

**WSR 24-19-026**  
**EXPEDITED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed September 9, 2024, 1:32 p.m.]

Title of Rule and Other Identifying Information: Revisions to Title 314 WAC to adopt gender-neutral language. Revisions are being proposed to WAC 314-02-030, 314-02-038, 314-02-0415, 314-02-108, 314-03-020, 314-03-030, 314-03-035, 314-03-040, 314-09-005, 314-10-110, 314-11-020, 314-11-030, 314-11-040, 314-11-105, 314-12-040, 314-12-210, 314-12-215, 314-16-110, 314-16-150, 314-17-020, 314-17-025, 314-17-040, 314-17-045, 314-17-065, 314-18-030, 314-18-040, 314-20-100, 314-21-025, 314-24-115, 314-24-190, 314-25-040, 314-28-100, 314-29-007, 314-29-040, 314-34-020, 314-35-060, 314-42-120, 314-44-005, 314-60-080, and 314-60-085.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed modifies various sections throughout Title 314 WAC, replacing gender-specific pronouns and terms with gender-neutral language. The changes are intended to promote a regulatory framework that is inclusive, clear, and accessible. These changes do not alter the meaning or substance of the rules.

Reasons Supporting Proposal: This rule making is necessary to align with modern standards of inclusivity and to ensure that the liquor and cannabis board's (board) regulations are nondiscriminatory and accessible to all members of the public. The proposed amendments are technical corrections that will not change the substantive meaning of the rules but will make them more inclusive.

The proposal to update Title 314 WAC to include gender-neutral language is supported by the need to promote inclusivity, align with modern drafting standards, and improve clarity. These updates ensure the language used is respectful and accessible to all individuals. This rule making is initiated in response to a petition for rule making that was previously accepted by the board, highlighting public interest in modernizing the language.

Statutory Authority for Adoption: RCW 66.08.030, 69.50.342, 34.05.353.

Statute Being Implemented: RCW 66.08.030.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Kildahl, P.O. Box 43080, Olympia, WA 98504, 360-480-7960; Implementation and Enforcement: Chandra Wax, P.O. Box 43080, Olympia, WA 98504, 360-664-9878.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed revisions are purely linguistic, with no impact on the substance of the rules. Therefore, expedited rule making is appropriate.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jeff Kildahl, Policy and Rules Coordinator, Washington State Liquor and Cannabis Board, P.O. Box 43080, Olympia, WA 98504, phone 360-480-7960, fax 360-704-5027, email rules@lcb.wa.gov, lcb.wa.gov, AND RECEIVED BY December 23, 2024.

August 28, 2024  
David Postman  
Chair

### OTS-5797.1

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under (~~twenty-one~~) 21 years of age from the premises?** A spirits, beer, and wine restaurant licensee may exclude minors from the entire premises at all times as approved by the board.

(1) To exclude minors from the entire licensed premises at all times the applicant or licensee must:

(a) Indicate during the liquor license application process that (~~he/she does~~) they do not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine restaurant that allows minors, the applicant may request permission from the board's licensing and regulation division to exclude minors at all times or for a specific event. See WAC 314-02-130 for instructions on requesting this approval.

(c) Spirits, beer, and wine restaurant licensees who exclude minors from the entire premises at all times or at certain times must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035.

(d) During the times that a spirits, beer, and wine restaurant licensee excludes minors from the entire premises, the licensee may not employ minors. (See RCW 66.44.316 for more information on employing minors.)

(2) Restaurants that have less than (~~fifteen~~) 15 percent of their total customer service area dedicated to dining must exclude minors from the entire premises. The licensee:

(a) Must pay the largest annual license fee (less than (~~fifty~~) 50 percent dedicated dining);

(b) Must meet all other requirements of this license, including the food service requirements outlined in WAC 314-02-035; and

(c) May not employ minors at any time. (See RCW 66.44.316 for information on employing certain persons (~~eighteen~~) 18 years and over under specific conditions.)

(3) See WAC 314-11-060(1) regarding requirements for "minors prohibited" signage.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-038 Can a spirits, beer, and wine nightclub license exclude persons under (~~twenty-one~~) 21 years of age from the premises?** A spirits, beer, and wine nightclub licensee may exclude minors from the premises at all times.

(1) To exclude minors from the entire licensed premises at all times, the applicant must:

(a) Indicate during the liquor license application process that (~~he/she does~~) they do not wish to have minors on the entire premises at all times; or

(b) If already licensed as a spirits, beer, and wine nightclub license that allows minors, the licensee may request permission from the board's licensing and regulation division to exclude minors at all times. See WAC 314-02-130 for instructions on requesting this approval.

(2) Spirits, beer, and wine nightclub licensees who exclude minors from the premises may not employ minors. (See RCW 66.44.310 for more information on employing minors.)

AMENDATORY SECTION (Amending WSR 08-17-067, filed 8/19/08, effective 9/19/08)

**WAC 314-02-0415 What are the requirements for instructing employees on spirits, beer, or wine?** (1) Per RCW 66.24.590, a licensee or its manager may furnish spirits, beer, or wine to the licensee's employees who are (~~twenty-one~~) 21 years of age or older, free of charge, as a necessary part of instruction and training on spirits, beer, and wine.

(2) The licensee must use spirits, beer, and wine (~~he or she obtains~~) they obtain under the license for purposes of instruction.

(3) The instruction must be given at the hotel premises.

AMENDATORY SECTION (Amending WSR 14-15-075, filed 7/16/14, effective 8/16/14)

**WAC 314-02-108 Responsible vendor program.** (1) **What is the purpose of this chapter?** The purpose of this section is to establish standards and procedures for a responsible vendor program for spirits retail and beer and wine retail licensees selling alcohol for off-premises consumption.

(2) **What is the responsible vendor program for spirits retail licensees?** This program is free, voluntary, and self-monitoring. Spirits retail licensees who hold a responsible vendor certificate and maintain all requirements are eligible for reduced sanctions on their first single violation within any period of (~~twelve~~) 12 calendar months.

(3) **How does a spirits retail licensee become a responsible vendor?** Any spirits retail licensee who meets the program standards may participate. To apply for a responsible vendor certificate, the licensee must have no public safety violations within the last two years and must complete and submit a board-provided application form. Board staff will review the application for completeness, and will:

(a) Certify the completed application clearly indicates the licensee has all program standards in place and send a certificate to the licensee; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will notify the licensee of the reason(s) the application is being returned.

(4) **To qualify as a responsible vendor, a spirits retail licensee must:**

(a) Post their responsible vendor program certificate for public viewing at the main entrance of the premises;

(b) Train each employee supervising or selling alcohol in responsible liquor sales. Licensees may require employees to obtain a mandatory alcohol server training permit from a board certified provider or train employees themselves using the training criteria specified in subsection (5) of this section; and

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(i) A list of acceptable forms of identification which are accepted at the premises;

(ii) Directions for checking identification for customers; and

(iii) The consequences for selling spirits to a minor or apparently intoxicated person.

(d) In an area visible to patrons, post signs to deter illegal purchases of alcohol. Examples of information include, it is illegal to purchase alcohol under (~~twenty-one~~) 21 years of age or while apparently intoxicated. Other information may include acceptable forms of identification at the premises;

(e) Have an on-going training plan for employees, to include annual training at a minimum. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, training must cover the topics listed in subsection (5) of this section; and

(f) Retain employee training records and signed house policies for three years and must be able to present employee training records upon request.

(5) **What are the program standards, program content, and other requirements for the responsible vendor program?** All training must include, at a minimum, the following:

(a) Guidelines for recognizing minors and apparently intoxicated persons;

(b) Forms of identification for purchasing alcohol;

(c) How to check identification and how to recognize false or altered identification;

(d) A requirement to check identification in accordance with house policies;

(e) Recommended actions for refusing sales of alcohol to minors or apparently intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or apparently intoxicated persons;

(g) A review of house policies on alcohol sales. Each licensee must ensure that ((his/her)) their employees receive training that covers the licensee's own house policies; and

(h) The standards and requirements for the mandatory alcohol server training stipulated in WAC 314-17-060 are deemed sufficient for employee's initial training for the responsible vendor training.

(6) **What are the sanctions when a licensee violates liquor laws or regulations?** For violations, as outlined in WAC 314-29-020 through 314-29-040, involving the sales of spirits, the prescribed penalty is doubled. If a licensee has a certified responsible vendor program having all program standards in place, the board will impose the standard penalty detailed in WAC 314-29-020 through 314-29-040 for that violation. Any subsequent violation involving spirits within any period of ((twelve)) 12 calendar months will be double the standard penalties. Regardless of the type of alcohol sold; beer, wine, or spirits, WAC 314-29-020 through 314-29-040 are applicable.

#### OTS-5798.1

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

**WAC 314-03-020 Consumer orders, internet sales, and delivery for grocery stores and beer and wine specialty shops.** A grocery store or beer and wine specialty shop licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes payment for the sale; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in ~~((his or her))~~ their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of ~~((six))~~ 6:00 a.m. and ~~((two))~~ 2:00 a.m. Delivery must be fully completed by ~~((two))~~ 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under ~~((twenty-one))~~ 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person ~~((twenty-one))~~ 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory-sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in ~~((one-hundred))~~ 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be ~~((twenty-one))~~ 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Times and dates of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

**WAC 314-03-030 Consumer orders, internet sales, and delivery for spirits retail licensees.** A spirit retail licensee may accept orders for spirits from, and deliver spirits to, customers.

(1) **Resale.** Spirits shall not be for resale.

(2) **Stock location.** Spirits must come directly from a licensed retail location.

(3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a spirits retail licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits retail licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment for the sale; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell spirits via the internet, a new spirits retail license applicant must request internet-sales privileges in (~~his or her~~) their application. An existing spirits retail licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits retail licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under (~~(twenty-one)~~) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person (~~(twenty-one)~~) 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in (~~(one-hundred)~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be (~~(twenty-one)~~) 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display the spirits retail licensee's registered trade name.

(12) **Accountability.** A spirits retail licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

AMENDATORY SECTION (Amending WSR 24-04-042, filed 1/31/24, effective 3/2/24)

**WAC 314-03-035 Consumer orders, internet sales, and delivery for on-premises beer and/or wine liquor licensees.** An on-premises beer and/or wine licensee may accept orders for beer or wine from, and deliver beer or wine to, customers, if the licensee obtains a delivery endorsement under RCW 66.24.710.

(1) **Resale.** Beer and wine shall not be for resale.

(2) **Stock location.** Beer and wine must come directly from a licensed on-premises retail location.



(3) **How to place an order.** Beer and wine may be ordered in person at a licensed location, by mail, telephone, internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state is allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell beer and wine via the internet, a new license applicant must request internet-sales privileges in (~~his or her~~) their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States Postal Service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Beer and wine may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under 21 years of age is prohibited from purchasing, delivering, or accepting delivery of beer and wine.

(b) A delivery person must verify the age of the person accepting delivery before handing over beer and wine.

(c) If no person 21 years of age or older is present to accept a beer and wine order at the time of delivery, the beer and wine shall be returned to the licensee.

(8) **Intoxication.** Delivery of beer and wine is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of beer and wine must be factory sealed in bottles, cans, or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. Delivery of malt liquor in kegs or other containers capable of holding four gallons or more of liquid is allowed, provided that kegs or containers are factory sealed and that the keg sales requirements (see WAC 314-02-115) are met prior to delivery. For the purposes of this subsection, "factory sealed" means that a unit is in 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a beer and wine package must have language stating that:

- (i) The package contains liquor;
- (ii) The recipient must be 21 years of age or older; and
- (iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at a licensed premises. Each delivery sales record shall include the following:

- (i) Name of the purchaser;
- (ii) Name of the person who accepts delivery;
- (iii) Street addresses of the purchaser and the delivery location; and
- (iv) Times and dates of purchase and delivery.

(b) An employee delivering beer or wine must obtain the signature of the person who receives beer and wine upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of beer and wine must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of beer and wine made by employees.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

AMENDATORY SECTION (Amending WSR 17-17-030, filed 8/9/17, effective 9/9/17)

**WAC 314-03-040 Consumer orders, internet sales, and delivery for beer and/or wine gift delivery licenses.** A beer and/or wine gift delivery licensee may accept orders for beer or wine from, and deliver beer or wine to, customers.

(1) **Resale.** Liquor shall not be for resale.

(2) **Stock location.** Liquor must come directly from a licensed retail location.

(3) **How to place an order.** Liquor may be ordered in person at a licensed location, by mail, telephone or internet, or by other similar methods.

(4) **Sales and payment.**

(a) Only a licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a licensee, except for transmittal of payment through a third-party service. The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

(i) The sale must be made by the licensee;

(ii) The licensee processes the payment; and

(iii) The liquor licensee pays the owner of the mobile application a service fee.

(b) All orders and payments shall be fully processed before liquor transfers ownership or, in the case of delivery, leaves a licensed premises.

(c) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(d) Internet. To sell liquor via the internet, a new license applicant must request internet-sales privileges in ~~((his or her))~~ their application. An existing licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Liquor may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Per chapter 66.44 RCW, any person under ~~((twenty-one))~~ 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person ~~((twenty-one))~~ 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned to the licensee.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of liquor must be factory sealed in bottles, cans or other like packaging. Delivery of growlers, jugs or other similar, nonfactory sealed containers is prohibited. For the purposes of this subsection, "factory sealed" means that a unit is in ~~((one hundred))~~ 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

(i) The package contains liquor;

(ii) The recipient must be ~~((twenty-one))~~ 21 years of age or older; and

(iii) Delivery to intoxicated persons is prohibited.

(10) **Required information.**

(a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:

(i) Name of the purchaser;

(ii) Name of the person who accepts delivery;

(iii) Street addresses of the purchaser and the delivery location; and

(iv) Time and date of purchase and delivery.

(b) A private carrier must obtain the signature of the person who receives liquor upon delivery.

(c) A sales record does not have to include the name of the delivery person, but it is encouraged.

(11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display a licensee's registered trade name.

(12) **Accountability.** A licensee shall be accountable for all deliveries of liquor made on its behalf.

(13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement or restriction.

#### OTS-5799.1

AMENDATORY SECTION (Amending WSR 01-03-087, filed 1/17/01, effective 2/17/01)

**WAC 314-09-005 What is the purpose of chapter 314-09 WAC?** The purpose of chapter 314-09 WAC is to outline:

(1) The process for persons, entities, and governmental jurisdictions to object to the issuance or renewal of a liquor license or permit; and

(2) An applicant or licensee's options when (~~his/her~~) their liquor license or permit is denied or action is taken to not renew (~~his/her~~) their liquor license or permit.

#### OTS-5854.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-10-110 Penalties, suspension notices, posting or advertising of—Other closing notices prohibited.** (1) The liquor and cannabis board may suspend or revoke a retailer's or sampler's license for violation of the board's administrative rules governing tobacco. Further, the board may impose a monetary penalty in lieu of license suspension for violation of said rules not covered by statute.

(2) Licensees are required to maintain compliance with all tobacco laws and regulations during any period of suspension. Whenever the board shall suspend the license of any licensee, the board shall on the date the suspension becomes effective cause to be posted in a conspicuous place on or about the licensed premises a notice in a form to be prescribed by the board, stating that the license or licenses have been suspended by order of board because of violation of the Washington state laws or the regulations.

(3) During the period of suspension:

(a) No person shall remove, alter, cover, or in any way disturb the posted notice(s) of suspension;

(b) No person shall place, permit or allow to be placed in, at, or upon the licensed premises, any notice or statement of reasons or

purpose indicating that the premises have been closed or that sale of tobacco products has been discontinued for any reason other than as stated in the notice of suspension; Provided Further, That the prohibition of this subsection shall apply to any nearby or adjacent property, such as a parking lot area that is owned by or under the control of the licensee.

(c) Neither the licensee nor (~~his/her or its~~) their employees shall advertise, either by newspaper, radio, television, handbill, brochure, flyer or by any means whatever, that the licensed premises are closed or discontinuing the sale of tobacco products for any reason(s) other than those stated in the board's suspension notices.

(4) A tobacco licensee may operate the business during the period of suspension provided there is no sale or distribution of tobacco products.

### OTS-5800.1

AMENDATORY SECTION (Amending WSR 04-15-162, filed 7/21/04, effective 8/21/04)

**WAC 314-11-020 What are the guidelines regarding sales to persons under (~~twenty-one~~) 21 years of age and where persons under (~~twenty-one~~) 21 are allowed on a licensed premises?** (1) Per RCW 66.44.270, licensees or employees may not supply liquor to any person under (~~twenty-one~~) 21 years of age, either for (~~his/her~~) their own use or for the use of any other person.

(2) Per RCW 66.44.310, licensees or employees may not allow persons under (~~twenty-one~~) 21 years of age to remain in any premises or area of a premises classified as off-limits to persons under (~~twenty-one~~) 21. (See RCW 66.44.310 (1)(b) regarding nonprofit, private club licensees.)

(3) Per RCW 66.20.180, at the request of any law enforcement officer, a holder of a card of identification must present (~~his/her~~) their card of identification if the person is on a portion of a premises that is restricted to persons over (~~twenty-one~~) 21 years of age, or if the person is purchasing liquor, attempting to purchase liquor, consuming liquor, or in the possession of liquor. If the person fails or refuses to present a card of identification it may be considered a violation of Title 66 RCW and:

(a) The person may not remain on the licensed premises after being asked to leave by a law enforcement officer; and

(b) The person may be detained by a law enforcement officer for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth.

AMENDATORY SECTION (Amending WSR 02-11-054, filed 5/9/02, effective 6/9/02)

**WAC 314-11-030 What if a person's identification meets the legal requirements but I still have doubts about (~~his or her~~) their age?**

(1) Per RCW 66.20.190 and 66.20.210, if a patron presents proper iden-

tification as outlined in WAC 314-11-025 but the licensee or employee still has doubts about the patron's age, the licensee or employee may require the patron to sign a certification card. Certification cards are provided by the board's enforcement and education division.

(2) The certification card must be completely filled out and filed alphabetically by the licensee or employee by the close of business on the day used. Certification cards are subject to examination by any law enforcement officer.

~~((RCW. 01-06-014, § 314-11-030, filed 2/26/01, effective 3/29/01.)))~~

AMENDATORY SECTION (Amending WSR 24-04-042, filed 1/31/24, effective 3/2/24)

**WAC 314-11-040 Permissible duties of an employee under 21 years of age on a licensed premises.** A person must be 21 years of age or older to be employed in the sale, handling, or service of liquor, except as provided in this chapter.

(1) Per RCW 66.44.340 and RCW 66.44.350, persons between 18 and 21 years of age may perform the following duties:

	<b>Duties 18, 19, and 20 year old employees may perform, as long as there is a person 21 years of age or older on duty supervising the sale of liquor</b>	<b>Duties 18, 19, and 20 years old employees may not perform</b>
(a) In a grocery store or beer/wine specialty shop:	<ul style="list-style-type: none"> <li>■ Sell, stock, and handle beer and wine; and</li> <li>■ Deliver beer and/or wine to a customer's car with the customer (for the purposes of this rule, there is no minimum age requirement for an employee of a grocery store or a beer/wine specialty shop to deliver beer and/or wine to a customer's car with the customer).</li> </ul>	Supervise employees who sell, stock, or handle beer and/or wine.
(b) In a spirits retail business:	<ul style="list-style-type: none"> <li>■ As long as there are at least two supervisors at least 21 years of age on duty, persons 18, 19, and 20 years old may sell, stock, and handle spirits.</li> <li>■ Deliver spirits to a customer's car with the customer (for purposes of this rule, there is no minimum age requirement for an employee of a spirits retailer to deliver spirits to a customer's car with the customer).</li> </ul>	Supervise employees who sell, stock, or handle spirits.
(c) In an establishment that sells liquor for on-premises consumption:	<ul style="list-style-type: none"> <li>■ Take orders for, serve, and sell liquor in areas classified as open to persons under 21 years of age; and</li> </ul>	Functions of a bartender, including:

	<b>Duties 18, 19, and 20 year old employees may perform, as long as there is a person 21 years of age or older on duty supervising the sale of liquor</b>	<b>Duties 18, 19, and 20 years old employees may not perform</b>
	<ul style="list-style-type: none"> <li>■ Enter areas designated as off-limits to persons under 21 years of age to perform duties such as picking up liquor for service in other parts of the establishment; cleaning up, setting up, and arranging tables; delivering messages; serving food; and seating patrons; provided the employee does not remain in the area any longer than is necessary to perform the duties.</li> </ul>	<ul style="list-style-type: none"> <li>■ Pouring spirits or mixing cocktails;</li> <li>■ Drawing beer or wine from a tap or spigot;</li> <li>■ Opening or pouring beer or wine in an area classified by the board as off limits to any person under the age of 21; and</li> <li>■ Providing an employee spirits or beer by the pitcher or glass, or wine by the carafe or glass for delivery to a customer.</li> </ul>
(d) In a spirits retail business:		Supervise employees who sell, stock, or handle spirits.

(2) Per RCW 66.44.316 and 66.44.318, the following persons that are 18, 19, or 20 years of age may remain on licensed premises or portions of premises that are restricted from persons under 21 years of age, but only during the course of (~~his or her~~) their employment:

- (a) Persons performing janitorial services during the hours when there is no sale, service, or consumption of liquor on the premises;
- (b) Employees of amusement device companies for the purpose of installing, maintaining, repairing, or removing any amusement device;
- (c) Security or law enforcement officers and firefighters during the course of their official duties and if they are not the direct employees of the licensee; and
- (d) Professional musicians, per WAC 314-11-045.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-11-105 What can the board do with lawfully seized liquor?**

(1) Per RCW 66.08.030(20) and chapter 66.32 RCW, the board may destroy lawfully seized liquor under the following conditions:

- (a) The board must maintain a record of the type, brand, and amount of liquor seized for at least one year.
- (b) The lawfully seized liquor may be destroyed only after:
  - (i) The board's charges of a violation of Title 66 RCW or board regulations have been sustained after an administrative proceeding pursuant to chapter 314-29 WAC as now or hereafter amended, in which the liquor to be destroyed has been the subject of, or evidence in, the administrative proceeding; or
  - (ii) The board's charges of a violation of Title 66 RCW or board regulations have been admitted or are not contested by the person from whom the liquor was seized and the liquor seized was the subject of the charged violation; or
  - (iii) The liquor was seized pursuant to lawful arrest and liquor was held as evidence in a criminal proceeding where a final disposition has been reached; or
  - (iv) When no administrative or judicial proceedings are held, all parties who claim a right, title, or interest in the seized liquor have been given notice and opportunity for a hearing to determine

((his or her)) their right, title, or interest in the subject liquor. Claims of right, title, or interest in seized liquor must be made to the board, in writing, within ((thirty)) 30 days of the date of seizure.

(2) If the liquor lawfully seized is in its original, sealed container, the board may either:

(a) Sell the unopened beer, wine, or spirits to the distributor selling the product at a negotiated price. The bill of sale must be kept for three years; or

(b) Upon written request from a law enforcement agency, provide the liquor to the law enforcement agency for bona fide training.

### OTS-5801.1

AMENDATORY SECTION (Amending WSR 88-16-025, filed 7/27/88)

**WAC 314-12-040 Prorating and refunding of fees—Discontinuance of business.** (1) Unless otherwise provided by law, there will be no prorating of any license fee.

(2) Upon denial or withdrawal of an application for license, adoption or change of trade name, or change of location, the fee tendered therewith shall be returned: Provided, however, such return shall not apply to the nonrefundable ((seventy-five dollar)) \$75 fee submitted with an application for a new annual retail license.

(3) When a license is suspended or ((cancelled)) canceled, or the licensed business is discontinued, no refund of the license fee shall be made.

(4) Upon discontinuance of business for ((twenty-one)) 21 days or more by a licensee, ((he)) they shall forthwith deliver up ((his)) their license to the board, or representative of the board. A licensee who is not operating as a seasonal business and who has voluntarily discontinued sale of liquor in excess of ((forty-five)) 45 days will not be eligible for renewal of license for a subsequent year unless sale of liquor under the license is resumed on a permanent basis prior to the beginning of the next subsequent licensing period.

AMENDATORY SECTION (Amending WSR 10-19-065, filed 9/15/10, effective 10/16/10)

**WAC 314-12-210 Chronic public inebriation and alcohol impact areas—Purpose.** (1) **What is the purpose of the rules concerning chronic public inebriation and alcohol impact areas?**

(a) The enabling statutes for the board are contained in chapter 66.08 RCW. These statutes authorize the board to exercise the police powers of the state for the protection of the welfare, health, peace, and safety of the people of Washington.

(b) The board's mandate to protect the welfare, health, peace, and safety of the people is to ensure that a liquor licensee conducts ((his or her)) their business in a lawful manner and that the presence



of a licensee's liquor sales does not unreasonably disturb the welfare, health, peace or safety of the surrounding community.

(c) The purpose of the rules concerning chronic public inebriation and alcohol impact areas is to establish a framework under which the board, in partnership with local government and community organizations, may act to mitigate negative impacts on a community's welfare, health, peace or safety that result from the presence of chronic public inebriation.

(d) For the purpose of these rules, chronic public inebriation exists when the effects of the public consumption of liquor or public intoxication occur in concentrations that endanger the welfare, health, peace or safety of a neighborhood or community.

(2) **What do the rules concerning chronic public inebriation and alcohol impact areas seek to do?** WAC 314-12-210 and 314-12-215 seek to:

(a) Establish an expanded local review process for liquor license applications, license assumptions, and renewals of active liquor licenses for businesses located within a recognized alcohol impact area;

(b) Establish standards under which the board may refuse to issue a liquor license; may refuse to permit a license assumption or renewal of a liquor license; may place conditions or restrictions upon the issuance, assumption or renewal of a license; or may place conditions or restrictions on an existing license located within the geographical boundaries of a recognized alcohol impact area; and

(c) Allow the board in specific circumstances to restrict the off-premises sale of certain liquor products or liquor product containers inside a recognized alcohol impact area.

## OTS-5855.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-12-215 Alcohol impact areas—Definition—Guidelines.** (1) **What is an alcohol impact area?**

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any

unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, community group petitions, public testimony or testimony by current or former chronic public inebriates.

(d) **Minimum requirements for an alcohol impact area petition packet:**

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section). The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

**(3) What conditions or restrictions may the board recognize for an alcohol impact area?**

(a) Restrictions may include, but are not limited to:

(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a standardized list of products that will be banned in alcohol impact areas. The list can be found on the LCB website. The list contains products that are banned in the majority of current alcohol impact areas. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pickup; or other statistically documented evidence.

(c) After the board has recognized an alcohol impact area the local authority may request the board approve additional products to their banned products list provided that the products are reasonably linked to the problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic

evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pick-up; or other statistically documented evidence.

(d) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

**(4) What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?**

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public inebriates or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

**(5) What will the board do once it recognizes an alcohol impact area?**

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

**(6) What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?**

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of 60 calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a 60-day comment period.

(b) For renewals, the board will notify a local authority at least 90 calendar days before a current license expires. The same requirements in (a) (i) and (ii) of this subsection apply to the 90-day

comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

**(7) When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?**

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than 30 calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation as contained in subsections (2) and (3) of this section.

(d) Prohibition of a new product added to an existing prohibited products list takes effect no sooner than 30 calendar days following the board's recognition of a modified prohibited products list.

**(8) Reporting requirements and five-year assessments.**

(a) A year after the implementation of the alcohol impact area a local authority shall submit a report to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report is due no later than 60 calendar days following the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, 10th, 15th, et cetera, anniversary of the board's recognition of the alcohol impact area. The five-year assessment process is as follows:

(i) Within 20 calendar days of receiving a local authority's fifth, 10th, 15th, et cetera, report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has 20 calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one 20 calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why (~~he or she is~~) they are unable to meet the initial 20-day deadline.

(iii) The board will complete an assessment within 60 calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties.

An assessment may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one 20-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why (~~he or she is~~) they are unable to meet the 20-day deadline.

## OTS-5802.1

AMENDATORY SECTION (Amending WSR 10-01-091, filed 12/16/09, effective 1/16/10)

**WAC 314-16-110 Liquor purchases by spirits, beer, and wine licensees.** (1) Any employee authorized by the board may sell spirituous liquor at a discount of (~~fifteen~~) 15 percent from the retail price fixed by the board, together with all taxes, to any spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee upon presentation to such employee at the time of purchase of a special permit issued by the board to such licensee or through such other means of insuring identification of the authorized purchaser as are approved by the board. Prior to license delivery, a new licensee may, with board authorization, be sold discount liquor and beer and wine purchased under Title 66 RCW for the purpose of stocking the premises. The employee shall at the time of selling any spirituous liquor to a spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee make a record of the liquor so sold, together with the name of the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee making the pur-

chase. No sale of beer, wine, or spirituous liquor shall take place until the premises of the new licensee have been inspected by the board and the spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility license is delivered.

(2) Every spirits, beer and wine restaurant, spirits, beer, and wine nightclub, spirits, beer, and wine club or sports/entertainment facility licensee, upon purchasing any spirituous liquor from the board, shall immediately cause such liquor to be delivered to (~~his or her~~) their licensed premises, and (~~he or she~~) they shall not remove or permit to be removed from said premises any bottle or other container containing such liquor, except pursuant to chapter 314-70 WAC or to return it to a state liquor store or agency, nor shall (~~he or she~~) they dispose or allow to be disposed the liquor contained therein in any manner except as authorized by (~~his or her~~) their license. A delivery service business may pick up more than one liquor order on the same day so long as each of said orders are delivered in the normal course of business on the same day without detour or diversion, except for those stops and deliveries as may be necessary to make deliveries to the other licensees whose order is also on the particular delivery vehicle. The possession of any bottle or other container purchased from the board at a discount by any person other than the licensee or said licensee's agents or employees who purchased the same, or the possession thereof at any place which is not the licensed premises of the licensee who purchased such liquor, shall be prima facie evidence that the licensee unlawfully permitted the removal thereof from (~~his or her~~) their licensed premises. The licensee who permanently discontinues business, other than as a result of a legal distraint action, may remove open bottles of liquor from the premises for personal use upon payment to the board of an amount to be determined by the board in lieu of the discount and tax exemption in effect at that time.

(3) No licensee shall keep in or on the licensed premises any spirituous liquor which was not purchased from the board at a discount. Spirituous liquor not purchased at a discount from the board may be kept in or on the licensed premises under authority of a banquet permit issued pursuant to RCW 66.20.010(3) and chapter 314-18 WAC, but only during the specific date and time for which the banquet permit was issued. Notwithstanding any other provision of Title 314 WAC, a spirits, beer and wine licensee may display antique, unusual, or unique liquor bottles with or without liquor on the licensed premises if such bottles are used as part of the decor, and any such bottles containing liquor are locked securely in display cases, and are not for sale.

(4) No person, including anyone acting as the agent for another other than a spirits, beer and wine licensee shall keep or possess any bottle or other container containing spirituous liquor which was purchased from the board at a discount except as provided in subsection (2) of this section.

(5) All spirituous liquor in and on the licensed premises shall be made available at all times by every licensee for inspection by the board, and such licensee shall permit any authorized inspector of the board to make such tests or analyses, by spirit hydrometer or otherwise, as the inspector deems proper. Such inspectors are authorized to seize as evidence any bottles or other containers and the contents thereof which they have determined have been reused, refilled, tampered with, adulterated, diluted, fortified or substituted.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-16-150 No sale of liquor to minors, intoxicated persons, etc.** (1) No retail licensee shall give or otherwise supply liquor to any person under the age of (~~twenty-one~~) 21 years, either for (~~his/her~~) their own use or for the use of (~~his/her~~) their parent or of any other person; or to any person apparently under the influence of liquor; nor shall any licensee or employee thereof permit any person under the said age or in said condition to consume liquor on (~~his/her~~) their premises, or on any premises adjacent thereto and under (~~his/her~~) their control.

(2) No retail licensee shall permit any person apparently under the influence of liquor to physically possess liquor on the licensed premises.

### OTS-5803.1

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

**WAC 314-17-020 How long are class 12 and 13 permits good for?**

(1) Class 12 and 13 permits are valid for five years. A class 12 or 13 permit expires on the first day of the month, five years following the month a student passes the standardized exam. For example, if a student passes the standardized exam on June 15, 2010, (~~his or her~~) their class 12 or 13 permit will expire on July 1, 2015.

(2) A permit holder must retake a class 12 or 13 training course and pass the standardized exam to obtain a subsequent class 12 or 13 permit.

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

**WAC 314-17-040 May an (~~eighteen to twenty~~) 18 to 20 year-old student who takes and passes a class 12 training course upgrade to a class 12 permit upon turning (~~twenty-one~~) 21 without retaking the training course?** Yes.

(1) An (~~eighteen, nineteen or twenty~~) 18, 19, or 20 year-old person may take a class 12 training course and pass the corresponding exam; however, (~~he or she~~) they may be issued only a class 13 permit. Upon turning (~~twenty-one~~) 21 years of age, such a person who obtains a class 13 permit after taking and passing a class 12 training course and exam may request that a provider or trainer upgrade (~~his or her~~) their class 13 permit to a class 12 permit.

(2) The expiration date of an upgraded class 12 permit shall be the same expiration date as the original class 13 permit.



AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

**WAC 314-17-045 How do I get a class 12 or 13 permit in Washington if I was trained in another state?** (1) If a person completes an alcohol server training course in another state and that training course is also certified in the state of Washington, (~~he or she~~) they may receive a class 12 or 13 permit in Washington by completing the provider's board-certified Washington state supplement to the program and passing the standardized exam.

(2) A trainer or provider shall issue a class 12 or 13 permit, which will expire five years from the first day of the month following the date an original training course was taken. For example, if you complete a training course on June 15, 2010, your class 12 or 13 permit will expire on July 1, 2015.

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

**WAC 314-17-065 How does a provider receive certification for its trainers?** (1) To certify one of its trainers, a provider must complete a form provided by and returned to the board.

(2) A provider will contract only with a trainer who:

(a) Has a minimum of two years of post-secondary education in, or equivalent years of work experience in, one or more of the following fields:

(i) Training;

(ii) Education;

(iii) Law;

(iv) Law enforcement;

(v) Substance abuse rehabilitation; or

(vi) Sale and service of alcoholic beverages;

(b) Holds a class 12 permit;

(c) Meets the criminal history requirements (see WAC 314-17-070);

and

(d) Meets the continuing education requirements (see WAC 314-17-050).

(3) The board may consider any information pertaining to a trainer's certification in any state, including any certification suspensions or revocations in the past five years. The board, at its discretion and in consideration of public safety, may also consider criminal history (see WAC 314-17-070), administrative violations, patterns of misconduct, and other applicable occurrences or circumstances when deciding to approve, deny, suspend or revoke a trainer's certification.

(4) The board will respond to a request for trainer certification within (~~thirty~~) 30 calendar days of receipt of a request, and then will either certify an applicant trainer or explain why an applicant trainer fails to meet the qualifications.

(5) A trainer may not begin to teach a training course until a trainer receives (~~his or her~~) their certification from the board.

(6) A trainer must teach a provider's training program in its entirety as approved, and may not change the method of presentation or course content without approval from a provider and the board.

(7) It is the responsibility of a provider to keep the board informed of its current trainers. In this effort, a provider must notify

the board within (~~(seventy-two)~~) 72 hours of the termination of a trainer or within (~~(seventy-two)~~) 72 hours of when a provider is notified that a trainer has terminated (~~(his or her)~~) their employment.

### OTS-5804.1

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

#### **WAC 314-18-030 Applicants—Retail liquor licensees ineligible—**

**Exceptions.** (1) Any person (~~(twenty-one)~~) 21 years of age or older, either for (~~(himself/herself)~~) themselves or in a representative capacity on behalf of a society, organization, or business entity, may apply for a banquet permit which authorizes the service and consumption of liquor at a specific place upon a specific date.

(2) Retail liquor licensees are NOT eligible to apply for banquet permits for events to be held at, in, or upon such licensee's premises: Provided, however, that the licensee's ineligibility will not apply:

(a) When the application is by an established organization of members or auxiliary within a licensed club;

(b) Where grand openings, or special openings following new construction or substantial alterations, or when conventions are to be held on the licensed premises;

(c) Where special occasions such as employee Christmas parties, business anniversaries, etc., are held on the licensed premises;

(d) For functions held at locations other than the licensed premises.

(3) Banquet permits may be issued to qualified applicants for private functions on a chartered bus, chartered boat, chartered plane, or a chartered passenger car on a train.

(4) A banquet permit is not required for:

(a) Spirit, beer and wine sampling conducted in accordance with RCW 66.28.040 as implemented by chapter 314-64 WAC.

(b) Beer or wine provided by a brewery, winery, or distributor as part of a course of instruction for liquor licensees and/or their employees pursuant to RCW 66.28.150.

(5) The board interprets and will apply the relevant portions of the Liquor Act (RCW 66.20.010, 66.04.010(23), 66.04.010(26), 66.24.480, 66.24.481, and 66.44.100), reading them in pari materia, as not requiring a banquet permit to be obtained by an individual for a function when that individual is not acting with a business purpose or on behalf of an organization or business entity, where each of the following conditions are met:

(a) The function to be held by the individual is of a personal, noncommercial type which would normally be held in the individual's private home but for space considerations. Examples being a birthday party, wedding reception, bar mitzvah, etc. In lieu of holding the function in (~~(his or her)~~) their home, the individual has arranged for use of a facility which is to be closed off from the public during the function and which is not on any licensed premises.

(b) The function is hosted by the individual personally. That is, there is no charge in any manner whatsoever for attendance, whether by admission charge, donation, dues, fees, or otherwise, and there is no charge in any manner whatsoever for anything provided at the function (i.e., mixer, setups, ice, food, hors d'oeuvres, etc.).

(c) That there is no business purpose for the function and that no pecuniary gain is intended or realized by the individual from the holding of the function.

(d) That those persons attending the function are the personal invitees of the individual holding it.

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-18-040 Issuance fee—Restrictions.** (1) Banquet permits may be issued by the board's stores and agencies to qualified applicants on forms provided by the board; the fee for each banquet permit will be (~~ten dollars~~) \$10.

(2) Except for outdoor areas, banquet permits will only be issued for use at premises that are or can be arranged so that the general public can be excluded therefrom.

(3) Where the application is for a banquet to be held either partially or wholly out-of-doors, the following restrictions will apply:

(a) State parks: State parks are exempt from the law requiring a license or permit to consume liquor in a public place (RCW 66.04.011). Banquet permits shall not be issued for the service and consumption of liquor in state parks.

(b) City and county parks: Applicants will be issued banquet permits only upon presentation of written approval from the appropriate local authority for the banquet applied for.

(c) Commercial parks (privately owned and operated): Store and agency managers may issue banquet permits for use in such commercial parks even though the event is to be held partly or wholly out-of-doors.

(d) All other outdoor areas: Issuance is conditioned upon approval of the area liquor enforcement officer.

(4) Where the application is for a banquet permit for an event to be held on a college or university campus or upon the premises of an elementary or high school, public or private; permits will be issued provided that approval, in writing, by an appropriate official of the college, university, elementary, or high school is furnished with the application.

(5) When the application is for a banquet permit for an event to be held in or at a state armory used for military purposes, permits will be issued provided that approval, in writing, by the adjutant general or (~~his/her~~) their designee is furnished by the applicant to the board and to the chief of police of the incorporated city or town in which the armory is located or to the county sheriff if the armory is located outside the boundaries of incorporated cities or towns.

(6) Banquet permits will not be issued for use at premises that have a license issued by the board that is or will be suspended on the date of the scheduled banquet.

(7) The event for which the banquet permit application is made cannot be open to the public through general admission ticket sales.

(8) The event for which the banquet permit application is made cannot be open to the public or advertised to the public.

(9) Approval of the area enforcement officer is required for banquet permits intended for use in the cocktail lounge facilities or tap rooms of hotels, restaurants, and clubs, unless the entire premises under the control of the licensee is devoted to the banquet, and then only if all licensee liquor is removed from view and securely isolated.

(10) Where the application is for a banquet permit for an event to be held on a vessel under the jurisdiction of the Washington state ferry system; permits will be issued provided that approval, in writing, by an appropriate official of the Washington state ferry system is furnished with the application.

### OTS-5805.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-20-100 Beer suppliers and distributors.** RCW 66.28.180 requires beer distributors and suppliers to maintain all current and prior price lists at its liquor licensed location.

(1) **Definitions** - For the purposes of this chapter:

(a) A "price list" means a declaration of the prices at which any and all brands of beer and any and all packages within a brand are to be sold by the person maintaining the list. Distributors must maintain a price list showing all such prices for sales to retailers. Each manufacturer functioning as a distributor must maintain a price list showing all such prices for sales to retailers as well as showing such prices for sales to distributors. The price list will contain the wholesale prices at which any and all brands of beer sold by the supplier or distributor shall be available to retailers within the state.

(b) A "beer supplier" means a microbrewery, domestic brewery, certificate of approval holder, beer importer, beer distributor acting as the first United States importer, or a distributor selling beer to another distributor.

(c) A "beer distributor" means a distributor selling to a retailer, a domestic brewery acting as a distributor, a microbrewery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling beer of its own production to a retailer.

(d) Third-party delivery is prohibited.

(2) **Products and price lists** - If a beer supplier or distributor lists selected items on which prices are temporarily reduced, these prices must clearly reflect all items and the selling price. All products must be made available to all retail licensees to the extent it is reasonably practical to do so and all retail licensees must be given reasonable notice of all prices and price changes.

(3) **Distributor changes**

(a) The following guidelines apply when a beer supplier makes a distributor change outside of the regular distributor appointment timelines. The supplier must notify the board in writing that ((he/she

wishes)) they wish to change ((his/her)) their current distributor and appoint a new distributor to be effective immediately.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Price lists for new distributors** - When the board issues a new beer distributor license, the licensee must have a price list available.

(5) **Accommodation sales** - The provisions of this rule do not apply when a beer distributor makes an accommodation sale to another beer distributor and this sale is made at a selling price that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

### OTS-5856.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-21-025 What are the guidelines for controlled purchase programs?** A retail liquor licensee may conduct an in-house controlled purchase program under the following conditions:

(1) The licensee must keep a statement on file signed by the licensee and each employee indicating that the employee has received training regarding the sale of liquor to persons under 21 years of age. Restaurant, tavern, or sports/entertainment facility licensees must keep on file either such a statement for each employee or a copy of the employee's mandatory alcohol server training permit. These records must be maintained on the licensed premises, available for inspection by the board, unless otherwise approved in writing by the liquor and cannabis board's enforcement and education division.

(2) During an in-house controlled purchase program, the person supervising the program must possess:

(a) The licensee's controlled purchase program procedures,

(b) The board's written approval of the in-house controlled purchase program, and

(c) Valid identification (see WAC 314-11-025 for a list of acceptable identification).

(3) The persons participating in the in-house controlled purchase program must be at least 18 years of age.

(4) The persons participating in the in-house controlled purchase program may not use fraudulent identification and should not be deceptively mature in appearance.

(5) The licensee must ensure that two photos are taken of the persons participating in the in-house controlled purchase program on the day of the program. One photo must be full face and one photo must show the employee from head to toe. These photos must be maintained on the licensed premises, available for inspection by the board.

(6) If persons participating in the in-house controlled purchase program are paid for their time, the compensation of such persons may

not be based on the number of successful purchases made during the course of the in-house controlled purchase program.

(7) The licensee must have written procedures that ensure any liquor purchased by an 18, 19, or 20 year old person during an in-house controlled purchase program is adequately secured by the licensee or an employee who is at least 21 years of age immediately following an occurrence of any purchase.

(8) Per RCW 66.44.290, the licensee must provide ((his/her)) their employees a written description of the employer's in-house controlled purchase program, which must include a notice of action an employer may take as a consequence of an employee's failure to comply with the employer's policies regarding the sale of alcohol during an in-house controlled purchase program.

(9) Per RCW 66.44.290, a licensee may not terminate an employee solely for a first-time failure to comply with the licensee's policies regarding the sale of alcohol during an in-house controlled purchase program.

(10) If a licensee's controlled purchase program fails to meet any of the requirements of RCW 66.44.290, WAC 314-21-015, or 314-21-025, the board may revoke its approval to conduct in-house controlled purchase programs. The licensee may reapply for approval to conduct in-house controlled purchase programs not less than one year following the board's revocation of approval.

#### OTS-5857.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-24-115 Wine importers—Requirements.** (1) Principal office: Each wine importer shall keep the board informed at all times of the location of the principal office required by the Washington State Liquor Act and shall, not less than 30 days prior thereto notify the board in writing of any change in the location of such office.

(2) Warehouses: Wine importers maintaining warehouses at which wine imported by such importer is stored shall have the location approved by the board.

(3) Certain duties: No wine importer shall import or transport or cause to be transported into the state of Washington any brand of wine manufactured within the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of ((his)) their intention so to do, and shall have ascertained from the board that the winery manufacturing such wine has obtained from the Washington state liquor and cannabis board a certificate of approval as provided in the Washington State Liquor Act (section 10, chapter 21, Laws of 1969 ex. sess.).

#### OTS-5806.1

AMENDATORY SECTION (Amending WSR 23-20-039, filed 9/27/23, effective 10/28/23)

**WAC 314-24-190 Wine suppliers and distributors. (1) Definitions**

- For the purposes of this chapter:

(a) A "wine supplier" means a domestic winery, certificate of approval holder, wine importer, wine distributor acting as the first United States importer, or a distributor selling wine to another distributor.

(b) A "wine distributor" means a distributor selling to a retailer or a holder of an annual special permit for short-term rental owners under RCW 66.20.010, a domestic winery acting as a distributor, or a certificate of approval holder with a direct shipping to Washington retailer endorsement selling wine of its own production to a retailer.

(2) **Products** - All products must be made available to all retail licensees to the extent it is reasonably practical to do so.

(3) **Distributor changes:**

(a) The following guidelines apply when a wine supplier makes a distributor change. The supplier must notify the board in writing that ~~((he/she wishes))~~ they wish to change ~~((his/her))~~ their current distributor and appoint a new distributor.

(b) A wine supplier must notify the board if any of the contracts or agreements listed in this rule are revised or terminated by either party.

(4) **Accommodation sales** - The provisions of this rule do not apply when a wine distributor makes an accommodation sale to another wine distributor and this sale is made at a selling price that does not exceed the laid-in cost of the wine being sold. Accommodation sales may only be made when the distributor purchasing the wine is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the supplier.

**OTS-5807.1**

AMENDATORY SECTION (Amending WSR 98-18-097, filed 9/2/98, effective 10/3/98)

**WAC 314-25-040 Delivery of beer and wine—Records.** (1) Sales made by a ships chandler of beer and wine to an approved recipient may only be delivered to another ships chandler, a vessel for use in foreign commerce, a contracted Interstate Common Carrier, or employees thereof.

(2) Beer and wine may only be delivered when the ships chandler has on file a signed statement, in a format approved by the board, which indicates the captain of the ship or manager of the authorized purchasing business understands and agrees that:

(a) No beer or wine purchased will be consumed in Washington waters or territory or within three miles of the shores of the state of Washington;

(b) No beer or wine purchased will be consumed while the ship is docked in a Washington port; and

(c) Local law enforcement officers and board enforcement officers have the right to board and inspect the vessel while in Washington waters.

(3) Every statement will be notarized and remain valid for (~~twelve~~) 12 calendar months after the date of signing and be signed by the master of the ship or (~~his/her~~) their agent with the ships stamp affixed and countersigned by the ships chandler or their employee.

(4) A ships chandler or their employee must deliver any beer and wine directly to an authorized recipient purchasing the alcoholic beverage and it must be immediately placed into a locked storage area. The ships chandler must obtain the signature and printed name of the master or agent of the ship, ships chandler licensee or contracted Interstate Common Carrier on the delivery document which will contain the following information:

- (a) Name of ship;
- (b) Country of registry, if known;
- (c) Type and amount of product delivered;
- (d) Date of delivery;
- (e) Name and address of ships chandler making the sale; and
- (f) Signature and printed name of crew member receiving the liquor.

(5) The ships chandler will maintain records of all sales to ships, ships chandler licensees and Interstate Common Carrier approved licensees doing business in foreign commerce to include all federally mandated documents including order forms, bills of lading, affidavits, delivery to auxiliary location, etc., for a period of two years. Such records, or their computerized equivalent, will be available for inspection and copying by employees of the board upon request.

(6) Board employees have the right to enter and inspect, without warrant, any business, ship, aircraft, vessel, or transport vehicle from which beer and wine is delivered to or from a licensed ships chandler.

#### OTS-5808.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-28-100 Consumer orders, internet sales, and delivery for distillery and craft distillery licensees.** A distillery or craft distillery licensee may accept orders for spirits from, and deliver spirits to, customers.

- (1) **Resale.** Spirits shall not be for resale.
- (2) **Stock location.** Spirits must come directly from a licensed distillery or craft distillery possession.
- (3) **How to place an order.** Spirits may be ordered in person at a licensed location, by mail, telephone, or internet, or by other similar methods.
- (4) **Sales and payment.**
  - (a) Only a spirits distillery or craft distillery licensee or a licensee's direct employees may accept and process orders and payments. A contractor may not do so on behalf of a spirits distillery or



craft distillery licensee, except for transmittal of payment through a third-party service.

The use of internet or mobile applications for retail customers to purchase alcohol in Washington state are allowed under the following conditions:

- (i) The internet sale will be made by the distillery;
- (ii) The payment for the sale will be processed by the distillery; and
- (iii) The distillery pays the owner of the internet or mobile application a service fee.

(b) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's possession.

(c) All orders and payments shall be fully processed before spirits transfers ownership or, in the case of delivery, leaves a licensed distillery's or craft distillery's possession.

(d) Payment method. Payment methods include, but are not limited to: Cash, credit or debit card, check or money order, electronic funds transfer, or an existing prepaid account. An existing prepaid account may not have a negative balance.

(e) Internet. To sell spirits via the internet, a new spirits distillery or craft distillery license applicant must request internet sales privileges in (~~his or her~~) their application. An existing spirits distillery or craft distillery licensee must notify the board prior to beginning internet sales. A corporate entity representing multiple stores may notify the board in a single letter on behalf of affiliated spirits distillery or craft distillery licensees, as long as the liquor license numbers of all licensee locations utilizing internet sales privileges are clearly identified.

(5) **Delivery location.** Delivery shall be made only to a residence or business that has an address recognized by the United States postal service; however, the board may grant an exception to this rule at its discretion. A residence includes a hotel room, a motel room, or other similar lodging that temporarily serves as a residence.

(6) **Hours of delivery.** Spirits may be delivered each day of the week between the hours of 6:00 a.m. and 2:00 a.m. Delivery must be fully completed by 2:00 a.m.

(7) **Age requirement.**

(a) Under chapter 66.44 RCW, any person under (~~twenty-one~~) 21 years of age is prohibited from purchasing, delivering, or accepting delivery of liquor.

(b) A delivery person must verify the age of the person accepting delivery before handing over liquor.

(c) If no person (~~twenty-one~~) 21 years of age or older is present to accept a liquor order at the time of delivery, the liquor shall be returned.

(8) **Intoxication.** Delivery of liquor is prohibited to any person who shows signs of intoxication.

(9) **Containers and packaging.**

(a) Individual units of spirits must be factory sealed in bottles. For the purposes of this subsection, "factory sealed" means that a unit is in (~~one hundred~~) 100 percent resalable condition, with all manufacturer's seals intact.

(b) The outermost surface of a liquor package, delivered by a third party, must have language stating that:

- (i) The package contains liquor;

- (ii) The recipient must be (~~twenty-one~~) 21 years of age or older; and
- (iii) Delivery to intoxicated persons is prohibited.
- (10) **Required information.**
- (a) Records and files shall be retained at the licensed premises. Each delivery sales record shall include the following:
- (i) Name of the purchaser;
- (ii) Name of the person who accepts delivery;
- (iii) Street addresses of the purchaser and the delivery location; and
- (iv) Time and date of purchase and delivery.
- (b) A private carrier must obtain the signature of the person who receives liquor upon delivery.
- (c) A sales record does not have to include the name of the delivery person, but it is encouraged.
- (11) **Website requirements.** When selling over the internet, all website pages associated with the sale of liquor must display the spirits distillery or craft distillery licensee's registered trade name.
- (12) **Accountability.** A spirits distillery or craft distillery licensee shall be accountable for all deliveries of liquor made on its behalf.
- (13) **Violations.** The board may impose administrative enforcement action upon a licensee, or suspend or revoke a licensee's delivery privileges, or any combination thereof, should a licensee violate any condition, requirement, or restriction.

#### OTS-5809.1

AMENDATORY SECTION (Amending WSR 08-17-038, filed 8/14/08, effective 9/14/08)

- WAC 314-29-007 How may a licensee challenge the summary suspension of (~~his or her~~) their liquor license?** (1) Upon summary suspension of a license or permit by the board pursuant to WAC 314-29-006, an affected licensee or permit holder may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within (~~fifteen~~) 15 days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.
- (2) A hearing shall be held before an administrative law judge within (~~fourteen~~) 14 days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.
- (3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:
- (a) The licensee or permit holder is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee or permit holder will suffer irreparable injury. For purposes of this section, elimination of income from licensed or permitted activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

AMENDATORY SECTION (Amending WSR 18-21-115, filed 10/17/18, effective 11/17/18)

**WAC 314-29-040 Information about liquor license suspensions.**

(1) On the date a liquor license suspension goes into effect, a liquor and cannabis board enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor and cannabis board due to a violation of a board law or rule.

(2) During the period of liquor license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable liquor laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice (see WAC 314-01-005 for the definition of "licensed premises").

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor and cannabis board's suspension notice.

(3) During the period of liquor license suspension:

(a) A retail liquor licensee may operate (~~(his/her)~~) their business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor. No banquet permit or special occasion function may be held on the premises during a period of liquor license suspension.

(b) A nonretail licensee may operate (~~(his/her)~~) their business provided there is no sale, delivery, service, consumption, removal, or receipt of liquor.

(c) A manufacturer of alcohol may do whatever is necessary as a part of the manufacturing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsaleable during a suspension, provided it does not include bottling the product. The manufacturer may not receive any agricultural products used in the production of alcohol, crush fruit, or bottle alcohol during the period of suspension.

## OTS-5858.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions.** (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor and cannabis board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor and cannabis board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate (~~his/her~~) their business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate (~~his/her~~) their business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

## OTS-5810.1

AMENDATORY SECTION (Amending WSR 20-01-074, filed 12/11/19, effective 1/1/20)

**WAC 314-35-060 Seizure of vapor products.** (1) Any vapor products in the possession of a person acting as a distributor or retailer of vapor products, and who is not licensed as required under this chapter, chapter 70.345 RCW or both, or a person who is selling vapor products in violation of RCW 82.24.550(6), may be seized without a warrant by any agent of the board. Any vapor products seized under this subsection are deemed forfeited.

(2) Any vapor products in the possession of a person who is not a licensed distributor, delivery seller, retailer, or a manufacturer's representative, and who transports vapor products for sale without having provided notice to the board as required under WAC 314-35-053, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the

consignee or purchaser, and the quantity and brands of vapor products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of vapor products under this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the vapor products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without (~~his or her~~) their knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the board upon process issued by any superior court or district court having jurisdiction over the property.

(5) Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant; or

(b) The board has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(6) This section may not be construed to require the seizure of vapor products if the board's agent reasonably believes that the vapor products are possessed for personal consumption by the person in possession of the vapor products.

(7) Any vapor products seized by a law enforcement officer must be turned over to the board as soon as practicable.

#### OTS-5811.1

AMENDATORY SECTION (Amending WSR 12-24-032, filed 11/28/12, effective 12/29/12)

#### **WAC 314-42-120 Conduct of brief adjudicative proceedings.** (1)

Brief adjudicative proceedings shall be conducted by a presiding officer for brief adjudicative proceedings designated by the board. The presiding officer for brief adjudicative proceedings shall have agency expertise in the subject matter but shall not have personally participated in the decision to issue the initiating document.

(2) The parties or their representatives may present written documentation. The presiding officer for brief adjudicative proceedings shall designate the date by which written documents must be submitted by the parties.

(3) The presiding officer for brief adjudicative proceedings may, in ~~((his or her))~~ their discretion, entertain oral argument from the parties or their representatives.

(4) No witnesses may appear to testify.

(5) The presiding officer for brief adjudicative proceedings shall not issue an oral order. Within ~~((ten))~~ 10 business days of the final date for submission of materials or oral argument, if any, the presiding officer for brief adjudicative proceedings shall enter an initial order.

### OTS-5812.1

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-44-005 Agent's license required—Eligible employers defined—Certain classes limited—Bona fide entity defined—Prohibited practices.** (1) No person shall canvass for, solicit, receive or take orders for the purchase or sale of any liquor, or act as the agent for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person is holder of an agent's license as provided in RCW 66.24.310, and this regulation.

(2) An agent's license may be issued to the accredited representative of a person, firm, or corporation within the state of Washington holding any of the following licenses:

- (a) A beer certificate of approval license;
- (b) A beer distributor's license;
- (c) A brewer's license;
- (d) A beer importer's license;
- (e) A wine certificate of approval license;
- (f) A wine distributor license;
- (g) A domestic winery license;
- (h) A wine importer's license;
- (i) A spirits certificate of approval license;
- (j) A spirits distributor license;
- (k) A distiller or craft distiller license; or
- (l) A spirits importer license.

(3) An agent's license may be issued to the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine. A person, firm, or corporation so qualified, is herein defined to be an eligible employer. Such employer shall apply to the board for such an agent's license for ~~((his))~~ their accredited representatives on application forms prescribed and furnished by the board. This subsection shall not apply to drivers who deliver beer or wine or to domestic wineries or their employees. Employees of a domestic winery must have identification on them that indicates they work for the winery. Identification may be in the form of a winery's business card, employee badge, or similar identification.

(4) Any person acting as an independent contractor for a winery must have an agent's license. An independent contractor is defined as an independent business person who runs ~~((his or her))~~ their own busi-

ness that provides services to another individual or business. The independent contractor is a separate business entity. The earnings of a person who is working as an independent contractor are subject to self-employment tax.

(5) Every firm which applies for an agent's license under the provisions of this section shall furnish the board with satisfactory proof that such firm is in fact a bona fide business entity.

(6) Only the licensed agent of a distiller, manufacturer, importer, or distributor of spirituous liquor may contact retail licensees in goodwill activities when such contacts pertain to spirituous liquor products.

(7) No distiller, manufacturer, importer, or distributor, or agent thereof, shall allow, pay or rebate, directly or indirectly, any cash or merchandise to any retail licensee to induce or promote the sale of liquor, including the payment of tips to such licensees or their employees and the purchasing of drinks "for the house." Such persons, firms and licensees must operate in conformity with WAC 314-12-140, RCW 66.28.010, 66.28.040, and other applicable laws and rules.

(8) Upon the termination of the employment of a licensed agent, (~~his~~) their employer shall immediately notify the board and with such notice return to the board the agent's license issued to such person.

#### OTS-5859.1

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-60-080 Requests for public records.** An individual may request a public record orally or in writing. The LCB encourages all public records requests be submitted in writing. Public records requests may be sent to the LCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the LCB is available at its main office and on its website at lcb.wa.gov. A written request or public records request form must be submitted or presented to the public records officer or designee and may be sent to the LCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

(a) The name, organization, mailing address, telephone number, and email address of the requestor;

(b) The date and time of day of the request;

(c) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;

(d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described; and

(e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the LCB.

(2) If the public records officer or designee accepts a request other than in writing, (~~he or she~~) they will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 24-16-064, filed 7/31/24, effective 8/31/24)

**WAC 314-60-085 Processing public records requests.** (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days after receipt of the request, the public records officer or designee will do one or more of the following:

(a) Provide the records or make the records available for inspection and copying depending on the nature of the request;

(b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the LCB received the request.

(4) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask (~~him or her~~) them to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the LCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the LCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document.



If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, (~~he or she~~) they should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must review the assembled records within 30 days of the LCB's notification to (~~him or her~~) them that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that (~~he or she~~) they should contact the agency to make arrangements to review the records. If the requestor or a representative of the requestor fails to review the records within the 30-day period or make other arrangements, the LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

**(7) Providing copies of records.**

(a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the LCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the LCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the LCB's offices, the requestor must pay for and pick up the copies within 30 days of the LCB's notification to (~~him or her~~) them that the copies are available for pickup. The LCB will notify the requestor in writing of this requirement and inform the requestor that (~~he or she~~) they should contact the LCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the 30-day period, or fails to make other arrangements, the LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

**(8) Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the LCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the LCB keeps the record.

**(9) Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection or copies of records in installments, if (~~he or she~~) they reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the LCB prior to delivery of the installment. If, within 30 days, the requestor fails to pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

**(10) Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the LCB has com-

pleted the records request and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor.

(12) **Later discovered documents.** If, after the LCB has informed the requestor that it has provided all available records and closed a request, the LCB becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

## WSR 24-19-034

## EXPEDITED RULES

## DEPARTMENT OF REVENUE

[Filed September 10, 2024, 10:53 a.m.]

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of revenue (DOR) is implementing ESHB 2003 (2024) by adding the new leasehold excise tax exemption in RCW 82.29A.139 for affordable housing on public lands, and moving all existing affordable housing exemptions to the same portion of the rule. DOR is also codifying the existing leasehold excise tax exemptions in RCW 82.29A.137 for certain leasehold interests related to the manufacture of superefficient airplanes, and in RCW 82.29A.138 for certain amateur radio repeaters.

Reasons Supporting Proposal: This rule making implements ESHB 2003 (2024) and existing leasehold excise tax exemptions that had not been previously added to this rule.

Statutory Authority for Adoption: RCW 82.29A.140.

Statute Being Implemented: RCW 82.29A.139, 82.29A.138, and 82.29A.137.

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

Name of Proponent: DOR, governmental.

Name of Agency Personnel Responsible for Drafting: Darius Massoudi, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1572; Implementation and Enforcement: Jeannette Gute, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1599.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The expedited rule-making process is appropriate because DOR is incorporating statutory language into the rule.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Darius Mas-soudi, DOR, P.O. Box 47467, Olympia, WA 98504-7467, phone 360-534-1572, fax 360-534-1606, email DariusM@dor.wa.gov, BEGINNING September 12, 2024, 12:00 a.m., AND RECEIVED BY November 18, 2024, 11:59 p.m.

September 10, 2024

Brenton Madison  
Rules Coordinator

**OTS-5850.1**

AMENDATORY SECTION (Amending WSR 24-04-077, filed 2/5/24, effective 3/7/24)

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

(a) This rule explains the exemptions from leasehold excise tax provided by RCW 82.29A.125, 82.29A.130, 82.29A.132, 82.29A.134, 82.29A.135, ~~((and)) 82.29A.136, 82.29A.137, 82.29A.138, and 82.29A.139.~~ To be exempt from the leasehold excise tax, the property subject to the leasehold interest must be used exclusively for the purposes for which the exemption is granted.

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

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

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

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

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

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

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

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

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

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

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

(5) **Subsidized housing.**

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

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

- Owned in fee simple by the state of Washington; and
- Used as subsidized housing for residents subject to income qualification requirements.

If the United States Department of Housing and Urban Development holds the leasehold interest on the property it is exempt from leasehold excise tax. This is because the property is owned in fee simple by the state of Washington, used for subsidized housing, and the residents are subject to income qualification requirements.

(6) **Affordable housing on public lands.**

(a) All leasehold interests in public lands are exempt from leasehold excise tax when used for the placement of affordable housing under the following conditions:

(i) A lessee must commit to renting or selling 100 percent of the units as permanently affordable for low-income and moderate-income households; and

(ii) The term of the lease is at least 20 years.

(b) For purposes of this subsection, the following definitions apply:

(i) "Affordable housing" has the same meaning as provided in RCW 84.14.010 and means residential housing that is rented by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income. For the purposes of housing intended for owner occupancy, "affordable housing" means residential housing that is within the means of low or moderate-income households.

(ii) "Low-income household" has the same meaning as provided in RCW 84.14.010 and means a single person, family, or unrelated persons living together whose adjusted income is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and affordable development.

(iii) "Moderate-income household" has the same meaning as provided in RCW 84.14.010 and means a single person, family, or unrelated persons living together whose adjusted income is more than 80 percent but is at or below 115 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States Department of Housing and Urban Development.

(iv) "Public lands" has the same meaning as provided in RCW 79.02.010 and means lands of the state of Washington administered by the department of natural resources including, but not limited to, state lands, state forestlands, lands included in a state forestland pool, and aquatic lands.

**(7) Public employee housing.**

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

**(b) Examples.**

(i) A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

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

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

**(8) Military housing.**

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

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

unit offices, and other similar facilities for the support of military housing.

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

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

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

**(10) Interests consisting of 3,000 or more residential and recreational lots.** All leasehold interests consisting of 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

**(11) Nonprofit fair associations.**

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

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

~~**((7) Public employee housing.**~~

~~(a) All leasehold interests in public property or property of a community center which is exempt from property tax used as a residence by an employee of the public owner or the owner of the community center which is exempt from property tax are exempt from leasehold excise tax if the employee is required to live on the public property or community center which is exempt from property tax as a condition of his or her employment. The "condition of employment" requirement is met~~

only when the employee is required to accept the lodging in order to enable the employee to properly perform the duties of his or her employment. However, the "condition of employment" requirement can be met even if the employer does not compel an employee to reside in a publicly owned residence or residence owned by a community center which is exempt from property tax.

~~(b)~~ **Examples.**

~~(i)~~ A park ranger employed by the National Park Service, an agency of the United States government, resides in a house furnished by the agency at a national park. The ranger is required to be on call 24 hours a day to respond to requests for assistance from park visitors staying at an adjacent overnight campground. The use of the house is exempt from leasehold excise tax because the lodging enables the ranger to properly perform her duties.

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

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

~~(8-))~~ (12) **Interests held by enrolled Indians.**

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

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

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

~~((9-))~~ (13) **Leases on Indian lands to non-Indians.**



(a) Leasehold interests held by non-Indians (not otherwise exempt from tax due to the application of the balancing test described in WAC 458-20-192) in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States are exempt from leasehold excise tax if the amount of contract rent paid is greater than or equal to 90 percent of fair market rental value. In determining whether the contract rent of such lands meets the required level of 90 percent of market value, the department will use the same criteria used to establish taxable rent under RCW 82.29A.020 (2)(g) and WAC 458-29A-200.

(b) **Example.** Harry leases land held in trust by the United States for the Yakama Nation for the sum of \$900 per month. The fair market value for similar lands used for similar purposes is \$975 per month. The lease is exempt from the leasehold excise tax because Harry pays at least 90 percent of the fair market value for the qualified lands. For more information on the preemption analysis and other tax issues related to Indians, see WAC 458-20-192.

~~((10))~~ (14) **Annual taxable rent is less than \$250.**

(a) Leasehold interests for which the taxable rent is less than \$250 per year are exempt from leasehold excise tax. For the purposes of this exemption, if the same lessee has a leasehold interest in two or more contiguous parcels of property owned by the same lessor, the taxable rent for each contiguous parcel will be combined and the combined taxable rent will determine whether the threshold established by this exemption has been met. To be considered contiguous, the parcels must be in closer proximity than merely within the boundaries of one piece of property. When determining the annual leasehold rent, the department will rely upon the actual substantive agreement between the parties. Rent payable pursuant to successive leases between the same parties for the same property within a 12-month period will be combined to determine annual rent; however, a single lease for a period of less than one year will not be projected on an annual basis.

(b) **Examples.**

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

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

(iii) Grace leases a lot from the City of Flora, from which she sells crafts at different times throughout the year. She pays \$50 per month for the lot, and has a separate lease for each season during which she sells. She has one lease from May through September, and a separate lease for the time between Thanksgiving and Christmas, which might run 30 to 40 days, depending on the year. The leases will be combined for the purposes of determining the leasehold excise tax.

They relate to the same piece of property, for the same activity by the same lessee, and occur within the same year.

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

~~((11))~~ **(15) Leases for a continuous period of less than 30 days.** Leasehold interests that provide use and possession of public property or property of a community center which is exempt from property tax for a continuous period of less than 30 days are exempt from leasehold excise tax. In determining the duration of the lease, the department will rely upon the actual agreement and/or practice between the parties. If a single lessee is given successive leases or lease renewals of the same property, the arrangement is considered a continuous use and possession of the property by the same lessee. A leasehold interest does not give use and possession for a period of less than 30 days based solely on the fact that the lessor has reserved the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

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

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

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

~~(13))~~ **(16) Public works contracts.**

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

(b) **Example.** Assume Tinker Construction is a contractor performing work to construct a second deck on the Nisqually Bridge pursuant to a public works contract between the state of Washington and Tinker

Construction. During construction of the second deck on the Nisqually Bridge any leasehold interest in real or personal property created for Tinker Construction solely for the purpose of performing the work necessary under the terms of the contract is exempt from leasehold excise tax.

~~((14))~~ **(17) Correctional industries in state adult correctional facilities.**

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

(b) **Examples.**

(i) Assume ABC Retail Company, a for-profit corporation, operates and manages a business within a state prison under an agreement between it and the department of corrections. ABC Retail Company is exempt from leasehold excise tax for its use and possession of state property.

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

~~((15))~~ **(18) Camp facilities for persons with disabilities.**

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

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

~~((16))~~ **(19) Public or entertainment areas of certain baseball stadiums.**

(a) Leasehold interests in public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy, located in a county with a population of over 1,000,000 people, with a seating capacity of over 40,000, and constructed on or after January 1, 1995, are exempt from leasehold excise tax.

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

~~((17))~~ **(20) Public or entertainment areas of certain football stadiums and exhibition centers.** Leasehold interests in the public or entertainment areas of an open-air stadium suitable for national football league football and for Olympic and world cup soccer, with adjacent exhibition facilities, parking facilities, and other ancillary facilities constructed on or after January 1, 1998, are exempt from leasehold excise tax. For the purpose of this subsection, the term "public and entertainment areas" has the same meaning as set forth in subsection ~~((16))~~ **(19)** of this rule.

~~((18))~~ **(21) Public facilities districts.** All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW are exempt from leasehold excise tax.

~~((19))~~ **(22) State route 16 corridor transportation systems.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from leasehold excise tax. RCW 82.29A.132.

~~((20))~~ **(23) Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from leasehold excise tax. RCW 82.29A.134.

~~((21) Interests consisting of 3,000 or more residential and recreational lots.~~ All leasehold interests consisting of 3,000 or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from leasehold excise tax. Any combination of residential and recreational lots totaling at least 3,000 satisfies the requirement of this exemption. RCW 82.29A.136.

~~((22))~~ **(24) Historic sites owned by the United States government or municipal corporations.** All leasehold interests in property listed on any federal or state register of historical sites are exempt from leasehold excise tax if the property is:

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

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

~~((23))~~ **(25) Amphitheaters.**

(a) All leasehold interests in the public or entertainment areas of an amphitheater are exempt from leasehold excise tax if a private entity is responsible for 100 percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over 17,000 reserved and general admission seats and is in a county that had a population of over 350,000, but less than 425,000 when the amphitheater first opened to the public.

(b) For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or

which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" do not include office areas used pre-dominately by the lessee.

~~((24))~~ **Military housing.**

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

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

~~(25))~~ **(26) Community colleges and technical colleges.**

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

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

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

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

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

~~((26))~~ **(27) Anaerobic digesters.**

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

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

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

~~((27))~~ **(28) Exemptions for public or entertainment areas of certain arenas.** Leasehold interests in the public or entertainment

areas of the following two types of arenas are exempt from the leasehold excise tax:

(a) An arena with a seating capacity of more than 2,000; located on land owned by a city with a population over 200,000; and within a county with a population of less than 1,500,000. For the purposes of this paragraph, the term "public or entertainment areas" has the same meaning as set forth in subsection ~~((23))~~ (25) of this rule.

(b) Beginning October 1, 2023, an arena with a seating capacity of more than 4,000; located on land owned by, and within, a city with a population over 100,000; and private entities were responsible for 100 percent of the cost of constructing improvements to the arena which were not reimbursed by the public owner. For the purposes of this paragraph, "public or entertainment areas" has the same meaning as set forth in subsection ~~((23))~~ (25) of this rule, except that it also includes office areas used predominately by the lessee.

(i) A taxpayer claiming an exemption for this type of arena must file a complete tax performance report as provided in RCW 82.32.534.

(ii) This exemption does not apply to leasehold interests on or after October 1, 2033.

~~((28))~~ (29) **Certain facilities owned by the state parks and recreation commission.** Beginning January 1, 2023, leasehold interests in facilities owned by the state parks and recreation commission that are listed on the national register of historic places or the Washington heritage register are exempt from leasehold excise tax. This exemption expires January 1, 2034.

~~((29))~~ (30) **Electric vehicle infrastructure.**

(a) Until July 1, 2025, leasehold interests in public lands for the purpose of installing, maintaining, and operating electric vehicle infrastructure are exempt from leasehold excise tax.

(b) For purposes of this subsection, the following definitions apply:

(i) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(ii) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(iii) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, green electrolytic hydrogen production facilities, and renewable hydrogen production facilities. See RCW 82.29A.125.

(iv) "Green electrolytic hydrogen" means hydrogen produced through electrolysis, and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(v) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, co-

des, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(vi) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for energy input into the production process.

(vii) "Renewable resource" means: Water, wind, solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

~~((+30))~~ **(31) Manufacture of superefficient airplanes.**

(a) Until July 1, 2040, leasehold interests in port district facilities that are exempt from retail sales tax under RCW 82.08.980, or use tax under RCW 82.12.980, and used by a manufacturer engaged in the manufacturing of superefficient airplanes, are exempt from leasehold excise tax. A person claiming the business and occupation (B&O) credit under RCW 82.04.4463, for property taxes and leasehold excise taxes paid on property used for the manufacture of commercial airplanes is not eligible for this exemption. See RCW 82.29A.137.

(b) "Superefficient airplanes" has the same meaning as provided by RCW 82.32.550 and means twin aisle airplanes that carry between 200 and 350 passengers, with a range of more than 7,200 nautical miles, a cruising speed of approximately mach 0.85, and that use 15 to 20 percent less fuel than other similar airplanes on the market.

(c) A taxpayer claiming this exemption must annually file a complete tax performance report as provided in RCW 82.32.534.

**(32) Certain amateur radio repeaters.**

(a) Leasehold interests in property used for the placement of amateur radio repeaters that are made available for use by, or are used in support of, a public agency in the event of an emergency or potential emergency to which the agency is, or may be, a qualified responder, are exempt from leasehold excise tax. See RCW 82.29A.138.

(b) "Amateur radio repeater" means an electronic device that receives a weak or low-level amateur radio signal and retransmits it at a higher level or higher power, so that the signal can cover longer distances without degradation, and is used by amateur radio operators possessing a valid license issued by the federal communications commission.

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

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

(i) Generally, every new tax preference expires on the first day of the calendar year that is subsequent to the calendar year that is 10 years from the effective date of the tax preference.

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

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

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

## WSR 24-19-065

## EXPEDITED RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 16, 2024, 11:38 a.m.]

Title of Rule and Other Identifying Information: Chapter 16-516 WAC, Washington potato commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends the Washington potato commission WAC by removing gender-specific pronouns and replacing them with terms that are neutral and/or consistent throughout the chapter.

Reasons Supporting Proposal: This rule making was brought forward through a petition from a member of the public. This rule making clarifies the language without changing intent.

Statutory Authority for Adoption: RCW 43.23.025.

Statute Being Implemented: Chapter 15.66 RCW.

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

Name of Proponent: Washington potato commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-1887; Implementation and Enforcement: Chris Voigt, 108 South Interlake Road, Moses Lake, 509-765-8845.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited process is appropriate due to it being name changes and no impact to rule effects.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Megan Finkenbinder, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone 360-902-1887, fax 360-902-2092, email mfinkenbinder@agr.wa.gov, BEGINNING October 2, 8:00 a.m., AND RECEIVED BY November 19, 11:59 p.m.

September 16, 2024  
Derek I. Sandison  
Director

## OTS-5816.1

AMENDATORY SECTION (Amending Order and Findings, effective 7/23/56)

**WAC 16-516-003 Director's order making marketing order effective and creating a potato commission.** (1) Whereas, the director of agri-



culture of the state of Washington acting pursuant to and by virtue of the authority vested in ~~((him))~~ the director by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on June 6, 1956, that certain marketing order entitled, "Marketing Order for Washington Potatoes Providing for the Creation of a Washington Potato Commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090; and ~~((7))~~

(2) Whereas, the director of agriculture has found that more than ~~((fifty-one))~~ 51 percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington potatoes has been assented to in writing by more than ~~((sixty-five))~~ 65 percent of the producers who produced more than ~~((fifty-one))~~ 51 percent by volume of the said potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said marketing order for Washington potatoes providing for the creation of a Washington potato commission, said order to be effective at 12:01 a.m. July 23, 1956.

AMENDATORY SECTION (Amending WSR 17-05-033, filed 2/8/17, effective 3/11/17)

**WAC 16-516-010 Definitions.** The following terms shall have the meanings given in RCW 15.66.010, supplemented by the following additional definitions:

"Act" means the Washington state agricultural commodity commissions statute, chapter 15.66 RCW;

"Affected area" or "area of production" are synonymous and mean all of the state of Washington;

"Affected commodity" means potatoes as defined in this section;

"Affected handler" means any handler of potatoes;

"Affected producer" means any producer who is subject to this marketing order;

"Agricultural development" means activities intended to increase the efficiency, productivity, or fair market access of Washington potatoes and potato products;

"Commercial quantities" shall mean and include five hundredweight or more per growing season;

"Disclosure" means inspection or copying;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act ~~((for him or her))~~ on the director's behalf concerning some matter under this chapter;

"District" means the geographical divisions of the area of potato production established pursuant to the provisions of WAC 16-516-020;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, packing, shipping, selling, marketing, or distributing of potatoes that are not produced by the handler.

"Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" or "affected unit" are synonymous and mean and include each (~~(one hundred)~~) 100 pound unit or any combination of packages making a (~~(one hundred)~~) 100 pound unit of potatoes;

"Marketing season" or "fiscal year" are synonymous and mean the (~~(twelve)~~) 12-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state government;

"Potato commission" or "commission" are synonymous and mean the commission established pursuant to the provisions of WAC 16-516-020;

"Potatoes" means and includes all kinds and varieties of Irish potatoes grown in the state of Washington and marketed, sold or intended for use for human consumption;

"Producer" means any person engaged in the production of potatoes grown in Washington for market in commercial quantities, and it includes a landowner, landlord, tenant or other person that participates in the growing or producing of the affected commodity and who has a proprietary interest in the potatoes so produced. "To produce" means to act as a producer;

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

"Research" means scientific research conducted by a university or other accredited researcher on pest and disease surveys; pest and disease control tools or techniques; planting, harvesting, handling and other production or processing tools or techniques; health or nutritional qualities or benefits of potatoes or potato products; and environmental issues including, but not limited to, water use, water quality, water quantity, and erosion control related to production of potatoes or potato products. Results of agricultural research conducted under the provisions of this marketing order shall be public information;

"Sale" means a transaction wherein the property in or to potatoes is transferred from the producer to a purchaser for consideration.

"Sale" shall also include an agreement to acquire such property for a consideration;

"Unfair trade practice" means any practice that is unlawful or prohibited under the laws of the state of Washington including but not limited to Titles 15, 16, and 69 RCW and chapters 9.16, 19.77, 19.80, 19.84, and 19.83 RCW, or any practice, whether concerning interstate or intrastate commerce that is unlawful under the Federal Trade Commission Act of 1914, as amended (38 Stat. 719; 15 U.S.C. Sec. 41 et seq.) or the violation of or failure to accurately label as to grades and standards in accordance with any lawfully established grades or standards or labels.

AMENDATORY SECTION (Amending WSR 06-03-003, filed 1/4/06, effective 2/4/06)

**WAC 16-516-020 Potato commission.** (1) Establishment and membership. A potato commission is hereby established to administer this marketing order which shall be composed of nine members who shall be producers elected from districts as provided in subsections (2) and (3) of this section and five members who shall be appointed by the elected producer members as provided in subsection (4) of this section. In addition, the director shall appoint one member to the commission to represent the director as a voting member of the commission.

(2) Representative districts. For the purpose of nomination and selection of producer members of the commission, the affected area of the state of Washington shall be divided into three representative districts as follows:

(a) "District No. 1" shall be and include the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln.

(b) "District No. 2" shall be and include the counties of Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin.

(c) "District No. 3" shall be and include the counties of Skagit and all other counties in the state of Washington.

(3) Elected membership. Producer members shall be elected from the districts as follows:

(a) Positions 1, 2, 3, and 4 shall be elected from District No. 1.

(b) Positions 5, 6, 7, and 8 shall be elected from District No. 2.

(c) Position 9 shall be elected from District No. 3.

(4) Appointed membership.

(a) Positions 10, 11, 12, 13, and 14 shall be appointed by the elected producers as provided in subsections (1) and (5)(b) of this section.

(b) Position 15 shall be appointed by the director as provided in subsection (1) of this section.

(5) Membership qualifications. Commission members shall be citizens and residents of this state, over the age of (~~eighteen~~) 18 years.

(a) Producer members of the commission shall be producers of potatoes in the district in and for which they are nominated and elected. The producer members shall be and have been actively engaged in producing potatoes for a period of at least three years, and shall derive a substantial proportion of their incomes from the sale of potatoes. A producer member of the commission must have paid an assessment to the commission on potatoes in each of the preceding three calendar years. The qualifications of producer members of the commission as herein set forth must continue during their term of office.

(b) Members of the commission appointed by the elected producers to positions 10, 11, 12, 13, and 14 shall be potato producers or handlers or others active in matters directly relating to Washington state potatoes and have a demonstrated record of service in the potato industry in Washington state.

(6) Term of office. The term of office of the elected and appointed producer members of the commission shall be three years from the date of their election or appointment and until their successors are

elected or appointed and qualified. Commencing on July 1, 2005, the term of office for members of the commission shall be as follows: Positions 1, 5 and 7 shall terminate June 30, 2008; positions 3, 4 and 6 shall terminate June 30, 2006; positions 2, 8 and 9 shall terminate June 30, 2007; positions 10 and 11 shall terminate June 30, 2008; positions 12 and 14 shall terminate June 30, 2006; and position 13 shall terminate June 30, 2007.

(7) Nomination and election of commission members. Nomination and election of commission members shall be as set forth in the act and specified by the director. Dates will be set as follows:

(a) Not earlier than March 18<sup>th</sup> and not later than April 2<sup>nd</sup> of each year, the director shall give notice by mail to all producers in each district in which one or more open positions will occur in the commission and call for nominations. Nominating petitions shall be signed by five persons qualified to vote for such candidates. Such notice shall state the final date for filing said petitions which shall be not earlier than April 7<sup>th</sup> and not later than April 12<sup>th</sup> of each year.

(b) Not earlier than April 17<sup>th</sup> and not later than May 2<sup>nd</sup> of each year, the director shall mail ballots to all affected producers in each district in which one or more open positions will occur. Ballots must be received by the director not later than June 1<sup>st</sup> of such year. Such mailed ballot shall be conducted in a manner so that it shall be a secret ballot in accordance with rules adopted by the director. An affected producer is entitled to one vote.

(c) Each appointed producer member of the commission shall be elected by majority vote of the elected commissioners in a public vote at a public meeting held within (~~ninety~~) 90 days prior to the expiration of the appointed member's term.

(8) Vacancies. In the event of a vacancy on the board in an elected or commission-appointed position, the remaining members shall select a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant. Any member so appointed shall serve until the normal expiration of (~~his or her~~) their term.

(9) Powers and duties of commission. The commission shall have the following powers and duties:

(a) To administer, enforce, direct and control the provisions of this marketing order and of the act relating thereto;

(b) To elect a chairman and such other officers as the commission may deem advisable; and to select subcommittees of commission members;

(c) To adopt, rescind, and amend rules reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this marketing order;

(d) To employ and discharge at its discretion such administrators and additional personnel, attorneys, research agencies and other persons and firms that it may deem appropriate and pay compensation to the same;

(e) To acquire personal property and lease office space and other necessary real property and transfer and convey the same;

(f) To institute and maintain in its own name any and all legal actions, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities necessary to carry out the provisions of the act and of this marketing order;

(g) To keep accurate records of all its receipts and disbursements, which records shall be open to inspection and audit by the de-

partment and other legal agencies of the state and make annual reports therefrom to the state auditor;

(h) To borrow money and incur indebtedness;

(i) To make necessary disbursements for routine operating expenses;

(j) To collect the assessments of producers as provided in this marketing order and to expend the same in accordance with and to effectuate the purposes of the act and this marketing order;

(k) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of this marketing order during each fiscal year. The commission, at least ((~~forty-five~~)) 45 days prior to the beginning of its fiscal year, shall prepare and submit to the director its budget, research plan, and its commodity-related education and training plan;

(l) To accept and receive gifts and grants from private persons or private and public agencies and expend the same to effectuate the purposes of the act and this order;

(m) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes set forth in this marketing order;

(n) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes set forth in this marketing order. Personal service contracts must comply with chapter 39.29 RCW;

(o) To enter into contracts or agreements for research in the production, irrigation, processing, transportation, use, distribution and trade barriers impacting potatoes and potato products;

(p) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(q) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale or use of potatoes as requested by any elected official or officer or employee of any agency and as authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(r) To assist and cooperate with the department or any other local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect trade of the affected commodity;

(s) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to the affected commodity;

(t) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized by this marketing order;

(u) To establish a foundation using commission funds as grant money for the purposes established in this marketing order;

(v) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each producer's production for a minimum three-year period pursuant to RCW 15.66.140(18);

(w) To maintain a list of the names and addresses of persons who handle potatoes within the affected area and data on the amount and

value of the potatoes handled by each person pursuant to RCW 15.66.140(19) for a minimum three-year period;

(x) To maintain a list of names and addresses of all affected persons who produce potatoes and the amount, by unit, of potatoes produced during the past three years pursuant to RCW 15.66.143(1);

(y) To maintain a list of all persons who handle potatoes and the amount of potatoes handled by each person during the past three years pursuant to RCW 15.66.143(2);

(z) To check records of producers or handlers of the affected commodity during normal business hours to determine whether the appropriate assessment has been paid; and

(aa) To exercise such other powers and perform such other duties as are necessary and proper to effectuate the purposes of the act and of this order.

(10) Procedure for commission.

(a) The commission shall by resolution establish a headquarters which shall continue as such unless and until so changed by the commission, at which headquarters shall be kept the books, records and minutes of the commission meetings.

(b) The commission shall hold regular meetings at least quarterly, with the time and date thereof to be fixed by the resolution of the commission. Notice of the meetings shall be published in the potato commission newsletter and sent to the appropriate general and agricultural media outlets.

(c) The commission may hold such special meetings as it may deem advisable and shall establish by resolution the time, place and manner of calling such special meetings with reasonable notice as required in RCW 42.30.080.

(d) Any action taken by the commission shall require the majority vote of the members present, provided a quorum is present.

(e) A quorum of the commission shall consist of at least nine members.

(f) No members of the commission shall receive any salary or other compensation from the commission, except that each member shall be paid a specified sum to be determined by resolution of the commission, which shall not exceed the compensation rate set by RCW 43.03.230 or state travel expense rates in accordance with RCW 43.03.050 and 43.03.060 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, except the commission may adopt by resolution provisions for reimbursement of actual travel expenses incurred by members of the commission in carrying out the provisions of this marketing order pursuant to RCW 15.66.130.

(11) Limitation of liability of commission members and employees. Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in (~~his~~) their individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal agent, person, or employee, except for their own individual acts of dishonesty or crime. No such

person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 06-03-003, filed 1/4/06, effective 2/4/06)

**WAC 16-516-040 Assessments and assessment funds.** (1) Assessments levied.

(a) On and after the effective date of this order, there is hereby levied and there shall be collected by the commission, as provided in the act, upon all potatoes grown in the state an annual assessment of four cents per hundredweight which shall be paid by the producer thereof upon each and every hundredweight of potatoes sold, processed, delivered for sale or processing by ~~((him or her))~~ the producer or stored or delivered for storage when storage or delivery for storage shall be outside the boundaries of this state: Provided, that no assessment shall be collected on the following:

(i) Potatoes grown and sold for seed under an established seed certification program;

(ii) Potatoes sold for livestock feed, regardless of grade;

(iii) Potatoes sold for nonfood products, such as industrial starch;

(iv) Potatoes of a producer's own production used by ~~((him or her on his or her))~~ the producer on their own premises for seed, feed or personal consumption;

(v) Potatoes donated or shipped for relief or charitable purposes; or

(vi) Sales on a producer's premises by a producer direct to a consumer of ~~((five hundred))~~ 500 pounds or less of potatoes from a producer's own production.

(b) The commission may provide by rule for an assessment discount not to exceed ~~((twenty-five))~~ 25 percent of the total hundredweight on field run or ungraded potatoes to allow for cull potatoes not used or intended for use for human consumption.

(c) No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all potatoes sold, processed or delivered for sale or processing by all producers of potatoes for the fiscal year to which the assessment applies.

(2) Collection of assessment.

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore.

(b) Handlers receiving potatoes from the producer, including warehousemen and processors shall collect producer assessments from producers whose production they handle, and all moneys so collected shall be paid to the commission on or before the ~~((twentieth))~~ 20th day of the succeeding month for the previous month's collections. Each handler shall at times required by rule file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(c) Producer assessments may be paid before the potatoes are shipped off the farm or at different or later times. If assessments are paid after the potatoes are shipped off the farm, any person subject to the assessment shall give adequate assurance or security for its payments as the commission shall require by rule.

(d) The commission may adopt rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season and of the assessment discount, if any, allowable on field run or ungraded potatoes.

(e) No affected units of potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment herein provided for has been paid and the receipt issued, but no liability hereunder shall attach to common carriers in the regular course of their business. When any potatoes for which exemption as provided in subsection (1) of this section is claimed are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemptions.

(f) Any producer or handler who fails to comply with the provisions of this subsection as herein provided shall be guilty of a violation of this order.

(3) Funds.

(a) Moneys collected by the potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by the producer in excess of three percent of the total market value of all potatoes sold, processed, delivered for sale or processing during that period. Refund may be made only upon satisfactory proof given by the producer, which may include bills of lading, bills of sale, or receipts.

AMENDATORY SECTION (Amending WSR 17-05-033, filed 2/8/17, effective 3/11/17)

**WAC 16-516-205 Requests for public records.** (1) All requests for disclosure of public records must be submitted in writing directly to the commission's public records officer by mail at 108 Interlake Road, Moses Lake, WA 98837, or by email at publicrecords@potatoes.com. The written request should include:

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

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

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

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



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

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

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

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

## WSR 24-19-067

## EXPEDITED RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 16, 2024, 2:32 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-501 WAC, WSDA procedural rules—Commodity boards or commissions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to a petition for rule making, the department of agriculture (department) is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Reasons Supporting Proposal: RCW 43.01.160 requires state agencies to use gender-neutral terms in rules unless a specification of gender is intended. Replacing gender-specific terminology supports the department's commitment to integrate inclusive policies and procedures as outlined in the department's 22-25 strategic plan.

Gender-inclusive pronouns are pronouns that are not specifically gendered and can be utilized when referring to each other in the third person. They are linguistic tools that we use to refer to people. Using gender-neutral pronouns can help create a more inclusive and welcoming environment and show respect for people's gender identities.

Statutory Authority for Adoption: RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, 16.67.060, and 43.01.160.

Statute Being Implemented: Chapters 15.65 and 16.66 RCW.

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

Name of Proponent: Skye Theriot, private.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-1887.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendments in this proposal meet the criteria for expedited rule making specified in RCW 34.05.353 (1)(c) by clarifying the rule, without changing its effect, by replacing gender-specific pronouns with gender-inclusive pronouns.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Megan Finkenbinder, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone 360-902-1887, fax 360-902-2092, email [mfinkenbinder@agr.wa.gov](mailto:mfinkenbinder@agr.wa.gov), BEGINNING October 2, 8:00 a.m., AND RECEIVED BY November 19, 11:59 p.m.

September 16, 2024  
Derek I. Sandison  
Director

OTS-5815.1

AMENDATORY SECTION (Amending WSR 18-21-181, filed 10/24/18, effective 11/24/18)

**WAC 16-501-525 Unsigned ballot envelopes: Advisory votes, referenda, and board member elections.** The director of the department of agriculture is responsible for administering marketing order referenda under chapters 15.65 and 15.66 RCW and for administering elections for advisory votes and board member selection as authorized in RCW 15.24.035, 15.26.060, 15.28.023, 15.44.021, 15.65.240, 15.66.113, 15.88.050, 15.89.050, 15.115.060, and 16.67.060.

(1) The department will mail ballots to those eligible to vote in each election according to the terms of the applicable statute and marketing order. Each voter will be provided an official ballot, instructions for voting, a security envelope and return ballot-mailing envelope with a "Certificate of Eligibility" (certification) printed on the reverse side of the envelope.

(2) After casting a vote in the election, an eligible voter must place the ballot in the security envelope, which is then placed in the ballot-mailing return envelope with the certification on the reverse side. To validate (~~his or her~~) their ballot, the voter is required to complete, sign and date the certification.

(3) In the event a ballot is submitted to the department and the certification is not signed and dated in accordance with the instructions contained on the outside of the ballot-mailing return envelope or the ballot is returned in a different envelope without a certification, the ballot-mailing envelope will not be opened nor will the ballot it contains be counted. The unopened ballot-mailing envelope will be set aside and retained in accordance with the appropriate records retention schedule.

(4) Only validated ballots will be included in a ballot count.

(5) This rule applies to referenda, advisory votes, elections, and runoffs required by statute.

## WSR 24-19-068

## EXPEDITED RULES

## DEPARTMENT OF AGRICULTURE

[Filed September 16, 2024, 2:43 p.m.]

Title of Rule and Other Identifying Information: Chapter 16-520 WAC, Washington seed potato commission.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to a petition for rule making, the department of agriculture (department) is proposing to clarify current rule language by replacing all gender-specific pronouns with modern gender-inclusive pronouns.

Reasons Supporting Proposal: RCW 43.01.160 requires state agencies to use gender-neutral terms in rules unless a specification of gender is intended. This rule making clarifies the language without changing intent.

Gender-inclusive pronouns are pronouns that are not specifically gendered and can be utilized when referring to each other in the third person. They are linguistic tools that we use to refer to people. Using gender-neutral pronouns can help create a more inclusive and welcoming environment and show respect for people's gender identities.

Statutory Authority for Adoption: RCW 15.66.113, 43.01.160, and 43.23.025.

Statute Being Implemented: Chapter 15.66 RCW.

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

Name of Proponent: Skye Theriot, private.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, 1111 Washington Street S.E., Olympia, 360-902-1887; Implementation and Enforcement: Henry Bierlink, 204 Hawley Street, Lynden, 360-354-8767.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The amendments in this proposal meet the criteria for expedited rule making specified in RCW 34.05.353 (1)(c) by clarifying the rule, without changing its effect, by replacing gender-specific pronouns with gender-inclusive pronouns.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Megan Finkenbinder, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504, phone 360-902-1887, fax 360-902-2092, email mfinkenbinder@agr.wa.gov, BEGINNING October 2, 8:00 a.m., AND RECEIVED BY November 19, 11:59 p.m.

September 16, 2024  
Derek I. Sandison  
Director

OTS-5817.1

AMENDATORY SECTION (Amending Order and Findings, issued 9/18/56)

**WAC 16-520-003 Director's order creating seed potato commission and making marketing order effective.** (1) Whereas, the director of agriculture of the state of Washington acting pursuant to and by virtue of the authority vested in ~~((him))~~ the director by the provisions of the Washington Agricultural Enabling Act, being chapter 15.66 RCW, issued on August 17, 1956, that certain marketing order entitled, "Marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission," for the written referendum assent of the affected producers in accordance with RCW 15.66.090; and ~~((7))~~

(2) Whereas, the director of agriculture has found that more than ~~((fifty-one))~~ 51 percent of the affected producers have replied to the written referendum within the time specified by the director and that said marketing order for Washington seed potatoes has been assented to in writing by more than ~~((sixty-five))~~ 65 percent of the producers who produced more than ~~((fifty-one))~~ 51 percent by volume of the said seed potatoes reported produced in the state of Washington during the past five years; said determination being based upon the official affected producer list of seed potato producers established by the director pursuant to the provisions of RCW 15.66.060, which list is now on file in the department; said affected producers being qualified to assent to said marketing order;

(3) Now therefore, I, Sverre N. Omdahl, director of the department of agriculture of the state of Washington, acting pursuant to and by virtue of the authority vested in me by said act, do hereby make effective the said act, do hereby make effective the said marketing order for Washington seed potatoes providing for the creation of a Washington seed potato commission, said order to be effective at 12:01 a.m. October 1, 1956.

AMENDATORY SECTION (Amending WSR 17-09-074, filed 4/19/17, effective 5/20/17)

**WAC 16-520-010 Definitions.** Definitions for terms used in this chapter are also found in chapter 15.66 RCW, Washington State Agricultural Commodity Commissions Act. For the purposes of the seed potato marketing order, the following definitions shall apply:

"Act" means the Washington State Agricultural Commodity Commissions Act, chapter 15.66 RCW;

"Affected area" means and includes all of the state of Washington;

"Affected producer" means any producer who is subject to this marketing order;

"Commercial quantities" means ~~((five thousand))~~ 5,000 hundred-weight or more;

"Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act ~~((for him or her))~~ on the director's behalf concerning some matter under this marketing order or chapter 15.66 RCW;

"Disclosure" means inspection or copying;

"Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of seed potatoes that are not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler;

"Hundredweight" and "affected unit" are synonymous and mean and include each (~~one hundred~~) 100 pound unit or any combination of packages making a (~~one hundred~~) 100 pound unit of seed potatoes;

"Marketing season" and "fiscal year" are synonymous and mean the (~~twelve~~) 12-month period beginning July 1st of any year and ending upon the last day of June, both dates inclusive;

"Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society or any other organization of individuals or any unit or agency of local or state or federal government;

"Producer" means any person engaged in the business of producing or causing to be produced for market in the state of Washington seed potatoes in commercial quantities. "To produce" means to act as a producer;

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

"Sale" means a transaction wherein the property in or to seed potatoes is transferred from the producer to a purchaser for consideration. "Sale" shall also include an agreement to acquire such property for a consideration;

"Seed potato commission" and "commission" are synonymous and mean the commission established under WAC 16-520-020 consistent with chapter 15.66 RCW;

"Seed potatoes" means and includes all kinds and varieties of Irish seed potatoes grown in the state of Washington and marketed, sold or intended for use for seed purposes.

AMENDATORY SECTION (Amending WSR 10-22-008, filed 10/21/10, effective 11/21/10)

**WAC 16-520-035 Limitation of liability of commission members and employees.** Obligations incurred by the commission and any other liabilities or claims against the commission shall be enforced only against the assets of the commission in the same manner as if it were a corporation and no liability for the debts or actions of the commission shall exist against either the state of Washington or any subdivision or instrumentality thereof or against any other commission established pursuant to the act or the assets thereof or against any member officer, employee or agent of the commission in (~~his or her~~) their individual capacity. The members of the commission, including employees thereof, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for (~~his or her~~) their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other member of the commission. The liability of the members of the commission shall

be several and not joint and no member shall be liable for the default of any other member.

AMENDATORY SECTION (Amending WSR 18-01-053, filed 12/13/17, effective 1/13/18)

**WAC 16-520-040 Assessments and assessment funds.** (1) **Assessments levied.** There is hereby levied and there shall be collected by the commission, as provided in chapter 15.66 RCW, upon all seed potatoes of commercial quantities grown in the state an annual assessment which shall be paid by the producer thereof upon each and every hundredweight of seed potatoes sold, processed, delivered for sale or processing by ~~((him or her))~~ the producer or stored or delivered for storage when such storage or delivery for storage is outside the boundaries of this state. The assessment shall then be set by the seed potato commission at a regular meeting before July 15th of each year, to become effective from September 1st of the same year to August 31st of the following year. The assessment shall not be less than one cent or more than ~~((ten))~~ 10 cents per hundredweight. No assessment may be collected on the following:

(a) Seed potatoes of a producer's own production used by ~~((him or her on his or her))~~ the producer on their own premises for seed, feed or personal consumption;

(b) Seed potatoes donated or shipped for relief or charitable purposes; or

(c) Sales on a producer's premises by a producer direct to a consumer of ~~((five hundred))~~ 500 pounds or less of seed potatoes from a producer's own production.

No assessment levied or made collectable by the act under this order shall exceed three percent of the total market value of all such seed potatoes sold, processed or delivered for sale or processing by all producers of seed potatoes for the fiscal year to which the assessment applies.

(2) **Collection of assessment.**

(a) All assessments made and levied pursuant to the provisions of the act under this marketing order shall apply to the respective producer who shall be primarily liable therefore. To collect the assessments, the commission may require:

(i) Stamps to be known as "Washington seed potato commission stamps" to be purchased from the commission and fixed or attached to the containers, invoices, shipping documents, inspection certificates, releases or receiving receipts or tickets. Any stamps shall be canceled immediately upon being attached or fixed and the date of the cancellation shall be placed thereon;

(ii) Handlers receiving seed potatoes from the producer, including warehousemen and processors, to collect producer assessments from producers whose production they handle and all moneys so collected shall be paid to the commission on or before the ~~((twentieth))~~ 20th day of the succeeding month for the previous month's collections. Each handler shall at the times as required by rule, file with the commission a return under oath on forms to be furnished by the commission, stating the quantity of seed potatoes handled, processed, delivered and/or shipped during the period prescribed by the commission.

(iii) In the event payment of producer assessments occur before the seed potatoes are shipped off the farm or occur at different or

later times, such person subject to the assessment shall give adequate assurance or security for its payment as the commission shall require.

(b) The commission is authorized to make reasonable rules in accordance and conformity with the act and with this section to effectuate the collection of assessments. On or before the beginning of each marketing season, the commission shall give reasonable notice to all producers, handlers and other affected persons of the method or methods of collection to be used for that marketing season.

(c) No hundredweight unit or units of seed potatoes shall be transported, carried, shipped, sold, stored or otherwise handled or disposed of until every due and payable assessment has been paid and the receipt issued or stamp canceled, but no liability or obligation applies to common carriers in the regular course of their business. When any seed potatoes for which an exemption is claimed, as provided for in subsection (1) of this section, are shipped either by railroad or truck, there shall be plainly noted on the bill of lading, shipping document, container or invoice, the reasons for the exemption(s).

(d) Any producer or handler who fails to comply with the provisions of this section as herein provided shall be guilty of a violation of this order.

(3) **Funds .**

(a) Moneys collected by the seed potato commission pursuant to the act and this marketing order as assessments shall be used by the commission only for the purposes of paying for the costs or expenses arising in connection with carrying out the purposes and provisions of the act and this marketing order.

(b) At the end of each fiscal year the commission shall credit each producer with any amount paid by such producer in excess of three percent of the total market value of all seed potatoes sold, processed, delivered for sale or processing or delivered for storage or stored when such storage or delivery for storage was outside the boundaries of this state during that period. Refund may be made only upon satisfactory proof given by the producer which may include, bills of lading, bills of sale or receipts.



## WSR 24-19-087

## EXPEDITED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed September 17, 2024, 10:48 a.m.]

Title of Rule and Other Identifying Information: WAC 468-12-800(3) Categorical exemptions (regarding State Environmental Policy Act rules).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal corrects a contextual error when referencing subsections (17) and (18) from WAC 197-11-800.

Reasons Supporting Proposal: The reference in WAC 468-12-800(3) to WAC 197-11-800(18) is incorrect. When reading subsections (17) and (18) from WAC 197-11-800, it is subsection (17) that refers to information collection and research, not subsection (18), which refers to legal filings. The proposed correction changes the reference to subsection (17).

Statutory Authority for Adoption: RCW 43.21C.120.

Statute Being Implemented: RCW 43.21C.120.

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

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

Name of Agency Personnel Responsible for Drafting: Kerri Wheeler, Olympia, 360-549-6264; Implementation and Enforcement: Gretchen Coker, Olympia, 360-810-0964.

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

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

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This is a minor correction to an existing rule.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Steve Larsen, Washington State Department of Transportation, P.O. Box 47418, 310 Maple Park Avenue S.E., Olympia, WA 98504-7418, phone 360-705-7738, email [wac@wsdot.wa.gov](mailto:wac@wsdot.wa.gov), BEGINNING October 2, 2024, AND RECEIVED BY November 18, 2024, at 5:00 p.m.

September 17, 2024  
Nikki Nisbet, Acting Director  
Business Support Services

OTS-5422.1

AMENDATORY SECTION (Amending WSR 84-19-030, filed 9/14/84)

**WAC 468-12-800 Categorical exemptions.** The following activities of the department are within the categorical exemptions contained in the indicated subsections of WAC 197-11-800:

(1) The repair, maintenance, or minor alteration of existing private or public structures, facilities or equipment, as provided in WAC 197-11-800(3) ~~((7))~~ including, but not limited to:

(a) Burning of weeds or brush within right of way limits;

(b) Preparation, storage, and application of sand and de-icing chemicals;

(c) Disposal and/or treatment of sewage generated on transportation department property in accordance with state and local regulations;

(d) Right of way mowings;

(e) Snow removal and avalanche control;

(f) Erosion control measures;

(g) Stormwater disposal procedures not involving significant changes in existing drainage patterns and quantities outside of transportation right of way;

(h) Street, road, rail, and airport cleaning and sweeping;

(i) Litter pickup and disposal;

(j) Removal and disposal of debris;

(k) Application of right of way fertilizer;

(l) Planting, thinning, and removal of roadside, railyard, or airport vegetation as required for landscaping and maintenance purposes;

(m) Dead animal removal and disposal;

(n) Pavement burning;

(o) Maintenance and fencing of game crossings;

(p) Pit and sundry site reclamation;

(q) Waste oil disposal;

(r) Maintenance of chemical toilets;

(s) Control and disposal of roadway spills;

(t) The periodic application of approved pesticides to transportation rights of way to maintain design conditions as provided in WAC 197-11-800(24);

(u) All repair, maintenance, or minor alteration of existing transportation pavement, drainage facilities, rails, earthwork, bridges, tunnels, guardrails, railroad protective devices, signs, paths, trails, buildings, toll booths, radio and telephone equipment, air quality equipment, rest area facilities, storage facilities, pit sites, airports, and other physical features and structures within the jurisdiction of the transportation department.

(2) Adoptions or approvals of utility, transportation, and solid waste disposal rates, as provided in WAC 197-11-800(15) ~~((7))~~ including, but not limited to, the establishment of or changes in toll rates.

(3) Information collection and research, as provided by WAC 197-11-800 ~~((18))~~ (17) including, but not limited to, the development, adoption, and revision of transportation plans and six-year construction programs, and any other studies, plans, and programs which lead to proposals which have not yet been approved, adopted, or funded, and which do not commit the transportation department to proceed with the proposals contained therein.