

WSR 24-09-008

PROPOSED RULES

MILITARY DEPARTMENT

(Emergency Management Division)

[Filed April 4, 2024, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-21-009.

Title of Rule and Other Identifying Information: Chapter 118-66 WAC, Enhanced 9-1-1 funding; chapter 118-67 WAC, Wireless enhanced 9-1-1 calls from radio communications service companies—Technical and operational standards; and chapter 118-68 WAC, Requires [Required] for automatic location identification.

Hearing Location(s): On May 30, 2024, at 11:00 a.m., join the meeting now [contact agency for link]. For accessibility reasons, for various 911 stakeholders across the state, this meeting will be held virtually.

Date of Intended Adoption: June 7, 2024.

Submit Written Comments to: Adam Wasserman, 20 Aviation Drive, Camp Murray, WA 98430, email adam.wasserman@mil.wa.gov.

Assistance for Persons with Disabilities: Contact Adam Wasserman, phone 253-512-7468, email adam.wasserman@mil.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update chapters 118-66, 118-67, and 118-68 WAC to be in alignment with associated RCW that have already undergone revision and been implemented. The purpose of these changes is to remove redundant language, update verbiage to reflect current technologies, and remove obsolete references.

Reasons Supporting Proposal: The reason for this proposal is to be in alignment with the modernization of the statewide 911 emergency communications system, as outlined in HB [SHB] 1703, and the associated revisions that have already been implemented to associated RCW.

Statutory Authority for Adoption: RCW 38.52.520.

Statute Being Implemented: RCW 38.52.520.

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

Name of Proponent: State 911 coordination office, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Fritz, 710 West 13th Street, Vancouver, WA 98660, 360-992-9210; Implementation and Enforcement: Adam Wasserman, 20 Aviation Drive, Camp Murray, WA 98430, 253-512-7468.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No fiscal impact.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

March 26, 2024

Adam R. Wasserman

Assistant Director for Emergency Communications

OTS-5305.1

Chapter 118-66 WAC
(~~(ENHANCED 9-1-1)~~) 911 FUNDING

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-020 Purpose and priorities. (1) These rules define the purposes for which available state (~~(enhanced 9-1-1)~~) 911 account moneys may be expended, consistent with the eligibility requirements, criteria, and priorities of RCW 38.52.540 and 38.52.545.

(2) RCW 38.52.540 authorizes the establishment of a state (~~(enhanced 9-1-1)~~) 911 account in the state treasury to be used only for the following purposes:

(a) (~~To support the statewide coordination and management of the enhanced 9-1-1 system;~~

(b) ~~For the implementation of wireless enhanced 9-1-1 statewide;~~

(c) ~~For the modernization of enhanced 9-1-1 communications systems statewide; and~~

(d) ~~To help supplement, within available funds, the operational costs of the statewide enhanced 9-1-1 emergency communications system, including:~~

(i) ~~Adequate funding of counties to enable implementation of wireless enhanced 9-1-1 service; and~~

(ii) ~~Reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 9-1-1 service pursuant to negotiated contracts between the counties or their agents and the radio communications service companies.)~~ To procure, fund, and manage the statewide 911 emergency communications system network; and

(b) To purchase goods and services that support the counties and Washington state patrol public safety answering points in providing 911 baseline level of service statewide; and

(c) To assist the counties and Washington state patrol public safety answering points to provide 911 emergency communications systems and associated administrative, and operational costs; and

(d) To acquire 911 hardware, software, and technology appropriate to support a 911 emergency communications system, 911 emergency communications training, and public education; and

(e) To support the statewide coordination and management of the 911 emergency communications system; and

(f) For modernization needs of the 911 emergency communications system as defined in RCW 38.52.010.

(3) RCW 38.52.545 (~~(provides that the)~~) specifies rules defining the purposes for which available state (~~(enhanced 9-1-1 funds)~~) 911 moneys may be expended in which the state 911 coordinator, with the advice and assistance of the 911 advisory committee, must consider ((the base needs of individual counties for specific assistance, and establishes the following expenditure priorities for such funds)) needs necessary to provide a baseline level of service by individual counties and their designated Washington state patrol public safety answering points. Priorities are available for 911 emergency communications system funding are as follows:

(a) To procure, fund, and manage the statewide network and supporting services, and assure that ((9-1-1)) 911 dialing is operational statewide; and

(b) To assist counties and Washington state patrol public safety answering points to provide 911 emergency communications systems and associated administrative and operational costs as necessary to assure they can achieve a ((basic)) baseline level of service ((level for 9-1-1)) for 911 operations; and

(c) To assist counties ((as practicable to acquire items of a capital nature appropriate to modernize 9-1-1 systems and increase 9-1-1 effectiveness)) and their designated Washington state patrol public safety answering points to acquire 911 hardware, software, and technology to support a 911 emergency communications system baseline level of service.

(4) The state ((enhanced 9-1-1)) 911 coordinator, with the advice and assistance of the ((enhanced 9-1-1)) 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of ((enhanced 9-1-1)) 911 services for all counties and to specify by rule the additional purposes for which moneys, if available, may be expended from the state ((enhanced 9-1-1)) 911 account.

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-030 Definitions. (1) "((9-1-1)) 911 call(s)" ((shall mean voice or data that is routed to a public safety answering point (PSAP) by dialing or accessing 9-1-1 in emergency situations.

(2) "9-1-1 demarcation point" shall mean the point at which the 9-1-1 network begins and provides the ingress from the telecommunications providers' network.

(3) "9-1-1 network" shall mean the system of circuits, networks and/or equipment managed and maintained by the Washington state E9-1-1 office to provide 9-1-1 communications from the 9-1-1 demarcation point to the PSAP demarcation point, including the information technology system known as emergency services internet protocol network (ESInet).

(4) "9-1-1" is a generic term referring to any request for public safety assistance, regardless of the media used to make that request. This term may appear in conjunction with specific media, such as "voice call," "video call," "text call," or "data-only call" when the specific media is of importance. The term "noninteractive call" refers to an emergency call that is initiated automatically, carries data, does not establish a two-way interactive media session, and typically does not involve a human at the "initiating" end.

(2) "911 coordinator electronic mobile device" shall mean equipment capable of receiving and delivering text, data, graphics, or other electronic media via a private computer network or the internet.

(3) "911 emergency communications system" has the same meaning as defined in RCW 38.52.010.

(4) "911 information technology services" shall mean the technical support and maintenance of eligible 911 equipment.

(5) "911 mapping administration" shall mean personnel, hardware, and software necessary to create and maintain geographical information system (GIS) data necessary for geospatial routing, location, interpretation, and to display the data on a PSAP call answering position.

(6) "911 management information system (MIS)" shall mean equipment that collects, stores, and collates ((9-1-1)) 911 call ((data)) information into reports and statistics.

~~((5) "Address" shall mean the identification of a unique physical location by street name, number, postal community (and when available, zip code), latitude, longitude (and, when available, altitude). When applicable, the address may contain the identification of separately occupied subunits, such as apartment or suite numbers, and where appropriate, other information such as building name or floor number which defines a unique physical location.~~

~~(6-)) (7) "911 network" also referred to as the next generation 911 emergency services internet protocol network. This network shall meet the service level standards adopted by the state 911 coordination office.~~

(8) "911 public education coordination" shall mean the development and delivery of 911 public education.

(9) "911 training coordination" shall mean the development and delivery of a 911 call receiver training program.

(10) "Advisory committee" shall mean the ((enhanced 9-1-1)) 911 advisory committee as established by RCW 38.52.530.

~~((7)) (11) "Alternate routing" shall mean ((a method)) the capability of routing ((9-1-1)) 911 calls to a designated alternate ((PSAP)) location(s) ((when all 9-1-1 lines are busy at the primary PSAP location)) if all 911 connections are busy, unavailable, or out of service. May be activated upon request or automatically, if detectable, when 911 equipment fails or the PSAP itself is unavailable. This includes default routing which is a predetermined routing path coordinated between a carrier and a PSAP.~~

~~((8) "ANI/ALI controllers" shall mean the equipment that processes the 9-1-1 calls and/or data and provides control functions for retrieving and interpreting information in the ANI and ALI databases.~~

~~(9) "ANI/ALI display equipment" shall mean the equipment at the PSAP call answering position necessary for the display of automatic number identification and automatic location identification.~~

~~((10)) (12) "Automatic location identification (ALI)" ((shall mean a feature of the enhanced 9-1-1 emergency communications system by which the name and address associated with the calling party's telephone number (identified by ANI feature) is forwarded to the PSAP for display)) has the same meaning as defined in RCW 38.52.010.~~

~~((11)) (13) "Automatic location identification (ALI) database service" shall mean the set of ((ALI)) records residing on ((a)) computer systems ((at an E9-1-1 service provider)) and the associated process, procedures, and programs used to create, store, and update the data for presentation to the public safety telecommunicator when a customer accesses the 911 emergency communications system.~~

~~((12) "Automatic location identification/data management system (ALI/DMS)" shall mean a system of manual procedures and computer programs used to create, store, and update the data required for automatic location identification in support of enhanced 9-1-1.~~

~~(13) "Automatic number identification (ANI)" shall mean a feature of the enhanced 9-1-1 emergency communications system that allows for the automatic display of the telephone number used to access 9-1-1.)~~

~~(14) ("B.01/P.01 grade of service" shall mean a level of service where the probability that one call out of one hundred (one percent) will be blocked during the average busy hour.~~

~~(15) "Call detail recorder" shall mean equipment used to store, record or print ANI/ALI information for 9-1-1 calls.)~~ "Baseline level of 911 service" has the same meaning as defined in RCW 38.52.010.

~~(15) "Call handling equipment (CHE)" shall mean equipment and/or systems utilized by the PSAP to receive and process 911 communications. Sometimes this is referred to as customer premise equipment (CPE).~~

~~(16) "Computer aided dispatch (CAD)" shall mean equipment capable of receiving and disseminating detailed information related to ((emergency)) call taking and dispatching.~~

~~(17) "Coordinator professional development (CPD)" shall mean a defined group of support elements provided to all counties and Washington state patrol.~~

~~(18) ("Customer premise equipment (CPE)" shall mean equipment utilized by the PSAP to receive and process 9-1-1 communications.~~

~~(19) "Department" shall mean the Military Department as referred to in RCW 38.52.010.~~

~~(20) "Electronic mail" shall mean a means of delivering text, data, graphics and other electronic media via a private computer network or the internet.~~

~~(21)) "Eligible entities" shall mean the counties and Washington state patrol determined to be eligible for reimbursement of costs for a specified item.~~

~~((22))~~ (19) "Emergency services communication system" ((shall mean a multicounty or county-wide communications network, including an enhanced 9-1-1 system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services)) has the same meaning as defined in RCW 38.52.010 and 82.14B.020.

~~((23) "Emergency service zone (ESZ)" shall mean a geographical area with a combination of designated police, fire, and emergency medical service providers.~~

~~(24) "Enhanced 9-1-1 (E9-1-1) mapping administration" shall mean personnel, hardware, and software necessary to create and maintain geographical information system (GIS) data necessary to interpret Phase II E9-1-1 latitude and longitude (and, when available, altitude), and to display the data on a PSAP call answering position.~~

~~(25) "Enhanced 9-1-1 emergency communications system" shall mean a public communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 9-1-1 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 9-1-1 voice or data to the appropriate public safety answering point that operates in a defined 9-1-1 service area and capability to automatically display the name, address, and telephone number of incoming 9-1-1 voice or data at the appropriate public safety answering point. Enhanced 9-1-1 emergency communications system includes the modernization to next generation 9-1-1 systems.~~

~~(26) "Enhanced 9-1-1 information technology services" shall mean the technical support and maintenance of eligible E9-1-1 equipment.~~

~~(27) "Enhanced 9-1-1 public education services" shall mean the development and delivery of 9-1-1 public education.~~

~~(28) "Enhanced 9-1-1 training coordination" shall mean the development and delivery of a 9-1-1 call receiver in-house training program.~~

~~(29))~~ (20) **"Geographical information system (GIS)"** shall mean an integrated system of hardware and software for capturing, managing, analyzing, and displaying geographically referenced information.

~~((30) "Instant call check" shall mean equipment which records 9-1-1 call conversations for immediate playback on demand.~~

~~(31) "Interconnected voice over internet protocol service (VoIP)" has the same meaning as established under RCW 82.14B.020.~~

~~(32) "Interconnected voice over internet protocol service line" has the same meaning as established under RCW 82.14B.020.~~

~~(33))~~ (21) **"Language interpreter services"** shall mean language translation services for ~~((9-1-1))~~ 911 calls.

~~((34) "Location determination technology (LDT)" shall mean the technology used exclusively to determine position or geographic location using latitude and longitude (and, when available, altitude) of a wireless 9-1-1 caller when the mobile switching center (MSC) starts a call or while the MSC is engaged in a call, or of a VoIP 9-1-1 caller when the VoIP switch starts a call or while the VoIP switch is engaged in a call.~~

~~(35))~~ (22) **"Location"** shall mean a civic location or geodetic location that contains enough detail for accurately routing a call to a PSAP serving the location.

(23) **"Logging recorder"** shall mean a device that is capable of time stamping, recording, and replaying ~~((9-1-1))~~ 911 voice and data.

~~((36))~~ (24) **"Mapping display"** shall mean equipment capable of displaying ~~((9-1-1))~~ 911 call locations on a map.

~~((37) "Master street address guide (MSAG)" shall mean a database of street names and address ranges within their associated postal communities defining emergency service zones for 9-1-1 purposes.~~

~~(38) "Mobile positioning center (MPC)" shall mean a point of interface to a wireless network for the emergency service network. The gateway mobile location center (GMLC) serves as the point of interface to the global system for mobile communications (GSM) wireless network. The MPC and GMLC serve as the entity that retrieves, forwards, stores and controls position data within the location network. The MPC/GMLC entity receives position information from the wireless network, forwards it to the emergency services network upon request and coordinates requests for position update.~~

~~(39) "Mobile switching center (MSC)" shall mean the wireless equivalent of a switching office that provides switching functions for wireless calls.~~

~~(40) "MSC Phase I software capabilities" shall mean software at an MSC that is necessary for the provision of Phase I E9-1-1 service and is used exclusively for this purpose.~~

~~(41) "MSC Phase II software capabilities" shall mean software at the MSC that is necessary for the provision of Phase II E9-1-1 service, and is exclusively used for this purpose.~~

~~(42) "Multicounty region" shall mean two or more counties served by a regional PSAP.~~

~~(43))~~ (25) **"Next generation ((9-1-1 (NG9-1-1) network)) 911 emergency communications system"** ~~((shall mean the next evolutionary step in the development of the 9-1-1 emergency communications system known as E9-1-1 since the 1970s. NG9-1-1 is a system comprised of managed IP based networks and elements that augment present-day E9-1-1 features and functions and add new capabilities. NG9-1-1 will eventually replace the present E9-1-1 system. NG9-1-1 is designed to provide access to emergency services from all sources, and to provide multimedia data capabilities for PSAPs and other emergency service organiza-~~

tions)) has the same meaning as defined in RCW 38.52.010 and 82.14B.020.

(26) "Next generation 911 demarcation point" has the same meaning as defined in RCW 38.52.010.

~~((44) "Night service" shall mean a feature that forwards all 9-1-1 calls routed to a designated PSAP to an alternate directory number preassigned for that PSAP. The alternate directory number may be associated with another PSAP or other alternate destination.~~

~~(45) "Phase I address" shall mean the identification of a cell site and cell sector from which a 9-1-1 call originates, and includes identification of a cell site address, cell sector orientation, and/or a text description of the area.~~

~~(46) "Phase I ALI database" shall mean a computer database used to update the mobile directory number (MDN) information of wireless end user and cell site and cell sector information.~~

~~(47) "Phase I ALI data circuit" shall mean a dedicated 9-1-1 data circuit between an MSC and a service control point (SCP), and between an SCP and an ALI database.~~

~~(48) "Phase I (ALI)" shall mean the MDN information of wireless end users and the cell site and cell sector information.~~

~~(49) "Phase I E9-1-1 service" shall mean service that facilitates the selective routing of wireless 9-1-1 calls and the display of Phase I ALI at the PSAPs.~~

~~(50) "Phase I implementation plan" shall mean a plan of an RCSC or county for implementation of Phase I E9-1-1 service in a county or counties in Washington state, including, but not limited to: Phase I E9-1-1 service activation date; network flowchart (including the company's relevant MSCs); specification of the technology used for interface to the selective router and the ALI/data management system (ALI/DMS) and a 9-1-1 call flow description; procedures for updating cell site and cell sector information; default and diverse routing plans; and an outline of Phase I E9-1-1 service testing procedures.~~

~~(51) "Phase I interface to ALI database" shall mean the physical connection of Phase I ALI data circuits from a service control point (SCP) or selective router to the ALI database, and the ALI feature enabling of the circuits.~~

~~(52) "Phase I interface to selective router" shall mean the physical connection of the Phase I 9-1-1 voice network from an MSC of an RCSC to a selective router, and the selective router feature enabling of the 9-1-1 trunks.~~

~~(53) "Phase I master street address guide (MSAG)" shall mean records in a master street address guide associated with each cell sector that provide cell site and cell sector identification, address, coverage information, service provider name, and PSAP of the cell sector for automatic display at the PSAP when a wireless 9-1-1 call is processed by that cell sector.~~

~~(54) "Phase I testing" shall mean testing conducted by an RCSC when Phase I E9-1-1 service is implemented to ensure the service is working correctly and testing after a company makes Phase I E9-1-1 service affecting additions or changes to their networks.~~

~~(55) "Phase II address" shall mean the latitude and longitude (and, when available, altitude) of the wireless end user.~~

~~(56) "Phase II ALI" shall mean the latitude and longitude (and, when available, altitude) of the wireless end user, in addition to the mobile directory number information. When the latitude and longitude are not available the Phase II ALI defaults to Phase I ALI as defined in this chapter.~~

~~(57) "Phase II computer aided dispatch (CAD) system upgrades" shall mean upgrades to the PSAP CAD system necessary to interpret the Phase II ALI data stream or to provide output to display Phase II location.~~

~~(58) "Phase II E9-1-1 service" shall mean service provided by an RCSC that delivers Phase I E9-1-1 service and latitude and longitude (and, when available, altitude) of the wireless end user.~~

~~(59) "Phase II implementation plan" shall mean a plan of an RCSC or county for implementation of Phase II E9-1-1 service in a county or counties in Washington state, including, but not limited to: Phase II E9-1-1 service activation date; network flowchart (including specification of the technology used for Phase II); and an outline of Phase II E9-1-1 service testing procedures.~~

~~(60) "Phase II testing" shall mean testing conducted by an RCSC when Phase II E9-1-1 service is implemented to ensure the service is working correctly, and periodic testing necessary for the maintenance of the service.~~

~~(61)) (27) "Place of primary use(,)" ((as defined in RCW 82.04.065, shall mean the street address representative of where the subscriber's use of the mobile telecommunications service primarily occurs, which must be:~~

~~(a) The residential street address or the primary business street address of the subscriber; and~~

~~(b) Within the licensed service area of the home service provider.~~

~~(62) "PSAP demarcation point" shall mean the point at which the 9-1-1 network accesses the PSAP's CPE.~~

~~(63) "PSAP mapping" shall mean a system capable of converting latitude and longitude (and, when available, altitude) to a map display at the 9-1-1 call answering positions at the PSAPs.~~

~~(64) "Pseudo-ANI (P-ANI)" shall mean a nondialable telephone number used to support routing of wireless 9-1-1 calls that may identify a wireless cell, cell sector, or PSAP to which the call should be routed; or a nondialable telephone number used to support routing of VoIP 9-1-1 calls that identifies the PSAP to which the call should be routed) has the same meaning as defined in RCW 38.52.010 and 82.14B.020.~~

~~((65)) (28) "Public safety answering point (PSAP)" ((shall mean the public safety answering location for 9-1-1 calls originating in a given area. PSAPs are designated as primary or secondary, which refers to the order in which calls are directed for answering) has the same meaning as defined in RCW 38.52.010.~~

~~((66)) (29) "Radio communications service company (RCSC)" ((shall mean every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio communications services, or cellular communications service for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio-paging providers)) has the same meaning as defined in RCW 38.52.010 and 82.14B.020.~~

~~((67) "Reverse ALI search" shall mean the ability to electronically query the ALI database to obtain an address associated with a known telephone number.~~

~~(68) "Route diversity" shall mean a method of assuring continuity of service by using multiple transmission routes to deliver a particular service between two points on a network.~~

~~(69) "Selective router" shall mean a device that provides the switching of 9-1-1 calls and controls delivery of a voice call with ANI to the PSAP and provides selective routing, speed calling, selective transfer, fixed transfer, and certain maintenance functions for each PSAP.~~

~~(70) "Selective routing" shall mean a feature that permits a 9-1-1 call to be routed to a predesignated PSAP based upon the address and/or location associated with the originating 9-1-1 access point.~~

~~(71) "Service control point (SCP)" (also referred to as "signal control point") shall mean a remote database within the signaling system 7 (SS7) signaling network that supplies the translation and routing data needed to deliver advanced network services.~~

~~(72)(a) "Service control point (SCP) Phase I capabilities" shall mean database and routing translations necessary for interpretation of data provided by the MSC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the correct MDN of the wireless phone and the correct cell site and cell sector information.~~

~~(b) "Service control point (SCP) Phase II capabilities" shall mean specific functions and features necessary for interpretation of Phase II data provided by the MPC on wireless 9-1-1 calls to allow 9-1-1 calls to be routed to the correct PSAP and display the latitude and longitude (and, when available, altitude) of the caller.~~

~~(73) "Signaling system 7 (SS7)" shall mean an out of band signaling system used to provide basic routing information, call set-up and other call termination functions in which signaling is removed from the voice channel itself and put on a separate data network.~~

~~(74)) (30) "Statewide services" shall mean services which benefit all counties and the Washington state patrol and ((do)) does not require local 911 excise tax revenue to be used prior to state reimbursement. Some are paid directly by the state ((E9-1-1)) 911 office and some are reimbursed through county contracts.~~

~~((75) "Switching office" shall mean a telecommunications provider facility that houses the switching and trunking equipment serving telephones in a defined area.~~

~~(76) "Switching office enabling" shall mean the technology that allows the public network telephone switching office to recognize and accept the digits 9-1-1.~~

~~(77)) (31) "Telecommunications provider" ((shall mean a telecommunications company as defined in RCW 80.04.010, a RCSC as defined herein, and a commercial mobile radio service provider as defined in 47 C.F.R., section 20.3, and providers of VoIP as defined herein and/or data service)) has the same meaning as defined in RCW 38.52.010.~~

~~((78)) (32) "Telecommunications services priority (TSP)" shall mean a service that assigns a priority to telecommunications lines for service restoration.~~

~~((79)) (33) "Teletype (TTY)" shall mean a telecommunications device that permits typed telephone conversations with or between deaf, hard of hearing, or speech impaired people with a machine at their location.~~

~~((80)) (34) "Traffic studies" shall mean ((9-1-1)) 911 call studies performed by a telecommunications provider.~~

~~((81)) (35) "Uninterruptible power supply (UPS)" shall mean a system designed to provide power, without delay or electrical transients, during a period when the normal power supply is incapable of performing acceptably and before generator or other auxiliary power is made available.~~

~~((82))~~ (36) **"Voice over internet protocol (VoIP) service"** shall mean as defined by the Federal Communications Commission (FCC) in 47 C.F.R. Sec. 9.3.

~~((83))~~ **"VoIP ALI"** shall mean a feature by which the name and registered address associated with the calling party's VoIP telephone number is forwarded to the PSAP for display.

~~(84)~~ **"VoIP ALI database"** shall mean a set of VoIP ALI records residing on a computer system at an E9-1-1 service provider or VoIP positioning center.

~~(85)~~ **"VoIP interface to ALI database"** shall mean the data connection between the VoIP positioning center (VPC) and the ALI database that serves the PSAP.

~~(86)~~ **"VoIP positioning center (VPC)"** shall mean the entity that retrieves, forwards, stores and controls position data within the location network.

~~(87)~~ **"VoIP service provider"** shall mean a provider of VoIP service as defined by the Federal Communications Commission (FCC) in 47 C.F.R. Sec. 9.3.

~~(88)~~ **"VoIP service provider soft switch"** shall mean the VoIP equivalent of a switching office that provides switching functions for VoIP calls.

~~(89)~~ **"VoIP testing"** shall mean testing conducted by a VoIP service provider when E9-1-1 service is implemented to ensure the service is working correctly, and testing after a company makes E9-1-1 service affecting additions or changes to their networks.)

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-040 County eligibility for funding. (1) As required by RCW 38.52.510, each county must provide funding for the ~~((enhanced 9-1-1))~~ 911 emergency communications system in the county in an amount equal to the amount the maximum taxes under RCW 82.14B.030(1) would generate in the county or the amount necessary to provide full funding of the system in the county.

(2) A county in the state of Washington may be eligible to receive available funds from the state ~~((enhanced 9-1-1))~~ 911 account for certain eligible ~~((enhanced 9-1-1))~~ 911 emergency communications system expenses as described in this chapter only if the county has imposed the maximum county ~~((enhanced 9-1-1))~~ 911 tax allowed under RCW 82.14B.030 (1) and (2).

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-042 Radio communications service company (RCSC) ~~((eligibility for wireless funding))~~ agreements. ~~((1))~~ The state ~~((enhanced E9-1-1))~~ 911 coordinator is authorized to enter into statewide agreements to improve the efficiency of ~~((enhanced 9-1-1 services))~~ 911 emergency communications system for all counties, and may do so through execution of statewide agreements with RCSC(s).

~~((2))~~ Funds for wireless enhanced 9-1-1 service shall not be distributed to any radio communications service company that has not ne-

~~gotiated or in good faith attempted to negotiate a wireless enhanced 9-1-1 Phase I or Phase II service agreement with the applicable county(ies).)~~

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-045 Washington state patrol (WSP) eligible expenses.

Upon designation by a county as a primary PSAP for wireless ~~((9-1-1))~~ 911 calls, a Washington state patrol communications center may be eligible to receive available wireless funds from the state ~~((enhanced 9-1-1))~~ 911 account for the following eligible ~~((components))~~ categories, components of which are not listed in order of priority:

- (1) Statewide dialing items:
 - (a) Coordinator professional development (CPD);
 - (b) ~~((Wireless Phase I E9-1-1 service components:~~
 - ~~(i) Phase I automatic location identification (ALI);~~
 - ~~(ii) Phase I address;~~
 - ~~(iii) Service control point Phase I capabilities;~~
 - ~~(iv) Phase I ALI database;~~
 - ~~(v) Phase I interface to selective router;~~
 - ~~(vi) Phase I interface to ALI database;~~
 - ~~(vii) Phase I testing;~~
 - ~~(viii) Phase I implementation plans;~~
 - ~~(ix) Phase I implementation agreements;~~
 - ~~(x) Pseudo-ANI (P-ANI);~~
 - ~~(xi) MSC Phase I software capabilities;~~
 - ~~(xii) Traffic studies between the MSC and selective router;~~
 - ~~(xiii) Phase I ALI data circuits;~~
 - (c) ~~Wireless E9-1-1 Phase II service components (including all Phase I components):~~
 - ~~(i) Location determination technology;~~
 - ~~(ii) Phase II implementation plan;~~
 - ~~(iii) Phase II testing;~~
 - ~~(iv) MSC Phase II software capabilities;~~
 - ~~(v) Service control point Phase II capabilities; and~~
 - ~~(vi) Mobile positioning center;~~
 - (d) ~~NG9-1-1 network;~~
 - (e) ~~9-1-1 network equivalent (B.01/P.01 grade of service level required);~~
 - ~~(f) Selective routing;~~
 - ~~(g) Automatic location identification (ALI) database;~~
 - ~~(h) Traffic studies between selective router and PSAP;~~
 - ~~(i) Telecommunications service priority;~~
 - ~~(j) Language interpretive service;~~
 - ~~(k) Alternate routing and/or night service;~~
 - ~~(l) Customer premise equipment (CPE)/telephone system and maintenance;~~
 - ~~(m) TTY required for compliance with the Americans with Disabilities Act (ADA);~~
 - ~~(n) ANI/ALI controllers and necessary interfaces to send data to other PSAP equipment;~~
 - ~~(o) ANI/ALI display equipment for primary PSAPs;~~
 - ~~(p) PSAP mapping and maintenance;~~

- ~~(g) 9-1-1 coordinator duties;~~) Next generation 911 emergency communications system;
- (c) Automatic location identification (ALI) database service;
- (d) Traffic studies;
- (e) Telecommunications services priority (TSP);
- (f) Language interpretive service;
- (g) Alternate routing;
- (h) Call handling equipment (CHE) telephone system and maintenance;
- (i) TTY required for compliance with the Americans with Disabilities Act (ADA);
- (j) Call handling equipment (CHE) display equipment for PSAPs;
- (k) 911 coordinator duties;
- (l) 911 coordinator electronic mobile device; and
- (m) Associated administrative costs;
- (2) ~~((Basic))~~ Baseline service items:
- ~~(a) Uninterruptible power supply (UPS) for PSAP ((enhanced 9-1-1)) 911 equipment and maintenance;~~
- ~~(b) ((Route diversity between selective router and PSAP;~~
- ~~(c) ((E9-1-1)) 911 mapping administration;~~
- ~~((d) Instant call check equipment and maintenance;~~
- ~~(e))~~ (c) Mapping display for call answering positions ((that are ANI/ALI equipped));
- ~~((f) 9-1-1))~~ (d) 911 Management information system;
- ~~((g) Call detail recorder or printer and maintenance;~~
- ~~(h))~~ (e) Headsets for ((9-1-1)) 911 call receivers; and
- (f) Associated administrative costs;
- (3) Capital items:
- (a) Logging recorder for ((9-1-1)) 911 calls and maintenance;
- (b) Computer aided dispatch (CAD) system hardware ((and)), software, and maintenance;
- (c) Auxiliary generator and generator maintenance to provide ((9-1-1)) 911 eligible equipment/telephone services backup power;
- (d) Clock synchronizer and maintenance; ((and))
- (e) Console furniture for ((9-1-1)) 911 call receiving equipment and maintenance; and
- (f) Associated administrative costs.

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-050 State eligible expenses. ~~((Enhanced 9-1-1))~~ (1) A 911 emergency communications system ~~((s are))~~ is comprised of multiple ~~((components.))~~ features, functions, and services whose costs may be eligible, subject to available funds, ((expenses for implementation, operation, and maintenance costs of these components may be eligible)) for reimbursement ~~((if incurred))~~ by eligible entities. The components and services listed below may ~~((be eligible))~~ qualify for reimbursement to eligible entities from the state ~~((enhanced 9-1-1))~~ 911 account based on a reasonable prioritization by the state ~~((E9-1-1))~~ 911 coordinator, with the advice and assistance of the ~~((enhanced 9-1-1))~~ 911 advisory committee and in accordance with the purposes and priorities established by statute and regulation ~~((, including WAC 118-66-020)).~~ The state ~~((E9-1-1))~~ 911 coordinator will

adopt policies defining specific details related to reimbursement eligibility.

~~((1)) (2) Expenses for the ((following wireline service components may be eligible for reimbursement)) items listed below may be eligible for reimbursement from the state ((enhanced 9-1-1)) 911 account from funds generated under the ((state wireline/VoIP enhanced 9-1-1 account (RCW 82.14B.030 (5) and (7)) as statewide dialing items:~~

- ~~(a) Switching office enabling;~~
- ~~(b) Automatic number identification (ANI);~~
- ~~(c) Traffic studies between switching offices and the selective router;~~
- ~~(d) ALI/DMS service;~~
- ~~(e) Reverse ALI search capability.~~

~~(2) Expenses for the following wireless components may be eligible for reimbursement from state enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)) as statewide dialing items:~~

- ~~(a) Wireless Phase I E9-1-1 service components:~~
 - ~~(i) Phase I automatic location identification (ALI);~~
 - ~~(ii) Phase I address;~~
 - ~~(iii) Service control point Phase I capabilities;~~
 - ~~(iv) Phase I ALI database;~~
 - ~~(v) Phase I interface to selective router;~~
 - ~~(vi) Phase I interface to ALI database;~~
 - ~~(vii) Phase I testing;~~
 - ~~(viii) Phase I implementation plans;~~
 - ~~(ix) Phase I implementation agreements;~~
 - ~~(x) Pseudo-ANI (P-ANI);~~
 - ~~(xi) MSC Phase I software capabilities;~~
 - ~~(xii) Traffic studies between the MSC and selective router;~~
 - ~~(xiii) Phase I ALI data circuits;~~
- ~~(b) Wireless E9-1-1 Phase II service components (including all Phase I components):~~
 - ~~(i) Location determination technology;~~
 - ~~(ii) Phase II implementation plan;~~
 - ~~(iii) Phase II testing;~~
 - ~~(iv) MSC Phase II software capabilities;~~
 - ~~(v) Service control point Phase II capabilities; and~~
 - ~~(vi) Mobile positioning center.~~

~~(3) Expenses for the following components are shared with wireline/VoIP and wireless enhanced 9-1-1 services and may be eligible for reimbursement from state enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030 (5) and (7)) and from state enhanced 9-1-1 account funds generated under the statewide wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)):)) authority derived from RCW 82.14B.030 (5), (6), (7), and (8).~~

- ~~(a) Statewide dialing items:~~
 - ~~(i) Coordinator professional development (CPD);~~
 - ~~(ii) ((NG9-1-1 network;~~
 - ~~(iii) 9-1-1 network equivalent (B.01/P.01 grade of service level required);~~
 - ~~(iv) Selective routing;~~
 - ~~(v)) Next generation 911 emergency communications system;~~
 - ~~(iii) Automatic location identification (ALI) database service;~~
 - ~~((vi)) (iv) Traffic studies ((between selective router and PSAP));~~

~~((vii) Telecommunications service priority;~~
~~(viii))~~ (v) Telecommunications service priority (TSP);
(vi) Language interpretive service;
~~((ix))~~ (vii) Alternate routing ((and/or night service));
~~((x) Customer premise))~~ (viii) Call handling equipment ((CPE)/
telephone system)) (CHE) and maintenance;
~~((xi))~~ (ix) TTY required for compliance with the Americans with
Disabilities Act (ADA);
~~((xii) ANI/ALI controllers and necessary interfaces to send data~~
~~to other PSAP equipment;~~
~~(xiii) ANI/ALI display equipment for primary PSAPs;~~
~~(xiv) PSAP mapping and maintenance;~~
~~(xv) County 9-1-1))~~ (x) CHE display equipment for PSAPs;
(xi) PSAP mapping and maintenance;
(xii) 911 coordinator duties;
~~((xvi) MSAG coordination and maintenance;~~
~~(xvii) Mapping/GIS coordination and maintenance;~~
~~(xviii) 9-1-1))~~ (xiii) 911 information technology services;
~~((xix) 9-1-1))~~ (xiv) 911 call receiver salaries and benefits;
~~((xx) 9-1-1))~~ (xv) 911 public education coordination;
~~((xxi) 9-1-1))~~ (xvi) 911 training coordination;
(xvii) 911 coordinator electronic mobile device; and
(xviii) Associated administrative costs.
 (b) ~~((Base))~~ Baseline service items:
 (i) Uninterruptible power supply (UPS) for PSAP ~~((enhanced~~
~~9-1-1))~~ 911 equipment and maintenance;
 (ii) ~~((Route diversity between selective router and PSAP;~~
~~iii) 9-1-1))~~ 911 Coordinator training;
~~((iv) MSAG training;~~
~~(v))~~ (iii) Mapping/GIS training;
~~((vi))~~ (iv) Information technology (IT) training;
~~((vii))~~ (v) Call receiver training;
~~((viii) E9-1-1))~~ (vi) 911 mapping administration;
~~((ix) Instant call check equipment and maintenance;~~
~~(x))~~ (vii) Mapping display for call answering positions ((that
are ANI/ALI equipped));
~~((xi) 9-1-1))~~ (viii) 911 Management information system;
~~((xii) Call detail recorder or printer and maintenance;~~
~~(xiii))~~ (ix) Headsets for ((9-1-1)) 911 call receivers;
~~((xiv) Enhanced 9-1-1))~~ (x) 911 document destruction; and
~~((xv) 9-1-1 coordinator electronic mail))~~ (xi) Associated admin-
istrative costs.
 (c) Capital:
 (i) Logging recorder for ~~((9-1-1))~~ 911 calls and maintenance;
 (ii) Computer aided dispatch (CAD) system hardware ~~((and))~~ , soft-
 ware, and maintenance;
 (iii) Auxiliary generator and generator maintenance to provide
~~((9-1-1))~~ 911 eligible equipment/telephone services backup power;
 (iv) Clock synchronizer and maintenance; ~~((and))~~
 (v) Console furniture for ~~((9-1-1))~~ 911 call receiving equipment
 and maintenance; and
(vi) Associated administrative costs.
~~((4) Within available funds and consistent with statutory and~~
~~regulatory purposes and priorities, the state enhanced 9-1-1 coordina-~~
~~tor (with the advice and assistance of the enhanced 9-1-1 advisory~~
~~committee) has the discretion to allocate state enhanced 9-1-1 account~~

~~funds to eligible entities as reimbursement for wireline/VoIP and wireless enhanced 9-1-1 eligible expenses.~~

~~(5) Eligible expenses for wireline/VoIP components established in WAC 118-66-050(1) may only be eligible for reimbursement from state enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030 (5) and (7)). Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.~~

~~(6) Eligible expenses for wireless components established in WAC 118-66-050(2) may only be eligible for reimbursement from enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)). Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.~~

~~(7) Eligible expenses for components established in WAC 118-66-050(3) may be eligible for reimbursement from state enhanced 9-1-1 account funds generated under the state wireline/VoIP enhanced 9-1-1 excise tax (RCW 82.14B.030 (5) and (7)) and state enhanced 9-1-1 account funds generated under the state wireless enhanced 9-1-1 excise tax (RCW 82.14B.030(6)). (All shared components.) The amount allocated from each tax source will be based on an equitable distribution determined by the state E9-1-1 coordinator with the advice and assistance of the enhanced 9-1-1 advisory committee. Such funds shall be allocated based on statutory and regulatory purposes and priorities and WAC 118-66-020.)~~

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-060 County eligible expenses. (1) In addition to the state reimbursement eligible items listed in WAC ((118-66-050)) 118-66-020 (1) through (3), PSAP and ((9-1-1)) 911 administration cost items are eligible county ((9-1-1)) 911 expenses, including the following items, which are not listed in order of priority:

- (a) Management services;
- (b) Human resources services;
- (c) Legal costs;
- (d) Financial services;
- (e) PSAP and ((9-1-1)) 911 administration lease/purchase costs;
- (f) ((E9-1-1)) 911 building repair and maintenance, and major systems replacement/repair;
- (g) ((E9-1-1)) 911 property and liability insurance;
- (h) PSAP and ((9-1-1)) 911 administrative telephone system; and
- (i) ((E9-1-1/NG9-1-1)) 911/NG911 reserve accounts(,; and
- ~~(j) Radio communications services companies wireless enhanced 9-1-1 recovery expenses).~~

(2) The items listed ((in subsection (1) of this section)) above are not eligible for funding from the state ((enhanced 9-1-1)) 911 account nor shall such items be used in the determination of eligibility in receiving state assistance from the state ((enhanced 9-1-1)) 911 account.

(3) When the items listed ((in subsection (1) of this section)) above are used with other PSAP operations such as dispatching, the county ((9-1-1)) 911 eligible amount shall be determined by percentage of use.

AMENDATORY SECTION (Amending WSR 03-10-014, filed 4/25/03, effective 7/1/03)

WAC 118-66-081 Funding applications. Requests for funding shall be submitted in accordance with application formats developed by the state ((E9-1-1)) 911 coordinator and shall include plans and budget information justifying the funding request, an annual schedule of eligible items, funding levels, and funding priority. The state ((E9-1-1)) 911 coordinator will establish a schedule of annual application dates.

AMENDATORY SECTION (Amending WSR 11-03-004, filed 1/5/11, effective 2/5/11)

WAC 118-66-090 Other rules. Through other governmental agencies, such as the Federal Communications Commission and the Washington utilities and transportation commission, rules have and will be adopted which will impact the statewide operation of ((enhanced 9-1-1)) 911. By this reference, this rule is intended to be consistent with and complementary to these other rules.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 118-66-085 Reporting requirements for radio communications service companies (RCSCs).

OTS-5306.1

Chapter 118-67 WAC

WIRELESS ((ENHANCED 9-1-1)) 911 CALLS FROM RADIO COMMUNICATIONS SERVICE COMPANIES—TECHNICAL AND OPERATIONAL STANDARDS

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-020 Purpose. (1) RCW 38.52.561 authorizes the state ((enhanced 9-1-1)) 911 coordinator, with the advice and assistance of the ((enhanced 9-1-1)) 911 advisory committee, to set nondiscriminatory, uniform technical and operational standards consistent with the rules of the Federal Communication Commission (FCC) for the transmission of ((9-1-1)) 911 calls from radio communications service compa-

nies to ~~((enhanced 9-1-1))~~ 911 emergency communications systems. These standards must not exceed the requirements set by the FCC.

(2) ~~((The FCC, in its orders may refer to or approve standards adopted by the following standards bodies:~~

~~(a) Alliance for Telecommunications Industry Solutions (ATIS);~~

~~(b) Emergency Services Interconnection Forum (ESIF);~~

~~(c) National Emergency Number Association (NENA).~~

~~(3-))~~ This chapter is based upon and does not exceed FCC requirements contained in 47 C.F.R. ~~((§ 20.18))~~ Chapter 1.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-030 Definitions. (1) ~~((**"Alliance for Telecommunications Industry Solutions (ATIS)"** shall mean the membership organization that provides the tools necessary for the industry to identify standards, guidelines and operating procedures that make the interoperability of existing and emerging telecommunications products and services possible.~~

~~(2) **"Emergency Services Interconnection Forum (ESIF)"** shall mean the working group of ATIS that provides a venue for the telecommunications industry, public safety and other stakeholders to develop and refine technical and operational interconnection issues that will ensure E9-1-1 service will be available for everyone.~~

~~(3-))~~ **"911 only devices"** shall mean a nonservice initialized device that is manufactured with the capability of dialing 911 only and that cannot receive incoming calls.

(2) **"Device"** shall mean a piece of technology equipment designed to perform specific functions and with the capability to access the 911 emergency communications system.

(3) **"Dispatchable location"** means a location delivered to the PSAP with a 911 call that consists of the validated street address of the calling party, plus additional information such as suite, apartment, or similar information necessary to adequately identify the location of the calling party.

(4) **"Electronic serial number (ESN)"** shall mean the unique 11-digit serial number assigned to the device by the manufacturer.

(5) **"Federal Communications Commission (FCC)"** shall mean the agency of the federal government established under the Communications Act of 1934, as revised, for the purpose of regulating interstate communication by wire and radio.

~~((4) **"Electronic serial number (ESN)"** shall mean the unique 11-digit serial number assigned to the handset by the manufacturer.~~

~~(5-))~~ (6) **"International Mobile Equipment Identifier (IMEI)"** shall mean the unique 15-digit serial number assigned to a global system for mobile communication (GSM) handset used on a GSM wireless network.

~~((6) **"National Emergency Number Association (NENA)"** shall mean the group established to foster the technological advancement, availability, and implementation of a universal emergency telephone number system.))~~

(7) **"Nonservice initialized ((handsets)) devices"** shall mean a ((handset)) device for which there is no valid service contract with an RCSC.

(8) (~~"Phase I enhanced 9-1-1 service"~~ shall mean wireless 9-1-1 service where the RCSC is required to provide the telephone number of the originator of a 9-1-1 call and the location of the cell site or base station receiving a 9-1-1 call from any mobile handset accessing their systems to the designated PSAP through the use of ANI and Pseudo-ANI (see WAC 118-66-030).

(9) ~~"Phase II enhanced 9-1-1 service"~~ shall mean wireless 9-1-1 service where the RCSC is required to provide the telephone number of the originator of a 9-1-1 call and the location by latitude and longitude to the designated PSAP.

(10) ~~"Radio communications service company (RCSC)"~~ ((shall mean every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio communications services, or cellular communications service for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio-paging providers.

(11) ~~"9-1-1 Only Handsets"~~ shall mean a nonservice initialized handset that is manufactured with the capability of dialing 9-1-1 only and that cannot receive incoming calls)) has the same meaning as defined in RCW 38.52.010 and 82.14B.020.

(9) "Real-time text (RTT)" is text that is transmitted instantly as it is typed or created.

(10) "Text-to-911" is a service typically provided by mobile carriers, which allows for the sending of short messages to a PSAP from any text enabled device.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-040 Introduction. (1) Radio communications service companies (RCSCs) shall comply with the technical and operational standards established by the Federal Communications Commission for the transmission of 9-1-1 calls in section 47 C.F.R. Chapter I (~~(, § 20.18)~~) of the FCC Rules.

(2) The authority given to the state (~~(enhanced 9-1-1)~~) 911 coordinator by RCW 38.52.561 is limited to setting standards as set forth in that section and does not constitute authority to regulate radio communications service companies.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-050 ((Phase II accuracy.)) 911 location accuracy requirements. ((+1)) RCSCs shall meet or exceed the location accuracy standards ((for Phase II enhanced 9-1-1:

(a) ~~For network-based technologies: 100 meters for 67 percent of calls, 300 meters for 95 percent of calls;~~

(b) ~~For handset-based technologies: 50 meters for 67 percent of calls, 150 meters for 95 percent of calls.~~

~~(c) For the remaining 5 percent of calls, location attempts must be made and a location estimate for each call must be provided to the appropriate PSAP.~~

~~(2) Adhere to schedules for implementation of Phase I and Phase II enhanced 9-1-1 service (see paragraphs 20.18 (d) through (g) of the FCC Rules and subsequent modifications of the FCC's Richardson Order and Phase II Compliance Deadlines in CC Docket 94-102):) set forth by the FCC.~~

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-060 ((Phase I enhanced 9-1-1 service.)) 911 location information. ~~((1) Within six months of a request by the designated public safety answering point as set forth in WAC 118-67-100, RCSCs must provide the telephone number of the originator of a 9-1-1 call and the location of the cell site or base station receiving a 9-1-1 call from any mobile handset accessing their systems to the designated public safety answering point through the use of ANI and pseudo-ANI.~~

~~(2) When the directory number of the handset used to originate a 9-1-1 call is not available to the serving carrier, such carrier's obligations under paragraph (1) of this section extend only to delivering 9-1-1 calls and available call party information, including that prescribed in WAC 118-67-120 to the designated public safety answering point.~~

~~(3) With respect to 9-1-1 calls accessing their systems through the use of TTYs, RCSCs must comply with the requirements in paragraphs (1) and (2) of this section, as to calls made using a digital wireless system.))~~

RCSCs, using any and all industry adopted standards, must deliver one of the following to the PSAP:

(1) Dispatchable location; or

(2) Device latitude and longitude with callback number.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-090 ((Handset)) Device-based location technologies. ~~((RCSCs that employ a handset-based location technology may phase in deployment of Phase II enhanced 9-1-1 service, subject to the following requirements:~~

~~(1) Without respect to any PSAP request for deployment of Phase II 9-1-1 enhanced service, the RCSC shall:~~

~~(a) Ensure that 100 percent of all new digital handsets activated are location-capable.~~

~~(b) By December 31, 2005, achieve 95 percent penetration of location-capable handsets among its subscribers.~~

~~(2) Once a PSAP request is received, the RCSC shall, in the area served by the PSAP, within six months:~~

~~(a) Install any hardware and/or software in the CMRS network and/or other fixed infrastructure, as needed, to enable the provision of Phase II enhanced 9-1-1 service; and~~

~~(b) Begin delivering Phase II enhanced 9-1-1 service to the PSAP.~~

~~(3) For all 9-1-1 calls from portable or mobile phones that do not contain the hardware and/or software needed to enable the RCSC to provide Phase II enhanced 9-1-1 service, the RCSC shall, after a PSAP request is received, support, in the area served by the PSAP, Phase I location for 9-1-1 calls or other available best practice method of providing the location of the portable or mobile phone to the PSAP.~~

~~(4)) RCSCs employing ((handset)) device-based location technologies shall ensure that location-capable ((portable or mobile phones)) devices shall conform to industry interoperability standards designed to enable the location of such ((phones)) devices by multiple RCSCs.~~

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-110 TTY access to ((9-1-1)) 911 services. RCSCs subject to this section must be capable of transmitting ((9-1-1)) 911 calls from individuals with speech or hearing disabilities through means other than mobile radio ((handsets)) devices, e.g., through the use of text telephone devices (TTY), text-to-911, and real-time text (RTT). Operators of digital wireless systems must comply with the provisions of this paragraph.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-120 Nonservice initialized ((handsets)) devices. RCSCs that donate a nonservice initialized ((handset)) device for purposes of providing access to ((9-1-1)) 911 services are required to:

- (1) Program each ((handset)) device with ((9-1-1)) 911 plus the decimal representation of the seven least significant digits of the electronic serial number, international mobile equipment identifier or any other identifier unique to that ((handset)) device;
- (2) Affix to each handset a label that is designed to withstand the length of service expected for a nonservice initialized ((phone)) device, and that notifies the user that the ((handset)) device can only be used to dial ((9-1-1)) 911, that the ((9-1-1)) 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and
- (3) Institute a public education program to provide the users of such ((handsets)) devices with information regarding the limitations of nonservice initialized ((handsets)) devices.

AMENDATORY SECTION (Amending WSR 04-01-066, filed 12/12/03, effective 1/12/04)

WAC 118-67-130 Manufacturers of ((9-1-1-only handsets)) 911 only devices. Manufacturers of ((9-1-1-only handsets)) 911 only devices that are manufactured after May 3, 2004, are required to:

- (1) Program each ((handset)) device with ((9-1-1)) 911 plus the decimal representation of the seven least significant digits of the

electronic serial number, International Mobile Equipment Identifier or any other identifier unique to that ((handset)) device;

(2) Affix to each ((handset)) device a label that is designed to withstand the length of service expected for a nonservice initialized phone, and which notifies the user that the ((handset)) device can only be used to dial ((9-1-1)) 911, that the ((9-1-1)) 911 operator will not be able to call the user back, and that the user should convey the exact location of the emergency as soon as possible; and

(3) Institute a public education program to provide the users of such ((handsets)) devices with information regarding the limitations of ((9-1-1-only handsets)) 911 only devices.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 118-67-070	Phase II enhanced 9-1-1 service.
WAC 118-67-080	Network-based location technologies.
WAC 118-67-100	Requirements for PSAPs.

OTS-5307.1

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-010 Purpose. The purpose of chapter 118-68 WAC is to adopt standards for the protection of life through assuring that telephone systems provide adequate location information through ((en-
hanced)) 911 emergency communications systems pursuant to RCW 38.52.505.

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-020 Definitions. The following definitions shall apply when used in chapter 118-68 WAC:

(1) The "**authority having jurisdiction**" is defined as the fire chief for municipal corporations, or the county fire marshal or designee as appointed by the governing body for unincorporated areas.

(2) "**Building unit identifier**" means room number or equivalent designation of a specific portion of a structure, or an apartment number in multifamily residences.

(3) "**Call back telephone number**" means a phone number which can be called from ((the public switched network)) voice and data networks to be used by the public safety answering point to recontact the location from which the 911 call was placed. The number may or may not be the number of the ((station)) device used to originate the 911 call.

(4) **"Determination of noncompliance"** means written notification that a system is not in compliance with this regulation. Information contained therein shall include, but not be limited to, system deficiencies requiring correction to bring the system into compliance and a date by which noted corrections shall be made.

(5) (~~"Director of fire protection" means the state fire marshal or his/her designee.~~

~~(6) "Emergency location identification number (ELIN)" means a valid North American Numbering Plan format telephone number assigned to the MLTS operator by the appropriate authority that is used to route the call to a PSAP and is used to retrieve the ALI for the PSAP. The ELIN may be the same number as the ANI. The North American Numbering Plan number may in some cases not be a dialable number.~~

~~(7) "Emergency response location" means a location to which a 911 emergency response team may be dispatched. The location should be specific enough to provide a reasonable opportunity for the emergency response team to quickly locate a caller anywhere within it.~~

~~(8) "Fire official" means the person or his/her designee appointed by the city, town or county for the administration and enforcement of the Uniform Fire Code. Adopted by reference in the State Building Code, chapter 19.27 RCW and energy related building standards, chapter 19.27A RCW.~~

~~(9) "MLTS" means a multiline telephone system comprised of common control units, telephones and control hardware and software. This includes network and premises based systems and includes systems owned or leased by governmental agencies and nonprofit entities, as well as for profit businesses.~~

~~(10) "On-site notification" means a system capability whereby a call to 911 is directed through the 911 network to a public safety answering point and simultaneously to a display unit collocated with the fire alarm annunciator panel for the building which will display the caller's location to a minimum of the building unit identifier.~~

~~(11)) "Dispatchable location" has the same meaning as defined in WAC 118-67-030.~~

~~(6) "Public safety answering point (PSAP)" ((means a facility equipped and staffed to receive 911 calls)) has the same meaning as defined in RCW 38.52.010.~~

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-040 Compliance. All facilities covered by this regulation shall comply with its provisions by May 1, 2001. Additionally, all facilities shall comply with FCC regulation 34 FCC Rcd 6607 (8) by August 1, 2019.

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-050 Inspection. (1) For the purpose of directing emergency response, the authority having jurisdiction is authorized to approve the adequacy of automatic location information displayed on the ((enhanced)) 911 equipment serving its jurisdiction, when 911

calls are made. Such authority shall issue a determination of noncompliance to the telephone system owner when an automation location information display is not in compliance. For systems which are in compliance the testing authority shall issue a notice of compliance noting the date of inspection and test circumstances.

(2) The authority having jurisdiction shall ensure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location information displays as herein defined:

(a) For the 1994 Uniform Building Code Occupancy Group Classification R-1 except congregate residences, hotels, and motels, the minimum information requirements are:

- 2.a.1 Customer name
- 2.a.2 Street address and city
- 2.a.3 Building unit identifier
- 2.a.4 Call back telephone number

(b) For congregate residences, hotels, and motels as defined in the 1994 Uniform Building Code Group Classification R-1 the minimum information requirements as in (a) above or:

- 2.b.1 Customer name
- 2.b.2 Street address and city
- 2.b.3 Building unit identifier, or additional information supplied by automatic simultaneous connection of the caller, the PSAP and a knowledgeable designated individual(s) who will be able to supplement the ALI record with specific location information by effectively communicating with the PSAP

(c) For multiple unaffiliated business users as defined in chapter 80.36 RCW, the minimum information requirements are:

- 2.c.1 Business name
- 2.c.2 Street address and city
- 2.c.3 Building unit identifier (or more specific location information)
- 2.c.4 Call back telephone number

(d) For common and public schools, as defined in RCW 28A.150.010 and 28A.150.020, the minimum information requirements for any school district having a private telecommunications system acquired after January 1, 1997, that allows connection to the public switched network:

- 2.d.1 Individual school name
- 2.d.2 Street address and city
- 2.d.3 Building unit identifier
- 2.d.4 Call back telephone number

(e) For schools with phone systems installed prior to January 1, 1997, at any time the facility is occupied, it shall provide direct access to telephones that are connected to the public switched network, such that calls to 911 result in automatic location information.

(f) For certification of voluntary compliance for uses not defined above, the minimum information requirements are:

- 2.f.1 Business or agency name
- 2.f.2 Street address and city
- 2.f.3 Building unit identifier (or more specific location information)
- 2.f.4 Call back telephone number

(3) Additionally, the above entities shall comply with FCC rules related to section 506 of the Ray Baum's Act pertaining to dispatchable location regardless of the technological platform used.

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-070 Right of review. (1) The authority having jurisdiction shall promulgate procedures through which a facility may seek review of initial decisions. Such procedures shall conform to the Administrative Procedure Act, chapter 34.05 RCW, to the extent that act is applicable, and shall be pursuant to brief adjudicative procedures, RCW 34.05.482 through 34.05.485.

(2) At a minimum, such procedures shall provide that a facility aggrieved by an initial order of the authority having jurisdiction or ((his/her)) their designee may petition for review, in writing, stating why the initial order is in error, to the designated agency head within ((ten)) 10 days of the initial order. If no petition is made within ((ten)) 10 days, the initial order becomes final. In any event, the decision of the designated agency head shall be deemed the final decision of the agency.

AMENDATORY SECTION (Amending WSR 01-09-045, filed 4/13/01, effective 5/14/01)

WAC 118-68-090 ((Separability)) Severability. If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of the regulation or the application of the provision to other persons or circumstances shall not be affected.

WSR 24-09-009

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed April 4, 2024, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-076.

Title of Rule and Other Identifying Information: WAC 182-527-2742
Estate recovery—Service-related limitations.

Hearing Location(s): On May 21, 2024, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_KZuT0nluR3mMN22GogHn7Q. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than May 22, 2024.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by May 21, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by May 10, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-527-2742 to add a new subsection (1)(e) to except from estate recovery state-only funded guardianship and conservatorship assistance program services.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose costs on businesses.

Scope of exemption for rule proposal:

Is fully exempt.

April 4, 2024
Wendy Barcus
Rules Coordinator

OTS-5272.1

AMENDATORY SECTION (Amending WSR 17-12-019, filed 5/30/17, effective 7/1/17)

WAC 182-527-2742 Estate recovery—Service-related limitations.

For the purposes of this section, the term "agency" includes the agency's designee.

The agency's payment for the following services is subject to recovery:

- (1) State-only funded services, except:
 - (a) Adult protective services;
 - (b) Offender reentry community safety program services;
 - (c) Supplemental security payments (SSP) authorized by the developmental disabilities administration (DDA); ~~((and))~~
 - (d) Volunteer chore services; and
 - (e) Guardianship and conservatorship assistance program services.
- (2) For dates of service on and after January 1, 2014:
 - (a) Basic plus waiver services;
 - (b) Community first choice (CFC) services;
 - (c) Community option program entry system (COPES) services;
 - (d) Community protection waiver services;
 - (e) Core waiver services;
 - (f) Hospice services;
 - (g) Intermediate care facility for individuals with intellectual disabilities services provided in either a private community setting or in a rural health clinic;
 - (h) Individual and family services;
 - (i) Medicaid personal care services;
 - (j) New Freedom consumer directed services;
 - (k) Nursing facility services;
 - (l) Personal care services funded under Title XIX or XXI;
 - (m) Private duty nursing administered by the aging and long-term support administration (AL TSA) or the DDA;
 - (n) Residential habilitation center services;
 - (o) Residential support waiver services;
 - (p) Roads to community living demonstration project services;
 - (q) The portion of the managed care premium used to pay for ALT-SA-authorized long-term care services under the program of all-inclusive care for the elderly (PACE); and
 - (r) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (3) For dates of service beginning January 1, 2010, through December 31, 2013:
 - (a) Medicaid services;
 - (b) Premium payments to managed care organizations (MCOs); and
 - (c) The client's proportional share of the state's monthly contribution to the Centers for Medicare and Medicaid Services to defray the costs for outpatient prescription drug coverage provided to a person who is eligible for medicare Part D and medicaid.
- (4) For dates of service beginning June 1, 2004, through December 31, 2009:
 - (a) Medicaid services;
 - (b) Medicare premiums for people also receiving medicaid;

- (c) Medicare savings programs (MSPs) services for people also receiving medicaid; and
- (d) Premium payments to MCOs.
- (5) For dates of service beginning July 1, 1995, through May 31, 2004:
- (a) Adult day health services;
 - (b) Home and community-based services;
 - (c) Medicaid personal care services;
 - (d) Nursing facility services;
 - (e) Private duty nursing services; and
 - (f) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (6) For dates of service beginning July 1, 1994, through June 30, 1995:
- (a) Home and community-based services;
 - (b) Nursing facility services; and
 - (c) The hospital and prescription drug services provided to a client while the client was receiving services listed in this subsection.
- (7) For dates of service beginning July 26, 1987, through June 30, 1994: Medicaid services.
- (8) For dates of service through December 31, 2009. If a client was eligible for the MSP, but not otherwise medicaid eligible, the client's estate is liable only for any sum paid to cover medicare premiums and cost-sharing benefits.
- (9) For dates of service beginning January 1, 2010. If a client was eligible for medicaid and the MSP, the client's estate is not liable for any sum paid to cover medical assistance cost-sharing benefits.
- (10) For dates of service beginning July 1, 2017, long-term services and supports authorized under the medicaid transformation project are exempt from estate recovery. Exempted services include those provided under:
- (a) Medicaid alternative care under WAC 182-513-1600;
 - (b) Tailored supports for older adults under WAC 182-513-1610;
 - (c) Supportive housing under WAC 388-106-1700 through 388-106-1765; or
 - (d) Supported employment under WAC 388-106-1800 through 388-106-1865.

WSR 24-09-023
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 9, 2024, 12:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-02-044.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-416-0005 How long can I get Basic Food?, 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?, and 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food?

Hearing Location(s): On May 21, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than May 22, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by May 21, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by May 7, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to comply with the approved federal waiver for the elderly simplified application project (ESAP), extending the basic food certification period from 12 months to 36 months for households with no earned income where all members are age 60 or older and/or disabled adults.

Related emergency rules are currently in place under WSR 24-02-040.

Reasons Supporting Proposal: DSHS received approval from the United States Department of Agriculture, Food and Nutrition Service to extend certification periods for this group of clients.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.902.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Carolyn Horlor, P.O. Box 45470, Olympia, WA 98504-4570, 360-764-0676.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

April 5, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5012.5

AMENDATORY SECTION (Amending WSR 11-16-030 and 11-18-012, filed 7/27/11 and 8/26/11, effective 10/16/11)

WAC 388-416-0005 How long can I get Basic Food? (1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to (~~twelve~~) 12 months, unless:

(a) You receive food assistance under the Washington state combined application project (WASHCAP). (~~(7)~~) We set your WASHCAP certification period as described under WAC 388-492-0090.

(b) You receive food assistance under the elderly simplified application project (ESAP). ESAP households are certified for 36 months.

(~~(b)~~) (c) You receive transitional food assistance (~~(7)~~) (TFA). We set your TFA certification period as described under WAC 388-489-0015.

(2) We terminate your Basic Food benefits before the end of your certification period in subsection (1) of this section if:

(a) You fail to complete a mid-certification review as described under WAC 388-418-0011;

(b) We get proof of a change that makes your AU ineligible; or

(c) We get information that your AU is ineligible and you do not provide needed information to verify your AU's circumstances.

AMENDATORY SECTION (Amending WSR 22-17-080, filed 8/17/22, effective 9/17/22)

WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits? (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances during your certification period. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or basic food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

- (i) Receive refugee cash assistance as described under WAC 388-400-0030;
- (ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060;
- (iii) Receive a referral to the housing and essential needs (HEN) program as described under WAC 388-400-0070; or
- (iv) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for basic food if:

- (i) Your assistance unit has a certification period of six months or less; or
- (ii) ((All adults in your)) Your assistance unit ((are)) consists only of elderly or disabled adults, or qualifies for the elderly simplified application project (ESAP), and does not have ((æ)) earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as basic food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
<u>((b)) (b) If you are no longer eligible for ESAP but remain eligible for basic food for the remainder of a 36-month certification period converted from an ESAP certification.</u>	<u>In the 11th and 23rd months of your certification period when your certification period has more than 13 months remaining of the 36-month certification period. You must complete your review by the 10th day of the 12th month or the 24th month or both of the certification period.</u>
((b)) (c) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
((æ)) (d) For basic food and another program when either program has a certification or review period between six and 12 months.	In the fifth month of your basic food certification period when you receive basic food and another program. You must complete your review by the 10th day of month six of your basic food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review form online, or in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Complete the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;

(iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

(i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;

(ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;

(iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you 10 days' notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

AMENDATORY SECTION (Amending WSR 24-05-032, filed 2/13/24, effective 4/1/24)

WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food? (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income de-

duction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over \$35.00 each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs except medical marijuana;

(d) Over the counter drugs;

(e) Eye glasses;

(f) Medical supplies other than special diets;

(g) Medical equipment or medically needed changes to your home;

(h) Shipping and handling charges for an allowable medical item.

This includes shipping and handling charges for items purchased through mail order or the internet;

(i) Long distance calls to a medical provider;

(j) Hospital and outpatient treatment including:

(i) Nursing care; or

(ii) Nursing home care including payments made for a person who was an (~~assistance unit~~) AU member at the time of placement.

(k) Health insurance premiums paid by the person including:

(i) Medicare premiums; and

(ii) Insurance deductibles and copayments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC 182-519-0100. We do not allow your entire spenddown obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food or veterinary bills for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness.

If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a ((24)) 36-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first 12 months of your certification period, or average it for the remainder of ((~~our~~)) your certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

- (a) The expense was paid before you applied for benefits or in a previous certification period;
- (b) The expense was paid or will be paid by someone else;
- (c) The expense was paid or will be paid by the department or another agency;
- (d) The expense is covered by health care insurance;
- (e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;
- (f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or
- (g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

WSR 24-09-025

PROPOSED RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed April 10, 2024, 7:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-076.

Title of Rule and Other Identifying Information: Cross-program payment allocation.

Hearing Location(s): On June 25, 2024, at 9:00 a.m., via Zoom <https://esd-wa-gov.zoom.us/j/86558726717?pwd=VG9EODFpbGhPTlRyVklyYclgrVmNtdz09>, Meeting ID 865 5872 6717, Pass-code 319431; or call in One-tap mobile +12532158782,,86558726717#,,,,*319431# US (Tacoma), +12532050468,,86558726717#,,,,*319431# US.

Date of Intended Adoption: June 26, 2024.

Submit Written Comments to: Lawrence Larson, P.O. Box 9046, Olympia, WA 98507-9046, email rules@esd.wa.gov, fax 844-652-7096, by June 25, 2024.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-586-4600, TTY relay 711, email Teresa.eckstein@esd.wa.gov, by June 15, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The employment security department (department) currently runs three programs: State unemployment insurance, WA Cares, and paid family and medical leave. As part of its duties, the department receives payments from employers for each program. Occasionally, an employer sends a payment to the department without indicating which program(s) the payment was intended for, and the department is unable to make contact with the employer. There are currently no rules addressing how employer payments are allocated across these programs in these situations. Therefore, the department is engaging in rule making to add rules that will address how payments will be allocated across these programs.

Reasons Supporting Proposal: The proposal is needed to clarify how the department will allocate payments between programs when the department receives a payment from an employer and the department is unable to determine which program(s) the employer intended the payment for.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50A.05.060, 50B.04.020.

Statute Being Implemented: RCW 50.24.010, 50A.10.030, 50B.04.080.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Lawrence Larson, Olympia, Washington, 360-890-3460; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule only relates to internal department operations that are not subject to violation by a nongovernment party.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:
Is fully exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule making will not impose costs on small businesses as the rule relates to internal department operations.

April 10, 2024

Joy E. Adams

Employment System Policy Director

OTS-5211.1

**Chapter 192-03 WAC
EMPLOYER PAYMENT ALLOCATION**

NEW SECTION

WAC 192-03-010 Employer payment. (1) When an employer makes a payment to a program under Title 50, 50A, or 50B RCW, the full amount of the payment will be allocated to the program listed by the employer.

(2) If the program for which the payment is intended is not clear, the department will make a reasonable attempt to contact the employer to determine how the payment should be applied.

(3) If the department is unsuccessful in contacting the employer, the department will investigate if the employer has any outstanding debts to any of the programs referenced in subsection (1) of this section. If money is owed to one or more programs, then the payment will be deposited in the following order of priority:

- (a) To Title 50 RCW, if money owed to this program; then
- (b) To Title 50A RCW, if money owed to this program; then
- (c) To Title 50B RCW, if money owed to this program.

NEW SECTION

WAC 192-03-020 Credits between programs. If an employer has a credit within one program, the credit can only be applied to another program under Title 50, 50A, or 50B RCW, at the request of the employer.

WSR 24-09-026
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed April 10, 2024, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-22-073.

Title of Rule and Other Identifying Information: Transition to kindergarten; establish a new chapter within Title 392 WAC and amend chapters 392-121 and 392-122 WAC.

Hearing Location(s): On May 21, 2024, at 11:00 a.m., via Zoom (call-in option also available). Participation link available on the office of superintendent of public instruction (OSPI) rules web page ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity. The hearing will be held as a virtual public hearing, without a physical meeting space. Please visit the OSPI rules web page for information on participating in the hearing ospi.k12.wa.us/policy-funding/ospi-rulemaking-activity. For participation questions, please email sirena.wu@k12.wa.us.

Date of Intended Adoption: May 23, 2024.

Submit Written Comments to: Samantha Bowen, Early Learning Director, OSPI, P.O. Box 47200, Olympia, WA 98504, email earlylearning@k12.wa.us, by May 21, 2024.

Assistance for Persons with Disabilities: Contact Sirena Wu, OSPI rules coordinator, phone 360-480-9317, TTY 360-664-3631, email sirena.wu@k12.wa.us, by May 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In alignment with 2SHB 1550, passed by the Washington state legislature in 2023, OSPI is proposing rule making concerning transition to kindergarten programs. The proposed rules would provide for program administration, allocation of state funding, and minimum standards and requirements for transition to kindergarten programs. In addition, technical changes to apportionment sections may be considered.

Reasons Supporting Proposal: 2SHB 1550 (2023) continues and re-names transitional kindergarten as the transition to kindergarten program, which assists eligible children in need of additional preparation to be successful kindergarten students in the following school year. The permanent rules must be adopted by the beginning of the 2024-25 school year.

Statutory Authority for Adoption: RCW 28A.300.072, 28A.150.290.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Samantha Bowen, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does

not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:
Is fully exempt.

April 10, 2024
Chris P. S. Reykdal
State Superintendent of Public Instruction

OTS-4751.2

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-121-106 Definition—Enrolled student. As used in this chapter, "enrolled student" means a person residing in Washington state who:

(1) Is eligible to enroll in the school district's education programs because he or she:

(a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.215);

(b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);

(c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);

(d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);

(e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250);

(f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.260; or

(g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through ~~((twelve))~~ 12 and transition to kindergarten program;

(3) Is under ~~((twenty-one))~~ 21 years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 23-16-093, filed 7/31/23, effective 8/31/23)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Worksite learning - Training provided in accordance with WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the

school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(l) Transition to kindergarten - Pursuant to RCW 28A.300.072 and chapter 392-425 WAC.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-122 Definition—Full-time equivalent student. As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1) ~~((a) Prior to the 2018-19 school year, the minimum hours for each grade are as follows:~~

~~(i) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;~~

~~(ii) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;~~

~~(iii) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;~~

~~(iv) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.~~

~~(b) Beginning with the 2018-19 school year,))~~ The minimum hours for all grades and transition to kindergarten programs are 27 hours and 45 minutes each week (1,665 weekly minutes), or 5 hours and 33 minutes (333 minutes) for each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student. ~~((a) Prior to the 2018-19 school year, a student's partial full-time equivalent is the student's weekly enrolled hours divided by the minimum hours for the student's grade level set forth in subsection (1)(a) of this section.~~

~~(b) Beginning with the 2018-19 school year,))~~ A student's partial full-time equivalent is the student's weekly enrolled minutes divided by 1,665.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-121-137 Full-time equivalent enrollment of students with a disability. In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student

only if the student is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

(4) A student with a disability and enrolled in a transition to kindergarten program may be counted for transition to kindergarten funding.

AMENDATORY SECTION (Amending WSR 20-15-062, filed 7/10/20, effective 8/10/20)

WAC 392-121-182 Alternative learning experience requirements.

(1) **Scope.** This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience.

(2) **Requirements.** A school district or charter school must meet the requirements of this section and chapter 392-550 WAC to count an alternative learning experience as a course of study pursuant to WAC 392-121-107.

(3) **Student eligibility.** A student enrolled in an alternative learning experience course must meet the following conditions:

(a) The student must meet the definition of an enrolled student under WAC 392-121-106;

(b) The student is enrolled in grades K-12;

(c) The student must not meet any of the enrollment exclusions in WAC 392-121-108;

~~((e))~~ (d) The student's residence must be in Washington state as provided in WAC 392-137-115; and

~~((d))~~ (e) For students whose residence is not located in the school district providing an alternative learning experience course (nonresident student), the district must:

(i) Document the school district in which the nonresident student's residence is located;

(ii) Establish procedures that address, at a minimum, the coordination of student counting for state funding so that no enrolled student is counted for more than one full-time equivalent in the aggregate. The procedure must include, but not be limited to, the following:

(A) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts must execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(B) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC, the district may not claim funding for the student until after a release transfer is completed by the resident district and the nonresident serving district.

(4) **Enrollment count dates.**

(a) Alternative learning experience enrollment is claimed based on the monthly count dates as defined in WAC 392-121-119.

(b) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day

in May and include students whose written student learning plan pursuant to WAC 392-550-025(1) has an ending date that is the last school day in May.

(c) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May; and

(ii) The student's written student learning plan pursuant to WAC 392-550-025(1) includes an end date that is the last day of school for graduating students in May.

(5) Reporting of student enrollment.

(a) For the first time a student's alternative learning experience enrollment is claimed for state funding, the following requirements must be met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place with a start date that is before the monthly count day; and

(ii) There is documented evidence of student participation as required by WAC 392-121-106(4).

(b) On subsequent monthly count dates, a student's alternative learning experience course(s) can be claimed for state funding if the following requirements are met:

(i) A completed written student learning plan pursuant to WAC 392-550-025(1) is in place on the monthly count date;

(ii) The contact requirement pursuant to WAC 392-550-025(2) was met in the prior month;

(iii) The monthly progress evaluation requirement pursuant to WAC 392-550-025(3) was met in the prior month; and

(iv) If the monthly progress evaluation showed unsatisfactory progress, the intervention plan requirement pursuant to WAC 392-550-025(4) is met.

(c) Students must be excluded from the monthly count including students who have not had contact with a certificated teacher for (~~twenty~~) 20 consecutive school days. Any such student must be excluded from the monthly count until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107.

(d) The student count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date.

(6) Student full-time equivalency.

(a) The full-time equivalency of students enrolled in alternative learning experiences is based on the estimated average weekly hours of learning activity described in the written student learning plan.

(b) Pursuant to WAC 392-121-122, (~~twenty-seven~~) 27 hours and (~~forty-five~~) 45 minutes each week (~~((one thousand six hundred sixty-five)) 1,665~~ weekly minutes) equal one full-time equivalent.

(c) Enrollment of part-time alternative learning experience students is subject to the provisions of chapter 392-134 WAC and generates a pro rata share of full-time funding based on the estimated average weekly minutes of learning activity described in the written

student learning plan divided by (~~one thousand six hundred sixty-five~~) 1,665 weekly minutes.

(d) Kindergarten students claimed for more than a 0.50 full-time equivalent must meet the state-funded full-day kindergarten requirements, as provided for in RCW 28A.150.315.

(e) The full-time equivalent limitations outlined in WAC 392-121-136 and the nonstandard school year limitations outlined in WAC 392-121-123 apply to alternative learning enrollment.

OTS-4752.2

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-430 Physical, social, and emotional support (PSES) staff—Apportionment of state moneys. (1) State moneys for PSES staff shall be allocated as provided in this chapter.

(2) PSES staff allocations based on the prototypical school formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for PSES staff will be based upon budgeted assumptions as provided in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated PSES staffing penalty units, if applicable, for purposes of funding from September through December.

(4) Enrollment will only include student full-time equivalent (FTE) enrolled in the general education program 01 as defined in RCW 28A.150.260 and transition to kindergarten program 09 as defined in RCW 28A.300.072 and chapter 392-425 WAC.

(5) Funded ratios starting with January apportionment will be based on actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of PSES staffing to generate the full allotment.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-435 Physical, social, and emotional support (PSES)—Student enrollment. (1) Grade level and transition to kindergarten enrollment reported on the P-223 will be considered in the compliance calculations for January, March, and June.

(2) Only students in program 01 - Basic education and program 09 - Transition to kindergarten will be included in the calculation. Enrollment in career and technical education, skill center, alternative learning experience, open doors, and running start programs will be excluded from the calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-440 Physical, social, and emotional support (PSES)—Staff. (1) The superintendent of public instruction will include in the calculation of PSES compliance of those staff that are coded in programs 01, 09, or 97 to one of the following duty root and activity code combinations:

- Duty root 39 - All activities - Orientation and mobility specialist;
- Duty root 42 - All activities - Counselor;
- Duty root 43 - All activities - Occupational therapist;
- Duty root 44 - All activities - Social worker;
- Duty root 45 - All activities - Speech, language pathology/ audio;
- Duty root 46 - All activities - Psychologists;
- Duty root 47 - All activities - Nurse;
- Duty root 48 - All activities - Physical therapist;
- Duty root 49 - All activities - Behavior therapist;
- Duty root 64 - All activities - Contractor ESA;
- Duty root 96 - Activity 24 - Family engagement coordinator;
- Duty roots 91 - 99 - Activity 25 - Pupil management and safety;
- Duty roots 91 - 99 - Activity 26 - Health/related services.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Districts must prioritize funding allocated for PSES staff to staff who hold a valid ESA certificate appropriate for that role.

(4) Staff coded to the above duty roots and activity codes in program 21 will be multiplied by the annual percentage of students receiving special education instruction used in the determination of 3121 revenue for inclusion in the compliance calculation.

AMENDATORY SECTION (Amending WSR 22-24-029, filed 11/30/22, effective 12/31/22)

WAC 392-122-450 Physical, social, and emotional support (PSES) compliance—Calculations. (1) Funded staffing units will be calculated using each grade level and transition to kindergarten funding formula calculations.

(2) Staffing units will be combined at the district level and compared to the staffing units generated using the prototypical funding model.

(3) Penalty units are determined by subtracting the prototypical funded staff units from the district's actual funded units.

(4) Staff in the S-275 or the supplemental tool not assigned to a valid grade grouping will be included into the high school funding formula.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-500 K-3 class size—Apportionment of state moneys.

(1) State moneys for K-3 class size including transition to kindergarten program 09 as defined in RCW 28A.300.072 and chapter 392-425 WAC shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 and transition to kindergarten program (grade T) will be based upon budgeted grades K-3 and grade T enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated grades K-3 and grade T class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-505 K-3 class size—Student enrollment. (1) Grade level K-3 and transition to kindergarten program enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-510 K-3 class size—Teachers. (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and program 09 for transition to kindergarten (grade T), and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3, and grade T multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers. (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, ~~((and))~~ 3, and transition to kindergarten (grade T).

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-520 K-3 class size—Calculation. Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 and transition to kindergarten (grade T) collectively as provided in WAC 392-122-510 into the calculated combined total enrollment in grade levels of T, K, 1, 2, or 3.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, charter school, or tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 and transition to kindergarten program for the prior school year multiplied by the district's percentage of October comprehensive education data and research system (CEDARS) headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in (~~the comprehensive education data and research system~~) CEDARS as of March 31st of the prior school year.

(b) (i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least (~~fifty~~) 50 percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October CE-DARS headcount enrollment in grades K-12 for free and reduced-price lunch as reported in (~~the comprehensive education data and research system~~) CEDARS as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 and transition to kindergarten program for the prior year.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(1) Multiplying the reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, excluding enrollment reported for transition to kindergarten program by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 21-04-039, filed 1/26/21, effective 2/26/21)

WAC 392-122-810 Distribution of state moneys for the state highly capable students education program. The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's average annual full-time equivalent students as reported on the P223, monthly report of school district enrollment form, excluding enrollment reported for transition to kindergarten program.

OTS-4726.3

**Chapter 392-425 WAC
TRANSITION TO KINDERGARTEN**

NEW SECTION

WAC 392-425-005 Purpose and authority. The purpose of this chapter is to provide minimum standards and requirements for transition to kindergarten programs. The chapter is intended to ensure that transition to kindergarten programs serve eligible students of all abilities who need additional preparation to be successful in kindergarten and who lack access to other early learning group settings. The rules in this chapter establish expectations and requirements for local education agencies in implementing and administering transition to kindergarten programs.

The authority for this chapter is under RCW 28A.300.072, which requires the office of superintendent of public instruction to establish rules concerning transition to kindergarten programs.

NEW SECTION

WAC 392-425-010 Applicability. This chapter establishes the minimum administrative requirements and program standards for implementing and administering quality transition to kindergarten programs under RCW 28A.300.072 and this chapter.

NEW SECTION

WAC 392-425-015 Eligibility. A transition to kindergarten program may be implemented and administered by the following local education agencies, in accordance with RCW 28A.300.072:

- (1) Common school districts;
- (2) State tribal compact schools authorized under chapter 28A.715 RCW;
- (3) Beginning in school year 2023-24, only charter schools authorized under RCW 28A.710.080(2) may implement and administer a transition to kindergarten program.

NEW SECTION

WAC 392-425-020 Definitions. "Eligible local education agency" means a local education agency authorized to administer a transition to kindergarten program under WAC 392-425-015.

"Screening process and tool" means using one or more instruments or methods of assessing and measuring the ability and need of an individual student.

NEW SECTION

WAC 392-425-025 Notification of intent to offer a transition to kindergarten program. An eligible local education agency planning to implement and administer a transition to kindergarten program must notify the office of superintendent of public instruction before the school year begins. The notice must be provided through a process established by the office of superintendent of public instruction.

NEW SECTION

WAC 392-425-030 Local area early learning coordination and determining program need. An eligible local education agency must conduct a local needs assessment before beginning or expanding a transition to kindergarten program that considers the existing availability and affordability of local and local tribal early learning providers.

NEW SECTION

WAC 392-425-035 Staff qualifications. A person serving as a teacher in a transition to kindergarten program must hold a valid teaching certificate in accordance with Title 181 WAC. Certificated educators with an early childhood education endorsement are strongly recommended. Paraeducators for transition to kindergarten programs must have met the minimum hiring requirements and must make progress on the paraeducator certificate program in accordance with Title 179 WAC.

NEW SECTION

WAC 392-425-040 Student eligibility. (1) Children meeting the following criteria are eligible to participate in a transition to kindergarten program offered by an eligible local education agency:

(a) A child who has been determined, by the local education agency, to benefit from additional preparation for kindergarten through a screening process and tool; and

(b) A child who is at least four years old by August 31st of the school year in which they enroll in a transition to kindergarten program.

(2) In determining student eligibility and admitting students to a transition to kindergarten program, local education agencies must:

(a) Give priority to children most in need of additional preparation to be successful in kindergarten, as demonstrated through a screening process and tool.

(b) Give priority to children with the lowest family income not otherwise eligible and not enrolled in another local program.

(c) Not exclude, nor establish a policy to prohibit from participation, an eligible child due only to the presence of a disability.

(d) Not charge tuition or other fees from state-funded eligible students for enrollment in a transition to kindergarten program.

NEW SECTION

WAC 392-425-045 Minimum instructional requirements (school year, days, and hours). (1) Eligible local education agencies offering a transition to kindergarten program must offer the program during the local education agency's school year.

(a) The program may begin after the first day of the local education agency's school year.

(b) If a partial-year program is being offered, it must begin by January 31st of the school year.

(c) The program must conclude by the end of the school year.

(2) Transition to kindergarten programs must be offered as an all-day program.

Based on family choice, a child may participate in a transition to kindergarten program as a part-time student (partial day). A part-time student will be counted as a partial full-time equivalent student in accordance with WAC 392-121-122.

NEW SECTION

WAC 392-425-050 Transition to kindergarten apportionment procedures. The local education agency administering a transition to kindergarten program is subject to the apportionment procedures under chapters 392-121 and 392-122 WAC.

NEW SECTION

WAC 392-425-055 Assessment for transition to kindergarten students. In accordance with RCW 28A.655.080, the Washington kindergarten inventory of developing skills (WaKIDS) must be administered at the beginning of the program. Additionally, the WaKIDS whole-child assessment must be administered at least one more time during the school year.

NEW SECTION

WAC 392-425-060 Adherence to guidelines. An eligible local education agency planning to implement and administer a transition to kindergarten program is required to adhere to guidelines, as developed by the office of superintendent of public instruction, related to:

- (1) Best practices for site readiness of facilities that are used for the program;
- (2) Developmentally appropriate curricula designed to assist in maintaining high quality programs; and
- (3) Professional development opportunities.

WSR 24-09-034
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 11, 2024, 9:29 a.m.]

Supplemental Notice to WSR 24-03-051.

Preproposal statement of inquiry was filed as WSR 23-20-065.

Title of Rule and Other Identifying Information: WAC 388-850-020 Plan development and submission, 388-850-025 Program operation—General provisions, 388-850-035 Services—Developmental disabilities, and 388-850-045 What is the formula for distribution of funding to the counties?

Hearing Location(s): On May 21, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than May 22, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 21, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on May 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) amended these rules to increase the percentage of a county's allocated funds for county administrative expenses, to remove text that duplicates requirements dictated by statute, and to update the distribution formula and other outdated service names and processes.

Reasons Supporting Proposal: These amendments are intended to increase the percentage of allocated funds for county administrative expenses and to simplify the process for county plan development. The first time these rules went to hearing there was a typo in a contact person's email address. DDA would like to have another public hearing and public comment period to ensure stakeholders have another opportunity to provide comment.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120 and 71A.14.050.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Sherry Richards, P.O. Box 45310, Olympia, WA 98504-5310, 360-628-3044.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:
Is fully exempt.

April 10, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5014.1

AMENDATORY SECTION (Amending WSR 99-19-104, filed 9/20/99, effective 9/20/99)

WAC 388-850-020 Plan development and submission. ~~((1) All dates in this section refer to the twenty-four month period prior to the start of the state fiscal biennium.~~

~~(2) Before July 1, in the odd year of each biennium, the department shall negotiate with and submit to counties the biennial plan guidelines.~~

~~(3) Before July 1, the department shall submit to counties needs assessment data, and before December 31, updated needs assessment data in the odd year of each biennium.~~

~~(4) Before April 1, of the even year of each biennium, each county shall submit to the department a written plan for developmental disabilities services for the subsequent state fiscal biennium. The county's written plan shall be in the form and manner prescribed by the department in the written guidelines.~~

~~(5) Within sixty days of receipt of the county's written plan, the department shall acknowledge receipt, review the plan, and notify the county of errors and omissions in meeting minimum plan requirements.~~

~~(6) Within thirty days after receipt, each county shall submit a response to the department's review when errors and omissions have been identified within the review.~~

~~(7) Before December 15 of the even year of each biennium, the department shall announce the amount of funds included in the department's biennial budget request to each county. The department shall announce the actual amount of funds appropriated and available to each county as soon as possible after final passage of the Biennial Appropriations Act.~~

~~(8)) (1) Each county ((shall)) must submit to the department a ((contract proposal within sixty)) written plan each biennium no more than 60 days ((of the announcement by the department of the actual amount of funds appropriated and available)) after the initial biennial contract.~~

~~((9)) (2) The department may modify deadlines for submission of county plans ((and responses to reviews or contract proposals)) when, in the department's judgment, the modification enables the county to improve the program ((or)) planning process.~~

~~((10)) (3) The department may authorize the county to continue providing services in accordance with the previous plan and contract((,)) and reimburse at the average level of the previous contract, in order to continue services until the new contract is executed.~~

AMENDATORY SECTION (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

- WAC 388-850-025 Program operation—General provisions.** (1) The provisions of this section shall apply to all programs operated under authority of the ~~((acts))~~ act.
- (2) The county and all contractors and subcontractors must comply with all applicable law or rule governing the department's approval of payment of funds for the programs. Verification may be in the manner and to the extent requested by the assistant secretary.
- (3) State funds ~~((shall))~~ must not be paid to a county for costs of services provided by the county or other person or organization who or which was not licensed, certified, ~~((and))~~ or approved as required by law or by rule whether or not the assistant secretary approved the plan~~((was approved by the secretary))~~.
- (4) The assistant secretary may impose such reasonable fiscal and program reporting requirements as the assistant secretary deems necessary for effective program management.
- (5) **Funding.**
- (a) The department and county ~~((shall))~~ must negotiate and execute a contract before the department provides reimbursement for services under contract, except as provided under WAC 388-850-020~~((+10))~~ (3).
- (b) Payments to counties ~~((shall))~~ must be made on the basis of ~~((vouchers))~~ information submitted to the department for costs incurred under the contract. The department ~~((shall))~~ must specify the form and content of the ~~((vouchers))~~ information.
- (c) The assistant secretary may make advance payments to counties, where such payments would facilitate sound program management. ~~((The secretary shall withhold advance payments from counties failing to meet the requirements of WAC 388-850-020 until such requirements are met. Any county failing to meet the requirements of WAC 388-850-020 after advance payments have been made shall repay said advance payment within thirty days of notice by the department that the county is not in compliance.))~~
- (d) The assistant secretary may withhold all or part of a subsequent monthly disbursement to a county if ~~((If))~~ the department receives evidence a county or subcontractor performing under the contract is:
- (i) Not in compliance with applicable state law or rule; ~~((or))~~
 - (ii) Not in substantial compliance with the contract; or
 - (iii) Unable or unwilling to provide such records or data as the assistant secretary may require~~((, then the secretary may withhold all or part of subsequent monthly disbursement to the county until such time as satisfactory evidence of corrective action is forthcoming))~~.
- (e) The department may withhold funds until satisfactory evidence of corrective action is received. Such withholding ~~((or denial))~~ of funds ~~((shall be))~~ is subject to appeal under the Administrative Procedure Act (chapter 34.05 RCW).
- (6) **Subcontracting.** A county may subcontract for the performance of any of the services specified in the contract. ~~((The))~~ A county's ~~((subcontracts shall))~~ subcontract must include:
- (a) A precise and definitive work statement, including a description of the services provided;
 - (b) The subcontractor's specific agreement to abide by the ~~((acts))~~ act and the rules;

(c) Specific authority for the assistant secretary and the state auditor to inspect all records and other material the assistant secretary deems pertinent to the subcontract ~~((+))~~ and ~~((agreements))~~ agreement by the subcontractor that such records will be made available for inspection;

(d) Specific authority for the assistant secretary to make periodic inspection of ~~((the subcontractor's program or))~~ premises in the community where services are provided in order to evaluate performance under the contract between the department and the county; and

(e) Specific agreement by the subcontractor to provide such program and fiscal data as the assistant secretary may require.

~~((7) **Records: Maintenance.** Client records shall be maintained for every client for whom services are provided and shall document:~~

~~(a) Client demographic data;~~

~~(b) Diagnosis or problem statement;~~

~~(c) Treatment or service plan; and~~

~~(d) Treatment or services provided including medications prescribed.~~

~~(8) **Liability.**~~

~~(a) The promulgation of these rules or anything contained in these rules shall not be construed as affecting the relative status or civil rights or liabilities between:~~

~~(i) The county and community agency; or~~

~~(ii) Any other person, partnership, corporation, association, or other organization performing services under a contract or required herein and their employees, persons receiving services, or the public.~~

~~(b) The use or implied use herein of the word "duty" or "responsibility" or both shall not import or imply liability other than provided for by the statutes or general laws of the state of Washington, to any person for injuries due to negligence predicated upon failure to perform on the part of an applicant, or a board established under the acts, or an agency, or said agency's employees, or persons performing services on said agency's behalf.~~

~~(c) Failure to comply with any compulsory rules shall be cause for the department to refuse to provide the county and community agency funds under the contract.)~~

AMENDATORY SECTION (Amending WSR 05-11-015, filed 5/9/05, effective 6/9/05)

WAC 388-850-035 Services—Developmental disabilities. (1) ~~((A county may purchase and provide services listed under chapter 71A.14 RCW.~~

~~(2))~~ The department ~~((shall pay))~~ pays a county for department_authorized services provided to ~~((an))~~ eligible ~~((developmentally disabled person))~~ people with developmental disabilities.

~~((3))~~ (2) A county may purchase or provide authorized services. Authorized services ~~((may))~~ include ~~((, but are not limited to))~~:

(a) ~~((Early childhood intervention))~~ Childhood development services;

(b) Supported employment services;

(c) Community ~~((access))~~ inclusion services;

~~((d) Residential services;)~~

~~((e))~~ (d) Individual ~~((evaluation))~~ technical assistance; and

~~((f) Program evaluation;
(g) County planning and administration; and
(h) Consultation and staff development))~~

(e) Residential Services.

(3) The county must provide indirect services. Indirect services include:

(a) Community information and education;

(b) Training and other activities;

(c) County planning and administration; and

(d) Program evaluation.

AMENDATORY SECTION (Amending WSR 10-13-164, filed 6/23/10, effective 7/24/10)

WAC 388-850-045 What is the formula for distribution of funding to the counties? (1) For the ~~((purposes))~~ purpose of this section, "county" ~~((shall mean))~~ means the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties ~~((shall be))~~ is based on the following criteria:

(a) The distribution of funds provided by the legislature or other sources ~~((shall be))~~ is based on a distribution formula which best meets the needs of the population to be served.

(b) The distribution formula takes into consideration ~~((requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, the number of children eligible for birth to three services, special education enrollment,))~~ the number of ~~((individuals))~~ clients receiving county-funded services ~~((, the number of individuals enrolled with the division and the general population of the county))~~ or child development services funded through maintenance of effort, and the number of DDA-eligible clients entering long-term services.

~~((c) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.))~~

(3) A county may ~~((utilize seven))~~ use 10% or less ~~((percent))~~ of the county's allocated funds for county administrative expenses. A county may ~~((utilize))~~ use more than ~~((seven percent))~~ 10% for county administration with approval ~~((of the division director))~~ from the DDA assistant secretary.

WSR 24-09-052

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 15, 2024, 11:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-074.

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

Hearing Location(s): On May 21, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Cathy Holder at CathyH@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: July 1, 2024.

Submit Written Comments to: Tiffany Do, P.O. Box 47453, Olympia, WA 98504-7453, email tiffanyd@dor.wa.gov, fax 360-534-1606, 360-534-1558, by May 31, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update WAC 458-20-13501 (Rule 13501) to provide general guidance on the various types of taxes applied to a variety of business activities involving timber harvesting operations, and the filing and reporting obligations of a timber harvester as well as of a "small harvester," as defined in RCW 84.33.035. The proposed amendments include additional examples to clarify the tax implications of various types of transactions, including the two common types of standing timber sales.

Reasons Supporting Proposal: Since amending Rule 13501 in 2019 to recognize section 4 of E3SHB (chapter 336, Laws of 2019), the department of revenue (department) finds it necessary to provide further guidance on the types of taxes that a timber harvester, a small harvester, and a contractor providing necessary mechanical and labor services to timber harvest operations must report. Additionally, the Department received public comments requesting clarification on the activities that constitute "manufacturing activity" with respect to timber harvesting, and on sales and use tax exemption eligibility for machinery and equipment used in timber harvest operations. The department also received requests to add examples to Rule 13501 with tax implications for two common types of standing timber sales, one subject to B&O tax with no real estate excise tax implications and one subject to real estate excise tax with no B&O tax implications. The department is proposing additional guidance and examples to Rule 13501 based on stakeholder feedback.

Statutory Authority for Adoption: RCW 82.01.060, 82.32.300.

Statute Being Implemented: RCW 82.04.260(12), 82.04.333, 82.04.440, 82.16.020, 82.45.010(1), 82.45.195, 84.33.035.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Tiffany Do, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1558; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

April 15, 2024
Brenton Madison
Rules Coordinator

OTS-4440.5

AMENDATORY SECTION (Amending WSR 20-02-058, filed 12/24/19, effective 1/24/20)

WAC 458-20-13501 Timber harvest operations. (1) Introduction. Timber harvest operations generally consist of a variety of ~~((different))~~ activities. ~~((These activities may be subject to))~~ Depending on the nature of the activity, different tax types and tax rates ~~((or classifications under))~~ may apply, such as the business and occupation (B&O) tax, ~~((and))~~ public utility tax~~((, depending on the nature of the activity))~~ (PUT), retail sales tax, use tax, real estate excise tax (REET), and timber harvest excise tax (timber excise tax). See chapters 82.04, 82.08, 82.12, 82.16, 82.45, and 84.33 RCW.

(a) **Scope of rule.** This rule explains the application of the ~~((business and occupation (B&O), public utility))~~ B&O tax, PUT, retail sales, and use taxes to persons performing activities associated with timber harvest operations, including timber harvesters, manufacturers of timber or wood products, extractors for hire, processors for hire, sellers of real property, and consumers of tangible personal property typically used in timber harvest operations. In addition, this rule explains how the ~~((public utility tax))~~ PUT deduction provided by RCW 82.16.050 for the transportation of commodities to an export facility applies to the transportation of logs~~((. It also explains how the B&O tax exemption provided by RCW 82.04.333))~~ and provides details on how to apply the B&O tax exemption for small timber harvesters ~~((applies))~~.

(b) ~~((Additional information sources for activities associated with timber harvest operations. In addition to the taxes addressed in this rule, the forest excise and real estate excise taxes often apply to certain activities or sales associated with timber harvest operations.))~~ **Other rules that may be relevant.**

(i) Persons engaged in timber harvest operations should refer to the following rules for additional information:

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

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

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

~~((iv))~~ (ii) Persons engaged in timber harvesting activities may be subject to the timber excise tax or REET. This rule does not cover either of those taxes in detail. For more information on timber excise tax and REET, readers should refer to:

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

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

(iii) Persons cultivating short-rotation hardwoods are considered farmers. "Short-rotation hardwoods" are hardwood trees, such as hybrid cottonwoods, cultivated by agricultural methods in growing cycles shorter than 15 years. RCW 84.33.035. For tax-reporting information for farmers and persons selling property to, or performing horticultural service for, farmers, readers should refer to:

(A) WAC 458-20-209 Farming for hire and horticultural services performed for farmers; and

(B) WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers.

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

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

(2) **Timber harvesters.** Timber harvesters may engage in a variety of business activities ((that require them to report)), each subject to different tax reporting and collection obligations, including B&O tax under the extracting, manufacturing, wholesaling, or retailing ((B&O tax)) classifications; retail sales tax; and use tax. Timber harvesters ~~((may qualify))~~ are eligible for preferential B&O tax rates on certain qualifying business activities until July 1, 2045. RCW 82.04.260(12).

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

(i) When a government entity, i.e., the United States or any instrumentality thereof; the state, including its departments and institutions and political subdivisions; or any municipal corporation, fells, cuts, or takes timber for sale or for commercial or industrial use, the first person other than that government entity who acquires title to or possessory interest in the timber is considered the harvester.

(ii) The term "harvester" does not include persons performing, under contract, the necessary labor or mechanical services for ((the extractor/harvester.

~~(a) **Timber purchasers to file information report.** A purchaser must report to the department of revenue (department) purchases)) a harvester.~~

(iii) For purposes of B&O tax, a timber "harvester" is considered an "extractor," as that term is defined in RCW 82.04.100. In general, an extractor is subject to extracting B&O tax upon the value of the extracted products. RCW 82.04.230 and WAC 458-20-135. A timber harvester may also be a "manufacturer" as defined in RCW 82.04.110 if the harvester subsequently performs a manufacturing activity as defined in RCW 82.04.120 (1) (c) involving the extracted trees. The type of excise tax under which a timber harvester must report and pay is dependent on the business activities the timber harvester conducts. See (b) through (g) of this subsection for additional information.

(b) **Timber purchasers - Special reporting requirements.** A purchaser of privately owned timber ((in an amount exceeding two hundred thousand)) in excess of 200,000 board feet ((, if purchased)) in a voluntary sale made in the ordinary course of business must report the particulars of the purchase to the department of revenue (department) on or before the last day of the month following the purchase of the timber. RCW 84.33.088.

(i) The report must contain all information relevant to the value of the timber purchased including, but not limited to, the following, as applicable: Purchaser's name, address and contact information; seller's name, address, and contact information; sale date; termination date in sale agreement; total sale price; legal description of sale area; sale name; forest practice application/harvest permit number if available; total acreage involved in the sale; estimated net volume of timber purchased by tree species and log grade; and description and value of property improvements.

~~((This))~~ (ii) The report must be filed on or before the last day of the month following ((the purchase of)) the timber purchase date. A ((two hundred fifty dollar)) penalty of \$250 may be imposed against a purchaser for each failure to ((satisfy the requirements for filing)) file this report. These filing requirements are scheduled to expire ((July 1, 2018)) September 30, 2025. RCW 84.33.088.

~~((b))~~ (c) **Extracting.** The felling, cutting (severing from land), or taking of trees is an extracting activity as defined in RCW 82.04.100. The extracting B&O tax classification applies to the value of the products extracted, which ((is the value of the severed trees prior to any manufacturing activity)) generally is the gross proceeds of sales, whether such sales are at wholesale or at retail. See RCW 82.04.230 and WAC 458-20-112.

(i) Until July 1, 2045, timber extractors are eligible for a preferential B&O tax rate for timber extracting activities. RCW 82.04.260 (12) (a). Taxpayers reporting under the preferential extracting timber B&O tax classification in the current year are required to

complete an Annual Tax Performance Report by May 31st of the following year.

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

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

(i) For timber harvest operations, the manufacturing portion of the operation begins after the standing timber has been extracted (felled, cut (severed from land), or taken) if the severed trees are subsequently measured, delimited, and bucked at the manufacturing (harvest) site. The manufacturing site includes the entire contiguous area that is being actively logged (known as a "cutting area" or "harvest unit"). For timber harvest operations, manufacturing activities include bucking (cutting into length), delimiting, and measuring of felled, cut (severed from the land), or taken trees.

(ii) If the product is delivered to a point outside the state, transportation costs incurred by the seller from the last point at which manufacturing takes place within Washington may be deducted from the gross proceeds of sale when determining the value of the product, depending on the extent of the additional manufacturing activity conducted subsequent to the manufacturing conducted at the harvest site. See WAC 458-20-112.

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

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

~~((ii))~~ (B) If logs are hauled to a separate manufacturing facility for processing into lumber, poles, or piles, the measure of tax is the gross proceeds of sale of the lumber, poles, or piles less transportation costs incurred by the seller from the manufacturing facility to the place of delivery to the customer out-of-state; and

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

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

~~((iv))~~ (iii) Until July 1, 2045, persons who manufacture ~~((A))~~ timber into timber products or wood products; ((B)) ~~timber products into other timber products or wood products; or ((C))~~ mass timber products defined in RCW 19.27.570(1), are eligible ((for)) to

report their gross proceeds of sales under a preferential manufacturing of timber or wood products B&O tax ((rate multiplied by the gross proceeds of sale)) classification. RCW 82.04.260 (12) (b). Taxpayers ((reporting under the preferential Manufacturing of Timber or Wood Products)) claiming this preferential B&O tax ((classification)) rate in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

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

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

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

Example ((2)) 1. Measure of B&O tax for timber harvester. ~~((A timber harvester enters into a contract with another person to perform the necessary labor and mechanical services for the harvesting of timber. The harvester is to receive sixty percent of the log sale proceeds, and the person contracting to perform the services is to receive forty percent. The log buyer purchases the logs for five hundred thousand dollars. The buyer pays three hundred thousand dollars to the harvester and two hundred thousand dollars to the person performing the harvesting services. The harvester's gross proceeds of sale is five hundred thousand dollars.))~~ **Facts:** UVW Company (UVW), a timber harvester and a timber manufacturer, enters into a contract with QRS Company (QRS), in which QRS agrees to perform the necessary labor and mechanical services for extracting the timber, and for manufacturing (measuring, delimiting, and bucking of) the felled timber. UVW receives 60 percent of the gross proceeds from sales of the logs, and QRS receives 40 percent. A third-party buyer located in Washington purchases the logs from UVW for \$500,000. The buyer pays \$300,000 to UVW for the log sales and \$200,000 to QRS for performing the harvesting services.

Result: UVW is required to report the entire \$500,000 in sales proceeds for B&O tax purposes, regardless of the fact that QRS received \$200,000 of the sales proceeds directly from the buyer. In accordance with RCW 82.04.070, there is no deduction for the cost of doing business; therefore, UVW may not deduct the amount UVW paid to QRS for performing harvesting services. As a harvester and manufacturer, UVW must report \$500,000 under extracting B&O tax, manufacturing B&O tax, and retailing or wholesaling B&O tax, depending on whether the third-party buyer is buying the logs for resale. UVW is eligible for a multiple activities tax credit (MATC) because UVW is selling the logs it extracted and manufactured in Washington to a Washington customer. See (g) of this subsection for more information on the MATC.

(ii) Retail sales tax must be collected and remitted on all sales to consumers, unless ~~((exempt by law))~~ a statutory exemption applies. For wholesale sales, sellers must obtain and retain copies of their customers' reseller permits to document the wholesale nature of the transaction or otherwise comply with RCW 82.04.470. For information on reseller permits see WAC 458-20-102 and 458-20-10201.

(iii) Until July 1, 2045, persons who ~~((sell at wholesale))~~ make wholesale sales of eligible products may report their gross proceeds of sales under the preferential wholesaling of timber or wood products B&O tax classification. RCW 82.04.260 (12) (c). Taxpayers who claim

this preference in the current calendar year must complete an Annual Tax Performance Report by May 31st of the following calendar year. The following are eligible products:

- (A) Timber extracted by the seller;
- (B) Timber products manufactured by the seller from timber or other timber products;
- (C) Wood products manufactured by the seller from timber or timber products; ((or)) and
- (D) Mass timber products, as defined in RCW 19.27.570(1), manufactured by the seller ((, are eligible for a preferential B&O tax rate multiplied by the gross proceeds of sale. RCW 82.04.260 (12)(c). Taxpayers reporting under the preferential Wholesaling of Timber or Wood Products B&O tax classification in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year)).
- (iv) Small harvesters, as defined in RCW 84.33.035, are not required to complete an Annual Tax Performance Report with the department.

~~((e) **Multiple activities tax credit (MATC)**. An extractor or manufacturer who sells the product extracted or manufactured must report under each of the appropriate "production" (extracting or manufacturing) and "selling" (wholesaling or retailing) classifications on the excise tax return. The extractor or manufacturer may then claim a multiple activities tax credit (MATC) as described in RCW 82.04.440 for the extracting tax (RCW 82.04.230) or manufacturing tax (RCW 82.04.240), provided the credit does not exceed the wholesaling or retailing tax liability. For a more detailed explanation of the MATC reporting requirements see WAC 458-20-19301.))~~ (f) **Engaging in multiple activities**. Persons who extract, manufacture, or both extract and manufacture the timber products they sell are engaged in multiple activities. Timber harvesters who are engaged in multiple activities are required to report their gross proceeds of sales under each applicable production B&O tax classification (extracting or manufacturing) and, under the appropriate selling B&O tax classification (wholesaling or retailing).

(g) **Multiple activities tax credit (MATC)**. The MATC will apply in cases where a person sells products to Washington customers that they have also extracted and/or manufactured in Washington. For a detailed explanation of the MATC reporting requirements see WAC 458-20-19301.

Example 2. Computing the MATC.

Facts: ZYX Tree Company (ZYX) is in the business of manufacturing and selling wood siding products used in building construction. All of ZYX's products are manufactured by ZYX using timber that ZYX harvested. For the month of July 2023, ZYX had \$100,000 in gross income from its sales of specialty wood siding products. All of the sales were made at wholesale and occurred in Washington.

Result: ZYX must report \$100,000 in gross revenue under each of the following B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. Additionally, ZYX is eligible to claim the MATC. Because the preferential B&O tax rates are the same for all three of the classifications reported by ZYX, the MATC will fully offset both the extracting timber and manufacturing timber or wood products B&O tax liabilities. ZYX's tax liability after applying the MATC is \$290.40 (\$100,000 multiplied by the wholesaling of timber or wood products B&O tax rate of 0.2904 percent under RCW 82.04.260 (12)(c)). Note: An additional B&O tax surcharge imposed on those persons who are subject to any of

the taxes imposed under RCW 82.04.260(12) may apply. See RCW 82.04.261 for more information.

(3) **Extractors for hire.** Persons performing extracting activities (labor or mechanical services) (~~(, such as independent contractors,)~~) for timber harvesters (~~(are subject to tax under the extracting for hire)~~) as independent contractors for hire must report gross income from these activities under the extracting for hire B&O tax classification (~~(measured by the gross income from those services)~~). RCW 82.04.280. Persons performing extracting for hire services for consumers must collect and remit retail sales tax on those services unless otherwise exempt by law. RCW 82.04.050(2).

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

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

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

- (a) Cutting or severing trees;
- (b) Logging road construction or maintenance;
- (c) Activities related to and performed on timber-producing property that are necessary and incidental to timber operations, such as:
 - (i) Slash cleanup and burning;
 - (ii) Scarification;
 - (iii) Stream and pond cleaning or rebuilding;
 - (iv) Restoration of logging roadways to a natural state;
 - (v) Restoration of wildlife habitat; and
 - (vi) Fire trail work.

Example 3. Extracting timber for hire.

Facts: Timber Harvester, a harvester and manufacturer, pays Tree Severing Corporation (TSC) \$100,000 to fell trees owned by Timber Harvester.

Result: TSC is performing an extracting activity for hire. The \$100,000 TSC receives is subject to B&O tax under the preferential extracting for hire timber classification. TSC must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). This transaction is not subject to retail sales tax because Timber Harvester is not the consumer of the extracted timber.

(4) **Processors for hire.** Persons (~~(performing)~~) that perform labor and mechanical services as independent contractors for timber harvesters (~~(during the manufacturing portion of a timber harvest operation)~~) upon property belonging to others, so that as a result a new, different, or useful article of tangible personal property is produced for sale or commercial or industrial use during the manufacturing portion of a timber harvest operation are subject to B&O tax under the processing for hire (~~(B&O tax)~~) classification, measured by the gross income from those services. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon his or her own materials. RCW 82.04.280 (~~(For information regarding processors for hire see)~~) and WAC

458-20-136. Persons performing processing for hire services for consumers must collect and remit retail sales tax on the charges for those services unless otherwise exempt by law. RCW 82.04.050(2).

(a) For timber harvest operations, the manufacturing portion of the operation begins after the standing timber has been felled, cut (severed from the land), or taken if the felled trees are subsequently delimbed, measured, and bucked at the manufacturing (harvest) site. The subsequent activities of cutting, delimiting, and measuring of the felled, cut (severed from the land), or taken timber by third parties are considered processing for hire activities when performed at the site of the harvest.

(b) Until July 1, 2045, persons who process for hire ((a)) (i) timber into timber products or wood products; ((b)) (ii) timber products into other timber products or wood products; or ((c)) (iii) mass timber products defined in RCW 19.27.570(1), are eligible ((for a preferential B&O tax rate multiplied by the gross proceeds of sale)) to report their gross proceeds under the preferential processing for hire timber products B&O tax classification. RCW 82.04.260 (12)(b). Taxpayers ((reporting under the preferential Processing for Hire Timber Products B&O tax classification)) claiming this B&O tax preference in the current year are required to complete an Annual Tax Performance Report by May 31st of the following year.

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

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

Facts: TTT Company (TTT), a harvester and a manufacturer, owns a parcel of land comprised of standing timber. TTT fells the timber on its own behalf. Subsequently, TTT pays Tree Services, Inc. (TSI) \$300,000 to delimb, measure, and buck the severed trees at TTT's harvest site.

Result: TSI is a processor for hire. The \$300,000 TSI received is subject to B&O tax under the preferential processing for hire timber products classification. TSI must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). This transaction is not subject to retail sales tax because TTT is not the consumer of the harvested timber, assuming TTT will resell the logs it extracted and manufactured.

Example 5. Tax treatment of services related to the manufacturing portion of a timber harvest operation.

Facts: With the same facts from Example 4, TTT pays Chopper Services Inc. (CS) \$200,000 to transport severed timber by helicopter from the location within the harvest site where the timber was felled to a staging location where the severed timber can be delimbed, measured, and bucked (manufactured into logs) by TSI, prior to being loaded into trucks by TTT and transported to a mill for further processing.

Result: CS's provision of helicopter transportation services for transporting severed timber to a staging area within the manufacturing (harvest) site where the severed timber will be processed (measured, delimbed, and bucked) into logs are part of the manufacturing operation (which began after the timber was felled), and are themselves manufacturing activities. See RCW 82.08.02565 (2) (c) (ii). The \$200,000 CS received from TTT is subject to B&O tax under the processing for hire timber products classification. CS must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12).

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

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

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

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

~~((b) Hauls))~~ **Example 6. Tax consequences of hauling logs (private roads, public roads, or both).**

Facts: Bob's Logging Company (Bob's Logging) pays HHH Log Hauling Company (HHH) \$4,000 to haul logs over private roads from Bob's harvest site to a transfer site located 10 miles away, where Bob's Logging will unload, sort, and reload the logs for further distribution. Separately, Bob's Logging pays JJJ Log Hauling Ltd (JJJ) \$6,000 to haul logs from the transfer site to a mill located 30 miles away. JJJ will transport the logs over both private and public roads. The harvest site, transfer site, and mill site are all located in unincorporated parts of Mason County.

Result: HHH is subject to B&O tax under the service and other activities classification because the haul of the logs performed by HHH is exclusively on private roads. HHH must report \$4,000 in gross income under the service and other activities B&O tax classification.

JJJ is subject to PUT under the motor transportation classification because the haul occurs on both private and public roads. JJJ must report \$6,000 in gross income under the motor transportation PUT classification.

(b) **Jointly provided hauling services.** In cases where log hauling services are jointly provided by two or more motor carriers, the motor carrier that contracts with the purchaser of the hauling services may be eligible to claim a PUT deduction for amounts paid to third-party motor carriers that jointly furnish some portion (or all) of the haul. See WAC 458-20-179 and RCW 82.16.050 for more information on the PUT deduction for services furnished jointly.

Example 7. Hauling services jointly provided.

Facts: Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from the harvest site to the transfer site, then from the transfer site to the mill. The portion of the haul from the harvest site to the transfer site will be performed over private and public roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

Result: JJJ must report \$10,000 in gross income under the log hauling over public highways PUT classification. Additionally, JJJ may take a \$4,000 deduction for "Amounts Paid to Another for Services Jointly Provided" from the amount reported.

HHH must report \$4,000 in gross income under the log hauling over public highways PUT classification. HHH is not eligible for a deduction.

Example 8. Hauling services jointly provided.

Facts: Assume the facts from Example 6, except that JJJ contracts with Bob's Logging to perform all necessary hauling services from the harvest site to the transfer site, then from the transfer site to the mill. The portion of the haul from the harvest site to the transfer site will be performed entirely over private roads. JJJ receives \$10,000 from Bob's Logging in exchange for the contracted services. After entering into the contract with Bob's Logging, JJJ enters into a contract with HHH, in which HHH will perform the first portion of the haul from the harvest site to the transfer site. HHH receives \$4,000 from JJJ in exchange for its portion of the jointly provided services.

Result: JJJ must report \$10,000 in gross income under the log hauling over public highways PUT classification. JJJ may not claim a deduction for "Amount Paid to Another for Services Jointly Provided," as HHH's hauling services are not performed over a public road and are therefore not subject to PUT.

HHH must report \$4,000 in gross income under the service and other activities B&O tax classification. HHH is not subject to PUT, as the log hauling services were provided entirely over private roads.

(c) **Hauling logs using own equipment.** ((If the person hauls the product using his or her)) In cases where a person hauls timber or wood products using their own equipment((,)) and has established hauling rates that ((are paid)) they pay to ((third-parties)) third parties for comparable hauls, ((these)) such rates may be used to establish the measure of tax for the person's hauling activity. Otherwise, the measure of the tax should be all costs attributable to the hauling activity including, but not limited to, the following costs relative to the hauling equipment: Depreciation; repair parts and repair labor;

and wages and benefits for employees or compensation to contractors driving or maintaining the equipment. If appropriate records are not maintained to document these costs, the department will accept one-third of the gross income derived from a contract for all labor or mechanical services beginning with the cutting or severance of trees through the hauling services as the measure of the tax under the motor transportation or log hauling over public highways PUT classification.

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

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

(a) In general, when a timber sale arrangement meets the definition of "selling standing timber" as defined in RCW 82.04.260 (12) (d), the gross income is subject to B&O tax under chapter 82.04 RCW. Until July 1, 2045, persons engaging in "selling standing timber" are eligible to report gross receipts from sales of standing timber under the preferential B&O tax rate of 0.2904 percent in RCW 82.04.260 (12) (d). Persons claiming the preferential B&O tax rate in the current year must file a complete Annual Tax Performance Report with the department under RCW 82.32.534 by May 31st of the following year.

(b) RCW 82.45.195 provides a REET exemption for a sale of standing timber if the gross income from such sale is taxable under RCW 82.04.260 (12) (d); also see WAC 458-61A-113. However, when a sale of standing timber does not meet the definition of "selling standing timber" in RCW 82.04.260 (12) (d) or when a sale of standing timber is a sale, conveyance, or transfer of the ownership of or title to real property as defined in RCW 82.45.010 and WAC 458-61A-113, REET is due. "Real property" or "real estate" means any interest, estate, or beneficial interest in land or anything affixed to land, including an ownership interest or beneficial interest in any entity that owns land, or anything affixed to land, including standing timber or crops. WAC 458-61A-102(18). For more information on sales that are subject to REET, see chapters 82.45 RCW and 458-61A WAC.

(c) The following examples briefly identify two common types of timber sale arrangements ~~((and then state a conclusion as to the taxes that apply. These examples are not an all-inclusive list of the different types of timber sale arrangements, or the variations that may occur))~~. The examples are intended to provide general guidance only. The tax treatment of a particular timber sale arrangement depends on the facts and circumstances in each case. These examples presume that the trees being harvested are not Christmas trees, and that no participant is a federal, state, or local government entity. The examples do not detail the timber excise tax consequences.

~~((a))~~ **Example ((6)) 9. Sale of standing timber (stumpage sales).** ~~((In this type of arrangement, Seller (landowner or other owner of the rights to standing timber) sells standing timber to Buyer. Buyer receives title to the timber from Seller before it is severed from the stump. Buyer may hire Contractor to perform the harvesting activity.~~

~~The tax consequences are:~~

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

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

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

~~(b) **Example 7. Sale of harvested timber (logs).** In this type of sales transaction, Seller (landowner or other owner of the rights to standing timber) hires Contractor to perform the harvesting activity. Contractor obtains all the necessary cutting permits, performs all of the harvesting activities from severing the trees to delivering the logs for scaling, and makes all the arrangements for the sale of the logs. Contractor, in effect, is performing the harvesting and marketing services for Seller. Seller retains title to the logs until after they are scaled, at which time title transfers to Buyer.~~

~~The tax consequences are:~~

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

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

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

Facts: ABC Company (ABC) owns a large tract of standing timber. ABC sells the right to cut the standing timber to XYZ Partnership (XYZ) for \$100,000 on March 1, 2021. The sale agreement does not require XYZ to harvest (sever) the standing timber within 30 months from the date of the original contract. XYZ receives title to the timber from ABC prior to harvesting it. When the timber is ready for harvest on May 1, 2024, XYZ hires DEF Company (DEF) (third-party timber harvest contractor) to sever the timber on its behalf. XYZ pays DEF \$50,000. After the timber is extracted, XYZ sells the harvested timber to UVW Company (an unrelated third-party Washington manufacturer) at wholesale for \$250,000. UVW Company will measure, delimb, and buck the severed timber, then haul the logs from the harvest site to its own manufacturing facility, using its own trucks.

Result: ABC is not subject to B&O tax, PUT, or retail sales or use tax. ABC is liable for REET on the sale of standing timber to XYZ, because the transaction is a sale of real property. See RCW 82.45.010(1), 82.45.060, WAC 458-61A-102, and 458-61A-113. ABC is not liable for B&O tax, in this example, because the sale between ABC and XYZ does not meet the definition of "selling standing timber" in RCW 82.04.260 (12)(d). However, if the sale arrangement between ABC and XYZ were to require that XYZ sever or cut the timber within 30 months from the date of the original sale contract, ABC would then be subject to B&O tax on its proceeds from "selling standing timber" as defined

in RCW 82.04.260(12), and the transaction would be exempt from REET in accordance with RCW 82.45.195.

XYZ (as the owner of the standing timber) must report \$250,000 in gross income under the following B&O tax classifications: Extracting timber and wholesaling of timber or wood products. XYZ is eligible to claim the MATC equal to its extracting timber B&O tax liability. XYZ must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). XYZ is also subject to timber excise tax. See chapters 84.33 RCW and 458-40 WAC.

DEF must report \$50,000 in gross income under the extracting for hire timber B&O tax classification and is not eligible for a credit or deduction. DEF must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12).

Example 10. Sale of harvested timber (logs).

Facts: Assume the facts from Example 9, except that ABC hires DEF to harvest the timber on ABC's behalf, rather than selling the standing timber to XYZ. ABC agrees to pay DEF \$50,000 in exchange for DEF's harvesting and manufacturing (measuring, delimiting, and bucking of felled trees) services. After the timber has been severed, measured, delimited, and bucked into logs by DEF, ABC sells the logs to GHI Lodge, Inc. (GHI) for \$250,000. GHI is purchasing the logs to construct a new lodge (for GHI's own use) in unincorporated Skamania County (which is also the location of the harvest site).

Result: ABC (as the owner of the timber) must report \$250,000 in gross income under the following B&O tax classifications: Extracting timber, manufacturing of timber products, and retailing. ABC is eligible to claim the MATC equal to its extracting timber B&O tax and manufacturing of timber products B&O tax liabilities. ABC must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). ABC is required to collect retail sales tax at the current combined state and local rate for unincorporated Skamania County. ABC is also subject to timber excise tax. See chapters 84.33 RCW and 458-40 WAC.

DEF must report \$50,000 in gross income under the extracting for hire timber and processing for hire timber products B&O tax classifications. DEF must timely file an Annual Tax Performance Report as required under RCW 82.04.260(12). DEF is not eligible for the MATC.

(7) Equipment and supplies used in timber harvest operations.

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

If a person ((using property in Washington incurs a use tax liability, and prior to that use paid)) ~~acquires tangible personal property in a transaction that is not subject to retail sales tax, the person is subject to use tax based on the place of first use of the tangible personal property in Washington. In cases where a person has already paid a retail sales or use tax on the same tangible personal property to another state or foreign country (or political subdivision of either), that person may claim a credit for those taxes against ((the)) their~~ Washington use tax liability.

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

Example 11. Retail sales tax exemption for M&E (qualifying and nonqualifying M&E).

Facts: GHI LLC (GHI) is a timber harvester and a manufacturer, engaged in felling, delimiting, bucking, measuring, cutting, yarding, and loading logs at a logging operation site. GHI specializes in harvesting timber in remote locations with steep and challenging terrain. In performing its business activities, GHI uses a feller buncher to sever (cut) the standing timber. GHI also uses chainsaws to fell snags. After the severed trees have been processed into logs, GHI uses a yarder to create a cable yarding system to transport (or drag) the logs through the harvest unit to a staging area where they will be loaded onto trucks for transportation to an off-site mill. At the staging area, GHI uses a log loader to sort and stack the logs by species and length. Both the yarder and the log loader are exclusively used by GHI as described in this example.

Result: For purposes of the retail sales and use tax exemptions in RCW 82.08.02565 and 82.12.02565, GHI may be eligible to claim an exemption for the yarder and the log loader as (a) GHI is a manufacturer; (b) the manufacturing operation process has begun; (c) both pieces of equipment are used directly in the manufacturing operation; (d) both pieces of equipment are used a majority of the time in a qualifying manner; and (e) all other requirements under WAC 458-20-13601 are met (including the one year useful life requirement). In general, yarding (the process of transporting or dragging felled trees or logs to a landing area) as a standalone activity is not a manufacturing activity. Thus, whether yarding is a part of a manufacturing operation depends on whether such activity takes place at a manufacturing site. In this example, yarding occurs at the manufacturing (harvest) site.

GHI is not eligible to claim an exemption for the feller buncher or chainsaws as the majority use of both types of equipment are for extracting activities (cutting or severing trees from the land). Had the majority of use of the chainsaws and the feller buncher been for delimiting, measuring, and bucking the felled trees, both pieces of equipment may have been eligible for the M&E exemption if all the other requirements for the M&E exemption in WAC 458-20-13601 are satisfied.

Example 12. Retail sales tax exemption for M&E (majority use test).

Facts: Assume the facts from Example 11. In addition, GHI uses a bulldozer for a variety of purposes in its operations. The bulldozer is used exclusively to (a) support GHI's feller buncher in performing extracting activities (cutting or severing of timber); (b) support GHI's yarder in performing manufacturing activities upon the timber that has already been severed (transporting the severed trees that have already been delimited, measured, and bucked to the landing area where the logs will be loaded onto trucks and transported to an off-site mill); and (c) clear debris and generally assist in the restoration of timber harvest sites. GHI does not separately state charges associated with its use of the bulldozer in its contracts with customers. GHI does maintain detailed time records that document the number

of hours the bulldozer is used in the performance of each of the three activities. In its first year of use, the bulldozer was used to support the feller buncher for 200 hours, support the yarder for 400 hours, and clear debris and generally assist in harvest site restoration for 400 hours.

Result: While the use of the bulldozer to support the yarder for manufacturing activities is generally a qualifying use for purposes of the M&E exemption in RCW 82.08.02565 and 82.12.02565, the bulldozer is not eligible for the exemption because the majority of its use is for a nonqualifying purpose (supporting the feller buncher for extracting activities and clearing debris for harvest site restoration). In this case, the proper measure for determining majority use is time. A majority of the bulldozer's use, measured in time, was for nonmanufacturing activities (60 percent, or 600 of 1,000 hours used).

(b) **Property manufactured for commercial use.** ((Persons manufacturing tangible personal property)) A person who manufactures timber or wood products for commercial or industrial use ((are)) is subject to ((both the manufacturing)) B&O tax under the manufacturing of timber or wood products classification and use tax ((en)). Both taxes are imposed based on the value of the tangible personal property manufactured((r)) unless a specific exemption applies. WAC 458-20-134 defines and provides information on commercial or industrial use, and WAC 458-20-112 describes how to determine the value of products. If ((the person also extracts the product, B&O tax is due under the extracting tax classification, and a MATC may be taken)) a person is also the harvester of the timber, the activity is subject to B&O tax under the extracting timber classification. The MATC will also apply, so long as both the extracting and manufacturing activities occur in Washington.

Example ((8)) 13. Lumber manufactured for commercial use.

Facts: ABC Company ((severs trees)) (ABC) harvests timber, manufactures the ((logs)) timber into lumber, and then uses the lumber to construct an office building. The harvest site and manufacturing site are both located in unincorporated Clark County. The office building site is in Camas.

Result: ABC's use of the lumber ((by ABC in constructing)) to construct its office building is a commercial or industrial use. ABC is subject to use tax on the value of the lumber incorporated into the office building. Because ABC's first taxable use of the lumber occurred in Camas (the building construction site location), the combined state and local use tax is due based on the location code and rate assigned to the Camas address. ABC is also subject to B&O tax under the extracting timber and manufacturing of timber or wood products ((B&O tax)) classifications and may claim ((a)) the MATC((. ABC is also responsible for remitting use tax on the value of the lumber incorporated into the office building)).

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

(a) **Responsibility to remit retail sales or use tax.** The purchase of seed((s)) or seedlings by a ((person cultivating timber)) tree cul-

tivator is subject to ~~((the))~~ retail sales tax. If ~~((the))~~ a seller fails to collect retail sales tax, the buyer must remit ~~((retail sales tax (commonly referred to as ")))~~ deferred retail sales tax ~~(("))~~ (or use tax) ~~((r))~~ unless otherwise exempt by law. The use of seed collected by a ~~((person cultivating timber))~~ tree cultivator is also subject to use tax.

(i) In the case of seed provided by a tree cultivator to a third-party grower ~~((s))~~ in Washington, the ~~((seed owner, and not the third-party grower,))~~ tree cultivator incurs any use tax liability on the value of the seed. ~~((The value))~~

(ii) In the case of seedlings brought into and used in Washington ~~((is))~~ by a tree cultivator, the seedlings are subject to ~~((the))~~ use tax, unless retail sales or use tax was previously paid on the seedlings ~~((or on the seed from which the seedlings were grown))~~.

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

(i) ~~((Retail sales tax))~~ **Exemption requirements.** Retail sales and use tax ~~((does))~~ do not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller ~~((if the seed is to be))~~ and is: (A) Used for growing timber outside Washington ~~((This exemption also applies to the sale of conifer seed))~~ or (B) sold to an Indian tribe or member and is to be used for growing timber in Indian country ~~((, again only if the seed is immediately placed into freezer storage operated by the seller))~~. For the purposes of this ~~((exemption))~~ rule, "Indian country" ~~((has the meaning given in))~~ is defined as set forth in 18 U.S.C. Sec. 1151. See RCW 82.24.010.

~~((This exemption applies only if))~~ The buyer must provide ~~((s))~~ the seller with an exemption certificate in a form and manner prescribed by the department at the time of purchase. The seller must retain a copy of the buyer's exemption certificate ~~((to substantiate the exempt nature of these sales))~~. RCW 82.32.070 requires taxpayers to keep and preserve suitable records as may be necessary to determine the amount of any tax collected by the department for a period of five years.

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

(iii) **Tax paid at source deduction.** A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax paid at source deduction may claim a

deduction on its combined excise tax return. The deduction is allowed only if the buyer keeps and preserves records (~~(that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid)~~) identifying the seller, purchase date, purchase amount, and retail sales tax paid. RCW 82.32.070 requires suitable records must be kept and preserved for a period of five years. See WAC 458-20-102 for more information on the tax paid at source deduction.

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

(9) **Activities or income incidental to timber harvest operations.** (~~(The following activities or income, and the applicable tax classifications are often associated with timber operations. These tax reporting requirements apply even if these activities are incidental to the person's primary business activity.)~~) This subsection addresses the tax consequences of various business activities that are incidental to timber harvest operations.

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

(b) **Timber cruising, scaling, and access fees.** Gross income from timber cruising, scaling services, and allowing others to use private roads is subject to B&O tax under the service and other activities (~~(B&O tax)~~) classification. (~~(This tax classification also applies to)~~) Gross income from access fees for activities such as hunting, taking firewood, bough cutting, mushroom picking, or grazing is also subject to B&O tax under the service and other activities classification. Charges (~~(to)~~) that allow a person to take an identified quantity of tangible personal property from privately owned real property are considered sales of that property, and the gross income received from these charges is subject to B&O tax under the retailing or wholesaling classification, as the case may be. These charges are also subject to retail sales tax when made to a consumer and the sale is sourced to Washington, unless a specific exemption applies. (~~(See subsection (9)(d) of this rule.)~~)

(c) **Planting, thinning, and spraying.** ~~((The service and other activities B&O tax applies to the gross proceeds of sale received for))~~ Sales of the following services are subject to B&O tax under the service and other activities classification: Planting trees or other vegetation((τ)); precommercial thinning((τ)); and spraying or applying fertilizers, pesticides, or herbicides.

(d) **Sales of firewood and Christmas trees.** ~~Sales of firewood, Christmas trees, and other tangible personal property are ((either wholesale (subject to B&O tax under the wholesaling tax classification) or retail (subject to B&O tax under the retailing tax classification and also to retail sales tax) sales, depending on the nature of the transaction))~~ generally subject to either the wholesaling B&O tax, or the retailing B&O tax and retail sales tax, as the case may be. These sales are often made in the nature of charges ((allowing)) that allow the buyer to select and take an identified quantity of the property (e.g., six cords of firewood or two Christmas trees). Sales of commercially traded firewood or naturally grown trees (including Christmas trees) are also subject to timber excise tax; see WAC 458-40-610 and 458-40-660. For activities related to plantation (cultivated) Christmas trees, see subsection (10) of this rule and WAC 458-20-210.

(e) **Unloading logs from logging trucks.** The taxability of gross income ((from the unloading of)) received by persons operating equipment to unload logs from logging trucks onto rail cars at transfer points ((is subject to the retailing B&O and retail sales taxes when the activity is a rental of equipment with operator. RCW 82.04.050. For more information regarding the rental of equipment with an operator see WAC 458-20-211. If this activity is not a rental of equipment with operator, gross income from the activity is)) depends on the nature of the customer's activities.

(i) In cases where the customer will direct the operator of the equipment as to where and how to move the logs, the activity is considered a "rental of equipment with an operator," the charges for which are subject to retailing B&O tax and retail sales tax. See RCW 82.04.050(9) and WAC 458-20-211.

(ii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, the activity is considered an "other support service," and the charges for which are subject to B&O tax under the service and other activities ((B&O tax)) classification.

~~((The income from unloading of logs from logging trucks is subject to tax under the stevedoring B&O tax classification if performed at an export facility as a part of or to await future movement in waterborne export. For tax-reporting information regarding services associated with interstate or foreign commerce))~~ (iii) In cases where the equipment operator is responsible for loading and unloading logs at their own discretion and to contract specification, and where the activities are performed at an export facility as part of a waterborne export activity, the activity is considered "stevedoring," the charges for which are subject to B&O tax under the stevedoring classification. See WAC 458-20-193D.

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

~~This tax classification applies to the gross income from this activity even if the person segregates a charge for boomsticks used~~

while transporting the logs)) classification. Commonly, log transporters use "boomsticks" (i.e., floating logs chained together in a rough hexagonal shape, which are designed to prevent log bundles or loose logs from escaping the log boom during towing) to assist in the transportation of logs over water.

(i) In cases where boomsticks are used in the transportation of logs, any separate or itemized charges for the use of boomsticks are included in the taxable measure subject to the other public service business PUT classification.

(ii) In ((many)) cases where logs will be towed to a location specified by the customer for storage(~~(. Any charges for)~~), separately stated or itemized charges for the use of boomsticks, while the logs are stored, are rentals of tangible personal property and are subject to ((the)) B&O tax under the retailing ((B&O tax)) classification and retail sales tax ((if to a consumer. For information regarding the rental of tangible personal property see WAC 458-20-211)).

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

(10) **Harvesting Christmas trees.** As described below, persons growing, producing, or harvesting Christmas trees are either farmers or extractors ((under the law, as explained below. Activities generally associated with the harvesting of Christmas trees, such as cutting, trimming, shearing, and baling (packaging) are not manufacturing activities because they are not the "cutting, delimiting, and measuring of felled, cut, or taken trees" under RCW 82.04.120)), depending on the facts and circumstances in each case.

(a) **Plantation Christmas tree operations (farming operations).** Persons growing or producing plantation Christmas trees on their own lands or on lands in which they have a present right of possession are farmers. See RCW 82.04.213 and WAC 458-20-210 for more information on farmers. Plantation Christmas trees are Christmas trees that are exempt from the timber excise tax under RCW 84.33.170(~~(. This))~~), which requires that the Christmas trees be grown on land prepared by intensive cultivation and tilling, such as irrigating, plowing, or turning over the soil, and on which all unwanted plant growth is controlled continuously for the exclusive purpose of raising Christmas trees. See RCW 82.04.035 and 84.33.035.

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

(ii) Farmers growing or producing plantation Christmas trees ((may)) are not subject to retail sales or use tax on their purchase of seed((s)), seedlings, fertilizer, and spray materials ((at whole-sale)). See RCW 82.04.050 and ((82.04.060)) WAC 458-20-210.

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

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

(11) **Timber harvest operations in conjunction with other land clearing or construction activities.** Persons sometimes engage in timber harvest operations in conjunction with ~~((the clearing of land for the construction of residential communities, golf courses, parks, or other development. In such cases, these persons are engaging in separate business activities, and income from each may be subject to different tax liabilities))~~ land clearing or construction activities, such as clearing or improving land for residential or commercial building development, golf courses, parks, or other improvements to real property. Each activity has its own tax consequences and may be subject to tax under a variety of taxes.

(a) Income ~~((attributable to the))~~ derived from a timber harvest operation((s)) is subject to ~~((tax under the tax classifications as described elsewhere in this rule))~~ the provisions in this rule for timber harvesters.

(b) Income ~~((attributable to the))~~ derived from clearing or improving of land for ((the)) construction of ((the)) residential ((community, golf course, park)), commercial, or other ((development)) improvements is subject to ~~((the))~~ wholesaling B&O tax, retailing((r)) B&O tax and retail sales tax, or public road construction B&O tax, as the case may be. Refer to WAC 458-20-170, 458-20-171, and 458-20-172 for tax-reporting information regarding these construction activities. Persons performing landscape and horticultural services such as cutting or trimming trees after the land is developed should refer to WAC 458-20-226.

Example 14. Combined contracts (land clearing and timber harvesting).

Facts: LCG Land Clearing and Grading Company (LCG) is hired by FFF Corporation (FFF), a commercial property development company, to clear and grade an unimproved parcel of land owned by FFF. Once cleared and graded, FFF intends to construct a commercial warehouse on the property, which it will lease to third-party tenants. The property contains a significant amount of standing timber, which LCG is responsible for extracting and selling the extracted timber on FFF's behalf under the terms of the contract. The contract between FFF and LCG includes a \$25,000 charge for the timber extraction services and a \$75,000 charge for the land clearing and grading services. LCG hires a subcontractor, HHH Logging Company (HHH) to extract the timber from the property. LCG pays HHH \$20,000 for its services. FFF ultimately sells the extracted timber to JJ Mill Company (JJ) for \$30,000 at wholesale.

Result: LCG is an extractor for hire with respect to the \$25,000 in proceeds from FFF for the harvest of the standing timber. The gross income is subject to B&O tax under the extracting for hire timber

classification. LCG is also subject to B&O tax under the retailing classification and must collect retail sales tax from FFF on the \$75,000 in proceeds for the clearing and grading of the real property.

HHH is an extractor for hire with respect to the \$20,000 in proceeds from LCG for the harvest of the standing timber. The gross income is subject to B&O tax under the extracting for hire timber classification.

FFF is an extractor with respect to the sale of the harvested timber to JJ. FFF must report \$30,000 in gross income under the extracting timber and wholesaling of timber or wood products B&O tax classifications. FFF may also be eligible for the MATC, if the sale to JJ occurred in Washington.

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

(a) **Logging road materials provided without charge.**

(i) Landowners ((/)) or timber harvesters may provide materials (e.g., crushed rock) ((without charge)) to persons constructing or maintaining logging roads without charge. In such cases, ((while both the person providing the materials without charge and the person applying the materials to the road are consumers under the law,)) tax is due only once on the value of the materials.

(ii) The person constructing or maintaining the roads is responsible for remitting use tax on the value of the materials, unless ((that)) the person documents that the landowner or timber harvester previously remitted the appropriate retail sales or use tax.

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

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

(i) If ((the)) a person ((either)) directly, or by contracting with others, extracts and crushes, washes, screens, or blends materials to be incorporated into the logging road, B&O tax under the extracting classification is due on the raw value of the extracted products ((before any manufacturing)). B&O tax under the manufacturing classification ((,)) and use tax are also due ((upon)), measured by the value of the manufactured product. If the "cost basis" is the appro-

appropriate method for determining the value of products under WAC 458-20-112, this value includes the cost of transportation to a processing point((~~τ~~)) but does not include any transportation from ((~~the~~)) a processing point to ((~~the~~)) a road site. ((A)) The MATC may be taken when computing the B&O tax as explained in WAC 458-20-19301.

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

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

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

(a) **Conditions for deduction.** This deduction is available only to the person making the last haul, not including hauls within the export facility((~~τ~~)) before the logs are ((~~put~~)) placed on the ship. This deduction is not available if the haul starts in the same city or town where the export facility is located.

The deduction is available only if both of the following criteria are met:

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

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

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

Exemption certificate for logs delivered to an export facility

The undersigned export facility operator hereby certifies:

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

1. The logs will not go through a process to change the form of the logs before shipment to another state or country.
2. There will be no intervening transportation of these logs from the time of receipt at the export facility until loaded on the vessel for the interstate or foreign journey.

Trucking Firm _____
 Trucking Firm Address _____
 Trucking Firm UBI# _____
 Export Facility Operator _____
 Operator UBI# _____
 Person Giving Statement _____
 Title of Person Giving Statement _____

(c) **Examples.** (~~The following examples identify a number of facts and then state a conclusion regarding the deductibility of income derived from hauling logs to export facilities. Unless specifically provided otherwise~~) ~~For Examples 16 through 18, presume that the logs are shipped directly to another country from the export facility.~~

~~((i) **Example 9.** Logs are hauled from the harvest site to an export facility. While the bark will be removed from fifty percent of the logs, no other processing takes place.))~~ **Example 16. Qualifying PUT deduction for transportation to an export facility.**

Facts: MMM Hauling Company (MMM) is hired to haul logs from a harvest site to an export facility over public roads. The logs will immediately be loaded upon a ship for export at the export facility. As part of its services, MMM will remove bark from 50 percent of the logs; no other processing activities will occur. MMM receives \$10,000 in exchange for its services.

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained.

NOTE: Because the mere removal of bark is not considered a change in the form of the logs, the export facility may provide a certificate in the above form indicating that all logs at this facility will ultimately be shipped to another country. (~~The hauler may then claim a deduction for one hundred percent of this haul.~~)

~~((ii) **Example 10.** Logs are hauled from the harvest site))~~ Additionally, this means that MMM is not engaged in a processing for hire activity.

Example 17. Activities that do not qualify for PUT deduction for transportation to an export facility.

Facts: Assume the facts from Example 16, except that MMM hauls the logs to an export sorting area, approximately one mile from the export facility. At this location further sorting takes place and ~~((eighty))~~ 80 percent of the logs are hauled approximately one mile ~~((on))~~ over public roads ~~((to shipside and shipped))~~ for export to another country. The other ~~((twenty))~~ 20 percent of the logs are sold and delivered to local sawmills. (~~The haul to the sorting yard is~~)

subject to tax because there is another haul from the sorting yard to shipside.)

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may not claim a deduction from the measure of its PUT, as the logs will not be shipped directly to another country from the export facility. It is immaterial that ((the hauler)) MMM may be paid ((based on)) an "export" rate for its services.

((The haul from the sorting yard to shipside is)) Charges for the haul of the logs from the export sorting area to the export facility may be deductible if ((it)) the transportation route does not start and end within the corporate limits of the same city or town, and the hauler obtains the appropriate exemption certificate. The haul to the local sawmills is not deductible.

((iii) **Example 11.** Logs are hauled from the harvest site to an export facility. The hauler is aware that all logs will need to be hauled a distance of approximately one-half mile across the export facility yard to reach the ship when it arrives at the dock. The dock is located next to the export facility. The hauler may take the deduction.) **Example 18. Qualifying PUT deduction for transportation to an export facility.**

Facts: Assume the facts from Example 16, except that once the logs are delivered by MMM to an export facility, the logs will still need to be transported approximately half of a mile to reach the ship for loading (all within the export facility).

Result: MMM must report \$10,000 in gross income under the log hauling over public highways PUT classification. MMM may also claim a \$10,000 deduction from the measure of its PUT, as the logs will be shipped directly to another country from the export facility, provided the appropriate exemption certificate is obtained. Movement of the logs within the export facility is not an intervening haul.

(14) **Small timber harvesters - Business and occupation tax exemption.** RCW 82.04.333 provides a limited exemption from B&O tax for small harvesters. A small harvester may take a deduction for an amount not to exceed ((one hundred thousand dollars)) \$100,000 per tax year from the gross receipts or value of products proceeding or accruing from timber harvested. A deduction may not reduce the amount of tax due to less than zero.

((A)) (a) **Definition of small harvester.** "Small harvester" means every person, who from his or her own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use in an amount not exceeding ((two million)) 2,000,000 board feet in a calendar year. When a government entity (i.e., the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein) ((se)) fells, cuts, or takes timber for sale or for commercial or industrial use, not exceeding these amounts, the small harvester is the first person other than the ((United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or any municipal corporation therein,)) government entity who acquires title to or a possessory interest in the timber. "Small harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester, and it does not include the harvesters of Christmas trees or short-rotation hardwoods. RCW 84.33.035.

~~((a))~~ (b) Registration - Tax return. A person whose only business activity is as a small harvester of timber ~~((and whose gross income in a calendar year from the harvesting of timber is less than one hundred thousand dollars, is not))~~ is required to register with the department for B&O tax purposes ~~((This person must nonetheless register with the forest tax))~~, unless otherwise specified in WAC 458-20-101 (2) (a) or under chapter 82.32 RCW. A small harvester must also register with the forest tax program in the department's audit division ~~((of the department))~~ for payment of the timber excise tax. See chapters 84.33 RCW and 458-40 WAC for more information regarding the timber excise tax.

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

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

~~((i) Example 12.))~~ Example 19. Unregistered small harvester.

Facts: A small harvester, not currently registered with the department for B&O tax purposes, harvests timber in June 2023 and again in August 2023, receiving ~~((fifty thousand dollars in June and two hundred thousand dollars in August from the sale of the logs harvested.~~

~~B&O tax is due on the entire two hundred fifty thousand dollars received from the sale of logs.)~~ \$10,000 for the June 2023 sale and \$200,000 for the August 2023 sale of the harvested logs. Each sale is made to a lumber mill who presents the small harvester with a reseller permit.

Result: The small harvester must register with the department in August when the receipts from the timber harvesting business exceed the ~~((one hundred thousand dollars exemption amount))~~ gross revenue threshold in WAC 458-20-101, assuming the other registration conditions in that rule have not otherwise been met prior to August.

An excise tax return ~~((is to be filed in the appropriate period as provided in WAC 458-20-22801.~~

~~(ii) Example 13.~~ A person is primarily engaged in another business ~~that))~~ must be filed according to the tax reporting frequency assigned by the department (e.g., monthly, quarterly, or annually). The small harvester must report \$210,000 in gross revenue under extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products B&O tax classifications. The small harvester taxpayer is eligible to report a \$100,000 "small harvester" B&O tax deduction from the measure of all three B&O tax classifications. In addition, the taxpayer is eligible to take the MATC for both the extracting timber and manufacturing of timber or wood products. As a result, the wholesaling of timber or wood products B&O tax is due.

Example 20. Registered small harvester.

Facts: RRR Construction Company (RRR) is primarily in the business of commercial building construction and is currently registered with the department ~~((for B&O tax purposes and has monthly receipts of two hundred fifty thousand dollars. The person is)).~~ In July 2023, RRR generates \$250,000 in gross wholesaling income from its construction activities. RRR is also a small harvester as defined in RCW 84.33.035

~~((and receives sixty thousand dollars)). RRR's timber harvesting operation includes extracting standing timber from its own land and processing the extracted timber into logs before wholesaling the logs to third-party mills. In July 2023, RRR receives \$60,000 from the sale of (the timber harvested.~~

~~B&O tax remains due on two hundred fifty thousand dollars from the other business activities. The sixty thousand dollars received from the sale of logs is exempt and is not reported on the person's excise tax return. The exemption applies to the activity of harvesting timber and receipts from the sale of logs are not combined with the receipts from other business activities to make the sale of logs taxable)) logs from its timber harvesting operation to a local mill for resale. Year to date, RRR has not had any other sales of harvested timber or wood products.~~

~~**Results:** RRR is required to report \$250,000 in gross revenue under the wholesaling B&O tax classification for its construction activities.~~

~~RRR (as a smaller harvester and a manufacturer) is required to report \$60,000 in proceeds from the sale of logs under three B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. RRR is eligible for a \$60,000 "small harvester" B&O tax deduction from all three B&O tax classifications. RRR is eligible for additional "small harvester" B&O tax deductions up to \$40,000 (\$100,000-\$60,000) for the remainder of the reporting calendar year.~~

~~((iii) **Example 14.**)) **Example 21. Unregistered small harvester (deduction carryover).**~~

~~**Facts:** Don Janson, a small harvester not otherwise registered with the department for B&O tax purposes contracts with ((a logging company to provide the labor and mechanical services of the harvesting. The small harvester is to receive sixty)) NNN Logging Company (NNN) to extract standing timber from real property owned by Mr. Janson and process the extracted timber into logs. Mr. Janson retains ownership of the timber until it is sold. Under the agreement, Mr. Janson receives 60 percent and the logging company ((forty)) receives 40 percent of the log sale proceeds. ((The log purchaser pays two hundred fifty thousand dollars for the logs during the calendar year, paying one hundred fifty thousand dollars to the small harvester and one hundred thousand dollars to the logging company.~~

~~For the small harvester, B&O tax is due on the entire two hundred fifty thousand dollars paid for the logs. The small harvester is taxed upon the gross sales price of the logs without deduction for the amount paid to the logging company. RCW 82.04.070. The small harvester must register with the department for B&O tax purposes in the month when, for the calendar year, the proceeds from all timber harvested exceed one hundred thousand dollars. The logging company is taxed on the one hundred thousand dollars it received under the appropriate business tax classification(s). The logging company is not a small harvester as defined in RCW 84.33.035.) In September 2021, the harvested timber is sold at wholesale for \$250,000, \$150,000 (60 percent of \$250,000) of which is received by Mr. Janson.~~

~~**Result:** Mr. Janson (as a smaller harvester and a manufacturer) is required to register with the department for B&O tax purposes and must report the entire \$250,000 in sales proceeds under the following B&O tax classifications: Extracting timber, manufacturing of timber or wood products, and wholesaling of timber or wood products. Mr. Janson is not allowed to deduct the \$100,000 (40 percent of \$250,000) Mr.~~

Janson paid to NNN. However, Mr. Janson is eligible to take a \$100,000 "small harvester" B&O tax deduction from the measure of the B&O tax classifications reported, reducing the B&O taxable income to \$150,000. Assuming the sale occurred in Washington, Mr. Janson is also eligible to claim the MATC for both the extracting timber and manufacturing of timber or wood products. Mr. Janson is subject to B&O tax under the wholesaling of timber or wood products classification.

NNN (as a logging contractor for Mr. Janson) must report the \$100,000 gross income received from its extracting standing timber and processing for hire activities under the following B&O tax classifications: Extracting for hire timber and processing for hire timber products. NNN may also be subject to other taxes, depending on the activities NNN conducted.

WSR 24-09-053

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 15, 2024, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-087.

Title of Rule and Other Identifying Information: WAC 458-20-182 Warehouse businesses, and new WAC 458-20-18201 Warehouse and grain elevators and distribution centers exemption—Remittance.

Hearing Location(s): On May 23, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Cathy Holder at CathyH@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: June 3, 2024.

Submit Written Comments to: Perry Stern, P.O. Box 47453, Olympia, WA 98504-7453, email PerryS@dor.wa.gov, fax 360-534-1606, by May 31, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-182, the purpose of this rule-making effort is to update the definitions for "storage warehouse" and "warehouse" to match the definitions in RCW 82.04.280 and 82.08.820. Additionally, this rule-making effort adds subsections regarding dry stack storage, portable self-storage containers, prescription drug warehousing, and other rules to reference. Other changes have been made to enhance readability of the rule.

New WAC 458-20-18201, the purpose of this rule-making effort is to provide information about the qualifying criteria, application, and documentation requirements for the retail sales and use tax exemptions provided in RCW 82.08.820 and 82.12.820, respectively.

Reasons Supporting Proposal: WAC 458-20-182, this rule will provide updated definitions.

WAC 458-20-18201, this rule will provide information on filing and application requirements.

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

Statute Being Implemented: RCW 82.04.280, 82.08.820, and 82.12.820.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Perry Stern, 6400 Linderson Way S.W., Tumwater, WA, 360-524-1588; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-531-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on taxpayers, as it does not propose any requirements not

already provided for in the statute. The proposed rule does not impose new fees, filing requirements, or recordkeeping guidelines that are not already established in the statute.

April 15, 2024
Brenton Madison
Rules Coordinator

OTS-5209.1

AMENDATORY SECTION (Amending WSR 87-05-042, filed 2/18/87)

WAC 458-20-182 Warehouse and other storage businesses. (1) **Introduction.** This rule explains the application of the business and occupation (B&O) tax and retail sales and use taxes to warehouse and other storage businesses. It also clarifies the taxability for some specific storage-related activities.

(2) **Other rules that may apply.** You may want to refer to other rules for additional information, including the following:

(a) WAC 458-20-115 Sales of packing materials and containers;

(b) WAC 458-20-118 Sale or rental of real estate, license to use real estate;

(c) WAC 458-20-133 Frozen food lockers;

(d) WAC 458-20-180 Motor carriers;

(e) WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington;

(f) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce; and

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

(3) **Definitions.** ((For purposes of this section)) The following terms and meanings ((will)) apply to this rule:

(a) ~~((("Warehouse" means every structure wherein facilities are offered for the storage of tangible personal property.~~

~~(b) "Storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW (which are agricultural commodities warehouses), public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities whereby customers have direct access to individual storage areas by separate access.~~

~~(c) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

(b) "Cold storage warehouse" means a storage warehouse used to store either fresh ((and/)) or frozen, or both types of perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination ((thereof)), at a desired temperature to maintain the quality of the product for orderly marketing. RCW 82.04.280. This term does not include freezer space or frozen food lockers. See WAC 458-20-133.

~~((d)) "Automobile storage garage" means any off-street building, structure, or area where vehicles are parked or stored, for any period of time, for a charge.~~

~~(2)) (c) "Storage warehouse" means any part of a building or structure in which goods, wares, or merchandise are received for storage for compensation. "Storage warehouse" does not include field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, automobile storage garages, railroad freight sheds, docks and wharves, and "self-storage" or "mini-storage" facilities where customers have direct access to individual storage areas by a separate entrance. RCW 82.04.280. "Storage warehouse" also does not include a building or structure, or that part of the building or structure, in which an activity taxable under RCW 82.04.272, warehousing and reselling prescription drugs, is conducted. RCW 82.04.280.~~

~~(d) "Warehouse" means every structure where facilities are used for the storage of tangible personal property.~~

~~(4) **Business and occupation tax.** ((Warehouse)) The B&O tax is imposed on privilege of engaging in business in Washington. The measure of the B&O tax is the gross income of the business (gross income) or gross proceeds of sale (gross proceeds) as the case may be. RCW 82.04.080 and 82.04.090. Businesses that provide storage services are taxable under the B&O tax classification according to the nature of their ((operations)) activities and the specific kinds of goods stored, as follows:~~

~~(a) Warehousing classification.~~

~~(i) Persons engaged in operating any "storage warehouse" or "cold storage warehouse," as defined ((herein)) in subsection (3) of this rule, are subject to B&O tax under the warehousing classification ((, measured by the gross income of the business)). ((+)) See RCW 82.04.280. ((+))~~

~~((b)) (ii) Types of activities that fall within the warehousing classification include dry stack storage and storing a third-party's items within a storage container in the person's warehouse. The fact that the third party lacks dominion and control over the warehouse storage area distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.~~

Example 1.

Facts: Safe Harbor, LLC (Safe Harbor) is a Washington business engaged in providing dry stack storage. Dave purchases a boat storage space from Safe Harbor for the boating season. When Dave wishes to use his boat, he contacts Safe Harbor and the Safe Harbor operator removes Dave's boat from its storage slot and places it in the water. When Dave is finished using his boat, he leaves it in Safe Harbor's dock where the operator lifts the boat from the water and returns it to the stack. The haul-out service is included as part of the dry stack storage.

Result: Dave lacks dominion and control over the stacking berth. Consequently, the charge for the use of a stacking berth is a warehousing activity and not a rental of real estate. The haul-out service is taxable under the warehousing B&O tax classification because it is performed with respect to the dry stack storage of Dave's boat. Safe Harbor must report and pay warehousing B&O tax on its gross income from operating a dry stack storage warehouse. RCW 82.04.080 and 82.04.280.

Example 2.

Facts: Your PNW Storage, LLC (YPS) is engaged in the business of storing a third-party's items within a storage container in YPS' ware-

house. YPS maintains control over the storage container when it is stored at YPS' warehouse.

Result: YPS is subject to B&O tax under the warehousing classification. The third party lacks dominion or control over the warehouse storage area which distinguishes, in part, a warehousing activity from activities taxable under other B&O tax classifications.

(iii) If a person is engaged in warehousing and also provides related services including handling, sorting, weighing, measuring, and loading or unloading tangible personal property for storage, the gross income from these services is included in the person's gross income from warehousing.

(iv) A person storing third-party goods, incidental to the person's provision of order fulfillment services to the third party, is not operating a storage warehouse or cold storage warehouse for purposes of the warehousing B&O tax classification.

(b) Retailing classification.

(i) Persons engaged in operating any automobile storage garage for consumers are generally subject to B&O tax under the retailing classification (, measured by gross proceeds of such operations)). ((See)) RCW 82.04.050 ((3)(d).)) and 82.04.250.

((c) Persons engaged in operating any warehouse business, other than those of (a) and (b) of this subsection, are subject to tax under the service classification, measured by the gross income of the business. (See RCW 82.04.290.) This includes cold storage and frozen food lockers, field warehouses, fruit warehouses, agricultural commodities warehouses, and freight storage warehouses.

(d) Effective July 1, 1986, no warehouse business or operation of any kind is subject to tax under the public utility tax of chapter 82.16 RCW.

(3) **Tax measure.** The gross income of the business of operating a warehouse includes all income from the storing, handling, sorting, weighing, measuring, and loading or unloading for storage of tangible personal property.

(4)) However, amounts received for the rental of designated parking spaces are derived from the rental of real estate and are not subject to retail sales tax or B&O tax. See (4) (e) of this rule for more information on the exemption for rental of real estate.

(ii) Persons renting or leasing to a consumer tangible personal property used to store goods are making retail sales. See RCW 82.04.040 and 82.04.050 and WAC 458-20-211.

Example 3.

Facts: Porta-Closet, LLC (Porta-Closet) is engaged in renting portable self-storage containers to customers that are stored at the customer's site rather than in a warehouse.

Result: Porta-Closet is subject to B&O tax under the retailing classification on the gross proceeds of sales from the activity. B&O tax under the retailing classification also applies to any transportation charges for delivery or pick-up of the portable storage containers to or from the customer's site. See WAC 458-20-211. However, public utility tax applies to transportation charges for moving the portable storage containers between the customer's different sites.

(c) Prescription drug warehousing classification. Persons engaged in warehousing and reselling drugs for human use under a prescription are subject to B&O tax under the warehousing and reselling prescription drugs classification. See RCW 82.04.272.

(i) A person qualifies for the prescription drug warehousing classification only if it satisfies all of the following requirements:

(A) Purchases prescription drugs from a manufacturer or wholesaler;

(B) Warehouses and resells the prescription drugs directly to a qualified buyer;

(C) Is registered with the Federal Drug Enforcement Administration;

(D) Is licensed as either a wholesaler or retailer by the state pharmacy quality assurance commission established by RCW 18.64.001; and

(E) Resells the prescription drugs directly to a retailer with a pharmacy facility license or nonresidential pharmacy license issued by the department of health under RCW 18.64.043 or 18.64.370, respectively, or to a hospital, clinic, health care provider, or other provider of health care services.

(ii) While the person must be engaged in both the warehousing and reselling of prescriptions drugs to be eligible for the preferential B&O tax rate, it is not necessary for the person's warehouse to be located in Washington to qualify.

(d) Wholesaling. A person engaged as a lessor of storage equipment or containers is not required to pay retail sales or use tax on purchases of storage containers and other related equipment that are leased to a customer and subsequently leased to other customers without intervening use. The original rental is subject to wholesaling B&O tax and the subsequent rental is subject to the retailing B&O tax. The original seller is required to obtain a reseller permit (WAC 458-20-102) to substantiate the wholesale nature of the transaction. WAC 458-20-211.

(e) Service and other classification.

(i) Persons engaged in storage activities not described in subsection (4) (a), (b), (c), or (d) of this rule, and that are not otherwise addressed in any other specific B&O tax classification, are subject to B&O tax under the service and other B&O classification.

(ii) Granting of a license to use real estate is taxable under the service and other B&O tax classification unless specifically classified otherwise by statute. RCW 82.04.290 and WAC 458-20-118(1). A license to use real estate grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same.

(iii) Storage activities that fall within the service and other classification include freezer space and frozen food lockers, field warehouses, agricultural commodities warehouses, and freight storage warehouses.

Example 4.

Facts: South Pole Storage (South Pole) is engaged in the business of renting frozen food lockers. Cara rents a frozen food locker from South Pole for the purpose of storing large cuts of beef, which she purchases from a local cattle ranch for her family's consumption. South Pole does not alter the meat in any way; it merely provides storage.

Result: South Pole's gross income from the rental of the frozen food lockers is taxable under the service and other activities classification. See WAC 458-20-133.

(f) Exempt from B&O tax. Amounts derived from the sale and rental of real estate are exempt from B&O tax. See RCW 82.04.390 and WAC 458-20-118. A transaction will be considered the rental of real estate if all of the following five elements are met:

(i) A rental period of 30 days or longer;

(ii) The lessee has the right to exclusive use of the rented space;

(iii) The lessee has the right of continuous possession over the space;

(iv) The lessee has dominion and control of the rented space; and

(v) A landlord/tenant relationship exists between the lessor and lessee. See WAC 458-20-118.

Example 5.

Facts: More Space Company (MSC) rents self-service storage units. All of the storage units have separate entrances. Carter enters into a six-month contract with MSC for an individual storage unit for his furniture while he works in Denmark.

Result: Carter likely has dominion and control of the rented space. Thus, MSC's gross income received from the rental of its storage unit to Carter is exempt from B&O tax because it is a rental of real estate.

(5) Grain warehouses storing own grain. Where a grain ((warehouseman)) warehouser purchases or owns grain stored in such warehouse, ((there shall be included in)) taxable gross income includes:

(a) An amount equal to the charges at the customary rate for all services ((rendered)) given in connection with ((such)) the grain((s)) up to the time of purchase by the ((warehouseman)) warehouser; and

(b) The amount of any charges for services that are ((rendered)) given during the period of the ((warehouseman's)) warehouser's ownership ((thereof)) of the grain, billed and stated((, as such,)) separately from the price of the grain((s)) on the invoice to the purchaser at the time of the sale by the ((warehouseman)) warehouser.

~~((5)) (6) Retail sales tax and use tax.~~ ((Persons operating automobile garage storage businesses must collect and report retail sales tax upon the gross selling price of such parking/storage services.

~~(6) Consumables.~~ Retail sales tax is due on the sale of tangible personal property or retail services to a consumer as provided in chapter 82.04 RCW. Persons ((engaged in)) operating any of the business activities ((covered by)) described in this ((section)) rule must pay retail sales tax ((upon)) on their purchases of their consumable supplies, equipment, and materials for their own use as consumers in operating ((such)) the businesses. ~~((7) Use tax.~~ The Use tax is due ((upon)) on the value of all tangible personal property used as consumers by persons operating warehouse businesses, upon which the retail sales tax has not been paid.

~~((For specific provisions covering temporary holding of goods in foreign or interstate movement by water, see WAC 458-20-193D respecting stevedoring and associated activities.))~~ (a) Portable storage containers. A person engaged in the business of providing portable self-storage containers to customers for temporary storage must pay retail sales tax upon their purchases of property used in the operation of the business. A purchase of a storage container is subject to retail sales tax when the container is used for storage at the purchaser's warehouse rather than rented to customers for use at the customer's location. A reseller permit may not be used to purchase consumable supplies, equipment, and materials used in the operation of a business. See WAC 458-20-211.

(b) Automobile garage parking/storage. Persons operating any automobile storage garage must collect and report retail sales tax upon the gross selling price of the parking/storage services to consumers.

WSR 24-09-056

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed April 15, 2024, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-06-057.

Title of Rule and Other Identifying Information: New WAC 458-20-27901 Clean alternative fuel vehicles and plug-in hybrid vehicles.

Hearing Location(s): On May 22, 2024, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Cathy Holder at CathyH@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: June 3, 2024.

Submit Written Comments to: Leslie Mullin, P.O. Box 47453, Olympia, WA 98504-7453, email LeslieMu@dor.wa.gov, fax 360-534-1606, by May 31, 2024.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to publish a new rule that addresses the sales and use tax exemption authorized under RCW 82.08.9999 and 82.12.9999, respectively, for certain clean energy vehicles. This rule is being written to provide additional guidance to buyers and sellers of eligible vehicles so they understand the exemption requirements and limitations.

Reasons Supporting Proposal: The new rule will assist buyers and sellers regarding exemption requirements and limitations in purchasing and/or leasing such qualifying vehicles and ensure they are receiving the correct exemption amount.

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

Statute Being Implemented: RCW 82.08.9999, 82.12.9999.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Mullin, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1589; Implementation and Enforcement: Heidi Geathers, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1615.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed new rule provides information and examples for the sales and use tax exemption for certain clean energy vehicles authorized under RCW 82.08.9999 and 82.12.9999, respectively. The proposed new rule does not impose more-than-minor costs on businesses, as it does not propose any new tax rate, tax measure, reporting or recordkeeping requirements not already established by these statutes.

April 15, 2024

Brenton Madison
Rules Coordinator

OTS-5243.2

NEW SECTION

WAC 458-20-27901 Clean alternative fuel vehicles and plug-in hybrid vehicles. (1)(a) **Introduction.** This rule provides information about the retail sales and use tax exemption (exemption) in RCW 82.08.9999 and 82.12.9999 for the purchase, lease, or use of clean alternative fuel vehicles and certain plug-in hybrid vehicles.

(b) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including the following:

(i) WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

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

(iii) WAC 458-20-247 Trade-ins, selling price, sellers' tax measures.

(iv) WAC 458-20-257 Tangible personal property warranties and service contracts.

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

(2) **Definitions.** The following definitions apply throughout this rule:

(a) **"Clean alternative fuel"** means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2019, and the rules of the Washington state department of ecology.

(b) **"Fair market value"** has the same meaning as "value of the article used" in RCW 82.12.010 and, for the purposes of this rule, the fair market value of a leased clean alternative fuel or plug-in hybrid vehicle is generally determined according to the retail selling price at the place of use of vehicles of similar quality and character. The fair market value includes delivery charges or any other services necessary to complete the lease. RCW 82.12.010; WAC 458-20-178.

(c) **"New vehicle"** has the same meaning as "new motor vehicle" in RCW 46.04.358 and means any motor vehicle that:

(i) Is self-propelled;

(ii) Is required to be registered and titled under Title 46 RCW;

(iii) Has not been previously titled to a retail purchaser or lessee; and

(iv) Is not a used vehicle as defined in (h) of this subsection.

(d) **"Plug-in hybrid vehicle"** is a vehicle that uses at least one method of propulsion capable of being reenergized by an external source of electricity and capable of traveling at least 30 miles using only battery power.

(e) **"Qualification period end date"** means August 1, 2025.

(f) **"Qualification period start date"** means August 1, 2019.

(g) **"Selling price"** has the same meaning as used in RCW

82.08.010. Selling price includes charges for delivery and installation, for vehicle accessories purchased as part of the purchase of the vehicle, and any other charges for services necessary to complete the sale. RCW 82.08.010; WAC 458-20-108; 458-20-178; 458-20-247. The selling price does not include the value of any trade-in. However, for purposes of this exemption, the value of any trade-in is added to the selling price to determine exemption eligibility.

(h) **"Used vehicle"** has the same meaning as "used vehicle" in RCW 46.04.660 and means a vehicle that:

(i) Has been sold, bargained, exchanged, given away, or title transferred from the person who first took title to it from the manufacturer or first importer, dealer, or agent of the manufacturer or importer; and

(ii) Is used in a manner to have become what is commonly known as "secondhand."

(3) **Exemption.** A sales and use tax exemption applies to new or used passenger cars, light duty trucks, or medium duty passenger vehicles that meet the power requirements and are within the value limitations described below. A person may not claim this exemption if the exemption under RCW 82.08.993 or 82.12.817(2) is claimed.

(a) **Power requirements.** The exemption applies only to the sale, lease, or use of a vehicle either exclusively powered by a clean alternative fuel or a plug-in hybrid vehicle.

(b) **List of eligible vehicles.** The department of licensing must maintain and publish a list of all vehicle models eligible for this tax exemption and is authorized to issue final rulings on vehicle model eligibility. A seller or lessor is not responsible for repayment of the tax exemption if a vehicle was listed as of the date it was purchased or the lease agreement was signed, and met the other exemption requirements, and is subsequently removed from the list.

(c) **Eligible vehicle values.** The selling price plus the trade-in value of property of like kind for vehicle sales at the time of purchase, or the fair market value for vehicles at the inception of the lease agreement, may not exceed the following amounts:

(i) New vehicles: \$45,000.

(ii) Used vehicles: \$30,000.

(d) **Trade-in values.** When determining whether a new or used vehicle is eligible for the exemption in this rule, the value of any trade-in vehicle must be added to the selling price of the vehicle.

Example 1. An automobile dealer sells a new clean alternative fuel vehicle for \$53,000. As part of the sale, the dealer accepts a trade-in vehicle from the buyer with an agreed upon value of \$10,000, resulting in a taxable selling price of \$43,000. The new vehicle does not qualify for the exemption because the selling price, as defined in subsection (2) of this rule, plus the vehicle trade-in value of \$10,000, exceeds the new vehicle value limit of \$45,000.

(e) **Determining amount subject to retail sales tax.** After determining the new or used vehicle qualifies for the exemption, the seller must then determine the eligible exemption amount as described in the table in this subsection (3)(e). The amount subject to retail sales tax is calculated by subtracting the exemption amount and the trade-in allowance, if any, from the selling price. In the case of a lease, the exemption amount applies up to the eligible exemption amount identified in the table in this subsection (3)(e) for lease payments made, and any additional selling price of the leased vehicle if the original

lessee purchases the leased vehicle before the qualification period end date. The exemption amounts are provided below and based on the date of purchase or date of the signed lease agreement.

Date of purchase/Date of signed lease agreement	Exemption amount (New vehicles)	Exemption amount (Used vehicles)
August 1, 2019 - July 31, 2021	\$25,000	Total sales price or \$16,000, whichever is less
August 1, 2021 - July 31, 2023	\$20,000	
August 1, 2023 - July 31, 2025	\$15,000	

Example 2. In February 2022, an automobile dealer sells a new clean alternative fuel vehicle for \$44,000, before factoring in a trade-in allowance. The purchaser provides a down payment of \$5,000 and the dealer accepts a trade-in vehicle from the buyer with an agreed upon value of \$7,000 and finances the remaining \$32,000. The new vehicle qualifies for the exemption because the taxable selling price of \$37,000, plus the value of the buyer's trade-in vehicle of \$7,000, does not exceed the \$45,000 limit. To determine the amount of the sale subject to retail sales tax, the dealer will subtract the exemption amount indicated in the chart in subsection (3)(e) of this rule and the trade-in value from the vehicle's selling price. The seller is required to report \$44,000 in gross revenue under the retailing B&O and retail sales tax classifications, then report a \$7,000 trade-in allowance deduction and a \$20,000 clean alternative fuel vehicle deduction from the retail sales tax classification. The retail sales taxable amount is \$17,000. The retailing B&O taxable amount is \$44,000.

Example 3. On March 1, 2023, an automobile dealer (who is assigned a monthly tax reporting frequency) leased a new clean alternative fuel vehicle with a fair market value of \$42,000. The new leased vehicle qualifies for the exemption because its fair market value is \$45,000 or less. The maximum allowable exemption amount is \$20,000. The lease covers a 36-month period, and the monthly lease payment is \$500. The lessee decides to purchase the vehicle following the expiration of the lease on March 1, 2026, for \$24,000. Because the lessee paid \$18,000 in total lease payments prior to purchasing the vehicle, the remaining available exemption is \$2,000, which may be deducted from the selling price of \$24,000, resulting in a retail sales taxable amount of \$22,000.

For the entire 36-month lease period, the seller is required to report \$500 in gross revenue from monthly vehicle lease payments under the retailing B&O and retail sales tax classifications on each of its monthly excise tax returns, then report a \$500 deduction from the retail sales tax classification, resulting in a retail sales taxable amount of \$0. The seller may not claim a deduction for B&O tax purposes, resulting in a retailing B&O taxable amount of \$500. For the March 2026 return, the seller is required to report \$24,000 in gross revenue under the retailing B&O and retail sales tax classifications, then report a \$2,000 clean alternative fuel vehicle deduction from the retail sales tax classification. The retail sales taxable amount is \$22,000. The retailing B&O taxable amount is \$24,000.

(f) **Exemption eligibility dates.**

(i) **Sales.** For vehicle sales, the sale must be made between August 1, 2019, and July 31, 2025, to qualify for the exemption. Sales of vehicles after July 31, 2025, do not qualify for the exemption.

(ii) **Leases.** For vehicle leases, the lease agreement must be signed between August 1, 2019, and July 31, 2025, to qualify for the

exemption. Lease agreements signed after July 31, 2025, do not qualify for the exemption. However, leases that qualified for the exemption before August 1, 2025, will continue to receive the exemption on any lease payments due through the remainder of the lease through July 31, 2028. RCW 82.08.9999(7).

Example 4. A lessee signs a four-year vehicle lease agreement for an eligible vehicle on June 15, 2025, with the first payment due on July 15, 2025, and the last payment due on June 15, 2029. Because this exemption expires on August 1, 2028, the retail sales tax exemption will be applied to each lease payment, beginning July 15, 2025, and continue until the earlier of July 31, 2028, or until the available exemption amount is reduced to zero.

(4) **Recordkeeping.** The seller, or lessor in the case of a lease, of any eligible vehicle, new or used, must keep the following records necessary for the department of revenue to verify eligibility:

- (a) Vehicle make, model, and year;
- (b) Whether the vehicle was sold or leased;
- (c) Selling price for purchased vehicles, or fair market value at the inception of the lease for leased vehicles;
- (d) Date of sale or start date of lease;
- (e) Terms of lease, including monthly lease payment and length of lease; and
- (f) Total amount qualifying for the incentive claimed for each vehicle, including the future monthly amount to be claimed for each leased vehicle.

WSR 24-09-058
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Behavioral Health Administration)
[Filed April 15, 2024, 3:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-15-035.

Title of Rule and Other Identifying Information: WAC 388-880-005 Special commitment of sexually violent predators—Legal basis (amend), 388-880-007 Purpose (amend), 388-880-010 Definitions (amend), 388-880-020 Authorization for indefinite commitment to the sexual predator program (amend), 388-880-030 Sexual predator program supplemental and post commitment evaluations (repeal), 388-880-031 Sexual predator program annual evaluation (amend), 388-880-033 Evaluator—Qualifications (amend), 388-880-034 Evaluator—Supplemental and post commitment evaluation responsibilities (repeal), 388-880-035 Refusal to participate in a supplemental or post commitment pretrial evaluation (repeal), 388-880-036 Supplemental evaluation—Reporting (repeal), 388-880-040 Individualized treatment: Clinical services (amend), 388-880-041 Individualized treatment: Discharge planning (new), 388-880-050 Rights of a person court-detained or civilly committed to the special commitment center (amend), and possible other sections in chapter 388-880 WAC.

Hearing Location(s): On May 21, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than May 22, 2024.

Submit Written Comments to: Rules and Policies Assistance Unit, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on May 21, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on May 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS recognizes these WAC have not been updated since 2013 and since then, there have been policy and RCW changes that require an update. DSHS has decided to change the name of the treatment program from "sexual predator program" to "sex offense specific treatment program," which will help clarify the type of treatment provided by the special commitment center (SCC). DSHS is updating the WAC that relate to the forensic evaluations that are completed as well as the qualifications of the forensic evaluators. DSHS is also updating language to include discharge planning.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71.09.070, 71.09.090, and 71.09.097.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Christina Wells, SCC, 253-363-0274; Implementation and Enforcement: Keith Devos, CEO, SCC, 253-617-6322.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not a significant legislative rule. RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 34.05.328 (5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.

Scope of exemption for rule proposal:

Is fully exempt.

April 10, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5024.4

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-005 Special commitment of sexually violent predators

—**Legal basis.** (1) Chapter 71.09 RCW authorizes the department to develop a ~~((sexual predator program (SPP)))~~ sex offender specific treatment program for a person the court determines to be a sexually violent predator.

(2) The department's ~~((SPP))~~ sex offender specific treatment program ~~((shall))~~ will provide:

(a) Custody, supervision, and evaluation of a person court-detained to the ~~((SPP))~~ sex offender specific treatment program to determine if the person meets the definition of a sexually violent predator under chapter 71.09 RCW; ~~((and))~~

(b) Treatment, care, evaluation and control of a person civilly committed as a sexually violent predator ~~((-))~~; and

(c) Discharge planning in accordance with RCW 71.09.080

(4) (a)-(g).

(3) Evaluations and evaluation procedures may be established in coordination with the department, the department of corrections and the end of sentence review committee.

(4) Secure facilities operated by the department for the ~~((sexual predator program))~~ sex offender specific treatment program include the special commitment center (SCC) total confinement facility, a secure community transition facility, and any community-based ~~((facility))~~ placement established under chapter 71.09 RCW and operated by the secretary or under contract with the secretary.

(5) The secretary or designee may execute such agreements as appropriate and necessary to implement this chapter.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-007 Purpose. These rules carry out the legislative intent of chapter 71.09 RCW, authorizing the department to provide evaluation, care, control, and treatment of persons court-detained or civilly committed to the ~~((sexual predator program))~~ sex offender specific treatment program.

AMENDATORY SECTION (Amending WSR 23-11-031, filed 5/10/23, effective 6/10/23)

WAC 388-880-010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

"Appropriate facility" means the total confinement facility the department uses to hold and evaluate a person court-detained under chapter 71.09 RCW.

"Authorized third party" means a person approved in writing by the resident on a DSHS Form 17-063 (Authorization to disclose records), who may request and have access to the resident clinical file under chapter 71.09 RCW or the resident's medical records under chapter 70.02 RCW.

"Care" means a service the department provides during a person's detention or commitment within a secure facility toward adequate health, shelter, and physical sustenance.

"Chief executive officer (CEO)" means the person appointed by the secretary of the department to be responsible for the general operation, program, and facilities of the SCC. Also referred to as "superintendent of the special commitment center" and "superintendent" under chapter 71.09 RCW.

"Control" means a restraint, restriction, or confinement the department applies protecting a person from endangering self, others, or property during a period of custody under chapter 71.09 RCW.

"Department" means the department of social and health services or DSHS.

"Escorted leave" means a leave of absence under the continuous supervision of an escort from a facility housing persons who are court-detained or civilly committed under chapter 71.09 RCW.

"Evaluation" means an examination, report, or recommendation by a professionally qualified person to determine if a person has a personality disorder ~~((r))~~ or mental abnormality, ~~((or both,))~~ which ~~((causes serious difficulty in controlling their sexually violent behavior and))~~ renders the person likely to engage in predatory acts of sexual violence if not confined in a secure facility. The ~~((four))~~ types of evaluations that may occur related to a person's commitment or detention under chapter 71.09 RCW are as follows:

- The **initial evaluation** occurs before the person is detained at the SCC, usually occurring while the person is in prison, department of children, youth, and families, a state mental hospital, a county jail, or in the community following commission of a recent overt act.

~~((Supplemental evaluations, as required by RCW 71.09.040, are performed for civil commitment trial purposes.))~~

- **Annual review evaluations** occur only after a person has been civilly committed under RCW 71.09.070.

• **Post commitment evaluations**, as required ((by)) under RCW 71.09.090, when the person qualifies for a conditional or unconditional release trial.

"Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

"Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

"Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020((+4)).

"Health profession" means those licensed or regulated professions set forth in RCW 18.120.020((+4)).

"Immediate family" includes a resident's parents, stepparents, parent surrogates, legal guardians, grandparents, spouse, brothers, sisters, half or stepbrothers or sisters, children, stepchildren, registered domestic partner, and other dependents.

"Indigent" for purposes of escorted leave and state issued property, refers to the financial status of a resident who has maintained a total balance of \$40 or less, combined, in their resident trust and resident store accounts for the past 30 days, after paying court ordered legal financial obligations, child support, or cost-of-care reimbursement, and who swears or affirms under penalty of perjury that they have no additional outside resources, including but not limited to pension income, business income, and a spouse's or registered domestic partner's employment or other income.

"Individual treatment plan (ITP)" means an outline the SCC staff persons develop detailing how control, care, and treatment services are provided to a civilly committed person or to a court-detained person.

"Legal mail" means a resident's written communications, to or from: Courts/court staff regarding a legal action currently before a court, a licensed attorney, a public defense agency, a licensed private investigator retained by private counsel representing a resident or appointed by a court, an expert retained by an attorney representing a resident or appointed by a court, and a law enforcement agency.

"Less restrictive alternative (LRA)" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions stated in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

"Less restrictive alternative facility" means a secure community transition facility as defined under RCW 71.09.020(16).

"Mental abnormality" means a congenital or acquired condition affecting the person's emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

"Original format" means the format in which a record subject to public disclosure was originally produced.

"Oversight" means official direction, guidance, review, inspection, investigation, and information gathering activities conducted for the purposes of program quality assurance by persons or entities within, or external to, the SCC.

"Personality disorder" means an enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture, is pervasive and inflexible, has onset in ado-

lescence or early adulthood, is stable over time, and leads to distress or impairment. Purported evidence of a personality disorder must be supported by testimony of a licensed forensic psychologist or psychiatrist.

"Predatory" means acts a person directs toward:

- (1) Strangers;
- (2) Individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or
- (3) Persons of casual acquaintance with whom no substantial personal relationship exists.

"Professionally qualified person":

(1) **"Psychiatrist"** means a person licensed as a physician in this state, in accordance with chapters 18.71 and 18.57 RCW. In addition, the person must:

- (a) Have completed three years of graduate training in a psychiatry program approved by the American Medical Association or the American Osteopathic Association; and
- (b) Be certified, or eligible to be certified, by the American Board of Psychiatry and Neurology.

(2) **"Psychologist"** means a person licensed as a doctoral level psychologist in this state, in accordance with chapter 18.83 RCW.

"Relapse prevention plan (RPP)" details static and dynamic risk factors particular to the resident and contains a written plan of interventions for the purpose of reducing the risk of sexual offending.

"Resident" means a person court-detained or civilly committed pursuant to chapter 71.09 RCW.

"Resident trust account" means the custodial bank account, held by the state, which represents the resources of the individual resident which is held for the individual resident's use.

"Responsivity" refers to the delivery of treatment in a manner that is consistent with the abilities and learning style of the resident. Responsivity can be conceptualized within the following categories: Physical limitations and sensory impairments, cognitive and learning impairments, mental health symptoms and behavioral disorders, cultural and subcultural differences to the extent that these differences may interfere with treatment participation.

"Risk factors" means resident factors, supported by empirical evidence, shown to increase the likelihood an individual will engage in sexual offending behavior.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"Secure community transition facility (SCTF)" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include, but are not limited to, the facilities established in RCW 71.09.250 and any community-based facilities established under chapter 71.09 RCW that is state-owned and state-operated by the secretary ((or under contract with the secretary.)) to be an SCTF. Only SCTFs need to comply with the residential conditions listed in RCW 71.09.250 through 71.09.330 and RCW 71.09.341 through 71.09.344.

"SCTF residential community transition team (RCTT)" means a team made up of three key individuals who will be closely involved with day to day decision making related to the transition activities of a resident residing in an SCTF operated by the department of social and

health services. These three individuals include the department of corrections (DOC) correctional specialist, the certified sex offender treatment provider employed by DSHS or who has been contracted by the SCC, and the SCTF manager, the chief of clinical services or designee may substitute for the SCTF manager. The RCTT must approve all community activities of an SCTF resident. As the agency responsible for funding SCTF activities, DSHS through its SCTF manager may consider budgetary constraints when approving or supporting discretionary activities such as community shopping or recreation, or personal activities such as visiting family and friends.

"Secure facility" means a residential facility for persons court-detained or civilly committed under the provisions of chapter 71.09 RCW that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement in RCW 71.09.096.

"Senior clinical team" means a team of professionally qualified persons employed by the department which are designated by the CEO to meet regularly to:

- Make decisions about the implementation of the sex offense treatment.
- Make clinical recommendations to provide input about residents releasing to less restrictive alternative (LRA) settings.
- Provide general consultation regarding resident treatment and behavioral management issues.
- Conduct outreach to program areas of SCC including staffing and consultation of residents in sex offense treatment.
- As requested, provide guidance and advice to the chief of clinical services, the CEO, and the treatment teams.

Members of the senior clinical team are expected to consider all available relevant information, including contextual and situational factors, to make optimal, clinically supportable decisions.

The team may include either a SCC contracted community-based psychologist with advanced forensic assessment and treatment expertise, a contracted community-based psychiatrist with advanced expertise in forensic assessment and treatment, or both.

The senior clinical team may not include the following persons, unless needed at the request of the chief of clinical services for consultation on a specific issue(s):

- The resident's attorney;
- The prosecuting agency;
- Any representative from DOC;
- Potential certified sex offender treatment providers (CSOTPs) or community providers of any type who may treat the resident; or
- Any other party who may serve to financially gain from the resident's release.

"(~~Sexual predator~~) Sex offender specific treatment program" means a department-administered and operated program including the special commitment center (SCC) established for:

- (1) A court-detained person's custody and evaluation; or
- (2) Control, care, and treatment of a civilly committed person defined as a sexually violent predator under chapter 71.09 RCW.

"Sexually violent offense" means an act defined under chapter 9A.28 RCW, RCW 9.94A.030 and 71.09.020.

"Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person

likely to engage in predatory acts of sexual violence if not confined in a secure facility.

"**Special commitment center (SCC)**" means the department operated secure facility that provides supervision and sex offender treatment services in a total confinement setting for individuals detained or committed under RCW 71.09.

"**Total confinement facility**" means a facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a secure facility by the secretary.

AMENDATORY SECTION (Amending WSR 03-23-022, filed 11/10/03, effective 12/11/03)

WAC 388-880-020 Authorization for indefinite commitment to the ~~((sexual predator))~~ sex offender specific treatment program. A person must be admitted to the custody of the department when, under RCW 71.09.060, a court or jury determines, beyond a reasonable doubt, that the person is a sexually violent predator and commits the person for placement in a secure facility operated by the department for control, care, and treatment.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-031 ~~((Sexual predator program))~~ Sex offender specific treatment program annual review evaluation. (1) Annually or as required by court order, the department ~~((shall))~~ must conduct an evaluation and examine the mental condition of each person civilly committed under chapter 71.09 RCW. The evaluation ~~((shall))~~ must be conducted by a professionally qualified person ~~((designated by the secretary))~~.

(2) Under RCW 71.09.070, the annual review evaluation must include consideration of whether:

(a) The person currently meets the definition of a sexually violent predator; and

(b) Conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community.

(3) The report of the department ~~((shall))~~ must be in the form of a declaration or certification in compliance with the requirements of chapter 5.50 RCW ~~((9A.72.085))~~ and ~~((shall))~~ will be prepared by a professionally qualified person as defined herein.

(4) The department ~~((shall))~~ will file this ~~((periodic))~~ report with the court that civilly committed the person under chapter 71.09 RCW.

(5) A copy of this report ~~((shall))~~ will be served on the prosecuting agency involved in the initial hearing or commitment and upon the ~~((detained or))~~ committed person and ~~((his or her))~~ their counsel.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-033 Evaluator—Qualifications. Professionally qualified persons employed by the department or under contract to provide evaluative services must have a license, in good standing, in the state of Washington as a psychologist or psychiatrist and:

- (1) Have demonstrated expertise in conducting evaluations of ~~((sex offenders))~~ individuals adjudicated for sexual and nonsexual crimes, including diagnosis and risk ~~((assessment of reoffense risk))~~ assessments;
- (2) Have demonstrated expertise in providing expert testimony ~~((related to sex offenders or other forensic topics))~~ in legal proceedings involving individuals adjudicated for sexual and nonsexual crimes; and
- (3) Provide documentation of such qualification to the department initially and annually.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-040 Individualized treatment: Clinical services.

(1) When the court detains ~~((a person))~~ or commits a person to the SCC, SCC staff persons designated by the ~~((clinical director))~~ chief of clinical services ~~((shall))~~ must develop ~~((an individual))~~ a clinical treatment plan ~~((ITP))~~ for the person to address sex offense treatment progress. The resident ~~((shall))~~ will have an opportunity to participate in the treatment planning process.

(2) The ~~((ITP))~~ clinical treatment plan ~~((shall))~~ will be based upon, but not limited to, the following information as may be available:

- (a) The person's offense history;
- (b) A psycho-social history;
- (c) The person's most recent forensic evaluation; and
- (d) A statement of high-risk factors for potential reoffense, as may be ascertained over time.

(3) The ~~((ITP shall))~~ clinical treatment plan must include, but is not ~~((be))~~ limited to:

- (a) A description of the person's specific treatment and responsibility needs ~~((in:));~~
 - ~~((i) Sex offender specific treatment;~~
 - ~~((ii) Substance abuse treatment, as applicable;~~
 - ~~((iii))~~ (b) Supports to promote psychiatric stability, as applicable;
 - ~~((iv))~~ (c) Supports for medical conditions and disability, as applicable; and
 - ~~((v) Social, family, and life skills.~~
 - ~~((b))~~ (d) An outline of intermediate and long-range treatment goals, with cognitive and behavioral interventions for achieving the goals ~~((:)).~~
 - ~~((c) A description of SCC staff persons' responsibilities; and~~
 - ~~((d) A general plan and criteria, keyed to the resident's achievement of long-range treatment goals, for recommending to the court~~

~~whether the person should be released to a less restrictive alternative.))~~

~~(4) ((SCC staff persons shall review the person's ITP every six months.))~~ Each resident's clinical treatment plan will be done as follows:

(a) A new clinical treatment plan will be issued every ~~((twelve))~~ 12 months or more often as needed.

(b) ~~((Existing treatment plans))~~ Progress towards treatment goals will be reviewed at least once every six months by the treatment team, this review ~~((shall))~~ will be documented in a progress note.

(c) The review or reissue of a resident's clinical treatment plan may occur at any time based on the resident's behavior or treatment status.

(5) A court-detained person's plan may include access to program services and opportunities available to persons who are civilly committed, with the exception that the court-detained person may be restricted in employment and other activities, depending on program resources and incentives reserved for persons who are civilly committed ~~((and/))~~ or actively involved in treatment, or both.

(6) Nothing in this chapter ~~((shall))~~ will exclude a court-detained person from engaging in the sex offender treatment program and, should the person elect to engage in treatment before the person's commitment trial:

(a) The person ~~((shall be accorded privileges and))~~ will have access to program services ((in a like manner as are accorded)) similar to a civilly committed person in treatment; and

(b) ~~((Shall))~~ Will not, solely by reason of the person's voluntary participation in treatment, be judged nor assumed by staff, administrators, or professional persons of the SCC or of the department to meet the definition of a sexually violent predator under chapter 71.09 RCW.

NEW SECTION

WAC 388-880-041 Individualized treatment: Discharge planning.

(1) SCC will develop on an ongoing basis, clinically appropriate discharge plans for every resident. These plans will address at a minimum:

(a) The resident's known physical health, functioning, and any need for health aid devices;

(b) The resident's known intellectual or cognitive level of functioning and need for specialized programming;

(c) The resident's known history of substance use and abuse;

(d) The resident's known history of risky or impulsive behaviors, criminogenic needs, and treatment interventions to address them;

(e) The resident's known ability to perform life skills and activities of daily living independently and the resident's known need for any disability accommodations;

(f) A summary of the known community services and supports the resident needs for a safe life in the community and the type of providers of such services and support; and

(g) A plan to mitigate the needs identified in this subsection that also addresses ways to develop or increase social supports, recreation opportunities, gainful employment, and if applicable, spiritual opportunities.

(2) These plans are memorialized in a psychosocial assessment. These assessments will be written by the assigned social worker and reviewed by the social work manager. Psychosocial assessments are updated on an annual basis, or more frequently if needed.

AMENDATORY SECTION (Amending WSR 10-13-130, filed 6/22/10, effective 7/23/10)

WAC 388-880-050 Rights of a person court-detained or civilly committed to the special commitment center. (1) During a person's period of detention or commitment, the department ~~((shall))~~ must:

~~(a) ((Apprise the person of the person's right to an attorney and to retain one professionally qualified person to perform an evaluation on the person's behalf; Provide access to the person and the person's records in accordance with RCW 71.09.080(3) and WAC 388-880-044; and~~

~~(b) ((Provide access to the person and the person's records in accordance with RCW 71.09.080 and WAC 388-880-044.))~~ When a resident requests review of their SCC records to the SCC records department, the SCC records department will compile all records and schedule a time and location for the resident to review those records.

(2) A person the court detains for evaluation or commits to the SCC ~~((shall))~~ will:

~~(a) Receive adequate care, ((and)) individualized treatment, and discharge planning;~~

~~(b) Be permitted to wear the person's own clothing and maintain the person's own possessions except ((as may be)) when:~~

~~(i) Required to wear state issued clothing during an escorted leave from the secure facility((, or when the wearing of state issued clothing is required within the facility for health or safety of self or others,));~~

~~(ii) Doing so would impact the health, safety, or security of the facility, self, or others; ((or when the wearing of a particular type of clothing or a particular colored clothing or accoutrement is prohibited for the general safety and security within the facility where the person is housed; and to keep and use the person's own possessions, except when deprivation of possessions is necessary for the person's protection, health or safety, the protection, health or safety of others, or to))~~

~~(iii) ((limit)) Limiting the quantity of the person's personal possessions to within facility ((limitation)) limitations, or for the protection of property within the ((SCC)) TCF or SCTF;~~

~~(c) Be permitted to accumulate and spend a reasonable amount of money in the person's SCC resident trust account, while residing in the TCF;~~

~~(d) ((Have access to reasonable personal storage space within SCC limitations, which shall be outlined in an internal policy that is accessible to the person;~~

~~(e) Be permitted to have))~~ Have access to approved visitors ((within reasonable limitations));

~~((f))~~ (e) Have ~~((reasonable))~~ access to a telephone to make and receive confidential calls within SCC limitations; and

~~((g))~~ (f) Have ~~((reasonable))~~ access to letter writing material and to:

(i) Receive and send correspondence through the mail within SCC policies (~~limitations and according to established safeguards against the receipt of contraband material~~); and

(ii) Send written communication regarding the fact of the person's detention or commitment.

(3) A person the court commits to the SCC (~~shall~~) will have the following procedural rights to:

(a) Have reasonable access to an attorney and be informed of the name and address of the person's designated attorney;

(b) Petition the court for release from the SCC; and

(c) Receive annual written notice of the person's right to petition the committing court for release. The department's written notice and waiver (~~shall~~) must:

(i) Include the option to voluntarily waive the right to petition the committing court for release; and

(ii) Annually be forwarded to the committing court by the department.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-880-030	Sexual predator program supplemental and post commitment evaluations.
WAC 388-880-034	Evaluator—Supplemental and post commitment evaluation responsibilities.
WAC 388-880-035	Refusal to participate in a supplemental or post commitment pretrial evaluation.
WAC 388-880-036	Supplemental evaluation—Reporting.

WSR 24-09-062
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
(Board of Boiler Rules)
[Filed April 16, 2024, 9:44 a.m.]

Continuance of WSR 24-02-070.

Preproposal statement of inquiry was filed as WSR 23-21-043.

Title of Rule and Other Identifying Information: Board of boiler rules: WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?, 296-104-102 Inspections—What are the standards for in-service inspection?, 296-104-200 Construction—What are the standards for new construction?, 296-104-255 Installation—What are the required clearances for boilers?, 296-104-260 Installation—What are the required clearances for unfired pressure vessels?, and 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): On May 22, 2024, at 10:20 a.m., at the Department of Labor and Industries (L&I), 7273 Linderson Way S.W., Tumwater, WA 98501; or join electronically (Zoom) <https://lni-wa.gov.zoom.us/j/86866173024?pwd=ZnhCejZrSlIxRG9CRTZDYnZnSVpBZz09>, Passcode X*y7x8Z*; or join by phone (audio only) 253-215-8782, Meeting ID 868 6617 3024, Passcode 79245079. The in-person and virtual/telephonic hearing starts at 10:20 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: June 4, 2024.

Submit Written Comments to: Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Meagan.Edwards@Lni.wa.gov, fax 360-704-1980, by 5 p.m. on May 15, 2024.

Assistance for Persons with Disabilities: Contact Meagan Edwards, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov, by May 10, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this continuance is to extend the public comment period and provide a second public hearing for changes under chapter 296-104 WAC, Board of boiler rules—Substantive. L&I filed a CR-102 proposal on January 2, 2024 (WSR 24-02-070). A hybrid public hearing was held on February 21, 2024, with written comments accepted through February 13, 2024. During the process, some stakeholders did not receive notice of the CR-102 filing. This continuance extends the opportunity for public comments.

Proposed amendments to the chapter are as follows:

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

- Adds a new subsection that installers are responsible for correcting deficiencies found on initial permit inspection and paying subsequent inspection fees.
- Renumbers subsections and converts spelled numbers to numerals for formatting.

WAC 296-104-102 Inspection—What are the standards for in-service inspection?

- Removes the National Board Inspection Code (NBIC), current edition Part 4, Section 6, Supplement 3 from the nonmandatory guidelines for pressure relief devices for consistency with the code.

WAC 296-104-200 Construction—What are the standards for new construction?

- Adds new Section XIII from the 2023 edition of the American Society of Mechanical Engineers (ASME) to the standards for new construction of boilers and pressure vessels for consistency with the code.
- Converts a spelled number to a numeral for formatting.

WAC 296-104-255 Installation—What are the required clearances for boilers?

- Allows for clearances less than 18 inches for boilers when recommended by the manufacturer's instructions to provide better direction for clearances.
- Rearranges the existing requirements and renumbers subsections for formatting.

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels?

- Adds a new exception that allows for side clearances less than 18 inches for pressure vessels when recommended by the manufacturer's instructions and it does not inhibit inspection, maintenance, or repair to provide better direction for clearances. This also includes:
 - o Notating that exceptions must be documented in the state's jurisdictional database.
 - o Clarifying the access requirements for manholes.

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

- Increases fees by the fiscal growth factor rate of 6.40 percent to support operating expenses for the boiler program.

Reasons Supporting Proposal: This rule making is needed to ensure that Washington's rules are clear and consistent to improve public safety, and that inspection fees will support the boiler program's operating expenses. According to RCW 70.79.330 and 70.79.350, a fee schedule for inspections is to be set by the board of boiler rules and the fees are to be used to administer the boiler program.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Carlson, Program Manager, Tumwater, Washington, 360-902-5270; Implementation and Enforcement: Steve Reinmuth, Assistant Director, Tumwater, Washington, 360-902-6348.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Meagan Edwards, L&I, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-522-0125, fax 360-704-1980, email Meagan.Edwards@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions:

	Proposed WAC Sections	This proposed rule section is not exempt - Analysis is required.	This proposed rule section is exempt. Provide RCW to support this exemption.
1.	WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?	X	
2.	WAC 296-104-102 Inspection—What are the standards for in-service inspection?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts national consensus codes that generally establish industry standards.
3.	WAC 296-104-200 Construction—What are the standards for new construction?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(c) because it adopts national consensus codes that generally establish industry standards.
4.	WAC 296-104-255 Installation—What are the required clearances for boilers?	X	
5.	WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels?	X	
6.	WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?	<input type="checkbox"/>	This section is exempt under RCW 34.05.310 (4)(f) because it sets or adjusts fees under the authority of RCW 19.02.075.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Most of the rule changes are exempt from the small business economic impact analysis [statement] (SBEIS) under RCW 19.85.025. Those changes that are not exempt from the SBEIS requirement are the following:

- Making the installer responsible for correcting deficiencies found during installation inspection and paying subsequent rein-

spection fees: Current rule requires boiler and pressure vessel installations to pass inspection to obtain a certificate of inspection to operate the equipment. As such, where corrective action is required following an initial inspection before the boiler or pressure vessel installation can be considered to pass inspection, the installer must make the corrective action and have a reinspection. Under the current rule, the owner is responsible for inspection fees for installations inspected by state inspectors, including reinspections. This change makes the installer responsible for any subsequent reinspection fees as a result of a noncompliant installation, rather than the owner. While rules setting fees are exempt from the SBEIS requirement under RCW 34.05.310 (4)(f), as the installer works for the owner, the installer has the ability to negotiate their pay for the work they perform.

- Allowing for clearances of boilers of less than 18 inches when recommended by the manufacturer: For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval and allowing for clearances of pressure vessels of less than 18 inches when recommended by the manufacturer.
- Allowing for side clearances of less than 18 inches for pressure vessels when recommended by the manufacturer's instructions clarifies L&I's existing practices of documenting exceptions for clearance requirements and providing safe access for manholes. For owners, the proposed amendment results in a cost savings by not having to complete and submit a variance request form to L&I for installation approval and clarifies L&I existing practices; therefore, it does not add a substantive change.

These changes will either result in a cost savings to customers or no increased costs over current practice or the baseline.

According to the Regulatory Fairness Act under RCW 19.85.030 (1)(a), an agency shall prepare an SBEIS: (i) If the proposed rule will impose more-than-minor costs¹ on businesses in an industry; or (ii) if requested to do so by a majority vote of the joint administrative rules review committee within 45 days of receiving the notice of proposed rule making under RCW 34.05.320. As the portions of the rule amendments not meeting exemptions will either result in a cost savings to customers or no increased costs over current practice or the baseline, the proposed amendments are not expected to impose more-than-minor costs, so an SBEIS is not required.

¹ Minor cost is defined under RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll.

April 16, 2024
Timothy Barker, Chair
Board of Boiler Rules

OTS-5060.3

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-020 Administration—What are the filing requirements for boilers and unfired pressure vessels before their installation/reinstallation?

(1) "Boiler/pressure vessel, water heater installation or reinstallation permit" shall mean a permit approved by the chief inspector and submitted by the installer prior to starting installation or reinstallation of any boiler/pressure vessel or water heater within the jurisdiction of Washington.

(2) The "installer" is any entity or person who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is responsible for the installation/reinstallation permit fee per WAC 296-104-700.

(3) If a nonconformance condition or deficiency is found on the initial permit inspection, the installer will be responsible for implementing immediate corrective action and any subsequent inspection fees after corrections per the fee schedule in WAC 296-104-700.

(4) The following pressure retaining items, as defined in WAC 296-104-010, require a boiler/pressure vessel and water heater installation or reinstallation permit:

- Expansion tanks;
- Historical boilers and unfired pressure vessels;
- Hot water heaters;
- Indirect water heaters;
- Jacketed steam kettles;
- Low pressure boilers;
- Nonstandard boilers and unfired pressure vessels;
- Pool heaters;
- Power boilers;
- Reinstalled boilers and unfired pressure vessels;
- Secondhand boilers and unfired pressure vessels;
- Standard boilers and unfired pressure vessels;
- Unfired pressure vessels;
- Unfired steam boilers.

~~((4))~~ (5) The installer shall notify the chief inspector utilizing the permit form to request a permit inspection not less than ~~((ten))~~ 10 working days prior to placing equipment in operation. Equipment shall not be operated other than for testing, prior to an inspection being conducted which finds the boiler or pressure vessel to be in compliance with this chapter.

~~((5))~~ (6) If an emergency installation (due to leakage, failure, etc.) situation occurs, the installer will notify the chief inspector within ~~((forty-eight))~~ 48 hours after installation, utilizing the permit form to request an immediate inspection of the installation.

~~((6))~~ (7) The installer may be subject to civil penalties per WAC 296-104-701 for failure to comply with the filing requirements of the installation permit.

AMENDATORY SECTION (Amending WSR 18-23-092, filed 11/20/18, effective 1/1/19)

WAC 296-104-102 Inspection—What are the standards for in-service inspection? Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers and unfired pressure vessels is the National Board Inspection Code (NBIC), current edition Part 2, excluding Section 6, Supplements 1, 5, 6, and 7 which may be used as nonmandatory guidelines.

(2) The standard for installation, in-service inspection, and repair of pressure relief devices is the National Board Inspection Code (NBIC), current edition Part 4, excluding Section 6, Supplement((s)) 1 ((and 3)) which may be used as nonmandatory guidelines.

(3) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Part 2, Section 6, Supplement 2 of the National Board Inspection Code (NBIC) current edition.

(4) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(5) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, current edition. This code may be used on or after the date of issue.

(6) TAPPI TIP 0402-16, revised 2011 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

AMENDATORY SECTION (Amending WSR 13-10-018, filed 4/23/13, effective 6/1/13)

WAC 296-104-200 Construction—What are the standards for new construction? The standards for new construction are:

(1) ASME Boiler and Pressure Vessel Code, current edition, Sections I, III, IV, VIII, Division 1, 2, 3, X, XII, XIII;

(2) ASME PVHO-1 Safety Standard for Pressure Vessels for Human Occupancy, current edition; and

(3) Standards of construction approved by the chief inspector and meeting the National Board Criteria for Registration of Boilers, Pressure Vessels and Other Pressure Retaining Items.

These codes and standards may be used on or after the date of issue and become mandatory ((twelve)) 12 months after adoption by the board as specified in RCW 70.79.050(2). ASME Code Cases may be approved for use when accepted by the chief inspector. The board recognizes that the ASME Code states that new editions of the code become mandatory six months after the date of issue. For nuclear systems,

components and parts the time period for addenda becoming mandatory is defined in the Code of Federal Regulations.

AMENDATORY SECTION (Amending WSR 06-24-042, filed 11/30/06, effective 1/1/07)

WAC 296-104-255 Installation—What are the required clearances for boilers? When boilers are replaced or new boilers installed in either existing or new buildings, a minimum top clearance as specified below shall be provided between the top of boiler proper and ceiling. Sufficient access must be provided for inspection, maintenance, operations, and repair. Required clearances shall be:

~~(1) (Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heating surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.~~

~~(2) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; shall be. 3 feet.~~

~~(3) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers; shall be. 2 feet.~~

~~(4) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.~~

~~(5) Minimum clearances at sides, front and back wall shall be the manufacturers' recommendations, but in no case less than eighteen inches.) Minimum clearances at sides, front, and back wall shall be the manufacturers' service clearance recommendations. If no recommendations are stated by the manufacturer, then 18 inches shall be the minimum clearance.~~

(2) Minimum clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the boiler shall be. 5 feet.

(3) Minimum clearance on top of power boilers having a steam generating capacity in excess of 5,000 pounds per hour or having a heat surface in excess of 1,000 sq. ft. or input in excess of 5,000,000 btu per hour shall be. 7 feet.

(4) Minimum clearance on top of low pressure heating boilers which exceed any one of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface; and power boilers which do not exceed any of the following limits: 5,000,000 btu input; 5,000 lbs. steam per hour capacity or 1,000 sq. ft. heating surface shall be. 3 feet.

(5) Minimum clearance on top of boilers which do not exceed the above limits and miniature boilers shall be. 2 feet.

AMENDATORY SECTION (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

WAC 296-104-260 Installation—What are the required clearances for unfired pressure vessels? When unfired pressure vessels are replaced or new vessels are installed in either existing or new buildings, (~~manufacturers' recommendations shall be used, but in no case less than eighteen inches shall be provided between the top of the unfired pressure vessel and the ceiling and adjacent walls or other structures. All unfired pressure vessels having manholes shall have five feet clearance from manhole openings and any wall, ceiling, or piping that will prevent a person from entering the unfired pressure vessel~~) clearances shall be provided to allow access for safe operation, inspection, maintenance, and/or repair. Passageways around all sides of pressure vessels shall have an unobstructed width of not less than 18 inches. Exception: Unfired pressure vessels may be installed with a side clearance of less than 18 inches if the lesser clearance does not violate the manufacturer's installation instructions or inhibit inspection, maintenance, and/or repair. Any exception shall be notated in object comments in the jurisdictional database. All unfired pressure vessels having a manhole shall have five foot clearance at the manhole opening to allow an individual to have safe access to the inside of the vessel to perform inspection and/or maintenance.

AMENDATORY SECTION (Amending WSR 22-09-062, filed 4/19/22, effective 7/1/22)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of (~~(\$69.60)~~) \$74.00 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is (~~(\$29.90)~~) \$31.80.

Hot water heaters per RCW 70.79.090, inspection fee: (~~(\$8.90)~~) \$9.40.

The department shall assess a (~~(\$7.30)~~) \$7.70 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	((\$50.60)) <u>\$53.80</u>	((\$40.50)) <u>\$43.00</u>
All other boilers less than 500 sq. ft.	((\$50.60)) <u>\$53.80</u>	((\$40.50)) <u>\$43.00</u>
500 sq. ft. to 2500 sq. ft.	((\$101.30)) <u>\$107.70</u>	((\$50.60)) <u>\$53.80</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	((\$40.50)) <u>\$43.00</u>	((\$19.70)) <u>\$20.90</u>
Power boilers:	Internal	External

Less than 100 sq. ft.	(\$50.60) <u>\$53.80</u>	(\$40.50) <u>\$43.00</u>
100 sq. ft. to less than 500 sq. ft.	(\$61.30) <u>\$65.20</u>	(\$40.50) <u>\$43.00</u>
500 sq. ft. to 2500 sq. ft.	(\$101.30) <u>\$107.70</u>	(\$50.60) <u>\$53.80</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	(\$40.50) <u>\$43.00</u>	(\$19.70) <u>\$20.90</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
	Internal	External
Less than 15 sq. ft.	(\$40.50) <u>\$43.00</u>	(\$29.90) <u>\$31.80</u>
15 sq. ft. to less than 50 sq. ft.	(\$60.10) <u>\$63.90</u>	(\$29.90) <u>\$31.80</u>
50 sq. ft. to 100 sq. ft.	(\$70.20) <u>\$74.60</u>	(\$40.50) <u>\$43.00</u>
For each additional 100 sq. ft. or any portion thereof	(\$70.10) <u>\$74.50</u>	(\$19.70) <u>\$20.90</u>
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours	(\$61.30)	<u>\$65.20</u>
For each hour or part of an hour in excess of 8 hours	(\$91.60)	<u>\$97.40</u>
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours	(\$91.60)	<u>\$97.40</u>
For each hour or part of an hour in excess of 8 hours	(\$143.50)	<u>\$152.60</u>
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		
For each hour or part of an hour up to 8 hours	(\$61.30)	<u>\$65.20</u>
For each hour or part of an hour in excess of 8 hours	(\$91.60)	<u>\$97.40</u>
When insurance company is authorized inspection agency:		
For each hour or part of an hour up to 8 hours	(\$91.60)	<u>\$97.40</u>
For each hour or part of an hour in excess of 8 hours	(\$143.50)	<u>\$152.60</u>

Examination fee: A fee of (~~(\$113.40)~~) \$120.60 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of (~~(\$61.20)~~) \$65.10 for initial work card. A fee of (~~(\$38.00)~~) \$40.40 for annual renewal.

If a special inspector changes companies: A work card fee of (~~(\$61.20)~~) \$65.10.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of (~~(\$571.90)~~) \$608.50 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 24-09-064

PROPOSED RULES

PIERCE COLLEGE

[Filed April 16, 2024, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-067.

Title of Rule and Other Identifying Information: Expressive activities policy.

Hearing Location(s): On May 21, 2024, at 2:30 p.m., via Zoom <https://pierce-college.zoom.us/j/88284318058>.

Date of Intended Adoption: June 12, 2024.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by May 23, 2024.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by May 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pierce College is engaging with the rule-making process to establish procedures and reasonable controls for the use of college facilities to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity.

Reasons Supporting Proposal: Establish procedures for the use of college facilities for expressive activity.

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

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice president of learning and student success, Pierce College District, 253-840-8336.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule will not impose any costs for the institution.

April 15, 2024
Julie A. White
Chancellor and CEO

OTS-5293.1

Chapter 132K-220 WAC
EXPRESSIVE ACTIVITIES POLICY

NEW SECTION

WAC 132K-220-010 General policy. Pierce College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities to which the college's facilities are dedicated. Accordingly, the college establishes the common areas of the college as a limited public forum dedicated to the use of college groups for expressive activity, subject to the college's time, place, and manner limitations and restrictions set forth in this policy or otherwise specified.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities. These regulations are intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups seeking to assemble in common areas of the campus for expressive activity. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college has designated certain facilities as public use areas open to noncollege groups as set forth herein.

NEW SECTION

WAC 132K-220-020 Definitions. For purposes of this policy, the following definitions are used:

(1) "College facilities" means all college buildings, structures, grounds, office space, classrooms, and parking lots. This includes both physical and online/virtual version of these spaces.

(2) "College groups" means individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

(3) "Common areas" means those indoor and outdoor areas of each campus established by the college where college groups may assemble for expressive activity, subject to the college's reasonable time, place, and manner restrictions.

(4) "Expressive activity" means activity protected by the first amendment and includes, but is not necessarily limited to, activities such as informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests,

meetings to display group feelings or sentiments, or other types of assemblies to share information, perspective, or viewpoints.

(5) "Noncollege groups" means individuals or groups who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

(6) "Public use areas" means those outdoor areas of each campus that the college has chosen to open as places where both college groups and noncollege groups may assemble for expressive activity, subject to the college's reasonable time, place, and manner restrictions.

NEW SECTION

WAC 132K-220-030 Use of college facilities. (1) Subject to the regulations and requirements of this policy, groups may use the campus common areas for expressive activities between the hours of 7:00 a.m. and 10:00 p.m.

(2) Any sound amplification device may only be used at a volume that does not disrupt or disturb the normal use of classrooms, offices, laboratories, or any previously scheduled college event or activity.

(3) Groups are encouraged to notify the campus public safety department no later than 24 hours in advance of an expressive activity. However, unscheduled expressive activities are permitted so long as the activity does not disrupt any other event or activity occurring at the college facility.

(4) All sites used for expressive activity must be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of clean-up or for the repair of damaged property.

(5) All groups must comply with all fire, safety, and sanitation regulations, and any special requirements specified for the expressive activity. The college cannot and will not provide utility connections or hook-ups for purposes of expressive activity conducted pursuant to this policy.

(6) The expressive activity must not be conducted in such a manner to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or to college activities or events. The expressive activity must not create safety hazards or pose safety risks to people or property.

(7) The expressive activity must not interfere with educational or institutional activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The expressive activity must not materially infringe on the rights and privileges of college students, employees, or guests to the college.

(8) There shall be no overnight camping in or on college facilities. Camping is defined to include unauthorized: Sleeping, cooking activities, storing or use of personal belongings for habitation, and/or the erection of tents, shelters, or other structures used for purposes of habitation.

(9) College facilities may not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or recognized student organization.

(10) The expressive activity must also be conducted in accordance with any other applicable college policies and regulations, local ordinances, and state or federal laws.

NEW SECTION

WAC 132K-220-040 Additional requirements for noncollege groups.

(1) College buildings, rooms, and athletic fields may be rented by noncollege groups in accordance with the use of district facilities policy. Renting a college facility does not relieve individuals or groups from adhering to this policy.

(2) The college has established public use areas for use as limited public forums. These areas can be used by noncollege groups for expressive activity (i.e., speech and assembly) on campus. Areas identified as limited public forums can be found on the Pierce College website at <https://www.pierce.ctc.edu/maps>.

Public use areas may be scheduled. Scheduled groups have priority of use over unscheduled groups.

(3) Noncollege groups that seek to engage in expressive activity are encouraged to provide notice to the campus safety office no later than 24 hours prior to the expressive activity along with the following information to ensure the area is not otherwise scheduled, and to give the college an opportunity to assess any security needs:

(a) The name, address, and telephone number of a contact person for the individual, group, entity or organization sponsoring the expressive activity; and

(b) The date, time, and requested location of the expressive activity; and

(c) The nature and purpose of the expressive activity; and

(d) The estimated number of people expected to participate in the expressive activity.

NEW SECTION

WAC 132K-220-050 Distribution of materials. (1) College groups may post information on bulletin boards, and other display areas designated for that purpose, and may distribute materials throughout the common and public use areas of campus. Noncollege groups may distribute materials only in public use areas.

(2) All groups are encouraged to include the sponsoring organization's name and address on the distributed or posted information.

(3) Materials are subject to a posting time limit and require a date stamp prior to posting. Materials may be removed after the expiration of the date stamp time limit or if they do not have a date stamp.

WSR 24-09-065**PROPOSED RULES****PIERCE COLLEGE**

[Filed April 16, 2024, 10:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-065.

Title of Rule and Other Identifying Information: Nonregistered individuals in the classroom policy.

Hearing Location(s): On May 21, 2024, at 2:30 p.m., via Zoom <https://pierce-college.zoom.us/j/88284318058>.

Date of Intended Adoption: June 12, 2024.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by May 23, 2024.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by May 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pierce College is engaging with the rule-making process to preserve a safe and academically focused classroom environment, while complying with state regulations.

Reasons Supporting Proposal: Preserve a safe and academically focused classroom environment.

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

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice president of learning and student success, Pierce College District, 253-840-8336.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule will not impose any costs for the institution.

April 15, 2024
Julie A. White
Chancellor and CEO

OTS-5292.1

Chapter 132K-200 WAC
NONREGISTERED INDIVIDUALS IN THE CLASSROOM POLICY

NEW SECTION

WAC 132K-200-010 General policy. Pierce College is committed to preserving a safe and academically focused classroom environment, while complying with state regulations. In order to support the learning environment, presence in the classroom is restricted to faculty and individuals officially registered for the specific class section. However, nonregistered individuals and students are temporarily allowed with specific restrictions.

NEW SECTION

WAC 132K-200-020 Definitions. For purposes of this policy, the following definitions are used:

(1) Nonregistered individual(s) is a person who is not currently enrolled in classes within the Pierce College district, but has an affiliation with the college through admissions application or previous enrollment.

(2) Nonregistered student(s) is a person who is enrolled in classes within the Pierce College district, to include credit and non-credit bearing classes in the current term, but is not enrolled in the specific class of interest.

(3) Student(s) is a person who is enrolled in classes in the current term within the Pierce College district, to include credit and noncredit bearing classes, and is officially registered for a specific class section.

NEW SECTION

WAC 132K-200-030 Rules. The following rules apply to nonregistered individuals/students in the classroom:

(1) Nonregistered individuals and nonregistered students who are not officially enrolled in the class of interest, regardless of wait-list status, must have permission of the faculty to attend the class. Attendance is restricted and cannot extend beyond the 3rd class meeting without being officially enrolled in the class.

(2) Students who withdraw during the refund window for the term are not allowed to continue attending the class after the withdrawal has occurred.

(3) Students who withdraw from the class without a refund can continue participation in the class, subject to the approval of the primary faculty member. Continued participation should only be granted in circumstances where such participation will not significantly detract from the learning experience for enrolled students (no grades/credit can be earned for students who have withdrawn from the class).

(4) Students who need to finish an "incomplete" are not allowed to attend a class in which they are not currently enrolled. Extenuating circumstances may be appealed to the vice president of student learning and success for Fort Steilacoom or Puyallup classes, or to the executive director for Joint Base Lewis McChord classes.

(5) The conduct of nonregistered individuals or nonregistered students shall not interfere with the educational process or learning

environment, and all are expected to abide by all operational regulations and guidelines, including safety and access restrictions.

NEW SECTION

WAC 132K-200-040 Visitors. Persons who are not affiliated with the college but want to visit a classroom for informational purposes should follow the classroom visitors and invited guests policy.

WSR 24-09-066

PROPOSED RULES

PIERCE COLLEGE

[Filed April 16, 2024, 10:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-069.

Title of Rule and Other Identifying Information: Students records release policy.

Hearing Location(s): On May 21, 2024, at 2:30 p.m., via Zoom <https://pierce-college.zoom.us/j/88284318058>.

Date of Intended Adoption: June 12, 2024.

Submit Written Comments to: Julie Draper Davis, 9401 Farwest Drive S.W., Lakewood, WA 98498, email jdraperdavis@pierce.ctc.edu, by May 23, 2024.

Assistance for Persons with Disabilities: Contact access and disability services, phone 253-964-6468, email ads@pierce.ctc.edu, by May 7, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pierce College is engaging with the rule-making process to repeal chapter 132K-122 WAC because the Family Educational Rights and Privacy Act (FERPA) provides the necessary legal requirements and guidance to protect the privacy of student education records.

Reasons Supporting Proposal: FERPA, Department of Education.

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

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Draper Davis, Pierce College District, 253-912-2331; Enforcement: Vice president of learning and student success, Pierce College District, 253-840-8336.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule will not impose any costs for the institution.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule will not impose any costs for the institution.

April 15, 2024
Julie A. White
Chancellor and CEO

WSR 24-09-073
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed April 16, 2024, 8:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-013.

Title of Rule and Other Identifying Information: WAC 110-148-1326

Can I get a license to care for a specific child, and what are the requirements?

Hearing Location(s): On May 21, 2024, telephonic. Make oral comments by calling 360-972-5385 and leaving a voicemail that includes the comment and an email address or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 21, 2024, will be considered.

Date of Intended Adoption: May 22, 2024.

Submit Written Comments to: DCYF Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 21, 2024.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 110-148-1326 does not currently give DCYF the authority to issue child-specific licenses to an Indian child's family or extended family member with children in the custody of an Indian tribe or the tribe's child placing agency. This authority is now required by SB 5683.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: SB 5683; RCW 74.15.125.

Statute Being Implemented: SB 5683; RCW 74.15.125.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Ann Radcliffe, 253-341-2325; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

April 16, 2024
Brenda Villarreal
Rules Coordinator

OTS-5350.1

AMENDATORY SECTION (Amending WSR 22-16-028, filed 7/25/22, effective 8/25/22)

WAC 110-148-1326 Can I get a license to care for a specific child, and what are the requirements?

(1) Pursuant to RCW 74.15.125(7), the department may issue a child-specific license to:

(a) Relatives or suitable persons, as defined in RCW 13.36.020, to provide foster care services to a ((specified)) specific child and that child's siblings or relatives in the department's care and authority ((-

~~(a) These~~); or

(b) An Indian child's family or extended family members, as defined in RCW 13.38.040, or suitable persons, as defined in RCW 13.36.020, to provide foster care services to a specific Indian child and that child's siblings or relatives in the custody of an Indian tribe, as defined in RCW 43.376.010, or the tribe's child placing agency.

(2) Placements of children in the care and authority of the department are at the discretion of the department.

((b)) (3) Licensees under this section may only receive placement of one or more specific children identified prior to the issuance of a license.

((2)) (4) The department must reassess licenses issued under this section when licensees want to:

(a) Add a child to their child specific license and that child was not identified prior to licensure; or

(b) Receive a general foster family home license.

((3)) (5) Reassessment under subsection ((2)) (4) of this section may require licensees to give up their current child specific licenses, complete new or additional training, or submit new licensing applications as a condition of receiving new or different licenses.

((4)) (6) Licensees under this section must meet the licensing requirements detailed in RCW 74.15.030(2) and this chapter.

((5)) (7) A child-specific license does not grant licensees the right to:

(a) Have a specific child placed in their care; or

(b) Be a party in any juvenile court proceeding under chapter 13.34 RCW.

WSR 24-09-078

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed April 17, 2024, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-102.

Title of Rule and Other Identifying Information: Title 390 WAC, Public disclosure commission; chapters 390-16 and 390-18 WAC. Implementation of chapter 42.62 RCW regarding the use of synthetic media in election campaign-related activities.

Hearing Location(s): On May 23, 2024, at 9:30 a.m., at the Public Disclosure Commission (PDC) Office, 711 Capitol Way South, Olympia, WA 98504. Remote access available; contact fdc@fdc.wa.gov.

Date of Intended Adoption: May 23, 2024.

Submit Written Comments to: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, email fdc@fdc.wa.gov, fax 360-753-1112, by May 20, 2024.

Assistance for Persons with Disabilities: Contact Jana Greer, phone 360-753-1111, fax 360-753-1112, email fdc@fdc.wa.gov, by May 20, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will assist in furthering the purpose of SB [ESSB] 5152 (2023), codified under chapter 42.62 RCW, regarding the recognition and disclosure of synthetic media (deepfakes) used in election campaigning activity. The proposal will include specific requirements within existing reporting systems for disclosing the use of synthetic media in campaign-related communications.

Reasons Supporting Proposal: Under RCW 42.62.040, the legislature instructed PDC to adopt rules in furtherance of the purpose of chapter 42.62 RCW, regarding the use of synthetic media in election campaign-related communications.

Statutory Authority for Adoption: RCW 42.17A.110, 42.62.040.

Statute Being Implemented: Chapter 42.62 RCW.

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

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sean Flynn, 711 Capitol Way South, Olympia, WA 98504, fdc@fdc.wa.gov; Enforcement: 711 Capitol Way South, Olympia, WA 98504, fdc@fdc.wa.gov.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. PDC is not required to prepare a cost-benefit analysis under RCW 34.05.328 (5) (b).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Under RCW 42.62.040, PDC is required to adopt rules in furtherance of purpose of SB [ESSB] 5152 (2023), codified at chapter 42.62 RCW.

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2024

Sean Flynn
General Counsel

OTS-5353.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-16-037 Purpose of campaign expenditures—How to report.

(1) Any person required to report the "purpose" of an expenditure under RCW 42.17A.240(6), or 42.17A.255 (5)(b), must identify any candidate(s) or ballot proposition(s) that are supported or opposed by the expenditure (~~((unless such candidate(s) or ballot proposition(s) have been previously identified in a statement of organization of the person))~~ as required to be filed under RCW 42.17A.205 (2)(f) and (g);

(2) Whenever an expenditure is made to a candidate or a political committee pursuant to an agreement or understanding of any kind regarding how the recipient will use the expenditure, the report must describe in detail that agreement or understanding and the goods and/or services to be provided.

Example A: If an expenditure is made directly to a vendor for get-out-the-vote (GOTV) phone calls or robocalls, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Robocall	GOTV—phone bank 28th and 29th Legislative districts	\$1,000

Example B: If an expenditure is made directly to a vendor for printing, the purpose must include the following details:

Vendor Name	Purpose	Amount
ABC Printing	5,000 brochures	\$3,000

(3) Any expenditure using "synthetic media," as defined under RCW 42.62.020, in the creation or distribution of any political advertising or other expenditure, must identify:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising, if any;
and

(c) The description of any audience targeting information provided as a service for any digital communication by a digital communication platform, or other vendor.

AMENDATORY SECTION (Amending WSR 24-01-028, filed 12/8/23, effective 1/8/24)

WAC 390-16-063 Additional information regarding independent expenditures and C-6 report filing. (1) RCW 42.17A.255 requires a person not otherwise subject to the disclosure requirements of chapter

42.17A RCW to disclose an independent expenditure of \$1,000 or more that supports or opposes a candidate or ballot measure. RCW 42.17A.260 requires the disclosure of political advertising with a fair market value of \$2,000 or more that is presented to the public within 21 days of an election, that supports or opposes a ballot proposition, or that qualifies as an independent expenditure and supports or opposes a candidate.

(a) **Prorating and attributing independent expenditures that support or oppose multiple candidates or ballot measures.** Whether to disclose an independent expenditure that supports or opposes multiple candidates or ballot measures is determined by prorating and attributing the cost of the expenditure among all candidates or ballot measures that are the subject of the expenditure. Disclosure is required when:

(i) The pro rata cost for a single candidate or ballot measure reaches or exceeds the statutory threshold and none of the subject candidates are seeking election to the same office and none of the subject ballot measures are competing measures; or

(ii) The sum of the pro rata costs attributable to all candidates seeking election to the same office or the sum of the pro rata costs attributable to competing ballot measures reaches or exceeds the statutory threshold.

Example 1 (prorating): A mailer/postcard supports one candidate and one ballot measure at a total cost of \$3,200. One side of the postcard is entirely devoted to the ballot measure. The other side is split evenly between the candidate and the ballot measure. The ballot measure's pro rata share is \$2,400 (75%) and the candidate's pro rata share is \$800 (25%).

Example 2 (prorating and attributing): An independent expenditure ad appears in the newspaper two weeks before the election. The ad costs \$2,000; 50% of the ad supports a candidate and the other 50% opposes the candidate's opponent. The independent expenditure is disclosed under RCW 42.17A.260 because the sum of the pro rata share for the two candidates who seek the same office is \$2,000.

(b) **Disclosing independent expenditures that support or oppose multiple candidates or ballot measures.** When a pro rata, attributable cost reaches or exceeds the statutory threshold, the entire independent expenditure must be disclosed, including the amounts attributable to all candidates and ballot propositions supported or opposed by the expenditure.

(c) **Other applications of prorating and attributing independent expenditures.** Use the prorating and attribution steps explained in (a)(i) and (ii) of this section to determine when an independent expenditure as defined in RCW 42.17A.005 must comply with the "no candidate authorized this ad" sponsor identification and, if applicable, the "top 5" contributors required by RCW 42.17A.320 and WAC 390-18-010.

(2) A political committee reporting pursuant to RCW 42.17A.225, 42.17A.235 and 42.17A.240 is exempt from providing on a C-6 form the sources of any funds received by the committee for an electioneering communication, unless the committee received funds that were earmarked or otherwise designated for the communication.

(3) An out-of-state political committee must report pursuant to RCW 42.17A.305 if it sponsors an electioneering communication as defined in RCW 42.17A.005.

(4) The sponsor of an electioneering communication must report pursuant to RCW 42.17A.305 and these rules regarding electioneering

communications, even if the expenditure also satisfies the definition of independent expenditure in RCW 42.17A.005 or 42.17A.255. Persons in compliance with this subsection are deemed in compliance with RCW 42.17A.255 or 42.17A.260.

(5) Any person making an expenditure that is reportable under RCW 42.17A.640, grass roots lobbying campaigns, that also satisfies the definition of electioneering communication in RCW 42.17A.005, must also file pursuant to RCW 42.17A.305 and these rules regarding electioneering communications. The report filed pursuant to RCW 42.17A.305 must identify the grass roots campaign.

(6) In addition to any other reporting requirements on the C-6 form, any political advertising that supports or opposes a ballot proposition or that supports or opposes a candidate and qualifies as an independent expenditure, or any electioneering communication, must identify any "synthetic media," as defined under RCW 42.62.020, that was used in the advertising or communication, and further report:

(a) The name of the vendor that provided the software or other digital technology used to create the synthetic media;

(b) The commercial advertiser that sold the advertising or communication, if any; and

(c) The description of any audience targeting information provided for any digital communication by a digital communication platform, or other vendor.

OTS-5354.2

NEW SECTION

WAC 390-18-035 Synthetic media—Application of disclosure statements in electioneering communications. For purposes of chapter 42.62 RCW, any disclosure statement regarding the use of "synthetic media" in an electioneering communication is in addition to any required disclosure statements under chapter 42.17A RCW and Title 390 RCW, and may not substitute, replace, or otherwise interfere with such disclaimer requirements.

AMENDATORY SECTION (Amending WSR 22-05-021, filed 2/4/22, effective 3/7/22)

WAC 390-18-050 Commercial advertisers—Public inspection of records. (1) "Commercial advertiser" as that term is used in the act and these rules is defined under RCW 42.17A.005.

(2) Any person that hosts political advertising or electioneering communications on a digital communication platform or other media is not required to maintain records on such advertising or communications if the services have been purchased directly through another commercial advertiser, however the commercial advertiser that directly sells the services must maintain the information as required in this section. In order to ensure that such commercial advertiser directly makes its books of account available for public inspection, when sell-

ing digital media services to be hosted on another platform or other media, the advertiser must include a separate text box or link that automatically appears with the advertisement or communication in a manner that is compatible with the device and technology used to display the advertising, and that reasonably directs the reader to at least one method under subsection (4) of this section for making the required information available. Such methods may include, but are not limited to, an address or location for receiving in-person inquiries, a link to a portal for processing requests, or a link to a website where the required information is maintained.

(3) Pursuant to RCW 42.17A.345, each commercial advertiser who has accepted or provided political advertising, or electioneering communications, must maintain current books of account and related materials as required by this section. Information contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information. Such records must be maintained for a period of no less than five years after the date of the applicable election.

(4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:

(a) In person during normal business hours; or

(b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:

(i) By digital transmission, such as email, promptly upon request, but no later than two business days; or

(ii) By online publication in one of the following formats:

(A) On the advertiser's primary website; or

(B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

(5) A commercial advertiser may have, to the extent necessary, up to three business days to update its books of account upon receiving notice regarding any missing political advertising or electioneering communication, if:

(a) At the time the order was placed, the commercial advertiser had asked the purchaser in writing whether the order included any political advertising or electioneering communication;

(b) The purchaser did not provide such information; and

(c) The order was not reasonably identifiable to the commercial advertiser as political advertising or an electioneering communication.

(6) The information and books of account that must be maintained open for public inspection pursuant to RCW 42.17A.345 are:

(a) The name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified;

(b) A copy of the advertisement or communication in a print or digital graphic record for any media with a visual component, or in an audio or transcribed record for any radio or other media that does not include a visual component;

(c) The name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employer identification number, or other verifi-

ble identification, if any, of an entity, so that the public can know who paid for the advertising or communication, without having to locate and identify any affiliated entities;

(d) The total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used; and

(e) Date(s) the commercial advertiser rendered service, including the dates, where applicable, that the advertising or communication was presented to the public.

(7) In addition to subsection (6) of this section and pursuant to RCW 42.17A.345, the materials and books of account open for public inspection must include the political advertisement or electioneering communication itself, and a description of the major work components or tasks, as specified in (a) through (g) of this subsection, that were required to provide the advertising or communications services.

(a) For printers, reproducers and other persons who provide commercial duplicating services: Quantity of items, item description, design, layout, typesetting, photography, printing, silk screening, binding.

(b) For mailing services: Quantity of items mailed, binding, stuffing, labeling, list or directory services, postage or delivery.

(c) For broadcast media: Air time and number of spot advertisements. If the broadcaster provides additional services such as copy writing, talent, production, and tape reproduction, some type of record or notation evidencing the additional service must be available.

(d) For billboard or sign companies: Number and location of signs, design, printing and art work, erection/removal costs.

(e) For specialty or novelty commercial advertisers: Quantity of items provided, silk screening, design, printing and art work.

(f) For newspapers and other print media: Amount of advertising space and dates of publication. If the advertiser provides additional services such as design or layout, some type of record evidencing such additional services must be available.

(g) For digital communication platforms:

(i) A description of the demographic information((~~7~~));

(ii) The statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business(~~(~~7~~ and~~));

(iii) The total number of impressions generated by the advertisement or communication; and

(iv) Any generative adversarial network techniques, artificial intelligence, or other digital technology, provided by the commercial advertiser to produce any "synthetic media," as defined under RCW 42.62.020, for the advertisement or communication.

(8) At the request of the PDC, each commercial advertiser required to comply with this section must provide to the PDC copies of the information described above.

WSR 24-09-084

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 17, 2024, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-024.

Title of Rule and Other Identifying Information: WAC 308-104-050
Waiver of driver education requirement—When granted.

Hearing Location(s): On May 29, 2024, at 1:00 p.m. Join Zoom meeting <https://dol-wa.zoom.us/j/87241577435?pwd=8CNe9T0akMWaYacwnZVq1kOMUnziOI.1>, Meeting ID 872 4157 7435, Passcode 615795; or One-tap mobile +12532158782,,87241577435#,,,,*615795# US (Tacoma), +12532050468,,87241577435#,,,,*615795# US, Meeting ID 872 4157 7435, Passcode 615795. Find your local number <https://dol-wa.zoom.us/j/87241577435?pwd=8CNe9T0akMWaYacwnZVq1kOMUnziOI.1>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: May 30, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98501, email rulescoordinator@dol.wa.gov, 360-902-3846, by May 29, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by May 14, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal would amend WAC 308-104-050 to reflect the department of licensing's (DOL) current process and recent statutory changes related to RCW 46.20.100 Persons under eighteen.

Reasons Supporting Proposal: DOL received a petition from the public to update WAC 308-104-050 to reflect DOL's current process and changes made to RCW 46.20.100.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.25.140 Rules.

Statute Being Implemented: RCW 46.20.100 Persons under eighteen; and SB 5800.

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

Name of Proponent: Dave Sedelmeier, Apex Driving School, private.

Name of Agency Personnel Responsible for Drafting: Colton Myers, 1125 Washington Street S.E., Olympia, WA 98504, 360-634-5094; Implementation and Enforcement: Bryan Jackson, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3854.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule making aligns rule with current practices and does not impose any additional requirements on customers or businesses.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify

language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.
 Scope of exemption for rule proposal:
 Is fully exempt.

April 17, 2024
 Ellis Starrett
 Rules and Policy Manager

OTS-5336.1

AMENDATORY SECTION (Amending WSR 90-17-028, filed 8/8/90, effective 9/8/90)

WAC 308-104-050 Waiver of driver education requirement—When granted. No waiver of the traffic safety education course requirement for applicants under the age of 18 years shall be issued unless ~~((+ (1)))~~ the parent, guardian, responsible adult as defined in RCW 46.20.075 (9) (b), or other person having the care, custody and control of the applicant certifies that the applicant is:

~~((a))~~ (1) Unable to take or successfully complete a traffic safety education course and the reasons therefor ~~((r))~~; and

~~((b))~~ (2) That there exists an immediate need to operate a motor vehicle. The immediate need shall be set forth in as much detail as possible. For the purpose of meeting this requirement, "an immediate need exists" shall be construed to mean that the capability to drive will reduce or help eliminate the negative consequences of the situation that created the immediate need to drive. If operating a motor vehicle does not reduce the hardship which was created by the situation, "an immediate need" does not exist ~~((; and~~

~~(2) The waiver is approved by a majority of a three member committee consisting of two department of licensing members which shall include any two of the following: The assistant director for driver services, the administrator of hearings, the administrator of driver responsibility, the administrator or assistant administrator(s) for driver operations, and one member who shall be the supervisor of driver and safety education in the office of the superintendent of public instruction or his/her designee. The committee shall have the power to set definite restrictions as to hours of the day and routes or areas of travel permitted under the waiver until the applicant has completed a driver education course or has reached the age of 18 years))~~.

WSR 24-09-085

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 17, 2024, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-04-103.

Title of Rule and Other Identifying Information: Chapter 308-124C WAC, Real estate—Records and responsibilities.

Hearing Location(s): On May 23, 2024, at 10:00 a.m. Join Zoom meeting <https://dol-wa.zoom.us/j/87840383439?pwd=YRbQ0x0qw2aaVxvt3jLVKbartzMF30.1>, Meeting ID 878 4038 3439, Passcode 224974; or One-tap mobile +12532158782,,87840383439#,,,,*224974# US (Tacoma), +12532050468,,87840383439#,,,,*224974# US, Meeting ID 878 4038 3439, Passcode 224974. Find your local number <https://dol-wa.zoom.us/j/87840383439?pwd=YRbQ0x0qw2aaVxvt3jLVKbartzMF30.1>. If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: May 24, 2024.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by May 23, 2024.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by May 13, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide clarity concerning the documentation required to be maintained.

Reasons Supporting Proposal: Updated language will provide more clarity for licensees on their recordkeeping requirements.

Statutory Authority for Adoption: RCW 18.85.041 Director—General powers and duties.

Statute Being Implemented: WAC 308-124C-105 Required records.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Catharine Naegeli, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1891.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These proposed changes do not impose any additional compliance costs for the public because they are not changing the recordkeeping requirements for licensees related to broker price opinions, but rather clarifying how those need to be retained.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is fully exempt.

April 17, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5230.1

AMENDATORY SECTION (Amending WSR 14-16-054, filed 7/29/14, effective 8/29/14)

WAC 308-124C-105 Required records. The designated broker is required to keep the following on behalf of the firm:

(1) Trust account records:

(a) Duplicate receipt book or cash receipts journal recording all receipts;

(b) Sequentially numbered, nonduplicative checks with check register, cash disbursements journal or check stubs;

(c) Validated duplicate bank deposit slips or daily verified bank deposit;

(d) Client's accounting ledger summarizing all moneys received and all moneys disbursed for each real estate or business opportunity transaction or each property management account, contract or mortgage collection account;

(e) In conjunction with (d) of this subsection, separate ledger sheets for each tenant (including security deposit), lessee, vendee or mortgagor; for automated systems, the ledger sheets may be a computer generated printout which contains required entries;

(f) Reconciled bank statements and canceled checks for all trust bank accounts.

(2) Other records:

(a) An accurate, up-to-date log of all agreements or contracts for brokerages services submitted by the firm's affiliated licensees.

(b) A legible copy of the transaction or contracts for brokerage services shall be retained in each participating real estate firm's files.

(c) A transaction folder containing all agreements, receipts, contracts, documents, leases, closing statements and material correspondence for each real estate or business opportunity transaction, and for each rental, lease, contract or mortgage collection account, broker's price opinions, and referral agreements.

(d) All required records shall be maintained at one location where the firm is licensed. This location may be the main or any branch office.

WSR 24-09-086

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed April 17, 2024, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-05-083.

Title of Rule and Other Identifying Information: WAC 308-30-220
Fees for notarial acts.

Hearing Location(s): On May 21, 2024, at 11:00 a.m. Join Zoom meeting <https://dol-wa.zoom.us/j/86991014712?pwd=hvnETlvoshboUkNpa5mPceoDbw0rPp.1>, Meeting ID 869 9101 4712, Passcode 948043; or One-tap mobile +12532050468,,86991014712#,,,,*948043# US, +12532158782,,86991014712#,,,,*948043# US (Tacoma), Meeting ID 869 9101 4712, Passcode 948043. Find your local number [https://dol-wa.zoom.us/u/k1CsHmzDo](https://dol-wa.zoom.us/j/86991014712?pwd=hvnETlvoshboUkNpa5mPceoDbw0rPp.1). If you are having difficulty joining the Zoom meeting at the time of the public hearing, please call 360-902-0131. An in-person option is available at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: May 22, 2024.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by May 21, 2024.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by May 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is considering raising the maximum fees a notary may charge for notarial acts from \$10 to \$15.

Reasons Supporting Proposal: This rule making is based on a petition DOL received from the public requesting a raise in the maximum fees notaries are allowed to charge for their services, and is supported by additional feedback received from the notary industry via survey results.

Statutory Authority for Adoption: RCW 42.45.170 Fees, and 42.45.250 Rules.

Statute Being Implemented: WAC 308-30-220 Fees for notarial acts.

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

Name of Proponent: Public.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: Kathe McDaniel, P.O. Box 9020, Olympia, WA 98507, 360-634-5238.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule-making effort is supported through a public petition and additional industry feedback received via survey results. Feedback DOL has received indicates that these rule changes will allow notary licensees the ability to reasonably increase their service fees without putting an undue burden on customers of notary services.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust

fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045. Is exempt under RCW 19.85.025(4).
 Scope of exemption for rule proposal:
 Is fully exempt.

April 17, 2024
 Ellis Starrett
 Rules and Policy Manager

OTS-5312.1

AMENDATORY SECTION (Amending WSR 21-05-039, filed 2/11/21, effective 3/14/21)

WAC 308-30-220 Fees for notarial acts. (1) The maximum fees a notary may charge for notarial acts are:

Notarial Act	<u>Maximum Fee</u>
Witnessing or attesting a signature	((\$10.00)) <u>\$15.00</u>
Taking an acknowledgment or a verification upon oath or affirmation	((\$10.00)) <u>\$15.00</u>
Certifying or attesting a copy	((\$10.00)) <u>\$15.00</u>
Administering an oath or affirmation	((\$10.00)) <u>\$15.00</u>
Certifying that an event has occurred or an act has been performed	((\$10.00)) <u>\$15.00</u>
<u>Remote notarial act</u>	<u>\$25.00</u>

(2) A notary public need not charge for notarial acts.

(3) A notary public may not charge fees for receiving or noting a protest of a negotiable instrument.

(4) A notary public may additionally charge the actual costs of copying any instrument or record.

(5) A notary public may charge a travel fee when traveling to perform a notarial act if:

(a) The notary public and the individual requesting the notarial act agree upon the travel fee in advance of the travel; and

(b) The notary public explains to the individual requesting the notarial act that the travel fee is in addition to the notarial fee in subsection (1) of this section and is not required by law.

(6) Notwithstanding the maximum fees set forth in subsection (1) of this section and the prohibition set forth in subsection (3) of this section, a notary public may charge a maximum fee of (~~twenty-five dollars~~) \$25 to perform a remote notarial act.