~~ 30 days after the nurse technician's date of graduation; or an unexpected family crisis which caused him or her to delay sitting for the examination. Failure of the examination is not "good cause."

(16) "Good standing" as applied to a nursing technician, means the nursing technician is enrolled in a registered nursing program or licensed practical nursing program approved by the commission and is successfully meeting all program requirements.

(17) "Health care professional" means the same as "health care provider" as defined in RCW 70.02.010(18).

(18) "Home state" is defined as where the nursing education program has legal domicile.

(19) "Host state" is defined as the state jurisdiction outside the home state where a student participates in clinical experiences or didactic courses.

(20) "Immediately available" as applied to nursing technicians, means that an RN who has agreed to act as supervisor is on the premises and is within audible range and available for immediate response as needed which may include the use of two-way communication devices which allow conversation between the nursing technician and an RN who has agreed to act as supervisor.

(a) In a hospital setting, the RN who has agreed to act as supervisor is on the same patient care unit as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(b) In a nursing home or clinic setting, an RN who has agreed to act as supervisor is in the same building and on the same floor as the nursing technician and the patient has been assessed by the RN prior to the delegation of duties to the nursing technician.

(21) "Initial approval" of nursing education program is the approval status conferred by the commission to a new nursing program based on its proposal prior to the graduation of its first class.

(22) "Licensed practical nurse (LPN)" is a nurse licensed as defined in RCW 18.79.030(3), with a scope of practice defined in RCW 18.79.020 and 18.79.060.

(23) "Limited educational authorization" is an authorization to perform clinical training when enrolled as a student through a commission approved refresher course. This authorization does not permit practice for employment.

(24) "Minimum standards of competency" means the knowledge, skills, and abilities that are expected of the beginning practitioner.

(25) "National nursing education accreditation body" means an independent nonprofit entity, approved by the United States Department of Education as a body that evaluates and approves the quality of nursing education programs within the United States and territories.

(26) "Nontraditional program of nursing" means a school that has a curriculum which does not include a faculty supervised teaching and learning component in clinical settings.

(27) "Nursing education program administrator" is an individual who has the authority and responsibility for the administration of the nursing education program.

(28) "Nursing education program" means a division or department within a state supported educational institution or other institution of higher learning, charged with the responsibility of preparing nursing students and nurses to qualify for initial licensing or higher levels of nursing practice.

(29) "Nursing faculty" means an individual employed by a nursing education program who is responsible for developing, implementing, evaluating, updating, and teaching nursing education program curricula.

(30) "Nursing technician" means a nursing student preparing for RN or LPN licensure who meets the qualifications for licensure under RCW 18.79.340 who is employed in a hospital licensed under chapter 70.41 RCW or a nursing home licensed under chapter 18.51 RCW, or clinic. The nursing student must be in a nursing educational program in the United States or its territories that is approved by the state or territorial nursing regulatory authority and recognized in the list of approved nursing education programs using the National Council Licensure Examination-RN or National Council Licensure Examination-PN. Approved nursing education programs do not include nontraditional schools as defined in subsection ((27)) (26) of this section.

(31) "Philosophy" means the beliefs and principles upon which a nursing education program curriculum is based.

(32) "Practical nursing education program" means a nursing education program which, upon successful completion of course work that includes core nursing course to provide a sound theoretical base combining clinical experiences with nursing principles, critical thinking, and interactive skills for entry level practical nursing, awards a certificate or degree that the graduate is prepared for interdependent practice to prepare a practical nurse for interdependent practice as an LPN.

(33) "Registered nurse" or "RN" is a licensed nurse as defined in RCW 18.79.030(1), 18.79.040, 18.79.240, and 18.79.260.

(34) "Supervision" of licensed or unlicensed nursing personnel means the provision of guidance and evaluation for the accomplishment of a nursing task or activity with the initial direction of the task or activity; periodic inspection of the actual act of accomplishing the task or activity; and the authority to require corrective action.

(a) "Direct supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is quickly and easily available, and has assessed the patient prior to the delegation of the duties.

(b) "Immediate supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is on the premises, is within audible and visual range of the patient, and has assessed the patient prior to the delegation of duties.

(c) "Indirect supervision" means the licensed RN who provides guidance to nursing personnel and evaluation of nursing tasks is not on the premises but has given either written or oral instructions for the care and treatment of the patient and the patient has been assessed by the registered nurse prior to the delegation of duties.

(35) "Traditional nursing education program" means a program that has a curriculum which includes a faculty supervised teaching and learning component in clinical settings.

[Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-010, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.110 and 2012 c 153. WSR 13-15-064, § 246-840-010, filed 7/15/13, effective 8/15/13. Statutory Authority: RCW 18.79.010 and 18.79.110. WSR 10-24-047, § 246-840-010, filed 11/24/10, effective 1/1/11. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-010, filed 5/12/08, effective 6/12/08. Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-010, filed 6/11/04, effective 6/11/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-010, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-010, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 13-15-064, filed 7/15/13, effective 8/15/13)

**WAC 246-840-840 Nursing technician.** The purpose of the nursing technician credential is to provide additional work related opportunities for students enrolled in an LPN, ADN, or BSN program, within the limits of their education, to gain valuable judgment and knowledge through expanded work opportunities.

(1) The nursing technician is as defined in WAC 246-840-010(~~(18)~~) (30).

(2) The nursing technician shall have knowledge and understanding of the laws and rules regulating the nursing technician and shall function within the legal scope of their authorization under chapter 18.79 RCW and shall be responsible and accountable for the specific nursing functions which they can safely perform as verified by their nursing program.

(3) The nursing technician shall work directly for the hospital, clinic or nursing home and may not be employed in these facilities through a temporary agency.

[Statutory Authority: RCW 18.79.110 and 2012 c 153. WSR 13-15-064, § 246-840-840, filed 7/15/13, effective 8/15/13. Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-840, filed 6/11/04, effective 6/11/04. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-840, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

**WAC 246-840-850 Use of nomenclature.** (1) Any person who meets the definition of nursing technician under WAC 246-840-010(~~(21)~~) (30) shall use the title nursing technician.

(2) No person may practice or represent oneself as a nursing technician by use of any title or description of services without being registered under chapter 18.79 RCW, unless otherwise exempted by chapter 18.79 RCW.

[Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-850, filed 6/11/04, effective 6/11/04. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-850, filed 6/18/97, effective 7/19/97.]

## WSR 22-04-086

## PERMANENT RULES

## SECRETARY OF STATE

[Filed January 31, 2022, 1:47 p.m., effective March 3, 2022]

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

Purpose: Updating and modernizing the address confidentiality program rules.

Citation of Rules Affected by this Order: Repealing WAC 434-840-065 and 434-840-110; and amending WAC 434-840-005, 434-840-010, 434-840-015, 434-840-017, 434-840-020, 434-840-025, 434-840-030, 434-840-035, 434-840-070, and 434-840-240.

Statutory Authority for Adoption: RCW 40.24.030, 40.24.090.

Other Authority: Chapter 40.24 RCW.

Adopted under notice filed as WSR 22-01-150 on December 15, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 10, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2022.

Randy Bolerjack  
Deputy Secretary of State

**OTS-3210.3**

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-005 Definitions.** For the purposes of this chapter:

(1) "Actual residential address" for purposes of the application means ((any)) the physical location((s)) where the participant resides, ((works, or attends school,)) for which the participant is requesting confidentiality.

(2) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(3) "Agency" means every elected or appointed state or local public office, public officer, or official, department, division, bureau, board, commission, committee, council, authority, agency, institution of higher education, or other unit of the executive, legislative, or judicial branch of the state; or any city, county, city and county, town, special district, school district, local improvement district, or other statutory unit of state or local government or any functional

subdivision of that agency, or any other kind of municipal, quasi-municipal, or public corporation.

(4) "Applicant" means an adult person, a parent or guardian acting on behalf of a minor, if the minor resides with the applicant, or a guardian acting on behalf of an incapacitated person as defined in RCW 11.88.010.

(5) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, trafficking, or stalking who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, ~~((determining whether the program's services can help keep the victim safe,))~~ and the completion and submission of the ACP application.

(6) "Authorization card" means the official card issued by the secretary of state to a participant, which must state the participant's name, date of birth, substitute address, certification expiration date, and signature ~~((of))~~ line for the program participant.

~~((7))~~ ~~((("Authorization card application form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.~~

~~((8))~~ "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

~~((9))~~ (8) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is incapable of fulfilling its statutory duties and obligations.

~~((10))~~ (9) "Certification" means that the secretary of state has determined that the ~~((eligible person))~~ application has been properly completed and meets the requirements for entering into or continuing in the program.

~~((11))~~ (10) "Change of identity" means that the program participant has changed the participant's name and Social Security number in an attempt to sever all connections to a previous name.

~~((12))~~ (11) "Criminal justice participant" means a criminal justice employee as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020 (2)(b)(iii) or (iv), and any family members residing with them.

~~((13))~~ (12) "Domestic violence" means an act as defined in RCW 10.99.020, including a threat of such acts, committed against an individual in a domestic situation, regardless of whether these acts of threats have been reported to law enforcement officers.

~~((14))~~ (13) "Mail" means first class letters and flats delivered via the United States Postal Service, including priority, express, certified, and registered mail, and excluding packages, parcels, periodicals, and catalogues, unless they are clearly identifiable as pharmaceuticals or clearly indicate they are sent by a government agency.

~~((15))~~ (14) "Mailing address" means the residential street address to which the secretary of state ~~((must))~~ will forward a participant's mail ~~((, except in those cases where the United States Postal Service provides no delivery service to the residential address.~~

~~(16))~~ or the alternative mailing address provided by the participant.

~~(15)~~ "Minor child" means an individual who has not attained the age of ~~((eighteen))~~ 18, residing with or under the guardianship of an adult applicant or program participant.

~~((17))~~ (16) "Participant mail box (PMB)" means the specific identifier assigned by the secretary of state to a program participant for use in sorting mail and confirming program participation in accordance with subsection (10) of this section.

~~((18))~~ (17) "Program participant" means an individual accepted as certified for the program under RCW 40.24.030.

~~((19))~~ (18) "Protected records marriage" means a program participant who has applied for and qualified for protected marriage records, as provided under WAC 434-840-200 and 434-840-310.

~~((20))~~ (19) "Protected records voter" means a program participant who has applied and qualified for confidential voter registration, as provided under RCW 40.24.060, WAC 434-840-100, and 434-840-310.

~~((21))~~ (20) "Public record" means any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any state or local governmental agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

~~((22))~~ (21) "Sexual assault" means an act as defined in RCW 70.125.030 and includes an attempt to commit such acts against an individual, regardless of whether these acts, attempts, or threats have been reported to law enforcement officers.

~~((23))~~ (22) "Stalking" means an act as defined in RCW 9A.46.110 and includes threats of such acts committed against an individual, regardless of whether these acts or threats have been reported to law enforcement officers.

~~((24))~~ (23) "Substitute address" means an address designated by the secretary, including the identification number that is used by a participant to receive mail, instead of providing their actual residence address.

~~((25))~~ (24) "Trafficking" means an act as defined in RCW 9A.40.100 or an act recognized as a severe form of trafficking under 22 U.S.C. Sec. 7102(8) as it existed on June 12, 2008, or such subsequent date as may be provided by the secretary of state by rule, consistent with the purposes of this subsection, regardless of whether the act has been reported to law enforcement.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-005, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 29A.04.611. WSR 14-06-040, § 434-840-005, filed 2/26/14, effective 3/29/14. Statutory Authority: RCW 40.24.090. WSR 08-23-094, § 434-840-005, filed 11/19/08, effective 12/20/08; WSR 05-13-059, § 434-840-005, filed 6/9/05, effective 7/10/05. Statutory Authority: RCW 29A.04.610. WSR 04-15-089, § 434-840-005, filed 7/16/04, effective 8/16/04. Statutory Authority: RCW 40.24.090. WSR 98-19-063, § 434-840-005, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-005, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-010 Application process.** (1) The secretary of state shall certify an (~~eligible person~~) applicant as a program participant when the secretary of state receives an application that contains:

- (a) The full legal name and date of birth of the applicant(s);
- (b) A listing of all minor children residing at the residential address, each minor child's full legal name, and each minor child's date of birth, and each minor child's relationship to the applicant;
- (c) A listing of all adults residing at the residential address requesting participation, each adult's full legal name, date of birth, and relationship to the applicant;
- (d) The applicant's actual Washington state residential (~~addresses, work, and school addresses, if any, for which confidentiality is requested~~) address;
- (e) The telephone number of the applicant(s);
- (f) The address to which mail should be sent, this may be the same as the residential address;
- (g) A sworn statement, under penalty of perjury, by the applicant, that the applicant has good reason to believe either:
  - (i) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking, and that the applicant fears for their safety or the safety of their children, or the safety of any minor children or incapacitated person on whose behalf the application is made; or
  - (ii) That the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020.
- (h) The state of Washington personnel number, if the applicant or any of the persons covered by the application is a Washington state employee;
- (i) The applicant's signature;
- (j) The date on which the applicant signed the application;
- (k) The signature, printed name, and phone number of the application assistant designated by the secretary of state under RCW 40.24.080 who assisted in preparation of the application;
- (l) A (~~completed checklist of understanding, signed and dated by the applicant designating~~) designation of the secretary of state to act as legal agent for purposes of service of process and for the purpose of receipt of mail.
  - (~~(m) Signed authorization card form for each member of household.~~)
  - (2) (~~The application must be completed and signed in the presence of an application assistant;~~
  - ~~(3))~~ The completed application (~~assistant shall submit completed applications~~) and any additional materials shall be submitted to the secretary of state (~~using first class mail~~); and
  - (~~(4))~~ (3) If the completed application does not meet the requirements of this part, the secretary of state (~~shall~~) will contact the applicant to obtain missing information. The applicant shall be certified only if the missing information is provided.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-010, filed 5/22/19, effective 6/22/19. Statutory Authority:

RCW 40.24.090. WSR 08-23-094, § 434-840-010, filed 11/19/08, effective 12/20/08; WSR 98-19-063, § 434-840-010, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-010, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-015 Certification of participants.** (1) The secretary of state shall certify an ~~((eligible person))~~ applicant, minor children, and adults residing at the residential address for whom a properly completed application or renewal is filed as a program participant.

(2) Upon certification of the applicant, the secretary of state ~~((shall))~~ will issue, and mail, an address confidentiality program participant authorization card to the applicant's mailing address with instructions on how to use the address confidentiality program card. For participants under age ~~((eighteen))~~ 18, the card must be signed by the adult responsible for the participant. The authorization card ~~((shall))~~ will include the program participant's name, authorization code, substitute mailing address, certification expiration date, and ~~((applicant's signature))~~ a signature line for the applicant.

(3) A properly completed application ~~((shall))~~ will be effective ~~((on the day it is received))~~ within two business days of receipt by the address confidentiality program.

(4) The term of a program participant's certification shall be four years following the effective date of her or his application unless the certification is withdrawn or invalidated before that date.

(5) At the time of certification, the secretary of state will send a voter registration application to the applicant accompanied by information related to participating in voting as a protected records voter.

(6) Secretary of state staff members must first verify the identity of an application assistant, program applicant, or program participant prior to any discussion of any data related to any applicant or participant or their certification.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-015, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-017 Substitute address.** (1) Program participants may use the substitute address provided by the secretary of state when interacting with any state or local agency on all forms or applications that require an address. ~~((This is done by providing the substitute address and presenting the authorization card and PMB authorization number to the agency.))~~

(2) Every state or local government agency, or office, shall accept the substitute address issued by the secretary of state as the only address for all program participants when the participant provides the address and authorization card and authorization number un-

less the agency has an exemption pursuant to RCW 40.24.050 and WAC 434-840-070. Program participants are not required to respond to any question regarding the details or circumstances of the person's inclusion in the program. The public agency may contact the secretary of state to verify program participation and for additional program information.

~~(3) ((Program participants are solely responsible for requesting the use of a substitute address by any agency as the participant's address for use in interaction with each agency or office.~~

~~(4)) The agency official creating a new record may make a file photocopy of the authorization card and will immediately return the authorization card to the program participant.~~

~~(4) The agency official may call the program to verify an individual's participation status in the program and to confirm the participant's authorization number (PMB).~~

~~(5) The secretary of state is the agent for receipt of all mail sent to program participants at the substitute address.~~

~~((5)) (6) All first class mail specifically addressed to the program participant at the substitute address ((must)) will be forwarded at least every second business day to each participant's mailing address, using "return service requested" designation on the envelope. The secretary of state is not required to forward mail that is not specifically addressed to the participant.~~

~~((6)) (7) The secretary of state may hold a participant's mail for up to ((three)) five business days upon verbal request of the participant. The hold may be up to three weeks if the participant's request is written and signed and provides a contact telephone number for the hold period. The secretary of state must compare the signature on the hold request with that on file for the participant prior to holding the mail. In the absence of a specific hold date from the participant, the hold date is the date of receipt by the secretary of state.~~

~~((7) For services delivered to an actual physical address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide service, in addition to the substitute address.~~

~~(a) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.~~

~~(b) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way. Measures may include, but are not limited to, assigning a pseudonym to the participant, keeping the actual address in the participant's paper file at an agency (not in an electronic system), and making the records password protected and limiting record access to a small pool of staff.)~~

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-017, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-020 Exercise of program participant's privileges.**

(1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) Program participants are solely responsible for requesting the use of a substitute address.

(3) A program participant shall show their authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of their actual location.

~~((4) The agency official creating a new record may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant. The agency official may call the program to verify an individual's current participation status in the program.~~

~~(5) An agency shall accept the substitute address unless the agency has received a written exemption from the secretary of state pursuant to RCW 40.24.050 and WAC 434-840-070.~~

~~(6) For services delivered to an actual address or tied to residency in a particular jurisdiction, the state or local agency must request only the smallest portion of the actual address needed to provide services, in addition to the substitute address.~~

~~(7) In cases in which all or part of the actual address has been disclosed pursuant to this section, the substitute address must be used by the agency as the address of the program participant for all public data or purposes that the actual address is not required.~~

~~(8) The secretary of state, upon request of the agency, shall suggest measures that assist in protecting the actual address and the participant's name against disclosure in any way.)~~

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-020, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-020, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-020, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-020, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-025 Attaining age of majority.** When ~~((a participant reaches))~~ the secretary of state becomes aware that a minor child has reached the age of ~~((eighteen))~~ 18, the secretary of state ~~((shall))~~ will inform the minor child participant of options related to continued participation in the address confidentiality program. These options include leaving the program, applying for continuation in the program, and reapplying on their own behalf.

(1) In anticipation of the minor child participant's ~~((eighteenth))~~ 18th birthday, the secretary of state ~~((shall))~~ will send an application packet via first class mail to the participant's substitute address. The packet ~~((must))~~ will include instructions on actions

to be taken by age ~~((eighteen))~~ 18. The packet ~~((must))~~ will include notice that if the participant does not respond within ~~((thirty))~~ 30 days they will be removed from the program, ~~((they must return their authorization card,))~~ and mail forwarding will stop. If ~~((thirty))~~ 30 days passes without contact from the participant, the secretary of state ~~((shall))~~ will mail a final notice that the participant's certification will be canceled if the participant fails to submit the certification of continuance within ~~((ten))~~ 10 days.

(2) The packet ~~((shall))~~ will include the application form ~~((, checklist of understanding, authorization card form,))~~ and information about voter registration ~~((The secretary of state must offer the participant the opportunity)),~~ including information about how to register to vote as a protected records voter.

(3) The secretary of state shall renew the certification of a participant upon receipt of a properly completed application form ~~((and checklist of understanding. If the form is for continuance of participation, it does not require the signature of an application assistant. Responsibility for changes in information and renewal belong to the participant once the participant reaches age eighteen)).~~

(4) A participant who reaches age ~~((eighteen))~~ 18 and changes residence may reapply through an application assistant, or withdraw.

(5) Program participants that have reached age ~~((eighteen))~~ 18 who have withdrawn, or allowed certification to expire, may reapply on their own behalf by contacting an application assistant.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-025, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-030 Certification renewal.** (1) At least ~~((thirty))~~ 30 days prior to the expiration of a certification, the secretary of state ~~((shall))~~ will inform a program participant, of the option of renewing certification in the program by sending a renewal form to the participant's mailing address. The notice ~~((must))~~ will provide instructions on actions the participant must take upon expiration of certification, if the participant chooses to leave the program. These include ~~((return of the authorization card,))~~ notifying senders of the former participant's actual address and notifying that the substitute address is no longer valid for the former participant. Ten days prior to expiration of certification, the secretary of state ~~((must))~~ will mail a second notice to the participant unless the participant has responded with a renewal or communication indicating intent to withdraw from the program.

(2) Information about voter registration should be provided to the participant as part of the notification process.

(3) A program participant may renew her or his program certification by ~~((first class mail))~~ filing with the address confidentiality program ~~((: (a) The participant's current authorization card; (b)))~~ by first class mail, a properly completed renewal application ~~((and checklist of understanding forms; and (c) a new authorization card form with signature)).~~

(4) If the completed renewal does not meet the requirements of this part, the secretary of state (~~shall~~) will contact the participant (~~or applicant~~) to obtain the missing information.

(5) For a program participant who has properly filed a completed renewal application, the address confidentiality program shall: (a) Certify a program participant (~~, who has filed a properly completed renewal application form,~~) to participate in the program for an additional four year term unless the certification is withdrawn or invalidated before that date; (b) issue to the program participant a new authorization card which includes the (~~program~~) participant's name, authorization code, substitute mailing address, certification expiration date, and signature line.

(6) A properly completed renewal application, postmarked on or before the expiration date, is effective on the day it is reviewed and certified by the secretary of state.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-030, filed 5/22/19, effective 6/22/19. Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-030, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-030, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-030, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 19-12-002, filed 5/22/19, effective 6/22/19)

**WAC 434-840-035 Certification cancellation.** (1) The address confidentiality program shall terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant's certification term has expired and renewal of certification is not completed;

(b) The address confidentiality program has determined that false information was used in the application process; or

(c) The participant (~~(fails to respond to the program's request for verification of the participant's residential address)~~) obtains a legal change of identity.

(2) The address confidentiality program may terminate a participant's certification and invalidate that participant's authorization card if:

(a) The participant no longer resides at the residential address on file, and has not provided at least two days prior notice in writing of a change of address;

(b) Any first class or certified mailing, or service of process document forwarded by the program is returned as nondeliverable, refused, or unclaimed; or

(c) The participant (~~(obtains a legal change of identity)~~) fails to respond to the program's request for verification of the participant's residential address.

(3) The address confidentiality program (~~shall~~) will send written notification of the pending termination to the participant's last known mailing or residential address. The participant shall have (~~ten~~) 10 business days in which to appeal the termination under procedures developed by the secretary of state.

(4) After the secretary of state has provided notice as required in subsection (3) of this section the participant's certification is

considered to be in pending status. While in this status, the secretary of state (~~must~~) will hold the participant's mail without forwarding to the participant. Pending status ends after (~~ten~~) 10 business days, or upon the participant's compliance with this section, whichever occurs first. This does not prevent the secretary of state from forwarding correspondence marked "service of process."

(5) If the participant's pending cancellation status expires, the secretary of state (~~must~~) will cancel the certification of the program participant.

(6) The address confidentiality program (~~shall~~) will notify authorized election officials and authorized Washington state department of health personnel if the participant is registered to vote or has a protected records marriage license when a participant's authorization has been terminated from the program. The authorized elections (~~and health~~) department personnel (~~shall~~) will transmit to the address confidentiality program all appropriate administrative records pertaining to the participant.

(7) If the certification of a participant is canceled, mail addressed to the program participant (~~must~~) will be returned to sender.

[Statutory Authority: RCW 40.24.090 and 40.24.030. WSR 19-12-002, § 434-840-035, filed 5/22/19, effective 6/22/19.]

AMENDATORY SECTION (Amending WSR 05-13-059, filed 6/9/05, effective 7/10/05)

**WAC 434-840-070 Agency exemption request.** (1) An agency requesting an exemption under RCW 40.24.050, must provide in writing to the secretary of state:

(a) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual;

(b) Identification and description of the specific record or record series for which the exemption is requested;

(c) Identification of the individuals who will have access to the record;

(d) Explanation of how the agency's acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and

(e) (i) Explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures; and, where appropriate (~~7~~);

(ii) Description of any agency procedural change(s) that could be made that would allow it to accept the substitute address and meet its statutory or administrative obligations and an estimate of implementation time needed.

(2) The secretary of state shall file and review an agency's request for an exemption.

(3) During the review, evaluation and appeal of an agency's exemption request, the agency shall accept the use of a program participant's substitute address.

(4) The secretary of state's determination to grant or withhold a requested exemption shall be based on, but not limited to, an evaluation of the information provided under subsection (1) of this section

in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's actual address.

(5) If the secretary of state determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address information and that the actual address information will be used only for those statutory and administrative purposes, the secretary may issue a written exemption for the agency. When granting an exemption, the secretary may include:

- (a) An agency's obligation to maintain the confidentiality of a program participant's address information;
- (b) Limitations on use and access to that address information;
- (c) Term during which the exemption is authorized for the agency;
- (d) Designation of the record format on which the address information may be maintained;
- (e) Designation of an address information disposition date after which the agency may no longer maintain a record of the address information; and
- (f) Any other provisions and qualifications determined appropriate by the secretary of state.

(6) When a program participant requests use of the substitute address in a record, and the agency has received an exemption for that record, the agency shall immediately provide a copy of the written exemption to the requesting program participant. The agency shall notify the address confidentiality program of the occurrence and denial of the program participant's request.

(7) The secretary of state's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons therefore.

(8) An agency may appeal the denial of its request by resubmitting its written request together with additional data, information, and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary of state's denial determination.

[Statutory Authority: RCW 40.24.090. WSR 05-13-059, § 434-840-070, filed 6/9/05, effective 7/10/05; WSR 98-19-063, § 434-840-070, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-070, filed 9/26/91, effective 10/27/91.]

AMENDATORY SECTION (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-240 Certified copy of marriage certificates. (1)**

Upon the request of a program participant, accompanied by the appropriate fee, the address confidentiality program may request in writing a certified copy of a program participant's marriage certificate from the agency maintaining that record and release it to the program participant. A certified copy of a marriage certificate containing the name of the program participant is only available through the address confidentiality program.

(2) Upon cancellation from the program, the former program participant must work directly with the department of health personnel to request a copy of their marriage certificate.

[Statutory Authority: RCW 40.24.090. WSR 98-19-063, § 434-840-240, filed 9/16/98, effective 10/17/98. Statutory Authority: 1991 c 23. WSR 91-20-074, § 434-840-240, filed 9/26/91, effective 10/27/91.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |   |
|-----------------|---|
| WAC 434-840-065 | Information release to nonlaw enforcement agency. |
| WAC 434-840-110 | Proof of program participant's authority.         |

**WSR 22-04-090**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-07—Filed February 1, 2022, 8:04 a.m., effective March 4, 2022]

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

Purpose: For all private passenger automobile coverage, renter's coverage, and homeowners coverage issued in the state of Washington, insurers shall not use credit history to determine personal insurance rates, premiums, or eligibility for coverage. The temporary prohibition shall remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the president on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a State of Emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

Citation of Rules Affected by this Order: New WAC 284-24A-090; and amending WAC 284-24A-050.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.480, 48.19.020, 48.19.035, 48.19.080.

Adopted under notice filed as WSR 21-20-126 on October 5, 2021.

A final cost-benefit analysis is available by contacting Michael Walker, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7036, fax 360-586-3109, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov).

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

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

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

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

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

Date Adopted: February 1, 2022.

Mike Kreidler  
Insurance Commissioner

**OTS-3388.1**

AMENDATORY SECTION (Amending WSR 05-02-026, filed 12/29/04, effective 7/1/05)

**WAC 284-24A-050 What types of information must an insurer include in a multivariate analysis?** (1) A multivariate statistical analysis must evaluate the rating factors listed below (if applicable to the rating plan, and to the extent that data are credible):

(a) For (~~homeowners, dwelling property,~~) earthquake(~~(7)~~) and personal inland marine insurance:

- (i) Insurance score;
- (ii) Territory and/or geographic area;
- (iii) Protection class;
- (iv) Amount of insurance;
- (v) Surcharges or discounts based on loss history;
- (vi) Number of family units; and
- (vii) Policy form relativity.

(b) For (~~private passenger automobile,~~) personal liability and theft, and mechanical breakdown insurance:

- (i) Insurance score;
- (ii) Driver class;
- (iii) Multicar discount;
- (iv) Territory and/or geographic area;
- (v) Vehicle use;
- (vi) Rating factors related to driving record; and
- (vii) Surcharges or discounts based on loss history.

(2) An insurer must provide a general description of the model used to perform the multivariate analysis, including the:

- (a) Formulas the model uses;
- (b) Rating factors that are included in the modeling process; and
- (c) Output from the model, such as indicated rates or rating factors.

(3) An insurer must show how the proposed rates or rating factors are related to the multivariate analysis.

(4) The temporary prohibition in WAC 284-24A-090 on the use of credit history to determine personal insurance rates, premiums, or eligibility for coverage for all homeowners and private passenger automobile coverage will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a state of emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

(a) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(i) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renters, and condominium owner's coverage.

(ii) Private passenger automobile coverage includes motorcycles and recreational vehicle coverage.

(b) The temporary prohibition on the use of credit history to determine personal insurance rates, premiums, or eligibility for homeowners and private passenger automobile coverage does not apply to commercial lines, personal liability and theft, earthquake, personal inland marine, or mechanical breakdown coverage.

[Statutory Authority: RCW 48.02.060, 48.18.545, 48.19.035, and 48.30.010. WSR 05-02-026 (Matter No. R 2004-01), § 284-24A-050, filed 12/29/04, effective 7/1/05. Statutory Authority: RCW 48.02.060, 48.18.100, 48.18.120, 48.19.080, 48.19.370, 48.30.010, 49.60.178, 48.18.545(7), 48.19.035(5). WSR 02-19-013 (Matter No. R 2001-11), § 284-24A-050, filed 9/6/02, effective 10/7/02.]

NEW SECTION**WAC 284-24A-090 Temporary prohibition of use of credit history.**

(1) Notwithstanding any other provision of this chapter, this section applies to all homeowners and private passenger automobile insurance pertaining to and issued in the state of Washington while this rule is effective.

(2) The insurance commissioner finds that as a result of the broad negative economic impact of the coronavirus pandemic, the disproportionately negative economic impact the coronavirus pandemic has had on communities of color, and the disruption to credit reporting caused by both the state and federal consumer protections designed to alleviate the economic impacts of the pandemic, for homeowners and private passenger automobile coverage issued in the state of Washington, the use of insurance credit scores results in premiums that are excessive, inadequate, or unfairly discriminatory within the meaning of RCW 48.19.020 and 48.18.480.

(3) For all homeowners and private passenger automobile coverage issued in the state of Washington, insurers must not use credit history to determine personal insurance rates, premiums, or eligibility for coverage.

(4) For purposes of this section, insurers must not:

(a) Use credit history to place insurance coverage with a particular affiliated insurer or insurer within an overall group of affiliated insurance companies.

(b) Use credit history to determine a consumer's eligibility for any payment plan.

(5) (a) In order to comply with this section, insurers subject to this rule may substitute any insurance credit score factor used in a rate filing with a neutral rating factor.

(b) For purposes of this section, insurers may, but are not required to, implement the neutral factor by peril or coverage.

(6) Insurers may not include rate stability rules in filings submitted to comply with this section.

(7) This subsection applies to insurers that have used credit history to place insurance coverage with a particular affiliated insurer or insurer within a group of insurance companies. For each such impacted insured, the insurer:

(a) Must provide the following notification to each impacted insured, no later than 60 calendar days prior to renewal: "You are currently insured with (COMPANY NAME) at least in part due to your credit history. You may also be eligible for coverage in one or more of our affiliated companies, which may provide a more competitive premium or broader coverage options. Factors other than credit history may still limit your eligibility for coverage. Please contact your Agent/Broker for further assistance. If you do not have an Agent/Broker, you may contact our customer service representatives directly at (PHONE NUMBER) for assistance. This notice does not constitute an offer of renewal or guaranteed coverage.";

(b) Must allow an impacted insured to either secure quotes, or secure coverage, or both, in an affiliated insurer that provides the same line of insurance; and

(c) May not consider the insured's prior company placement when determining premiums or eligibility for coverage for the impacted insured in an affiliated insurer that provides the same line of insurance.

(8) The temporary prohibition on the use of credit history in this section will remain in effect for three years following the day the national emergency concerning the novel coronavirus disease (COVID-19) outbreak declared by the President on March 13, 2020, under the National Emergencies Act (50 U.S.C. 1601 et seq.) terminates, or the day the Governor's Proclamation 20-05, proclaiming a state of emergency throughout the state of Washington as a result of the coronavirus disease 2019 (COVID-19) outbreak in the United States expires, whichever is later.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) Homeowners coverage includes dwelling property, mobile homeowners, manufactured homeowners, renters, and condominium owner's coverage.

(b) Private passenger automobile coverage includes motorcycles and recreational vehicle coverage.

(c) "Neutral factor" means a single constant factor calculated such that, when it is applied in lieu of insurance-score-based rating factors to all policies in an insurer's book of business, the total premium for the book of business is unchanged.

[ ]

**WSR 22-04-092**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed February 1, 2022, 8:10 a.m., effective March 4, 2022]

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

Purpose: The adopted rule establishes the small employer emergency safety grant program and implements ESHB 1097, codified as RCW 51.04.180. ESHB 1097 was passed to increase worker protections from hazards in the workplace. The bill also created the safety grant program for small employers during declared states of emergency. The adopted rule:

- Includes definitions;
- Establishes how the program will be authorized which conforms with ESHB 1097;
- Defines eligibility requirements for those wishing to apply for the grant program when it is active;
- Outlines what will be on the grant program's application;
- Outlines how grants will be awarded, and how an applicant can request reconsideration of a denied grant application;
- Includes guidance on how labor and industries will prioritize grant applications; and lastly
- Outlines recordkeeping requirements when an applicant receives a grant.

Citation of Rules Affected by this Order: New WAC 296-910-001, 296-910-003, 296-910-005, 296-910-010, 296-910-015, 296-910-020, 296-910-025, and 296-910-030.

Statutory Authority for Adoption: RCW 51.04.180.

Adopted under notice filed as WSR 21-23-089 on November 16, 2021.

A final cost-benefit analysis is available by contacting Tracy West, Department of Labor and Industries, Government Affairs and Policy Division, P.O. Box 44001, Olympia, WA 98504-4001, phone 360-902-6954, fax 360-902-4202, email [tracy.west@lni.wa.gov](mailto:tracy.west@lni.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 0.

Date Adopted: February 1, 2022.

Joel Sacks  
Director

**OTS-3467.2**

**Chapter 296-910 WAC**  
**SMALL EMPLOYER EMERGENCY SAFETY GRANT PROGRAM**

NEW SECTION

**WAC 296-910-001 Purpose.** (1) The purpose of this chapter is to set guidance and eligibility requirements for a grant program for small employers in need of assistance during a state of emergency declared under RCW 43.06.010.

(2) The grant program provides for one-time grants to small employers for purchases of equipment, gear, or capital costs to meet any new safety and health requirements related to the emergency that are required before the small employer is permitted to continue or resume business operations.

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NEW SECTION

**WAC 296-910-003 Definitions.** (1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department of labor and industries.

(3) "Government" means local, state, or federal government.

(4) "Employee" means a "worker" for workers' compensation coverage purposes, as defined in RCW 51.08.180.

(5) "Employer" has the same meaning as in RCW 51.08.070.

(6) "Small employer" means:

(a) A for-profit or nonprofit employer who is not self-insured and pays workers' compensation premiums to the state fund as defined in RCW 51.08.175.

(b) An employer with a total of 25 or fewer full-time equivalent employees in all locations, and including those required to be reported under all department workers' compensation insurance subaccounts. The FTE count is to be calculated by dividing the total employee hours by 2080 hours per year.

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NEW SECTION

**WAC 296-910-005 Qualifying state of emergency and program authorization.** (1) The small employer emergency safety grant program will only be available when the following are met:

(a) The governor has declared a state of emergency as defined in RCW 43.06.010; and

(b) The director authorizes the use of reserve funds to activate the grant program.

(2) In order for the director to authorize the use of this grant program there must be adequate reserves in the accident fund and pension reserve fund as described in RCW 51.04.180(1).

(3) If the grant program is authorized by the director, the department will send out an announcement that the department is accepting grant applications. It will include:

(a) The new safety and health requirements that must be complied with during a declared emergency.

(b) The department may also publish a list of the types of equipment, gear, or capital improvements that could be options for meeting those requirements.

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#### NEW SECTION

**WAC 296-910-010 Eligibility.** The following must be met to be considered eligible for a small employer emergency safety grant:

(1) The applicant must be a small employer as defined in WAC 296-910-003.

(2) The applicant must have a need to purchase equipment, gear or make capital improvements to comply with new safety and health regulations or policies during a declared emergency, for use in the area of the declared emergency.

(3) The applicant must not have received funds for the same type of purchase or activity covered by another grant, government program, or insurance contract.

(4) The applicant must be in good standing with the department. If the applicant has debt with the department, there must be a payment plan in place that the applicant has been adhering to.

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#### NEW SECTION

**WAC 296-910-015 Grant application.** (1) Eligible employers must apply for a small employer emergency safety grant using the department's grant application process.

(2) The application information will include, but not be limited to:

(a) Name of employer;

(b) For businesses, name and contact information of owner(s); for other organizations, name and contact information of executive leader(s);

(c) Industry or type of business or organization;

(d) Employer address, including the address within the area of the declared emergency where employees work;

(e) Employer's federal employer identification number;

(f) Employer's Washington unified business identifier (UBI) number;

(g) Employer's workers' compensation account number;

(h) Number of FTEs;

(i) Amount of funds requested;

(j) Purpose of requested funds, including detail of the equipment, gear, or capital improvement they intend to purchase to comply with new safety and health requirements;

(k) Whether other funding has been received, is anticipated, or is being applied for from another grant, government program, or insurance contract.

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#### NEW SECTION

**WAC 296-910-020 Grant awards and reconsideration.** (1) The department will announce when small employer emergency grant applications are being accepted and the eligible region, based on the declared state of emergency.

(2) If an eligible employer purchased qualified safety items during a declared emergency and the grant application process later opens, the employer may apply for a grant to reimburse the costs.

(3) The department retains the option of requiring matching funding by employers in a grant funding round for certain types of expenses.

(4) Small employer emergency grants will only be available for the duration of a declared state of emergency.

(5) The grant application period may be limited in time, so grants may not be available for the full duration of the emergency.

(6) Grant amounts awarded may be less than requested by an eligible applicant.

(7) Grant amounts will be determined based on:

(a) Funds available to the department according to RCW 51.04.180;

(b) Number of eligible applicants;

(c) Amount of funds requested by applicants;

(d) Impact of the disaster or event causing the declared emergency, e.g., size of event, number of counties included in declared emergency, affiliated safety and health requirements, etc.;

(e) Type and number of employers affected; and

(f) Other important factors announced by the department.

(8) The department will notify a grant applicant whether a grant has been awarded or declined.

(9) If an application for grant funding is declined, the applicant may make a request to the department for reconsideration of their application for funding.

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#### NEW SECTION

**WAC 296-910-025 Grant award prioritization.** The factors the department will consider in prioritizing grant awards include, but are not limited to:

(1) Total number of employees;

(2) Total number of employees affected;

(3) Whether an employer provides critical goods or services to the affected community;

- (4) Level of impact from the disaster (e.g., proximity, degree of exposure, etc.);
- (5) Equipment, gear, or capital improvements that are required;
- (6) Amount requested.

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NEW SECTION

**WAC 296-910-030 Recordkeeping.** (1) Grant recipients must keep records and receipts related to an awarded small employer emergency safety grant for six years. These records must be made available for inspection upon request by the department.

(2) Upon request, grant recipients must allow the department on-site to view the purchased equipment, nondisposable gear, or capital improvements during or after the emergency, and to verify emergency use through interviews with employees.

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