

WSR 15-02-006
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)

[Filed December 26, 2014, 9:11 a.m., effective January 26, 2015]

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

Purpose: Amendments in Title 388 WAC remove medical references, support the creation of the housing and essential needs (HEN) referral program and remove references to the Alcohol and Drug Addiction Treatment and Support Act (ADATSA). These amendments are currently in effect via emergency rule making filed on October 31, 2014, as WSR 14-22-067. This permanent filing supersedes the emergency filing currently in effect.

Chapter 15, Laws of 2011, (2E2SHB 1738) designated the health care authority (HCA) as the single state agency responsible for the administration of Washington's medical assistance programs. This law also gave HCA the authority to adopt rules to carry out the medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. The department is eliminating corresponding medical assistance rules under Title 388 WAC. Amendments also support the creation of the new HEN referral program created under chapter 10, Laws of 2013, (SHB 2069) and also remove references related to ADATSA, as the legislature did not appropriate funds for ADATSA. Beginning January 1, 2014, ADATSA-related medical care services recipients are medicaid eligible under the Affordable Care Act.

Additional amendments spell out the acronym, ABD, identifying it as the aged, blind or disabled program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-406-0005, 388-406-0035, 388-406-0045, 388-424-0010, 388-424-0015, 388-436-0030, 388-450-0015, 388-450-0025, 388-450-0040, 388-450-0156, 388-450-0170, 388-472-0005, and 388-473-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030.

Other Authority: 2E2SHB 1738, chapter 15, Laws of 2011; chapter 10, Laws of 2013; and RCW 41.05.021, 74.04.050, 74.08.090, 74.09.035, 74.09.530, and the 2013 biennial budget.

Adopted under notice filed as WSR 14-12-076 on June 3, 2014.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-450-0156 (1)(d) was amended to eliminate "Washington apple health coverage" as a result of comments received.

WAC 388-418-0005 is withdrawn from this permanent rule making, as it will be pursued in another rule-making action.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: December 23, 2014.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-03 issue of the Register.

WSR 15-02-011
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-341—Filed December 26, 2014, 2:12 p.m., effective January 26, 2015]

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

Purpose: The purpose of this rule is to exempt hagfish from the ban and permit requirement on possession of, transport, transfer or sale of live hagfish. The effect of this rule change is to allow a live hagfish fishery and thereby expand opportunity as there are separate markets for live and frozen hagfish. The rule change will eliminate the need for a permit to transport live hagfish. The ban on live fish transport is intended to protect against the introduction of exotic diseases and for resource conservation purposes. Only hagfish species indigenous to Washington are exempted and conservation measures are being achieved through active fishery management actions.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-039.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 14-22-110 on November 5, 2014.

Changes Other than Editing from Proposed to Adopted Version: The adopted version includes a change to clarify text that could have been interpreted as applying to all the categories of fish listed as exceptions to the permit requirement only applies to the exemption for mosquito fish.

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

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

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

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

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

Date Adopted: December 19, 2014.

Philip Anderson
Director

AMENDATORY SECTION (Amending WSR 13-02-043, filed 12/21/12, effective 1/21/13)

WAC 220-20-039 Live fish—Import and transfer. (1)

It is unlawful for any person, group, corporation, association, or government entity to import into, transport, transfer, sell, or possess within the state of Washington live fish and/or the viable sexual products of fish without first obtaining a permit to do so from the director. The only exceptions ((#)) to the permit requirement are for aquarium fish, game fish, indigenous marine baitfish, indigenous hagfish species and mosquito fish (genus *Gambusia*). The exception for mosquito fish applies only when used by agencies authorized by chapter 17.28 RCW. The permit must accompany the fish and/or sexual products at all times within the state of Washington and must be presented to department employees on demand.

(2) For any permit issued under subsection (1) of this section, the director may impose conditions as necessary to ensure the protection of food fish populations from infectious, contagious, or communicable diseases and pests.

(3) It is unlawful to violate the terms and conditions imposed on any permit issued under subsection (1) of this section. In addition to penalties provided by law, violation of the permit terms and conditions may result in the suspension and/or revocation of the permit.

(4) A violation of this section is punishable under RCW 77.15.253, 77.15.290, or 77.15.750, depending on the species, value of the species, and the circumstances underlying the violation.

WSR 15-02-017

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 29, 2014, 11:44 a.m., effective January 29, 2015]

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

Purpose: WAC 458-20-178 (Rule 178) Use tax. This rule explains who is responsible for remitting use tax, and when and how to remit the tax. It also explains the imposition of use tax as it applies to the use of tangible personal property within Washington when the property was not subject to retail sales tax at the time of acquisition.

Rule 178 has been revised to delete verbiage in subsection (6) that is inaccurate because the example is no longer valid. Chapter 13, Laws of 2013 2nd sp. sess., made the example invalid when it created a use tax exemption for items less than ten thousand dollars, purchased ... , from a non-

profit organization or a library. While this specific exemption is scheduled to expire July 1, 2017, the example in subsection (6) could still be misleading and thus it has been removed.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-178 Use tax.

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

Adopted under notice filed as WSR 14-21-120 on October 17, 2014.

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

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

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

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

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

Date Adopted: December 29, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-09-036, filed 4/10/14, effective 5/11/14)

WAC 458-20-178 Use tax and the use of tangible personal property. (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax.

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

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(ii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated services; digital codes used to obtain digital goods or digital automated services; and remote-access software.

(iii) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

(iv) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

(vi) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.

(vii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax?** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

- Purchases directly from out-of-state sellers;
- Purchases through the internet, telemarketing, mail order; or
- Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state vendors and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. None of these vendors is required to collect Washington's retail sales tax. Use tax is due on all taxable items ordered including the annual subscriptions.

(b) **Example 2.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include the first act by which a person takes or assumes dominion or control over the article (as a consumer). It includes installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. (See RCW 82.12.010.) Multiple uses of the same article by the same person do not generally result in multiple use tax liabilities.

(4) **Measure of tax – Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines this value to generally be the purchase price of the article. There are a number of specific situations where this value may be different than the amount of consideration paid

or given by the buyer to the seller. See subsection (7) of this rule for exceptions.

(a) **When the value is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and include, but is not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) This is frequently referred to as the fair market value of the property. For additional information regarding the measure of tax for articles in these situations, refer to WAC 458-20-112, Value of products. Refer to subsection (4)(i)(i) of this rule for determining use tax when there is no similar article of like quality and character.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered into the accounting records and/or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of

property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" for the bailee is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

- The retail selling price of such new or improved product when first offered for sale; or
- The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used.

However, this measure of "value of article used" is a separate provision from RCW 82.12.0251 use tax exemption. The use tax exemption is provided to nonresidents bringing property into Washington for his or her use or enjoyment while temporarily within the state, unless the property is used in conducting a nontransitory business activity. The term "nontransitory business activity," for the purposes of this exemption, means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Reasonable rental value.** A reasonable rental value is normally determined by the rental price or using the fair market rental value of similar products of like quality and character if rental price is not reasonable. If a reasonable rental value cannot be determined because of the nature of property, such as it may not be possible to find similar products of like quality and character, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost \$100,000 and has a book life of forty-eight months results in a monthly rental value of \$3,083 $((100,000/48) + (100,000 \times .01))$. This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if

the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalog has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is first put to use in this state, unless an exemption is available.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

- (A) Using the department's web site at dor.wa.gov;
- (B) Calling the department's telephone information center at 1-800-647-7706; or
- (C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the twenty-fifth day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax?** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. (~~For instance, RCW 82.08.02573 provides a retail sales tax~~

~~exemption for certain fund-raising sales made by nonprofit organizations or, effective July 1, 2010, libraries (see chapter 106, section 214, Laws of 2010). Because~~) Where there is no complementary use tax exemption, the buyer/user is still responsible for remitting use tax on his or her use of the purchased property.

~~(Another)~~ For instance (~~where~~), there is no complementary use tax exemption to the retail sales tax exemption (~~is~~) in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer/user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

(i) **Example 4.** AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

(ii) **Example 5.** WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** The use of property acquired by gift or donation is subject to the use tax, unless the person gifting or donating the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is gifted or donated back to the original giftor or donor if the original giftor or donor previously paid the retail sales tax or use tax.

Example 6. John purchases a vehicle, pays retail sales tax on the purchase, and gifts the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary

gifts or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due on the value of the property when first used for the nonexempt or taxable purpose. For instance, RCW 82.12.0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use, and the buyer provides the seller with a completed reseller permit. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting

records to substantiate any claims the property was not put to intervening use.

(ii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer and/or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer and/or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer and/or distributor had not paid use tax, the customer would owe use tax on the reasonable rental value as this is a bailment situation. See subsection (4)(f) of this section for the measure of tax on bailed articles.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes.

(a) **Example 7.** A construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington.

(b) **Exemption.** For an exemption pertaining to use tax liability, see WAC 458-20-17401, Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.

WSR 15-02-018
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed December 29, 2014, 11:49 a.m., effective January 29, 2015]

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

Purpose: 2ESHB 1117, effective on June 12, 2014, provides a new REET exemption for transfers pursuant to a transfer on death deed and substantiation requirements to claim that exemption, as well as a change to the affidavit requirements for transfer on death deed transfers. WAC 458-61A-202 and 458-61A-303 need to be amended to reflect this new exemption and accompanying substantiation and affidavit requirements for transfers pursuant to transfer on death deeds. Amending these rules to reflect the new transfer on death deed provisions in ESHB [2ESHB] 1117 will provide taxpayers, practitioners, and counties with guidance on how to treat filings and recordings related to these transfers.

Citation of Existing Rules Affected by this Order: Amending WAC 458-61A-202 Inheritance or devise and 458-61A-303 Affidavit.

Statutory Authority for Adoption: RCW 82.45.150, 82.32.300, and 82.01.060(2).

Adopted under notice filed as WSR 14-22-060 on October 31, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 29, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

WAC 458-61A-202 Inheritance or devise. (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property

transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The transfer of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, and retain a life estate. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate

and Libby convey their property to Rex, while retaining a life estate, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Transfer on death deeds.** The transfer of real property pursuant to a transfer on death deed to the beneficiary(ies) named in the transfer on death deed occurs upon the death of the transferor and is generally not subject to the real estate excise tax. However, if the transfer of real property pursuant to a transfer on death deed satisfies a contractual obligation of the transferor owed to the beneficiary(ies) designated in the transfer on death deed, real estate excise tax is due on the transfer.

(8) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a trust instrument, a certified copy of the death certificate, and a copy of the trust instrument showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants with rights of survivorship and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order;

(f) **Transfer on death deeds.** If the property is being transferred pursuant to a transfer on death deed, the beneficiary(ies) of the transfer on death deed must record a certified copy of the death certificate to perfect title.

(g) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through ((e)) (f) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

AMENDATORY SECTION (Amending WSR 14-06-060, filed 2/28/14, effective 3/31/14)

WAC 458-61A-303 Affidavit. (1) **Introduction.** This section explains when a real estate excise tax affidavit is required for the transfer of real property. See WAC 458-61A-101 for procedures pertaining to transfers and acquisitions of a controlling interest in an entity owning real property in the state of Washington.

(2) **Affidavit required.** In general, an affidavit must be filed when ownership or title to real property transfers as evidenced by conveyance, deed, grant, assignment, quitclaim, or

any other document effectuating the transfer including, but not limited to, the following:

(a) Transfer establishing or separating community property, or in fulfillment of a settlement agreement incident to a dissolution of marriage, legal separation, or declaration of invalidity, or in fulfillment of a community property agreement under RCW 26.16.120;

(b) Transfer resulting from a court order;

(c) Transfer to secure a debt;

(d) Transfer of a taxable easement;

(e) A deed in lieu of foreclosure of a mortgage;

(f) A deed in lieu or declaration of forfeiture of a real estate contract;

(g) Transfer to an heir in the settlement of an estate;

(h) Transfer to or from the United States, the state of Washington, or any political subdivision or municipal corporation of this state;

(i) Transfer of development rights, water rights, or air rights;

(j) Transfer of leasehold improvements;

(k) Boundary line adjustments; ((e))

(l) Rerecording a document to correct a minor error, such as the legal description or spelling of a name; or

(m) Transfer pursuant to a previously recorded transfer on death deed when the beneficiary(ies) perfect title by recording a certified copy of the transferor's death certificate.

(3) **Affidavit not required.** The real estate excise tax affidavit is not required nor accepted for the following transactions including, but not limited to:

(a) Transfer of cemetery lots or graves;

(b) Transfer for assignment or release of security, stated on the face of the instrument:

(i) To secure or assign a debt; or

(ii) To provide or release collateral;

(c) A lease of real property that does not transfer lessee-owned improvements;

(d) A mortgage or deed of trust, satisfaction of mortgage, or reconveyance of a deed of trust;

(e) A seller's assignment of deed and contract;

(f) A fulfillment deed pursuant to a real estate contract;

(g) A community property agreement under RCW 26.16.120;

(h) Purchase of an option; ((e))

(i) An earnest money agreement;

(j) The recording of a transfer on death deed; or

(k) The revocation of a transfer on death deed.

(4) **Examples.**

(a) Lionel Construction has developed a group of new homes. It deeds a street to the homeowners' association upon completion of the development. This is done to clear title, which is an exempt transaction. The affidavit should cite the appropriate exemption rule, describe the exemption as "clearing title for street for homeowners' association," and have attached all department-required documentation.

(b) Webb Corporation transfers its interest in a parcel of real property to its wholly owned subsidiary, Watson Company. This is an exempt transaction because there is no change in beneficial ownership of the property. The affidavit must cite the appropriate exemption rule, describe the exemption as "transfer to wholly owned subsidiary; no change in

beneficial ownership," and have attached all documentation required by the department.

(c) Amy records a transfer on death deed naming her two children as beneficiaries. No affidavit is required when Amy records the transfer on death deed and no real estate excise tax is due on the transfer. When Amy dies, the transfer on death deed transfers the property to her two children. This is an exempt transaction because the transfer was pursuant to a transfer on death deed, and there was no other consideration on the transfer. However, in order to perfect title, both of Amy's children must sign an affidavit claiming the appropriate exemption (WAC 458-61A-202) and record a certified copy of Amy's death certificate along with the signed affidavit at the county where Amy recorded the transfer on death deed.

(5) **Multiple buyers.** When the transfer of property is to two or more buyers, the affidavit must clearly state the relationship between them as joint tenants, tenants in common, partners, etc., and identify the form and proportion of interest each is acquiring.

(6) Affidavit must be complete.

(a) Taxpayers must provide complete and accurate information on the affidavit, as well as all documentation required by the department for claimed tax exemptions. Incomplete affidavits will not be accepted.

(b) An affidavit is incomplete if any required information is omitted or obviously incorrect, such as the use of a nominal selling price. A nominal selling price is an amount stated on the affidavit that is so low in comparison with the fair market value assessment stated on the property tax rolls that it would cause disbelief by a reasonable person. In the case of a nominal selling price, the county assessed value will be used as the selling price, unless there is an independent appraisal showing a greater value.

(7) **Documentation required when claiming an exemption.** Claims of exemption from the real estate excise tax must be specific and include the following:

(a) Current assessed values of parcels involved as of the date of sale; and

(b) Complete reasons for the exemption, including reference to the specific tax exemption in this chapter, citing the specific WAC section and subsection providing the exemption, as well as a brief description of the exemption.

(8) **Completion of affidavit.** The department will provide a real estate excise tax affidavit to be completed by the taxpayer and filed with the agent of the county where the property is located. Affidavits will be furnished by the department to the county agents and accessible to the public in one or more formats to be determined by the department. Alternative forms may be used, as long as they are in a format accepted by the department.

In most instances, the affidavit must be signed by the seller or the seller's agent and the buyer or the buyer's agent, under oath, certifying that all information on the affidavit is complete and correct. However, an affidavit given in connection with the grant of an easement or right of way to a utility company, public utility district or cooperative, or a governmental entity needs to be signed only on behalf of the entity purchasing the utility right of way or easement. In addition, an affidavit given in connection with the transfer of real prop-

erty pursuant to a transfer on death deed need only be signed on behalf of the transferor by the designated beneficiary(ies) named in the transfer on death deed.

(9) **Duplicate affidavits.** To accommodate the requirement that the affidavit be signed by both the seller and buyer, or agents of each, identical affidavits may be submitted for a single transaction, one bearing the seller's or seller's agent's signature and one bearing the buyer's or buyer's agent's signature. Both affidavits must be complete and have identical information. The county agent will receipt one of the affidavits and attach the other affidavit to the receipted affidavit.

(10) **Retention of records.** The taxpayer must retain all records pertaining to the transaction for a period of at least four years from the date of sale.

WSR 15-02-019

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed December 29, 2014, 1:34 p.m., effective January 29, 2015]

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

Purpose: In response to requests from transit agencies, the Washington state department of transportation seeks more flexibility to allow in-lane transit vehicle stops when appropriate and provide consistent language in rules that determine when and where a transit vehicle may stop temporarily in a roadway for the purpose of receiving or discharging passengers.

Citation of Existing Rules Affected by this Order: Repealing WAC 468-46-060; and amending WAC 468-46-010 and 468-46-020.

Statutory Authority for Adoption: RCW 46.61.560.

Adopted under notice filed as WSR 14-13-111 on June 18, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 31, 2014.

Kathryn W. Taylor
Assistant Secretary

AMENDATORY SECTION (Amending WSR 79-01-033, filed 12/20/78)

WAC 468-46-010 Engineering and traffic investigation of request for transit vehicle stop zone. When requesting a transit vehicle stop zone outside of any incorporated city or town, the public transit agency shall be responsible for conducting a field review to evaluate accessibility to the proposed location. When the requested location is within the roadway, the transit agency shall have a policy for in-lane stops that addresses safety and operational issues. Upon receipt of a request from a public transit authority for approval of a transit vehicle stop zone outside of any incorporated city or town, the department of transportation shall ~~((conduct an engineering and traffic investigation in an attempt to find a suitable location at which transit vehicles may stop wholly off the roadway for the purpose of receiving or discharging passengers))~~ assess the sight distance at the proposed location.

AMENDATORY SECTION (Amending WSR 79-01-033, filed 12/20/78)

WAC 468-46-020 Secretary of transportation or designee to approve transit vehicle stop zones. ~~((Should such a location not be found within a reasonable or practical distance suitable to the transit authority needs, and the public convenience requires that transit vehicles temporarily stop upon the roadway for the purpose of receiving or discharging passengers;))~~ The secretary of transportation or any assistant secretary or district engineer to whom the secretary has delegated the authority, may approve a transit vehicle stop zone ((at the most suitable location available having adequate sight distance based upon engineering judgment, with stopping sight distance as a minimum. The secretary of transportation may approve transit vehicle stop zones at locations not meeting the above requirements)) that conforms to WAC 468-46-010 or where the secretary deems the circumstances warrant such exceptions.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 468-46-060 Elimination of transit vehicle stop zones.

WSR 15-02-021 PERMANENT RULES

STUDENT ACHIEVEMENT COUNCIL

[Filed December 30, 2014, 8:16 a.m., effective January 30, 2015]

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

Purpose: Reflect the accurate name of the agency in the rules; and changes in the rules to reflect reciprocity agreements created between Washington and other states regarding the authorization of degree-granting institutions.

Citation of Existing Rules Affected by this Order: Amending WAC 250-61-010, 250-61-020, 250-61-030, 250-

61-040, 250-61-050, 250-61-060, 250-61-063, 250-61-065, 250-61-070, 250-61-080, 250-61-085, 250-61-100, 250-61-110, 250-61-120, 250-61-140, 250-61-160, 250-61-170, 250-61-180, 250-61-190, 250-61-200, and 250-61-210.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Adopted under notice filed as WSR 14-23-027 on November 12, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 21, Repealed 0.

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

Date Adopted: December 30, 2014.

Dr. Gene Sharratt
Executive Director

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-010 Purpose. The Degree-Granting Institutions Act, chapter 28B.85 RCW requires that degree-granting institutions operating in Washington obtain authorization from the ~~((higher education coordinating board))~~ Washington student achievement council, unless specifically exempted from the authorization requirement by the act. This chapter is declared by the ~~((board))~~ council as a supplement to the act in order to establish necessary regulations for the authorization of degree-granting institutions.

The purpose of the act is to ensure fair business practices and adequate quality among degree-granting institutions operating in the state of Washington and to protect citizens against substandard, fraudulent, and deceptive practices.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-020 Applicability. A degree-granting institution shall not operate, conduct business, grant or offer to grant any academic courses or degree programs unless the institution has obtained authorization from the ~~((board))~~ council, been granted a waiver of the requirements of authorization, or been determined by the ~~((board))~~ council to be exempt.

The act applies to:

(1) Institutions granting or offering to grant degree programs and/or academic credit courses either at or from a location within the state; and

(2) Institutions maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose or any function of a degree-granting institution other than contact with the institution's former students; and

(3) Institutions specifically targeting Washington citizens with promotion of their degree programs and/or academic credit courses.

The act does not apply to degree programs and academic credit courses offered exclusively from outside the state through individual and private interstate communication.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-030 Delegation and ~~((board))~~ council supervision. Unless otherwise indicated, the ~~((board))~~ council delegates authority for administering the act and these rules to the executive director.

Actions taken pursuant to these rules by the executive director or designee shall be subject to supervision by the ~~((board))~~ council.

Such actions shall be reported periodically to the ~~((board))~~ council for its review.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-040 Duties of executive director. In addition to other administrative responsibilities vested in the executive director of the ~~((higher education coordinating board))~~ Washington student achievement council under the act and this chapter, the executive director shall carry out the following administrative responsibilities:

(1) Process authorization applications, fee payments, bonds or security deposits, to include the denial and issuance of authorization, signed by the executive director or designee.

(2) Cause the payment of any unsatisfied final judgment against an authorized institution, from the resources available through the institution's surety bond or other security deposit.

(3) Upon written notice from an authorized institution, release the surety on the institution's bond or return the institution's security deposit, as prescribed in RCW 28B.85.070.

(4) In the event of impaired liability of the security, notify the institution of suspension until the security liability in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(5) To the extent that there is a payment, release the security to the extent of the payment.

(6) Establish and maintain all records called for under the provisions of the act and this chapter.

(7) Maintain a current inventory of degree-granting institutions authorized or exempted under this chapter, including student complaints against such institutions.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(2) ~~"((Board)) Council"~~ means the Washington ~~((higher education coordinating board))~~ student achievement council.

(3) "Executive director" means the executive director of the ~~((board))~~ council or the executive director's designee.

(4) "Accrediting association" means a national or regional accrediting association that is recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education.

(5) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(6) "College" means an institution which offers two-year and/or four-year programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(7) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(8) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(9) "Seminary" means an institution which offers one or more professional programs to candidates for the ministry, rabbinate, or priesthood.

(10) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(11) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(12) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(13) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(14) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a ~~((board-recognized))~~ council-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the ~~((board))~~ council; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the ~~((board))~~ council.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a (~~(board-recognized)~~) council-recognized accrediting association; authorized by the (~~(board)~~) council; or that has been exempted or granted a waiver by the (~~(board)~~) council.

(16) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(17) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(18) "Distance learning" means a form of educational instruction other than classroom instruction, to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(19) "Credit" means the unit by which an institution measures its course work. The number of credit assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(20) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(21) "To operate" means but is not limited to the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number (~~(or internet server)~~) for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(22) "Suspend" means that, due to deficiencies, the (~~(board)~~) council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the (~~(board)~~) council.

(23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemp-

tion, the (~~(board)~~) council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

(24) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education.

(25) "Additional program" means a degree program that:

(a) Differs in title and curriculum from any currently authorized program; or

(b) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(26) "Additional site" means a site at which the institution will provide both administrative services as well as educational instruction.

(27) State authorization reciprocity agreement (SARA) means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-060 Exemption criteria. No exemption from the requirements for degree authorization is considered to be permanent. The exemption granted is dependent upon the institution's maintenance of the conditions under which the exemption was granted.

The provisions of this chapter do not apply to:

(1) Honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Any public college, public university, public community college, or public technical college or institute operating as part of the public higher education system of this state.

(3) Institutions that have received institutional accreditation from an association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education, Provided:

(a) The institution has been continuously offering degree program(s) in Washington for fifteen years or more; and

(b) The institution was established originally within the state of Washington and has operated as the same organization continuously from that date until the present. An institution is considered to have operated as the same organization continuously if it has no significant alteration of primary location, ownership, or incorporation and no closure involving cessation of substantially all organized instructional and administrative activity; and

(c) The institution has been accredited as a degree-granting institution for ten years or more by an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(d) The institution maintains eligibility to participate in Title IV financial aid programs.

(4) A branch campus, extension center, or off-campus facility operating within the state of Washington, which is affiliated with an institution domiciled outside this state, Provided:

(a) It has continuously offered degree programs in Washington for fifteen years or more; and

(b) It has held separate institutional accreditation as a free-standing institution for ten years or more by an accrediting association recognized by the ((board)) council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(c) It maintains eligibility to participate in Title IV financial aid programs.

(5) Institutions offering instruction on a federal enclave solely to federal employees and their dependents. If the institution offers or advertises instruction for other persons, the institution shall be subject to authorization.

(6) Institutions recognized by the Washington state legislature as an accredited Washington degree-granting institution, provided the institution maintains all conditions specified in the legislation as part of the recognition.

(7) Tribally controlled Native American colleges.

(8) Institutions which offer program(s) of study whose sole stated objective is training in the religious beliefs of the controlling religious organization and/or preparation of students for occupations that are primarily church-related, Provided:

(a) The institution's mission reflects its religious nature; and

(b) The institution's degree program(s) in title and abbreviation, curriculum content, and objectives reflect the strictly religious nature of the institution; and

(c) The institution's program(s) require a prescribed program of study, which must be successfully completed prior to the granting of a degree; and

(d) The institution's program(s) of study are represented in an accurate manner in institutional catalogs, web sites, and other official published materials; and

(e) The institution does not claim or publicize accreditation from an accrediting association that is not recognized by the ((board)) council and the Secretary of the U.S. Department of Education.

(9) In the case of institutions which offer both religious and secular programs, the secular programs shall be subject to the requirements of chapter 28B.85 RCW.

(10) Institutions not otherwise exempt which offer only workshops and seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-063 Exemption requirements. In order to apply for and maintain an exemption from the requirements for degree authorization, an institution must comply with the following:

(1) The chief academic officer of the institution shall contact the ((board)) council staff and arrange for a preliminary conference to discuss the exemption criteria and procedures pertaining to the request for exemption.

(2) Any institution granted exemption from the requirements for degree authorization may be subject to periodic review by the ((board)) council to ensure that all criteria for the exemption continue to be met. The institution is to provide all information requested by the ((board)) council to assist in making this determination.

(3) The institution shall inform the ((board)) council immediately of any proposed changes within the institution and/or its offerings that may affect the exemption granted.

(4) The executive director may suspend or withdraw the exemption granted to an institution that fails to maintain the conditions under which the exemption was granted; engages in false advertising; or allows misleading representations to be made on its behalf. Suspension shall allow the institution a prescribed period of time to address the issues that may have brought the suspension. Withdrawal shall require the institution to cease all degree-granting activities immediately.

(5) In the case of religious exemption, a religious institution shall be required to place the following statement in a prominent position within any catalog, general bulletins, web sites, and course schedules: "The Washington (~~Higher Education Coordinating Board~~) student achievement council has determined that (name of institution) qualifies for religious exempt status from the Degree-Granting Institutions Act for the following programs: (List). The ((HECB)) council makes no evaluation of the administration, faculty, business practices, financial condition or quality of the offerings by this institution. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the ((HECB)) council at P.O. Box 43430, Olympia, WA 98504-3430."

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-065 Waiver of requirements. The executive director or the director's designee may waive or modify the authorization requirements contained in this chapter for a particular institution if the executive director or the director's designee finds that such waiver or modification will not frustrate the purposes of this chapter; and (1) that literal application of this chapter creates a manifestly unreasonable hardship on the institution; or (2) is an institution based out-of-state that provides distance learning courses and/or programs to Washington state residents under a state authorization reciprocity agreement entered into by the Washington student achievement council. No waiver granted under this chapter is permanent. The ((board)) council will periodically review institutions granted waivers and continue the waiver only if the conditions under which the waiver was initially granted remain in effect.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-070 Applicability to private vocational schools. Degree-granting private vocational schools' pro-

grams shall be regulated pursuant to the terms of an inter-agency agreement between the (~~(higher education coordinating board)~~) Washington student achievement council and the work force training and education coordinating board. As stipulated in the interagency agreement, degree programs shall be regulated by the (~~(higher education coordinating board)~~) Washington student achievement council and nondegree programs shall be regulated by the work force training and education coordinating board. Copies of the agreement are available from either agency upon request.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-080 Authorization standards. These standards form the basis for the review of an institution by the (~~(board)~~) council staff and guide the decisions of the executive director and the (~~(board)~~) council. To receive authorization, the institution shall meet all of the specific requirements of this chapter.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-085 Accreditation requirements. An institution operating in Washington shall:

(1) Be accredited by an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education; or

(2) Have applied for accreditation to an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education and such application is pending before the accrediting association; or

(3) Have been granted a temporary waiver by the (~~(board)~~) council of the requirement for accreditation based upon submission of a plan for accreditation as outlined in the initial authorization application; or

(4) Have been granted an exemption by the (~~(board)~~) council of the requirement for accreditation based upon the following condition: The school has filed, and kept current with appropriate amendments, at the (~~(higher education coordinating board)~~) Washington student achievement council an affidavit by each president of two separate accredited colleges or universities accredited by an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education stating that the majority of course credits offered by the unaccredited institution are generally acceptable or transferable to the accredited college or university which each president represents.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of the Washington inter-college relations commission.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education requirements for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

(f) Noncollegiate learning.

(i) Undergraduate credit for noncollegiate learning may be awarded when validated through a portfolio or similar procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process. Noncollegiate learning credit shall constitute no more than twenty-five percent of an undergraduate degree program.

(ii) Credit awarded for noncollegiate learning at the graduate level must be consistent with the minimum standards as published by the ~~((school's))~~ institution's accrediting association.

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or implied in the statute. The results of those evaluations shall be submitted to ~~((board))~~ council staff upon request.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-110 Student services and instructional resources requirements. (1) Student services. The institution shall provide adequate services for students in addition to formal instruction. These services shall normally include admissions, advising and guidance, financial assistance, student records, and disability accommodation.

(a) Advising and guidance services shall be readily available to students to assist them in program planning, course selection, and other academic activities.

(b) Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.

(c) Student records shall be maintained in accordance with the guidelines established by the U.S. Department of Education.

(d) Students with disabilities shall have access to, and reasonable accommodations in, all programs for which they are qualified consistent with the provisions of the Americans with Disabilities Act.

(e) Placement services and employment opportunities, if provided, shall be accurately described.

(2) Facilities for site-based instruction.

(a) The institution shall have adequate space, facilities and equipment, instructional materials, and staff to support quality education and services.

(b) The institution shall comply with all applicable ordinances, laws, codes, and regulations concerning the safety, health, and access of all persons on its premises.

(3) Disability accommodations. The institution shall provide reasonable accommodations for students and employees with disabilities. The institution shall inform students and employees of local, state, and federal laws regarding discrimination against people with disabilities.

(4) Library. The institution shall provide adequate and accessible library resources and facilities to support the educational needs of students and faculty. If the institution, educational site, or academic center does not maintain its own library on site, it must demonstrate that it can provide sufficient library resources to meet the needs of the program(s) through a written agreement with another institution or organization, or through other mechanisms.

(5) Financial resources.

(a) The institution shall have adequate financial resources necessary to sustain its purpose and commitment to students.

(b) In the case of an institution seeking initial authorization, it shall have sufficient financial resources to sustain itself for one full academic year without the assistance of revenue from tuition and fees.

(6) Financial records.

(a) The institution shall maintain financial records in conformity to generally accepted accounting principles.

(b) The institution shall be audited annually by an independent certified public accountant according to generally accepted auditing standards.

(c) Such records shall be made available to the ~~((board))~~ council upon request.

(7) Recruitment and publications. All publications relating to the institution, including advertisements, catalogs, and other communications shall be accurate and not misleading. Any catalog and/or web site that is made available to students describing the educational services offered shall include the statement of authorization as provided by the ~~((board))~~ council upon the granting of authorization.

Authorized institutions shall not advertise or publicize that they are approved, recommended, accredited, or otherwise endorsed by the ~~((board))~~ council. Such institutions may only state that they are authorized by the ~~((board))~~ council.

(8) Transcripts and academic credentials. The institution shall provide accurate and appropriate transcripts of credit for enrolled students and diplomas for graduates.

(a) For each student, the institution shall maintain and make available a transcript that specifies the name of the institution, the name of the student, all courses completed, and an explanation of the institution's evaluation system. Each course entry shall include a title, the number of credits awarded, and a grade or written evaluation. The transcript shall distinguish credits awarded by transfer, for prior learning experience, and credit by examination.

(b) The institution shall not be required to make copies of transcripts available unless all tuition and fees and other expenses owed by the student to the institution have been paid.

(c) In addition to transcripts, the institution shall maintain records to document the performance and progress of each student, including, but not limited to: Financial transactions, admissions records, and records of interruption for unsatisfactory progress or conduct. Transcripts shall be kept

permanently after a student has discontinued enrollment. All other records and accounts shall be kept for a minimum of six years after a student has discontinued enrollment.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads: "(Name of institution) is authorized by the Washington ~~((higher education coordinating board (HECB)))~~ student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The ~~((HECB))~~ council may be contacted for a list of currently authorized programs. Authorization by the ~~((HECB))~~ council does not carry with it an endorsement by the ~~((board))~~ council of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the ~~((HECB))~~ council at P.O. Box 43430, Olympia, WA 98504-3430."

(3) The catalog shall include elements as required by the ~~((board))~~ council in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-140 Security requirements. The institution is required to have on file with the ~~((board))~~ council an original surety bond or other security acceptable to the ~~((board))~~ council in lieu of the bond.

(1) For institutions seeking initial authorization, the surety bond or security amount for the initial period of authorization shall be twenty-five thousand dollars.

(2) For institutions seeking renewal authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for educational services in Washington, but not less than twenty-five thousand dollars nor more than two hundred fifty thousand dollars. For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees.

(3) Release of surety bonds and other securities shall be made in compliance with chapter 28B.85 RCW.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-160 Discontinuance or closure requirements. (1) In the event an institution chooses to discontinue a program and/or site currently available to Washington residents, but maintain other operations, it shall notify the ~~((board))~~ council well in advance of any such proposed action and provide information to the ~~((board))~~ council pertaining to accommodations to be made for any currently enrolled students to ensure they are provided the opportunity to complete their studies.

(2) In the event an institution proposes to discontinue all its operation, the chief administrative officer of the institution shall:

(a) Notify the executive director immediately by certified mail; and

(b) Furnish enrolled students with a written notice explaining the reasons for closure and what procedures they are to follow to secure refunds and their official records, and what arrangements have been made for providing continuing instruction at other institutions; and

(c) The institution shall make all reasonable efforts to ensure that current students are provided with alternative opportunities to complete their studies; and

(d) Provide for the permanent maintenance of official records in a manner acceptable to the executive director.

In the event it appears to the executive director that the official records of an institution discontinuing its operation are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the students and the ~~((board))~~ council, the executive director may seek a court order to take possession of the records and provide for their permanent maintenance.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-170 Application requirements. (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the ~~((board))~~ council staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by ~~((board))~~ council staff. The application packet will not be considered complete until all required elements have been received by the ~~((board))~~ council.

(c) For standard authorization, an initial application fee in the amount of five thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ~~((state treasurer))~~ student achievement council.

(d) For field placement authorization, an initial application fee in the amount of two thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ~~((state treasurer))~~ student achievement council.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by ~~((board))~~ council staff.

(b) No later than the due date provided by the ~~((board))~~ council, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by ~~((board))~~ council staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, a renewal application fee in the amount of two thousand five hundred dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ~~((state treasurer))~~ student achievement council.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ~~((state treasurer))~~ student achievement council.

(3) Additional program(s).

(a) If an institution proposes to offer additional program(s) of study during the current authorization period, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(4) Additional site(s).

(a) If an institution proposes to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization. The chief administrator, representing the new owner(s), shall notify the ~~((board))~~ council as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the executive director may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the ~~((board))~~ council no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

WAC 250-61-180 Application review procedures. (1) Staff analysis. Following receipt of a fully completed application, ((~~board~~)) council staff shall review and analyze the material submitted.

(2) Additional documentation and site visit. If ((~~board~~)) council staff determines it is necessary to verify or supplement the information provided in the application, the staff may require additional written documentation and/or arrange for a site visit. The expense for any site visits shall be paid by the institution applying for authorization.

(3) External consultants. At the discretion of the executive director, the expertise of other higher education experts may be used to assist in the evaluation of the documentation submitted. The cost for the services of the evaluation expert(s) shall be paid by the institution applying for authorization. The fee for such services is five hundred dollars per program per consultant, to be submitted by the institution upon request by the ((~~board~~)) council during the review process. The check is to be made payable to the ((~~higher education coordinating board~~)) Washington student achievement council.

(4) Comment period. Upon completion of a preliminary review, the ((~~board~~)) council shall post a notification of the request for authorization on its web site for a set period of time. Any persons having knowledge as to why the institution or its program(s) may not meet the requirements for degree authorization may provide comment to the ((~~board~~)) council on the proposal.

(5) Staff recommendations. After the final review has been completed, ((~~board~~)) council staff shall summarize its findings and develop a recommendation to the executive director regarding the application. This recommendation will take one of the following forms:

(a) That the institution be granted authorization, subject to biennial reporting and maintenance of the conditions under which authorization has been granted.

(b) That the institution be granted conditional authorization, subject to additional conditions as established by the ((~~board~~)) council, and maintenance of the conditions under which authorization has been granted.

(c) That the institution be denied authorization.

(6) Notification. Following the executive director's decision to authorize or deny the institution's request, a letter signifying the action shall be sent from the executive director to the chief administrative officer of the institution.

(a) The letter of authorization will serve as official authorization for the institution to operate in Washington for the specific programs and locations designated in the letter.

(b) An institution denied authorization shall be provided with an explanation as to how the institution and/or its programs failed to meet the criteria for authorization. Any institution denied standard authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of four thousand dollars. Any institution denied field placement authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of one

thousand dollars. The check is to be made payable to the Washington ((~~state treasurer~~)) student achievement council.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-190 Complaints. A student with a complaint against an authorized institution concerning loss of tuition and/or fees due to unfair or deceptive business practices by the institution shall make a reasonable effort to resolve the complaint directly with the institution. If a mutually satisfactory solution cannot be reached, the following procedure shall be pursued:

(1) Upon receipt of a written complaint that an institution has failed or is failing to comply with the provisions of the act or this chapter, and documentation that the student has made a reasonable effort to resolve the complaint directly with the institution, the executive director shall notify the institution by mail of the nature of the complaint and shall conduct an investigation.

(2) If preliminary findings indicate that a violation(s) may have occurred or are occurring, the executive director shall attempt, through mediation and conciliation, to effect compliance and bring about a settlement.

(3) If no agreement is reached, the executive director shall file a formal complaint with the ((~~board~~)) council and notify the institution of the conduct which warrants the complaint. Final resolution of the complaint shall be subject to hearing procedures provided for in this chapter and the institution may be subject to a summary suspension of its authorization, pending further proceedings for suspension, withdrawal or other actions deemed proper after the hearing.

(4) Any complaints must be filed within one year after the student's last recorded date of attendance in order to be considered by the ((~~board~~)) council. Only the student or the student's legal guardian may file a complaint on behalf of the student.

(5) Complaints may also be filed with the ((~~board~~)) council by an authorized staff member of the ((~~board~~)) council or by the attorney general.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-200 Suspension or withdrawal of authorization. (1) The executive director may suspend or withdraw an institution's authorization if it finds that:

(a) Any statement contained in the application for authorization is untrue; or

(b) The institution has failed to maintain the standards for authorization as detailed in the act and this chapter; or

(c) Advertising or representations made on behalf of, and sanctioned by, the institution is deceptive or misleading; or

(d) The institution has violated any provision of this chapter.

(2) The executive director may suspend the institution's authorization for a period of time if, in the executive director's judgment, the deficiencies can be corrected within the given time period. Upon suspension, the institution must immediately cease the recruitment and/or enrollment of new students. The institution may continue serving currently

enrolled students for the remainder of the term. Authorization may be reinstated after any deficiencies have been resolved to the satisfaction of the ~~((board))~~ council.

(3) Authorization shall be withdrawn only after the institution has been informed in writing of its deficiencies and been given reasonable time to meet the required standards. Upon withdrawal, the institution must immediately cease all degree-granting operations. To seek reinstatement of authorization, the institution must apply for initial authorization.

(4) The executive director's and ~~((board's))~~ council's actions are subject to due process hearing procedures of the Washington Administrative Procedure Act.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-210 Hearing process. (1) A party subject to the following actions may request a hearing:

(a) A denial of exemption from the Degree-Granting Institutions Act;

(b) A denial of authorization under the Degree-Granting Institutions Act;

(c) A cease and desist order issued under chapter 28B.85 RCW; or

(d) Other final action as defined in chapter 34.05 RCW, by the executive director that adversely affects the institution or student and which is contrary to the intent and purpose of the Degree-Granting Institutions Act or this chapter.

(2) A party must submit a request for a hearing to the executive director at the ~~((board))~~ council office no later than thirty days following receipt of the notice of final agency action. In the written request, the party must identify the final action in dispute and state that a hearing is requested.

(3) Any hearing called for under the act shall be conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW, as follows:

(a) The presiding officer, who shall be the executive director or the hearing officer designated by the executive director, shall conduct the hearing under the provisions of chapter 34.05 RCW and shall enter an initial order under RCW 34.05.461 (2) through (9).

(b) The ~~((board))~~ council shall review the initial order under RCW 34.05.464 and either enter a final order or remand the matter for further proceedings under RCW 34.05.464(7).

(c) If the challenged agency action is upheld, the party that initiated the hearing process shall pay the costs of the administrative hearing within sixty days following final disposition of the matter.

(d) Any further review of final action must be taken in accordance with RCW 34.05.510 et seq.

WSR 15-02-024

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 30, 2014, 9:11 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The department proposed to add new chapter 16-29 WAC, Animal disease traceability. The 2011 legislative session passed SHB 1538 which directed the department to adopt by rule a fee per head on cattle sold or slaughtered in the state or transported out of the state to administer animal disease traceability activities for cattle. The proposed new WAC establishes per head fees on cattle sold or slaughtered in the state or transported out-of-state, establishes a process to assess and collect the fees, and establishes a penalty matrix for failing to pay the fees.

Statutory Authority for Adoption: RCW 16.36.150.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-21-165 on October 22, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: December 30, 2014.

Don R. Hover
Director

Chapter 16-29 WAC

ANIMAL DISEASE TRACEABILITY

NEW SECTION

WAC 16-29-005 Purpose. The purpose of this chapter is to administer animal disease traceability activities by assessing a per head fee on cattle sold or slaughtered in the state or transported out of the state.

NEW SECTION

WAC 16-29-010 Definitions. In addition to the definitions found in RCW 16.36.005, 16.57.010, 16.58.020 and chapter 16-610 WAC the following definitions apply to this chapter:

"Custom slaughtering" means slaughtering performed by a person licensed under chapter 16.49 RCW to slaughter meat food animals for the owner of the animal.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Immediate slaughter cattle" means out-of-state cattle processed within twenty-four hours of entry to a federally inspected slaughter facility.

"Slaughter facility" means an establishment operated for the purpose of slaughtering meat food animals for sale or use as human food in compliance with the federal Meat Inspection Act.

NEW SECTION

WAC 16-29-015 Levy and collection of assessment.

(1) An assessment of \$0.23 per head is levied on all cattle sold or slaughtered in the state or transported out of the state except for:

(a) An assessment of \$0.05 per head is levied on all immediate slaughter cattle.

(b) No assessment is paid on cattle slaughtered and retained by the owner for personal consumption.

(2) Collection of assessments will be collected in the same manner as the livestock inspection fees under RCW 16.57.223 and 16.65.090 except for subsection (1)(a) of this section. For immediate slaughter cattle or cattle originating from a certified feedlot, the assessments will be collected by the slaughter facility and remitted to the department by the fifteenth day of the month following the month the transaction occurred.

In addition to the assessment collected by the slaughter facility, the slaughter facility shall furnish the department a list of all cattle slaughtered during any given month.

(3) Assessments owed from private individual sales, trades, gifting, barter, or any other action that constitutes a change of ownership of livestock per WAC 16-610-020(3), not occurring at a public livestock market or special sale licensed under chapters 16.65 RCW and 16-610 WAC or a slaughter facility, will be collected:

(a) When a change of ownership livestock inspection is conducted or when the transaction is reported through an electronic livestock movement reporting system per chapter 16-610 WAC.

(b) When utilizing the "green tag" as provided in RCW 16.57.160(3). The assessment will be added to the purchase price of each tag.

(4) Assessments are collected at a federally inspected slaughter facility when:

(a) Cattle are sold and slaughtered concurrently. This is considered a one assessment event and one fee shall be collected per head from the seller.

(b) Cattle originate from a certified feedlot licensed under chapter 16.58 RCW. The assessments will be collected by the slaughter facility and remitted to the department by the fifteenth day of the month following the month the transaction occurred.

(c) Cattle are slaughtered and no change of ownership has occurred, the per head fee shall be collected from the owner of the animal.

(5) Collection of assessments for custom slaughtering occurs when utilizing custom slaughter beef tags per WAC 16-610-100. The assessment will be added to the purchase price of each tag.

(6) Collection of assessments at public livestock markets and special sales licensed under chapter 16.65 RCW will be considered one assessment event, charged to the seller, when:

(a) Cattle are purchased and destined to an out-of-state location by the buyer.

(b) Cattle are purchased and destined for slaughter to an in-state federally inspected slaughter facility.

(7) When Washington origin cattle are transported for sale to an out-of-state market where the director conducts inspections of Washington origin cattle by agreement with the host state, it shall be considered one assessment event and one fee shall be collected per head from the Washington seller.

(8) Collection of assessments for out-of-state movement occurs when:

(a) Cattle are purchased and destined to an out-of-state location by the buyer. This is considered a one assessment event and one fee shall be collected per head from the seller.

(b) Cattle are moving out-of-state with no change of ownership.

NEW SECTION

WAC 16-29-020 Inspection of records. The slaughter facility must keep accurate records for six years for all cattle entering a federally inspected slaughter facility. Records must be open for review by authorized department of agriculture personnel during normal business hours, and must be provided to the department upon the director's request.

NEW SECTION

WAC 16-29-025 Penalty outline and schedule. (1) If any person fails to comply with the requirements of RCW 16.36.150 and this chapter, the director may issue that person a notice of infraction and may assess a penalty.

(2) Each violation is a separate and distinct offense. Penalties may be assessed per violation or per head.

(3) The following is the base penalty, not including statutory assessments.

Violation	Base Penalty
RCW 16.36.150	Failing to pay the traceability fee
First offense	\$50.00
Second offense within three years	\$125.00
Third and subsequent offenses within three years	\$250.00

WSR 15-02-025

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 30, 2014, 9:13 a.m., effective January 30, 2015]

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

Purpose: The department proposed to amend chapter 16-54 WAC to:

- Align with a recent federal order on porcine epidemic diarrhea virus;

- Remove certificate of veterinary inspection exemption for horses, goats, sheep, alpacas, and llamas traveling into Washington for round trip visits of no more than four days;
- Allow trichomoniasis samples to be collected and pooled for up to five bulls using quantitative polymerase chain reaction (qPCR) testing;
- Increase the tuberculosis testing requirement age from six months to twelve months on dairy cattle originating from a TB free state; and
- Update definitions and Code of Federal Regulation citations.

Citation of Existing Rules Affected by this Order: Amending WAC 16-54-010, 16-54-028, 16-54-030, 16-54-032, 16-54-060, 16-54-065, 16-54-068, 16-54-071, 16-54-082, 16-54-083, 16-54-085, 16-54-086, 16-54-090, 16-54-101, 16-54-105, 16-54-111, 16-54-145, 16-54-160, 16-54-170, and 16-54-180.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-21-162 on October 22, 2014.

Changes Other than Editing from Proposed to Adopted Version: The department proposed amending the virgin bull definition within WAC 16-54-010 to expand the definition allowing bulls that were less than eighteen months of age and that had no breeding contact with female bovines and originated from a herd where all bulls had tested negative by a qPCR test to trichomoniasis every year for the past three years. The department will not be adopting this proposal.

The department proposed removing the entry permit requirement on imported semen and embryos within WAC 16-54-071. The department will not be adopting this change and will keep original language that retains the entry permit requirement for importing semen and embryos.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 20, Repealed 0.

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

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

Date Adopted: December 30, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-010 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited free state" means a state that has been determined by United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service (APHIS) to have a zero prevalence of cattle and bison herds affected with bovine tuberculosis as listed in Title 9 C.F.R. Part ~~((77.79))~~ 77.7 (January 1, ~~((2006))~~ 2014).

"Approved veterinary laboratory" means a laboratory that has been approved by National Veterinary Services Laboratories or other USDA, APHIS-approved facility.

"Certificate of veterinary inspection" means a legible veterinary health inspection certificate on an official form (electronic or paper) from the state of origin or from ~~((APHIS,))~~ USDA, APHIS executed by a licensed and accredited veterinarian or a veterinarian approved by ~~((APHIS,))~~ USDA, APHIS. The certificate of veterinary inspection is also known as an "official health certificate."

"Class free and Class A, B, and C states" means states that are classified for brucellosis by USDA, APHIS in Title 9 C.F.R. Part 78.41 (January 1, ~~((2006))~~ 2014).

"Consigned" means to deliver for custody or sale.

"Dairy cattle" means all cattle, regardless of age or sex or current use, that are of a breed used to produce milk or other dairy products for human consumption including, but not limited to, Ayrshire, Brown Swiss, Holstein, Jersey, Guernsey, and Milking Shorthorn.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Domestic bovine" means domesticated cattle, including bison.

"Domestic equine" means horses, donkeys, mules, ponies, and other animals in the *Equidae* family.

"Entry permit" means prior written permission issued by the director to admit or import animals or animal reproductive products into Washington state.

"Exotic animal" means species of animals that are not native to Washington state but exist elsewhere in the world in the wild state.

"Feral swine" means animals included in any of the following categories:

- Animals of the genus *Sus* that are free roaming on public or private lands and do not appear to be domesticated;
- Swine from domesticated stocks that have escaped or been released or born into the wild state;
- European wild hogs and their hybrid forms (also known as European wild boars or razorbacks), regardless of whether they are free roaming or kept in confinement; or
- Animals of the family *Tayassuidae* such as peccaries and javelinas, regardless of whether they are free roaming or kept in confinement.

"Immediate slaughter" means livestock will be delivered to a federally inspected slaughter ~~((plant))~~ facility within twelve hours of entry into Washington state.

"Mature vaccinate" means a female bovine over the age of twelve months that has been vaccinated, under directions issued by the state of origin, with a mature dose of brucellosis vaccine.

"Modified accredited state" means a state that has been determined by USDA, APHIS to have a prevalence of bovine tuberculosis of less than 0.1 percent of the total number of herds of cattle and bison as listed in Title 9 C.F.R. Part 77.11 (January 1, ~~((2006))~~ 2014).

"Movement permit" means an entry permit that is valid for six months and permits the entry of domestic equine into Washington state.

"NPIP" means the National Poultry Improvement Plan.

"Official brucellosis test" means the official test defined by Title 9 C.F.R. Part 78.1 (January 1, ~~((2006))~~ 2014).

"Official brucellosis vaccinate" means an official adult vaccinate or official calfhooed vaccinate as defined by Title 9 C.F.R. Part 78.1 (January 1, ~~((2006))~~ 2014).

"Official individual identification" means identifying an animal ~~((or group of animals))~~ using USDA-approved ~~((or WSDA approved))~~ devices or methods, ~~((including, but not limited to, official tags,))~~ or an alternative form of identification agreed upon by the sending and receiving states, such as unique breed registry tattoos ~~((and registered brands when accompanied by a certificate of inspection from a brand inspection authority who is recognized by the director))~~ when accompanied by registration documentation. A group of animals may be identified by registered brands when accompanied by a certificate of inspection from a brand inspection authority recognized by the director when agreed upon by the sending and receiving states.

"Poultry" means chickens, turkeys, ratites, waterfowl, game birds, pigeons, doves, and other domestic fowl.

"Psittacine" means birds belonging to the family *Psittacidae* including, but not limited to, parrots, macaws, and parakeets.

"Restricted feedlot" means a feedlot holding a permit issued under chapter 16-30 WAC.

"Restricted holding facility" means an isolated area approved and licensed by the director, as advised by the state veterinarian.

"Stage I, II, III, IV, or V pseudorabies state" means states as classified by the Pseudorabies Eradication State-Federal-Industry Program Standards (November 1, 2003).

"USDA, APHIS" means the United States Department of Agriculture Animal and Plant Health Inspection Service.

"Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by dentition inspection by an accredited veterinarian, that is certified by the owner or the owner's designee as having had no breeding contact with female cattle.

"Wild animals" is defined in RCW 77.08.010(61).

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-028 Testing procedure requirements. (1) An accredited veterinarian or a veterinary technician under the direct supervision of an accredited veterinarian must collect and submit all test specimens.

(2) All livestock regulatory tests must be performed by ~~((a laboratory approved by the National Veterinary Services Laboratories))~~ an approved laboratory.

(a) Official tuberculosis tests must be conducted by a licensed accredited veterinarian.

(b) Technicians employed and approved by state, federal, or tribal government and directly or indirectly supervised by state, federal, or tribal animal health veterinarians may conduct routine surveillance tests.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-030 Certificate of veterinary inspection, and entry permit requirements. (1) All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at Title 9 C.F.R. (January 1, 2014) for movement or importation from foreign countries.

(2) Certificate of veterinary inspection:

(a) A certificate of veterinary inspection must accompany all animals entering Washington state, except where specifically exempted in Title 9 C.F.R. Part 86 (January 1, 2014) and this chapter. Certificates of veterinary inspection expire thirty days from the date of issuance.

(b) The certificate of veterinary inspection must show that all livestock listed have been examined and found in compliance with vaccination, testing ~~((and Washington animal identification requirements found in chapter 16-610 WAC))~~ and identification requirements under Title 9 C.F.R. Part 86 (January 1, 2014).

(c) Livestock entering Washington state for veterinary care or as part of a veterinary research project where there will be constant veterinary care or supervision for the duration of the time spent in Washington state are exempt from import test requirements and certificate of veterinary inspection requirements. An entry permit is required.

(d) Any exemption to the requirement for a certificate of veterinary inspection may be suspended during an emergency disease condition declared by the director.

~~((2))~~ (e) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:

(i) Consigned to federally inspected slaughter facilities for immediate slaughter; or

(ii) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or

(iii) Consigned to no more than one approved livestock market where import requirements can be met; or

(iv) Consigned to a category 2 restricted holding facility, unless originating from a state or country with less than free status; or

(v) Cattle moving interstate from contiguous states on grazing permits, as long as testing and vaccination requirements are met, as required by each state veterinarian.

(3) Entry permit: An entry permit is required on:

(a) All domestic bovine (including Mexican cattle, Canadian cattle, and bison);

(b) Swine;

(c) Rams;

(d) Equine identified on a certificate similar to the Washington Equine Certificate of Veterinary Inspection and Movement Permit (form AGR-3027);

(e) Equine from states or countries where the diseases listed in WAC 16-54-071 have been diagnosed;

(f) Intact male equine that test positive to equine viral arteritis; and

(g) Equine reproductive products from donors that test positive to equine viral arteritis.

~~((3))~~ (4) Entry permits are granted at the discretion of the director and may be obtained from:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577
360-902-1878.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-032 Certificate of veterinary inspection—Required information. (1) A certificate of veterinary inspection must meet the requirements in Title 9 C.F.R. Part 86 (January 1, 2014) and contain the following information:

(a) An entry permit number, when required~~((, that includes the physical addresses of the premises of origin and destination))~~;

(b) Date of inspection;

(c) Names and physical addresses of the consignor and consignee;

(d) Shipment information, including:

(i) Physical addresses of origin and destination of shipment;

(ii) Anticipated shipment date; ~~((and))~~

(iii) Number of animals in the shipment; and

(iv) Purpose for which the animals are to be moved.

(e) Certification that the animals are free from clinical signs or known exposure to any infectious or communicable disease;

(f) Test or vaccination status, when required;

(g) Description of each animal by:

(i) Identifying species;

(ii) Breed;

(iii) Age;

(iv) Sex of the animal;

(v) Color; and

(vi) ~~((Tag, tattoo, microchip, USDA-approved RFID (radio frequency identification device) ear tag, or other))~~ Official ((method of)) individual identification((, including ownership brands)).

(2)(a) All certificates of veterinary inspection must be reviewed by the animal health official of the state of origin and a copy must be immediately forwarded within seven calendar days from date of issuance to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577;

(b) By e-mail to ahealth@agr.wa.gov.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-060 Quarantine. Any animal entering Washington state without a required certificate of veterinary inspection, or required entry permit, or that does not meet the requirements of this chapter shall be ~~((quarantined))~~ subject to a quarantine order or a hold order at the owner's expense and subject to any required test, inspection, or vaccination at the owner's expense until released from quarantine by the director.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-065 Prohibited entries. (1) Any animal that is infected with or exposed to any infectious or communicable disease is prohibited from entering Washington state.

(2) Livestock susceptible to vesicular stomatitis that have been ~~((located))~~ in contact with any premises within the past thirty days ~~((within ten miles of any premises))~~ under quarantine or investigation for vesicular stomatitis are prohibited from entering Washington state.

(3) The following animals are prohibited from entering Washington state for any purpose:

(a) Cattle originating from Mexican dairies;

(b) Feral swine;

(c) Domestic swine from herds where brucellosis is known to exist;

(d) Deleterious exotic wildlife, as defined by RCW 77.08.010 and designated at WAC 232-12-017, except as provided in WAC 232-12-017.

(4) The Washington state department of health under WAC ~~((246-100-191-))~~ 246-100-197 animals, birds, pets ~~((—)),~~ measures to prevent human disease((?)), prohibits certain animals including bats, skunks, foxes, raccoons, and coyotes from being imported into Washington state except for exhibition by bona fide public or private zoological parks.

(5) Entry permits allowing bona fide public or private zoological parks to import bats, skunks, foxes, raccoons, and coyotes may be issued by the director in consultation with the secretary of the Washington state department of health.

~~((Exemptions:~~

~~((6) Infected or exposed animals destined for immediate slaughter, or with an entry permit to a research facility, or with an entry permit to a veterinary facility for treatment may enter at the discretion of the director.))~~

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-068 Restrictions. (1) It is a violation to import animals into Washington state that do not comply with the requirements of this chapter or any other Washington state regulation relating to animal health and care, or to the importation and movement of poultry, hatching eggs, and wildlife.

(2) ~~((All animals entering Washington state must comply with the requirements of USDA, APHIS regulations found at~~

~~Title 9 C.F.R. for movement or importation from foreign countries.~~

~~(3))~~(a) Livestock entering Washington state from a state where a reportable disease listed in WAC 16-70-010 has been diagnosed within the past thirty days must be accompanied by a valid entry permit and a certificate of veterinary inspection.

(b) The certificate of veterinary inspection shall also include written verification that the animals have not been exposed to any reportable disease.

(c) In the case of a state where vesicular stomatitis has been diagnosed, the certificate of veterinary inspection for susceptible livestock must be issued within twenty-four hours of shipment to Washington state and must contain:

(i) The temperature reading of each equine at the time of inspection; and

(ii) The following statement written by an accredited veterinarian:

"All animals identified on this certificate have been examined and found to be free from clinical signs of vesicular stomatitis. During the past thirty days, these animals have not been exposed to vesicular stomatitis."

(d) Cattle entering Washington state from a state or a foreign state or province where vesicular stomatitis has been diagnosed must be held at their destination separate and apart from all other cattle for a period of seven days and reexamined by the state veterinarian or designee at the end of that period.

(e) In the case of a state where contagious equine metritis (CEM) has been diagnosed, the certificate of veterinary inspection for equine must contain the following statement: "The equine and equine reproductive products listed in this document have not originated from a premises where *T. equigenitalis* has been isolated during the sixty days immediately preceding importation to Washington or from a location currently under quarantine or investigation for CEM. No female equine in the shipment has been bred naturally to, or inseminated with, semen from an intact male positive for CEM or from an intact male resident upon positive premises or under quarantine or investigation for CEM. The equine showed no clinical signs of CEM on the day of inspection or semen collection."

~~((4) Dogs, cats, and ferrets must be accompanied by an entry permit and proof of current rabies vaccination if they originate from a rabies quarantined area.))~~

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-071 Domestic equine and equine reproductive products—Importation requirements. Import health requirements.

(1)(a) In addition to the other requirements of this chapter, all domestic equine and equine reproductive products entering Washington state must be accompanied by a certificate of veterinary inspection.

(b) Equine vaccinated against equine viral arteritis (EVA) must be accompanied by a vaccination certificate.

(c) Reproductive products from donors that test positive for EVA must be accompanied by an application and entry permit.

(d) Domestic equine from the western states of Oregon, Idaho, California, Nevada, Utah, Arizona, Montana, Wyoming, Colorado, and New Mexico may enter Washington state for shows, rides, or other events either with a certificate of veterinary inspection or with a document similar to the Equine Certificate of Veterinary Inspection and Movement Permit. Individual trips cannot exceed ninety days.

(e) An itinerary of interstate travel must be filed with the department within fourteen days of the expiration of the movement permit.

(2) All certificates and forms may be obtained from and sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

~~(Exemptions to import health requirements.~~

~~(3) Horses traveling into Washington state with their Oregon or Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.))~~

Import test requirements.

Equine infectious anemia (EIA).

~~((4))~~ (3) All domestic equine, except foals under six months of age accompanying their negative tested dams, must have a negative test for equine infectious anemia (EIA) within twelve months before entering Washington state.

Exemptions to EIA test requirements.

~~((5))~~ (4) Domestic equine moving to Washington from Idaho or Oregon are excluded from EIA test requirements.

Equine viral arteritis (EVA).

~~((6) Intact males over six months of age must test antibody negative for EVA within thirty days before entry into Washington state or have proof of vaccination.~~

~~(7) Vaccinated equine that test antibody positive for EVA must be accompanied by a certificate of veterinary inspection that provides proof of:~~

~~(a) A prevaccination negative antibody blood test;~~

~~(b) Vaccination within ten days of the prevaccination blood test; and~~

~~(c) Approved method of animal identification. Approved methods of identification are:~~

~~(i) Photograph or clearly drawn picture of the animal (both sides and front);~~

~~(ii) Brand (hot iron or freeze brand);~~

~~(iii) Microchip; and/or~~

~~(iv) Lip tattoo.~~

~~((8))~~ (5) Intact males over six months of age and equine reproductive products from donors that test positive for EVA may enter Washington state only if accompanied by an entry permit and a statement on the certificate of veterinary inspection verifying that the consignee:

(a) Has been advised of the positive antibody test results and the associated risks of EVA infection;

(b) Agrees to follow the recommendations of the Office International des Epizooties of the World Organization of Animal Health regarding EVA and USDA recommendations found in the *Equine Viral Arteritis Uniform Methods and Rules*, effective April 19, 2004; and

(c) Consents to the shipment.

~~((9))~~ (6) Intact males that test antibody positive for EVA are required to have an entry permit and may be subject to quarantine or a hold order.

~~((10))~~ Equine semen and embryos require an entry permit and must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

~~((11))~~ Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

~~((12))~~ (7) Equine semen and embryos require an entry permit and must originate from donors that have proof of vaccination or a negative antibody test for EVA during the current breeding season.

(8) Equine semen and embryos from antibody positive donors must be used or implanted only in vaccinated or seropositive mares. These mares must be isolated for twenty-one days following insemination or implantation.

(9) Additional testing for EVA may be required during emergency disease conditions declared by the director.

Piroplasmosis.

~~((13))~~ (10) Any equine that has ever tested positive for piroplasmosis may not enter Washington state.

~~((14))~~ (11) Any equine that has originated from a country or state where piroplasmosis is endemic must be negative to a C-ELISA test within thirty days before entry into Washington state, and ~~((must be quarantined))~~ are subject to a quarantine order upon arrival and retested within sixty to ninety days. Horses that test positive on the post-arrival C-ELISA test are not permitted to remain in the state and must be removed.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-082 Domestic bovine animals—Importation requirements. Import health requirements.

(1) Domestic bovine entering Washington state must have a certificate of veterinary inspection and an entry permit issued by the office of the state veterinarian prior to entry. Entry permits are required on all cattle entering the state.

(2) All dairy cattle, regardless of age, require official individual identification unless:

(a) Consigned to federally inspected slaughter facilities for immediate slaughter; or

(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only.

(3) Before entering Washington state, Canadian cattle, including calves, must be identified on the right hip by a "CAN" brand (C open-A N).

~~((Exemptions to import health requirements.~~

~~(3) Unless an emergency rule is in effect, a certificate of veterinary inspection is not required for domestic bovine that are:~~

~~(a) Consigned to federally inspected slaughter plants for immediate slaughter; or~~

~~(b) Consigned to state-federal approved livestock markets for sale for immediate slaughter only; or~~

~~(c) Consigned to specifically approved livestock markets or restricted holding facilities where import requirements can be met; or~~

~~(d) Consigned to a restricted feedlot or a category 2 restricted holding facility, unless originating from a state or country with less than free status; or~~

~~(e) Cattle moving interstate from contiguous states on grazing permits.)~~

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-083 Domestic and foreign bovine brucellosis requirements. (1) Female cattle, domestic and foreign, must have an official calfhood brucellosis vaccination and legible vaccination tattoo before entry into Washington state.

~~(a) ((Cattle vaccinated with strain 19 vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by a number indicating the quarter of the year in which they were vaccinated, followed by the last digit of the year of vaccination.~~

~~(b))~~ Cattle vaccinated with RB-51 strain of vaccine must be permanently identified with a tattoo in the right ear that must bear the USDA registered V shield preceded by the letter R followed by the last digit of the year of vaccination.

~~((e))~~ (b) Brucellosis vaccinated cattle from foreign countries must present original vaccination certificates. On arrival, the cattle must be tattooed with the USDA V shield and the year indicated on the vaccination certificate.

(2) ~~((Mature))~~ Adult vaccinated domestic ~~((bovine))~~ cattle that are identified by a legible vaccination tattoo and ~~((USDA vaccination and USDA))~~ official individual identification ~~((tags))~~ will be allowed entry into Washington state if the state of origin allows ~~((mature))~~ adult vaccination and is of the same brucellosis class or higher.

(3) ~~((a))~~ Test eligible dairy cattle from all states and all beef cattle and bison from ~~((Class A states))~~ USDA-designated zones described in 9 C.F.R. Part 78, Subpart E (January 1, 2014) must be tested negative for bovine brucellosis within thirty days before entry. ~~((b) Beef cattle from selected brucellosis free states designated by the director may be required to have a negative test thirty days before entry.~~

~~((e))~~ Test eligible ~~((bovine))~~ cattle are:

(a) Dairy bulls over six months of age~~((:));~~

(b) Brucellosis vaccinated dairy females over twenty months of age~~((, and));~~

(c) Brucellosis vaccinated beef breed females over twenty-four months of age, when required; and

(d) Beef bulls over six months of age, when required.

(4) Test eligible bison, when required, are:

(a) Bulls over six months of age; and

(b) Nonvaccinated heifers over six months of age.

~~((4))~~ (5) All animals must be identified ~~((by USDA approved))~~ with official individual identification.

Exemptions to domestic bovine brucellosis test and vaccination requirements.

~~((5))~~ (6) Domestic bovine that are exempt from brucellosis testing and vaccination requirements are:

(a) Those cattle from a class free state consigned to ~~((restricted feedlots))~~ a category 2 restricted holding facility;

(b) Those consigned to federally inspected slaughter ~~((plants))~~ facilities for immediate slaughter;

(c) Heifer calves less than four months of age;

(d) Designated slaughter ~~((only dairy breed))~~ cattle ~~((from Oregon, Idaho, and Montana))~~ that ~~((are))~~ have been consigned to ~~((a))~~ no more than one state-federal approved livestock market;

(e) Bull calves less than six months of age;

(f) Steers and spayed heifers;

(g) Official brucellosis vaccinated dairy cattle less than twenty months of age;

(h) Official brucellosis vaccinated beef cattle less than twenty-four months of age;

(i) Cattle from a certified brucellosis free herd, as defined by Title 9 C.F.R. Part 78.1 (January 1, 2014); and

(j) Test eligible beef breed cattle and dairy cattle that are consigned to a state or federally approved livestock market to meet entry testing requirements. Heifer calves between four and twelve months of age may be consigned to a state-federal approved sale yard where they will remain until meeting vaccination requirements.

~~((6))~~ (7) Cattle that have not met the department's brucellosis requirements may enter ~~((, with approval from the director,))~~ a category 1 restricted holding facility in Washington state with an entry permit, a certificate of veterinary inspection, and official individual identification when required, until testing and vaccination requirements have been met. The category 1 restricted holding facility must be approved by the director and operated in accordance with ~~((a written agreement between the facility owner and the director. The restricted holding facility must be maintained and all inspections, testing, and vaccination done at the owner's expense))~~ chapter 16-30 WAC.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-085 Bovine tuberculosis requirements.

(1) Dairy cattle (including steers and spayed heifers) twelve months of age or older and originating from a tuberculosis free state must test negative for bovine tuberculosis within sixty days before entering Washington state.

(2) All ((domestic bovine)) dairy cattle and beef cattle six months of age or older must have a negative bovine tuberculosis (TB) test within sixty days before entry into Washington state and must be officially individually identified ((with a USDA silver identification ear tag, or a USDA approved RFID tag, or an orange brucellosis vaccination tag)) when:

(a) Originating from a state or country where ~~((a))~~ there is an active epidemiological investigation related to bovine infected with tuberculosis ~~((affected herd has been identified))~~ within the past ~~((twelve))~~ twenty-four months;

(b) ~~((Originating from a state or country where there is an ongoing epidemiological investigation related to bovine infected with tuberculosis;~~

~~((e))~~ Originating from a state or country where tuberculosis is endemic or present in wildlife populations; or

~~((4))~~ (c) Originating from a modified accredited advanced or lower state as defined by USDA, APHIS in Title 9 C.F.R. ~~((, Chapter 1,))~~ Part 77 (January 1, ~~((2010))~~ 2014) or a country equivalent in status. Such domestic bovine shall be held separate and apart from native cattle for sixty days and retested negative at least sixty days after entry into Washington state.

~~((2))~~ Dairy cattle (including steers and spayed heifers) six months of age or older must:

(a) ~~Test negative for bovine tuberculosis within sixty days before entering Washington state; and~~

~~Be identified with a USDA silver identification ear tag, or a USDA approved RFID tag, or an orange brucellosis vaccination tag.~~

~~(3) Dairy heifers, steers, and bull calves less than six months of age must:~~

~~Be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility;~~

~~Be held separate and apart from all other domestic bovine until they test negative for bovine tuberculosis after six months of age; and~~

~~Be identified with a USDA silver identification ear tag, or a USDA approved RFID tag, or an orange brucellosis vaccination tag.~~

~~(4))~~ (3) Dairy cattle are exempt from bovine tuberculosis testing requirements of subsections ~~((2))~~ (1) and ~~((3))~~ (2) of this section if they:

(a) Originate from an accredited bovine tuberculosis-free herd, as defined by USDA, APHIS in Title 9 C.F.R. ~~((, Chapter 1,))~~ Part 77 (January 1, ~~((2010))~~ 2014), and if an accredited herd number and the date of the last bovine tuberculosis test are shown on the certificate of veterinary inspection;

(b) Are consigned to federally inspected slaughter ~~((plants))~~ facilities for immediate slaughter;

(c) Are consigned to slaughter through state and federally approved public livestock markets and remain in slaughter channels; or

(d) Enter a category 2 restricted holding facility (restricted feedlot) to be fed for slaughter.

~~((5))~~ (4) Cattle used for rodeo or timed events.

(a) All cattle used for rodeo or timed events ~~((;))~~ except those imported directly from Mexico, must be accompanied by proof recorded on a certificate of veterinary inspection of a negative bovine tuberculosis test within twelve months before entry into Washington state.

(b) Calves under six months old that were born and have continuously resided in the state of Washington are excluded from this requirement.

~~((6))~~ (5) Mexican cattle - All cattle imported from Mexico that enter Washington, including those imported for rodeo or recreation purposes, must be sexually neutered and must bear official individual Mexican identification and ~~((brand))~~ "M" branded before entry.

(a) All Mexican cattle must be accompanied by proof of two negative bovine tuberculosis tests conducted in the United States after entry from Mexico. The second negative test must be a minimum of sixty days after the first test and within thirty days before entry into Washington state.

(b) All Mexican cattle that remain in the state of Washington shall be tested annually for tuberculosis.

(c) If Mexican cattle entering Washington state are not accompanied by proof of two negative bovine tuberculosis tests prior to entry, they will be issued a hold order or a quarantine order that requires the animals to be taken directly to a designated premises or facility and kept separate and apart from Washington cattle until the completion of required tests.

(d) Sexually intact Mexican beef cattle may enter only with a prior entry permit and at the discretion of the director.

(e) Mexican cattle are exempt from the second bovine tuberculosis test and isolation requirements if their official individual Mexican identification remains intact and they are consigned to a federally inspected slaughter (~~(plant)~~) facility for immediate slaughter.

~~((7))~~ (6)(a) Cattle that have not met the tuberculosis requirements in this subsection may enter, with approval from the director, a category 1 restricted holding facility in Washington state until testing requirements have been met.

(b) The category 1 restricted holding facility must be approved by the director and operated in accordance with a written agreement between the facility owner and the director.

(c) The restricted holding facility must be maintained and all inspections and testing done at the owner's expense.

AMENDATORY SECTION (Amending WSR 10-20-092, filed 9/30/10, effective 10/31/10)

WAC 16-54-086 Bovine trichomoniasis requirements. (1) ~~((Breeding))~~ Bulls (except bison) may be imported into the state of Washington if they meet the following requirements:

(a) The bulls originate from a herd wherein all bulls have tested negative for bovine trichomoniasis since they were removed from female cattle; or

(b) The bulls have tested negative to a bovine trichomoniasis quantitative polymerase chain reaction (qPCR) test within ~~((thirty))~~ sixty days before import and have had no contact with female cattle from the time of the test to the time of import; or

~~((The bulls have tested negative to a bovine trichomoniasis culture test, if from a state that recognizes a culture test as an official test))~~ Rodeo bulls for timed events and bucking bulls have tested negative for bovine trichomoniasis within the past twelve months and have a statement on the certificate of veterinary inspection certifying that the bulls have had no female breeding contact; or

(d) If the bulls originate from a herd where one or more bulls or cows have been found infected with bovine trichomoniasis **within the past twelve months**, the bulls must have two negative qPCR tests one week apart. The samples for each test must be collected within thirty days before cattle are imported into Washington state, and an import permit must

be obtained from the director and include a certifying statement that the bulls originated from an infected herd.

(2) Laboratory pooled qPCR samples collected from up to five bulls will be accepted if the following conditions are met:

(a) Bulls are twelve months of age and older that cannot be designated as virgin bulls and have had no breeding contact with females;

(b) Bulls originate from a herd where there is no history of trichomoniasis infection, and are part of a single herd, not assembled cattle; and

(c) Bulls are sampled for a herd diagnostic test without regulatory implications or are part of a disease investigation.

(3) Before arrival at their destination in Washington state, all imported bulls must be identified with official identification or an official trichomoniasis bangle tag.

~~((3))~~ (4) Bulls that enter Washington state without meeting the bovine trichomoniasis requirements of this section will be ((quarantined)) subject to a quarantine order or a hold order at the owner's expense until they have had two negative qPCR tests one week apart.

~~((4))~~ (5)(a) Any bull or cow that is positive to a trichomoniasis test, and any herd in which one or more bulls or cows are found infected with trichomoniasis is considered infected.

(b) In the case of bulls testing positive to trichomoniasis, the herd shall be ((quarantined)) subject to a quarantine order or a hold order pending an epidemiological investigation to determine the source of the infection, and as long as infection persists in the herd.

(c) Infected bulls will be ((quarantined)) subject to a quarantine order or a hold order and will not be used for breeding. They must be slaughtered, sold for slaughter, or sent to a restricted feedlot or category 2 restricted holding facility to remain in slaughter channels.

~~((5))~~ (6) Certification and proficiency testing and types of tests. The state veterinarian will determine trichomoniasis training for veterinarians and laboratories, and the types of tests used to determine trichomoniasis infection. All sampling will be obtained by pipette scrapings from the prepuce and glans of a bull.

(a) All trichomoniasis testing of bulls in Washington state shall be performed by a veterinarian accredited by the ~~((United States Department of Agriculture, Animal and Plant Health Inspection Service))~~ USDA APHIS((3)). In addition, all accredited veterinarians testing bulls in Washington state for trichomoniasis are required to successfully complete training and pass a trichomoniasis testing procedure proficiency examination provided by the department. Effective January 1, 2011, accredited veterinarians may not perform official trichomoniasis testing of bulls in Washington state until they have successfully completed the training and passed the proficiency examination.

A schedule of training opportunities is available by contacting the department at:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
360-902-1878

(b) Registered veterinarians shall only utilize official laboratories recognized by the state veterinarian for testing of trichomoniasis samples.

(c) Registered veterinarians collecting samples in the state of Washington shall submit results of all trichomoniasis tests and all official identification on official trichomoniasis test and report forms to the animal services division within five business days of receiving test results from an ~~((official))~~ approved laboratory or identifying virgin bulls with official trichomoniasis bangle tags.

(d)(i) Polymerase chain reaction is accepted as an official test when completed by ~~((a qualified))~~ an approved laboratory ~~((approved by the director))~~ and when the sample is received by the laboratory within forty-eight hours of collection.

(ii) Other tests for trichomoniasis may be approved as official tests by the state veterinarian after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established.

(iii) An official test is one in which the sample is received in the ~~((official))~~ approved laboratory in good condition within forty-eight hours of collection. Samples in transit for more than forty-eight hours will not be accepted for official testing and must be discarded. Samples that have been frozen or exposed to high temperatures must also be discarded.

Exemptions to bovine trichomoniasis test requirements.

~~((6))~~ (7) Virgin bulls are exempt from bovine trichomoniasis test requirements. If sold, virgin bulls must be officially identified and accompanied by a certificate signed by the owner or the owner's designee that they have had no breeding contact with female cattle. "Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by dentition inspection by an accredited veterinarian, that is certified by the owner or the owner's designee as having had no breeding contact with female cattle; or bulls that are less than eighteen months of age and have had no breeding contact with female bovines and originate from a herd where all bulls have been tested negative, by a quantitative polymerase chain reaction (qPCR) test, to trichomoniasis for the past three years.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-090 Goats—Importation and testing requirements. Import health requirements.

(1) All goats entering Washington state must be accompanied by a certificate of veterinary inspection. The certificate of veterinary inspection must state that the goats are free from clinical signs or known exposure to any infectious or communicable disease including, but not limited to, footrot, sore mouth, and caseous lymphadenitis.

(2) Female dairy goats six months of age or older must test negative for brucellosis and tuberculosis within thirty days before they enter Washington state.

(3) Sexually intact goats must have official ~~((USDA scrapie))~~ individual identification.

Exemption to import health requirements.

~~((Goats traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection-))~~ Dairy goats entering Washington for show or exhibition purposes and returning to their home state are exempt from testing requirements. A certificate of veterinary inspection is required.

(5) Goats entering Washington state for immediate slaughter at a USDA inspected slaughter facility are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-101 Sheep—Importation and testing requirements. Import health requirements.

(1) A certificate of veterinary inspection must accompany all sheep entering Washington state. The certificate of veterinary inspection must state that the sheep:

(a) Are clinically free from the signs of infectious diseases, including footrot, sore mouth, and caseous lymphadenitis; and

(b) Originated from a flock in which scrapie has not been diagnosed in the past five years or are from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program described in Title 9 C.F.R. Part 54 (January 1, ~~((2006))~~ 2014);

(c) Are officially identified with official ~~((USDA scrapie program))~~ individual identification. Sheep required to be officially individually identified include:

(i) All breeding sheep;

(ii) All sexually intact sheep imported for exhibition;

(iii) All sheep over eighteen months of age.

Import test requirements.

(2) All breeding rams over six months of age require an entry permit.

(3) The certificate of veterinary inspection must state that the rams:

(a) Tested negative on an ELISA test for *Brucella ovis* within thirty days before entering Washington state; and

(b) Are palpated and certified free of any evidence of ~~((epididymitis))~~ epididymitis; and

(c) Are individually identified with an official ~~((USDA scrapie program))~~ individual identification. Each ram's official individual identification number, test results, and the date of the test must be entered on the certificate of veterinary inspection accompanying the animal.

(4) Any purebred rams of Suffolk, Hampshire, Shropshire, Southdown or Montadale descent, or cross thereof; any nonpurebred rams known to have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors; and any nonpurebred rams of unknown ancestry with a black face, except for hair sheep, may enter Washington state for breeding purposes if they are determined by genetic testing before entry to be QR or RR at the 171 codon. Hair sheep known to

have Suffolk, Hampshire, Shropshire, Southdown or Montadale ancestors are considered blackface sheep.

Exemptions to import health and test requirements.

(5) Sheep ~~((traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the))~~ entering Washington for show or exhibition purposes and returning to their home state are exempt from testing requirements. A certificate of veterinary inspection is required.

(6) Sheep entering Washington state for immediate slaughter at a ~~((USDA))~~ federally inspected slaughter ~~((plant))~~ facility are exempt from the certificate of veterinary inspection and testing requirements.

(7) Official ~~((USDA approved serapie))~~ individual identification is not required on slaughter sheep less than eighteen months of age.

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-105 Llamas and alpacas. Import health requirements.

~~((+))~~ All llamas and alpacas imported into Washington state shall be accompanied by a health certificate stating that the animals are free from signs of or exposure to infectious or communicable disease.

~~((Exemptions to import health requirements.~~

~~((2))~~ Llamas and alpacas traveling into Washington state with their Oregon and Idaho owners in private conveyance for round-trip visits of not more than four days duration for purposes other than breeding are exempt from the certificate of veterinary inspection.

AMENDATORY SECTION (Amending WSR 08-14-057, filed 6/25/08, effective 7/26/08)

WAC 16-54-111 Swine—Importation and testing requirements. Import health requirements.

(1) All swine entering Washington state must be accompanied by an entry permit, a certificate of veterinary inspection, and official ~~((USDA approved))~~ individual identification.

(2) The certificate of veterinary inspection must contain the following certification: "To the best of my knowledge, swine represented on this certificate have not originated from a premises known to be affected by Porcine Epidemic Diarrhea virus (PEDv), and have not been exposed to PEDv within the last 30 days." The certification must be signed by both the owner of the swine and the certifying veterinarian.

(3) Feral swine are prohibited in Washington state.

Import test requirements.

~~((3))~~ (4) **Brucellosis.** All intact male and intact female swine more than six months of age must be tested negative for brucellosis within thirty days before entering Washington state or must originate from a USDA validated brucellosis free herd or state (Swine Brucellosis Control/Eradication State-Federal-Industry Uniform Methods and Rules, April~~((:))~~ 1998).

~~((4))~~ (5) **Pseudorabies.** No test is required from states recognized as Stage IV or Stage V by Pseudorabies Eradica-

tion State-Federal-Industry Program Standards, November 1, 2003.

~~((5))~~ (6) A negative pseudorabies test within thirty days before entry is required for swine from any state or area that loses Stage IV or Stage V status.

Exemptions to import test requirements.

~~((6))~~ (7) Swine shipped directly to a federally inspected slaughter ~~((plant))~~ facility for immediate slaughter are exempt from testing requirements.

Swine semen and embryos.

~~((7))~~ (8)(a) Swine semen and swine embryos entering Washington state for insemination of swine or implantation into swine shall be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian stating that the donor swine are not known to be infected with or exposed to pseudorabies, were negative to an official pseudorabies serologic test within thirty days prior to the collection of the semen or embryos or were members of a qualified pseudorabies negative herd, and had not been exposed to pseudorabies within thirty days prior to the collection of the semen or embryos.

(b) Brucellosis testing is not required on donor swine from brucellosis validated free states.

(c) Pseudorabies testing is not required on donor swine from pseudorabies Stage IV or Stage V states.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-145 Poultry and game birds, including ratites—Importation and testing requirements. Import health requirements.

(1) All poultry, excluding doves and pigeons, imported into Washington state must be accompanied by a:

(a) Certificate of veterinary inspection; or

(b) USDA NPIP VS form 9-3 (Report of Sales of Hatching Eggs, Chicks, and Poults); or

(c) USDA VS form 17-6 (Certificate for Poultry or Hatching Eggs for Export).

(2) The certificate of veterinary inspection and the USDA VS form 17-6 must include either the NPIP number or negative results of the required tests.

(3) Poultry or hatching eggs must originate from flocks or areas not under state or federal restriction.

(4) Each ratite entering Washington state must be permanently identified with ~~((USDA approved))~~ official individual identification. The type of official individual identification must be listed on the certificate of veterinary inspection.

Import test requirements.

(5) Poultry, poults, and eggs, excluding doves and pigeons, that originate from flocks or hatcheries that have a pullorum-typhoid clean rating given by the state animal health official or are from an NPIP participant flock must meet the classification requirements stated in subsection (8) of this section.

(6) If poultry do not originate from an NPIP participant flock, they must test negative for the diseases listed in subsection (8) of this section thirty days before entry into the state of Washington.

(7) If hatching eggs are from non-NPIP participant flocks, then the parent breeder flock must be tested for the diseases in subsection (8) of this section within thirty days before the hatching eggs enter the state of Washington.

(8) Poultry, excluding doves and pigeons, must have a negative test for the following diseases:

Disease control classifications	Poultry type			
	Egg-type chickens	Meat-type chickens	Turkeys	Other ¹
Pullorum-typhoid	YES	YES	YES	YES ²
Avian influenza	YES	YES	YES	YES
<i>Mycoplasma gallisepticum</i>	-	-	YES	-
<i>Mycoplasma synoviae</i>	-	-	YES	-
<i>Salmonella enteritidis</i>	YES (commercial) ³	-	-	-

¹Waterfowl, hobby, fancy, exhibition chickens, game birds, ratites, and backyard flocks.

²Excluding waterfowl.

³Commercial means producers with three thousand or more birds regardless of shipment size.

Exemptions to import health requirements.

(9) Doves, pigeons, waterfowl, game birds, and poultry destined for immediate slaughter are exempt from the certificate of veterinary inspection and testing requirements.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-160 Birds other than poultry, including ~~(exotic)~~ psittacine birds—Importation and testing requirements. Import health requirements.

(1) All birds other than poultry entering Washington state require a certificate of veterinary inspection that contains the following statement:

"To the best of my knowledge, the birds listed on this certificate are not infected with exotic Newcastle disease, psittacosis, or avian influenza and have been free from clinical signs of or known exposure to infectious or communicable disease during the past thirty days."

(2) All birds must be individually identified with a numbered leg band or in a manner appropriate to the species.

~~(Exemptions to import health requirements.~~

~~(3) Family pet birds are exempt from the certificate of veterinary inspection and identification requirements if they:~~

- ~~(a) Are two or less in number; and~~
- ~~(b) Have not been purchased within thirty days of entry into Washington state; and~~
- ~~(c) Are traveling by private conveyance with their owners.)~~

AMENDATORY SECTION (Amending WSR 07-14-056, filed 6/28/07, effective 7/29/07)

WAC 16-54-170 Dogs, cats, and ferrets—Importation and testing requirements. ~~(Import health requirements.)~~

(1) Dogs, cats, or ferrets entering Washington state require a certificate of veterinary inspection.

(2) The certificate of veterinary inspection for dogs, cats, or ferrets must identify each animal and certify that each animal at the time of entry is current on rabies vaccination according to the manufacturer's label, and does not originate from an area under quarantine for rabies.

(3) Dogs six months of age or older must be tested negative for heartworm or are currently on a heartworm preventative.

Exemptions to import health requirements.

~~((3))~~ (4) Dogs, cats, or ferrets less than ninety days of age do not require a rabies vaccination.

~~((4))~~ (5) Dogs and cats that originate in Washington state and visit Canada for thirty days or less are exempt from a certificate of veterinary inspection.

~~((5))~~ (6) Dogs, cats, or ferrets that are family pets and have current rabies vaccination certificates and are traveling by private conveyance with their owners are exempt from a certificate of veterinary inspection.

~~(Import test requirements.~~

~~(6) The director may require dogs six months of age or older to be tested negative for heartworm.)~~

Exemptions to import test requirements.

(7) Dogs that ~~(are family pets,)~~ have been owned by the same owner for more than one month ~~(;) prior to entering the state, and~~ are not going to be sold or have a change of ownership, and are traveling by private conveyance with their owner ~~((or handler))~~ are exempt from the heartworm test requirement.

AMENDATORY SECTION (Amending WSR 10-13-153, filed 6/23/10, effective 7/24/10)

WAC 16-54-180 Wild and exotic animals—Importation and testing requirements. Import health requirements.

(1) Wild and exotic animals entering Washington state must be accompanied by a certificate of veterinary inspection issued by an accredited veterinarian licensed in the state of origin, or accompanied by an international certificate of health.

(2) All wild and exotic animals must be accompanied by an entry permit.

Import test requirements.

(3) **Brucellosis:** Within thirty days before entering Washington state, negative serologic testing must be conducted on the following categories of captive wild or exotic animals that are more than six months of age:

Table 1.
Wild and exotic animals that must be tested for brucellosis

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella abortus</i>	<i>Camelidae</i>	<ul style="list-style-type: none"> • Vicuna • Guanaco
	<i>Cervidae</i>	<ul style="list-style-type: none"> • Elk • Caribou • Moose • Reindeer • Deer
	<i>Giraffidae</i>	<ul style="list-style-type: none"> • Giraffe • Okapi
	<i>Bovidae</i>	<ul style="list-style-type: none"> • (Antelope) • Wild cattle (gaur, banteng, kaupre, yak) • Bison (American bison, European bison) • Buffalo (Asian water buffalo, tamaraw, lowland anoa, mountain anoa, African buffalo)
	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • Wild sheep (big-horn sheep, Dall's sheep, mouflon, argoli, uriol, blue sheep, barbary sheep, red sheep) • Wild goats (Rocky Mountain goat, ibex, walia ibex, west Caucasian tur, east Caucasian tur, Spanish ibex, markhor)
<i>Brucella suis</i>	<i>Suidae</i>	<ul style="list-style-type: none"> • Wild swine (European wild boar, bearded pig, Jovan pig, pygmy hog, wart hog, giant forest pig, East Indian swine or Babirusa, African bush pig, peccaries)

Tested For	Species Scientific Name	Common Name Examples
<i>Brucella suis bio-var 4</i>	<i>Cervidae</i>	<ul style="list-style-type: none"> • Caribou • Reindeer
<i>Brucella ovis</i>	<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • All wild sheep and goats must be tested and found negative to <i>Brucella ovis</i> within thirty days before entering Washington state

(4) **Tuberculosis** (*Mycobacterium bovis* and *Mycobacterium tuberculosis*):

(a) Animals less than six months of age that are nursing negative tested dams may be excluded from tuberculosis test requirements.

(b) Within thirty days before entering Washington state, the animals listed in the following table must test negative for *M. bovis* and *M. tuberculosis* by a skin test or other approved test that follows federal tuberculosis protocols:

Table 2.
Wild and exotic animals that must be tested for tuberculosis

Species Scientific Name	Common Name Examples
<i>Ceropithecidae</i>	• Old world primates
<i>Elephantidae</i>	• Elephants ¹
<i>Hylobotidae</i>	• Gibbons
	• Lessor apes
<i>Pongidae</i>	• Great apes
<i>Bovidae</i>	<ul style="list-style-type: none"> • (Antelope) • Wild cattle
<i>Ovidae, Capridae</i>	<ul style="list-style-type: none"> • Wild sheep • Wild goats
<i>Cervidae, Giraffidae</i>	<ul style="list-style-type: none"> • Elk • Caribou • Moose • Reindeer • Deer • Giraffe • Okapi

¹Negative trunk wash or other USDA-validated tuberculosis test every twelve months.

(c) *Cervidae*, such as elk, deer, caribou, moose, and reindeer and *Giraffidae*, such as giraffe and okapi, must be from herds not known to be infected with, exposed to, or affected by tuberculosis. They must also test negative for *M. bovis* using the testing requirements defined in Title 9 C.F.R. Part 77.33 (January 1, ((2006)) 2014).

(d) For all captive wild or exotic animals not listed in Table 2 in subsection (2)(b) of this section, the following statement signed by the animal's owner or agent must be placed on the official certificate of veterinary inspection:

"To my knowledge, the animals listed on this certificate are not infected with tuberculosis and have not been exposed to animals infected with tuberculosis during the past twelve months."

(5) **Pseudorabies:** All wild swine imported for zoos, exhibitions or to a research facility must test negative for pseudorabies no more than thirty days before entry into Washington state and must be held in quarantine for thirty to sixty days pending a postentry retest.

(6) **Equine infectious anemia:** All wild horses, donkeys, and hybrids of the family *Equidae* must test negative on an approved test for equine infectious anemia no more than six months before entry into Washington state.

(7) **Elaphostrongylinae** (*Parelaphostrongylus tenvis* (meningeal worm) and *Elaphostrongylus cervis* (muscle worm)): Before entering Washington state, all *Cervidae* must be examined for *Elaphostrongylinae* infection in the absence of anthelmintic treatment that could mask detection of the parasite.

(a) **All *Cervidae* residing for at least six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian must have a negative fecal exam for dorsal-spined larvae made by an approved laboratory using the Baermann technique. Animals must be certified that they have not been treated with or exposed to anthelmintics for at least thirty days before testing.

(b) **All *Cervidae* residing for less than six months** west of a line through the eastern boundaries of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, and Texas or geographical boundaries as otherwise designated by the state veterinarian or from east of that line must be held in a pre-entry quarantine for thirty to sixty days and have two fecal tests for dorsal-spined larvae made by an approved laboratory using the Baermann technique.

(i) The first test must be conducted at least thirty days and not more than forty days before the second test.

(ii) Fecal samples of at least thirty grams per sample are to be collected by an accredited veterinarian from the animal's rectum and identified by the animal's official identification number.

(iii) During the thirty-day testing period, test animals must be held in quarantine and isolated from all other *Cervidae* not included in the shipment.

(iv) If any animal tests positive to either of the two fecal tests, neither that animal nor any other animal held in quarantine with the infected animal may be imported into Washington state.

(c) All imported *Cervidae* must be held for one hundred eighty days in an ((onsite)) on-site quarantine and be available for inspection by the director during this time.

(d) Every thirty, sixty, ninety, one hundred twenty, one hundred fifty, and one hundred eighty days after arrival, fecal samples from the animals must be tested by the Baermann technique in an approved laboratory and be found negative

for dorsal-spined larvae. Animals that test positive for dorsal-spined larvae must either be removed from Washington state or destroyed.

(e) To prevent the presence of the gastropod intermediate hosts of *Elaphostrongylinae* larvae, the quarantine site must be prepared and inspected before the imported animals enter. Preparation includes:

(i) Providing a hard surface, such as asphalt or concrete, on which to keep the animals;

(ii) Spraying the quarantine area with an EPA-registered molluscicide; and

(iii) Spraying a four-meter wide tract around the perimeter of the holding compound with an EPA-registered molluscicide. This perimeter tract must be treated once every five days and within twenty-four hours of precipitation (10 mm or more) to ensure that the gastropod population is kept to zero within the compound.

(8) **Rabies:** Any carnivorous mammal taken from the wild is prohibited from entering Washington state if rabies has been diagnosed in the state of origin during the past twelve months.

WSR 15-02-026

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 30, 2014, 9:14 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The department proposed to amend chapter 16-610 WAC to:

- Eliminate the livestock inspection exemption for private sales of unbranded, female, dairy breed cattle involving fifteen head or less;
- Clarify the need for a certificate of permit to accompany transactions involving cattle not being moved out-of-state when presented for an inspection by the buyer;
- Develop an electronic livestock movement reporting system for milk producers licensed under chapter 15.36 RCW by establishing (1) criteria for utilizing the system, (2) fees to support the system, and (3) conditions of licensure; and
- Add the reference for the animal disease traceability fee to the cost of custom slaughter beef tags.

Citation of Existing Rules Affected by this Order: Amending WAC 16-610-020 and 16-610-100.

Statutory Authority for Adoption: RCW 16.57.350.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-21-166 on October 22, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: December 30, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 10-21-016, filed 10/7/10, effective 11/7/10)

WAC 16-610-020 Cattle inspections for brands or other proof of ownership. (1) All cattle must be inspected for brands or other proof of ownership:

(a) Before being moved out of Washington state, unless the provisions of WAC 16-610-035(2) apply.

(b) When offered for sale at any public livestock market or special sale approved by the director.

(c) Upon delivery to any cattle processing plant where the United States Department of Agriculture maintains a meat inspection program, unless the cattle:

(i) Originate from a certified feedlot; or

(ii) Are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or an agency in another state or Canadian province authorized by law to issue such a certificate.

(2) All cattle entering or reentering any certified feedlot licensed under chapter 16.58 RCW must be inspected for brands or other proof of ownership before commingling with other cattle unless the cattle are accompanied by an inspection certificate issued by the director, or a veterinarian certified by the director, or an agency in another state or Canadian province authorized by law to issue such a certificate.

(3) All cattle must be inspected for brands or other proof of ownership at any point of private sale, trade, gifting, barter, or any other action that constitutes a change of ownership (~~(, except for individual private sales of unbranded female dairy breed cattle involving fifteen head or less)~~). For transactions involving cattle not being moved or transported out of Washington state:

(a) Cattle must be presented for an inspection within fifteen days from the date of the initial transaction and accompanied by a certificate of permit. It shall be the responsibility of the seller to notify the department immediately that a sale has occurred. It shall be the responsibility of the buyer to present the animals for inspection.

(b) Cattle sold for 4-H and FFA youth projects are exempt from the fifteen day inspection requirement and can be inspected, if not prior, when consigned to a terminal show.

(c) Until the earlier of January 1, 2016, or the date of notice that an electronic livestock movement reporting system is available for use, individual private sales of unbranded female dairy breed cattle involving fifteen head or less are exempt from the inspection requirement.

(4) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.

AMENDATORY SECTION (Amending WSR 07-14-057, filed 6/28/07, effective 7/29/07)

WAC 16-610-100 Identification of custom slaughtered animals. (1) Any person presenting cattle for slaughter to a licensed custom slaughterer must give the custom slaughterer a completed certificate of permit. The certificate of permit documents the ownership of the animal at the time of slaughter.

(2) Any person licensed as a custom slaughterer must complete and attach a custom slaughter beef tag to each of the four quarters of all slaughtered cattle that are handled. In order to identify the owner of the carcass, these tags must remain attached to the quarters until the carcass is processed and the quarters are cut and wrapped.

(3) Only the department may provide custom slaughter beef tags to custom slaughterers. The fee for each set of four custom slaughter beef tags is one dollar and fifty cents plus the animal disease traceability fee owed to the department under chapter 16.36 RCW.

(4)(a) Custom meat facilities may accept carcasses of cattle slaughtered by the cattle owner only if a certificate of permit, signed by the owner, accompanies the carcass.

(b) Without a certificate of permit signed by the owner, custom meat facilities can only accept carcasses from mobile or fixed location custom farm slaughterers or officially inspected slaughter plants.

WSR 15-02-027

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 30, 2014, 9:14 a.m., effective January 30, 2015]

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

Purpose: The department proposed to amend chapter 16-70 WAC to add porcine epidemic diarrhea virus (PEDv) and Coccidioidomycosis to the monthly reporting requirements and remove infectious bovine rhinotracheitis. PEDv was first diagnosed in the United States in May of 2013. Since then it has spread to twenty-four states and has killed as [an] estimated four to seven million suckling piglets. To assist in the control and eradication of a PEDv outbreak in Washington this virus is being added to the list of animal diseases that must be reported by producers, veterinarians, and laboratories. Coccidioidomycosis is being added to the list of reportable diseases at the request of public health officials as the disease was recently discovered in Washington. Infectious bovine rhinotracheitis is being removed from the reporting requirements as it is endemic and very common.

Citation of Existing Rules Affected by this Order:
Amending WAC 16-70-005, 16-70-010, and 16-70-020.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-21-164 on October 22, 2014.

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

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

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

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

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

Date Adopted: December 30, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 07-10-087, filed 5/1/07, effective 6/1/07)

WAC 16-70-005 Definitions. For the purpose of this chapter:

"Animal" means any animal species except fish and insects including all those so classified as wild, captive wild, exotic wild, alternative livestock, semidomesticated, domestic or farm.

"OIE notifiable disease list" means the diseases listed by the OIE in the *Terrestrial Animal Health Code* (~~((15th Edition, 2006))~~ 22nd Edition, 2013). The OIE notifiable disease list may be found on the internet at: (~~(http://www.oie.int/eng/maladies/en_classification.htm)~~) <http://www.oie.int/en/international-standard-setting/terrestrial-code/>. The list may also be found in the Washington state department of agriculture's *Animal Health Handbook for Veterinarians*.

"OIE" means Office International des Epizooties. The OIE is the World Organization of Animal Health.

"Reportable disease list" means the list of diseases that include the OIE notifiable disease list and other diseases listed in this chapter.

"Veterinary laboratory" means a place equipped for performing diagnostic or investigative procedures on submitted specimens from animals and fish by personnel whose primary duties are to conduct such procedures.

AMENDATORY SECTION (Amending WSR 07-10-087, filed 5/1/07, effective 6/1/07)

WAC 16-70-010 Requirements for reporting diseases that are on the OIE notifiable disease list. (1) Any veterinary laboratory or person licensed to practice veterinary medicine in the state of Washington shall immediately report to the office of the state veterinarian the existence or suspected existence among any animals within the state of any reportable or notifiable diseases as published by the OIE (effective ~~(January 23, 2006))~~ May 2013) or in this chapter.

(2) Case definitions shall conform to OIE standards under the *Terrestrial Animal Health Code* (~~((15th Edition, 2006))~~ 22nd Edition, 2013) and the *OIE Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*, (~~(5th))~~ 6th Edition, (2004) (2008), with updates published online at: (~~(http://www.oie.int/eng/publicat/en_standards.htm)~~) <http://www.oie.int/manual-of-diagnostic-tests-and-vaccines-for-terrestrial-animals/>.

(a) A case means an individual animal affected by one of the diseases listed on the OIE notifiable disease list or a disease listed in this chapter.

(b) The criterion by which "affected" is defined for each disease (for example: Clinical signs, serological evidence, etc.) is found in the *Terrestrial Animal Health Code* and *Manual of Diagnostic Tests and Vaccines for Terrestrial Animals*.

(c) The OIE *Terrestrial Animal Health Code* can be found on the internet (~~(under OIE Health Standards at: http://www.oie.int/eng/normes/en_mcode.htm)~~) <http://www.oie.int/en/international-standard-setting/terrestrial-code/access-online/>. The *Terrestrial Animal Health Code* is available in web format; a hard copy version may be ordered from OIE.

AMENDATORY SECTION (Amending WSR 10-13-055, filed 6/10/10, effective 7/11/10)

WAC 16-70-020 Other diseases reportable to WSDA.

(1) In addition to the diseases published on the OIE notifiable disease list, the state veterinarian may request reports on other diseases of concern from a statistical or survey standpoint associated with overall disease control measures.

(2) Any veterinarian or veterinary laboratory must report to the office of the state veterinarian any of the diseases listed in subsection (5) of this section. Reports may be faxed to 360-902-2087 or sent to:

Washington State Department of Agriculture
Animal Services Division
1111 Washington Street S.E.
P.O. Box 42577
Olympia, Washington 98504-2577

(3) In addition to reporting requirements listed in the chart below, laboratories must send to the office of the state veterinarian reports of cultures of isolates from *Mycobacterium tuberculosis*, *Cryptococcus* excluding confirmed *Cryptococcus neoformans*, and Vancomycin resistant *Staphylococcus aureus* immediately after they are identified or the next business day.

(4) Veterinary laboratory directors must submit positive specimens of the diseases listed in subsection (3) of this section and any requested information to the state public health laboratories at:

Washington State Public Health Laboratories
Washington State Department of Health
1610 N.E. 150th Street
Seattle, Washington 98155

(5) The tables below describe the time frames associated with reportable diseases.

EMERGENCY CONDITIONS or DISEASE Report to state veterinarian immediately upon suspicion
<p>MULTIPLE SPECIES</p> <ul style="list-style-type: none"> • Anthrax (<i>Bacillus anthracis</i>) • Crimean Congo hemorrhagic fever • Foot-and-mouth disease • Heartwater (<i>Cowdria ruminantium</i>) • Japanese encephalitis • Livestock exposed to toxic substances which may threaten public health • Malignant catarrhal fever (all forms) • <i>Mycobacterium tuberculosis</i> • Rabies in any species (excluding bats) • Rift Valley fever • Rinderpest (cattle plague) • Screwworm myiasis (<i>Cochliomyia hominivorax</i> or <i>Chrysomya bezziana</i>) • Surra (<i>Trypanosoma evansi</i>) • Theileriosis (Corridor disease, East Coast fever) • Unexplained increase in dead or diseased animals • Vancomycin resistant (<i>Staphylococcus aureus</i>) • Vesicular stomatitis <p>BOVINE</p> <ul style="list-style-type: none"> • African trypanosomiasis (Tsetse fly diseases) • Bovine babesiosis (piroplasmosis) • Bovine spongiform encephalopathy (mad cow) • Contagious bovine pleuropneumonia (<i>Mycoplasma mycoides mycoides</i>) • Lumpy skin disease <p>CAPRINE/OVINE</p> <ul style="list-style-type: none"> • Contagious agalactia (<i>Mycoplasma agalactia</i>) • Contagious caprine pleuropneumonia (<i>Mycoplasma capricolum capripneumoniae</i>) • Nairobi sheep disease • ((Peste des petits ruminants (goat plague))) <u>Goat plague (<i>Peste des petits ruminants</i>)</u> • <i>Salmonella abortus ovis</i> • Sheep and goat pox <p>PORCINE</p> <ul style="list-style-type: none"> • African swine fever • Classical swine fever (hog cholera) • Nipah virus • Swine vesicular disease • Vesicular exanthema of swine

EMERGENCY CONDITIONS or DISEASE Report to state veterinarian immediately upon suspicion
<p>POULTRY</p> <ul style="list-style-type: none"> • Exotic Newcastle disease (Viscerotropic velogenic Newcastle disease) • High pathogenic avian influenza and low pathogenic avian influenza • Turkey rhinotracheitis <p>EQUINE</p> <ul style="list-style-type: none"> • African horse sickness • Dourine (<i>Trypanosoma equiperdum</i>) • Equine piroplasmosis (<i>Theileria equi</i> and <i>Babesia caballi</i>) • Glanders (Farcy) (<i>Pseudomonas mallei</i>) • Hendra virus (Equine morbillivirus) • Venezuelan equine encephalomyelitis <p>OTHER SPECIES</p> <ul style="list-style-type: none"> • Viral hemorrhagic disease of rabbits (calicivirus)

CONDITIONS OF REGULATORY IMPORTANCE Report to state veterinarian within twenty-four hours of suspicion or confirmation
<p>MULTIPLE SPECIES</p> <ul style="list-style-type: none"> • Bluetongue • Brucellosis <ul style="list-style-type: none"> • Bovine (<i>Brucella abortus</i>) • Canine (<i>Brucella canis</i>) • Caprine (<i>Brucella abortus</i> and <i>B. melitensis</i>) • Cervids (<i>Brucella abortus</i>) • Ovine (<i>Brucella ovis</i>) • Porcine (<i>Brucella suis</i>) • <i>Cryptococcus</i> not confirmed to be <i>Cryptococcus neoformans</i> • Plague (<i>Yersinia pestis</i>) • Pseudorabies (Aujeszky's disease) • Tularemia • West Nile virus <p>BOVINE</p> <ul style="list-style-type: none"> • Bovine tuberculosis (<i>Mycobacterium bovis</i>) • Trichomoniasis (<i>Trichomonas fetus</i>) <p>CAPRINE/OVINE</p> <ul style="list-style-type: none"> • Contagious ecthyma (Orf) • Scrapie <p>POULTRY</p> <ul style="list-style-type: none"> • Avian infectious laryngotracheitis

CONDITIONS OF REGULATORY IMPORTANCE Report to state veterinarian within twenty-four hours of suspicion or confirmation
<ul style="list-style-type: none"> Ornithosis (psittacosis or avian chlamydiosis) (<i>Chlamydia psittaci</i>) Pullorum disease (fowl typhoid) (<i>Salmonella gallinarum</i> and <i>S. pullorum</i>)
EQUINE
<ul style="list-style-type: none"> Contagious equine metritis (<i>Taylorella equigenitalis</i>) Ehrlichiosis (Potomac horse fever) Equine encephalomyelitis (Eastern and Western equine encephalitis) Equine infectious anemia (swamp fever) Equine rhinopneumonitis (Equine herpesvirus-1 neurologic form)
SWINE
<ul style="list-style-type: none"> <u>Porcine epidemic diarrhea virus (PEDv)</u>
OTHER SPECIES
<ul style="list-style-type: none"> Chronic wasting disease in cervids Tuberculosis in cervids

MONITORED CONDITIONS Report by monthly summaries
MULTIPLE SPECIES
<ul style="list-style-type: none"> Avian tuberculosis (<i>Mycobacterium avium</i>) <u>Coccidioidomycosis (<i>Coccidioides immitis</i>) (valley fever)</u> Echinococcosis/Hydatidosis (<i>Echinococcus</i> (species) <u>sp.</u>) Johne's disease (<i>Mycobacterium avium</i> <u>subspecies paratuberculosis</u>) Leishmaniasis Leptospirosis Listeriosis Lyme Disease Q Fever (<i>Coxiella burnetii</i>) Salmonella Scabies
BOVINE
<ul style="list-style-type: none"> Anaplasmosis (<i>Anaplasma marginale</i> or <i>A. centrale</i>) Beef measles ((<i>Taenia</i>)) <i>Taenia saginata</i>) Bovine genital campylobacteriosis (<i>Campylobacter fetus venerealis</i>) Bovine viral diarrhea Enzootic bovine leukosis (Bovine leukemia virus) (<i>Infectious bovine rhinotracheitis</i> (Bovine herpesvirus-1))

MONITORED CONDITIONS Report by monthly summaries
CAPRINE/OVINE
<ul style="list-style-type: none"> Caprine (contagious) arthritis/encephalitis) Caseous lymphadenitis Enzootic abortion of ewes ((<i>Chlamydia psittaci</i>)) (<i>Chlamydophila abortus</i>) Maedi-Visna (Ovine progressive pneumonia)
PORCINE
<ul style="list-style-type: none"> Porcine circovirus (post-weaning multisystemic wasting syndrome) Porcine cysticercosis (<i>Taenia solium</i> in humans) Porcine reproductive and respiratory syndrome Transmissible gastroenteritis (coronavirus) Trichinellosis (<i>Trichinella spiralis</i>)
POULTRY
<ul style="list-style-type: none"> Avian infectious bronchitis Avian mycoplasmosis (<i>Mycoplasma synoviae</i>) Duck viral hepatitis Fowl cholera (<i>Pasteurella multocida</i>) Infectious bursal disease (Gumboro disease) Infectious coryza (<i>Avibacterium paragallinarum</i>) Marek's disease Mycoplasmosis (<i>Mycoplasma gallisepticum</i>)
EQUINE
<ul style="list-style-type: none"> Equine influenza Equine rhinopneumonitis (Equine herpesvirus-1 <u>non-neurologic form</u>) Equine viral arteritis Strangles (<i>Streptococcus equi</i> <u>subsp. equi</u>) Pigeon Fever (<i>Corynebacterium pseudotuberculosis</i>)
OTHER SPECIES
<ul style="list-style-type: none"> Fish diseases on the OIE notifiable disease list Heartworm Hemorrhagic diseases of deer (bluetongue, adenovirus, and epizootic hemorrhagic disease) Myxomatosis in commercial rabbits

WSR 15-02-028

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed December 30, 2014, 9:15 a.m., effective January 30, 2015]

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

Purpose: The department proposed to amend chapter 16-86 WAC to:

- Modify the virgin bull definition;
- Modify the official individual identification definition;
- Increase the bovine tuberculosis testing requirement from thirty days to sixty days for raw milk dairies who introduce new animals into their herd; and
- Add castration to the list of options for bulls of unknown origin or unknown breeding history that are offered for sale at a livestock market.

Citation of Existing Rules Affected by this Order:
Amending WAC 16-86-005, 16-86-115, and 16-86-140.

Statutory Authority for Adoption: RCW 16.36.040.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 14-21-163 on October 22, 2014.

Changes Other than Editing from Proposed to Adopted Version: The department proposed amending the virgin bull definition within WAC 16-86-005 to include allowing bulls that were less than eighteen months of age and that had no breeding contact with female bovines and originated from a herd where all bulls had tested negative by a quantitative polymerase chain reaction (qPCR) test to trichomoniasis every year for the past three years. The department will not be adopting this proposal.

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

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

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

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

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

Date Adopted: December 30, 2014.

Don R. Hover
Director

AMENDATORY SECTION (Amending WSR 12-21-009, filed 10/5/12, effective 11/5/12)

WAC 16-86-005 Definitions. In addition to the definitions found in RCW 16.36.005, the following definitions apply to this chapter:

"Accredited veterinarian" means a veterinarian licensed to practice veterinary medicine, surgery, and dentistry in the state of Washington and approved by the United States Department of Agriculture (USDA) Veterinary Services to participate in state-federal cooperative programs.

"Adult vaccination tattoo" means a tattoo in the right ear with the letters RAV followed by the last digit of the year in which the vaccination was administered with RB-51 *Brucella* vaccine. An example is RAV2 for an adult vaccinated in 2012.

"Breed registry tattoo" means individual registry tattoos issued by breed associations.

"Brucellosis vaccine" means only those *Brucella abortus* products that are approved by and produced under license of the USDA for injection into cattle to enhance their resistance to brucellosis.

"Calfood vaccination tattoo" means a tattoo in the right ear consisting of an R, the United States registered V-shield, and the last digit of the year in which the animal was vaccinated with RB-51 *Brucella* vaccine. An example is RV-shield2 for a calf vaccinated in 2012.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of WSDA or the director's authorized representative.

"Herd plan" means a written management agreement between the animal owner and the state veterinarian, with possible input from a private accredited veterinarian designated by the owner, in which each participant agrees to undertake actions specified in the herd plan to control the spread of infectious, contagious, or communicable disease within and from an infected herd and to work toward eradicating the disease in the infected herd.

"Official calfood vaccinate" means female cattle between four and twelve months of age that are vaccinated with brucellosis vaccine at a calfood dose (2cc subcutaneously) and officially individually identified.

"Official individual identification" means identifying an animal (~~(or group of animals)~~) using USDA-approved (~~(or WSDA approved)~~) devices or methods (~~(including, but not limited to, official tags;)~~) or an alternative form of identification agreed upon by the sending and receiving states, such as unique breed registry tattoos(~~(-and)~~) when accompanied by registration documentation. A group of animals may be identified by registered brands when accompanied by a certificate of inspection from a brand inspection authority (~~(who is)~~) recognized by the director(~~(-If a radio frequency identification device is used for identification, the device must be placed in the left ear. The official tattoo must be placed in the middle third of the right ear)~~) when agreed upon by the sending and receiving states.

"Official Washington adult vaccinate" means female cattle over the age of twelve months that have resided in Washington state for ninety days or more and are vaccinated with a dose of brucellosis vaccine (2cc subcutaneously) under directions issued by the director.

"Premises" means a location where livestock are kept.

"Timed events" means competitive events that take place where time elapsed is the factor that determines the placing of individuals competing in the event.

"USDA" means the United States Department of Agriculture.

"Virgin bull" means a sexually intact male bovine less than eight hundred pounds and less than twelve months of age, as determined by dentition inspection by an accredited veterinarian. Virgin bulls must be certified by the owner or the owner's designee with a signed statement as having had no breeding contact with female cattle.

AMENDATORY SECTION (Amending WSR 10-20-093, filed 9/30/10, effective 10/31/10)

WAC 16-86-115 Trichomoniasis in Washington cattle. (1) Any sexually intact bovine, except for bison, that is found test-positive for trichomoniasis, and any herd in which one or more bulls or cows are found test-positive for trichomoniasis, is considered infected. Test-positive means a positive result on a quantitative polymerase chain reaction (qPCR) test for trichomoniasis.

(2) In the case of infected sexually intact bovine, the herd shall be quarantined pending an epidemiological investigation to determine the source of the infection.

(3) All exposed herds will be identified by an accredited veterinarian in conjunction with the department. An exposed herd is defined as a cattle herd which has had, within the past twelve months, direct commingling or cross-fence contact with an infected herd during a time of potential breeding activity. The owner of exposed herds will be notified of the possible exposure and requested to test the herd using a qPCR test. All testing will be at the owner's expense.

(4)(a) Infected bulls will be quarantined and branded high on the tail head by the department with a USDA regulatory S-brand, and will not be used for breeding.

(b) Infected bulls must be slaughtered, sold for slaughter, sent to a restricted feedlot, or to a category 2 restricted holding facility to remain in slaughter channels. Infected bulls shall only be moved when accompanied by a USDA form VS 1-27.

(c) Bulls of unknown origin or unknown breeding history offered for sale at a livestock market must be:

(i) Castrated prior to leaving the market; or

(ii) Tested negative for trichomoniasis by a qPCR test before being turned out with breeding stock; or ~~((must be))~~

(iii) Sold for slaughter(-); or

(iv) Sent to ((a restricted feedlot, or to)) a category 2 restricted holding facility to remain in slaughter channels.

(d) A nonpregnant female, with no calf at side, which is identified by the owner as being from an infected herd and is offered for sale at a livestock market, must remain in slaughter channels.

(5) The quarantine will be removed when all remaining bulls in the herd test negative to a second qPCR test for trichomoniasis and following proof of removal of infected bulls. Bulls must have a minimum of two negative qPCR tests at least one week apart for quarantine release. All bulls from infected herds, except virgin bulls, will be tested using a qPCR test the following trich-year before breeding. A trich-year means the period from September 1st to August 31st of any given year. Bulls from infected herds may not have to be tested the following trich-year if a herd plan has been approved by the state veterinarian.

(6) Information that cattle have tested positive for trichomoniasis may be supplied to county extension agents, accredited veterinarians, and industry representatives. Each month, the department may publish a press release of counties that have infected herds.

AMENDATORY SECTION (Amending WSR 08-01-094, filed 12/17/07, effective 1/17/08)

WAC 16-86-140 Tuberculosis testing requirements for raw milk dairies. (1) All cattle whose raw milk or raw milk products are offered for sale must be from a herd that has tested negative for tuberculosis within the previous twelve months.

(2) Any additions to the herd must be tested negative for tuberculosis at the owner's expense within ~~((thirty))~~ sixty days before introduction into the herd.

(3) Herds must be tested negative annually at the owner's expense to maintain the dairy's raw milk license.

(4) The state veterinarian shall direct all testing procedures in accordance with state and federal standards for animal disease eradication.

(5) All raw milk and raw milk products from animals that test positive for tuberculosis are prohibited from sale and must be destroyed.

WSR 15-02-029
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 14-353—Filed December 30, 2014, 9:33 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: The hydraulic code rules detail how hydraulic projects must be conducted to protect fish life. Hydraulic code rules and related administrative procedures have not been significantly updated since 1994. The proposed rule changes update the rules and clarify the application and permit-processing procedures, enabling the department to prevent or mitigate the impacts to fish life and habitat posed by hydraulic projects through the best available science.

Reasons Supporting Proposal: Existing rules have not been updated to account for statutory changes to chapter 77.55 RCW or to changes in method to protect fish life from the impacts of a variety of hydraulic project types in waters of the state. In addition, methods for submitting and processing applications have changed and the rules need to be updated to account for modern practices for administering the processing of applications. This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on August 8, 2014. The proposed changes were adopted by the commission at the December 5, 2014, commission conference call.

Citation of Existing Rules Affected by this Order: Repealing chapter 220-110 WAC.

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

Adopted under notice filed as WSR 14-14-133 on July 2, 2014.

Changes Other than Editing from Proposed to Adopted Version: Proposed rules were filed as WSR 14-14-133 on July 2, 2014, for public review and comment. Most comments focused on aspects of the rules that the commenters wanted the Washington department of fish and wildlife to

change. Upon careful consideration of the comments received, staff made some changes to the proposed rules.

Staff also made minor changes to correct spelling, grammar and format numbering and additional changes to improve consistency, readability and clarity. Staff also made "plain talk" improvements such as using everyday words, reducing sentence clutter and placing key points upfront. Other differences between the proposed and adopted rules are summarized below.

WAC 220-660-010, was modified to better align with RCW 77.55.011(11).

WAC 220-660-020, was modified to improve readability and clarity.

WAC 220-660-030, the sentence "Common terms that are already defined in statute are noted as such" was removed because the terms in statute were not noted as such. Definitions in subsections (4), (12), (13), (25), (27), (32), (42), (50), (53), (77)(c)(i), (79), (82), (83), (87), (88), (102), (106), (153) and (159) were modified to improve clarity and readability. Definitions were added for the terms "channel bed width," "nearshore" and "waterbody" to increase clarity because these terms are used throughout the rules. Subsection (30) was modified to correct the WAC numbers. Subsection (62) was modified to add the last sentence to clarify the jurisdiction. Definition in subsection (119) was modified to clarify protection of fish life means avoiding minimizing unavoidable impacts, and compensating for remaining impacts to fish life and the habitat that supports fish life through mitigation sequencing. Subsection (120) was modified to clarify that this definition does not supersede other state laws that govern the qualifications of professionals that perform hydraulic projects. Subsection (130) was modified to clarify a saltwater area means those state waters and associated beds waterward of the ordinary high water line in Puget Sound, the Strait of Juan de Fuca and the open coast and that the definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

WAC 220-660-040, subsection (2)(i) was modified to clarify what constitutes a portable boat hoist. Language was also added to clarify the portable boat hoist cannot be installed without a hydraulic project approval (HPA) during spawning and incubation in lakes where sockeye spawn on the beach and a table was included to show when those closed periods are.

Table 1

Authorized Work Times to Install Portable Boat Hoists in Lakes with Sockeye Spawning Beaches

Lake Name and Water Resource Inventory Area (WRIA) in parentheses	Authorized Work Times
<u>Baker (04)</u>	<u>June 15 - August 15</u>
<u>Cle Elum (39)</u>	<u>September 1 - March 31</u>
<u>Osoyoos (49)</u>	<u>May 15 - September 30</u>
<u>Ozette (20)</u>	<u>August 1 - October 31</u>
<u>Pleasant (20)</u>	<u>August 1 - October 31</u>

Lake Name and Water Resource Inventory Area (WRIA) in parentheses	Authorized Work Times
<u>Sammamish (08)</u>	<u>July 15 - September 30</u>
<u>Washington (08)</u>	<u>July 15 - September 30</u>

WAC 220-660-050, subsection (3)(a) was modified to clarify a standard HPA can be issued for work at one site or may cover multiple project sites. Subsection (3)(b)(ii)(A)(III) was modified to clarify the department may make an exception to the five sites when no prepermit issuance site visits are needed. Subsection (3)(b)(iii)(c) [(C)] was modified to clarify when the department will require that notice be given to the department. Subsections (4)(a)(iv), (8)(c)(i), (iii)(D), (G), (G)(V) and (15)(a) were modified to improve consistency with the language in other provisions and reduce redundancy. Subsections (5)(f) and (7)(d) were modified to clarify the timeframe in which mitigation must be completed. Subsections (12)(a) and (13)(b)(v) were modified to include authorizing agencies such as the department of natural resources. Subsection (14)(e) was modified to clarify how a permittee can request a modification of their HPA. Subsection (16)(f) was modified to clarify how the department will issue the modification.

WAC 220-660-060, the original WAC section was approved before all steps in the integration process occurred. The language was changed to reflect that integration has occurred but no substantial changes are made to the requirements.

WAC 220-660-080, subsection (1) was modified to improve readability and reduce redundancy. Subsection (3)(a) was modified to improve consistency with the language in other sections. Subsection (3)(c) was modified to clarify all work subject to this chapter must achieve no net loss through a sequence of mitigation actions. Subsections (3)(d), (4)(h)(ii), (i), (k), (5)(a) and (d)(iv) were modified to reduce redundancy. Subsection (3)(g) was added to clarify all maintenance work must comply with the applicable common technical construction provisions and project-specific and site-specific construction provisions. Maintenance work that rehabilitates and replaces a structure must also comply with the applicable common technical design provisions. Subsection (4)(b) was modified to clarify that if mitigation actions on or near the project cannot mitigate the project impacts, then the department prefers compensatory mitigation actions at another location benefit the same fish life populations, habitat types and functions as those impacted by the project. However, the department must give due consideration to any compensatory mitigation proposal that improves the overall habitat functions in the watershed for the affected fish life populations at the project site. The original subsection (4)(c) was deleted because it is redundant with subsection (4)(b) and was replaced with language to clarify when the department must accommodate compensatory mitigation. Subsection (4)(d) was modified to remove specific tools for calculating compensatory mitigation to allow flexibility. Subsection (4)(f) was modified to clarify what an illegal structure is. Subsection (5)(c) is modified to improve consistency with RCW 77.55.251. Subsection (5)(d)(ii) was modified to clarify this also includes associated habitat restoration strategies.

WAC 220-660-100, subsection (1)(a) was modified to reduce redundant language.

WAC 220-660-110, subsection (2) and (3)(a)(iii)(D) and (vi) were modified to clarify when work times apply.

WAC 220-660-120, subsections (1), (2), (4)(b), (e), (6)(b), (e), (7)(b), and (8)(a) were modified to improve readability. Subsection (4)(d) was modified to improve consistency with the definition of large woody material. Subsection (5)(b) was deleted because the language is redundant with subsection (5)(a). Subsection (5)(d) was modified based on new information and a review of the science to provide flexibility to use other biodegradable base oils. Subsection (6)(c) was modified to clarify that tires are not acceptable fill material. Subsection (6)(g) was moved to subsection (7)(f). Subsection (6)(h) was modified to clarify what materials are approved. Provisions in subsection (8) were reordered to reflect the order of this work. Subsection (9)(b) was modified to clarify when a hydraulic analysis for a bypass is not required. Subsection (10) was modified to clarify when hydraulic modeling for a cofferdam is not required. Subsection (12)(f) was added to clarify the department will require all person(s) removing fish from a job site to follow an approved protocol. Subsection (13)(i) was modified to clarify the department may require a vegetation monitoring and contingency plan. Subsection (13)(j) and (m) were modified to clarify revegetation requirements.

WAC 220-660-130, subsections (1) and (2) were modified to improve readability. Subsection (3)(a) was modified to clarify when an assessment is not required. Subsection (3)(e) was modified to clarify this requirement doesn't apply to beneficial structures. Subsections (4)(a) and (6)(c) were modified to clarify the department can approve exceptions.

WAC 220-660-140, subsections (1), (2)(a), (b), (4)(a), (7)(a), (c), (g) and (j) were modified to improve readability. Subsection (3)(c)(i) and (i)(B) were modified to clarify the pier width and the criteria for measuring water depth. Subsection (3)(c)(iv) was modified to clarify pier, ramps and floats as well as docks must have grating installed. Subsection (3)(c)(iv)(C) was added to clarify that in waterbodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock. Subsection (3)(c)(iv)(E) was modified to clarify the provision only applies to objects that are not part of the structure. Subsection (3)(c)(iv)(G) was deleted because it was redundant. Subsection (3)(g) was modified to apply to all embedded anchor(s) and pilings. Subsection (3)(i) was modified to define "usable." Subsection (3)(j) was modified to clarify the provision applies to functional grating in the replaced section only. Subsection (7)(g)(iv) was modified to clarify this applies whenever feasible.

WAC 220-660-150, subsection (1) was modified to improve readability.

WAC 220-660-160, subsections (3)(c)(ii), (7)(e) and (g) were modified to improve readability. Subsection (3)(c)(iv) was modified to define areas of low or impaired biological integrity. Subsection (3)(d)(i) was added to clarify that marinas and terminals should be designed so that most over-water coverage is in the deepest water feasible. Subsection (4)(b) was modified to clarify this only applies to objects that are not part of the structure. Subsections (4)(d), (e), and (5)(b)

were modified to clarify the criteria are measured from mean low water. Subsection (7)(e)(iii)(A) were [was] modified to specify that all buried stumps must be capped with clean sediment.

WAC 220-660-170, subsections (1) and (2) were modified to improve readability. Subsection (3)(c) was modified to clarify boat ramp and boat launch approaches, and hydroelectric dams are exempt from this requirement.

WAC 220-660-180, subsection (3)(a) was deleted. Subsection (4)(b) was modified to clarify the permittee must place boundary markers.

WAC 220-660-190, the introductory paragraph was modified to clarify the requirements for crossings on nonfish bearing streams. Subsection (3)(b) was modified to clarify the design of the water crossing structure must follow mitigation sequencing to prevent measurable unmitigated impacts to the expected channel functions and processes found at the site. Subsection (3)(c)(i) was modified to clarify the crossing design should fit within the geomorphic context of the reach. Subsection (3)(d) was modified to improve readability. Subsection (3)(d)(iii) was modified to clarify the department will approve fish passage improvement structures where extreme and unusual site conditions prevent a person from complying with the water crossing standards. Subsection (4)(d) was modified to clarify a person must design the bridge to account for the lateral migration expected to occur during the bridge's lifetime and to specify that the department will approve encroachment expected pathway of lateral migration if the design follows the mitigation to protect fish life and the habitat that supports fish life. Subsection (4)(f) was modified to clarify the design must have at least three feet of clearance between the bottom of the bridge structure and the water surface at the one hundred year peak flow unless engineering justification shows a lower clearance will allow the free passage of anticipated debris. Subsection (4)(g) was modified to require minimization and not avoidance. Subsection (6)(a)(iii) was modified to require prevailing stream gradient unless engineering justification for an alternative slope is approved by the department. Subsection (6)(a)(v) was modified to clarify alternative depths of culvert fill may be accepted with engineering justification that considers channel degradation and total scour. Subsection (7)(c) was modified to clarify that in site-specific situations, the department may approve a temporary culvert that does not meet all fish passage criteria. These situations may include streams where there is limited fish movement and presence, and where the use of a temporary culvert will result in fewer adverse impacts over the long term. Subsections (6)(b)(iii)(E)(II), (13) and (13)(a) were modified to improve readability. Subsection (10)(f) was modified to clarify vented (grade-separated) fords are preferred over at-grade fords because there is less aquatic disturbance and delivery of sediment and contaminants when traffic is separated from flowing water.

WAC 220-660-200, subsection (7)(a) was modified to clarify if target fish species are present and actively migrating, fish ladders with [an] auxiliary water supply system must have enough water available at all stream flows to pass fish

WAC 220-660-210, subsection (1) was modified to clarify channel realignment is also used to restore a single-thread, straightened channel(s) to a more natural sinuous pattern.

WAC 220-660-220, subsection (1) was modified to define what large woody material is. The definition is consistent with WAC 220-660-030(84). Subsection (2)(a) was modified to clarify the removal and cutting of large woody material can adversely affect the natural channel-forming processes. Subsection (3)(a) was modified to include the cutting of wood which also diminishes habitat functions and value.

WAC 220-660-230, subsection (3)(b) was deleted because subsection (3)(a) is modified to state when compensatory mitigation is required.

WAC 220-660-250, subsection (2), (4)(a) and (e)(i) and (J)(ii) were amended to improve readability.

WAC 220-660-260, subsection (1) was modified to change buffer to riparian zone. Subsections (2) and (4)(d) were modified to improve readability.

WAC 220-660-270, subsection (1) was modified to clarify that an HPA is not required for utility crossings attached to bridge structures. This is consistent with the previous rules.

WAC 220-660-280, subsection (3)(d) was modified to improve readability.

WAC 220-660-290, subsections (4)(c)(i), (5)(c)(i), (6)(c)(i) and (9)(b)(i) were modified so the list of sockeye lakes includes those with beach spawning only.

WAC 220-660-320, subsection (1)(a)(vi) was modified to clarify other shoreforms in addition to feeder bluffs support geomorphic processes such as sediment delivery and movement. Subsection (1)(b) was modified to clarify similar bed materials should be similar bed characteristics. Subsection (3)(b)(i) was modified to adequately characterize Pacific sand lance spawning beds. Subsection (3)(b)(iv) adds lingcod nesting areas as a saltwater habitat of special concern. Subsection (3)(b)(vi) was modified to include other macroalgae beds as rockfish settlement and nursery areas. Subsection (3)(b)(xi) was modified to include macroalgae species Pacific herring use as spawning substrate. Subsections (3)(b)(xii) and (4)(a) were modified to improve readability.

WAC 220-660-330, subsection (3)(b) adds timing to protect lingcod nests. Provision (3)(f) was modified to clarify this provision applies to surf smelt spawning only.

WAC 220-660-340, subsection (1) was modified to clarify it includes sand lance spawning habitat adjacent to documented areas.

WAC 220-660-350, subsections (3)(a)(i) and (iii) were modified to improve readability. Subsection (3)(c) was added to clarify when seagrass and macroalgae surveys must be conducted and when the department will require an advanced survey. Subsection (3)(d) was modified to clarify the department will also use an advanced survey to estimate project impacts to kelp beds and in herring spawning areas other macroalgae beds used as in herring spawning substrate.

WAC 220-660-360, subsections (1), (2), (4)(b), (c), (6)(a) and (b) were modified to improve readability. Subsection (5)(c) was modified to reflect a comment and a subsequent review of the science related to lubricants. Subsection (7)(d) was added to improve consistency with WAC 220-

660-120 (6)(g). Subsection (9)(f) was modified to clarify plant species composition should be similar to the surrounding native vegetation. Subsection (9)(i) was modified to clarify this applies to riparian and wetland sites only.

WAC 220-660-370, the introductory sentence was modified to clarify the department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life. Subsection (1) was modified to clarify how the total project area is defined. Subsections (3)(a) and (b) were modified to improve readability. Subsection (3)(c)(ii) was modified to clarify when the department will permit a bulkhead project under RCW 77.55.141. Subsection (3)(d) was modified to clarify an HPA application for a new bulkhead or other bank protection work or the replacement or rehabilitation of a bulkhead or other bank protection structure that extends waterward of the existing structure must include a site assessment, alternatives analysis and design rationale by a qualified professional.

WAC 220-660-380, subsections (3)(b)(iii) and (8)(b)(i)(B) was modified to clarify the department will require seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. Subsections (2) and (3)(b), (b)(iii)(B), and (6)(a) were modified to improve readability. A definition of what is usable is added to subsection (3)(c). Subsection (3)(d) was modified to clarify the provision applies to functional grating in the replaced section only. Subsection (5)(e) was modified to clarify this requirement applies to floats in intertidal areas only. Subsection (5)(f) was modified to clarify objects that are not part of the structure on, above, or below the grating should not block light penetration. Subsection (5)(i) was modified to apply to all embedded anchor(s), pilings (with stops), and float support/stub pilings. Subsection (8)(a)(i)(A) was modified to define aquatic vegetation of concern. Subsection (9)(d) was modified to clarify this only applies to objects that are not part of the structure. Subsection (10)(a) was deleted because it is redundant with WAC 220-660-360 (6)(a). Subsection (10)(e)(iii)(A) was added to clarify all buried stumps must be capped with clean sediment that matches the native material.

WAC 220-660-390, subsection (3)(a)(i) was modified to clarify the department will require a seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. Subsections (1), (2), (3)(d), and (4)(b) were modified to improve readability.

WAC 220-660-400, subsection (2) was modified to clarify this section applies to constructing, maintaining, and repairing marinas and terminals in saltwater areas. Subsection (3)(b) was modified to clarify the department will require seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. However, the department will not require a survey to replace an existing structure within its original footprint. Subsections (3)(c)(i) and (4)(c) were deleted because they are redundant with subsection (4)(b). Subsection (3)(d) was added to clarify that,

whenever feasible, design marinas and terminals to allow light penetration to intertidal and shallow subtidal water areas. Subsection (3)(c)(iii) was modified to clarify what are areas with existing low or impaired biological value. Subsections (3)(d), (d)(i), (iii), (v), (4)(b), (5), (7)(a) and (b) were modified to improve readability.

WAC 220-660-410, subsection (3)(d) was modified to clarify the department will require seagrass/macroalgae habitat survey for new dredging. However, the department will not require a survey for maintenance dredging or deepening the channel within the original dredged footprint. Subsections (2), (3)(b), and (4)(e) were modified to improve readability.

WAC 220-660-420, subsection (3)(d) was removed because it is redundant with subsection (3)(a). Subsection (4)(d) was modified to improve readability.

WAC 220-660-430, subsection (4)(b) was modified to improve readability. Subsection (4)(e) was modified to clarify the department will require seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. However, the department will not require a survey to replace an existing structure within its original footprint.

WAC 220-660-440, language is added to clarify an HPA is not required for utility crossings attached to bridge structures. This is consistent with the previous rules. Subsections (4)(a), (c) and (e) were modified to improve readability. Subsection (4)(b) was modified to clarify the department will require seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. However, the department will not require a survey to replace an existing structure within its original footprint.

WAC 220-660-450, subsection (3)(a) was modified to improve clarity and subsection (3)(c) was removed because it is not practical to seal the bore hole and substrate surface.

WAC 220-660-460, information about what is an informal appeal was added to improve clarity. The information about informal appeal hearings was modified to improve clarity around third party appeals.

WAC 220-660-470, information about what to include in a formal appeal was added to improve clarity.

WAC 220-660-480, technical assistance, technical assistance documents and technical site visits were defined to improve clarity and better align with chapter 43.05 RCW. To improve clarity, headers were added for "notice of violation" and "procedures for correction of violations." In addition, language was added to clarify the department may issue a civil penalty without first issuing a notice of correction, as provided for by law in RCW 43.05.110.

A final cost-benefit analysis is available by contacting Randi Thurston, 600 Capitol Way North, Olympia, WA 985-1-1091 [98501-1091], phone (360) 902-2602, fax (360) 902-2155, e-mail Randi.Thurston@dfw.wa.gov.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 48, Amended 0, Repealed 50.

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

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

Date Adopted: December 5, 2014.

Miranda Wecker, Chair
Fish and Wildlife Commission

Chapter 220-660 WAC

HYDRAULIC CODE RULES

NEW SECTION

WAC 220-660-010 Purpose. A hydraulic project is the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. Unless otherwise provided, any person who wants to conduct a hydraulic project must get a construction permit called the hydraulic project approval (HPA) from the department. The purpose of the HPA is to ensure that construction or performance of work is done in a manner that protects fish life. This chapter establishes the rules for the department's HPA authority (chapter 77.55 RCW).

NEW SECTION

WAC 220-660-020 Instructions for using chapter 220-660 WAC. The technical provisions in WAC 220-660-090 through 220-660-460 represent common provisions for the protection of fish life for typical projects proposed to the department. Implementing these provisions is necessary to minimize project-specific and cumulative impacts to fish life. These provisions reflect the current and best science, technology, and construction practices related to the protection of fish life. The department will incorporate new science and technology as it becomes available, and will allow alternative practices that provide equal or greater protection for fish life.

The technical provisions will apply to a hydraulic project when included as provisions on the HPA. The department will review each application on an individual basis. Common technical provisions applicable to a specific project may be modified or deleted by the department pursuant to WAC 220-660-070. HPAs may also have special provisions to address project-specific or site-specific considerations not adequately addressed by the common technical provisions. All hydraulic projects must also meet the applicable mitigation requirements in WAC 220-660-080.

In addition to the rules in this chapter, the department has developed guidance to help applicants. This guidance reflects

the department's experience and expertise with various types of hydraulic projects. Following the guidance will help ensure that a hydraulic project adequately protects fish life and will speed the department's review and decision process. All guidance documents are available on the department's web site.

NEW SECTION

WAC 220-660-030 Definitions. The following are definitions for terms used in this chapter.

(1) "Abandoning an excavation site" means not working an excavation site for forty-eight hours or longer.

(2) "Aggregate" means a mixture of minerals separable by mechanical or physical means.

(3) "Aquatic beneficial plant" means all native and non-native aquatic plants except those on the state noxious weed lists in WAC 16-750-005, 16-750-011, and 16-750-015.

(4) "Aquatic invasive species" means an invasive species of the animal kingdom with a life cycle that is at least partly dependent upon fresh, brackish, or marine waters. Examples include certain species of waterfowl, amphibians, fish, shellfish, and nutria.

(5) "Aquatic noxious weed" means an aquatic plant on the state noxious weed lists in WAC 16-750-005, 16-750-011, and 16-750-015.

(6) "Aquatic plant" means a native or nonnative emergent, submersed, partially submersed, free-floating, or floating-leaved plant species that is dependent upon fresh, brackish, or marine water ecosystems and includes all stages of development and parts.

(7) "*Aquatic Plants and Fish* pamphlet" means a document that details the rules for aquatic noxious weed and aquatic beneficial plant removal and control activities and that serves as the hydraulic project approval for certain plant removal and control activities in Washington state.

(8) "Artificial materials" means clean, inert materials used to construct diversion structures for mineral prospecting.

(9) "Associated human-made agricultural drainage facilities" means dikes, drains, pumps, drainage tiles, and drainage pipe made by humans that protect agricultural land.

(10) "Authorized agent" means someone who is authorized by the applicant to act on behalf of the applicant.

(11) "Bank" means any land surface landward of the ordinary high water line next to a body of water and constrains the water except during floods. The term "bank" also includes all land surfaces of islands within a body of water that are below the flood elevation of the surrounding body of water.

(12) "Bankfull width" means the width of the surface of the water at the point where water just begins to overflow into the active flood plain. In streams where there is no flood plain it is often the width of a stream or river at the dominant channel forming flow that reoccurs every one to two years.

(13) "Beach area" means the beds between the ordinary high water line and extreme low water.

(14) "Bed" means the land below (waterward of) the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff

devices, or other artificial watercourses except where they exist in a natural watercourse that has been artificially altered.

(15) "Bed materials" means naturally occurring materials such as gravel, cobble, rock, rubble, sand, mud, and aquatic plants that form the beds of state waters. Bed materials are also found in deposits or bars above the wetted perimeter of water bodies.

(16) "Board" means the pollution control hearings board created in chapter 43.21B RCW.

(17) "Bottom barrier or screen" means sheets of synthetic or natural fiber material used to cover and kill plants growing on the bottom of a watercourse.

(18) "Boulder" means a stream substrate particle larger than ten inches in diameter.

(19) "Bridge shadow" means the area under a bridge defined by the shadow cast by the sun. This area may not receive enough light and rain to support the plant growth needed for biotechnical bank stabilization.

(20) "Channel bed width" means the width of the bankfull channel, although bankfull may not be well defined in some channels. For those streams which are nonalluvial or do not have flood plains, the channel width must be determined using features that do not depend on a flood plain.

(21) "Chronic danger" means a condition declared by the county legislative authority in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(22) "Chronic danger HPA" means a written hydraulic project approval issued in response to a chronic danger declaration made by a county legislative authority.

(23) "Classify" means to sort aggregate by hand or through a screen, grizzly, or similar device to remove the larger material and concentrate the remaining aggregate.

(24) "Commission" means the Washington state fish and wildlife commission.

(25) "Compensatory mitigation" means the restoration, creation, enhancement, or preservation of aquatic resources to compensate for adverse impacts that remain after all appropriate and practicable avoidance and minimization has been achieved.

(26) "Concentrator" means a device used to physically or mechanically separate the valuable mineral content from aggregate.

(27) "Control" of an aquatic plant means to prevent all seed production and to prevent the dispersal of all propagative parts capable of forming new plants.

(28) "County legislative authority" means a county commission, council, or other legislative body.

(29) "Crevice" means removing aggregate from cracks and crevices using hand-held mineral prospecting tools or water pressure.

(30) "Critical food fish or shellfish habitats" means those habitats that are essential to fish life. These habitats include habitats of special concern listed in WAC 220-660-100 and 220-660-320.

(31) "Department" means the department of fish and wildlife.

(32) "Design flood" means a stream discharge of a specific rate and probability best suited to ensure the project design creates and shapes habitat or protects property and structures to a given level of risk (e.g., the 100-year design flood).

(33) "Director" means the director of the department of fish and wildlife.

(34) "Ditch" means a wholly artificial watercourse or a natural watercourse (waters of the state) altered by humans.

(35) "Diver-operated dredging" means the use of portable suction or hydraulic dredges held by SCUBA divers to remove aquatic plants.

(36) "Dredging" means removal of bed material using other than hand-held tools.

(37) "Early infestation" of an aquatic noxious weed means a stage of development, life history, or area of coverage that makes one hundred percent control and eradication likely to occur.

(38) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(39) "Emergency HPA" means a verbal or written hydraulic project approval issued in response to a declaration of emergency.

(40) "Entrained" means the entrapment of fish into a watercourse diversion that has no screen, into high velocity water along the face of an improperly designed screen, or into the vegetation cut by a mechanical harvester.

(41) "Equipment" means any device powered by internal combustion; hydraulics; electricity, except less than one horsepower; or livestock used as draft animals, except saddle horses; and the lines, cables, arms, or extensions associated with the device.

(42) "Eradication" of an aquatic noxious weed means to eliminate it within an area of infestation.

(43) "Established ford" means a crossing place in a watercourse that was in existence and used annually before 1986 or permitted by the department in or after 1986, and has identifiable approaches on the banks.

(44) "Excavation line" means a line on the dry bed at or parallel to the water's edge. The department determines the distance from the water's edge for each project site. The excavation line may change with water level fluctuations.

(45) "Excavation site" means the pit, furrow, or hole from which aggregate is removed to process and recover minerals, or into which wastewater is discharged to settle out sediments.

(46) "Excavation zone" means the area between the excavation line and the bank or the center of the gravel bar.

(47) "Expedited HPA" means a written hydraulic project approval issued in those instances where when normal permit processing would result in a significant hardship for the applicant or unacceptable damage to the environment.

(48) "Farm and agricultural land" means those lands identified in RCW 84.34.020.

(49) "Filter blanket" means one or more layers of pervious materials (organic, mineral, or synthetic) designed and installed to provide drainage, yet prevent the movement of soil particles by flowing water.

(50) "Fish conservation bank" means a habitat creation, restoration, or enhancement project intended to provide a bank of credits to compensate for unavoidable impacts to habitat that supports fish life from future development projects. Fish conservation banks are managed to optimize desired habitat for ESA-listed and at-risk fish species.

(51) "Fish habitat" or "habitat that supports fish life" means habitat, which is used by fish life at any life stage at any time of the year including potential habitat likely to be used by fish life, which could reasonably be recovered by restoration or management and includes off-channel habitat.

(52) "Fish habitat enhancement project" means a hydraulic project that meets criteria in RCW 77.55.181 (1)(a).

(53) "Fish habitat improvement structures" or "stream channel improvements" means natural materials such as large wood, rock, or synthetic materials such as chain or rope placed in or next to bodies of water to improve existing conditions for fish life. Examples are engineered logjams, large woody material, and boulders.

(54) "Fish guard" means a device installed at or near a surface water diversion head gate, or on the intake of any device used for pumping water from fish-bearing waters, to prevent entrainment, injury, or death of fish life. Fish guards physically keep fish from entering the diversion or pump intake and do not rely on avoidance behavior.

(55) "Fish life" means all fish species, including food fish, shellfish, game fish, unclassified fish and shellfish species, and all stages of development of those species.

(56) "Fish passage improvement structure" means artificial structures that are used to provide passage through, over, and/or around artificial barriers. They provide a graduated change in gradient with refuge areas allowing fish to pass barriers.

(57) "Fish screen" means "fish guard."

(58) "Flood gate" means a structure to control flooding through which water flows freely in one direction but is prevented from flowing in the other direction.

(59) "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that must not be fished for except as authorized by rule of the commission.

(60) "Forest practices hydraulic project" means a hydraulic project that requires a forest practices application or notification under chapter 76.09 RCW.

(61) "Frequent scour zone" means the area between the wetted perimeter and the toe of the slope. The frequent scour zone is comprised of aggregate, boulders, or bedrock. Organic soils are not present in the frequent scour zone.

(62) "Freshwater area" means those state waters and associated beds waterward of the ordinary high water line that are upstream of stream and river mouths. Freshwater areas also include all lakes, ponds, and tributary streams and surface-water-connected wetlands that provide or maintain habitat that supports life. This definition does not include irrigation ditches, canals, storm water treatment, and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

(63) "Functional grating" means the percent open area of the grating that is not covered or blocked by any objects such

as structural components, framing wood, flotation tubs, or objects placed on the surface of the grating.

(64) "Ganged equipment" means two or more pieces of mineral prospecting equipment coupled together to increase efficiency. An example is adding a second sluice to a high-banker.

(65) "General provisions" means those provisions that are in every HPA.

(66) "*Gold and Fish* pamphlet" means a document that details the rules for conducting small-scale and other prospecting and mining activities and that serves as the hydraulic project approval for certain mineral prospecting and mining activities in Washington state.

(67) "Habitat function" means the natural attributes of a given habitat that support the fish life that rely upon that habitat.

(68) "Habitat value" means an estimate of habitat quality, ecologically important functions and the relative value of the hydraulic project site within the watershed.

(69) "Hand-held equipment" means equipment held by hand and powered by internal combustion, hydraulics, pneumatics, or electricity. Examples are chainsaws, drills, and grinders.

(70) "Hand-held mineral prospecting tools" means:

(a) Tools used for mineral prospecting that are held by hand and are not powered by internal combustion, hydraulics, or pneumatics. Examples are metal detectors, shovels, picks, trowels, hammers, pry bars, hand-operated winches, and battery-operated pumps specific to prospecting; and

(b) Vac-pacs.

(71) "Hand-held tools" means tools held by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Examples are shovels, rakes, hammers, pry bars, and cable winches. This definition does not apply to hand-held tools used for mineral prospecting. See "hand-held mineral prospecting tools."

(72) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish life.

(73) "High-banker" means a stationary concentrator operated outside the wetted perimeter of the body of water from which the water is removed and that uses water supplied by hand or by pumping. A high-banker consists of a sluice box, hopper, and water supply. Aggregate is supplied to the high-banker by means other than suction dredging. This definition excludes rocker boxes. See Figure 1.



Figure 1: High-banker

(74) "High-banking" means using a high-banker to recover minerals.

(75) "Hydraulic drop" means an abrupt drop in water surface elevation.

(76) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(77) "Hydraulic project approval" or "HPA" means:

(a) A written approval for a hydraulic project issued under this chapter and signed by the director of the department or the director's designee; or

(b) A verbal approval for an emergency hydraulic project issued under this chapter by the director of the department or the director's designee; or

(c) The following printed pamphlet approvals:

(i) A "*Gold and Fish*" pamphlet issued under this chapter by the department, which identifies and authorizes specific minor hydraulic project activities for mineral prospecting and placer mining; or

(ii) An "*Aquatic Plants and Fish*" pamphlet issued under this chapter by the department, which identifies and authorizes specific aquatic plant removal and control activities.

(78) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(79) "In-lieu fee (ILF) program" means a state or federal certified program authorizing a person pay a fee to a third party instead of conducting project-specific mitigation or buying credits from a mitigation or fish conservation bank.

(80) "In-water blasting" means the use of explosives on, under, or in waters of the state, or in any location adjacent to the waters of the state, where blasting could impact fish life or habitat that supports fish life.

(81) "Job site" means the area of ground including and immediately adjacent to the area where work is conducted under an HPA. For mineral prospecting and placer mining projects, the job site includes the excavation site.

(82) "Joint aquatic resources permit application" or "JARPA" means a form provided by the department and other agencies that a person may submit to request a written HPA for a hydraulic project.

(83) "Lake" means any natural standing fresh waters or artificially impounded natural fresh waters of the state, except impoundments of the Columbia and Snake rivers.

(84) "Large woody material" means trees or tree parts larger than four inches in diameter and longer than six feet, or rootwads, wholly or partially waterward of the ordinary high water line.

(85) "Macroalgae" means any of the nonvascular aquatic plant species (the red, green, or brown seaweeds) that can be seen without using a microscope. They may be attached to the substrate or other macroalgae by a holdfast, or found drifting individually or in mats.

(86) "Maintenance" means repairing, remodeling, or making minor alterations to a facility or project to keep the facility or project in properly functioning and safe condition.

(87) "Major modification" means any change to a hydraulic project approval that is not a minor modification.

(88) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include overnight or live-aboard boating accommodations.

(89) "Marine terminal" means a public or private commercial wharf located in navigable waters of the state and used, or intended to be used, as a port or facility for storing, handling, transferring, or transporting goods to and from vessels.

(90) "Mean annual flood" means the average of all the annual peak floods of record.

(91) "Mean higher high water" or "MHHW" means the tidal elevation obtained by averaging each day's highest tide at a particular location over a period of nineteen years, as determined by National Oceanic and Atmospheric Administration (NOAA). It is measured from mean lower low water, which is a reference datum used to delineate waters of the state in saltwater areas.

(92) "Mean lower low water" or "MLLW" means the 0.0 feet tidal elevation, as determined by NOAA. It is determined by averaging each day's lowest tide at a particular location over a period of nineteen years. MLLW is a reference datum used to delineate waters of the state in saltwater areas. NOAA provides detailed information on their "Tides, Currents, and Predictions" web site.

(93) "Mechanical harvesting and cutting" means partially removing or controlling aquatic plants by using aquatic mechanical harvesters, which cut and collect aquatic plants, and mechanical cutters, which only cut aquatic plants.

(94) "Mineral prospect" or "mineral prospecting" means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment.

(95) "Mineral prospecting equipment" means any natural or manufactured device, implement, or animal (other than the

human body) used in any aspect of prospecting for or recovering minerals.

(96) "Mini high-banker" means a high-banker with a riffle area of three square feet or less. See Figure 2.



Figure 2: Mini high-banker

(97) "Mini rocker box" means a rocker box with a riffle area of three square feet or less. See Figure 3.

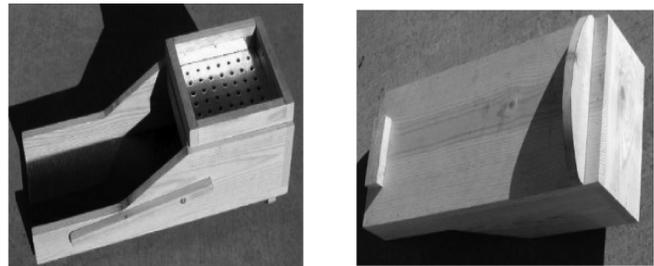


Figure 3: Mini rocker box (top view and bottom view)

(98) "Mining" means the production activity that follows mineral prospecting.

(99) "Minor modification" means a small change in work timing or plans and specifications of a hydraulic project.

(100) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts to fish life or habitat that supports fish life.

(101) "Mitigation bank" means a site where wetlands or other aquatic resources are restored, created, enhanced, or preserved. The bank exists expressly to provide compensatory mitigation before unavoidable impacts to wetlands or other aquatic resources occur.

(102) "Mitigation sequence" means the successive steps that the department and the applicant must consider and

implement to protect fish life when constructing or performing work. These steps must be considered and implemented in the order listed:

(a) Avoid the impact altogether by not taking a certain action or parts of an action.

(b) Minimize unavoidable impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking steps to reduce impacts.

(c) Rectify the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reduce or eliminate the impact over time.

(e) Compensate for remaining unmitigated impacts by replacing, enhancing, or providing substitute resources or environments.

(f) Monitor the impact and take appropriate corrective measures to reach the identified goal.

(103) "Multiple site permit" means a hydraulic project approval issued to a person under RCW 77.55.021 for hydraulic projects occurring at more than one specific location and which includes site-specific requirements.

(104) "Natural conditions" means environmental situations that occur or are found in nature. This does not include artificial or manufactured conditions.

(105) "Nearshore" means shallow waters where sunlight reaching the bed is sufficient to support the growth of submerged aquatic vegetation.

(106) "Nearshore zone" means the three critical "edge" habitats as follows: The edge between upland and aquatic environments, the edge between the shallow productive zone and deep water, and the edge between fresh and marine waters.

(107) "No net loss" means:

(a) Sequentially for avoiding impacts, minimizing unavoidable impacts, and compensating for remaining adverse impacts to fish life.

(b) Sequentially avoiding impacts, minimizing unavoidable impacts, and compensating for net loss of habitat functions necessary to sustain fish life.

(c) Sequentially avoiding impacts, minimizing unavoidable impacts, and compensating for loss of area by habitat type.

(d) Mitigation required to achieve no net loss should benefit the fish life being impacted.

(108) "Ordinary high water line" or "OHWL" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining freshwater is the elevation of the mean annual flood.

(109) "Pan" means an open metal or plastic dish operated by hand to separate gold or other minerals from aggregate by washing the aggregate. See Figure 4.



Figure 4: Pan

(110) "Panning" means the use of a pan to wash aggregate.

(111) "Permanent ford" means a ford approved by the department that is in place for more than one operating season.

(112) "Person" means an applicant, authorized agent, permittee, or contractor. The term person includes an individual, a public or private entity, or organization.

(113) "Placer" means a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals.

(114) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(115) "Power sluice" means "high-banker."

(116) "Power sluice/suction dredge combination" means a machine that can be used as a power sluice, or with minor modifications, as a suction dredge. See Figure 5.



Figure 5: Power sluices/suction dredge combination

(117) "Process aggregate" or "processing aggregate" means the physical or mechanical separation of the valuable mineral content within aggregate.

(118) "Prospecting" means the exploration for minerals and mineral deposits.

(119) "Protection of fish life" means avoiding, minimizing unavoidable impacts, and compensating for remaining impacts to fish life and the habitat that supports fish life through mitigation sequencing.

(120) "Purple loosestrife" means *Lythrum salicaria* and *Lythrum virgatum* as classified in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(b).

(121) "Qualified professional" means a scientist, engineer, or technologist specializing in a relevant applied science or technology including fisheries or wildlife biology, engineering, geomorphology, geology, hydrology, or hydrogeology. This person may be certified with an appropriate professional organization, and acting under that association's code of ethics and subject to disciplinary action by that association. A qualified professional can also be someone who, through demonstrated education, experience, accreditation, and knowledge relevant to the particular matter, may be reasonably relied on to provide advice within that person's area of expertise. This definition does not supersede other state laws that govern the qualifications of professionals that perform hydraulic projects.

(122) "Redd" means a nest made in gravel, consisting of a depression dug by a fish for egg deposition, and associated gravel mounds. See Figure 6.

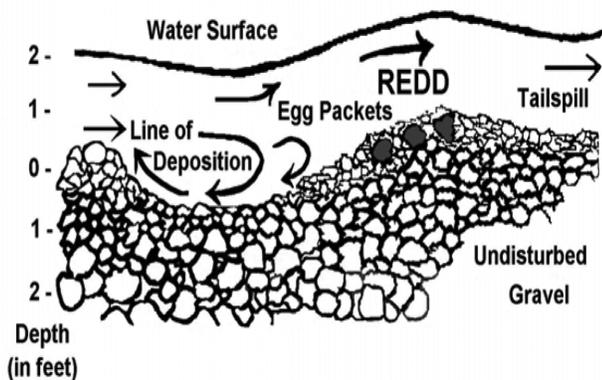


Figure 6: Cross-section of a typical redd

(123) "Rehabilitation" means major work required to restore the integrity of a structurally deficient or functionally obsolete structure. This can include partial replacement of a structure.

(124) "Replacement" means the complete removal of an existing structure and construction of a substitute structure in the same general location.

(125) "Riffle" means:

(a) The bottom of a concentrator containing a series of interstices or grooves to catch and retain a mineral such as gold; or

(b) A short, relatively shallow and coarse-bedded length of stream over which the stream flows at higher velocity and higher turbulence than it normally does in comparison to a pool.

(126) "River" means "watercourse."

(127) "Riparian zones" means the land adjacent to streams, rivers, ponds, lakes, and those wetlands whose soils and vegetation are influenced by ponded or channelized water. They are the transition areas between aquatic and upland habitats often with elements of both ecosystems.

(128) "Rocker box" means a nonmotorized concentrator consisting of a hopper attached to a cradle and a sluice box operated with a rocking motion. See Figure 7.

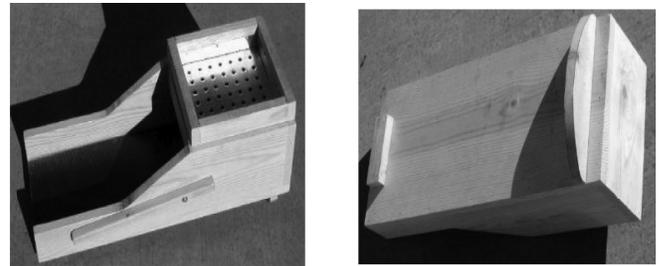


Figure 7: Rocker box

(129) "Rotovation" means the use of aquatic rotovators, machines that have underwater rototiller-like blades, to uproot aquatic plants as a means of control.

(130) "Roughened channel" means to construct a channel of a graded mix of sediment with enough roughness and hydraulic diversity to achieve fish passage. Roughened channels are designed to resist erosion and are often built at a steeper gradient than the prevailing channel.

(131) "Saltwater area" means those state waters and associated beds waterward of the ordinary high water line in Puget Sound, the Strait of Juan de Fuca and the open coast. Saltwater areas include estuaries and other surface-water-connected wetlands that provide or maintain habitat that support fish life. This definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

(132) "Scientific measurement devices" means devices that measure and/or record environmental data, such as staff gauges, tide gauges, water recording devices, water quality testing and improvement devices, and similar instruments.

(133) "Seagrass" means native *Zostera* species, *Ruppia maritima*, and *Phyllospadix* species.

(134) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that must not be taken except as authorized by rule of the commission. The term shellfish includes all stages of development and the bodily parts of shellfish species.

(135) "Sluice" means a trough equipped with riffles across its bottom used to recover gold and other minerals with the use of flowing water. See Figure 8.



Figure 8: Sluice

(136) "Spartina" means *Spartina alterniflora*, *Spartina anglica*, *Spartina x townsendii*, and *Spartina patens* as classified in RCW 17.10.010(10) and defined in RCW 17.26.020 (5)(a).

(137) "Special provisions" means those requirements that are part of a HPA, are site- or project-specific, and supplement or amend the technical provisions.

(138) "Spiral wheel" means a hand-operated or battery-powered rotating pan used to recover gold and minerals with the use of water. See Figure 9.



Figure 9: Spiral wheel

(139) "Stable slope" means a slope without measurable evidence of slumping, sloughing, or other movement. Stable slopes will not show evidence of landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically present on stable slopes.

(140) "Suction dredge" means a machine used to move submerged aggregate by hydraulic suction. The aggregate is processed through an attached sluice box to recover gold and other minerals. See Figure 10.



Figure 10: Suction dredge

(141) "Suction dredging" means using a suction dredge to recover gold and other minerals.

(142) "Tailings" means the waste material that remains after processing aggregate to remove valuable mineral content.

(143) "Temporary ford" means a ford that is in place for no more than one operating season or less.

(144) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(145) "Toe of the bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged waterward of the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure where it meets the stream bed or marine beach or bed.

(146) "Toe of the slope" means the base or bottom of a slope at the point where the ground surface abruptly changes to a significantly flatter grade.

(147) "Unimpeded fish passage" means the free movement of all fish species at any mobile life stage around or through a human-made or natural structure.

(148) "Unstable slope" means a slope with visible or measurable evidence of slumping, sloughing, or other movement. Evidence of unstable slopes includes landslides, uprooted or tilted trees, exposed soils, water-saturated soils, and mud, or the recent erosion of soils and sediment. Woody vegetation is typically not present on unstable slopes.

(149) "Vac-pac" means a motorized, portable vacuum that you use for prospecting. See Figure 11.



Figure 11: Vac-pac

(150) "Water crossing structures" means structures that span over, through, or under a watercourse. Examples are bridges, culverts, conduits, and fords.

(151) "Water right" means a certificate of water right, a vested water right or a claim to a valid vested water right, or a water permit, under Title 90 RCW.

(152) "Water body" means "waters of the state."

(153) "Watercourse," "river" or "stream" means any portion of a stream or river channel, bed, bank, or bottom waterward of the ordinary high water line of waters of the state. Watercourse also means areas in which fish may spawn, reside, or pass, and tributary waters with defined bed or banks that influence the quality of habitat downstream. Watercourse also means waters that flow intermittently or that fluctuate in level during the year, and the term applies to the entire bed of such waters whether or not the water is at peak level. A watercourse includes all surface-water-connected wetlands that provide or maintain habitat that supports fish life. This definition does not include irrigation ditches, canals, storm water treatment and conveyance systems, or other entirely artificial watercourses, except where they exist in a natural watercourse that has been altered by humans.

(154) "Waters of the state" or "state waters" means all salt and freshwaters waterward of the ordinary high water line and within the territorial boundary of the state.

(155) "Weed rolling" means the use of a mechanical roller designed to control aquatic plant growth.

(156) "Wetland(s)" is as defined in RCW 90.58.030.

(157) "Wetted perimeter" means the areas of a watercourse covered with water. The wetted perimeter varies with flow, discharge, and tides.

(158) "Woody vegetation" means perennial trees and shrubs having stiff stems and bark. Woody vegetation does not include grasses, forbs, or annual plants.

(159) "Written notice" or "written notification" means a communication through U.S. mail or e-mail.

NEW SECTION

WAC 220-660-040 Applicability of hydraulic project approval authority. (1) **When an HPA is required:** A person must obtain an HPA from the department before conducting a hydraulic project, unless the activity is exempt from this requirement as provided in subsection (2) of this section.

(2) **No HPA is required for the following hydraulic projects:**

(a) Installing oyster stakes, boundary markers, or property line markers by hand or with hand-held tools;

(b) Driving across an established ford (RCW 77.55.031);

(c) Remedial actions by the department of ecology or a person under a consent decree, order, or agreed order under RCW 70.105D.090 (RCW 77.55.061). Although no HPA is required, the department of ecology must ensure compliance with the substantive requirements of this chapter;

(d) Landscape management plans approved by the department and the department of natural resources under RCW 76.09.350(2) serve as an HPA for the life of the plan if fish are selected as one of the public resources covered under the plan (RCW 77.55.201);

(e) Removing derelict fishing gear according to the guidelines described in RCW 77.12.865 (RCW 77.55.041);

(f) Removing crab pots and other shellfish gear under a permit issued under RCW 77.70.500;

(g) An activity conducted solely to remove or control *Spartina* (RCW 77.55.051);

(h) An activity conducted solely to remove or control purple loosestrife performed with hand-held tools, hand-held equipment, or equipment carried by a person (RCW 77.55.-051);

(i) Installing or removing a portable boat hoist in a lake if the hoist:

(i) Is not permanently installed;

(ii) Does not have a frame length greater than fifteen feet;

(iii) Does not have armoring or other structures installed for a foundation or protection;

(iv) Does not have a canopy;

(v) Is not installed or removed using equipment operated on the bed;

(vi) Is not installed at the inlet or outlet of any stream;

(vii) Does not require any dredging, filling, pile driving, or any other bed modifications during installation or removal;

(viii) Is not modified during or after installation by adding docks, ramps, floats, or other structures that add surface area to the hoist or allow for moorage of additional watercraft; and

(ix) Is not installed in any of the following sockeye salmon-bearing lakes during times of the year when spawning and egg incubation is occurring in beach areas:

Table 1
Authorized Work Times to Install Portable Boat Hoists in Lakes with Sockeye Spawning Beaches

Lake Name and Water Resource Inventory Area ((WRIA) in parentheses)	Authorized Work Times
Baker (04)	June 15 - August 15
Cle Elum (39)	September 1 - March 31
Osoyoos (49)	May 15 - September 30
Ozette (20)	August 1 - October 31
Pleasant (20)	August 1 - October 31
Samamish (08)	July 15 - September 30
Washington (08)	July 15 - September 30

(j) Installing, maintaining, or removing scientific measurement devices if:

(i) All work conducted waterward of the OHWL is done by hand or with hand-held tools;

(ii) The project does not create a blockage to fish passage, even temporarily; and

(iii) The project does not include dewatering the job site, placing fill or concrete, or excavating or grading the bed or bank.

(k) Forest practices hydraulic projects, as defined in chapter 76.09 RCW and governed in Title 222 WAC; and

(l) Installation or maintenance of tideland and floating private sector commercial fish and shellfish culture facilities (RCW 77.12.047). However, an HPA is required to construct accessory hydraulic structures, such as bulkheads or boat ramps.

NEW SECTION

WAC 220-660-050 Procedures—Hydraulic project approvals. (1) Description:

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's web site.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

(3) Standard HPA:

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site.

Some special types of standard HPAs may cover multiple project sites.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHEP if the department determines that the size and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined processing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no prepermit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this

requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic projects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

(4) Emergency HPA:

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(5) Imminent danger HPA:

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(6) Chronic danger HPA:

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has

damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

(7) Expedited HPA:

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

(8) Pamphlet HPA:

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

(9) How to get an HPA:

(a) How to get a pamphlet HPA: A person can print a pamphlet HPA from the department's web site. A person may

also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located during normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m. After business hours, a person must contact the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

(A) A pamphlet HPA, subsection (3) of this section; or

(B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public web site; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, landowner or landowner representative, and the authorized agent, if any. Completing and submitting the application form through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life and habitat that supports fish life, and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

(G) Payment of the application fee required under chapter 77.55 RCW. This fee must be submitted with the application or paid under a billing agreement established in advance with the department unless the project is one of the following project types that are exempt from the application fee:

(I) Project type approved under pamphlet permits;

(II) Mineral prospecting and mining;

(III) Projects on farm and agricultural land, as defined in RCW 84.34.020;

(IV) Projects reviewed by a department biologist on contract with the applicant; or

(V) Modification of permits issued for projects applied for before July 10, 2012; and

(H) Applicants seeking approval under the farm and agricultural land fee exemption must provide a copy of the county assessor's classification of the property on which the project occurs as farm and agricultural land as that term is defined in RCW 84.34.020.

(iv) HPA application submission:

(A) A person must submit the complete application package:

(I) Using the department's online permitting system;

(II) Sending the package via mail to:

Department of Fish and Wildlife
P.O. Box 43234
Olympia, Washington 98504-3234;

(III) E-mail: HPAapplications@dfw.wa.gov;

(IV) Fax: 360-902-2946;

(V) Uploading to a file transfer protocol site acceptable to the department; or

(VI) Hand-delivering to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Microsoft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat pro-

gram after normal business hours as received on the next business day.

(10) Incomplete applications:

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or e-mailed notification of an incomplete application to the applicant or authorized agent. This written or e-mailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the department's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may not process any application that has been incomplete for more than six months. The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(11) Refund of application fee: The application fee is nonrefundable except when the application fee was paid but the proposed project is not a hydraulic project and therefore does not require an HPA, or the project is exempt from the fee. Upon determination that an application qualifies for a refund, the department must issue the refund within one week.

(12) Application review period:

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA permit before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

(13) Suspending the review period:

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized

agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

(i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);

(ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;

(iii) The applicant or authorized agent submits a written request for a delay;

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting and authorizing agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may not process any application if the application has been delayed for processing more than six months for any of the reasons identified in subsection (13)(a) or (b) of this section. The department must provide the applicant with written notification at the time the application expires. The applicant or authorized agent must submit a new complete application to receive further consideration of the project.

(14) Issuing or denying a hydraulic project approval:

(a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of a permit. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. In addition, the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141. However, these projects must meet the mitigation provisions in WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450 that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.

(c) The department may place specific time limitations on project activities in an HPA to protect fish life.

(d) The department may require a person to notify the department before construction starts, upon project completion, or at other times that the department deems necessary while the permit is in effect. The department may also require a person to provide periodic written reports to assess permit compliance.

(e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the permit, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia headquarters office through e-mail or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be applied for and permitted under the requirements of chapter 43.21K RCW.

(15) Hydraulic project approval expiration time periods:

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application, approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

(16) Requesting a time extension, renewal, or modification of a hydraulic project approval:

(a) The permittee may request a time extension, renewal, or modification of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, or modification submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the control number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA, the reason for the requested

change, the date of the request, payment of the application fee if the request is for a major modification and the original application was subject to an application fee, and the requestor's signature.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time extension, renewal, or modification to an approved HPA.

(d) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection except that modifications requiring an application fee do not require payment of the fee at the time of the request. The department will invoice the permittee upon committing the HPA to writing.

(e) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

(f) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s).

(17) Modifications of a hydraulic project approval initiated by the department:

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.

(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

(c) The department may not charge an application fee for modifications to HPAs initiated by the department.

(18) Requesting a transfer of a hydraulic project approval: An HPA is not transferable to another person. A person wishing to conduct a hydraulic project must submit a new complete application package.

NEW SECTION

WAC 220-660-060 Integration of hydraulic project approvals and forest practices applications. (1) Description:

(a) In 1999, the *Forests and Fish Report* and Engrossed Substitute House Bill 2091, which amended the Forest Practices Act, chapter 76.09 RCW, envisioned a more integrated approach to permitting hydraulic projects that also require forest practices applications (FPAs). In May 2001, the forest practices board adopted permanent forest practices rules in Title 222 WAC, which incorporated fish protection measures normally included in hydraulic project approvals (HPAs) for projects in nonfish-bearing waters.

(b) In April 2012, the Washington state legislature, through Second Engrossed Substitute Senate Bill 6406, amended the Forest Practices Act in chapter 76.09 RCW and the hydraulic code statutes in chapter 77.55 RCW. The amendment resulted in the intergration of the hydraulic code rule fish protection standards (Title 220 WAC) into the forest practices rules for hydraulic projects in fish-bearing waters on forest land. As codified in RCW 77.55.361 and 76.09.040, the requirements of the hydraulic code rules no longer apply to any forest practices hydraulic project. The amended statutes also include a requirement that the department adopt rules establishing the procedures for the concurrence review process. This process is outlined in subsection (3) of this section.

(2) General review and comment on forest practices hydraulic projects:

(a) The department may review and provide comments on any FPA.

(b) For FPAs that include a forest practices hydraulic project involving fish-bearing waters or shorelines of the state, the department must review the forest practices hydraulic projects and either provide comments to the department of natural resources (DNR), or document that the review has occurred without the need for comments. Before commenting, the department will strive to communicate with the applicant regarding any concerns relating to consistency with fish protection standards. The department will also strive to maintain communications with DNR as concerns arise and to inform DNR of communications with applicants.

(c) The department will encourage forest landowners to consult with department biologists, including site visits as needed, before submitting an FPA containing a hydraulic project. This will help ensure that project design plans and specifications meet fish protection standards. The intent of preapplication collaboration with the department is to provide more efficient and successful outcomes for forest landowners and their proposed hydraulic projects. In addition to the general review and comment process for forest practices hydraulic projects described in this subsection, hydraulic projects meeting the criteria described in subsection (3)(a) of this section will follow the concurrence review process.

(3) Concurrence review process:

(a) The department must review forest practices hydraulic projects meeting the following criteria and provide written comments to DNR on the project's ability to meet fish protection standards:

(i) Culvert installation or replacement, and repair at or below the bankfull width, as that term is defined in WAC 222-16-010 on July 10, 2012, in fish-bearing rivers and streams that exceed five percent gradient;

(ii) Bridge construction or replacement, and repair at or below the bankfull width, of fish-bearing unconfined streams; or

(iii) Fill within the 100-year flood level, as that term is defined in WAC 222-16-010, of fish-bearing unconfined streams.

(b) After the department receives notification from DNR that an FPA includes one or more hydraulic projects meeting the criteria in subsection (3)(a) of this section, the department

has thirty days to review the forest practices hydraulic project(s) for consistency with fish protection standards.

(c) Within five business days after notification from DNR, or as soon as possible thereafter, the department will determine if all information needed to assess the hydraulic project's consistency with fish protection standards is included in the application.

(d) If information is missing, the department will immediately contact the applicant to request the missing information. The department will also provide written notification to DNR, indicating that specific information is missing and that the applicant has been notified. If the applicant fails to provide missing information in a timely manner so that the department can complete its review within the required thirty-day time frame, the department may issue a nonconcurrency on a proposed project.

(e) If, during the thirty-day concurrence review period, the department determines that a forest practices hydraulic project may not be consistent with fish protection standards, the department will attempt to work with the applicant to modify the proposed project. The department will strive to include DNR on site visits with the applicant as needed.

(f) The department must provide written notification of concurrence or nonconcurrency to DNR within the thirty-day review period, stating whether or not the hydraulic project is consistent with fish protection standards. As part of the written notification to DNR, the department must provide information about the outcomes of any meetings with the applicant, including agreements or disagreements, any missing information requested, and any proposed changes needed to meet fish protection standards.

(g) The department will recommend that DNR disapprove the FPA when efforts described in subsection (3)(e) of this section have not resulted in a successful outcome, the project will result in direct or indirect harm to fish life, and enough mitigation cannot be assured by modifying the hydraulic project proposal or by DNR's agreement to add appropriate conditions to the FPA.

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 220-660-070 Changes to hydraulic project approval technical provisions. (1) The department may modify or delete technical provisions in this chapter through establishing conditions on an HPA permit when any of the following is demonstrated:

- (a) There is no logical application to a project;
- (b) A person provides an alternative to the provision that demonstrates that it provides equal or greater protection for fish life;
- (c) Enforcement of the original provision would result in denial of an HPA when there is enough mitigation defined to allow the project;
- (d) The modification or deletion of the provision will not cause a loss of or injury to fish life, or the loss or permanent degradation of the habitat that supports fish life;

(e) The proposed hydraulic project is part of an approved cleanup action under Model Toxics Control Act, Comprehensive Environmental Response Compensation and Liability Act, or Superfund Amendment and Reauthorization Act;

(f) The technical provision or provisions conflict with applicable local, state, or federal regulations that provide equal or better protection for fish life;

(g) The technical provision or provisions are not feasible due to geological, engineering or environmental constraints or safety concerns; or

(h) New scientific information is made available that demonstrates the project will result in equal or greater protection of fish life, and the habitat that supports fish life.

(2) The department may add conditions on the HPA permit to protect fish life as needed to address project-specific or site-specific impacts not adequately mitigated by the technical provisions. However, all provisions must relate to the project and be proportional to the impact of the project. The HPA will include all of the technical provisions with which a person will be required to comply.

NEW SECTION

WAC 220-660-080 Mitigation requirements for hydraulic projects. (1) **Description:** The department defines mitigation as sequentially avoiding impacts, minimizing and rectifying unavoidable impacts, and compensating for remaining impacts. This mitigation must achieve no net loss.

(2) **Fish life concerns:** Work conducted in or near water can negatively impact fish life. Best management practices such as proper design and siting, construction timing, isolating the work area, sediment and erosion control, water-quality management, and revegetation can avoid, minimize, and rectify many of these impacts. These best management practices are reflected in the technical provisions. However, remaining impacts may require compensation to offset the loss of fish life and habitat that supports fish life.

(3) Mitigation requirements:

(a) The department must determine if the project actions proposed will mitigate for the project impacts to fish life and the habitat that supports fish life based on available information.

(b) A person must pay for any surveys, studies, or reports required by the department to determine if the hydraulic project mitigates impacts to fish life and the habitat that supports fish life. When required, the department will provide a written explanation of why the information is required and what standards or protocols the applicant must follow.

(c) All work subject to this chapter must achieve no net loss through a sequence of mitigation actions. However, the department may not impose permit conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(d) Mitigation includes all of the action steps in the mitigation sequence.

(e) Compensatory mitigation is not required for hydraulic projects if other actions in the mitigation sequence are taken that avoid or offset impacts to fish life.

(f) The department may require advance mitigation if an experimental mitigation technique is being performed. If required, the advance mitigation should be fully functional prior to the project impacts.

(g) All maintenance work must comply with the applicable common technical construction provisions and project-specific and site-specific construction provisions. Maintenance work that rehabilitates and replaces a structure must also comply with the applicable common technical design provisions.

(h) Replacement of any portion of any structure must comply with the requirements in this chapter governing materials that may be used.

(4) Compensatory mitigation:

(a) The department may determine that compensatory mitigation actions are needed to offset impacts remaining after other actions in the mitigation sequence are completed.

(b) When compensatory mitigation is needed to offset impacts, the department prefers compensatory mitigation actions that restore impacted habitat types and functions on-site or immediately adjacent to the impact site. If mitigation actions on or near the project site cannot mitigate the project impacts, then the department prefers compensatory mitigation actions at another location benefit the same fish life populations, habitat types and functions as those impacted by the project. However, the department must give due consideration to any compensatory mitigation proposal that improves the overall habitat functions in the watershed for the affected fish life populations at the project site.

(c) At the request of the project proponent, the department must accommodate the mitigation needs of the infrastructure or noninfrastructure development, including proposals or portions of proposals that are explored or developed in RCW 90.74.040. However, the department will not approve compensatory mitigation that does not provide equal or better habitat functions, value and quantity by habitat type.

(d) The department will evaluate mitigation credits and debits on a scientifically valid measure of habitat function, value, and quantity by habitat type. Compensatory mitigation must also compensate for temporal losses, uncertainty of performance, loss of habitat quantity by habitat type, and differences in habitat functions and value.

(e) The department will consider the use of credits from an approved programmatic option such as a state or federal certified fish conservation bank, a joint 404/401 mitigation and fish conservation bank, or in-lieu fee program as a form of compensation only after the standard mitigation sequencing has been applied at the impact site. These credits should benefit the same fish life populations as those impacted by the hydraulic project.

(f) For calculating compensatory mitigation requirements under this chapter, the environmental baseline is habitat conditions at the time the HPA application is submitted. However, this baseline does not apply to hydraulic projects constructed illegally. Structures that predate the hydraulic code or structures that were previously authorized under past versions of the hydraulic code are deemed legal structures.

(g) The department will evaluate impacts caused by a hydraulic project by comparing the condition of the habitat

before project construction or the performance of work to the anticipated condition of the habitat after project completion.

(h) Maintenance on a legally constructed structure does not require compensatory mitigation unless:

(i) The maintenance causes a new loss of habitat function, value, or quantity by habitat type that is not associated with the original construction of the structure; or

(ii) The maintenance work does not comply with subsection (3)(g) in this section.

(i) Removal of a human-made or engineered structure does not require compensatory mitigation. However, the department may require bank resloping, revegetation, and other job site stabilization measures after structure removal.

(j) The department may require monitoring to determine the extent and severity of impacts and the effectiveness of the compensation projects. The department may require a monitoring and contingency plan to ensure the compensatory mitigation meets the performance goals and objectives specified in the HPA. This plan may be part of a larger mitigation plan.

(5) Mitigation plan:

(a) The department may require a mitigation plan for projects with ongoing, complex, and experimental mitigation actions.

(b) The department must notify a person in writing if a mitigation plan is required and specify what the plan must include if a mitigation plan was not submitted with the application.

(c) When reviewing a mitigation plan under RCW 77.55.021, the department must, at the request of the applicant, follow the guidance contained in RCW 90.74.005 through 90.74.030. Pursuant to RCW 90.74.020, a mitigation plan must do the following:

(i) Guarantee long-term viability of the created, restored, enhanced, or preserved habitat, including assurances for protecting any essential habitat functions and values defined in the mitigation plan;

(ii) Provide long-term monitoring of any created, restored, or enhanced mitigation site; and

(iii) Be consistent with the local comprehensive land use plan and any other applicable planning process in effect for the development area, such as an adopted subbasin or watershed plan.

(d) When making a permit decision, the department must consider, pursuant to RCW 90.74.020, whether the mitigation plan provides equal or greater habitat functions, value, and quantity by habitat type compared to the existing conditions. This consideration must be based upon the following factors:

(i) The relative value of the mitigation for the target fish life, in terms of the habitat functions, value, and quantity by habitat type;

(ii) The compatibility of the proposal with broader resource management and habitat management objectives and plans, such as existing resource management plans, species recovery plans and associated habitat restoration strategies, watershed plans, critical areas ordinances, the forestry riparian easement program, the riparian open space program, the family forest fish passage program, and shoreline master programs;

(iii) The ability of the mitigation to address scarce habitat functions or types within a watershed;

(iv) The benefits of the proposal to the broader watershed landscape, including the benefits of connecting various habitat units and reducing fish life-limiting habitats;

(v) The benefits of implementing advance compensatory mitigation before the project's anticipated impacts occur; and

(vi) The significance of any negative impacts to nontarget fish life.

(e) A mitigation plan may be approved through a memorandum of agreement between a person and the department.

(f) The department will require a memorandum of agreement between an applicant and the department if mitigation actions, including monitoring, exceed the five-year statutory time limitation of the HPA.

NEW SECTION

WAC 220-660-090 Technical provisions. Technical provisions are avoidance and minimization mitigation measures commonly used to protect fish life. WAC 220-660-100 through 220-660-450 are common technical provisions listed by hydraulic project types. All projects will also be reviewed relative to the provisions of WAC 220-660-080. The department will require certain technical provisions depending upon the individual proposal and the site characteristics. Additional special provisions may be included to address site-specific conditions. Those provisions must be in the HPA. The department may apply saltwater provisions listed in WAC 220-660-310 through 220-660-450 to a project in tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam.

NEW SECTION

WAC 220-660-100 Freshwater habitats of special concern. (1) Description:

(a) Freshwater habitats of special concern provide essential functions important in the developmental life histories of twenty-two priority fish species. Priority fish species include species that are listed under state and federal endangered species laws, and species of recreational, commercial, or tribal importance.

(b) The presence of freshwater habitats of special concern or adjacent areas with similar characteristics may restrict project type, design, location, and timing. These restrictions also may benefit other fish species that use these habitats. The department may determine the location of such habitats by a site visit, and/or by considering maps, publications, and other available information.

(2) Fish life concerns:

(a) All fish and shellfish have special habitat requirements related to water quantity and quality (including temperature) and to the physical features of the stream or body of water in which they live. For example, salmon and steelhead spawn and live for a time in a stream before going to the ocean. They require an ample supply of clean, cool, well-oxygenated water. Adults need clean gravel in which to spawn and juvenile fish require instream cover such as tree parts, boulders, or overhanging banks in which to hide from predators. Vegetated stream banks shade the water from the warming effects of the sun. Insects drop off overhanging vegetation and provide food. When juvenile salmon or steelhead

enter saltwater, their habitat requirements change. During this critical transition period, they must have shallow, near-shore waters where they can migrate, school, feed, and seek protection from larger fish. Each species of fish and shellfish has similar, yet unique requirements. They have become adapted to and require these natural conditions as a result of the ten thousand years of evolution since the last ice age. The degradation of any one of the elements of their required habitat results in reduced numbers of fish and shellfish.

(b) Construction activity in or near the water has the potential to kill fish or shellfish directly. More importantly, this activity can also alter the habitat that fish and shellfish require. Direct damage or loss of habitat results in direct loss of fish and shellfish production. Direct killing of fish or shellfish is usually a one-time loss. Damaged habitat, however, can continue to cause lost production of fish and shellfish for as long as the habitat remains altered.

(3) Freshwater habitats of special concern:

(a) The following habitats serve essential functions in the developmental life histories of twenty-two priority fish species:

(i) Spawning habitat;

(ii) Rearing habitat;

(iii) Migration corridors;

(iv) Cover and shelter provided by large woody debris, live tree roots, deep pools, shallow water, undercut banks, overhanging vegetation, turbulence, and large interstitial areas in cobble or boulder substrate;

(v) Off-channel habitat including wall-based channels, flood swales, side channels, and flood plain spring channels;

(vi) Native aquatic vegetation beds; and

(vii) Native riparian vegetation zones.

(b) The following are important geomorphic processes that form and maintain freshwater habitats of special concern:

(i) Woody material sources, delivery, and transport; and

(ii) Sediment sources, delivery, and transport.

(c) A person may request information from the department about the location of priority fish species and freshwater habitats of special concern. Information about priority fish species is also available on the department's web site.

NEW SECTION

WAC 220-660-110 Authorized work times in freshwater areas. (1) Description: The department authorizes work during less critical times of the year to reduce the risk of impacts to fish life at sensitive life stages. In-water work is not allowed during critical times of the year unless a person can implement mitigation measures to eliminate risk to fish life.

(2) **Fish life concerns:** Work in or near watercourses can harm fish life including incubating eggs and fry, juveniles, spawning adults, and other sensitive life history stages. Therefore, work must occur at times of the year when the risk to fish life is reduced or can be avoided.

(3) Determining authorized work times:

(a) The department has the discretion to modify timing windows depending on actual site conditions (such as hydrology, run timing, and fish presence) and the risk of the pro-

posed work to fish life. The department must specify authorized work times for hydraulic projects in or near waters of the state when it issues HPAs. When determining the authorized work times, the department will use the information below to determine the appropriate timing window for each project individually. Work timing considers:

(i) Life history stages of the fish and shellfish species present:

(A) Presence or absence of spawning, incubating, rearing, migrating, and other critical habitat that supports fish life at or near the job site; and

(B) The migration timing of juveniles and adults in both fresh and saltwater.

(ii) The expected impact of construction activities, equipment type, and access;

(iii) Best management practices proposed by the applicant, including proposed plans to:

(A) Control, contain, and manage sediment and erosion at the job site;

(B) Contain and manage wastewater at the job site;

(C) Isolate the impacts of the work using appropriate job site isolation techniques; and

(D) Minimize damage to riparian, wetland, and aquatic vegetation at the job site.

(iv) Mitigation measures volunteered or imposed upon the project;

(v) Existing or predicted weather conditions or flow during construction activities; and

(vi) Other circumstances and conditions pertaining to the proper protection of fish life.

(b) The department must publish on its public web site the times when spawning salmonids, their incubating eggs and fry, or other critical life history stage are least likely to be within Washington state fresh waters.

NEW SECTION

WAC 220-660-120 Common freshwater construction provisions. (1) **Description:** Only applicable common construction provisions will be applied to a specific hydraulic project. Common construction provisions include job site access, equipment use, construction materials, sediment and erosion control containment, in-water work area isolation, fish removal, job site repair, and revegetation.

(2) **Fish life concerns:** Construction and other work can negatively affect fish life. Some activities can kill or injure fish while others can cause behavioral changes that reduce fish growth and survival. Some activities can damage the habitat used for spawning and egg incubation, rearing, feeding, hiding from predators, and migration.

(3) **Staging areas:** Establish staging areas (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(4) **Job site access:**

(a) Use existing roadways or travel paths whenever feasible. If not feasible, minimize the number of new temporary access roads constructed.

(b) The design and location of new temporary access roads must follow the mitigation sequence to protect waters of the state from erosion and delivery of sediment.

(c) Clearly mark boundaries to establish the limit of work associated with site access and construction.

(d) Limit removal of native vegetation to one side of the channel to maintain the best shade coverage whenever feasible. Locate the project access site to minimize the need to remove woody vegetation. Woody vegetation greater than four inches diameter that must be removed to construct the hydraulic project must be marked in the field by the applicant and approved for removal by the department.

(e) Retain all natural habitat features on the bed or banks including large woody material and boulders. These natural habitat features may be moved during construction but they must be placed near the preproject location before leaving the job site.

(5) **Equipment use:**

(a) Confine the use of equipment to specific access and work corridors to protect riparian, wetland, and aquatic vegetation.

(b) If wet or muddy conditions exist, in or near a riparian zone or wetland area, use equipment that reduces ground pressure whenever feasible.

(c) Check equipment daily for leaks and complete any required repairs in an upland location before using the equipment in or near the water.

(d) Equipment used in or near water must use environmentally acceptable lubricants composed of biodegradable base oils. These are vegetable oils, synthetic esters, and polyalkylene glycols. The department may waive this requirement for a small project that has minimal use of equipment in or near the water if the duration of the project is forty-eight hours or less or if containment prevents the lubricants from entering waters of the state.

(6) **Construction materials:**

(a) Store all construction and deconstruction material in a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(b) Do not stockpile construction material waterward of the OHWL in waters of the state unless authorized by the department.

(c) Use only clean, suitable material as fill material (no trash, debris, car bodies, tires, asphalt, concrete, etc.).

(d) If the department approves the use of angular rock, the rock must be large enough and installed to withstand the 100-year peak flow or other design flow approved by the department.

(e) To prevent leaching, construct forms to contain any wet concrete. Place impervious material over any exposed wet concrete that will come in contact with waters of the state. Forms and impervious materials must remain in place until the concrete is cured.

(f) Do not use wood treated with oil-type preservative (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used if the western wood preservers institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the western wood preservers guidelines and the best management practices to minimize the preservative migrating from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines are available at www.wwpinstitute.org.

(g) The department discourages the use of whole tires. However, products made from recycled tires specifically manufactured for use in the aquatic environment are approved by the department.

(7) Construction-related sediment, erosion, and pollution containment:

(a) Unless approved by the department, work in the dry watercourse (when no natural flow is occurring in the channel, or when flow is diverted around the job site).

(b) Protect all disturbed areas from erosion. Maintain erosion and sediment control until work and cleanup of the job site are completed.

(c) When using straw for erosion and sediment control, use only straw that has been certified as free of noxious weeds and their seeds.

(d) If flow conditions arise that are likely to result in unanticipated and unpreventable erosion or siltation of waters of the state, all hydraulic project activities must stop except those needed to control erosion and siltation.

(e) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(f) Use tarps or other methods to completely contain treated wood, sawdust, trimmings, and drill shavings.

(g) Route the construction water (wastewater) from the project to an upland area above the limits of anticipated floodwater. Remove fine sediment and other contaminants before discharging the construction water to waters of the state.

(h) Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above the limits of anticipated floodwater unless the material is approved by the department for reuse in the project. Do not burn wood treated with preservatives, trash, waste, or other deleterious materials waterward of the OHWL.

(i) Deposit all trash from the project at an appropriate upland location.

(j) Prevent transporting and introducing aquatic invasive species by thoroughly cleaning vessels, equipment, boots, waders, and other gear before removing the gear from the job site.

(8) In-water work area isolation using block nets:

(a) Do not install block nets at sites with heavy vegetation, large cobble or boulders, undercut banks, or deep pools unless nets can be secured and maintained.

(b) The department must determine the maximum size of the block net opening. The size of the opening depends on the bypass design, the purpose of the block net, and the fish species likely to be present.

(c) Install block nets at sites that have reduced flow volume or velocity, uniform depth, and good accessibility.

(d) Install a downstream block net if fish may reenter the work area from downstream.

(e) After the first block net is secured at the upstream end, use a second block net to herd fish downstream and out of the project area.

(f) Install the block nets at an angle to the direction of flow (not perpendicular to the flow) to avoid entrapping fish in the net.

(g) To anchor block nets, place bags filled with clean round gravel along the bottom of the nets.

(h) Secure block nets along both banks and the channel bottom to prevent failure from debris accumulation, high flows, and/or flanking.

(i) To keep fish out of the job site, leave block nets in place until the work is complete and conditions are suitable for fish.

(j) Check block nets at least three times a day for entangled fish and accumulated debris.

(9) In-water work area isolation using a temporary bypass:

(a) Isolate fish from the work area by using either a total or partial bypass to reroute the stream through a temporary channel or pipe.

(b) The hydraulic capacity of the stream bypass must be equal to or greater than the peak flow event expected when the bypass will be operated. The department may require a person to conduct a hydrologic analysis to determine the magnitude of this flow event. The department will not require hydraulic analysis for a bypass on a stream with low flow.

(c) Provide fish passage during times of the year when fish are expected to migrate.

(d) Sequence the work to minimize the duration of dewatering.

(e) Use the least-impacting feasible method to temporarily bypass or exclude water from the work area. Consider the physical characteristics of the site and the anticipated volume of water flowing through the work area.

(f) Design the temporary bypass to minimize the length of the dewatered stream channel.

(g) During all phases of bypass installation and decommissioning, maintain flows downstream of the project site to ensure survival of all downstream fish.

(h) Install the temporary bypass before starting other construction work in the wetted perimeter.

(i) The department may require the installation of a cofferdam or similar device at the upstream and downstream end of the bypass to prevent backwater from entering the work area.

(j) Return diverted water to the channel immediately downstream of the work area. Dissipate flow energy from the diversion to prevent scour or erosion of the channel and bank.

(k) If the diversion inlet is a gravity diversion that provides fish passage, place the diversion outlet where it facilitates gradual and safe reentry of fish into the stream channel.

(l) If the bypass is a pumped diversion it must run continuously, once started, until it is no longer necessary to bypass flows. This requires back-up pumps on-site and twenty-four-hour monitoring for overnight operation.

(m) If the diversion inlet is a pump diversion in a fish-bearing stream, the pump intake structure must have a fish screen installed, operated, and maintained in accordance with RCW 77.57.010 and 77.57.070. Screen the pump intake by one of the following:

(i) Perforated plate: 0.094 inch (maximum opening diameter);

(ii) Profile bar: 0.069 inch (maximum width opening); or

(iii) Woven wire: 0.087 inch (maximum opening in the narrow direction).

(iv) The minimum open area for all types of fish screens is twenty-seven percent. The screened intake must have enough surface area to ensure that the velocity through the screen is less than 0.4 feet per second.

(n) The fish screen must remain in place whenever water is withdrawn from the stream through the pump intake.

(o) Maintain fish screens to prevent injury or entrapment of fish.

(p) Remove fish screens on dewatering pumps in the isolated work area only after all fish are safe and excluded from the work area.

(q) Isolate pump hose intakes with block nets so that fish do not get near the intake.

(r) Before restoring water to the work area, stabilize the bed with clean material sized to match undisturbed sediments.

(s) Complete all in-water and channel restoration work before rewatering the work area.

(10) In-water work area isolation using a cofferdam structure:

(a) Use modeling to determine the impact of the cofferdam or similar device on water-surface elevations during all anticipated flows. The department will not require modeling for a cofferdam installed in a stream with low flow.

(b) When designing the cofferdam or similar device, consider the infiltration rate of seepage flow from the riverbed and banks.

(c) Install and remove cofferdams or similar devices in a manner that maintains water quality.

(11) In-water work without a bypass or cofferdam: In the following instances, the department will not require the use of a cofferdam, bypass, or similar structure to separate the work area from waters of the state:

(a) When installing a cofferdam, bypass, or similar structure would cause greater impacts to fish life than it would prevent;

(b) When the work area is in deep or swiftly flowing water;

(c) When turbidity is not a concern;

(d) When fish can be excluded by nets or screens; or

(e) When fish are not present.

(12) Fish removal:

(a) All persons participating in fish capture and removal must have training, knowledge, and skills in the safe handling of fish.

(b) If electrofishing will be conducted, a person with electrofishing training must be on-site to conduct or direct all electrofishing activity.

(c) If personnel are available, the department and affected tribes may help capture and move fish life from the job site.

(d) Place block nets upstream and downstream of the in-water work area.

(e) Capture and safely move fish life from the work area to the nearest suitable free-flowing water.

(f) The department will require all person(s) removing fish from a job site to follow an approved protocol. An approved protocol is available on the department web site. A person may submit another protocol with their application. The department will approve another protocol if it provides equal or better fish protection. The protocol will be approved by the department in the HPA.

(13) Demobilization and cleanup:

(a) Restore the disturbed bed, bank, and riparian zones as close as possible to preproject condition unless modified elevations and contours are authorized by the department in the approved construction drawings.

(b) Completely remove any temporary fill and return the affected areas to preproject elevation and contours. Fill material must be removed before the end of the in-water timing window if the fill material could erode into or deliver sediment-laden water into waters of the state.

(c) By the end of the in-water work period, abandon temporary roads in wet or flood-prone areas.

(d) By the end of the in-water work period, remove all temporary stream crossings and restore the bed and banks to preproject condition.

(e) Upon completion of the project, remove all materials or equipment from the site and dispose of all excess spoils and waste materials in an upland area above the limits of anticipated floodwater.

(f) To prevent fish from stranding, backfill trenches, depressions, and holes in the bed that may entrain fish during high water or wave action.

(g) Removed or replaced structures and associated materials must not reenter waters of the state unless approved by the department.

(h) To minimize sediment delivery to the stream or stream channel, do not return in-stream flows to the work area from a bypass, cofferdam or similar structure until all in-channel work is completed and the bed and banks are stabilized.

(i) Using a proven methodology, replace native riparian zone and aquatic vegetation, and wetland vascular plants (except noxious weeds) damaged or destroyed by construction. The department may require a vegetation monitoring and contingency plan.

(j) The department must approve species composition, planting densities, and a maintenance plan for replanting on a site-specific basis. The species composition should be similar to the surrounding native vegetation whenever feasible.

(k) Complete replanting during the first dormant season (late fall through late winter) after project completion. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty

percent survival in year three will require that a person submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

(l) The department may waive the requirement to plant vegetation where the potential for natural revegetation is adequate or where other factors preclude it.

(m) The department may require fencing or other structures to prevent livestock, wildlife, or unauthorized persons from accessing the replanted riparian and wetland sites until the plantings are well established.

(n) Remove temporary erosion and sediment control methods after job site is stabilized.

(14) **Required permittee notification:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the department of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington military department emergency management division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the department gives approval. The department may require additional measures to mitigate impacts.

NEW SECTION

WAC 220-660-130 Stream bank protection and lake shoreline stabilization. Suitable methods to identify and select an appropriate stream bank protection technique are available in the department's *Integrated Streambank Protection Guidelines*, as well as other published manuals and guidelines.

(1) **Description:**

(a) Stream bank and lake shoreline erosion is a process where soil, gravel, and rock within the bank of a waterway become mobilized by the flow or wave action of water. Stream bank and lake shoreline erosion is a natural process that supplies the materials necessary to create features such as beaches, gravel bars, and flood plains. However, activities that alter the surrounding environment can greatly increase the rate of erosion. One of the primary causes of accelerated erosion is a reduction in the amount of vegetation within the riparian zone of a watercourse or lake.

(b) Stream bank protection and lake shoreline stabilization structures are permanent or temporary structures constructed to reduce or prevent stream bank and shoreline erosion. Structural techniques armor the bank with material such as riprap, concrete, or timber. Biotechnical techniques attempt to mimic natural processes by using live plantings, rootwads, and large woody material. Biotechnical techniques usually impact fish life less than structural techniques. Some projects integrate both structural and biotechnical techniques.

(2) **Fish life concerns:** Stream bank protection and lake shoreline stabilization alter the bed or beach and the physical processes that form and maintain habitat that supports fish life. Direct loss of habitat may include loss of aquatic vegetation, spawning gravel, large woody material, riparian zone vegetation, and flood plain connectivity as well as alteration of the channel/beach. These losses and alterations decrease the complexity and diversity of habitat.

(3) **Bank protection and lake shoreline stabilization design – General:**

(a) The department may require a person to submit a qualified professional's rationale with the HPA application for a new structure or a replacement structure extending waterward of the existing structure or bankline. This requirement does not apply to projects that address constriction, drop/weir scour or other scour caused by an existing structure. The rationale for the proposed technique must include:

(i) An analysis performed by a qualified professional assessing the level of risk to existing buildings, roads, or services being threatened by the erosion;

(ii) Technical rationale specific to the project design, such as a reach and site assessment to identify the mechanism of the bank failure and cause of erosion; and

(iii) Evidence of erosion and/or slope instability to warrant the work.

(b) Protect fish life and habitat that supports fish life by using the least-impacting technically feasible alternative. The common alternatives below are in order from most to the least preferred:

(i) No action – Natural channel processes to occur;

(ii) Biotechnical techniques;

(iii) Combination of biotechnical and structural techniques; and

(iv) Structural techniques.

(c) The department may require a person to incorporate large woody material or native vegetation into the design of the structures as partial or complete mitigation for unavoidable impacts to fish life.

(d) Restrict the area of stream bank protection and lake shoreline stabilization to the least amount needed to protect eroding banks.

(e) Where technically feasible, the toe of the structure must be located landward of the OHWL, unless an alternative is shown to have a net benefit to fish life and the habitat that supports fish life. Large wood or other materials consistent with natural stream processes can be placed waterward of the OHWL when approved by the department.

(f) The project must be designed to withstand the maximum selected design flow for the project.

(4) **Stream bank protection design:**

(a) When the bankline of a river or stream has changed as a result of meander migration or lateral erosion, the current location of the bank must be maintained. If this new alignment poses imminent threat to safety or structures or other improvement of value, the department may grant an exemption on a case-by-case basis to establish the bank alignment waterward of the current location to provide the minimum footprint necessary to construct the bank protection elements.

(b) The design of bank protection projects must follow the mitigation sequence to protect fish life and the habitat that supports fish life. The department will evaluate designs on the basis of performance. Properly designed bank protection projects:

(i) Incorporate the ecological and geomorphological processes acting at the site in the design;

(ii) Use a site and reach assessment to understand the causes of erosion;

(iii) Recognize that natural bank erosion processes and rates are essential for ecological health of the aquatic system and ensure that the design includes bank treatments that allow for natural rates of erosion to occur whenever feasible;

(iv) Move existing structures or other improvements of value away from the eroding bank whenever feasible;

(v) Use design flows appropriate for the type of protection and function of the individual bank protection elements;

(vi) Use natural materials whenever feasible, including large wood and vegetation;

(vii) Protect existing spawning and rearing habitat and the processes that create and maintain it; and

(viii) Recognize that stream bank erosion treatments can cause the need for more stream bank protection projects upstream and downstream of the project site and understand that the design must prevent or minimize these impacts to habitat that supports fish life and property.

(5) Lake shoreline stabilization design:

(a) If the OHWL reestablishes landward of a lake shoreline stabilization structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If the breach was a result of storm damage or other natural conditions, the bank protection structure may be repaired or replaced in the existing footprint if the work is conducted within three years from the date the damage occurred.

(b) The design of lake shoreline stabilization projects must follow the mitigation sequence to protect fish life and the habitat that supports fish life. The department will evaluate designs on the basis of performance. To properly design bank protection projects:

(i) Set back structures or other improvements of value away from the eroding shoreline;

(ii) Remove existing rock and concrete bulkheads whenever feasible;

(iii) Use soft shore protection methods such as beach nourishment, large wood, bank resloping, and revegetation;

(iv) Prevent impacts to adjacent habitat that supports fish life; and

(v) Bury the base of the structure deep enough to prevent undermining. Where scour depth is deep enough, choose a design that adjusts to changing scour depth without compromising the function of the bank protection.

(6) Bank protection and lake shoreline stabilization construction:

(a) The department may require a person to establish the horizontal distance of the structure from a permanent benchmark(s) (fixed objects) before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(b) Do not release overburden material into the waters of the state when resloping the bank.

(c) Do not use bed gravel for exterior armor unless approved by the department.

(d) Bank protection or shoreline stabilization material and filter blanket material must be placed from the bank or a barge. Dumping material onto the bank face may occur only if the toe is established and the material can be confined to the bank face.

NEW SECTION

WAC 220-660-140 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in freshwater areas. The requirements in this section apply to location, design, and construction of permanent and seasonal docks, piers, ramps (gangways), floats, watercraft lifts, and mooring buoys.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, pil-ing-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a structure that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven, jacked, or cast vertically into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) Fish life concerns:

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. However, light reduction is a main impact to fish life at critical life stages. Light reduction, or shading, by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead, and other fish species. Structures grounding on the bed can physically block migration and cause other impacts. The light/dark contrast of shading/no shading of over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation. These structures may increase the exposure of juvenile salmon, steelhead, and other small fish to predators by providing predator habitat.

(3) Residential and public recreational dock, pier, ramp, float, watercraft lift and buoy design – General:

(a) The design and location of structures must follow the mitigation sequence to protect freshwater habitats of special concern.

(b) Design and locate structures to protect fish spawning areas.

(c) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(i) Limit the width of residential piers and docks to six feet for the first thirty feet from the shoreline (measured from mean low water). Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(A) In certain river systems alternative residential pier and dock criteria may apply.

(B) For the Columbia River, limit the width of residential piers and docks to six feet for the first fifty feet from the shoreline. Docks must have twenty feet of water depth below them (both criteria measured at mean low water).

(ii) Piers must extend far enough from the shoreline so floats do not impact juvenile salmonid migration, feeding, and rearing areas. Grounding of floats is approved in reservoirs and impoundments only at times of the year when the water level is dropped.

(iii) The underside of pier must be at least one and one-half feet above the OHWL elevation unless prohibited by local land use regulations.

(iv) The department will require residential pier, dock, ramp and float designs to include grating. The department may require public recreational pier, dock, ramp and float designs to include grating.

(A) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least thirty percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(B) Northeast/southwest, northwest/southeast and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least fifty percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(C) In water bodies with a high density of piers and docks, the department may require that grating cover entire deck surface of the pier or dock.

(D) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(E) A dock or float six feet wide or narrower must have at least thirty percent of the deck surface covered in functional grating. A dock or float wider than six feet (up to eight feet wide) must have at least fifty percent of the deck surface covered in functional grating. The grating material's open area must be at least sixty percent. In some water bodies the department may require a higher proportion of grating. Locate flotation under the solid decked area only. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(F) If only the minimum deck surface area described in (c)(iv) of this subsection is grated, the grating material's open area must be at least sixty percent unless the grating covers more than the minimum deck area. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced to at least forty percent open area.

(d) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish, unless there are safety constraints.

(e) Fully enclose and contain flotation for the structure in a shell (tub) or 20 - 25 mm polyethylene or polyurethane wrap. The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultraviolet radiation and abrasion.

(f) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department.

(g) Embedded anchor(s) or other approved anchor(s) or piling may hold floats in place.

(h) The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features to minimize abrasion of the wood.

(i) The structure must have been usable at the site within the twelve months immediately before the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(j) Replacement of more than thirty-three percent or two hundred fifty square feet of decking or replacement of decking substructure requires installation of functional grating in the replaced portion only. The grating must conform to the requirements in this section.

(4) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed six inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum width needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, and/or untreated or department-approved treated wood.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) All pilings must be fitted with devices to prevent perching by fish-eating birds.

(5) Watercraft lift design:

(a) The design of the watercraft lift/grid must follow the mitigation sequence to protect juvenile salmonid migration, feeding, and rearing areas where shading impacts are a concern.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of pilings needed to support the watercraft lift/grid.

(6) Mooring buoy design:

(a) In water bodies where mooring buoy systems might damage the bed and native submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Locate the buoy deep enough to prevent vessel grounding.

(ii) Design and install the buoy system with mid-water floats so that anchor lines do not drag.

(iii) In areas with native submerged aquatic vegetation, use an embedment-style mooring anchor instead of a surface-style mooring anchor.

(iv) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(b) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(c) The mooring buoy must have a shell that is not readily subject to damage by ultraviolet radiation and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(7) Residential and public recreational docks, pier, ramp, float, watercraft lift, and buoy construction:

(a) Operate and anchor vessels and barges during construction in a manner that protects native aquatic vegetation.

(b) Reestablish the pier or dock centerline during the construction phase using the same methodology used to establish the centerline on the construction drawings.

(c) When installing steel piling, a vibratory hammer or water jet to drive piling is preferred.

(d) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(f) To avoid attracting fish to lights at night, limit impact pile driving to daylight hours whenever feasible.

(g) The department may require the following when removing piling:

(i) Use a vibratory or water jet system to dislodge piling whenever feasible.

(ii) After removal, place the piling on a construction barge or other dry storage site. Piling removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling.

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cut it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material.

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible.

(h) Securely anchor docks, floats, and mooring buoys.

(i) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(j) Dispose of removed docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

NEW SECTION

WAC 220-660-150 Boat ramps and launches in freshwater areas. (1) **Description:** A boat ramp or launch is a sloping, stabilized roadway or entry point constructed on the shoreline for launching boats from vehicular trailers or by hand. Ramps and launches extend into the water at a slope of typically twelve to fifteen percent and are typically oriented perpendicular to the shoreline. Ramp and launch widths vary with intended use, whereas the length often depends on the slope of the shoreline and seasonal water levels. Ramps and launches are usually constructed in areas protected from wind and waves with access to deep water close to shore; they are often associated with marinas and parking lots. Construction materials commonly consist of gravel, concrete, or asphalt.

(2) **Fish life concerns:** A boat ramp or launch typically destroys habitat that supports fish life in its footprint. A large number of ramps or launches in a given area reduces and fragments habitat. Ramps and launches placed above bed grade can block sediment and wood movement, and alter nearshore juvenile fish migration behavior. Ramp and launch construction, maintenance and the associated vessel activity can damage or destroy aquatic vegetation.

(3) Boat ramp and launch design:

(a) Design and locate ramps and launches to avoid adverse impacts to fish spawning areas.

(b) Design and locate ramps and launches to avoid or minimize excavation waterward of the OHWL.

(c) Design and construct ramps and launches to minimize interference with wood and sediment movement.

(d) Design the boat ramps and launches to prevent erosive undercutting or breaking of ramp edges.

(e) Design and construct boarding floats to minimize grounding on and shading of the bed and interfering with sediment and wood movement.

(4) Boat ramp and launch construction:

(a) Construct upland portions of ramps and launches in the dry and when the water body is at its lowest elevation or flow.

(b) Construct footings or the base of ramps and launches below the preexisting grade of the stream bank or lakeshore to minimize undermining the structure.

(c) Construct ramps and launches with concrete, compressed or hardened gravel, or other suitable materials approved by the department.

(d) When constructing concrete ramps and launches below the OHWL, use precast concrete slabs or isolate the wet concrete from waters of the state until it is fully hardened.

(e) Securely anchor launching rails to the stream or lake bottom.

(5) **Ramp and hand launch maintenance:** Whenever feasible, place sediment and woody material removed from ramps and launches at or waterward of the OHWL downstream of the structure.

NEW SECTION

WAC 220-660-160 Marinas and terminals in freshwater areas. The provisions in this section apply to constructing, maintaining and repairing marinas and terminals in freshwater areas.

(1) Description:

(a) A marina is a public or private facility providing vessel moorage space, fuel, or commercial services. Commercial services include overnight or live-aboard vessel accommodations (RCW 77.55.011(13)).

(b) A terminal is a public or private commercial wharf located in the navigable waters of the state and used, or intended to be used, as a port or facility for storing, handling, transferring, or transporting goods, passengers, and vehicles to and from vessels (RCW 77.55.011(14)).

(2) **Fish life concerns:** Marinas and terminals can alter the physical processes that create or maintain habitat that supports fish life. Possible impacts may include alteration of the light regime, hydrology, substrate conditions, and water

quality. Marinas and terminals often have a larger impact area than residential docks and are often associated with heavy boat traffic and human use. Thus, the size and magnitude of the potential impacts to fish life may be greater.

(3) Marina and terminal design – Generally:

(a) The design, location, and construction of new marinas and terminals must follow the mitigation sequence to protect fish spawning and juvenile salmon migration corridors, rearing, and feeding areas.

(b) The department may require physical modeling, numerical modeling, or other information that demonstrates adequate water exchange and circulation after construction.

(c) Whenever feasible, locate new marinas and terminals in areas that will minimize impacts to fish life.

(i) Locate new marinas and terminals to protect native aquatic vegetation.

(ii) Locate new marinas and terminals in naturally deep areas to avoid or minimize the need for dredging.

(iii) Locate new marinas and terminals in areas deep enough to protect the bed from propeller wash impacts.

(iv) Locate new marinas and terminals in areas with low or impaired biological integrity such as heavily industrialized areas.

(d) Whenever feasible, design marinas and terminals to allow light penetration to shallow water areas.

(i) Design marinas and terminals so that most over-water coverage is in the deepest water feasible.

(ii) Minimize the amount of pier or dock area that directly contacts the shoreline.

(iii) Minimize the width of over-water and in-water structures in shallow water areas.

(iv) Design and construct piers and other over-water structures as high as feasible to increase light transmission.

(v) Whenever feasible, use light-reflecting materials on the underside of over-water structures that are not grated.

(4) Marina design:

(a) The department may require a marina design to include grating to minimize impacts to juvenile salmonid migration corridors and native aquatic vegetation. If grating is required, locate flotation under the solid decked area only.

(b) Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(c) Whenever feasible, provide slips for smaller boats in shallower water and place slips for larger boats in deeper water.

(d) Do not locate new boathouses, houseboats, and covered moorages less than thirty feet from the shoreline and in water less than twenty feet deep (both criteria measured from mean low water). Houseboats with basements are not authorized.

(e) Any replacement roof for a covered moorage and boathouse in water less than thirty feet from the shoreline and in water less than twenty feet deep (both criteria measured from mean low water) must incorporate translucent materials or skylights in the roof.

(f) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to pre-

vent light from attracting fish, unless there are safety constraints.

(5) Breakwater design:

(a) Design and construct breakwaters to maintain shallow water juvenile salmon migration corridors.

(b) Avoid use of continuous sheet piles in water less than thirty feet from the shoreline and in water less than twenty feet deep (measured from mean low water).

(c) Use removable, floating breakwaters or wave boards.

(6) Piling design:

(a) Use the smallest diameter and number of pilings needed to construct a safe structure.

(b) New and replacement piling can be steel, concrete, recycled plastic, and/or untreated or department-approved treated wood.

(c) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(d) Whenever feasible, fit all pilings with devices to prevent perching by fish-eating birds.

(7) Marina and terminal construction:

(a) When installing steel piling, a vibratory hammer is preferred.

(b) If impact pile driving is needed, set the drop height to the minimum needed to drive the piling.

(c) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(d) To avoid attracting fish to light at night, limit impact pile driving to daylight hours whenever feasible.

(e) The department may require the following when removing piling:

(i) Use a vibratory system to dislodge piling whenever feasible;

(ii) After removal, place the piling on a construction barge or other dry storage site. Piling removed from the substrate must be moved immediately from the water into a barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cut it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material; and

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible.

(f) Securely anchor floats and mooring buoys.

(g) Dispose of removed docks, piers, ramps, floats, lines, chains, cables, and mooring anchors in an upland disposal site.

(h) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

(8) Marina and terminal maintenance:

(a) Upon request, the department must issue a renewable, five-year HPA for regular maintenance activities of a marina or terminal.

(b) Regular maintenance activities for the five-year HPA may include the following:

(i) Maintaining or repairing a boat ramp, launch, or float within the existing footprint;

- (ii) Maintaining or repairing an existing over-water structure within the existing footprint;
 - (iii) Maintaining or repairing boat lifts or railway launches;
 - (iv) Maintaining or repairing pilings, including replacing bumper pilings;
 - (v) Dredging less than fifty cubic yards of material;
 - (vi) Maintaining or repairing shoreline armoring or bank protection;
 - (vii) Maintaining or repairing wetland, riparian zone, or estuarine habitat; and
 - (viii) Maintaining or repairing an existing outfall.
- (c) The five-year permit must include a requirement that a person give the department a fourteen-day notice before regular maintenance activities start.

NEW SECTION

WAC 220-660-170 Dredging in freshwater areas. The requirements of this section do not apply to suction dredging for mineral prospecting covered in WAC 220-660-300, or to diver-operated dredging for aquatic plant control covered in WAC 220-660-290.

(1) **Description:** Dredging includes removing substrate or sediment from rivers and lakes to improve vessel navigation and to maintain navigational channels and flow conveyance. Dredging is also used to clean up contaminated sediments.

(2) **Fish life concerns:** Excessive deposition or aggradation may interfere with land use, hydraulic flow, and fish passage, and may cause stranding of fish. However, dredging can alter multiple fundamental channel processes, and effects can propagate upstream or downstream of the modified channel reach, or into tributaries, and may affect channel stability, habitat features, and flood plain interactions within and beyond the project area. Direct impacts include mortality, physiological stress, or displacement of fish and other organisms, increased sediment transport downstream, damage to riparian zone vegetation, and temporary loss or imbalance of nutrients and food supply. This activity usually decreases the complexity and diversity of habitat that supports fish life.

(3) **Dredging design:**

(a) The department may not authorize dredging in fish spawning beds unless it creates or improves the access or quality of fish spawning beds as part of an approved restoration project.

(b) The department will evaluate the potential impacts of dredging and the disposal of dredged materials in eulachon spawning areas and provision these projects based on project location, seasonality, scale, frequency, and duration and on run timing, run size, and presence/absence in the work area.

(c) The department may require a preproject channel survey or assessment by a qualified professional to determine the root causes of a sediment deposition problem and the potential channel changes that may result from dredging. This provision does not apply to maintenance dredging of navigational channels and berthing areas, boat ramp and boat launch approaches, and hydroelectric dams.

(d) The department may require pre- and post-dredge project bathymetric data for dredging of navigational channels and berthing areas.

(e) Use the dredge types and methods that minimize adverse impacts to fish and the habitat that supports fish life.

(4) **Dredging construction:**

(a) Operate a hydraulic dredge with the intake at or below the bed surface. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(b) Operate a dragline or clamshell to minimize turbidity. During excavation, each pass with the clamshell or dragline bucket must be complete. Stockpile dredged material in the location shown on the approved plan.

(c) To avoid fish stranding, the bed must not contain pits, potholes, or large depressions upon completion of the dredging.

(d) The department may require a person to use a boom or similar device to contain floatable materials when dredging a lake or pond.

(e) Dispose of dredged bed materials at a department-approved in-water disposal site or outside the flood plain so materials will not reenter waters of the state. The department may allow dredged material to be used for beneficial projects such as beach nourishment or capping contaminated sediments.

(f) To minimize turbidity, hopper dredges, scows, and barges used to transport dredged materials to the disposal or transfer sites must completely contain the dredged material.

NEW SECTION

WAC 220-660-180 Sand and gravel removal. The requirements of this section do not apply to suction dredging for mineral prospecting covered in WAC 220-660-300, or to diver-operated dredging for aquatic plant control covered in WAC 220-660-290.

(1) **Description:** Sand and gravel deposited by river processes is used as construction aggregate for roads and highways (base material and asphalt), pipelines (bedding), septic systems (drain rock in leach fields), and concrete (aggregate mix) for highways and buildings. In some areas, people remove aggregate mainly from river deposits, either from pits in river flood plains and terraces, or by removing gravel directly from riverbeds with heavy equipment.

(2) **Fish life concerns:** Removing sand and gravel from the active channel bed may affect sediment movement if it disrupts the sediment balance in the river. This disruption may cause channel adjustments that extend considerable distances beyond the excavation site. Removing instream sand and gravel changes the channel shape and bed elevation and may involve extensive clearing of vegetation, flow diversion, sediment stockpiling, and excavating deep pits. Removing sand and gravel can also produce a local sediment shortage that can reduce spawning potential and success in gravel-starved stream reaches. Disturbance or loss of gravel can create significant channel head cutting upstream from the project. Trenches or pits in the bed can trap fish. Other effects of removing instream gravel include a reduction of large woody

material that is important as cover for fish, and short-term loss of insects and stream bugs that are food for fish.

(3) Sand and gravel removal design:

(a) Limit sand and gravel removal to exposed bars. Sand and gravel removal must not result in lowering the average channel cross-section profile either in the work area or downstream of it.

(b) The department requires a quantitative site assessment to document habitat changes. This includes preproject and post-project channel cross-section surveys for commercial sand and gravel removal projects. As a provision of a multiyear HPA, the department may require surveys to be conducted each fall. The surveys must reference cross-sections vertically to a permanent benchmark and horizontally to a permanent baseline. The cross-sections must be surveyed perpendicular to the high flow channel every one hundred feet through the work area and at cross-sections upstream and downstream at adjacent channel riffles. The HPA application submitted to the department must include the preproject survey information. A person must submit the post-project survey to the department within ninety days after removal of sand and gravel is finished or the expiration date of the HPA, whichever occurs first.

(4) Sand and gravel removal construction:

(a) The department must establish an excavation line, which is then identified in the HPA.

(b) The permittee must place boundary markers to identify the excavation zone. The department must approve the location of the boundary markers before a person starts to remove sand and gravel.

(c) Excavation must start at the excavation line and proceed toward the bank or the center of the bar, perpendicular to the alignment of the watercourse.

(d) Do not remove bed material from the waterward side of the excavation line.

(e) Do not place or operate equipment within the wetted perimeter of the watercourse.

(f) Remove sand and gravel within the excavation zone from a point starting at the excavation line and progressing upward toward the bank or the center of the bar on a minimum two percent gradient. The department may require a survey of the excavation zone upon completion of the sand and gravel removal operation to ensure the operation maintained a two percent gradient and that no depressions remain. When required, the permittee must pay for the survey.

(g) At the end of each workday, the excavation zone must not contain pits, potholes, or depressions that may trap fish because of fluctuating water levels.

(h) Limit stockpiling of material waterward of the OHWL, after the initial bed disturbance, to protect fish life. If the department has approved stockpiling waterward of the OHWL, completely remove the material before fish start spawning in the area or stream flow starts increasing. The department will determine timing restrictions for each site individually. If the water level rises and makes contact with stockpiles, further operation of equipment or removal of the stockpiles may not proceed unless the department authorizes the work.

(i) Leave the upstream end of the sand and gravel bar undisturbed to maintain watercourse stability waterward of the OHWL.

(j) Retain large woody material waterward of the OHWL. Large wood within the excavation zone must be repositioned within the watercourse. Other debris must be disposed of so it will not reenter the watercourse.

(k) Sand and gravel washing or crushing operations must take place above the limits of anticipated floodwater.

NEW SECTION

WAC 220-660-190 Water crossing structures. Appropriate methods to design water crossing structures are available in the department's *Water Crossing Design Guidelines*, or other published manuals and guidelines. A list of approved manuals and guidelines is on the department's web site.

This section applies only to water crossings over fish-bearing waters. Crossings on nonfish bearing streams must be designed to pass wood and sediment expected in the stream reach to reduce the risk of catastrophic failure of the crossing. Water crossing structures on nonfish bearing streams in the forest environment that are designed to pass the 100-year flood flow and debris likely to be encountered meet this standard.

An HPA is required for all construction or repair/replacement of any structure that crosses a stream, river, or other water body regardless of the location of the proposed work relative to the OHWL of state waters. An HPA is also required for bridge painting and other maintenance where there is potential for paint, sandblasting material, sediments, or bridge parts to fall into the water. An HPA is not required for utility crossings attached to bridge structures.

(1) **Description:** Water crossings are structures constructed to facilitate the movement of people, animals, or materials across or over rivers and other water bodies. These structures include bridges, culverts, fords, and conduits. This section covers bridges, culverts, and fords; WAC 220-660-270 covers conduits. Generally, people use bridges to cross over larger streams and rivers, or over unstable channels; they use culverts to cross over smaller streams and they use fords when other stream crossing options would result in a greater impact to fish life and the habitat that supports fish life.

(2) Fish life concerns:

(a) A person must design water crossing structures in fish-bearing streams to allow fish to move freely through them at all flows when fish are expected to move. All water crossings must retain upstream and downstream connection in order to maintain expected channel processes. These processes include the movement and distribution of wood and sediment and shifting channel patterns. Water crossings that are too small in relation to the stream can block or alter these processes, although some encroachment of the flood plain and channel migration zone will be approved when it can be shown that such encroachment has minimal impacts to fish life and habitat that supports fish life.

(b) Fords have a high potential to generate and deliver sediment and may impede fish passage. However, under limited circumstances, fords are appropriate when they provide

better protection to fish life and habitat that supports fish life than other water crossing structures.

(3) Permanent water crossing structures – Generally:

(a) The water crossing design must provide unimpeded passage for all species of adult and juvenile fishes. Passage is assumed when there are no barriers due to behavioral impediments, excessive water slope, drop or velocity, shallow flow, lack of surface flow, uncharacteristically coarse bed material, and other related conditions.

(b) The design of the water crossing structure must follow mitigation sequencing to prevent measurable unmitigated impacts to the expected channel functions and processes found at the site. The department will make an exception where there are human-made features in the flood plain that are outside the control of the applicant and they are unlikely to be removed. By complying with the provisions under subsections (4) and (6) of this section, the applicant is assumed to provide these processes and functions.

(c) If channelization, encroachment, or other human-made changes have degraded the channel in the vicinity of the crossing, the design must have a similar slope and cross section expected under common conditions in the reach.

(i) Similar slope: The slope should be that of a stable channel that would fit within the geomorphic context of the reach.

(ii) Similar cross section: The cross section under or within the water crossing must have a channel bed width, a thalweg, and any overbank area that match the expected stream measurements in order to limit main channel velocity and scour to prevailing conditions.

(d) A person may propose one of the following alternative crossing design methods instead of complying with the provisions under subsections (4) and (6) of this section:

(i) A person can design a water crossing using any design methodology approved by the department if the method specifically addresses fish passage, the protection of the habitat that supports fish life, and the maintenance of expected channel processes defined by the site conditions.

(ii) A person may use an alternative design for an individual crossing on a case-by-case basis. To be approved, the alternative plan must include: Project objectives with performance measures, inspection schedule, maintenance triggers, and a contingency plan should the project fail to meet performance measures. Inspection must include compliance monitoring of performance measures after construction with an additional inspection three years after construction. Monitoring reports are required for these two inspections. The contingency plan is activated when the project fails to meet performance measures after the three-year inspection.

(iii) A person can use methods found in WAC 220-660-200. Fish passage improvement structures will be approved where extreme and unusual site conditions prevent a person from complying with the provisions in this section provided associated impacts are adequately mitigated.

(e) To determine the average channel bed width for water crossing structure design, a person must use at least three typical widths (bankfull or equivalent), measured in a stream reach that is characteristic of an alluvial or self-forming stream. A person must measure widths that describe prevailing conditions at straight channel sections and outside the

influence of any culvert, bridge, or other artificial or unique channel constriction.

(f) When removing an existing crossing in preparation for a new crossing, a person must remove all the existing components (such as approach fill, foundations, stringers, deck, riprap, guide walls, culverts, and aprons) likely to cause impacts to fish life and the habitat that supports fish life. The department may approve the partial removal of certain components when leaving them has been shown to have no measurable, or minor, impact.

(4) Bridge design:

(a) The bridge must pass water, ice, large wood and associated woody material, and sediment likely to move under the bridge during the 100-year flood flows or the design flood flow approved by the department.

(b) The waterward face of all bridge elements that may come in contact with waters of the state including abutments, piers, pilings, sills, foundations, aprons, wing walls, and approach fill must be landward of the OHWL. The requirement excludes midchannel piers and protection required at the toe of embankment in confined channels.

(c) A bridge over a watercourse with an active flood plain must be designed to prevent a significant increase in the main channel average velocity (a measure of encroachment). The bridge is defined as the main bridge span(s) plus flood plain relief structures and approach road overtopping. This velocity must be determined at the 100-year flood flow or the design flood flow approved by the department. The significance threshold should be determined by considering bed coarsening, scour, backwater, flood plain flow, and related biological and geomorphological effects typically evaluated in a reach analysis.

(d) A person must design the bridge to account for the lateral migration expected to occur during the bridge's lifespan. The department will approve encroachment into the expected pathway of lateral migration if the design follows the mitigation sequence to protect fish life and the habitat that supports fish life.

(e) Where there are existing flood control levees at the bridge construction site, or other structures or improvements of value that is not the property of the bridge owner but would constrain the construction of a bridge, the department may approve a shorter bridge span than would otherwise be required to meet the requirements in this section.

(f) The design must have at least three feet of clearance between the bottom of the bridge structure and the water surface at the 100-year peak flow unless engineering justification shows a lower clearance will allow the free passage of anticipated debris.

(g) The bridge design must minimize the need for scour protection. Where midchannel piers are necessary, design them so no additional scour protection is required. If scour protection is unavoidable, the design must minimize the scour protection to the amount needed to protect piers and abutments. The design must specify the size and placement of the scour protection so it withstands expected peak flows.

(5) Bridge construction:

(a) If excavation or other construction activities take place waterward of the OHWL, the work area must be iso-

lated from the stream flow (if present) by using a cofferdam, bypass, or similar structure.

(b) A person must minimize damage to the bed and banks when placing the bridge structure.

(c) Biotechnical slope protection outside the bridge shadow is preferred.

(6) Culvert design:

(a) Stream simulation design:

(i) A stream simulation culvert must be designed and constructed to comply with the requirements of this subsection.

(ii) The width of the channel-bed inside a stream simulation culvert at the elevation of the stream bed can be determined in one of two ways:

(A) The bed width may be calculated by using any published stream simulation design methodology approved by the department.

(B) The bed width of an individual culvert may be determined on a case-by-case basis with an approved alternative plan that includes project objectives, inspection, maintenance, and contingency components. Inspection must include compliance monitoring after construction, and effectiveness monitoring after three years. Maintenance and contingency are triggered when project fails to meet objectives.

(iii) The stream simulation culvert must be set at the same gradient as the prevailing stream gradient unless engineering justification for an alternative slope is approved by the department.

(iv) The slope of the bed inside a stream-simulation culvert must not exceed the slope of the upstream channel by more than twenty-five percent.

(v) The stream simulation culvert must be countersunk a minimum of thirty percent and a maximum of fifty percent of the culvert rise, but not less than two feet. Alternative depths of culvert fill may be accepted with engineering justification that considers channel degradation and total scour.

(vi) The median particle size of sediment placed inside the stream-simulation culvert must be approximately twenty percent of the median particle size found in a reference reach of the same stream. The department may approve exceptions if the proposed alternative sediment is appropriate for the circumstances.

(b) No-slope design:

(i) The stream channel in which a no-slope culvert will be placed must generally have a channel bed width that is ten feet or less and a gradient less than three percent. However, in some site-specific situations the department may approve no-slope in channels with a gradient up to five percent.

(ii) The length of the culvert must not exceed seventy-five feet.

(iii) A no-slope culvert must be designed and constructed to comply with the following requirements:

(A) The culvert is installed at a zero gradient.

(B) The width of the channel-bed inside a no-slope culvert at the elevation of the stream bed must be equal to or greater than the average channel bed width.

(C) The no-slope culvert is countersunk a minimum of twenty percent of the culvert rise at the culvert outlet downstream and a maximum of forty-percent of the culvert rise at the culvert inlet upstream.

(D) Combining the requirements for culvert width and countersinking, the culvert must meet the following requirements:

(I) For a circular culvert, the minimum culvert diameter must be equal to or greater than the average channel bed width plus twenty-five percent.

(II) For a culvert with an oval cross section (elliptical, pipe arch, or "squashed" pipe) the horizontal width must be equal to or greater than the average channel bed width plus twenty-five percent.

(III) For a box or pipe arch culvert, the span must be equal to or greater than the average channel bed width.

(E) The no-slope culvert must be filled to the depth of the countersink provided in (b)(iii)(C) of this subsection with material similar to what is found in the adjacent channel stream bed, unless either of the following conditions exist:

(I) The culvert is located in a wetland or in an area where the channel-bed is predominately fine sediment and the culvert will be backwatered; or

(II) The culvert will fill quickly because of the high rate of sediment transported through the culvert and will not cause excessive cutting or slumping of the upstream channel.

(7) Temporary culvert design requirements:

(a) The department must determine allowable placement of temporary culvert and time limitations based on the specific fish resources of concern at the proposed water crossing location.

(b) The design of the temporary crossing must maintain structural integrity at the peak flow expected to occur while the crossing is in place.

(c) Temporary culverts must provide unimpeded fish passage in locations where fish passage concerns exist. In site-specific situations, the department may approve a temporary culvert that does not meet all fish passage criteria. These situations may include streams where there is limited fish movement and presence, and where the use of a temporary culvert will result in fewer adverse impacts over the long term.

(d) A person must remove the temporary culvert and block all approaches to vehicular traffic before the HPA expires.

(8) Emergency culvert requirements:

(a) When there is an immediate threat to life, the public, private property, or of environmental degradation, a culvert may be replaced with one that is the same size or larger than the existing one. If the emergency crossing did not have a culvert or the size is not known, the emergency culvert should be large enough to safely pass the 100-year flood event with consideration for debris and sediment. In extreme circumstances, the department may approve the use of any available culvert.

(b) Fish passage must be provided at the times of the year when fish are expected to move. If the culvert design does not provide unimpeded fish passage, a person can use methods found in WAC 220-660-200 (fish passage improvement structures) to pass fish until a culvert is constructed.

(9) Culvert construction:

(a) A person must establish the culvert invert elevation with reference point(s) or benchmark(s) created prior to starting work on this project. The reference point(s) must be

clearly marked and preserved for post-project compliance. Prior to backfilling, the invert elevation, as stated on the plans, must be confirmed relative to the reference points with at least a construction-grade leveling device (such as an optical auto-level or laser level).

(b) A person must install the culvert in the dry or in isolation from the stream flow by using a bypass channel or culvert, or by pumping the stream flow around the work area. The department may grant exception if installing the culvert in the flowing stream reduces siltation or turbidity.

(c) A person must embed the top of footings of bottomless culverts sufficiently below potential scour depth to prevent exposure of the footing surface and undermining.

(d) The owner(s) must maintain the culvert to ensure it complies with subsection (3) of this section (general design requirement for water crossing structures).

(e) If the culvert becomes a hindrance to fish passage, the owner must obtain an HPA and provide prompt repair.

(10) Permanent ford design:

(a) A person must design and maintain a ford so the ford does not create a channel constriction, impede fish passage, block debris passage, or degrade water quality to the detriment of fish life.

(b) The department will authorize construction of new fords in limited situations when it is the least impacting water crossing option. The following are examples of situations where the department may authorize a ford:

(i) Where there is no maintenance access during winter months or early spring and the crossing has a high risk of failure from rain-on-snow events;

(ii) The road is seasonally inaccessible due to snow pack, weather, or other conditions that seasonally limit access to the water crossing structure;

(iii) The stream has extreme seasonal flow variations and low flows during anticipated ford use;

(iv) The channel has low bank height and low gradient approaches;

(v) The stream has dynamic flood plains, such as alluvial fans; or

(vi) The stream is subject to mass wasting events, debris transport, or extreme peak flows.

(c) Permanent fords must not impede fish passage.

(d) Fords must be located outside of all known or suspected fish spawning areas such as pool tailouts.

(e) Fords must only be used during periods of no or low stream flow (whether dry or frozen) to minimize the delivery of sediment to the stream.

(f) Vented (grade-separated) fords are preferred over at-grade fords because there is less aquatic disturbance and delivery of sediment and contaminants when traffic is separated from flowing water.

(11) Temporary ford design:

(a) The department may permit temporary fords only during the time of year that avoids high stream flows or expected fish spawning or migration.

(b) If fill is associated with the driving surface of a temporary ford, it must consist of clean washed gravel between one-quarter inch and four inches in diameter.

(c) If the natural stream bed is composed of material smaller than gravel, the temporary ford design must maintain

a positive separation between the watercourse bed and all fill associated with the ford to ensure that material used in ford construction is removable.

(12) Ford construction:

(a) Fords must be constructed during periods of low or no stream flow or in isolation from flowing water.

(b) Fords must be constructed perpendicular to the stream flow, or as close to perpendicular as practicable.

(c) Fords must be constructed using material approved by the department.

(d) If the stream bed does not have a firm rock or gravel base, install clean, washed rock or gravel to reduce sedimentation. Broken concrete and pavement or other debris should not be used to construct hardened fords. Placement of material should be limited to the approaches and crossing.

(e) A person must countersink the prism of the ford below the watercourse bed. A person must design the prism to withstand overtopping flood events, and natural debris.

(f) Fill associated with the driving surface of a permanent ford must consist of material that will not attract spawning fish.

(g) A person must protect the driving surface of ford approaches from erosion to ensure that erodible fine silt does not enter waters of the state.

(h) Fords must be regularly inspected and maintained to provide for fish passage and maintain water quality.

(13) Permanent removal of a water crossing (abandonment):

(a) When removing a water crossing without replacing it, a person must comply with the following provisions. In all instances a person must protect the job site from erosion and plant vegetation as necessary to restore the banks and other areas disturbed during construction or removal at the site.

(b) When removing temporary crossings, a person must remove the temporary culvert, bridge, ford, and any imported fill. The site must be restored to a similar width, depth, gradient, and substrate composition as the channel segments upstream and downstream from the crossing. If water-rounded granular materials were used for fill, and they are similar to those found in the existing channel bed, the department may allow the materials to remain on the site.

(c) When removing permanent crossings, a person must remove all the components of a bridge or culvert crossing (approach fill, sills, stringers, deck, riprap, guardrails, etc.). The department may approve leaving trees or other vegetation, fill materials when appropriate, or untreated log bridge stringers. The site must be restored to the original contours or a configuration approved by the department.

NEW SECTION

WAC 220-660-200 Fish passage improvement structures. The provisions in this section apply to fish ladders, weirs constructed for fish passage management, roughened channels, trap-and-haul operations, and hydraulic design culvert retrofits.

(1) **Description:** Fish passage improvement structures facilitate the passage of fish through or around a barrier. They restore upstream and downstream fish access to habitats that

have become isolated by human activities such as placing culverts, dams, and other artificial obstructions.

(2) **Fish life concerns:** Barriers can block fish from using upstream spawning and rearing habitat. The main goal is to remove fish passage barriers and ensure unimpeded passage of fish at all life stages, as well as to maintain natural channel processes and function. However, when it is not feasible to remove a barrier, a fish passage improvement structure may be an alternative mitigation measure. The department does not generally recommend using fish passage improvement structures because they can be partial barriers to fish passage and generally require maintenance. Fish passage improvement structures that mainly pass one species or class of fish may unintentionally limit the passage of other species.

(3) **Fish passage improvement structure design:**

(a) Fish passage improvement structures should not be used to bypass permanent natural barriers except in limited situations where they are needed to restore native fish species.

(b) A person must provide site and biological information relevant to the specific project, such as information on species present, hydrology and topography, and existing adjacent structures.

(c) The department may require compensatory mitigation if a fish passage structure cannot pass all fish species present at all mobile life stages.

(d) The design must consider site-specific conditions that could affect the function of the fish passage improvement structure. These include meander migration or vertical change in stream bed elevation, debris and bedload movement, tampering, vandalism, and poaching.

(e) The fish passage structure design must withstand the maximum expected flow.

(f) The fish passage structure must not result in significant migratory delays as determined by the department or mortality to fish life due to disorientation, distraction, predation, stress, or injury.

(g) The fish passage structure must accommodate expected run sizes to prevent crowding and significant delay of fish migration as determined by the department.

(h) The department will determine the inspection interval depending on the type of fish passage improvement structure and watershed conditions.

(i) The department may require the installation of a temporary fish passage structure to provide passage through temporary obstructions. The department may not require a fish passage structure if a barrier exists for such short duration that the department determines that no lasting impacts to fish life will occur.

(4) **Temporary fish passage improvement structures design:**

(a) A person must maintain a fish passage structure in an effective condition. If the structure starts to hinder fish passage, the person must obtain an HPA and promptly repair the problem.

(b) The department may approve the installation of temporary fish passage improvement structures when permanent structures are damaged or are under construction, to conduct maintenance or repair, for enhancement projects, or for sea-

sonal water diversion structures such as irrigation diversion dams.

(c) Temporary fish passage improvement structures must remain operational for the duration of the temporary obstruction and must be maintained and adjusted as needed to provide efficient passage of fish life.

(5) **Fish ladder design:**

(a) The department may authorize a fish ladder if:

(i) The fish ladder will enable fish passage at an existing barrier, but only until the existing barrier structure is replaced; or

(ii) The department determines that constructing a bridge, culvert, or roughened channel is not feasible due to the nature of the obstruction such as a flow control structure or the slope of the stream.

(b) The fish ladder design must be appropriate for the slope of the channel, water surface elevations, species present, flow regime, and conditions of the channel.

(c) The fish ladder must be designed to prevent fish from leaping out of the structure.

(d) The fish ladder pool volume must provide the hydraulic and fish capacity needed to pass all adult and juvenile fish.

(e) The fish ladder entrance (downstream end):

(i) Must provide enough streaming flow attraction during high and low flows, without excessive velocity or turbulence, to ensure fish can locate and enter the fish ladder without significant delay;

(ii) Must minimize distractions that lure fish away from the entrance to prevent fish from becoming trapped, injured, or stranded;

(iii) Must be large enough to accommodate all expected debris and ice without damage or loss of passage efficiency;

(iv) Must provide a stable flow pattern and uniform velocity at the entrance pools and transition channels to allow fish to pass through the structure unimpeded;

(v) Must provide multiple entrances to the fish ladder if a single entrance cannot attract and provide passage to all adult and juvenile fish. If the work area has multiple zones where fish accumulate, each zone must have at least one entrance; and

(vi) May be required to have artificial light to optimize fish passage.

(f) Fish ladder auxiliary water supply system (AWS):

(i) To ensure fish are attracted to the fish ladder, an AWS may be required that supplies supplementary water.

(ii) An AWS must have a diffuser design that discourages attraction of fish life to it and protects fish from injury.

(iii) An AWS must minimize the size of spaces between the diffuser to exclude and prevent injury to the smallest fish present.

(iv) An AWS must not use an auxiliary water supply from external sources that could confuse the homing instinct of fish.

(g) To prevent harm to fish life, the department may require screening of the AWS.

(h) The department may require a trash rack at the AWS intake.

- (i) Fish ladder exits must:
 - (i) Have a water depth that is similar to the depth inside the fish ladder;
 - (ii) Be located to ensure fish can safely exit the structure without susceptibility to predators, without becoming disoriented, and with the ability to continue their upstream migration; and
 - (iii) Be designed to protect the exit from damage by debris.
- (6) **Fish ladder construction:** To reduce potential contact injuries, all edges and surfaces exposed to fish must be ground smooth to the touch, with all edges aligning in a single smooth plane.
- (7) **Fish ladder operation and maintenance:**
 - (a) If target fish species are present and actively migrating, fish ladders with AWS must have enough water available at all stream flows to pass fish safely and efficiently through the fish ladder or the main channel without the need of a fish ladder.
 - (b) A person must inspect the fish ladder for proper function at a frequency determined by the department. Place wood and sediment retrieved during inspection and maintenance downstream of the fish ladder.
 - (c) A person operating or maintaining the fish ladder must be able to identify maintenance issues with the fish ladder and take corrective actions or notify the department if maintenance issues arise.
 - (d) The department may require shutdown of the fish ladder during high flows if the flow exceeds the fish passage design flow. However, a fish ladder must not be inoperable due to high flows for longer than seven days during the migration period for the target fish species. This provision applies to locations where the shutdown will not cause flooding or damage to structures, other structures of value or property.
- (8) **Fish passage weir design:**
 - (a) Design the weir to control the water surface elevation at the weir to provide fish passage over or through an obstruction.
 - (b) Design the weir to minimize impacts to natural channel geometry.
 - (c) Design the weir to ensure continued fish passage for all species present at all mobile life stages. The department may approve exceptions when it is implementing a program to restore native fish species or to protect native fish species from the introduction of nonnative fish species, and fish passage blockage is an intended component of the project.
- (9) **Roughened channel design:**
 - (a) The department may authorize a person to construct a roughened channel to facilitate the passage of fish around abrupt hydraulic drops, through culverts, or at diversion sites for water withdrawal.
 - (b) Roughened channels must be designed by licensed professional engineers, geomorphologists, or other qualified professionals approved by the department.
 - (c) Where nonleaping fish are present or when other types of fish passage improvement structures would not pass fish well enough as determined by the department, a person may be required to construct a roughened channel to bypass an obstruction.

- (d) Roughened channels must create an average cross-section velocity within the limits of fish-passage design criteria and the hydraulic design option.
- (e) Roughened channels must minimize impact on the existing fish life and habitat that supports fish life.
- (f) The size and gradation of roughened channel bed material must resist erosion at the maximum expected flow and must result in a dense structure that prevents subsurface flow.
- (10) **Trap-and-haul operations:**
 - (a) The department requires an HPA for installing, maintaining, and removing fish traps for trap-and-haul activities.
 - (b) The fish trap must be designed to withstand the maximum expected flow.
 - (c) The fish trap must be operated in a manner that prevents crowding and delaying target fish species migration as determined by the department.
- (11) **Hydraulic design culvert fish passage design:**
 - (a) The department may authorize an existing hydraulic design culvert to remain in place until the end of its design life or until another more appropriate culvert design can be constructed. However, a hydraulic design culvert cannot remain in place to the end of its design life if it does not provide for passage of fish.
 - (b) Before obtaining a permit to retrofit a culvert or construct a fish passage improvement structure using the hydraulic design method, a person must submit appropriate hydrology data and hydraulic design documentation prepared by a licensed professional engineer that demonstrates compliance with this section.
 - (c) The hydraulic design fish passage structure must include consideration of flood capacity for current conditions and future changes likely to occur within the stream channel, and debris and bedload passage.
 - (d) Plans submitted to the department to retrofit a culvert or to construct a fish passage improvement structure using the hydraulic design method must comply with the following:
 - (i) Minimum water depth at any location within a hydraulic design passage structure without a natural bed must be at least eight-tenths of a foot. The minimum depth of flow in the passage structure is determined by:
 - (A) The low flow design, which is the two-year seven-day low flow discharge for the subject basin; or
 - (B) When flow information for the site is unavailable, the department may authorize the use of calibrated flows from a comparable gauged site or the depth of the culvert when no water is flowing.
 - (ii) Maximum water velocity may not exceed the values in Table 1 at any point within a culvert. Measure maximum water velocity at the high fish passage design flow.

Table 2
Maximum Velocity Design Criteria for Hydraulic Design Culvert Installation

Culvert Length	Maximum Velocity
10 - 100 ft.	4.0 feet per second
100 - 200 ft.	3.0 feet per second
> 200 ft.	2.0 feet per second

(e) The hydraulic drop within the culvert or at the culvert inlet or outlet may not exceed one-half foot. When a drop has a submerged jet (the lowest part is below the downstream water surface) or is part of a natural or roughened channel design, the department may approve an exception to this drop limit.

(f) Water turbulence within the culvert must not be a barrier to passage of target fish species.

(g) The department may modify or approve design flow criteria for specific proposals as needed to address unusual fish passage requirements.

NEW SECTION

WAC 220-660-210 Channel relocation and realignment. (1) **Description:** The department discourages channel relocation and realignment and will approve them only when a person can demonstrate benefits or lack of adverse impact to fish life. Channel relocation may solve problems of channel encroachment and/or confinement, and foster the development of a new channel with appropriate channel morphology and healthy riparian zones. Channel relocation permanently changes the location of the channel. The new channel should be designed with bioengineered stability, rather than structural stability, so that the profile, pattern, cross-section and bed elevation can be expected to achieve long-term natural functioning. Channel realignment is used to restore a single-thread, straightened channel(s) to a more natural sinuous pattern.

(2) **Fish life concerns:**

(a) Channel relocation and realignment is a major undertaking involving reconstructing the channel bed, habitat features, channel banks, and flood plain. In-channel work will have a much greater impact on the bank and channel than off-channel work including the downstream burial of invertebrates, elevated suspended solids, and habitat destruction.

(b) However, channel relocation and realignment can also benefit fish life by altering channel planform, profile, and cross-section geometry to restore habitat that supports fish life. Restoration work can range from complete reconstruction of a channel to smaller-scale alterations that induce incremental changes to channel form.

(3) **Channel relocation and realignment design:** A channel relocation and realignment may be approved if:

(a) Permanent new channels are similar in length, width, depth, flood plain configuration, and gradient to the old channel(s); and

(b) The new channel(s) incorporates habitat components, bed materials, channel morphology, and native or other approved vegetation that provides better protection for fish life than that which previously existed in the old channel.

(4) **Channel relocation and realignment construction:**

(a) During construction, a person must isolate the new channel from the flowing watercourse.

(b) Before water is diverted into a permanent new channel(s), a person must install approved habitat components and bed and bank protection materials to prevent erosion as specified the approved design.

(c) When filling the old channel(s), water discharging from the fill must not adversely affect fish life.

(d) The angle of the structure used to divert the water into the new channel(s) must allow a smooth transition of water flow.

NEW SECTION

WAC 220-660-220 Large woody material placement, repositioning, and removal in freshwater areas. (1)

Description: Large woody material is trees and tree parts larger than four inches in diameter and longer than six feet or rootwads that enter stream channels mainly from stream bank undercutting, wind throw, and slope failures. Public agencies sometimes reposition or remove large woody material to address a threat to life, the public, or property. Large woody material is also placed in streams to restore or create habitat that supports fish life.

(2) **Fish life concerns:**

(a) The removal and cutting of large woody material can adversely affect the natural channel-forming processes associated with wood accumulation in the channel. Large woody material provides shelter for fish from high flows and predators. Sediment trapped by large woody material can create spawning areas for fish life. Large woody material also provides habitat for aquatic insects that fish eat.

(b) Large woody material plays a main role in shaping stream channels by forming pools and increasing stream meandering and sediment storage. Large woody material dissipates flow energy, leading to improved fish migration and channel stability.

(3) **Large woody material placement, repositioning and removal – Generally:**

(a) The department will approve the repositioning or removal of large woody material within the watercourse when needed to protect life, the public, property, or when needed to construct or mitigate for a hydraulic project. The department will require a person to place the repositioned or removed wood directly back in the channel unless it is not feasible due to geological, engineering, or safety constraints. If large woody material must be removed from the channel, the department will require compensatory mitigation if the wood removal including cutting diminishes habitat functions or value.

(b) The department will approve placement of large wood back in the channel to improve habitat that supports fish life. This may include placing channel-spanning logs, creating log jams, or introducing a single large log or rootwads to the channel. Large woody material may be stabilized against buoyant forces and hydraulic drag forces that may mobilize wood during flood flows by pinning, anchoring, or burying woody material in the flood plain.

(4) **Large woody material placement, repositioning, or removal:**

(a) When placing, repositioning, or removing large woody material, station equipment on the bank, bridge, or other approved location.

(b) Do not drag large woody material. Suspend large woody material during placement, repositioning, or removal so it does not damage the bed or banks. A yarding corridor or full suspension is required to protect riparian zone vegetation. Full suspension can be achieved with hand-operated or heavy

equipment or aerial log yarding towers. Where needed, the department may authorize cutting the large woody material to a size that allows suspension during removal, but still retains value as a habitat structure.

(c) When a person cannot suspend large woody material above the bed and banks, use skid logs or similar methods to avoid bank damage. After completing the yarding operation, remove skid logs in a manner that avoids damage to stream banks and vegetation, and restore the bank to preproject condition.

(d) Do not disturb large woody material embedded in a bank or bed except as approved by the department.

(e) When repositioning or removing large woody material is approved, fill and smooth over any depressions created in the bed with material that has the same composition as native material. Fill material must be sloped towards the bank at a slope similar to the prevailing condition. Reslope and replant disturbed banks.

(f) When repositioning or removing large woody material, minimize releasing bedload, logs, or debris downstream.

(g) Do not cut firewood from accumulations of large woody material in stream or river channels.

NEW SECTION

WAC 220-660-230 Beaver dam management. (1)

Description:

(a) A person may need to remove, breach, or modify a beaver dam to prevent damage to private and public land, structures, or other improvements of value from flooding. Beaver dams are normally removed using hand tools or equipment such as backhoes.

(b) An alternative to frequent dam removal is installing a beaver exclusion device. These devices prevent beavers from building a dam that blocks water flow at the mouth or inside of culverts.

(c) Installing a water level (flow) control device may be a preferred alternative to removing or breaching an established dam that maintains a beaver wetland; however, fish passage must be maintained. A person can install a water level control device to maintain a desirable beaver wetland. These devices are installed at the intended depth, extending upstream and downstream of the dam. This preserves the pond's habitat benefits.

(2) Fish life concerns:

(a) Beavers play an important ecological role in creating and maintaining ponds and wetlands for fish and wildlife habitat. Ponds also provide surface water storage that improves summer flows, as well as improving water quality through retaining sediment.

(b) Breaching, notching, or removing a dam can negatively affect fish life and the habitat that supports fish life by dewatering the upstream pond, stranding fish life, and releasing large volumes of water (that can be devoid of oxygen) and sediment downstream. Releasing sediment can affect downstream spawning areas. Breaching or removing a beaver dam may not prevent future beaver activity in the area. Persistent breaching or removing a beaver dam can increase the risk of negative impacts to habitat. In these instances, the

department may recommend that a person consider other beaver management techniques.

(c) Beaver exclusion devices and water level control devices can create a design challenge for fish passage and the devices can decrease the likelihood for long-term fish passage.

(3) Removal or breaching a beaver dam:

(a) Beaver dams may be removed or modified without compensatory mitigation only when:

(i) The continued existence of the beaver dam poses an imminent threat to the integrity of water crossing structures, other structures or improvements of value, private and public land, or in some rare cases, the environment; and

(ii) The beaver dam has been in existence for less than one year. Removal of older dams will be considered on a site-specific basis.

(b) The department will decide if compensatory mitigation is required to offset habitat loss caused by removing or breaching any beaver dam older than one year.

(c) The department may allow the use of explosives to remove a beaver dam if the department determines that the use of explosives has fewer impacts than other alternatives.

(d) Beaver dam management activities must take place when the work will cause the least impact to fish life. Except for an emergency or imminent danger, all work must occur when spawning or incubating fish are less likely to be present.

(e) Whenever feasible, remove or notch beaver dams by hand or with hand-held tools and hand-operated or motorized winches.

(4) Removal or breaching a beaver dam construction:

(a) Before starting work, install effective sediment and erosion control measures to prevent sediment from entering waters of the state. Inspect the sediment and erosion control measures regularly during construction and make all needed repairs if any damage occurs.

(b) Remove the dam gradually to allow the water to release slowly and prevent the downstream release of accumulated sediment at the bottom of the pond, or cause damage or erosion to the stream bed and banks. The department may specify in the HPA the rate water can be released.

(c) When notching, the notch must not extend below the height of the accumulated sediment.

(d) To prevent bank erosion and flooding of adjacent properties, the breach in the beaver dam must not be wider than the original stream channel as measured by the department. The department may approve larger breaches on a case-by-case basis.

(e) The department will specify the sequence in which to breach or remove a series of dams to avoid severe flooding and damage to habitat.

(f) Leave large woody material embedded in the stream bed or banks undisturbed.

(g) During and immediately after removal, monitor upstream and downstream for stranded fish in isolated pools. Capture and safely move all stranded or isolated fish to the nearest free-flowing water.

(5) Water level control device installation design and construction:

(a) Design and install water level control devices so that during low flows (when beavers are more actively increasing dam height), the flow passes through the device and maintains fish passage.

(b) Design and install water level control devices so that during low flows, the device will convey enough flow over and around the dam to pass fish; or design and install a water control device that also functions as a fish ladder.

(c) Install water level control devices in beaver ponds with pool depth of four feet or more. If the water level control device is installed in water shallower than four feet, the design must have an enclosure to protect the water intake from beaver activity.

(d) Maintain the water level control device to ensure it functions as designed.

(6) Beaver exclusion devices design and construction:

Design, install, and maintain guards, grates, grills, fences, and other beaver exclusion devices to provide unimpeded fish passage and to prevent beavers from plugging a culvert or other water crossing structures such as low bridge crossings.

NEW SECTION

WAC 220-660-240 Pond construction. (1) Description: A person may construct an out-of-channel pond for livestock watering, irrigation, fire protection, or other use. If the pond construction involves diverting water, a water right must be obtained prior to diverting waters of the state. This requirement does not apply to constructing storm water pond facilities landward of the ordinary high water line.

(2) **Fish life concerns:** To prevent fish from being injured or killed, a person must physically prevent fish from entering ponds not intended as fish habitat. Ponds can contribute to increased water temperatures and loss of instream flow in a watercourse, which may impact the survival of fish that need cold water for survival.

(3) Pond design and construction:

(a) Do not construct ponds within the watercourse.

(b) Design and construct ponds to protect fish life:

(i) Design, construct, and screen ponds to prevent the entry of fish unless the department determines that the pond will provide beneficial habitat; in which case, the design and construction must provide free and unrestricted fish access.

(ii) Unless the intent of the bypass reach is to enhance fish life or habitat that supports fish life, locate the outflow of the pond (return flow system) as close to the diversion point as possible so diverted water is absent from the watercourse for the shortest amount of time (shortest length of bypass reach).

(iii) Isolate the work area from the watercourse while constructing the pond, diversion system, and the return flow system. Design and construct the pond so the outflow temperature does not harm fish life.

NEW SECTION

WAC 220-660-250 Water diversions and intakes. (1) Description: Surface water diversions are common instream

features in agricultural areas where the water is used for irrigation. Throughout the state, people also divert water for other agricultural, hydropower, industrial, recreational, residential, municipal, and hatchery uses. A water right must be obtained prior to diverting water of the state.

(2) **Fish life concerns:** To protect fish life, including salmon and steelhead, Washington state law (RCW 77.57.070 and 77.57.010) requires that all surface water diversions be screened to prevent fish from being drawn into the diversions where they are at risk for injury or death from entrainment. Other elements of a water diversion can result in direct and indirect sources of injury or mortality. Wing and check dams can prevent or delay upstream and downstream fish passage increasing predation, and fish may be physically injured or dewatered by active cleaning mechanisms or in bypass mechanisms.

(3) Limit of department authority over water diversions and intakes:

(a) A written HPA is not required for emergency water diversions during emergency fire response. When possible, a person must notify the department before the emergency diversion. When advance notification is not possible, a person must notify the department within twenty-four hours of the emergency diversion, at the twenty-four-hour hotline phone number at 360-902-2536.

(b) The department cannot apply the hydraulic code to limit the amount or timing of water diverted under a water right, other than ensuring that there is sufficient bypass flow to return fish back to the stream of origin from a water diversion. However, the department requires an HPA for work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state, or that will utilize any of the waters of the state to divert water under a water right.

(c) Regulating water flow from a permanent permitted irrigation structure by operating valves, or manipulating stop logs, check boards, headgates, or headboards, does not require an HPA. Any hydraulic project activity related to a change in site conditions, the manner or location of water diversion, a new landowner or contact, or new biological information, will require an HPA modification.

(d) The department must allow a person who has gravel berm dam diversion permitted by the department before January 1994 to continue to have the dam if it complies with the provisions of the HPA. However, the department can provision the approval of gravel berms.

(4) Water diversion and intake design, construction, operation, and maintenance:

(a) A diversion structure must not hinder upstream and downstream adult and juvenile fish passage. If passage problems develop, the department may require a person to modify the check or wing dam.

(b) At pump stations, screens, and headgate areas, a person may use excavation equipment or suction dredge to remove accumulated silts and gravel from within twenty feet of the point of diversion unless otherwise permitted. Place material removed so it will not reenter waters of the state. The water diversion must be open during this work to capture disturbed sediment within the irrigation diversion and prevent loss of sediment into the stream.

(c) Equip and maintain any device used for diverting water from a fish-bearing watercourse with a fish screen approved by the department to prevent passage or impingement of fish into the diversion device. Maintain the fish screen and associated structures as necessary to achieve the approach velocity, a functional bypass, and fish protection criteria.

(d) Irrigation diversions must not create blind diversion channels leading to the fish screen. Diversions must be equipped with a fish bypass mechanism to provide opportunity for fish entrained within a delivery canal to volitionally return to the stream.

(e) Gravity diversions.

(i) Wing and check dams.

(A) Prior to constructing a wing or check dam, contact the department for opportunity to assess the site and determine whether active spawning and incubation is occurring at the site.

(B) Maintain diversion canals to maximize hydraulic gradient in the diversion canal to minimize the need for work within the natural watercourse. Maintenance includes removing sediment and debris at the point of diversion.

(C) Unless a gravel dam is approved, temporary wing or check dams for irrigation may be constructed using a combination of jersey barriers, concrete blocks, steel posts and wood, pinned straw bales, plastic sheeting, and similar inert materials.

(D) Where gravel dams are permitted, they must be constructed with gravels available on-site waterward of the OHWL, or with clean round gravel transported to the site. Limit bed disturbance to the minimum needed to achieve the provisions of the water right.

(E) Bed excavation depth to construct an irrigation diversion must not exceed eighteen inches unless otherwise approved by the department to avoid destabilizing the stream bed.

(F) Earth or dirt must not be used to seal check or wing dams. Straw, plastic sheeting, filter fabric, and similar inert materials may be used to seal wing or check dams.

(G) Do not use logs or other woody material waterward of the OHWL to construct the dam unless approved by the department. Large wood from upland locations may be used to create a wing or check dam.

(H) If logs or other large woody material block water flow into a ditch or inhibit construction, a person may relocate them within the OHWL.

(I) Wing or check dams must be constructed in a manner that does not cause bank erosion.

(J) All foreign materials, except clean or native gravel, used to construct wing or check dams must be removed within seven days after the end of the irrigation season.

(ii) Diversion dams must not extend completely across the stream unless needed to seal the dam to achieve the water right.

(iii) Graveled wing dams must be removed or breached down to the natural bed elevation in at least two locations at the end of the irrigation season.

(f) Start-up and shut-down of water diversions.

(i) Clean and maintain the fish bypass mechanism prior to diverting water to ensure it is operational and will prevent injury or stranding of fish life.

(ii) Ensure that there is sufficient flow within the bypass mechanism to safely return fish life from the fish screen to state waters.

(iii) If at any point during water diversion there is insufficient instream flow to provide opportunity for fish life to migrate downstream, close the fish bypass until there is sufficient flow.

(iv) Slowly ramp down flows at the end of the irrigation season in a manner that prevents stranding or predation of fish life within a canal above the fish screens or within the fish bypass mechanism. Do not close the head gate completely until fish have either left the canal and bypass or are salvaged and returned to the stream. Head gates located downstream of the fish screen may be closed immediately at the end of the irrigation season.

NEW SECTION

WAC 220-660-260 Outfall structures in freshwater areas. (1) **Description:** Outfalls move water from one place to another, typically to a water body. They may convey irrigation water, storm water, or other waste materials. The department recommends that a person construct energy dissipation structures landward of the riparian zone whenever feasible so discharged water can infiltrate into the soil or to sheet flow through the riparian zone into the stream.

(2) **Fish life concerns:** Outfalls can cause scouring or erosion of the bed. This can increase sediment supply to downstream reaches of rivers and streams. Outfalls can also cause bank erosion. This can cause a direct loss of bank side riparian vegetation. Riprap and other energy dissipation structures can bury instream habitat and riparian vegetation. In addition, outfalls can entrain fish.

(3) **Limit of department authority over storm water outfall projects:**

(a) The department may not provision HPAs for storm water discharges in locations covered by a National Pollution Discharge Elimination System municipal storm water general permit for water quality or quantity impacts. The HPA is required only for the actual construction of any storm water outfall or associated structures.

(b) In locations not covered by a National Pollution Discharge Elimination System municipal storm water general permit, the department may provision HPAs to protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(i) Before prescribing specific discharge rates in an HPA under this subsection, the department must:

(A) Find that the discharge from the outfall will cause harmful effects to fish life;

(B) Send the findings to the applicant and to the city or county where the project is being proposed; and

(C) Allow a person to use local ordinances or other ways to avoid the adverse effects from the direct hydraulic discharge. The forty-five day requirement for issuing HPAs

under RCW 77.55.021 is suspended when the department is meeting the requirements of this subsection.

(ii) After following the procedures in (b) of this subsection, the department may issue an HPA that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design landward of the mean higher high water mark of marine waters or the ordinary high water mark of fresh waters of the state.

(4) Outfall design and construction:

(a) Before designing and constructing an outfall consider alternatives such as tying into existing municipal storm water lines to avoid multiple storm water discharge points and low impact development techniques utilizing pervious pavement, infiltration galleries, green roofs, etc., to minimize discharge impacts.

(b) To prevent the entry of adult or juvenile fish, construct the outfall structure according to a design approved by the department.

(c) To prevent scouring, protect the watercourse bank and bed at the point of discharge using biotechnical techniques or other department-approved methods.

(d) Design and locate outfalls so that outflow or any associated energy dissipaters do not cause a loss of habitat that supports fish life. The department may require that energy be dissipated using one or more of the following methods, or other effective method approved by the department:

(i) Existing natural habitat features (such as large logs, rootwads, natural large rocks, and rock shelves) without degrading the habitat function or value of the features;

(ii) Pads of native plants (live willow or dogwood stakes or other native shrubs) and biodegradable fabric;

(iii) Imported habitat components (large woody material);

(iv) Manufactured in-line energy dissipaters, such as a tee diffuser;

(v) Rounded rock energy dissipation pads; or

(vi) Angular rock energy dissipation pads, if the department determines other options are not feasible.

NEW SECTION

WAC 220-660-270 Utility crossings in freshwater areas. (1) **Description:** Utility lines are cables and pipelines that transport gas, telecommunications, fiber optics, power, sewer, oil, and water lines from one side of a watercourse to the other. An HPA is not required for utility crossings attached to bridge structures.

(2) Fish life concerns:

(a) Utility crossings pose a risk to fish life and the habitat that supports fish life from potential substrate changes, destabilization of stream banks and channels, loss of riparian zone vegetation, and release of excessive sediment after stream flows resume. Utilities not buried below bed scour depth can require rock to protect them. This reduces habitat, inhibits channel processes, and can become fish passage barriers due to the rock or the pipeline.

(b) Trenching through stream banks and channels alters habitat and substrate characteristics, and therefore their productivity and should be avoided. Trenching may also cause the proportion of surface and subsurface flows to shift, altering stream hydrology. The department prefers trenchless crossing methods such as high-pressure directional drilling or punch and bore crossings that cause very little disturbance to the stream bed and banks.

(3) Utility line design:

(a) Align the conduit as perpendicular as possible to the watercourse.

(b) Avoid crossing at meander bends, braided streams, alluvial fans, active flood plains, or any other area that is inherently unstable and may lead to eroding and scouring the stream bed.

(c) Avoid areas of groundwater upwelling or locations within one hundred feet upstream of documented fish spawning areas.

(4) Utility line construction:

(a) Install the conduit well below scour depth of the watercourse to prevent natural scouring of the stream bed from exposing the pipeline or cable.

(b) If construction involves boring or jacking:

(i) Isolate pits from surface water flow to prevent bore hole collapse; and

(ii) Before discharging wastewater to state waters, route wastewater from project activities and dewatering to an area outside the watercourse to allow removal of fine sediment and other contaminants.

(c) If construction involves trench excavation:

(i) Trench widths should be as narrow as feasible to accommodate the pipe/line and achieve the depth specified in the approved plan.

(ii) Excavate trenches in the dry or isolate them from the flowing watercourse by installing a cofferdam, culvert, flume, or other approved method;

(iii) Plowing, placement, and covering must occur in a single pass of the equipment;

(iv) Limit disturbance of the bed and banks to the amount needed to complete the project. Before returning flow, backfill trenches with approved materials and return the bed to preproject condition.

(v) Dispose of excess spoils upland or on a barge so they will not reenter waters of the state.

(vi) Isolate the conduit approach trench from the watercourse until the conduit is laid across the watercourse.

(d) If construction involves directional drilling:

(i) Design the drill path to an appropriate depth below the watercourse to minimize the risk of frac-out and to a depth to prevent exposure of the line from natural scouring of the stream bed; and

(ii) Locate the drill entry and exit points away from the banks of the watercourse to minimize impact on these areas.

NEW SECTION

WAC 220-660-280 Felling and yarding of trees. (1) **Description:** Tree felling includes "bucking" or cutting the felled tree into short lengths and limbing the felled tree. Yarding is the process of hauling logs from the cutting area to

the landing and includes skidding (dragging the logs across the ground). There are three main kinds of yarding systems: Ground based, cable, and aerial logging.

(2) **Fish life concerns:** Felling and yarding trees can damage the aquatic and stream bank riparian zone habitat if done incorrectly.

(3) **Felling and yarding:**

(a) Do not fell trees into or across a Type S, F, or Np watercourse except when approved by the department. Felling into a Type N watercourse is approved if trees are removed as soon as it is practicable to do so.

(b) Trees or logs that accidentally enter a watercourse with identifiable bed or banks must remain where they fall unless the department authorizes the removal of parts or all of the trees or logs.

(c) Use full suspension when transporting logs across a watercourse with identifiable bed or banks, so no portion of the logs or limbs can enter the watercourse or damage the bed, banks, and riparian vegetation including riparian management zone trees.

(d) Use equipment that minimizes the number of cable crossings over the stream to reduce damage or disturbance to RMZ trees. Place cable tailholds across watercourses with identifiable bed or banks, if they minimize the number of new yarding roads needed. When changing roads, a person must move the cable around or over the riparian zone vegetation and banks to avoid damaging the vegetation and banks.

(e) Unless the department approves otherwise, remove limbs or other small debris that enter the watercourse with identifiable bed or banks, with each change in yarding road, or within seventy-two hours after entry into the watercourse or before the onset of high flows if anticipated to occur within seventy-two hours. Place the limbs and other small debris above the anticipated limits of floodwater. Remove limbs or other small debris from dry watercourses before the normal onset of high flows. Do not disturb large woody material that was in place before felling and yarding trees.

(f) Minimize releasing sediment to waters downstream from the felling or yarding activity. Use sediment control methods as needed to avoid releasing sediment downstream. Remove accumulated sediment from above check dams before removing them.

(g) Avoid or minimize skidding, ground lead yarding, or operating equipment within flowing waters in channels with defined bed or banks.

NEW SECTION

WAC 220-660-290 Aquatic plant removal and control. (1) **Description:** This section covers the physical and mechanical methods for controlling and removing aquatic plants. It does not address using grass carp, herbicides, or water column dye. Aquatic plant removal and control methods include physical, mechanical, biological, and chemical control methods. Often the best approach to controlling and removing aquatic plants is developing a vegetation management plan. A vegetation management plan is a comprehensive approach to controlling aquatic plants where all strategies are considered and usually some combination of techniques is selected and implemented. These plans should be

based on the biology and ecology of the aquatic plant to be controlled and the environmental characteristics of the site. Integrated vegetation management planning is encouraged to comprehensively address aquatic plant problems for a watercourse.

(2) **Fish life concerns:** Beneficial plants play a significant role in lakes and streams by providing food and habitat for fish life, stabilizing shorelines, and contributing to nutrient cycling. Sometimes beneficial plants can grow in overabundance, usually because of excessive inputs of nutrients such as nitrogen or phosphorus. In contrast, aquatic noxious weeds can threaten native vegetation, fish life, and the habitat that supports fish life.

(3) **Limit of authority:**

(a) An activity conducted solely to remove or control spartina does not require an HPA.

(b) An activity conducted solely to remove or control purple loosestrife and that is performed with hand-held tools or equipment, or equipment carried by a person when used, does not require an HPA.

(c) Any other activity conducted solely to remove or control aquatic noxious weeds or aquatic beneficial plants requires either a copy of the current *Aquatic Plants and Fish* pamphlet HPA available from the department or an individual HPA.

(4) **Removal of aquatic plants by hand:**

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Hand removal or control of aquatic plants can help eradicate an early infestation of aquatic noxious weeds and can be effective for small, confined areas.

(c) Hand removal or control of both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Cle Elum, Sammamish, and Washington. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of raking in the spawning area.

(ii) Work is restricted to hand-pulling, using hand-held tools or equipment, or using equipment that is carried by a person when used.

(iii) Removing or controlling aquatic beneficial plants to maintain an access for boating or swimming is allowed along no more than ten linear feet of the applicant's shoreline. The department requires advance authorization for boating and swimming access projects that cover a larger area.

(iv) When hand-pulling aquatic noxious weeds, remove the entire plant when possible. Completely remove detached plants and plant parts from waters of the state when possible. Dispose of detached plants and plant parts at an upland site so they will not reenter waters of the state.

(v) Do not remove or disturb existing fish habitat components such as logs, stumps, and large boulders.

(vi) Conduct work in a manner that minimizes the release of sediment and sediment-laden water from the job site.

(vii) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(viii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(ix) Do not use contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(5) Bottom barriers and screens:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Bottom barriers or screens can help eradicate an early infestation of aquatic noxious weeds and are best used in small, confined areas where control of all plants is needed.

(c) Bottom barrier or screen projects to control or remove either aquatic noxious weeds or aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Cle Elum, Sammamish, and Washington. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) For removing and controlling aquatic noxious weeds, the bottom barrier or screen material can cover no more than fifty percent of the length of the applicant's shoreline. The department requires advance authorization for bottom barrier or screen projects covering a larger area. Bottom barrier or screen and anchor material consisting of biodegradable material may be left in place. Within two years of placement, unless otherwise approved by the department, completely remove bottom barrier or screen and anchor material that is not biodegradable to encourage recolonization of aquatic beneficial plants.

(iii) To remove or control aquatic beneficial plants to maintain an area for boating or swimming, a bottom barrier or screen and anchor material may be installed along no more than ten linear feet of the applicant's shoreline. The department requires advance authorization for bottom barrier or screen projects for boating and swimming access projects covering a larger area.

(iv) Securely anchor a bottom barrier or screen material with pea gravel-filled bags, rock, or similar material to prevent billowing and movement off site.

(v) Regularly maintain a bottom barrier or screen and anchors to ensure the barrier or screen and anchors are functioning properly. Barriers or screens that have moved or are

billowing must immediately be securely reinstalled or removed from waters of the state.

(vi) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the water body if needed to properly install the bottom barrier or screen. Do not remove these habitat components from the water body.

(vii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(viii) Do not use contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(6) Weed rolling:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Weed rollers are best used when a person needs to control all aquatic plants.

(c) Weed rolling projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Cle Elum, Sammamish, and Washington. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) Weed rollers cannot be used to remove an early infestation of aquatic noxious weeds. Using weed rollers to remove or control all other infestation levels of aquatic noxious weeds can cover an area of no more than two thousand five hundred square feet. The department requires advance authorization for weed roller projects covering a larger area.

(iii) The department requires advance authorization to remove or control aquatic beneficial plants.

(iv) When using weed rollers to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the water body. Dispose of detached plants and plant parts at an upland site so they will not reenter waters of the state.

(v) Conduct work in a manner that minimizes the release of sediment and sediment-laden water from the job site.

(vi) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(vii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until

the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(viii) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the water body if needed to properly install the weed roller. Do not remove these habitat components from the water body.

(ix) Do not use contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(7) Mechanical harvesting and cutting:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA, unless otherwise indicated, and must be on the job site at all times.

(b) Mechanical harvesting and cutting projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Do not use mechanical harvesters and cutters to remove an early infestation of aquatic noxious weeds.

(ii) The department requires advance authorization to remove aquatic beneficial plants.

(iii) When using mechanical harvesters or cutters to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the water body. Dispose of detached plants and plant parts at an upland site so they will not reenter waters of the state.

(iv) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state. Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(v) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the project impacts.

(vi) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the water body if needed to operate the equipment. Do not remove these habitat components from the water body.

(vii) Conduct mechanical harvester and cutter operations only in waters deep enough to avoid contacting the bottom with the cutter blades.

(viii) Always operate mechanical harvesters and cutters so that they cause the least adverse impact to fish life.

(ix) Immediately and safely return to the water body all fish life that become entrained in the cut vegetation while operating a mechanical harvester.

(x) Do not use contaminated equipment which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(xi) Limit alteration or disturbance of the bank and bank vegetation to that required to conduct the project. Protect all disturbed areas from erosion using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(8) **Rotovation:** The department requires an individual HPA for rotovation projects. Rotovation projects to control or remove aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(a) Do not use rotovators to remove an early infestation of aquatic noxious weeds.

(b) When using rotovation to remove or control aquatic noxious weeds, completely remove detached plants and plant parts from the water body. Dispose of detached plants and plant parts at an upland site so they will not reenter waters of the state.

(c) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state. Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(d) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the project impacts.

(e) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the water body if needed to operate the equipment. Do not remove these habitat components from the water body.

(f) Always operate rotovators such that they will cause the least adverse impact to fish life.

(g) Do not use contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(h) Limit alteration or disturbance of the bank and bank vegetation to that needed to conduct the project. Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(i) Do not rotovate in fish spawning areas unless approved by the department.

(9) Aquatic plant dredging:

(a) A copy of the current *Aquatic Plants and Fish* pamphlet available from the department serves as an HPA for diver-operated dredging only, unless otherwise indicated, and must be on the job site at all times.

(b) Dredging projects to control or remove aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) Because of potential impacts to sockeye spawning areas, the department requires advance authorization for activities in Baker Lake and lakes Osoyoos, Ozette, Pleasant, Cle Elum, Sammamish, and Washington. If authorization is given, the department may require mitigation through a written agreement between the applicant and the department for impacts of the activity to the spawning area.

(ii) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, or any other toxic or harmful materials, from entering or leaching into waters of the state.

Keep equipment well-maintained and use food-grade oil in the hydraulic system.

(iii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the project impacts.

(iv) Existing fish habitat components such as logs, stumps, and large boulders may be relocated within the water body if needed to operate the equipment. Do not remove these habitat components from the water body.

(v) Always conduct dredging with dredge types and methods that cause the least adverse impact to fish life.

(vi) Do not use contaminated equipment, which can spread plant parts. Thoroughly remove and properly dispose of all viable plants and plant parts from the equipment before using the equipment in waters of the state.

(vii) To avoid stranding fish, the bed must not contain pits, potholes, or large depressions when dredging is finished.

(viii) Limit alteration or disturbance of the bank and bank vegetation to that needed to conduct the project. Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

(c) Diver-operated dredging only:

(i) Diver-operated dredging can help eradicate an early infestation of aquatic noxious weeds and can help conduct long-term maintenance after control or removal using other methods.

(ii) When using diver-operated dredging to remove or control aquatic noxious weeds, a person must completely remove plants and plant parts from the water body. Remove plants and plant parts from the dredge slurry before returning it to the water body. Dispose of dredged bed materials, including detached plants and plant parts, at an upland disposal site so they will not reenter waters of the state.

(iii) Operate a hydraulic dredge with the intake at or below the surface of the material that is being removed. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(iv) The department requires advance authorization to eradicate or control aquatic beneficial plants.

(d) For dredging other than diver-operated dredging, the department requires an individual HPA for all dredging projects to control or remove aquatic plants. All dredging other than diver-operated dredging must comply with the following technical provisions:

(i) Do not use draglines and clamshell dredges to remove an early infestation of aquatic noxious weeds.

(ii) When using dredging to remove or control aquatic noxious weeds, a person must completely remove plants and plant parts from the water body. Dispose of dredged bed materials, including detached plants and plant parts, at an upland site so they will not reenter waters of the state.

(iii) Do not conduct dredging in fish spawning areas unless approved by the department.

(iv) Operate a hydraulic dredge with the intake high enough above the root system of the vegetation being

removed so the bed is not excessively disturbed. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(v) If a dragline or clamshell is used, operate in a manner that minimizes turbidity. During excavation, complete each pass with the clamshell or dragline bucket. Do not stockpile dredged material waterward of the ordinary high water line.

(10) Water level manipulation:

(a) The department requires an individual HPA to manipulate water levels.

(b) Manipulating water levels (drawdowns) to remove or control aquatic noxious weeds or aquatic beneficial plants by exposing plants and root systems to extreme temperature and moisture conditions may be appropriate under specific circumstances. Accurate plant identification is important to ensure success.

(c) Water level manipulation projects to control or remove both aquatic noxious weeds and aquatic beneficial plants must comply with the following technical provisions except where otherwise indicated:

(i) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the project impacts.

(ii) Manipulate water levels in a manner that causes the least adverse impact to fish life.

(iii) Manipulate water levels gradually and in a controlled manner to prevent a sudden release of impounded water or sediments that may result in downstream bed and bank degradation, sedimentation, or flooding. Water levels must be drawn down and brought back up at rates predetermined in consultation with and approved by the department. Instream flow requirements must be maintained as water levels are brought back up.

(iv) Protect all disturbed areas from erosion, using vegetation or other means. Replant the banks within one year with native or other approved woody species.

NEW SECTION

WAC 220-660-300 Mineral prospecting. (1) Description: Mineral prospecting projects excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment. When prospectors locate valuable minerals through prospecting, they may attempt to recover larger quantities of the minerals using a variety of small motorized equipment, including suction dredges, high bankers, and heavy equipment. The rules in this section apply to using hand-held mineral prospecting tools and small motorized equipment.

(2) Fish life concerns: Mineral prospecting and mining activities can harm fish life and habitat that supports fish life.

(a) Direct impacts from mineral prospecting and mining activities may include:

(i) Mortality from the physical effects of disturbing eggs or fry incubating within the bed;

(ii) Mortality from passing vulnerable fish through mineral prospecting equipment; and

(iii) Lower environmental productivity resulting from habitat modifications such as altered stream beds or lowered water quality.

(b) Indirect impacts may include changes in food resources and human disturbances.

(c) The department minimizes impacts of mineral prospecting by restricting the type of mining equipment allowed, limiting excavation zones within streams, and setting allowable timing windows.

(3) General requirements:

(a) A copy of the current *Gold and Fish* pamphlet is available from the department, and it contains the rules that a person must follow when using the pamphlet as the HPA for the mineral prospecting project.

(b) Alternatively, a person may request exceptions to the *Gold and Fish* pamphlet by applying for a standard individual written HPA as described in WAC 220-660-060. The department must deny an HPA when, in the judgment of the department, the project will result in direct or indirect harm to fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. The department may apply saltwater provisions to written HPAs for tidally influenced areas upstream of river mouths and the mainstem Columbia River downstream of Bonneville Dam.

(c) Nothing in chapter 220-660 WAC relieves a person of the duty to obtain landowner permission and any other required permits before conducting any mineral prospecting activity.

(4) Mineral prospecting in freshwater without timing restrictions:

(a) A person may mineral prospect year-round in all fresh waters of the state, except lakes. A person must follow the rules listed below, but does not need to have the *Gold and Fish* pamphlet on the job site when working in fresh waters of the state.

(b) When mineral prospecting without timing restrictions, a person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels; and

(iii) Sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment.

(c) A person may not use vehicle-mounted winches. A person may use one hand-operated winch to move boulders or large woody material that is not embedded or located within the wetter perimeter. A person may use additional cables, chains, or ropes to stabilize boulders, or large woody material that is not embedded.

(d) A person may work within the wetted perimeter only from one-half hour before official sunrise to one-half hour after official sunset.

(e) A person may not disturb fish life or redds within the bed. If a person observes or encounters fish life or redds within the bed, or actively spawning fish when collecting or processing aggregate, a person must relocate their operation. A person must avoid areas containing live freshwater mus-

sels. If a person encounters live mussels during excavation, a person must relocate the operation.

(f) Aggregate excavation, collection, and removal:

(i) A person may excavate only by hand or with hand-held mineral prospecting tools.

(ii) A person may not excavate, collect, or remove aggregate from within the wetted perimeter. See Figures 1 and 2.

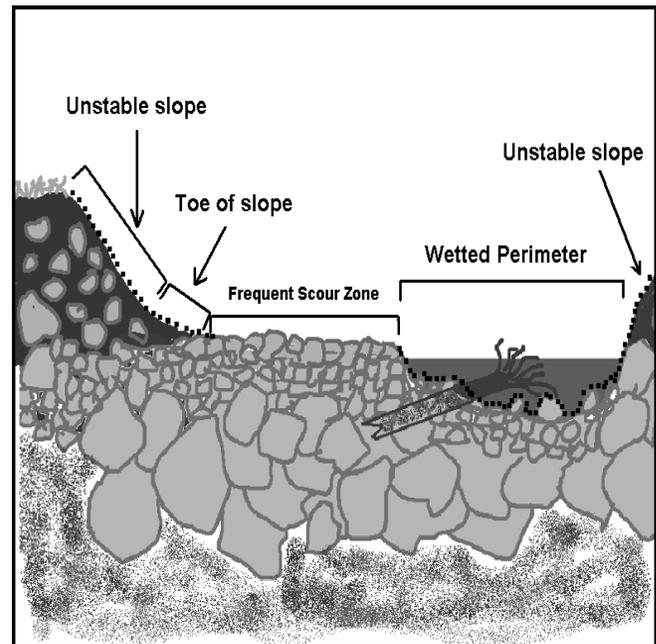


Figure 1: Cross section of a typical body of water, showing areas where excavation is not permitted under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(iii) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple persons may work within a single excavation site.

(iv) When collecting or excavating aggregate, a person may not stand within, or allow aggregate to enter, the wetted perimeter.

(v) A person must fill all excavation sites and level all tailing piles before moving to another excavation site or abandoning an excavation site. If a person moves boulders, a person must return them, as well as possible, to their original location.

(vi) A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. A person may not cut large woody material. See Figure 2.

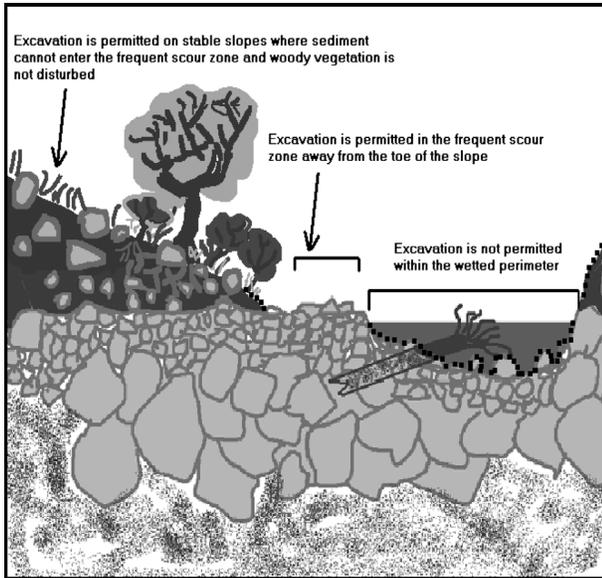


Figure 2: Permitted and prohibited excavation sites in a typical body of water under rules for mineral prospecting without timing restrictions. Dashed lines indicate areas where excavation is not permitted.

(vii) A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(viii) A person may not excavate, collect, or remove aggregate from the toe of the slope. A person also may not excavate, collect, or remove aggregate from an unstable slope or any slope that delivers, or might deliver sediment to the wetted perimeter or frequent scour zone. See Figures 3 and 4.

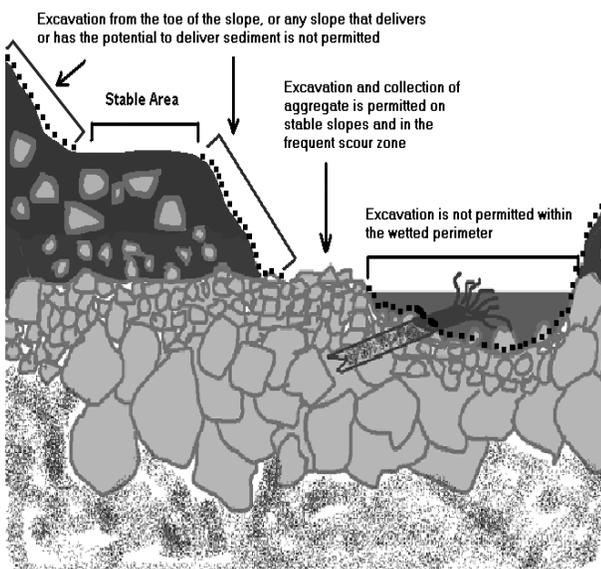


Figure 3: Limits on excavating, collecting, and removing aggregate on stream banks.

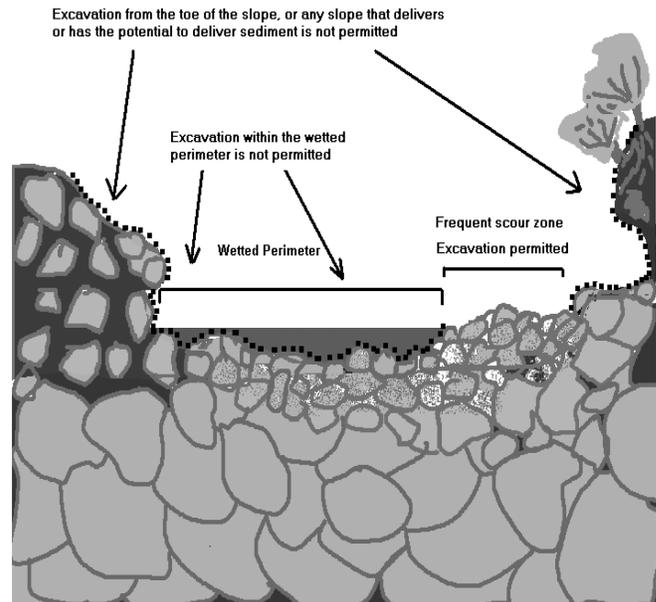


Figure 4: Excavating, collecting and removing aggregate within the wetted perimeter is not permitted.

(g) Processing aggregate:

(i) A person may stand within the wetted perimeter when processing aggregate with pans, spiral wheels, and sluices.

(ii) A person may not stand on or process directly on redds, or disturb incubating fish life. A person may not allow tailings or visible sediment plumes (visibly muddy water) to enter redds or areas where fish life are located within the bed.

(iii) A person may not level or disturb tailing piles that remain within the wetted perimeter after processing aggregate.

(iv) If a person collected or excavated aggregate outside of the frequent scour zone, a person must classify it at the collection or excavation site before processing.

(v) When using a sluice, a person may process only classified aggregate within the wetted perimeter.

(vi) The maximum width of a sluice, measured at its widest point, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(vii) A person may process with a sluice only in areas within the wetted perimeter that are composed mainly of boulders and bedrock. A person must separate sluice locations by at least fifty feet. A person may not place structures within the wetted perimeter to check or divert the water flow.

(viii) A person may operate mini high-bankers or other concentrators only outside the wetted perimeter. A person may not allow visible sediment or muddy water to enter the wetted perimeter. A second excavation site may be used as a settling pond.

(ix) As provided in RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish from entering the pump intake. A person must screen the

pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(x) A person may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(xi) A person may not disturb existing habitat improvement structures or stream channel improvements.

(xii) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter or frequent scour zone. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water, and contact the Washington military department emergency management division. A person may not return the equipment to the water until the problem is corrected. A person must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(xiii) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately cease operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(5) Mineral prospecting in fresh waters with timing restrictions:

(a) A person may mineral prospect in fresh waters of the state only during the times and with the mineral prospecting equipment limitations identified in subsection (7) of this section. A person must have the *Gold and Fish* pamphlet on the job site and comply with the provisions listed below.

(b) When mineral prospecting with timing restrictions, a person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels;

(iii) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(iv) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. See Figure 5.



Figure 5: Dredge intake nozzle

(v) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment; suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle; and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the nozzle size. See Figure 5; and

(vi) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(c) The widest point of a sluice, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(d) The suction intake nozzle and hose of suction dredges and power sluice/suction dredge combinations must not exceed the diameters allowed in the listing for the stream or stream reach where a person is operating, as identified in subsection (7) of this section.

(e) A person may not use vehicle-mounted winches. A person may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(f) Equipment separation:

(i) A person may use hand-held mineral prospecting tools; pans; spiral wheels; or sluices, mini rocker boxes, or mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment, as close to other mineral prospecting equipment as desired.

(ii) When operating any sluice or rocker box with a riffle area larger than three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combination, high-banker, or power sluice within the wetted perimeter, a person's equipment must be at least two hundred feet

from all others also operating this type of equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is actually operating within that two hundred foot radius. See Figure 6.

(iii) When operating any sluice or rocker box with a rifle area larger than three square feet (including ganged equipment), suction dredge, power sluice/suction dredge combination, high-banker, or power sluice outside of the wetted perimeter that discharges tailings or wastewater to the wetted perimeter, a person's equipment must be at least two hundred feet from all others also operating this type of equipment. This separation is measured as a radius from the center of the equipment the person is operating. A person may locate this equipment closer than two hundred feet if only one piece of equipment is actually operating within that two hundred-foot radius. See Figure 6.

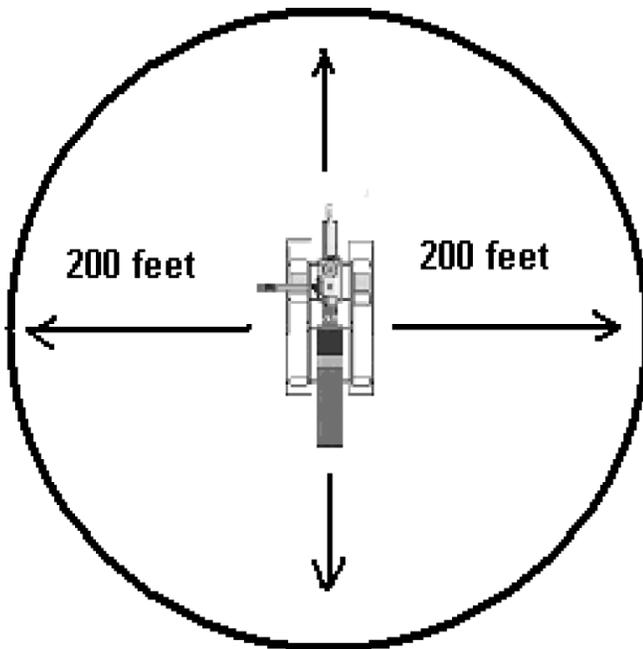


Figure 6: Equipment separation requirement.

(g) As provided in RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish from entering the pump intake. A person must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(h) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter or frequent scour zone. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment

from the body of water, and contact the Washington military department emergency management division. A person may not return the equipment to the water until the problem is corrected. A person must store fuel and lubricants outside the frequent scour zone, and in the shade when possible.

(i) A person may work within the wetted perimeter or frequent scour zone only from one-half hour before official sunrise to one-half hour after official sunset. If a person's mineral prospecting equipment exceeds one-half the width of the wetted perimeter of the stream, a person must remove the equipment from the wetted perimeter or move it so that at least fifty percent of the wetted perimeter is free of equipment from one-half hour after official sunset to one-half hour before official sunrise.

(j) A person may not excavate, collect, remove, or process aggregate within four hundred feet of any fishway, dam, or hatchery water intake.

(k) A person must not disturb existing habitat improvement structures or stream channel improvements.

(l) A person may not undermine, move, or disturb large woody material embedded in the slopes or located wholly or partially within the wetted perimeter. A person may move large woody material and boulders located entirely within the frequent scour zone, but a person must keep them within the frequent scour zone. A person may not cut large woody material.

(m) A person may not undermine, cut, or disturb live, rooted woody vegetation of any kind.

(n) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple individuals may work within a single excavation site.

(o) A person must fill all excavation sites and level all tailing piles before moving to another excavation site or abandoning an excavation site.

(p) A person may not excavate, collect, or remove aggregate from the toe of the slope. A person also may not excavate, collect, or remove aggregate from an unstable slope or any slope that delivers, or might deliver, sediment to the wetted perimeter or frequent scour zone. See Figures 7 and 8.

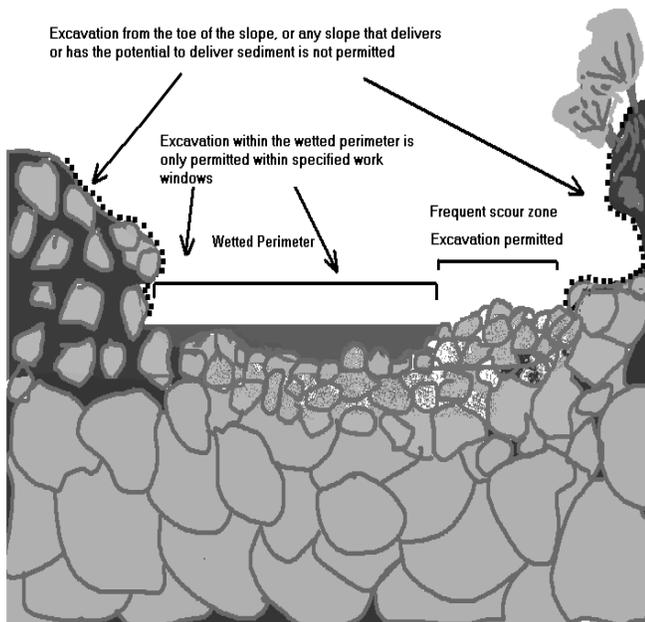


Figure 7: Cross section of a typical body of water showing unstable slopes, stable areas, and permitted or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

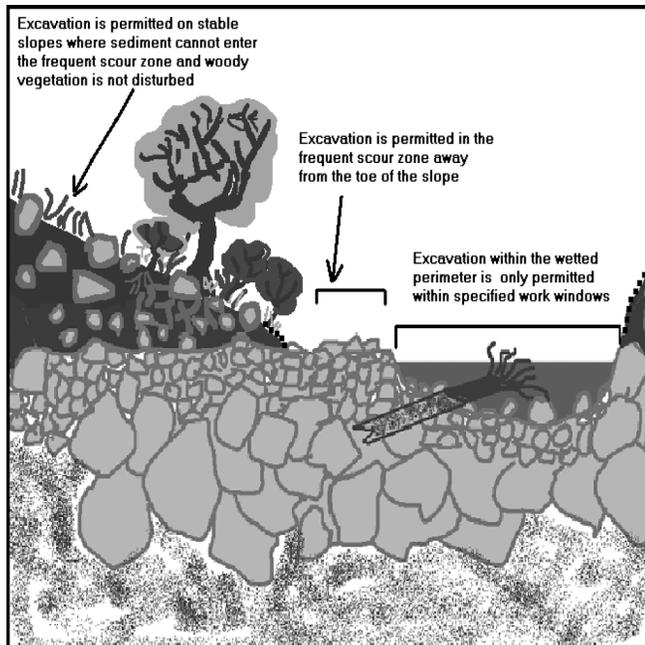


Figure 8: Cross section of a typical body of water showing unstable slopes, stable areas, and permitted or prohibited excavation sites under rules for mineral prospecting with timing restrictions. Dashed line indicates areas where excavation is not permitted.

(q) A person may partially divert a body of water into mineral prospecting equipment. However, at no time may the diversion structure be greater than fifty percent of the width of the wetted perimeter, including the width of the equipment. A person may not divert the body of water outside of the wetted perimeter.

(r) A person may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure by hand. Before abandoning the site, a person must remove artificial materials used to construct a diversion structure and restore the site to its approximate original condition.

(s) A person may process aggregate collected from the frequent scour zone:

(i) At any location if a person uses pans; spiral wheels; mini rocker boxes; mini high-bankers; or sluices or other concentrators with riffle areas three square feet or less, including ganged equipment.

(ii) Only in the frequent scour zone or upland areas landward of the frequent scour zone if a person uses power sluice/suction dredge combinations, high-bankers, or power sluices with riffle areas totaling ten square feet or less, including ganged equipment; or sluices or rocker boxes that have riffle areas larger than three, but less than ten square feet, including ganged equipment. A person may not discharge tailings to the wetted perimeter when using this equipment. However, a person may discharge wastewater to the wetted perimeter if its entry point into the wetted perimeter is at least two hundred feet from any other wastewater discharge entry point.

(t) A person may process aggregate collected from upland areas landward of the frequent scour zone:

(i) At any location if a person uses pans; spiral wheels; or sluices, concentrators, mini rocker boxes, and mini high-bankers with riffle areas totaling three square feet or less, including ganged equipment. A person must classify the aggregate at the excavation site before processing with this equipment within the wetted perimeter or frequent scour zone.

(ii) Only at an upland location landward of the frequent scour zone if a person uses power sluice/suction dredge combinations; high-bankers; power sluices; or rocker boxes. A person may not allow tailings or wastewater to enter the wetted perimeter or frequent scour zone.

(iii) Within the wetted perimeter or frequent scour zone if a person uses a sluice with a riffle area greater than three square feet. A person must classify the aggregate at the excavation site prior to processing with a sluice with a riffle area exceeding three square feet.

(u) A person may use pressurized water only for crevicing or for redistributing dredge tailings within the wetted perimeter. No other use of pressurized water is permitted.

(v) A person may conduct crevicing in the wetted perimeter, in the frequent scour zone, or landward of the frequent scour zone. The hose connecting fittings of pressurized water tools used for crevicing may not have an inside diameter larger than three-quarters of an inch. If a person crevices landward of the frequent scour zone, no sediment or wastewater may be discharged into the wetted perimeter or the frequent scour zone.

(w) A person must avoid areas containing live freshwater mussels. If a person encounters live mussels during excavation, a person must relocate the operation.

(x) A person may not disturb redds. If a person observes or encounters redds or actively spawning fish when collecting or processing aggregate, a person must relocate the operation.

(y) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(6) Mineral prospecting on ocean beaches:

(a) A person may mineral prospect year-round on ocean beaches of the state. A person must follow the rules listed below, and must have the *Gold and Fish* pamphlet on the job site when working on ocean beaches of the state, except as noted in this subsection.

(b) A person may mineral prospect only between the line of ordinary high tide and the line of extreme low tide on beaches within the Seashore Conservation Area set under RCW 79A.05.605 and managed by Washington state parks and recreation commission.

(c) No written or pamphlet HPA is required to mineral prospect south of the Copalis River, if a person operates landward of the upper limit of ghost shrimp burrowing in the beach; waterward of the ordinary high tide line; and a person does not use fresh water from fish-bearing streams during operations. See Figure 9.

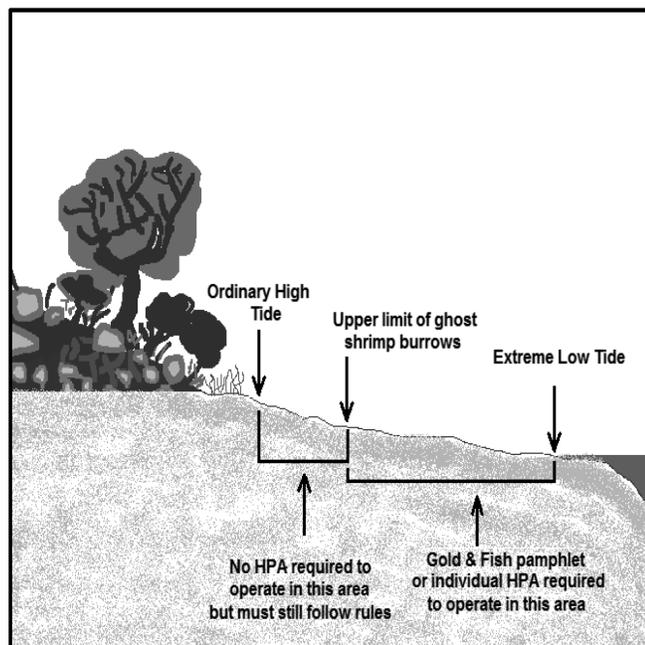


Figure 9. Beach area where no written or pamphlet HPA is required.

(d) A person may use only hand-held mineral prospecting tools and the following mineral prospecting equipment:

(i) Pans;

(ii) Spiral wheels;

(iii) Sluices, concentrators, rocker boxes, and high-bankers with riffle areas totaling ten square feet or less, including ganged equipment;

(iv) Suction dredges that have suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size;

(v) Power sluice/suction dredge combinations that have riffle areas totaling ten square feet or less, including ganged equipment; suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle; and pump intake hoses with inside diameters of four inches or less. The inside diameter of the dredge hose attached to the suction intake nozzle may be no greater than one inch larger than the nozzle size; and

(vi) High-bankers and power sluices that have riffle areas totaling ten square feet or less, including ganged equipment, and pump intake hoses with inside diameters of four inches or less.

(e) When operated in fish-bearing freshwater streams, the widest point of a sluice, including attachments, must not exceed twenty-five percent of the width of the wetted perimeter at the point of placement.

(f) A person may not use vehicle-mounted winches. A person may use one motorized winch and one hand-operated winch to move boulders and large woody material that is not embedded, and additional cables, chains, or ropes to stabilize them.

(g) Under RCW 77.57.010 and 77.57.070, any device a person uses for pumping water from fish-bearing waters must be equipped with a fish guard to prevent fish from entering the pump intake. A person must screen the pump intake with material that has openings no larger than five sixty-fourths inch for square openings, measured side to side, or three thirty-seconds inch diameter for round openings, and the screen must have at least one square inch of functional screen area for every gallon per minute (gpm) of water drawn through it. For example, a one hundred gpm-rated pump would require a screen with a surface area of at least one hundred square inches.

(h) All equipment fueling and servicing must be done so that petroleum products do not enter the wetted perimeter. If a petroleum sheen or spill is observed, a person must immediately stop work, remove the equipment from the body of water and beach, and contact the Washington military department emergency management division. A person may not return the equipment to the water or beach until the problem is corrected. A person must store fuel and lubricants away from the water inside a vehicle or landward of the beach, and in the shade when possible.

(i) A person may work only from one-half hour before official sunrise to one-half hour after official sunset. If a person uses mineral prospecting equipment in a fish-bearing

freshwater stream and the equipment exceeds one-half the width of the wetted perimeter of the stream, a person must remove the equipment from the wetted perimeter or move it so that at least fifty percent of the wetted perimeter is free of equipment from one-half hour after official sunset to one-half hour before official sunrise.

(j) A person may not undermine, cut, disturb, or move large woody material or woody debris jams.

(k) A person may work in only one excavation site at a time. However, a person may use a second excavation site as a settling pond. Multiple persons may work within a single excavation site.

(l) A person must backfill all trenches, depressions, or holes created in the beach during project activities before moving to another excavation site (except during use as a settling pond) or leaving an excavation site.

(m) A person may partially divert a body of water into mineral prospecting equipment. However, at no time may the diversion structure be greater than fifty percent of the width of the wetted perimeter of a fish-bearing freshwater stream, including the width of the equipment. A person may not divert the body of water outside of the wetted perimeter.

(n) A person may use materials only from within the wetted perimeter, or artificial materials from outside the wetted perimeter, to construct the diversion structure by hand. Before abandoning the site, a person must remove artificial materials used to construct a diversion structure and restore the site to its approximate original condition.

(o) A person may use pressurized water only for redistributing dredge tailings within the wetted perimeter. No other use of pressurized water is permitted.

(p) A person may not disturb live razor clams or other shellfish within the bed. If a person observes or encounters live razor clams or other shellfish during excavation, the person must relocate the operation.

(q) If at any time, as a result of project activities, a person observes a fish kill or fish life in distress, a person must immediately stop operations and notify the department, and the Washington military department emergency management division of the problem. A person may not resume work until the department gives approval. The department will require additional measures to mitigate the prospecting impacts.

(7) Authorized work times and mineral prospecting equipment restrictions by specific state waters for mineral prospecting and placer mining projects:

(a) A person may conduct mineral prospecting and placer mining under subsections (5) and (6) of this section only in the state waters, with the equipment restrictions, and during the times specified in the following table of authorized work times.

(b) The general work time for a county applies to all state waters within that county, unless otherwise indicated in the table.

(c) The work time for state waters identified in the table of authorized work times applies to all its tributaries, unless otherwise indicated. Some state waters occur in multiple counties. Check the table for the county in which mineral prospecting or placer mining is to be conducted to determine the work time for that water body.

(d) Where a tributary is identified as a boundary, that boundary is the line perpendicular to the receiving stream that is projected from the most upstream point of the tributary mouth to the opposite bank of the receiving stream. See Figure 10.

(e) Mineral prospecting and placer mining within water bodies identified in the table of authorized work times as "submit application" are not authorized under the *Gold and Fish* pamphlet. A person must obtain a written individual HPA to work in these water bodies.

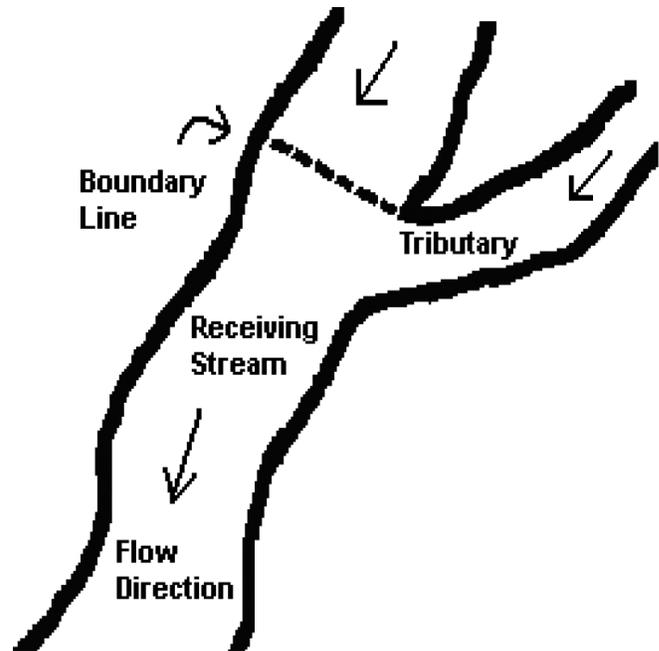


Figure 10: Where the boundary is located if a tributary listed as a boundary.

(f) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be four inches or less, but must be no greater than four and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle, is authorized only in the state waters identified in the table of authorized work times, and any tributaries to them, unless otherwise indicated in the table. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

(g) Mineral prospecting using mineral prospecting equipment that has suction intake nozzles with inside diameters that should be five inches or less, but must be no greater than five and one-quarter inches to account for manufacturing tolerances and possible deformation of the nozzle is authorized only in the state waters specifically identified in the table of authorized work times. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size. A person may use only mineral prospecting equipment with suction intake nozzle inside diameters of four and one-quarter inches or less in tributaries of these state waters. The inside diameter of the dredge hose attached to the nozzle may be no greater than one inch larger than the nozzle size.

Table 3
Authorized Work Times and Mineral Prospecting Equipment Restrictions by Specific State Waters for Mineral Prospecting and Placer Mining Projects

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Adams County	July 1 - October 31	X	–
Crab Creek (41.0002)	July 16 - February 28	X	X
Esquatzel Creek (36.MISC)	June 1 - February 28	X	X
Palouse River (34.0003)	July 16 - February 28	X	X
Asotin County	July 16 - September 15	X	–
Snake River (35.0002)	See Below	–	–
Alpowa Creek (35.1440)	July 16 - December 15	X	–
Asotin Creek (35.1716)	July 16 - August 15	X	–
Couse Creek (35.2147)	July 16 - December 15	X	–
Grande Ronde River (35.2192)	July 16 - September 15	X	X
Ten Mile Creek (35.2100)	July 16 - December 15	X	–
Benton County	June 1 - September 30	X	–
Columbia River	See Below	–	–
Glade Creek (31.0851)	August 1 - September 30	X	–
Yakima River (37.0002)	June 1 - September 15	X	X
Amon Wasteway (37.0009)	June 1 - September 30	X	–
Corral Creek (37.0002)	June 1 - September 30	X	–
Spring Creek (37.0205)	June 1 - September 30	X	–
Chelan County	July 16 - August 15	X	–
Columbia River	See Below	–	–
Antoine Creek (49.0294) - Mouth to falls at river mile 1.0	July 1 - February 28	X	–
Antoine Creek (49.0294) - Upstream of falls at river mile 1.0	July 1 - March 31	X	–
Chelan River (47.0052) - Mouth to Chelan Dam	July 16 - September 30	X	X
Colockum Creek (40.0760)	July 1 - October 31	X	–
Entiat River (46.0042) - Mouth to Entiat Falls	July 16 - July 31	X	X
Entiat River (46.0042) - Upstream of Entiat Falls	July 16 - March 31	X	–
Crum Canyon (46.0107)	July 16 - March 31	X	–
Mad River (46.0125)	July 16 - July 31	X	–
Indian Creek (46.0128)	July 16 - February 28	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Lake Chelan (47.0052)	Submit Application	–	–
Railroad Creek (47.0410)	July 16 - September 30	X	–
Stehekin River (47.0508)	Submit Application	–	–
Twenty-Five Mile Creek (47.0195)	July 16 - September 30	X	–
Other Lake Chelan tributaries outside of North Cascades National Park	July 1 - August 15	X	–
Other Lake Chelan tributaries within North Cascades National Park	Submit Application	–	–
Number 1 Canyon (45.0011)	July 1 - February 28	X	–
Number 2 Canyon (45.0012)	July 1 - February 28	X	–
Squilchuck Creek (40.0836) - Mouth to South Wenatchee Avenue	July 1 - September 30	X	–
Squilchuck Creek (40.0836) - Upstream of South Wenatchee Avenue	July 1 - February 28	X	–
Stemilt Creek (40.0808) - Mouth to falls	July 1 - September 30	X	–
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	–
Wenatchee River (45.0030) - Mouth to Hwy 2 Bridge in Leavenworth	July 15 - September 30	X	X
Wenatchee River (45.0030) - Hwy 2 Bridge in Leavenworth to Lake Wenatchee	July 15 - August 15	X	X
Beaver Creek (45.0751)	July 1 - September 30	X	–
Chiwaukum Creek (45.0700)	July 1 - July 31	X	–
Chiwawa River (45.0759) - Mouth to Phelps Creek	July 1 - July 31	X	X
Chiwawa River (45.0759) - Upstream of Phelps Creek	July 1 - July 31	X	–
Deep Creek (45.0764)	July 1 - February 28	X	–
Phelps Creek (45.0875)	July 16 - August 15	X	–
Icicle Creek (45.0474) - Mouth to Johnny Creek	July 1 - July 31	X	X
Icicle Creek (45.0474) - Upstream of Johnny Creek	July 1 - July 31	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Fourth of July Creek (45.0525)	July 1 - February 28	X	–
Lake Wenatchee (45.0030)	Submit Application	–	–
Little Wenatchee (45.0985) - Mouth to Wilderness Boundary	July 1 - July 31	X	X
Little Wenatchee (45.0985) - Upstream of Wilderness Boundary	Submit Application	–	–
White River (45.1116) - Mouth to White River Falls	July 1 - July 31	X	X
White River (45.1116) - Upstream of White River Falls	July 1 - February 28	X	–
Nason Creek (45.0888)	July 1 - July 31	X	–
Peshastin Creek (45.0232) - Mouth to Negro Creek	July 16 - August 15	X	–
Peshastin Creek (45.0232) - Upstream of Negro Creek	August 1 - February 28	X	–
Ingalls Creek (45.0273) - Mouth to Cascade Creek	Submit Application	–	–
Ingalls Creek (45.0273) - Upstream of Cascade Creek	July 16 - February 28	X	–
Negro Creek (45.0323) - Mouth to falls at stream mile 2.9	Submit Application	–	–
Negro Creek (45.0323) - Upstream of falls at stream mile 2.9	July 16 - February 28	X	–
Ruby Creek (45.0318)	July 16 - February 28	X	–
Tronson Creek (45.0346)	August 1 - February 28	X	–
Scotty Creek (45.0376)	August 1 - February 28	X	–
Shaser Creek (45.0365)	August 1 - February 28	X	–
Clallam County	July 16 - September 15	X	–
Clallam River (19.0129)	August 1 - August 15	X	–
Dungeness River (18.0018)	Submit Application	–	–
Independent Creek (18.MISC)	August 1 - August 31	X	–
Elwha River (18.0272)	August 1 - August 15	X	X
Hoko River (19.0148)	August 1 - September 15	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Jimmycomelately Creek (17.0285)	August 1 - August 31	X	–
Lake Ozette (20.0046)	Submit Application	–	–
Little Quilcene River (17.0076)	July 16 - August 31	X	–
Lake Ozette tributaries	July 16 - September 15	X	–
Lyre River (19.0031)	August 1 - September 15	X	–
McDonald Creek (18.0160)	August 1 - September 15	X	–
Morse Creek (18.0185)	August 1 - August 15	X	–
Ozette River (20.0046)	July 16 - September 15	X	–
Pysht River (19.0113)	August 1 - September 15	X	–
Quillayute River (20.0096, 20.0162, 20.0175)	August 1 - August 15	X	X
Bogachiel River (20.0162)	Submit Application	–	–
Calawah River (20.0175)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	–
Sekiu River (19.0203)	August 1 - September 15	X	–
Snow Creek (17.0219)	July 16 - August 31	X	–
Sol Duc River (20.0096)	Submit Application	–	–
Lake Pleasant (20.0313)	Submit Application	–	–
Lake Pleasant tributaries	July 16 - September 15	X	–
Sooes River (20.0015)	July 16 - September 15	X	–
Clark County	July 16 - September 30	–	–
Columbia River	See Below	–	–
Lacamas Creek (28.0160) - Mouth to dam	August 1 - August 31	X	–
Lacamas Creek (28.0160) - Upstream of dam	August 1 - September 30	X	–
Lewis River (27.0168)	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Mouth to Lucia Falls	August 1 - August 15	X	X
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X
East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	–
Lake River (28.0020)	January 1 - December 31	X	X
Burnt Bridge Creek (28.0143)	August 1 - August 31	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Salmon Creek (28.0059)	August 1 - August 31	X	–
Whipple Creek (28.0038)	August 1 - September 30	X	–
North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X
Cedar Creek (27.0339)	August 1 - September 15	X	–
North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	–
North Fork Lewis River (27.0168) - Upstream of Lower Falls	July 16 - August 15	X	X
Washougal River (28.0159) - Mouth to headwaters	August 1 - August 31	X	X
Columbia County	July 16 - September 30	X	–
Touchet River (32.0097)	August 1 - August 15	X	X
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	–
North Fork Touchet/Wolf Fork (32.0761)	Submit Application	–	–
South Fork Touchet (32.0708)	Submit Application	–	–
Tucannon River (35.0009)	July 16 - August 15	X	X
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	–
Cowlitz County	July 16 - September 30	X	–
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Mouth to Fisk Falls	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - South Fork Chehalis River - Upstream of Fisk Falls	August 1 - August 31	X	–
Columbia River	See Below	–	–
Abernathy Creek (25.0297)	July 16 - September 15	X	–
Burke Creek (27.0148)	August 1 - August 31	X	–
Burriss Creek (27.0151)	August 1 - August 31	X	–
Bybee Creek (27.0142)	August 1 - August 31	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Canyon Creek (27.0147)	August 1 - August 31	X	–
Coal Creek (25.0340)	July 16 - September 15	X	–
Clark Creek (25.0371)	August 1 - August 31	X	–
Cowlitz River (26.0002) - Mouth to barrier dam at river mile 49.5	July 16 - August 15	X	X
Coweeman River (26.0003) - Mouth to Baird Creek	August 1 - August 31	X	X
Coweeman River (26.0003) - Upstream of Baird Creek	August 1 - August 31	X	–
Cowlitz River (26.0002) - Tributaries below barrier dam to mouth	July 16 - September 30	X	–
Owl Creek (26.1441)	July 16 - September 15	X	–
Toutle River (26.0227)	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Mouth to Debris Dam	July 16 - August 15	X	X
North Fork Toutle River (26.0314) - Upstream of Debris Dam	July 16 - August 15	X	–
Green River (26.0323) - Mouth to Shultz Creek	July 16 - September 30	X	X
Green River (26.0323) - Upstream of Shultz Creek	July 16 - September 30	X	–
South Fork Toutle (26.0248) - Mouth to Bear Creek	July 16 - September 15	X	X
South Fork Toutle (26.0248) - Upstream of Bear Creek	July 16 - September 15	X	–
Tributaries to Silver Lake	July 16 - September 30	X	–
Germany Creek (25.0313)	July 16 - September 15	X	–
Kalama River (27.0002) - Mouth to Kalama Falls	August 1 - August 15	X	X
Kalama River (27.0002) - Upstream of Kalama Falls	August 1 - August 15	X	–
Lewis River (27.0168) - Mouth to East Fork Lewis River	August 1 - August 15	X	X
North Fork Lewis River (27.0334) - Confluence of East Fork to Merwin Dam	August 1 - August 15	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
North Fork Lewis River (27.0334) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Mill Creek (25.0284)	July 16 - September 15	X	-
Schoolhouse Creek (27.0139)	August 1 - August 31	X	-
Douglas County	July 1 - September 30	X	-
Columbia River	See Below	-	-
Douglas Creek Canyon (44.0146)	May 16 - January 31	X	-
Foster Creek (50.0065)	August 1 - April 15	X	-
McCarteney Creek (44.0002)	July 1 - February 28	X	-
Pine/Corbaley Canyon Creek (44.0779)	September 16 - April 15	X	-
Rock Island Creek (44.0630)	July 1 - September 30	X	-
Ferry County	July 1 - August 31	X	-
Columbia River	See Below	-	-
Kettle River (60.0002)	June 16 - August 31	X	X
Boulder Creek (60.0130) - Mouth to Hodgson Road Bridge	Submit Application	-	-
Boulder Creek (60.0130) - Upstream of Hodgson Road Bridge	June 16 - February 28	X	-
Deadman Creek (60.0008) - Mouth to SR395 Crossing	Submit Application	-	-
Deadman Creek (60.0008) - Upstream of SR395	June 16 - February 28	X	-
Goosmus Creek (60.0254)	June 16 - February 28	X	-
Toroda Creek (60.0410)	July 1 - September 30	X	-
San Poil River (52.0004)	June 16 - September 30	X	X
Granite Creek (52.0099) - Mouth to Powerhouse Dam	June 16 - September 30	X	-
Granite Creek (52.0099) - Upstream of Powerhouse Dam	June 16 - February 28	X	-
West Fork San Poil River (52.0192) - Mouth to Deep Creek	June 16 - September 30	X	X
West Fork San Poil River (52.0192) - Upstream of Deep Creek	June 16 - September 30	X	-

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Gold Creek (52.0197)	June 16 - February 28	X	–
Franklin County	June 1 - September 30	X	–
Columbia River	See Below	–	–
Snake River	See Below	–	–
Palouse River (34.0003)	July 16 - February 28	X	X
North bank tributaries of the lower Snake River between Palouse River and the mouth of the Snake River	June 16 - October 31	X	–
Garfield County	July 16 - September 30	X	–
Snake River (35.0003)	See Below	–	–
Alpowa Creek (35.1440)	July 16 - December 15	X	–
Asotin Creek (35.1716)	July 16 - August 15	X	–
Deadman Creek (35.0688)	July 16 - December 15	X	–
Grande Ronde River tributaries (35.2192)	July 16 - August 15	X	–
Meadow Creek (35.0689)	July 16 - December 15	X	–
Tucannon River (35.0009) - Mouth to Panjab Creek	July 16 - August 15	X	X
Tucannon River (35.0009) - Upstream of Panjab Creek	July 16 - August 15	X	–
Pataha Creek (35.0123) - Mouth to Pataha Creek	January 1 - December 31	X	–
Pataha Creek (35.0123) - Upstream of Pataha Creek	July 16 - December 31	X	–
Grant County	July 1 - October 31	X	–
Columbia River	See Below	–	–
Crab Creek (41.0002)	July 16 - September 15	X	X
Grays Harbor County	July 16 - October 15	X	–
Chehalis River (22.0190/23.0190) - Mouth to Porter Creek	August 1 - August 31	X	X
Chehalis River (22.0190/23.0190) - Porter Creek to Fisk Falls	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of Fisk Falls	August 1 - August 15	X	–
Cedar Creek (23.0570)	August 1 - September 30	X	–
Cloquallum Creek (22.0501)	August 1 - September 30	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Porter Creek (23.0543)	August 1 - September 30	X	–
Satsop River (22.0360)	August 1 - August 31	X	X
Wishkah River (22.0191)	August 1 - October 15	X	X
Wynoochee River (22.0260)	August 1 - September 30	X	X
Copalis River (21.0767)	August 1 - October 15	X	X
Elk River (22.1333)	July 1 - October 31	X	X
Hoquiam River (22.0137)	August 1 - October 15	X	X
Humtulpis River (22.0004) - Mouth to Forks	August 1 - September 30	X	X
Humtulpis River (22.0004) - Upstream of Forks	August 1 - September 30	X	–
Johns River (22.1270)	August 1 - September 30	X	X
Moclips River (21.0731)	August 1 - October 15	X	X
North River (24.0034)	August 1 - September 30	X	X
Queets River (21.0001)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Raft River (21.0337)	August 1 - October 15	X	X
Island County	June 16 - October 15	X	–
Cavalero Creek (06.0065)	June 16 - December 15	X	–
Chapman Creek (06.0070)	June 16 - December 15	X	–
Crescent Creek (06.0002)	June 16 - December 15	X	–
Cultus Creek (06.0026)	June 16 - March 15	X	–
Deer Creek (06.0024)	June 16 - March 15	X	–
Dugualla Creek (06.0001)	June 16 - March 15	X	–
Glendale Creek (06.0025)	June 16 - December 15	X	–
Kristoferson Creek (06.0062-06.0063)	May 1 - December 15	X	–
Maxwelton Creek (06.0029)	June 16 - December 15	X	–
North Bluff Creek (06.0006)	June 16 - March 15	X	–
Old Clinton Creek (06.0023)	June 16 - March 15	X	–
Jefferson County	July 16 - October 31	X	–
Big Quilcene River (17.0012) - Mouth to falls	July 16 - August 31	X	X
Big Quilcene River (17.0012) - Falls to Forks	August 1 - February 28	X	X
Big Quilcene River (17.0012) - Upstream of Forks	August 1 - February 28	X	–
Bogachiel River (20.0162)	Submit Application	–	–
Chimacum Creek (17.0203)	July 16 - September 15	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Donovan Creek (17.0115)	July 1 - October 15	X	–
Dosewallips River (16.0442)	July 16 - August 15	X	–
Duckabush River (16.0351)	July 16 - August 15	X	–
Dungeness River (18.0018)	August 1 - August 15	X	–
Elwha River (18.0272)	August 1 - August 15	X	X
Goodman Creek (20.0406)	August 1 - September 15	X	–
Hoh River (20.0422)	August 1 - August 15	X	X
Little Quilcene River (17.0076)	July 16 - August 31	X	–
Queets River (21.0001)	August 1 - August 15	X	X
Matheny Creek (21.0165)	August 1 - August 15	X	–
Sams River (21.0205)	August 1 - August 15	X	X
Quinalt River (21.0398)	August 1 - August 15	X	X
Salmon Creek (17.0245)	July 16 - August 31	X	–
Skokomish River (16.0001)	August 1 - August 31	X	X
Snow Creek (17.0219)	July 16 - August 31	X	–
Tarboo Creek (17.0129)	August 1 - September 30	X	–
Thorndyke Creek (17.0170)	August 1 - October 15	X	–
King County	July 16 - September 30	X	–
Cedar River (08.0299) - Mouth to Forks	August 1 - August 31	X	X
Cedar River (08.0299) - Upstream of Forks	August 1 - August 31	X	–
Issaquah Creek (08.0178)	August 1 - August 31	X	–
Sammamish River (08.0057)	August 1 - August 31	X	–
Steele Creek (08.0379)	July 16 - February 28	X	–
Green River (Duwamish River) (09.0001) - Mouth to Sawmill Creek	August 1 - August 31	X	X
Green River (Duwamish River) (09.0001) - Upstream of Sawmill Creek	August 1 - August 31	X	–
Lake Washington tributaries (08.LKWA)	August 1 - August 31	X	–
Snoqualmie River (07.0219) - Mouth to Snoqualmie Falls	August 1 - August 15	X	X
Snoqualmie River (07.0219) - Snoqualmie Falls to mouth of South Fork	July 16 - February 28	X	X
Patterson Creek (07.0376)	July 16 - September 30	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
Middle Fork Snoqualmie River (07.0219) - Mouth to Taylor Creek	July 16 - February 28	X	X
Middle Fork Snoqualmie River (07.0219) - Upstream of Taylor Creek	July 16 - February 28	X	–
Goat Creek (07.0754)	July 16 - February 28	X	–
North Fork Snoqualmie River (07.0527) - Mouth to Lennox Creek	July 16 - February 28	X	X
North Fork Snoqualmie River (07.0527) - Upstream of Lennox Creek	July 16 - February 28	X	–
Deep Creek (07.0562)	July 16 - February 28	X	–
Illinois Creek (07.0624)	July 16 - February 28	X	–
Lennox Creek (07.0596)	July 16 - February 28	X	–
Bear Creek (07.0606)	July 16 - February 28	X	–
Raging River (07.0384)	August 1 - September 15	X	X
South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
South Fork Skykomish River (07.0012) - Upstream of Sunset Falls	August 1 - August 15	X	–
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	–
Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	–
Index Creek (07.1264) - Mouth to Mud Lake Creek	August 1 - August 31	X	–
Index Creek (07.1264) - Upstream of Mud Lake Creek including Salmon Creek	July 16 - February 28	X	–
Miller River (07.1329) - Mouth to Forks	August 1 - August 15	X	X
Miller River (07.1329) - Upstream of Forks	August 1 - August 15	X	–
Coney Creek (07.1347)	July 16 - February 28	X	–

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East Fork Miller River (07.1329) - Mouth to Great Falls Creek	July 16 - August 15	X	-
East Fork Miller River (07.1329) - Upstream of Great Falls Creek	July 16 - February 28	X	-
Foss River (07.1562) - Mouth to Forks	July 16 - August 31	X	X
East Fork Foss River (07.1562) - Mouth to Burn Creek	July 16 - August 15	X	X
East Fork Foss River (07.1562) - Upstream of Burn Creek	July 16 - February 28	X	-
West Fork Foss River (07.1573) - Mouth to falls at river mile 2.0	July 16 - August 31	X	-
West Fork Foss River (07.1573) - Upstream of falls at river mile 2.0	July 16 - February 28	X	-
West Fork Miller River (07.1335)	July 16 - February 28	X	X
Money Creek (07.1300) - Mouth to 0.5 mile upstream of Kimball Creek	August 1 - August 31	X	-
Money Creek (07.1300) - Upstream of 0.5 mile upstream of Kimball Creek	August 1 - February 28	X	-
Kimball Creek (07.1301)	August 1 - August 31	X	-
Tye River (07.0012) - Mouth to Alpine Falls	August 1 - August 31	X	X
Tye River (07.0012) - Upstream of Alpine Falls	July 16 - February 28	X	-
South Fork Snoqualmie River (07.0467)	July 16 - February 28	X	X
Denny Creek (07.0517)	July 16 - February 28	X	-
Tolt River (07.0291) - Mouth to Forks	August 1 - August 31	X	X
North Fork Tolt River (07.0291) - Mouth to Yellow Creek	July 16 - September 15	X	X

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North Fork Tolt River (07.0291) - Upstream of Yellow Creek	July 16 - February 28	X	–
South Fork Tolt River (07.0302) - Mouth to dam	July 16 - September 15	X	X
South Fork Tolt River (07.0302) - Upstream of Tolt Reservoir	July 16 - February 28	X	–
Yellow Creek (07.0337)	July 16 - February 28	X	–
White River (10.0031)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Kittitas County	July 1 - September 30	X	–
Brushy Creek (40.0612)	July 1 - February 28	X	–
Colockum Creek (40.0760)	July 1 - October 31	X	–
Quilomene Creek (40.0613)	July 1 - October 31	X	–
Stemilt Creek (40.0808) - Upstream of falls	July 1 - February 28	X	–
Tarpiscan Creek (40.0723)	July 1 - February 28	X	–
Tekiason Creek (40.0686)	July 1 - February 28	X	–
Whisky Dick Creek (40.0591)	July 1 - February 28	X	–
Yakima River (39.0002) - Roza Dam to Teanaway River	August 1 - August 31	X	X
Naches River (38.0003) - Tieton River to Bumping River	July 1 - August 15	X	X
Little Naches River (38.0852) - Mouth to Matthew Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthew Creek	July 16 - August 15	X	–
Pileup Creek (38.0932)	July 16 - August 31	X	–
Gold Creek (38.MISC)	July 16 - February 28	X	–
Swauk Creek (39.1157)	July 16 - September 30	X	–
Baker Creek (39.1157)	July 16 - September 30	X	–
First Creek (39.1157)	July 16 - September 30	X	–
Iron Creek (39.1157)	July 16 - September 30	X	–
Williams Creek (39.1157)	July 16 - September 30	X	–
Boulder Creek (39.1157)	July 16 - February 28	X	–
Cougar Gulch (39.1157)	July 16 - February 28	X	–
Lion Gulch (39.1157)	July 16 - February 28	X	–

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Yakima River (39.0002) - Teanaway River to Easton Dam	August 1 - August 31	X	X
Yakima River (39.0002) - Upstream of Easton Dam	August 1 - August 31	X	X
Cle Elum River (39.1434) - Mouth to dam	July 16 - August 31	X	X
Cle Elum River (39.1434) - Upstream of Cle Elum Dam	Submit Application	-	-
Big Boulder Creek (39.1434MISC)	August 1 - February 28	X	-
Camp Creek (39.1434MISC)	August 1 - February 28	X	-
Fortune Creek (39.1434MISC)	August 1 - August 15	X	-
South Fork Fortune Creek (39.1434MISC)	August 1 - February 28	X	-
Howson Creek (39.1434)	July 16 - February 28	X	-
Little Salmon Le Sac Creek (39.1482)	August 1 - August 15	X	-
Paris Creek (39.1434MISC)	August 1 - February 28	X	-
Salmon Le Sac Creek (39.1520)	August 1 - February 28	X	-
Kachess River (39.1739) - Upstream of Lake Kachess	Submit Application	-	-
Kachess River (39.1739) - Below dam	July 16 - August 15	X	X
Box Canyon Creek (39.1765)	Submit Application	-	-
Mineral Creek (39.1792)	August 1 - August 15	X	-
Lake Keechelus (39.1842) tributaries	July 16 - August 15	X	-
Gold Creek (Lake Keechelus) (39.1842)	Submit Application	-	-
Manastash Creek (39.0988)	July 16 - September 30	X	-
Naneum Creek (39.0821)	July 16 - September 30	X	-
Taneum Creek (39.1081) - Mouth to I-90	July 16 - August 31	X	-
Taneum Creek (39.1157) - Upstream of I-90	July 16 - September 30	X	-
Teanaway River (39.1236)	July 16 - August 31	X	X
NF Teanaway River (39.1260)	Submit Application	-	-

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Umtanum Creek (39.0553)	July 16 - September 30	X	–
Wenas Creek, Below dam (39.0032)	July 16 - October 15	X	–
Wenas Creek, Upstream of Wenas Lake (39.0032)	July 16 - February 28	X	–
Other Yakima River tributaries not listed	July 16 - August 31	X	–
Kitsap County	July 16 - October 15	X	–
Anderson Creek (15.0211)	August 1 - November 15	X	–
Barker Creek (15.0255)	August 1 - September 30	X	–
Big Beef Creek (15.0389)	August 1 - August 15	X	–
Big Scandia Creek (15.0280)	August 1 - September 30	X	–
Blackjack Creek (15.0203)	August 1 - September 30	X	–
Burley Creek (15.0056)	August 1 - September 30	X	–
Chico Creek (15.0229)	August 1 - October 15	X	–
Clear Creek (15.0249)	August 1 - September 30	X	–
Curley Creek (15.0185)	August 1 - September 30	X	–
Dewatto River (15.0420)	August 1 - August 15	X	–
Dogfish Creek (15.0285)	August 1 - August 15	X	–
Gorst Creek (15.0216)	August 1 - August 15	X	–
Grovers Creek (15.0299)	August 1 - August 31	X	–
Johnson Creek (15.0387)	August 1 - October 31	X	–
Ollala Creek (15.0107)	August 1 - September 30	X	–
Ross Creek (15.0209)	August 1 - November 15	X	–
Salmonberry Creek (15.0188)	August 1 - November 30	X	–
Seabeck Creek (15.0400)	August 1 - August 15	X	–
Steele Creek (15.0273)	August 1 - September 30	X	–
Tahuya River (15.0446)	August 1 - August 31	X	X
Union River (15.0503)	August 1 - August 31	X	X
Klickitat County	July 15 - September 30	X	–
Alder Creek (31.0459)	August 1 - September 30	X	–
Chapman Creek (31.0192)	August 1 - September 30	X	–
Glade Creek (31.0851)	August 1 - September 30	X	–
Juniper Canyon Creek (31.0378)	August 1 - September 30	X	–
Klickitat River (30.0002) - Mouth to Klickitat hatchery	Submit Application	–	–

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Klickitat River (30.0002) - Upstream of Klickitat hatchery	Submit Application	–	–
Little White Salmon River (29.0131) - Mouth to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	–
Pine Creek (31.0354)	August 1 - September 30	X	–
Rock Creek (31.0014)	August 1 - September 30	X	–
Six Prong Creek (31.0465)	August 1 - September 30	X	–
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	–
Wood Gulch Creek (31.0263)	August 1 - September 30	X	–
Lewis County	August 1 - September 30	X	–
Chehalis River (22.0190/23.0190) - Mouth to South Fork Chehalis River	August 1 - August 15	X	X
Chehalis River (22.0190/23.0190) - Upstream of South Fork Chehalis River	August 1 - August 31	X	X
Newaukum River (23.0882) - Mouth to South Fork	August 1 - August 31	X	X
Newaukum River (23.0882) - Upstream of South Fork	August 1 - August 31	X	–
Skookumchuck River (23.0761)	August 1 - August 31	X	X
Cowlitz River (26.0002)	August 1 - August 15	X	X
Cispus River (26.0668) - Mouth to Squaw Creek (26.1010)	August 1 - August 15	X	X
Cispus River (26.0668) - Squaw Creek to Chambers Creek	July 16 - February 28	X	X
Cispus River (26.0668) - Upstream of Chambers Creek	July 16 - February 28	X	–
Yellowjacket Creek (26.0757)	August 1 - August 15	X	–

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McCoy Creek (26.0766) - Mouth to lower falls	August 1 - August 15	X	-
McCoy Creek (26.0766) - Upstream of lower falls	July 16 - February 28	X	-
Walupt Creek (26.1010)	Submit Application	-	-
Packwood Lake tributaries	August 16 - September 15	X	-
Tilton River (26.0560) - Mouth to North Fork	August 1 - September 30	X	X
Tilton River (26.0560) - Upstream of North Fork	August 1 - September 30	X	-
Toutle River (26.0227)	August 1 - August 31	X	X
North Fork Toutle River (26.0314)	July 16 - August 15	X	X
Green River (26.0323)	July 16 - September 30	X	X
Deschutes River (13.0028)	July 16 - August 31	X	X
Little Deschutes River (13.0110)	July 16 - February 28	X	-
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Lincoln County	June 16 - February 28	X	-
Columbia River	See Below	-	-
Hawk Creek (53.0101) - Mouth to falls	June 16 - August 31	X	-
Hawk Creek (53.0101) - Upstream of falls	June 16 - February 28	X	-
Upper Crab Creek (42.0001)	June 16 - February 28	X	-
Wilson Creek (43.0020)	June 16 - February 28	X	-
Mason County	August 1 - October 15	X	-
Cloquallum Creek (22.0501)	August 1 - September 30	X	-
Coulter Creek (15.0002)	August 1 - August 31	X	-
Dewatto River (15.0420)	August 1 - August 31	X	-
Goldsborough Creek (14.0035)	August 1 - October 15	X	-
John Creek (16.0253)	August 1 - August 31	X	-
Hamma Hamma River (16.0251) - Mouth to falls	August 1 - August 31	X	-
Johns Creek (14.0049)	August 1 - August 15	X	-
Lilliwaup River (16.0230) - Mouth to falls	August 1 - August 31	X	X

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Lilliwaup River (16.0230) - Upstream of falls	August 1 - February 28	X	–
Mill Creek (14.0029)	August 1 - August 15	X	–
Satsop River (22.0360)	August 1 - August 31	X	–
Schaerer Creek (16.0326)	August 1 - August 31	X	–
Sherwood Creek (14.0094)	August 1 - August 15	X	–
Skokomish River (16.0001) - Mouth to Forks	August 1 - August 31	X	X
Skokomish River (16.0001) - Upstream of Forks	August 1 - August 31	X	–
Tahuya River (15.0446)	August 1 - August 31	X	–
Twanoh Creek (14.0134)	August 1 - October 31	X	–
Union River (15.0503)	August 1 - August 31	X	X
Okanogan County	July 1 - August 15	X	–
Aneas Creek (49.0243) - Mouth to falls	July 16 - August 31	X	–
Aneas Creek (49.0243) - Upstream of falls	July 1 - March 31	X	–
Chewiliken Creek (49.0232) - Mouth to falls	July 16 - August 31	X	–
Chewiliken Creek (49.0232) - Upstream of falls	July 1 - March 31	X	–
Chiliwist Creek (49.0034) - Mouth to falls	July 16 - August 31	X	–
Chiliwist Creek (49.0034) - Upstream of falls	July 1 - March 31	X	–
Foster Creek (50.0065)	July 1 - February 28	X	–
Methow River (48.0007) - Columbia confluence to Twisp River	July 1 - July 31	X	X
Methow River tributaries between Black Canyon Creek and Gold Creek	July 1 - February 28	X	–
Black Canyon Creek (48.0015) - Mouth to Left Fork	Submit Application	–	–
Black Canyon Creek (48.0015) - Upstream of Left Fork	July 1 - February 28	X	–
Gold Creek (48.0104) - Mouth to Foggy Dew Creek	Submit Application	–	–

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Foggy Dew Creek (48.0153) - Mouth to Foggy Dew Falls	Submit Application	–	–
Foggy Dew Creek (48.0153) - Upstream of Foggy Dew Falls	July 1 - February 28	X	–
Middle Fork Gold Creek (48.0139)	July 1 - February 28	X	–
North Fork Gold Creek (48.0104)	Submit Application	–	–
Crater Creek (48.0177) - Mouth to Martin Creek	Submit Application	–	–
Crater Creek (48.0177) - Upstream of Martin Creek	July 1 - February 28	X	–
Martin Creek (48.0177)	July 1 - February 28	X	–
South Fork Gold Creek (48.0105) - Mouth to Rainy Creek	Submit Application	–	–
South Fork Gold Creek (48.0105) - Upstream of Rainy Creek	July 1 - February 28	X	–
Rainy Creek (48.0105)	July 1 - February 28	X	–
McFarland Creek (48.0090) - Mouth to Vinegar Gulch	Submit Application	–	–
McFarland Creek (48.0090) - Upstream of Vinegar Gulch	July 1 - February 28	X	–
Methow River tributaries between Libby Creek and Beaver Creek	July 1 - February 28	X	–
Beaver Creek (48.0307)	Submit Application	–	–
Frazer Creek (48.0309)	July 1 - February 28	X	–
Lightning Creek (48.0361)	July 1 - February 28	X	–
Middle Fork Beaver Creek (48.0307)	July 1 - February 28	X	–
South Fork Beaver Creek (48.0342)	July 1 - February 28	X	–
Libby Creek (48.0203) - Mouth to Hornet Draw Creek	Submit Application	–	–
Libby Creek (48.0203) - Upstream of Hornet Draw	July 1 - February 28	X	–
Methow River (48.0007) - Twisp River to Goat Creek	July 1 - July 31	X	X

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Methow River (48.0007) - Upstream of Goat Creek	July 1 - July 31	X	–
Chewuch River (48.0728) - Mouth to Meadow Creek	July 1 - July 31	X	X
Chewuch River (48.0728) - Upstream of Meadow Creek	July 1 - February 28	X	–
Early Winters Creek (48.1408) - Mouth to Silver Star Creek	Submit Application	–	–
Early Winters Creek (48.1408) - Upstream of Silver Star Creek	July 1 - February 28	X	–
Goat Creek (48.1364) - Mouth to 500 feet upstream of Montana Creek	Submit Application	–	–
Goat Creek (48.1364) - 500 feet Upstream of Montana Creek to Roundup Creek	July 1 - February 28	X	–
Goat Creek (48.1364) - Upstream of Roundup Creek	Submit Application	–	–
Lost River (48.0592)	July 16 - August 15	X	X
Twisp River (48.0374)	July 1 - July 31	X	X
Buttermilk Creek (48.0466)	Submit Application	–	–
North Creek (48.0674)	Submit Application	–	–
North Fork Twisp River (48.0691)	July 1 - February 28	X	–
South Creek (48.0641) - Upstream of Louis Creek	July 1 - February 28	X	–
South Creek (48.0641) - Mouth to Louis Creek	Submit Application	–	–
South Fork Twisp River (48.0698)	July 1 - February 28	X	–
Wolf Creek (48.1300)	Submit Application	–	–
Myers Creek (60.0517)	July 1 - February 28	X	–
Bolster Creek (60.0517)	July 1 - February 28	X	–
Ethel Creek (60.0517)	July 1 - February 28	X	–
Gold Creek (60.0517)	July 1 - February 28	X	–
Mary Ann Creek (60.0517)	July 1 - February 28	X	–
North Fork Mary Ann Creek (60.0517)	July 1 - February 28	X	–

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Okanogan River (49.0019) - Mouth to Zosel Dam	July 1 - August 31	X	X
Antoine Creek (49.0294) - Mouth to velocity gradient at river mile 1.0	July 1 - February 28	X	—
Antoine Creek (49.0294) - Upstream of falls	July 1 - March 31	X	—
Bonaparte Creek (49.0246) - Upstream of falls	July 1 - March 31	X	—
Bonaparte Creek (49.0246) - Mouth to Bonaparte Falls at river mile 1.0	July 1 - February 28	X	—
Loup Loup Creek (49.0048) - Mouth to Loup Loup Falls at river mile 2.4	July 1 - February 28	X	—
Loup Loup Creek (49.0048) - Upstream of Loup Loup Falls at river mile 2.4	July 1 - March 31	X	—
Mosquito Creek (49.0321) - Mouth to falls	July 1 - August 31	X	—
Mosquito Creek (49.0321) - Upstream of falls	July 1 - March 31	X	—
Nine Mile Creek (49.0516)	July 1 - February 28	X	—
Omak Creek (49.0138) - Mouth to Mission Falls at river mile 5.4	July 1 - February 28	X	—
Omak Creek (49.0138) - Upstream of falls	July 1 - March 31	X	—
Salmon Creek (49.0079) - Mouth to diversion	July 1 - August 31	X	—
Salmon Creek (49.0079) - Upstream of diversion	July 1 - February 28	X	—
Similkameen River (49.0325) - Mouth to Enloe Dam	July 1 - August 31	X	X
Similkameen River (49.0325) - Upstream of Enloe Dam	July 1 - October 31	X	X
Sinlahekin Creek (49.0349) - Mouth to barrier dam at Connors Lake	July 1 - August 31	X	—
Cecile Creek (49.0447)	July 1 - February 28	X	—
Chopaka Creek (49.0357)	July 1 - February 28	X	—
Toats Coulee Creek (49.0368)	July 1 - February 28	X	—

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Cougar Creek (49.0368)	July 1 - February 28	X	–
Siwash Creek (49.0284) - Falls to headwaters	July 1 - March 31	X	–
Siwash Creek (49.0284) - Mouth to falls at river mile 1.4	July 1 - February 28	X	–
Tonasket Creek (49.0501) - Mouth to Tonasket Falls at river mile 1.8	July 1 - February 28	X	–
Tonasket Creek (49.0501) - Upstream of Tonasket Falls at river mile 1.8	July 1 - March 31	X	–
Tunk Creek (49.0211) - Mouth to falls	July 1 - February 28	X	–
Tunk Creek (49.0211) - Upstream of falls	July 1 - March 31	X	–
San Poil River (52.0004)	June 16 - September 30	X	X
West Fork San Poil (52.0192)	June 16 - September 30	X	X
Gold Creek (52.0197)	June 16 - February 28	X	–
Toroda Creek (60.0410)	July 1 - September 30	X	–
Pacific County	August 1 - September 30	X	–
Bear River (24.0689)	August 1 - September 30	X	X
Bone River (24.0405)	August 1 - September 30	X	–
Chehalis River (22.0190/23.0190)	August 1 - August 15	X	X
Columbia River	See Below	–	–
Chinook River (24.MISC)	August 1 - September 30	X	X
Grays River (25.0093)	July 16 - September 15	X	X
Naselle River (24.0543)	August 1 - September 15	X	X
Nemah River (24.0460)	August 1 - September 30	X	X
Niawiakum River (24.0417)	August 1 - September 30	X	–
North River (24.0034)	August 1 - September 30	X	X
Palix River (24.0426)	August 1 - September 30	X	–
Willapa River (24.0251)	August 1 - September 30	X	X
Pend Oreille County	July 1 - August 31	X	–
Little Spokane River (55.0003)	August 1 - March 15	X	–
West Branch Little Spokane River (55.0439)	August 1 - March 15	X	–

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Harvey Creek (62.0310) - Mouth to Rocky Fork of Harvey Creek	August 1 - August 31	X	-
Harvey Creek (62.0310) - Upstream of Rocky Fork of Harvey Creek	July 16 - February 28	X	-
Pend Oreille River (62.0002)	Submit Application	-	-
Big Muddy Creek (62.0279)	August 1 - March 15	X	-
Bracket Creek (62.0815)	August 1 - March 15	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Exposure Creek (62.0261)	August 1 - August 31	X	-
Kent Creek (62.0819)	August 1 - March 15	X	-
Le Clerc Creek (62.0415)	August 1 - August 31	X	-
Lime Creek (62.0014)	August 1 - March 15	X	-
Lodge Creek (62.0859)	August 1 - August 31	X	-
Lost Creek (62.0322)	August 1 - March 15	X	-
Marmust Creek (62.0842)	August 1 - March 15	X	-
Pee Wee Creek (62.0007) - Mouth to falls	August 1 - August 31	X	-
Pee Wee Creek (62.0007) - Upstream of falls	August 1 - March 15	X	-
Renshaw Creek (62.0310)	August 1 - March 15	X	-
Sullivan (O'Sullivan) Creek (62.0074)	August 1 - August 31	X	-
North Fork Sullivan Creek (62.0075)	August 1 - August 31	X	-
Tributaries of Deep Creek in Pend Oreille County (61.0195)	July 16 - August 15	X	-
Currant Creek (61.0249)	July 16 - August 15	X	-
Meadow Creek (61.0351)	July 16 - August 15	X	-
Rocky Creek (61.0364)	July 16 - August 15	X	-
Silver Creek (61.0195)	July 16 - August 15	X	-
Smackout Creek (61.0226)	July 16 - August 15	X	-
Pierce County	July 16 - August 31	X	-
Chambers/Clover Creek Watershed (12.MISC)	July 16 - September 30	X	-
Flett Creek (12.0009)	July 16 - October 31	X	-
Leach Creek (12.0008)	July 16 - September 30	X	-

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Nisqually River (11.0008) - Mouth to Alder Lake	July 16 - August 31	X	X
Nisqually River (11.0008) - Upstream of Alder Lake	July 16 - September 30	X	X
Mashel River (11.0101) - Mouth to Busy Wild Creek	July 16 - September 30	X	X
Mashel River (11.0101) - Upstream of Busy Wild Creek	July 16 - September 30	X	-
Puyallup River (10.0021) - Mouth to PSE Electron Powerhouse Outfall	July 16 - August 31	X	X
Puyallup River (10.0021) - Upstream of PSE Electron Powerhouse Outfall	July 16 - August 15	X	X
Carbon River (10.0413)	July 16 - August 15	X	X
Cayada Creek (10.0525) - Mouth to falls about 800 feet upstream	July 16 - August 31	X	-
Cayada Creek (10.0525) - Upstream of the falls	January 1 - December 31	X	-
South Prairie Creek (10.0429)	July 16 - August 15	X	-
Voight Creek (10.0414) - Mouth to falls at river mile 4.0	July 16 - August 31	X	-
Voight Creek (10.0414) - Upstream of falls river mile 4.0	July 16 - February 28	X	-
White River (10.0031)	July 16 - August 15	X	X
Clearwater River (10.0080)	July 16 - August 15	X	X
Greenwater River (10.0122)	July 16 - August 15	X	X
Huckleberry Creek (10.0253)	July 16 - August 15	X	-
West Fork White River (10.0186)	July 16 - August 15	X	X
Sequalitchew Creek (12.0019)	July 16 - September 30	X	-
San Juan County	July 1 - August 31	X	-
Cascade Creek (02.0057), Orcas Island - Upstream of Lower Falls	July 1 - February 28	X	-

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Cascade Creek (02.0057), Orcas Island, Buck Bay to falls located approximately 300 feet above mouth	July 1 - October 31	X	-
Doe Creek (02.MISC), San Juan Island, Westcott Bay to falls (approximately 250 feet from mouth)	June 16 - October 15	X	-
False Bay Creek (02.MISC) - San Juan Island; mouth to lake	July 1 - October 31	X	-
Glenwood Springs, Orcas Island; direct tributary to Eastsound Bay	July 1 - October 15	X	-
Moran Creek (02.MISC) - Orcas Island; from Cascade Lake delta upstream 1/4 mile	July 1 - October 15	X	-
Unnamed Creek (02.0041) - San Juan Island; mouth to lake	July 1 - October 15	X	-
Skagit County	August 1 - September 15	X	-
Granite Creek (04.2313) - Upstream of East Creek	July 16 - February 28	X	-
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	-
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	-
Samish River (03.0005)	August 1 - September 15	X	-
Skagit River (03.0176/04.0176)	Submit Application	-	-
Baker River (04.0435) - Mouth to Baker Dam	Submit Application	-	-
Cascade River (04.1411)	Submit Application	-	-
Day Creek (03.1435)	July 16 - February 28	X	-
Lookout Creek (04.1447)	July 16 - February 28	X	-
Sibley Creek (04.1481)	July 16 - February 28	X	-

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Day Creek (03.0299) - Mouth to Rocky Creek	Submit Application	–	–
Day Creek (03.0299) - Upstream of Rocky Creek	August 1 - February 28	X	–
Finney Creek (04.0392) - Mouth to Big Fir Creek	Submit Application	–	–
Finney Creek (04.0392) - Upstream of Big Fir Creek	July 16 - February 28	X	–
Illabot Creek (04.1346)	Submit Application	–	–
Sauk River (04.0673) - Mouth to Forks	Submit Application	–	–
Sauk River (04.0673) - Upstream of Forks	August 1 - August 15	X	–
Suiattle River (04.0710)	Submit Application	X	X
Wiseman Creek (03.0280) - Mouth to SR20	Submit Application	–	–
Wiseman Creek (03.0280) - Upstream of SR20	July 16 - February 28	X	–
South Fork Nooksack River (01.0246) - Mouth to falls at river mile 30	Submit Application	–	–
South Fork Nooksack River (01.0246) - Falls at river mile 30 to Wanlick Creek	Submit Application	–	–
South Fork Nooksack River (01.0246) - Upstream of Wanlick Creek	Submit Application	–	–
Skamania County	July 15 - September 15	X	–
Columbia River	See Below	–	–
Cispus River (26.0668)	August 1 - August 15	X	X
Cispus River (26.0668) tributaries located in Skamania County	August 1 - October 31	X	–
East Fork Lewis River (27.0173) - Lucia Falls to Sunset Falls	August 1 - February 28	X	X
East Fork Lewis River (27.0173) - Upstream of Sunset Falls	August 1 - February 28	X	–
Green River (26.0323) (Tributary of North Fork Toutle River)	July 16 - September 30	X	X

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Hamilton Creek (28.0303)	August 1 - August 31	X	–
Hardy Creek (28.0303)	August 1 - August 31	X	–
Little White Salmon River (29.0131) - Mouth to Hatchery	July 16 - August 15	X	X
Little White Salmon River (29.0131) - Hatchery to Cabbage Creek	July 16 - January 31	X	X
Little White Salmon River (29.0131) - Upstream of Cabbage Creek	July 16 - January 31	X	–
North Fork Lewis River (27.0168) - Merwin Dam to Lower Falls	July 16 - August 15	X	X
Canyon Creek (27.0442)	July 16 - February 28	X	–
North Fork Lewis River (27.0168) - Upstream of Lower Falls	July 16 - February 28	X	X
Washougal River (28.0159) - Mouth to Stebbins Creek	August 1 - August 31	X	X
Washougal River (28.0159) - Upstream of Stebbins Creek	August 1 - August 31	X	–
White Salmon River (29.0160) - Mouth to Cascade Creek	July 16 - August 15	X	X
White Salmon River (29.0160) - Upstream of Cascade Creek	July 16 - August 15	X	–
Wind River (29.0023)	August 1 - August 15	X	X
Woodward Creek (28.0298)	August 1 - August 31	X	–
Snohomish County	July 16 - September 15	X	–
Lake Washington tributaries	August 1 - August 15	X	–
Sauk River (04.0673) - Mouth to Forks	August 1 - August 15	X	X
Sauk River (04.0673) - Upstream of Forks	August 1 - August 15	X	–
Suiattle River (04.0710)	August 1 - August 15	X	X
Snohomish River (07.0012) - Mouth to Highway 9	August 1 - October 31	X	X
Snohomish River (07.0012) - Upstream of Highway 9	August 1 - August 15	X	X

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Pilchuck River (07.0125) - Mouth to city of Snohomish Diversion Dam	August 1 - August 31	X	X
Pilchuck River (07.0125) - City of Snohomish Diversion Dam to Boulder Creek	August 1 - September 15	X	X
Pilchuck River (07.0125) - Upstream of Boulder Creek	August 1 - September 15	X	-
Skykomish River (07.0012) - Mouth to Forks	August 1 - August 15	X	X
Deer Creek (05.0173) - Mouth to stream mile 0.5	August 1 - August 31	X	-
Deer Creek (05.0173) - Upstream of stream mile 0.5	August 1 - February 28	X	-
North Fork Skykomish River (07.0982) - Mouth to Bear Creek Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Bear Creek Falls to Deer Falls	August 1 - August 31	X	X
North Fork Skykomish River (07.0982) - Deer Falls to West Cady Creek	August 1 - February 28	X	X
North Fork Skykomish River (07.0982) - Upstream of West Cady Creek	August 1 - February 28	X	-
Howard Creek (07.1042)	July 16 - February 28	X	-
Silver Creek (07.1053) - Mouth to Lake Gulch	August 1 - August 31	X	-
Silver Creek (07.1053) - Upstream of Lake Gulch	August 1 - February 28	X	-
Troublesome Creek (07.1085)	August 1 - February 28	X	-
West Fork Troublesome Creek (07.1092)	August 1 - August 31	X	-
South Fork Skykomish River (07.0012) - Mouth to Sunset Falls	August 1 - August 15	X	X
Beckler River (07.1413) - Mouth to Boulder Creek	August 1 - August 15	X	X
Beckler River (07.1413) - Upstream of Boulder Creek	July 16 - February 28	X	-

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Rapid River (07.1461) - Mouth to Meadow Creek	August 1 - August 31	X	X
Rapid River (07.1461) - Upstream of Meadow Creek	August 1 - February 28	X	X
Sultan River (07.0881) - Mouth to Diversion Dam at river mile 9.4	August 1 - August 15	X	X
Sultan River (07.0881) - Diversion Dam to Elk Creek	July 16 - February 28	X	X
Sultan River (07.0881) - Upstream of Elk Creek	July 16 - February 28	X	–
Wallace River (07.0940) - Mouth to Wallace Falls	August 1 - August 31	X	X
Wallace River (07.0940) - Upstream of Wallace Falls	August 1 - February 28	X	–
Olney Creek (07.0946) - Mouth to Olney Falls	August 1 - August 31	X	–
Olney Creek (07.0946) - Upstream of Olney Falls	August 1 - February 28	X	–
Snoqualmie River Mouth to falls (07.0219)	August 1 - August 15	X	X
All other Snohomish River tributaries	August 1 - August 31	X	–
Stillaguamish River (05.0001) - Mouth to Forks	August 1 - August 31	X	X
North Fork Stillaguamish River (05.0135) - Mouth to Squire Creek	August 1 - August 15	X	X
North Fork Stillaguamish River (05.0135) - Squire Creek to Cascade Creek	August 1 - August 15	X	–
North Fork Stillaguamish River (05.0135) - Upstream of Cascade Creek	July 16 - February 28	X	–
South Fork Stillaguamish River (05.0001) - Mouth to Deer Creek	August 1 - August 15	X	X
South Fork Stillaguamish River (05.0001) - Upstream of Deer Creek	August 1 - August 15	X	–
Spokane County	June 16 - August 31	X	–
Latah Creek (56.0003)	June 16 - August 31	X	–

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Little Spokane River (55.0600) - Mouth to Deer Creek	June 16 - August 31	X	X
Little Spokane River (55.0600) - Upstream of Deer Creek	June 16 - August 31	X	-
Spokane River (57.0001)	June 16 - August 31	X	X
Stevens County	July 16 - August 31	X	-
Columbia River	See Below	-	-
Big Sheep Creek (61.0150)	July 16 - August 15	X	-
Colville River (59.0002) - Mouth to the falls	July 16 - September 30	X	X
Colville River (59.0002) - Upstream of the falls	July 16 - September 30	X	X
Deep Creek (61.0195)	July 16 - August 15	X	-
Onion Creek (61.0098)	July 16 - August 15	X	-
Sheep Creek (59.0861)	July 16 - September 30	X	-
Lake Roosevelt tributaries from the mouth of the Spokane River to mouth of the Colville River	July 16 - February 28	X	-
Lake Roosevelt tributaries from the mouth of the Colville River north to the B.C. border	July 16 - February 28	X	-
Tributaries of Little Spokane River (55.0600)	June 16 - August 31	X	-
Calispel Creek (62.0628)	August 1 - August 31	X	-
Other tributaries to the Pend Oreille River in Stevens County	July 1 - August 31	X	-
Thurston County	July 16 - September 15	X	-
Cedar Creek (23.0570)	August 1 - September 30	X	-
Chehalis River (22.0190/23.0190) - Upstream of Porter Creek	August 1 - August 15	X	X
Skookumchuck River (23.0761) - Mouth to Skookumchuck Reservoir	August 1 - August 31	X	X
Skookumchuck River (23.0761) - Upstream of Skookumchuck Reservoir	August 1 - August 31	X	-

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Deschutes River (13.0028) - Mouth to Deschutes Falls	July 16 - August 31	X	X
Deschutes River (13.0028) - Upstream of Deschutes Falls	July 16 - August 31	X	–
Ellis Creek (13.0022)	May 16 - September 30	X	–
Little Deschutes River (13.0110)	July 16 - February 28	X	–
McLane Creek (13.0138)	August 1 - October 31	X	–
Percival Creek (13.0029)	July 16 - August 31	X	–
Nisqually River (11.0008)	July 16 - August 31	X	X
Tributaries of Nisqually River (11.0008)	July 16 - August 31	X	–
Porter Creek (23.0543)	August 1 - September 30	X	–
Schneider Creek (14.0009)	August 1 - October 31	X	–
Waddell Creek (23.0677)	August 1 - September 30	X	–
Woodard Creek (13.0012)	July 16 - August 31	X	–
Woodland Creek (13.0006)	July 16 - September 30	X	–
Wahkiakum County	July 16 - September 15	X	–
Columbia River	See Below	–	–
Abernathy Creek (25.0297)	July 16 - September 15	X	–
Deep River (25.0011)	July 16 - September 15	X	X
Elochoman River (25.0236)	July 16 - September 15	X	X
Grays River (25.0093)	July 16 - September 15	X	X
Mill Creek (25.0284)	July 16 - September 15	X	–
Naselle River (24.0543)	July 16 - September 15	X	X
Skamokowa Creek (25.0194)	July 16 - September 15	X	–
Walla Walla County	July 16 - September 30	X	–
Walla Walla River (32.0008) - Mouth to Oregon state line	July 16 - September 15	X	X
Mill Creek (32.1436) - Mouth to Oregon state line	August 1 - August 15	X	–
Touchet River (32.0097) - Mouth to Forks	August 1 - August 15	X	X
North Fork Touchet/Wolf Fork (32.0761)	Submit Application	–	–
South Fork Touchet (32.0708)	Submit Application	–	–
Whatcom County	July 16 - August 15	X	–
Damfino Creek (00.0032)	July 16 - August 31	X	–

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Nooksack River (01.0120)	Submit Application	–	–
Cascade Creek (02.0057) - Mouth to FR 37	Submit Application	–	–
Cascade Creek (02.0057) - Upstream of FR 37	July 16 - February 28	X	–
Middle Fork Nooksack River (01.0339) - Mouth to city of Bellingham Diversion Dam	Submit Application	–	–
Middle Fork Nooksack River (01.0339) - Upstream of city of Bellingham Diversion Dam	Submit Application	–	–
North Fork Nooksack River (01.0120) - Mouth to Nooksack Falls	Submit Application	–	–
North Fork Nooksack River (01.0120) - Upstream of Nooksack Falls	Submit Application	–	–
Barometer Creek (01.0513)	July 16 - February 28	X	–
Ruth Creek (01.0531)	July 16 - February 28	X	–
Swamp Creek (01.0518)	July 16 - February 28	X	–
Wells Creek (02.0057)	Submit Application	–	–
Bar Creek (01.0500)	July 16 - February 28	X	–
South Fork Nooksack (01.0246) - Mouth to Wanlick Creek	Submit Application	–	–
South Fork Nooksack (01.0246) - Upstream of Wanlick Creek	Submit Application	–	–
Samish River (03.0005)	July 16 - August 15	X	–
Skagit River (03.0176/04.0176)	Submit Application	–	–
Baker River (04.0435) - Mouth to Baker Lake Dam (04.0435)	Submit Application	–	–
Baker River (04.0435) - Baker Lake to National Park boundary	Submit Application	–	–
Boulder Creek (04.0499)	July 16 - February 28	X	–
Park Creek (04.0506) - Mouth to fish passage barrier at river mile 1.6	Submit Application	–	–

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Park Creek (04.0506) - Upstream of river mile 1.6	July 16 - February 28	X	-
Swift Creek (04.0509) - Mouth to Rainbow Creek	Submit Application	-	-
Swift Creek (04.0509) - Upstream of Rainbow Creek	July 16 - February 28	X	-
Ross Lake tributaries (03.0176/04.0176)	Submit Application	-	-
Ruby Creek (04.2199)	Submit Application	-	-
Canyon Creek (04.2458) - Mouth to Barron Creek	Submit Application	-	-
Canyon Creek (04.2458) - Upstream of Barron Creek and tributaries	October 1 - February 28	X	-
Barron Creek (04.2591)	October 1 - February 28	X	-
Boulder Creek (04.2478) - Mouth to 300 feet upstream	Submit Application	-	-
Boulder Creek (04.2478) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Friday Creek (04.2549) - Mouth to 300 feet upstream	Submit Application	-	-
Friday Creek (04.2549) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Holmes Creek (04.2473) - Mouth to 300 feet upstream	Submit Application	-	-
Holmes Creek (04.2473) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Mill Creek (04.2504) - Mouth to 300 feet upstream	Submit Application	-	-
Mill Creek (04.2504) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-
Nickol Creek (04.2476) - Mouth to 300 feet upstream	Submit Application	-	-
Nickol Creek (04.2476) - 300 feet upstream of mouth to headwaters	October 1 - February 28	X	-

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North Fork Canyon Creek (04.2583) - Mouth to Elk Creek	Submit Application	-	-
Cascade Creek (05.2584)	October 1 - February 28	X	-
North Fork Canyon Creek (04.2583) - Upstream of Elk Creek	October 1 - February 28	X	-
Slate Creek (04.2557) - Mouth to falls at river mile 0.6	Submit Application	-	-
Slate Creek (04.2557) - Upstream of falls at river mile 0.6	October 1 - February 28	X	-
Granite Creek (04.2313) - Mouth to East Creek	Submit Application	-	-
Granite Creek (04.2313) - Upstream of East Creek and tributaries	October 1 - February 28	X	-
Saar Creek (00.0003)	August 1 - September 30	X	-
Silesia Creek (00.0042) - Canadian border to Middle Fork	July 16 - August 15	X	-
Silesia Creek (00.0042) - Middle Fork to National Park boundary	July 16 - February 28	X	-
Rapid Creek (00.0048)	July 16 - February 28	X	-
West Fork Silesia Creek (00.0044)	July 16 - February 28	X	-
Winchester Creek (00.0045)	July 16 - February 28	X	-
Whitman County	July 16 - December 15	X	-
Snake River (35.0002)	See Below	-	-
Alkali Flats Creek (35.0570)	July 16 - December 15	X	-
Almota Creek (35.1017)	July 16 - December 15	X	-
Little Almota Creek (35.1018)	July 16 - December 15	X	-
Palouse River (34.0003) - Mouth to Palouse Falls	July 16 - September 30	X	X
Palouse River (34.0003) - Upstream of Palouse Falls	July 16 - February 28	X	X
Penewawa Creek (35.0916)	July 16 - December 15	X	-

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Wawawi Canyon Creek (35.1165)	July 16 - December 15	X	–
Yakima County	June 1 - September 15	X	–
Glade Creek (31.0851)	August 1 - September 30	X	–
Klickitat River (30.0002)	Submit Application	–	–
Yakima River (37.0002/38.0002/39.0002) - Mouth to Roza Dam	June 1 - September 15	X	X
Ahtanum Creek (37.1382)	June 16 - September 30	X	–
North Fork Ahtanum Creek (37.1382)	Submit Application	–	–
South Fork Ahtanum Creek (37.1382)	Submit Application	–	–
Naches River (38.0003) - Mouth to Tieton River	July 1 - October 15	X	X
Naches River (38.0003) - Upstream of mouth of Tieton River to Bumping River	July 1 - August 15	X	X
Bumping River (38.0998)	July 16 - August 15	X	X
American River (38.1000)	Submit Application	–	–
Gold Creek (38.MISC)	July 16 - February 28	X	–
Kettle Creek (38.1033)	Submit Application	–	–
Miner Creek (38.1027)	July 16 - February 28	X	–
Morse Creek (38.1072) - Mouth to SR410 crossing	August 1 - August 15	X	–
Morse Creek (38.1072) - Upstream of SR410 crossing	August 1 - February 28	X	–
Rock Creek (38.MISC)	July 16 - February 28	X	–
Timber Creek (38.1062)	August 1 - August 15	X	–
Union Creek (38.1045) - Upstream of 500 feet above falls	August 1 - February 28	X	–
Union Creek (38.1045) - Mouth to 500 feet above falls	Submit Application	–	–
Other American River tributaries not listed	August 1 - February 28	X	–
Deep Creek (38.MISC)	Submit Application	–	–
Copper Creek (38.MISC)	August 1 - August 15	X	–
Cowiche Creek (38.0005) - Mouth to South Fork Cowiche Creek	July 1 - September 30	X	–

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
North Fork Cowiche Creek (38.0008)	July 1 - February 28	X	–
South Fork Cowiche Creek (38.0031) - Mouth to Reynolds Creek	July 1 - September 30	X	–
South Fork Cowiche Creek (38.0031) - Upstream of Reynolds Creek	July 16 - October 31	X	–
Granite Creek (38.MISC)	August 1 - August 15	X	–
Little Naches River (38.0852) - Mouth to Matthews Creek	July 16 - August 15	X	X
Little Naches River (38.0852) - Upstream of Matthews Creek	July 16 - August 15	X	–
Crow Creek (38.0858)	July 16 - August 15	X	–
Nile Creek (38.0692)	July 16 - October 15	X	–
Rattlesnake Creek (38.0518)	July 16 - August 15	X	–
Tieton River (38.0166) - Mouth to Rimrock Dam	July 1 - August 31	X	X
North Fork Tieton River (38.0291) - Below Clear Lake Dam	Submit Application	–	–
North Fork Tieton River (38.0291) - Upstream of Clear Lake	July 1 - August 15	X	–
Clear Creek (38.0317)	July 16 - February 28	X	–
South Fork Tieton River (38.0374) - Below South Fork Falls	Submit Application	–	–
South Fork Tieton River (38.0374) - Upstream of South Fork Falls	July 16 - February 28	X	–
Indian Creek (38.0302)	Submit Application	–	–
Tributaries of Tieton River below Rimrock Dam	July 16 - February 28	X	–
Umtanum Creek (39.0553)	July 16 - September 30	X	–
Wenas Creek (39.0032)	July 16 - October 15	X	–
Other Yakima River tributaries	July 16 - August 31	X	–
Columbia River	–	–	–
Mouth to the I-205 Bridge	August 1 - March 31	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
I-205 Bridge to Bonneville Dam	July 16 - September 15	X	X
Bonneville Dam to Snake River	July 16 - February 28	X	X
Snake River to Priest Rapids Dam	July 16 - September 30	X	X
Priest Rapids Dam to Mouth of Crab Creek	July 16 - February 28	X	X
Mouth of Crab Creek to Wanapum Dam	July 16 - September 30	X	X
Wanapum Dam to the SR 285 bridge in South Wenatchee	July 16 - February 28	X	X
SR 285 bridge in South Wenatchee to the SR 2 bridge	July 16 - September 30	X	X
SR 2 bridge to one mile downstream of the Chelan River	July 16 - February 28	X	X
From one mile downstream of the Chelan River to the SR 97 bridge	July 16 - September 30	X	X
From SR 97 bridge to Chief Joseph Dam	July 16 - February 28	X	X
Chief Joseph Dam to Grand Coulee Dam	June 16 - March 31	X	X
Grand Coulee Dam to Canadian border	Submit Application	–	–
All Columbia River tributaries	See County Listings	–	–
Snake River	–	X	–
Mouth to Ice Harbor Dam	July 16 - September 30	X	X
Ice Harbor Dam to Mouth of Clearwater River	July 16 - March 31	X	X
Mouth of Clearwater River to state line	August 1 - August 31	X	X
All Snake River tributaries	See County Listings	–	–
Lakes	Submit Application	–	–
Strait of Juan de Fuca, Puget Sound, Hood Canal	Submit Application	–	–
Ocean beaches within the Seashore Conservation Area established under RCW 79A.05.605	January 1 - December 31	X	X

Washington Counties and State Waters (Water Resource Inventory Area (WRIA) in parentheses)	Mineral Prospecting is Allowed Only Between These Dates	State Waters (and tributaries, unless otherwise indicated) in Which a Person May Use Mineral Prospecting Equipment With a Four and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter	State Waters (NOT including tributaries) in Which a Person May Use Mineral Prospecting Equipment With a Five and One-Quarter Inch Maximum Suction Intake Nozzle Inside Diameter
All waters within Indian tribal reservation, National Park, state park, or wilderness boundaries, except those within the Seashore Conservation Area established under RCW 79A.05.605	Submit Application	—	—

NEW SECTION

WAC 220-660-310 Tidal reference areas. (1)

Description: The department uses the following tidal reference areas to delineate segments of the state's marine shorelines. The authorized work times in saltwater areas vary by tidal reference area.

(2) Definitions for tidal reference areas:

(a) Tidal Reference Area 1 (Shelton): All saltwater areas in Oakland Bay and Hammersley Inlet westerly of a line projected from Hungerford Point to Arcadia.

(b) Tidal Reference Area 2 (Olympia): All saltwater areas between a line projected from Hungerford Point to Arcadia and a line projected from Johnson Point to Devil's Head. This includes Totten, Eld, Budd, Case, and Henderson Inlets, and Pickering Passage.

(c) Tidal Reference Area 3 (South Puget Sound): All saltwater areas easterly and northerly of a line projected from Johnson Point to Devil's Head and southerly of the Tacoma Narrows Bridge.

(d) Tidal Reference Area 4 (Tacoma): All saltwater areas northerly of the Tacoma Narrows Bridge and southerly of a line projected true west and true east across Puget Sound from the northern tip of Vashon Island.

(e) Tidal Reference Area 5 (Seattle): All saltwater areas northerly of a line projected true west and true east across Puget Sound from the northern tip of Vashon Island and southerly of a line projected true east from Point Jefferson at 47°45'N. latitude across Puget Sound. This area includes Port Orchard, Port Madison, and Dyes and Sinclair Inlets.

(f) Tidal Reference Area 6 (Edmonds): All saltwater areas northerly of a line projected true east from Point Jefferson at 47°45'N. latitude across Puget Sound and southerly of a line projected true east from Possession Point to Mukilteo and from Foulweather Bluff to Double Bluff.

(g) Tidal Reference Area 7 (Everett): All saltwater areas northerly of a line projected true east from Possession Point to Chennault Beach, easterly of a line projected 5° true from East Point to Lowell Point, and southerly of the Stanwood to Camano Island Highway. This area includes Port Gardner, Port Susan, and parts of Possession Sound and Saratoga Passage.

(h) Tidal Reference Area 8 (Yokeko Point): All saltwater area westerly and northerly of a line projected 5° true from East Point to Lowell Point, north of the Stanwood to Camano Island Highway, and easterly and southerly of Deception Pass Bridge and the Swinomish Channel Bridge on State Route 20. This area includes Holmes Harbor, Saratoga Passage, Skagit Bay, Similk Bay, and most of the Swinomish Channel.

(i) Tidal Reference Area 9 (Blaine): All saltwater area in Skagit County and Whatcom County that lies northerly of the Swinomish Channel Bridge on State Route 20 and westerly and northerly of Deception Pass Bridge.

(j) Tidal Reference Area 10 (Port Townsend): All saltwater area of Puget Sound as defined in WAC 220-16-210, except Hood Canal south of a line projected from Tala Point to Foulweather Bluff, and except all waters defined in Tidal Reference Areas 1 through 9. Area 10 includes waters of the San Juan Islands, Admiralty Inlet, the Strait of Juan de Fuca, and associated bays and inlets.

(k) Tidal Reference Area 11 (Union): All saltwater area of Hood Canal southerly and easterly of a line projected from the northern entrance of Lilliwaup Bay to the northern entrance of Dewatto Bay.

(l) Tidal Reference Area 12 (Seabeck): All saltwater areas of Hood Canal northerly of a line projected from the northern entrance of Lilliwaup Bay to the northern entrance of Dewatto Bay and southerly of a line projected true east from Hazel Point. This area includes Dabob Bay and Quilcene Bay.

(m) Tidal Reference Area 13 (Bangor): All saltwater area of Hood Canal northerly of a line projected true east from Hazel Point and south of a line projected from Tala Point to Foulweather Bluff. This area includes Port Gamble.

(n) Tidal Reference Area 14 (Ocean Beaches): All saltwater area between Cape Flattery and the Oregon border at the mouth of the Columbia River, excluding Grays Harbor and Willapa Bay.

(o) Tidal Reference Area 15 (Westport): All saltwater area in Grays Harbor easterly of a line projected from the outermost end of the north jetty to the outermost end of the south jetty, and westerly of 123°59'W. longitude.

(p) Tidal Reference Area 16 (Aberdeen): All saltwater area in Grays Harbor easterly of 123°59'W. longitude and westerly of the State Route 101 Bridge across the Chehalis River.

(q) Tidal Reference Area 17 (Willapa Bay): All saltwater area in Willapa Bay easterly of a line projected from Leadbetter Point to Cape Shoalwater.

NEW SECTION

WAC 220-660-320 Saltwater habitats of special concern. (1) Description:

(a) Saltwater habitats of special concern provide essential functions in the developmental life history of fish life. These habitats include:

- (i) Spawning areas for forage fish;
- (ii) Settlement and nursery areas for juvenile rockfish and lingcod;
- (iii) Migration, rearing, and feeding areas for juvenile salmon;
- (iv) Settlement areas for native shellfish;
- (v) Areas of native aquatic and riparian vegetation that supports fish life; and
- (vi) Feeder bluffs and other shoreforms that support geomorphic processes such as sediment delivery and movement that creates and maintains habitat that supports fish life.

(b) The presence of saltwater habitats of special concern or adjacent areas with similar characteristic may restrict project type, design, location, and timing. Department staff or a department-trained biologist may conduct a site visit to determine the location of such habitats. In addition, the department may consider maps, publications, and other available information to determine the location.

(2) Fish life concerns:

(a) The nearshore zone represents three critical edge habitats; the edge between upland and aquatic environments, the edge between the shallow productive zone and deep water, and the edge between fresh and marine waters. Variations in wave energy, sediment delivery and movement, sunlight, water depth, salinity, and location associated with nearshore edges create a broad range of physical conditions that support a wide diversity and abundance of fish life. Disruption of nearshore ecosystem processes and physical conditions can adversely affect ecological functions, which will in turn cause a loss of fish life.

(b) Hydraulic projects ranging from installing stairways across bluff faces to building docks and bulkheads to dredging may contribute to a loss of habitat in the nearshore zone. Ongoing activities increasingly fragment and degrade the remaining habitat that supports fish life. Saltwater habitats of special concern require a higher level of protection because they provide essential functions in the developmental life history of fish life.

(3) Saltwater habitats of special concern:

(a) A person may request information from the department about the location of saltwater habitats of special concern.

(b) Saltwater habitats of special concern are habitats that provide essential functions in the development of priority fish species, including the following:

(i) Pacific sand lance (*Ammodytes hexapterus*) spawning beds are located in the upper beach area in saltwater areas typically composed of fine to coarse sand and small gravel;

(ii) Surf smelt (*Hypomesus pretiosus*) spawning beds are located in the upper beach area in saltwater areas typically composed of sand and/or small gravel and shell material;

(iii) Pacific herring (*Clupea pallasii*) spawning beds are located in lower beach areas and shallow subtidal areas in saltwater areas. Spawning substrate may consist of seagrass, kelp and other macroalgae, and other structure such as subtidal worm tubes;

(iv) Lingcod (*Ophiodon elongatus*) nesting areas are located in high-relief rock;

(v) Lingcod (*Ophiodon elongatus*) settlement and nursery areas are located in beach and subtidal areas with sand, seagrass beds, subtidal worm tubes, and other materials;

(vi) Rockfish (*Sebastes* spp.) settlement and nursery areas are located in kelp and other macroalgae beds, seagrass beds, and pinnacles, boulders, and other structurally complex habitats;

(vii) Juvenile salmonid (family Salmonidae) migration corridors and rearing and feeding areas are common throughout estuarine, intertidal and shallow subtidal saltwater areas of the state;

(viii) Olympia oyster (*Ostrea conchaphila*) settlement areas are located in sheltered bays and estuaries near 0.0 feet MLLW;

(ix) Seagrasses (*Zostera marina*, *Ruppia maritima* and *Phyllospadix* spp.) beds;

(x) Kelp (order Laminariales) beds;

(xi) Macroalgae species Pacific herring use as spawning substrate;

(xii) Intertidal wetland vascular plant areas (except noxious aquatic weeds); and

(xiii) Native riparian vegetation zones.

(4) Nearshore zone geomorphic processes that form and maintain saltwater habitats of special concern:

(a) The location and construction of hydraulic projects should avoid impacts to geomorphic processes that create and maintain nearshore zone habitat. Geomorphic processes are difficult to replace or compensate for.

(b) The following are nearshore geomorphic processes that form and maintain saltwater habitats of special concern:

(i) Sediment supply and transport;

(ii) Beach and bluff erosion and sediment accretion;

(iii) Distributary channel migration; and

(iv) Tidal channel formation and maintenance.

NEW SECTION

WAC 220-660-330 Authorized work times in saltwater areas. (1) Description: The department applies timing windows to reduce the risk of impacts to fish life at sensitive life stages. In-water work is not allowed during critical periods of the year unless a person can take mitigation measures to eliminate risk during critical periods.

(2) Fish life concerns: Work in or near salt waters of the state can harm fish life at sensitive life stages including spawning, incubation, juvenile migration, rearing, and feed-

ing. Therefore, work must occur at times of the year when the risk to fish life is reduced unless the risk can be avoided.

(3) **Authorized work times:** The department must specify authorized work times for hydraulic projects when it issues HPAs. The department will allow work waterward of the OHWL for the following times, areas, and species.

(a) Tidal Reference Areas 1 through 17; March 1 through October 15 for projects in or adjacent to documented Pacific sand lance spawning beds.

(b) Tidal Reference Areas 1 through 17; October 15 through May 15 for projects in or adjacent to juvenile lingcod

settlement and nursery areas. April 1 through December 31 for projects in or adjacent to lingcod nests.

(c) Tidal Reference Areas 1 through 17; September 30 through March 15 for projects in or adjacent to juvenile rockfish settlement and nursery areas.

(d) Tidal Reference Area 14; October 1 through May 15 for projects in or adjacent to documented razor clam beds.

(e) Tidal Reference Areas 1 through 17; the authorized times and areas for protection of migrating juvenile salmonids in the nearshore, and for projects in documented Pacific herring spawning beds and in or adjacent to documented surf smelt are listed in the following table:

**Table 4
Authorized Times for Protection of Juvenile Salmonid Migration, Feeding and Rearing Areas and Pacific Herring Spawning and Surf Smelt Spawning Beds**

AUTHORIZED TIMES			
Tidal Reference Area	Juvenile Salmonid Migration, Feeding and Rearing Areas	Surf Smelt Spawning Beds	Herring Spawning Beds
1	July 15 - February 15	(not present)	April 1 - January 15
2	July 15 - February 15	April 1 - June 30	April 1 - January 15
3	July 15 - February 15	May 1 - September 30	April 1 - January 15
4	August 1 - February 15 for all work except dredging in all areas except Commencement Bay. September 1 - February 15 for dredging in all areas except Commencement Bay. July 15 - February 15 for all work in Commencement Bay.	April 15 - September 30	April 15 - January 15
5	August 1 - February 15 for all work except dredging. September 1 - February 15 for dredging in all areas except Duwamish Waterway. October 16 - February 15 for dredging in the Duwamish Waterway upstream of the East and West Waterways.	April 1 - August 31 in all areas except Eagle Harbor and Sinclair Inlet. In Eagle Harbor and Sinclair Inlet, authorization is conditional upon inspection because year-round spawning occurs.	May 1 - January 15
6	July 15 - February 15 for all work except dredging. September 1 - February 15 for dredging.	April 1 - August 31	(not present)
7	July 15 - February 15 for all work except dredging in Port Gardner and the Snohomish River. September 15 - February 15 for dredging in Port Gardner. September 1 - February 15 for dredging in the Snohomish River.	Authorization is conditional upon inspection because year-round spawning occurs.	April 15 - January 31

AUTHORIZED TIMES			
Tidal Reference Area	Juvenile Salmonid Migration, Feeding and Rearing Areas	Surf Smelt Spawning Beds	Herring Spawning Beds
8	August 1 - February 15	Authorization is conditional upon inspection, because year-round spawning occurs.	April 15 - January 31
9	August 1 - February 15	Authorization is conditional upon inspection, because year-round spawning occurs.	April 15 - January 31 south of a line running due west from Governor's Point. June 15 - January 31 north of a line running due west from Governor's Point.
10	July 15 - February 15 July 15 - January 15 for all work from Tala Point to the Dungeness River. September 1 - March 1 San Juan Islands.	April 1 - July 31 except in the San Juan Islands where authorization is conditional upon inspection because year-round spawning occurs.	May 1 - January 15
11	July 15 - January 15	March 1 - September 15	April 1 - January 15
12	July 15 - January 15	March 1 - August 31	April 15 - February 15
13	July 15 - January 15	February 16 - July 31	April 15 - January 15
14	July 15 - February 15	October 1 - June 30	(not present)
15	July 15 - February 15	(not present)	February 1 - March 31
16	July 15 - February 15	(not present)	March 15 - January 31
17	July 15 - February 15	(not present)	March 15 - January 31

(f) If the surf smelt spawning season for the project location is six months or longer, the department may permit work outside of the authorized work times if:

(i) A department-trained biologist, following the department's intertidal forage fish spawning habitat survey protocol per WAC 220-660-340, conducts a spawning survey at the job site;

(ii) The results of the inspection show that no spawning is occurring or has recently occurred; and

(iii) If the survey shows eggs are not present, the person may start work. The person must start work within seventy-two hours of a survey.

(g) In documented intertidal forage fish spawning areas, the department must not allow work during surf smelt spawning seasons shorter than six months or during the Pacific sand lance spawning season. The department will make exceptions for projects receiving emergency, imminent danger, and expedited HPAs.

(h) The department will require an intertidal forage fish spawning bed survey if the job site is adjacent to a documented forage fish spawning bed, the beach at the job site has bed materials similar to the documented beach, and the work will occur during the spawning season.

(i) When specifying authorized work times for hydraulic projects, the department must consider the construction techniques, mitigation measures proposed, location of the project, and characteristics of habitats potentially affected by the

project. The department may inspect the work area to evaluate the habitat.

(j) During times when work in waters of the state is prohibited to protect nearshore juvenile salmonid migration, rearing, and feeding areas, the department may permit construction if the structure is located at or landward of the OHWL, and if all construction work is conducted from the landward side of the project.

(k) The department may apply additional timing restrictions to protect other important habitat that supports fish life at a specific site.

NEW SECTION

WAC 220-660-340 Intertidal forage fish spawning bed surveys. (1) **Description:** The department uses intertidal forage fish spawning bed surveys to determine presence, absence, quantity, and timing of surf smelt (*Hypomesus pretiosus*) and Pacific sand lance (*Ammodytes hexapterus*) spawning. The department may require an applicant to hire a qualified, department-trained biologist to conduct an intertidal forage fish spawning survey before working in potential surf smelt and Pacific sand lance spawning habitat adjacent to documented areas or in documented surf smelt spawning areas where the spawning season is six months or longer. The presence of eggs may restrict project type, design, location, and timing.

(2) **Fish life concerns:** Surf smelt and Pacific sand lance are important food for marine mammals, birds, and fish, including Pacific salmon. The department protects forage fish spawning by limiting construction activities on beaches when and where spawning is documented.

(3) **Intertidal forage fish surveys:**

(a) A biologist must complete the department's forage fish spawning beach survey training to be approved by the department to conduct intertidal forage fish spawning bed surveys.

(b) A biologist must follow the department-approved intertidal forage fish spawning protocol and use the standard department data sheets when conducting forage fish spawning beach surveys. The protocol and data sheets are available on the department's web site. The department may modify this protocol when only the presence or absence of surf smelt eggs needs to be determined.

(c) A biologist must submit the completed, standard department data sheets to the department within seventy-two hours of the survey.

NEW SECTION

WAC 220-660-350 Seagrass/macroalgae habitat surveys. (1) **Description:** The department has developed survey guidelines for seagrass and macroalgae habitat to improve protection of these important habitats in Puget Sound and coastal waters. The guidelines contain protocols for both preliminary and advanced surveys to help evaluate potential impacts to these habitats at project sites with various conditions. Because statistical considerations are an integral part of the advanced surveys, the guidelines include a sample size calculator to help determine the number of samples the diver/biologist must take. The guidelines are available on the department's web site.

(2) **Fish life concerns:**

(a) Seagrass and macroalgae such as kelp play a critical role in the nearshore zone ecosystem as primary producers, generating nutrients and substrate that form the base of the food chain. The dense and complex structure created by seagrass and macroalgae beds also provides refuge and foraging habitat for fishes, invertebrates, and other organisms.

(b) Direct impacts can occur on a local or site-specific scale from impacts to substrate and changes to light levels. Dredging, filling, or otherwise altering the substrate can make a site uninhabitable for seagrass and macroalgae and the species that depend on them. Boat propellers and anchors can physically damage plants, disturb sediments, and alter the habitat that supports fish life. Over-water structures such as piers, docks, and floats decrease the amount of light available. These habitat impacts can cause a substantial reduction in the size and diversity of the plant community.

(3) **Seagrass and macroalgae surveys:**

(a) The department will require a person to submit a seagrass and macroalgae survey as part of an HPA application for the following work unless the department can determine the project will not impact seagrass and macroalgae:

(i) Constructing a new dock, mooring buoy, wharf, or other over-water structure;

(ii) Constructing a replacement over-water structure outside the previously approved footprint;

(iii) New dredging, trenching, filling (boat ramps, fixed breakwaters, artificial habitat structures), or grading; and

(iv) Maintenance dredging, trenching, filling, or grading outside the previously approved footprint.

(b) The department will use the preliminary survey to:

(i) Determine if seagrass or macroalgae are present at the proposed work area;

(ii) Help the applicant locate and construct the project while following the mitigation sequence to protect seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate.

(c) Seagrass and macroalgae surveys must be conducted between June 1 and October 1 because the full extent of seagrass and macroalgae distribution can be more accurately mapped. If the preliminary survey shows that the project can be located and built without impacting seagrass and kelp beds or in herring spawning areas other macroalgae used as spawning substrate, the preliminary survey will meet the needs for mapping the project area. However, if the preliminary survey shows the project footprint will impact existing seagrass and kelp beds or in herring spawning areas other macroalgae beds used as spawning substrate, the department will require an advanced survey.

(d) The department will use an advanced survey to estimate project impacts to seagrass and kelp beds and in herring spawning areas other macroalgae beds used as herring spawning substrate. Advanced surveys are conducted to:

(i) Measure the project's impact to seagrass and macroalgae; and

(ii) Measure the performance of mitigation actions.

(e) The department must measure direct impacts by calculating the total area and density of seagrass and macroalgae affected by the project. The department uses this information to help calculate the size of the mitigation area required to compensate for seagrass and macroalgae loss.

(f) The department must measure mitigation success by comparing seagrass and macroalgae densities at a mitigation (or impact) site to those of a reference site. These comparisons must be statistically rigorous. The department has set monitoring standards for these surveys:

(i) $\alpha = 0.10$;

(ii) Power $(1 - \beta) = 0.90$; and

(iii) A difference of mean seagrass density of at least twenty percent. The department has developed survey guidelines for seagrass and macroalgae habitat. The department will consider other survey methods if they meet established monitoring standards.

(g) The divers/biologists who conduct the surveys must be qualified to identify the predominant seagrass and macroalgae species in the work area.

(h) If the department approves a monitoring and contingency plan, the department will require a qualified diver/biologist to monitor project impacts to determine seagrass or macroalgae loss and the required mitigation.

(i) Survey results and interpretation are subject to department approval.

NEW SECTION

WAC 220-660-360 Common saltwater construction provisions. (1) **Description:** Only applicable common construction provisions will be applied to a specific hydraulic project. Common construction provisions include job site access, equipment use, construction materials, sediment and erosion control containment, and job site repair and revegetation.

(2) **Fish life concerns:** Construction and other work can negatively affect fish life. Some activities can kill or injure fish life while others can cause behavioral changes that reduce growth and survival. Some activities can damage the habitat used for spawning and egg incubation, rearing, feeding, hiding from predators, and migration.

(3) **Staging areas:** Establish staging areas (used for activities such as equipment storage, vehicle storage, fueling, servicing, and hazardous material storage) at a location and manner that will prevent contaminants such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials from entering waters of the state.

(4) Job site access:

(a) Clearly mark boundaries to establish the limit of work associated with site access and construction.

(b) Limit the removal of native vegetation to the minimum amount needed to construct the project. Woody vegetation greater than four inches diameter that must be removed must be marked in the field by the applicant and approved for removal by the department. The department may require this large woody material to be placed on the beach after work is completed. A revegetation plan must be submitted to restore riparian vegetation removed as part of the project.

(c) Retain all natural habitat features on the beach larger than twelve inches in diameter including trees, stumps, logs, and large rocks. These natural habitat features may be moved during construction but they must be placed near the preproject location before leaving the job site.

(5) Equipment use:

(a) Use of equipment on the beach area must be held to a minimum and confined to specific access and work corridors.

(b) Check equipment daily for leaks and complete any required repairs before using the equipment in or near the water. Do not complete repairs on the beach.

(c) Equipment used in or near water must use environmentally acceptable lubricants composed of biodegradable base oils. These are vegetable oils, synthetic esters, and polyalkylene glycols. The department may waive this requirement for a small project that has minimal use of equipment in or near the water if the duration of the project is forty-eight hours or less or if containment prevents the lubricants from entering waters of the state.

(6) Vessel operation:

(a) Operate vessels in water deep enough to prevent impacts from grounding and propeller wash to seagrass, kelp, and forage fish spawning beds.

(b) Do not deploy anchors or spuds in seagrass, kelp, and forage fish spawning beds.

(c) Maintain anchor cable tension so anchor cables do not drag on the bed.

(7) Construction materials:

(a) Bed material, other than material excavated for bulkhead footings or placement of bulkhead base rock, must not be utilized for project construction or fills. The department may allow placement of dredged material in areas for beneficial uses such as beach nourishment or cleanup of contaminated sediments.

(b) Wet concrete must be prevented from entering waters of the state. Forms for any concrete structure must be constructed to prevent leaching of wet concrete. Impervious material must be placed over any exposed concrete not lined with forms that will come in contact with waters of the state. Forms and impervious material must remain in place until the concrete is cured.

(c) Do not use wood treated with oil-type preservatives (creosote, pentachlorophenol) in any hydraulic project. Wood treated with waterborne preservative chemicals (ACZA, ACQ) may be used if the western wood preservers institute has approved the waterborne chemical for use in the aquatic environment. The manufacturer must follow the western wood preservers guidelines and the best management practices to minimize the preservative migrating from treated wood into aquatic environments. To minimize leaching, wood treated with a preservative by someone other than a manufacturer must follow the field treating guidelines. These guidelines are available at <http://www.wwpinstitute.org/>.

(d) The department discourages the use of whole tires. However, products made from recycled tires specifically manufactured for use in the aquatic environment are approved by the department.

(8) Construction-related sediment, erosion and pollution containment:

(a) Project activities within the beach area must not occur when the project area, including the work corridor, is inundated by tidal waters unless the work is occurring from a vessel or barge.

(b) Protect all disturbed areas from erosion. Maintain erosion and sediment control until demobilization and cleanup of the job site is completed.

(c) When using straw for erosion and sediment control, use only straw that has been certified as free of noxious weeds and their seeds.

(d) Prevent contaminants from the project, such as petroleum products, hydraulic fluid, fresh concrete, sediments, sediment-laden water, chemicals, or any other toxic or harmful materials, from entering or leaching into waters of the state.

(e) Use tarps or other methods to completely contain treated wood sawdust, trimmings, and drill shavings.

(f) Deposit waste material from the project, such as construction debris, silt, excess dirt, or overburden, in an upland area above extreme high tide waters unless the material is approved by the department for reuse in the project.

(g) Prevent transporting and introducing aquatic invasive species by thoroughly cleaning vessels, equipment, boots, waders, and other gear removing the gear from the job site.

(9) Demobilization and cleanup:

(a) Reshape beach area depressions created during project activities to preproject beach level upon project completion.

(b) All debris or deleterious material resulting from construction must be removed from the beach area or bed and prevented from entering waters of the state.

(c) Do not burn wood treated with preservatives, trash, waste, or other deleterious materials waterward of the OHWL.

(d) Restore the disturbed bed, bank, and riparian zones as close as possible to their preproject condition unless modified elevations and contours are approved by the department.

(e) Using a proven methodology, replace native riparian zone and aquatic vegetation, and wetland vascular plants (except noxious weeds) damaged or destroyed by construction. The department may require a vegetation monitoring and contingency plan.

(f) The department must approve species composition, planting densities and a maintenance plan for replanting on a site-specific basis. The species composition should be similar to the surrounding native vegetation.

(g) Complete replanting during the first dormant season (late fall through late winter) after project completion. Maintain plantings for at least three years to ensure at least eighty percent of the plantings survive. Failure to achieve the eighty percent survival in year three will require that a person submit a plan with follow-up measures to achieve requirements or reasons to modify requirements.

(h) The department may waive the requirement to plant vegetation where the potential for natural revegetation is adequate.

(i) The department may require fencing or other structures to prevent livestock, wildlife, or unauthorized persons from accessing the replanted riparian and wetland sites until the plantings are well established.

(j) Remove temporary erosion and sediment control methods after job site is stabilized.

(10) **Required permittee notification:** If a fish kill occurs or fish are observed in distress at the job site, immediately stop all activities causing harm. Immediately notify the department of the problem. If the likely cause of the fish kill or fish distress is related to water quality, also notify the Washington military department emergency management division at 1-800-258-5990. Activities related to the fish kill or fish distress must not resume until the department gives approval. The department may require additional measures to mitigate impacts.

NEW SECTION

WAC 220-660-370 Bank protection in saltwater areas. RCW 77.55.141 applies to single-family residence bank protection that will not result in a permanent loss of critical food fish and shellfish habitat. RCW 77.55.021 applies to nonsingle-family residence bank protection and single-family residence bank protection that does not comply with the criteria in RCW 77.55.141. The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life. Appropriate methods to design marine bank protection are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) **Description:** A bank protection structure is a permanent or temporary structure constructed to protect or stabilize the bank. Bank protection methods are either hard or soft techniques. Soft approaches attempt to mimic natural processes by using biotechnical methods such as live plantings, rootwads and large woody material (LWM), and beach nourishment. Usually, soft approaches are designed to be less impacting to fish life. Hard approaches armor the bank with material such as rock, concrete, or wood intended to prevent erosion of the bank. Some projects use both hard and soft approaches. To be considered soft, at least eighty-five percent of the total project area must be constructed with naturally occurring materials in a manner that mimics the natural shore processes taking place in the vicinity of the project. In addition, the remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff). The total project area extends cross-shore from MLLW to the OHWL, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end.

(2) **Fish life concerns:** Bank protection structures alter the beach and disrupt nearshore ecosystem processes and physical conditions. This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt and a loss of migration, feeding, and rearing habitat for juvenile salmon. To protect fish life, the department protects the beaches where critical food fish or shellfish habitat occur and the nearshore zone geomorphic processes that form and maintain this critical habitat.

(3) **Bulkheads and other bank protection design:**

(a) If the OHWL is changed since an existing bank protection structure was built, and OHWL reestablishes landward of a bulkhead protection structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If an application for an HPA is submitted for repairs within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint.

(b) Use the least impacting technically feasible alternative. The common alternatives below are in order from most preferred to least preferred:

(i) Remove the bank protection structure;

(ii) No action - Control upland drainage;

(iii) Protect, enhance, and replace vegetation;

(iv) Relocate improvements or structures;

(v) Construct a soft structure by placing beach nourishment and large woody material;

(vi) Construct upland retaining walls;

(vii) Construct a hard structure such as bulkhead and rock revetment landward of the OHWL; and

(viii) Construct a hard structure such as a bulkhead and rock revetments at the OHWL.

(c) Upon receipt of a complete application, the department will determine the applicable RCW under which to process the application.

(i) A new, replacement, or repaired single-family residence bulkhead in saltwater areas must not result in the permanent loss of critical food fish or shellfish habitat to be processed under RCW 77.55.141.

(ii) If construction of a new single-family residence bulkhead or other bank protection project, or replacement or repair of an existing single-family residence bulkhead or other bank protection project waterward of the existing structure will result in the permanent loss of critical food fish or shellfish habitat, the department must instead process the application under RCW 77.55.021. However, the construction of all bulkheads or other bank protection must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.

(d) An HPA application for a new bulkhead or other bank protection work or the replacement or rehabilitation of a bulkhead or other bank protection structure that extends waterward of the existing structure must include a site assessment, alternatives analysis and design rationale by a qualified professional (such as a coastal geologist, geomorphologist, etc.) for the proposed project and selected technique. The department may grant an exemption depending on the scale and nature of the project. In addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include:

- (i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;
- (ii) Evidence of erosion and/or slope instability to warrant the stabilization work;
- (iii) Technical rationale specific to the design developed;
- (iv) An analysis of the benefits and impacts associated with the chosen protection technique; and
- (v) An explanation of the technique chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.

(e) The department may require the design of bank protection projects to incorporate beach nourishment, large woody material or native vegetation as mitigation.

(4) Single-family residence bulkhead projects processed under RCW 77.55.141:

(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no more than six feet waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least-impacting type of structure and construction method.

(5) Bank protection projects processed under RCW 77.55.021:

(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline stabilization techniques that provide

restoration of shoreline ecological functions may be permitted waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least-impacting type of structure and construction method.

(6) Bulkhead and other bank protection construction:

(a) The department may require a person to establish the horizontal distance of the structure from a permanent benchmark(s) (fixed objects) before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is approved waterward of the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor waterward of the bulkhead footing or base rock. Remove all excavated or stockpiled material from the beach within seventy-two hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

NEW SECTION

WAC 220-660-380 Residential and public recreational docks, piers, ramps, floats, watercraft lifts, and buoys in saltwater areas. This section applies to the design and construction of permanent, seasonal or temporary docks, piers, ramps (gangways), floats, watercraft lifts, and mooring.

(1) **Description:** Docks are structures that are fixed to the shoreline but floating upon the water. Piers are fixed, pilings-supported structures. Floats (rafts) are floating structures that are moored, anchored, or otherwise secured in the water that are not directly connected to the shoreline. A ramp is a gangway that connects a pier or shoreline to a float and provides access between the two. Pilings usually associated with these structures are timber, steel, reinforced concrete, or composite posts that are driven or jacked into the bed. A watercraft lift is a structure that lifts boats and personal watercraft out of the water. A mooring buoy is a structure floating on the surface of the water that is used for private and commercial vessel moorage.

(2) Fish life concerns:

(a) Over-water and in-water structures can alter physical processes that create or maintain habitat that supports fish life. These processes include light regime, hydrology, substrate conditions, and water quality. Light reduction is the

main impact to fish life at critical life stages. Light reduction or shading by over-water or in-water structures reduces survival of aquatic plants. Aquatic plants provide food, breeding areas, and protective nurseries for fish life.

(b) Shallow water provides juvenile fish a refuge from predators like larger fish. Over-water and in-water structures can alter movement of juvenile salmon, steelhead and other fish species. Structures grounding on the bed can physically block migration and damage forage fish spawning beds. The light/dark contrast of shading/no shading caused by over-water and in-water structures can affect migration behavior. Fish respond by moving into deeper water which increases the risk of predation.

(3) Residential and public recreational pier, ramp, float, watercraft lift and buoy design – Generally:

(a) The department requires that new structures are designed with a pier and ramp to span the intertidal beach, whenever feasible.

(b) The design and location of structures must follow the mitigation sequence to protect salt water habitats of special concern.

(i) Design and locate structures to protect juvenile salmonid migration, feeding, and rearing areas.

(ii) Design and locate structures to protect documented Pacific herring, Pacific sand lance, and surf smelt spawning beds; and rockfish and lingcod settlement and nursery areas.

(iii) The department will require a seagrass/macroalgae habitat survey for all new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required for replacement of an existing structure within its original footprint.

(A) Structures must be located at least twenty-five feet (measured horizontally from the nearest edge of the structure) and four vertical feet away from seagrass and kelp beds (measured at extreme low water).

(B) In documented herring spawning areas, structures must be located at least twenty-five feet (measured horizontally from the nearest edge of the structure) and four vertical feet from macroalgae beds on which herring spawn (measured at extreme low water).

(iv) If artificial nighttime lighting is used in the project, use low-intensity lights that are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.

(v) The design must not include skirting including batter fencing constructed around piers, docks, or floats unless approved by the department. The design should not use treated wood for the decking of the structure. The design may use treated wood for structural elements. Treated wood structural elements subject to abrasion by vessels, floats, or other objects must incorporate design features such as rub strips to minimize abrasion of the wood.

(c) The structure must have been usable at the site within the past twelve months of the time of application submittal to be considered a replacement structure. Usable means no major deterioration or section loss in critical structural components is present.

(d) Replacement of more than thirty-three percent or two hundred fifty square feet of decking or replacement of deck-

ing substructure requires installation of functional grating in the replaced section only. The grating must conform to the requirements in this section.

(4) Pier and ramp design:

(a) Design piers to maximize height over the bed to improve light transmission. The bottom of the pier must be at least six feet above the bed at the landward end.

(b) Limit the width of residential piers to no more than six feet wide. Limit the width of recreational piers to the minimum width needed to accommodate the intended use.

(c) North/south oriented piers (338 to 22 degrees, or 158 to 202 degrees) greater than four feet in width must have at least thirty percent of the entire deck surface covered in functional grating. The grating must be installed parallel to the length of the pier for the entire length of the pier.

(d) Northeast/southwest, northwest/southeast, and east/west oriented piers (23 to 157 degrees, 203 to 337 degrees) must have at least fifty percent of the entire deck surface covered in functional grating regardless of width. The grating must be installed parallel to the width of the pier, evenly spaced along the entire length of the pier.

(e) If only the minimum pier deck surface described in (c) or (d) of this subsection is covered, the grating material's open area must be at least sixty percent open area unless grating covers more than the minimum pier deck area of the pier. If the grating covers more than the minimum deck surface area, the grating material's open area can be reduced down to at least forty percent open area.

(f) Limit the width of residential ramps to four feet wide. Limit the width of public recreational ramps to the minimum width needed to accommodate the intended use. Cover the entire ramp surface with grating.

(5) Float design (floats connected to a pier):

(a) Whenever feasible, place float so that the largest dimension is oriented north/south.

(b) Limit the width of residential floats to eight feet. Limit the width of public recreational floats to the minimum width needed to accommodate the intended use.

(c) Whenever feasible, limit the length of single-family dock floats to thirty feet and joint-use dock floats to sixty feet.

(d) If the design has a float positioned perpendicular to the ramp to serve as a ramp landing, this float must not be more than six feet wide and ten feet long.

(e) Design floats in intertidal areas with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom.

(f) A float six feet wide or less must have at least thirty percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least fifty percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only.

(g) The grating material's open area must be at least sixty percent.

(h) Flotation for the structure must be fully enclosed and contained in a shell (tub). The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultra-violet radiation and abrasion.

(i) Embedded anchor(s), pilings (with stops), and float support/stub pilings may be used to hold floats in place.

(j) If a project uses anchors to hold the float in place, the anchor lines must not rest on the substrate at any time.

(6) Piling design:

(a) Use the smallest diameter and number of pilings required to construct a safe structure.

(b) Steel piling used to construct residential docks should not exceed twelve inches in diameter. Limit the diameter of steel piling used to construct public recreational docks to the minimum diameter needed to accommodate the intended use.

(c) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or treated wood approved by the department.

(d) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(e) Fit all pilings with devices to prevent perching by fish-eating birds.

(7) Watercraft lift/grid design:

(a) Design the watercraft lift/grid to minimize shading caused by the structure.

(b) The bottom of the watercraft lift/grid must be at least one foot above the bed.

(c) Use the minimum number of piling needed to support the watercraft lift/grid.

(8) Buoy design:

(a) In water bodies where buoy systems might damage submerged aquatic vegetation, locate and design the buoy system to minimize damage.

(i) Whenever feasible, use an embedded anchor.

(A) A seagrass/macroalgae habitat survey is not required if an embedment-style mooring anchor is installed. The department will require the diver/installer to locate the anchor so the mooring buoy system will not damage seagrass and kelp beds, and in herring spawning beds other macroalgae used as spawning substrate.

(B) A seagrass/macroalgae habitat survey is required if a surface style mooring anchor is installed. The survey is needed to ensure the mooring buoy system is installed at a location where seagrass, kelp, and in herring spawning beds other macroalgae used as spawning substrate will not be damaged.

(ii) Place the buoy deep enough to prevent vessel grounding.

(iii) Locate the buoy to avoid damage from vessel propellers to submerged aquatic vegetation.

(iv) Design the buoy system with a mid-water float so that anchor lines do not drag.

(v) Adequately size the mooring to prevent the anchor from shifting or dragging along the bed.

(vi) If the department authorizes the use of a concrete anchor, use a precast concrete anchor.

(vii) The buoy must have a shell that is resistant to ultra-violet radiation (sunlight) and abrasion caused by rubbing against vessels, the bed, and/or waterborne debris.

(9) Replacement floating docks: The department will authorize replacement floating docks, if:

(a) The area of replaced floating dock structure is not expanded;

(b) The replaced floating dock is not relocated within waters of the state without written authorization from the department. The replaced structure must be removed and disposed of upland so it will not reenter state waters;

(c) Floats are designed with stoppers or support pilings that keep the bottom of the floats at least one foot above the substrate so that the structure will not rest on the bottom;

(d) A float six feet wide or less must have at least thirty percent of the entire deck surface covered in functional grating. A float between six and eight feet wide must have at least fifty percent of the entire deck surface covered in functional grating. Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration. Flotation must be located under the solid decked area only;

(e) The grating material's open area must be at least sixty percent;

(f) Flotation for the structure must be fully enclosed and contained in a shell (tub). The shell or wrap must prevent breakup or loss of the flotation material into the water. The shell or wrap must not be readily subject to damage by ultra-violet radiation and abrasion.

(10) Residential and public recreational dock, pier, ramp, float, floating dock, watercraft lift, and buoy construction:

(a) The dock or pier centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(b) When installing steel piling, a vibratory hammer is preferred.

(c) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(d) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(e) To avoid attracting fish to light at night, limit impact pile driving to daylight hours whenever feasible.

(f) The department may require the following during piling removal:

(i) Use of a vibratory system to dislodge piling whenever feasible;

(ii) Place the piling on a construction barge or other dry storage site after the piling is removed. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate and cap all buried stumps with clean sediment that matches the native material;

(iv) Fill holes left by piling extraction with clean sediment that matches the native material whenever feasible;

(v) When removing creosote piling:

(A) Containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(B) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(g) Securely anchor dock, floats, and mooring buoys.

(h) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site; and

(i) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

NEW SECTION

WAC 220-660-390 Boat ramps and launches in salt-water areas. (1) **Description:** A boat ramp or launch is a sloping stabilized roadway or entry point constructed on the shoreline for launching boats from vehicular trailers or by hand. Ramps and launches extend into the water at a slope of typically twelve to fifteen percent and are typically oriented perpendicular to the shoreline. Ramp and launch widths vary with intended use, and the length often depends on the slope of the shoreline and tidal amplitudes. Ramps and launches are usually constructed in protected areas with access to deep water close to shore. Construction materials commonly consist of gravel, concrete, or asphalt; they are often associated with marinas and parking lots. A railway-type boat launch consists of a pair of railroad tracks supported by pilings, and extends from the upland down to the beach.

(2) **Fish life concerns:** A boat ramp or launch covers seabed habitat that supports fish life. A large number of ramps or launches in a given area increases the amount of loss and fragments this habitat. Ramps and launches placed above beach grade can block sediment movement (littoral drift). Ramp and launch construction, maintenance and the associated vessel activity can damage or destroy aquatic vegetation and forage fish spawning beds.

(3) **Boat ramp and launch design:**

(a) The design and location of ramps and launches must avoid adverse impacts to saltwater habitats of special concern.

(i) The department will require a seagrass/macroalgae habitat survey for new ramp or launch construction unless the department can determine the project will not impact seagrass and kelp beds and in herring spawning beds other macroalgae used as spawning substrate.

(ii) A survey is not required to replace an existing structure within its original footprint.

(b) Design and locate boat ramps and launches to avoid or minimize excavation waterward of the OHWL.

(c) Design boat ramps and launches to minimize impacts to tidal currents and littoral drift. Common alternatives are ordered from least to most impacting:

(i) Elevated railway-type launches;

(ii) Hoist or lift launches;

(iii) Elevated ramps; and

(iv) Ramps constructed at beach grade.

(d) The department will authorize boat ramps and launches on marine accretion shoreforms (such as barrier beaches, points, spits, and hooks) only if there will be no impact to geomorphic processes that create and maintain nearshore habitat.

(e) Design and construct boat ramps and launches to prevent erosive undercutting or breaking of ramp edges.

(f) Ramps elevated above the beach grade must have side slopes no steeper than one and one-half feet horizontal to one foot vertical.

(g) Design and locate new boat ramps and launches to prevent the need for dredging. The department will allow dredging to maintain access to an existing boat ramp or launch if the access was dredged as part of the original project.

(h) Design boarding floats to minimize grounding on and shading of the bed and impacts to tidal currents and littoral drift.

(i) Use the smallest number of pilings required to construct a safe railway-type launch.

(j) The rails of a rail launching system must lie on and follow the grade of the existing bed and bank.

(4) **Ramp and launch construction:**

(a) Construct the ramp or launch when the work area is not covered by tidal water.

(b) Construct footings or the base of the ramp and launch below the preexisting beach grade of the beach to minimize undermining of the structure.

(c) To construct a concrete boat ramp waterward of the OHWL, use precast concrete slabs or isolate the wet concrete from waters of the state until it is fully hardened.

(d) Securely anchor launching rails to the bed or support railway launch piling.

(5) **Ramp and hand launch maintenance:** Whenever feasible, place sediment and woody material removed from ramps and launches at or waterward of the OHWL downdrift of the structure.

NEW SECTION

WAC 220-660-400 Marinas and terminals in saltwater areas. This section applies to constructing, maintaining, and repairing marinas and terminals in saltwater areas.

(1) **Description:**

(a) A marina is a public or private facility providing vessel moorage space, fuel, or commercial services. Commercial services include overnight or live-aboard vessel accommodations (RCW 77.55.011(13)).

(b) A terminal is a public or private commercial wharf located in the navigable waters of the state and used, or intended to be used, as a port or facility to store, handle, transfer, or transport goods, passengers, and vehicles to and from vessels (RCW 77.55.011(14)).

(2) **Fish life concerns:** Marinas and terminals can alter the physical processes that create or maintain habitat that supports fish life. Impacts may include altering the light regime, hydrology, substrate conditions, and water quality under and adjacent to structures. Marinas and terminals often have a larger impact area than residential docks and are often associated with heavy boat traffic and human use. Thus, the size and magnitude of the potential impacts to fish life may be greater than those from residential docks.

(3) **Marina and marine terminal design – Generally:**

(a) The department may require a person to provide physical modeling, numerical modeling, or other information that demonstrates adequate water exchange and circulation after construction.

(b) The department will require a seagrass/macroalgae habitat survey for a new construction unless the department can determine the project will not impact seagrass and kelp beds and in herring spawning beds other macroalgae used as spawning substrate. A survey is not required for replacement of an existing structure within its original footprint.

(c) Whenever feasible, locate new marinas and terminals in areas that will minimize impacts to fish life.

(i) Locate new marinas and terminals in naturally deep areas to avoid or minimize the need for dredging.

(ii) Locate new marinas and terminals in areas deep enough to protect the bed from propeller wash impacts.

(iii) Locate new marinas and terminals in areas with existing low or impaired biological value such as heavily industrialized areas.

(d) Whenever feasible, design marinas and terminals to allow light penetration to intertidal and shallow subtidal water areas.

(i) Design marinas and terminals so that most over-water coverage is in the deepest water feasible.

(ii) Minimize the amount of pier area that directly contacts the shoreline.

(iii) Minimize the width of over-water and in-water structures.

(iv) Design and construct piers and other above-water structures as high as feasible to increase light transmission.

(v) Whenever feasible, use light-reflecting materials on the underside of over-water structures that are not grated.

(4) **Marina design:**

(a) The department prohibits constructing marinas on or over the following saltwater habitats of special concern: Pacific herring spawning beds and lingcod and rockfish settlement and nursery areas.

(b) The location and construction of new marinas must follow the mitigation sequence to protect surf smelt and Pacific sand lance spawning beds, seagrass and kelp beds and intertidal wetland vascular plants.

(c) The department may require a marina design to include grating to minimize impacts to juvenile salmonid migration corridors and native aquatic vegetation.

(i) If grating is required, locate flotation under the solid decked area only.

(ii) Orient grating so the lengthwise opening maximizes the amount of light penetration. Any objects that are not part of the structure on, above, or below the grating should not block light penetration.

(ii) Grating material must have at least a sixty percent open area.

(d) Whenever feasible, place slips for smaller boats in shallower water and place slips for larger boats in deeper water.

(e) Locate new boathouses, houseboats, and covered moorages waterward of the phototrophic zone.

(f) Any replacement roof for covered moorage or a boat-house in landward of the phototrophic zone must use translucent materials or skylights in the roof.

(g) If artificial nighttime lighting is used in the design, use low-intensity lights that are located and shielded to prevent light from attracting fish or disrupting fish migration behavior, unless there are safety constraints.

(h) The following provisions apply to marina construction landward of the existing OHWL:

(i) A single entrance may be required; and

(ii) The entire inner shoreline must comply with bank protection provisions in WAC 220-660-370.

(i) The following provisions apply to marina construction waterward of the OHWL:

(i) If a person must protect the bank area inside the marina they must comply with bank protection provisions in WAC 220-660-370. Between the elevation of the toe of the bulkhead and MLLW, the beach slope must not exceed one and one-half feet horizontal to one foot vertical.

(ii) For a single entrance or breach marina, the breakwater structure may not exceed one and one-half feet horizontal to one foot vertical slope inside and outside the marina.

(j) The following provisions apply when a marina includes breaches that form shore breakwaters (jetties) and detached breakwaters:

(i) The toe of the shore breakwaters (jetties) may extend seaward to 0.0 feet MLLW, but may not extend seaward more than two hundred fifty feet from OHWL;

(ii) The shore breakwaters must have a slope of at least one and one-half feet horizontal to one foot vertical throughout;

(iii) The breaches between the shore breakwaters and the detached breakwaters must be at least twenty feet wide measured at the toe of the slope;

(iv) Removable, floating breakwaters or wave boards should be used whenever feasible; and

(v) Avoid the use of continuous sheet piles whenever feasible.

(5) **Terminal Design:** The location and construction of new terminals must follow the mitigation sequence to protect saltwater habitats of special concern.

(6) **Piling design:**

(a) Use the smallest diameter and number of pilings needed to construct a safe structure.

(b) The use of creosote or pentachlorophenol piling is prohibited. New and replacement piling can be steel, concrete, recycled plastic, or untreated or department-approved treated wood.

(c) Treated wood piling must incorporate design features to minimize abrasion of the piling from contact with vessels, floats, or other objects.

(d) Whenever feasible, all pilings must be fitted with devices to prevent perching by fish-eating birds.

(7) Marina and marine terminal construction:

(a) Operate and anchor vessels and barges so that they do not adversely impact seagrass and kelp beds and in herring spawning areas other macroalgae beds used as herring spawning substrate.

(b) The pier and dock(s) centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(c) When installing steel piling, a vibratory hammer is preferred.

(d) If impact pile driving is used, set the drop height to the minimum needed to drive the piling.

(e) Use appropriate sound attenuation to minimize harm to fish from impact pile-driving noise.

(f) Whenever feasible, limit impact pile driving to daylight hours to avoid attracting fish to light at night.

(g) When removing piling:

(i) Use a vibratory system to dislodge piling whenever feasible;

(ii) After removal, place the piling on a construction barge or other dry storage site. The piling must not be shaken, hosed off, left hanging to dry or any other action intended to clean or remove adhering material from the piling;

(iii) If a treated wood piling breaks during extraction, remove the stump from the water column by fully extracting the stump or cutting it three feet below the substrate; and

(iv) Fill holes left by piling extraction with clean sediment that matches the native material.

(h) When removing creosote piling:

(i) Containment booms and absorbent booms (or other oil absorbent fabric) must be placed around the perimeter of the work area to capture wood debris, oil, and other materials released into marine waters as a result of construction activities to remove creosote pilings. All accumulated debris must be collected and disposed upland at an approved disposal site; and

(ii) Creosote logs and timbers must be fully suspended during removal so no portion of the log drags through the water or onto the beach.

(i) Securely anchor floats and mooring buoys.

(j) Dispose of replaced piers, ramps, floats, docks, lines, chains, cables, or mooring anchors in an upland disposal site.

(k) Place floats and buoys removed seasonally in an upland area. Do not store on the beach.

(8) Marina and marine terminal maintenance:

(a) Upon request, the department must issue a renewable, five-year HPA for regular maintenance activities of a marina or marine terminal.

(b) In this section, regular maintenance activities may include the following work:

(i) Maintain or repair a boat ramp, launch, or float within its existing footprint;

(ii) Maintain or repair an existing over-water structure within its existing footprint;

(iii) Maintain or repair boat lifts or railway launches;

(iv) Maintain or repair pilings, including replacing bumper pilings;

(v) Dredge less than fifty cubic yards of material;

(vi) Maintain or repair shoreline armoring or bank protection;

(vii) Maintain or repair wetland, riparian zone, or estuarine habitat; and

(viii) Maintain or repair an existing outfall.

(c) A five-year permit must include a provision that a person give the department a fourteen-day notice before regular maintenance activities start.

NEW SECTION**WAC 220-660-410 Dredging in saltwater areas. (1)**

Description: Dredging includes the removal of substrate to improve vessel navigation and to maintain navigation channels. Dredging is also used to clean up contaminated sediments.

(2) **Fish life concerns:** Dredging may result in changes in bathymetry, habitat conversion, and changes to nearshore zone ecosystem dynamics such as salinity intrusion. As a result, dredging may convert intertidal and shallow subtidal habitat to deeper subtidal habitat. Dredging may affect the plant and animal communities that are uniquely adapted to the particular light, current, and substrate regimes of intertidal and shallow subtidal areas. In addition to changing the habitat, dredging equipment can injure or kill fish and shellfish during the uptake of sediments and water. Suspended sediments released into the water column by dredging can affect fish by interfering with breathing and feeding, and by changing predator-prey relationships.

(3) Dredging – Generally:

(a) The department may require hydrodynamic modeling to assess changes in salinity, turbidity, and other physiochemical regimes for new dredging projects and expansions.

(b) The design and expansion of dredging projects must follow the mitigation sequence to avoid or minimize converting intertidal to subtidal habitat.

(c) The department prohibits new dredging in sand lance, surf smelt, and herring spawning beds; rockfish and lingcod settlement and nursery areas; and Olympia oyster settlement areas.

(d) The department requires a seagrass/macroalgae habitat survey for all new dredging. A survey is not required for maintenance dredging or deepening the channel within the original dredged footprint.

(e) Dredging must avoid adverse impacts to seagrass and kelp beds, intertidal wetland vascular plants, and geoduck tracts.

(f) Limit the depth of the maintenance dredging to no deeper than the channel depth at the seaward end. The department may authorize dredging to depths deeper than the channel at the seaward end only in berthing areas and turning basins for commercial shipping.

(g) In addition to those timing limitations listed in WAC 220-660-320, the department may further restrict dredge timing to protect other fish life.

(4) Dredging construction:

(a) Conduct dredging with dredge types and methods that cause the least impacts to fish life.

(b) Operate a hydraulic dredge with the intake at or below the bed surface. Raise the intake up to three feet above the bed only for brief periods of purging or flushing the intake system.

(c) Operate a dragline or clamshell to minimize turbidity. During excavation, each pass with the clamshell or dragline bucket must be complete. Dredged material must not be stockpiled waterward of the OHWL.

(d) Dispose of dredged bed materials at an approved in-water disposal site or in an upland location so the materials will not reenter waters of the state. The department may allow dredged material placement for beneficial uses such as beach nourishment or capping of contaminated sediments.

(e) To minimize turbidity, hopper dredges, scows and barges used to transport dredged materials to the disposal or transfer sites must completely contain the dredged material.

(f) Whenever feasible, limit dredging operations to daylight hours to avoid attracting fish to lights.

NEW SECTION

WAC 220-660-420 Artificial aquatic habitat structures in saltwater areas. (1) Description: An artificial aquatic habitat structure is a structure that humans design and place to provide long-term alterations to saltwater bottom habitat. The structure is designed and located to contribute to fish and shellfish management. Artificial reefs are one example.

(2) **Fish habitat concerns:** Artificial aquatic habitat structures draw large numbers of fish for the same reasons natural habitat structures do: They provide shelter, food, and a place for some species to spawn. They have holes and crevices in which both predator and prey can hide. However, artificial aquatic habitat structures alter the seabed and change the natural habitat. This alteration can change the make-up of the fish community and displace fish that used the natural habitat. Because artificial aquatic habitat structures can draw large numbers of fish into one place, coordination with fisheries managers is critical to prevent overfishing at these sites.

(3) Artificial aquatic habitat structure design:

(a) Artificial aquatic habitat structures must meet one or more of the following needs:

(i) Enhance fish viewing opportunity at a specific location;

(ii) Enhance or conserve aquatic resources; or

(iii) Mitigate for impacted habitat.

(b) Resource benefits must outweigh negative impacts caused by construction and placement of the structure.

(c) The department may require compensatory mitigation for unavoidable construction impacts to fish life and habitat that supports fish life.

(d) HPA applications must include the target fish species, species groups, or life stages that a person wants to enhance or rebuild. The critical habitat and environmental requirements of those species must be identified.

(e) A complete application to construct an artificial aquatic habitat structure must include the results of approved preconstruction surveys, a statement of the fishery or habitat need for the proposed structure, ongoing maintenance needs,

if any, and a plan for quarterly monitoring for two years after construction.

(f) The department will require at least four preconstruction surveys:

(i) Preconstruction surveys must be conducted during each seasonal quarter prior to the start of the project (January through March, April through June, July through September, and October through December);

(ii) Post-construction quarterly monitoring must follow department-approved biological protocols. A person must submit results of completed surveys to the department annually; and

(iii) The department may require additional surveys.

(4) Artificial aquatic habitat structure construction:

(a) Locate the structure at least two hundred yards away from other areas of hard-rock habitat to reduce the probability of an aquatic invasive species infestation.

(b) Locate the structure where it will least disturb adjacent shorelines.

(c) Construct the structures with high-density materials that are nontoxic and inert in sea water.

(d) Use clean materials to construct the structure. Do not use materials that would leach metals, petroleum products, or other hazardous materials.

(e) At least ninety-five percent of the construction materials must be larger than one foot in diameter.

(f) Avoid using vertical walls. Structures must consist of piles of loose material or separate modules.

(g) Place the structure where it will cause the least impact to fish life and the habitat that supports fish life.

(h) Reef material must not cover more than fifty percent of the natural substrate within the permitted area.

(i) Any one rock pile or module must not cover more than ten percent of the total permitted area.

(j) Rock piles must be located at least fifty feet apart.

NEW SECTION

WAC 220-660-430 Outfall and tide and flood gate structures in saltwater areas. (1) Description: Outfalls move water from one place to another, typically to a water body. Outfalls may convey storm water, or other waste materials. Tide and flood gates are adjustable gates used to control water flow in estuary, river, stream, or levee systems.

(2) **Fish life concerns:** Outfalls can increase erosion of a bed and bank, trap sediment, and cause a direct loss of beach and bank riparian habitat.

(3) Limit of department authority over storm water outfall and tide and flood gate projects:

(a) The department may not provision HPAs for storm water discharges in locations covered by a National Pollution Discharge Elimination System municipal storm water general permit for water quality or quantity impacts. An HPA is required only for the actual construction of any storm water outfall or associated structures.

(b) In locations not covered by a National Pollution Discharge Elimination System municipal storm water general permit, the department may issue HPAs that contain provisions to protect fish life from the direct hydraulic impacts of the discharge, such as scouring or erosion of the water body

bed. Before issuing an HPA under this subsection, the department must:

- (i) Find that the discharge from the outfall will cause harmful effects to fish life;
- (ii) Send the findings to the applicant and to the city or county where the project is being proposed; and
- (iii) Allow a person to use local ordinances or other ways to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for HPA issuance under RCW 77.55.021 is suspended when the department is meeting the requirements of this subsection.

(c) After following the procedures set forth in (b) of this subsection, the department may issue an HPA that prescribes the discharge rates from an outfall structure to prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design waterward of the mean higher high-water mark of marine waters.

(d) The department may not require a fishway on a tide gate, flood gate, or other associated human-made agricultural drainage facilities as a provision of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003. The department may require a fishway on a tide or flood gate as part of a non-agricultural drainage system and on agricultural drainage systems existing after May 20, 2003.

(4) Outfall design:

(a) To prevent scouring, protect the shoreline bank and bed at the point of discharge using bioengineering methods or other department-approved methods.

(b) The design and location of outfalls, outflow, and any associated energy dissipaters must follow the mitigation sequence to protect saltwater habitats of special concern. The department may require that energy be dissipated using one or more of the following methods, or other effective method proposed by a person and approved by the department:

- (i) Existing natural habitat features (such as large logs, root wads, natural large rocks, or rock shelves) if the habitat function or value of these features would not be degraded;
- (ii) Pads of native plants (shrubs and grasses) and biodegradable fabric;
- (iii) Imported habitat components (large woody material);
- (iv) Manufactured in-line energy dissipaters, such as a tee diffuser;
- (v) Rounded rock energy dissipation pads; or
- (vi) Angular rock energy dissipation pads, if the department determines other options are not feasible.

(c) An outfall pipe or other structural element that crosses a beach must be buried deep enough to avoid interrupting the along-shore sediment drift.

(d) To minimize impacts to saltwater habitats of special concern, the department may require that the outlet of submerged outfall piping not protrude above grade landward of minus thirty feet MLLW.

(e) The department will require a seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as

spawning substrate. A survey is not required to replace an existing structure within its original footprint.

(5) Outfall construction:

(a) To protect critical food fish or shellfish habitats, the department may apply timing constraints to proposed projects. The department must consider the construction techniques, location of the project, and characteristics of habitats potentially affected by the project. The department may inspect the work area to evaluate the habitat that supports fish life near the project.

(b) During times when work in waters of the state is prohibited to protect nearshore juvenile salmonid migration, rearing, and feeding areas, the department may permit construction if the outfall is located at or landward of the OHWL, and if all construction work is conducted from the landward side of the project.

(c) The department may require a person to establish structure elevations relative to permanent benchmarks before starting work on the project. The benchmarks must be located, marked, and protected to serve as a post-project reference for ten years.

(d) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(e) If a preconstruction seagrass/macroalgae habitat survey was performed, the conveyance pipe centerline must be reestablished during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

NEW SECTION

WAC 220-660-440 Utility crossings in saltwater areas. (1) **Description:** Utility crossings are cables and pipelines that transport gas, telecommunications, fiber optics, power, sewer, oil, or water underneath water bodies. An HPA is not required for utility crossings attached to bridge structures.

(2) **Fish life concerns:** Utility crossings pose a risk to fish life and habitat that supports fish life because of potential changes to substrates, destabilization of marine shoreline and distributary channels, loss of riparian vegetation zone, and loss of aquatic vegetation. Trenching through banks and beaches alters habitat that supports fish life, substrate characteristics, and therefore the productivity of the nearshore zone.

(3) **Utility crossing design:** The design and location of utility crossings must follow the mitigation sequence to protect saltwater habitats of special concern.

(4) Utility crossing construction:

(a) Excavate and install cables, sewer lines, and other utilities using equipment and techniques that minimize adverse impacts to fish life and the habitat that supports fish life.

(b) The department will require a seagrass/macroalgae habitat survey for new construction unless the department can determine the project will not impact seagrass and kelp beds, and in herring spawning beds, other macroalgae used as spawning substrate. A survey is not required to replace an existing structure within its original footprint.

(c) If a preconstruction seagrass/macroalgae habitat survey was performed, reestablish the utility line centerline during construction using the same methodology used to establish the centerline during the seagrass/macroalgae habitat survey.

(d) A person must not excavate trenches within the beach area when tidal waters cover the work area. The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor waterward of the OHWL. Remove all excavated or stockpiled material from the beach within seventy-two hours of the end of construction.

(e) Do not stockpile excavated materials containing silt, clay, or fine-grained soil or bed material waterward of the OHWL.

(f) Backfill all construction-related trenches, depressions, or holes that are waterward of the OHWL before they are filled by tidal waters.

NEW SECTION

WAC 220-660-450 Test boring in saltwater areas. (1)

Description: Boring is used to obtain information about the physical properties of the bed. This information is often needed to design foundations for proposed structures and to repair existing structures. Test boring is also commonly used to gather information about the contamination levels of sediment proposed for dredging.

(2) **Fish life concerns:** Boring-related impacts to fish life are usually minor and short term. Short-term impacts from the project include increased turbidity and noise levels and small vibrations created mainly from the drill rig.

(3) **Boring construction:** While boring, a person must:

(a) Take samples only within the project area approved by the department;

(b) Conduct boring in a manner that minimizes turbidity and discharge of silt to the water column as follows:

(i) Completely contain each boring and cone penetration action within the casing;

(ii) Do not discharge turbid or slurry-laden process water into state waters;

(iii) Minimize suspending sediment while collecting samples. Place all excess sediment and water derived during coring activities in proper containers, labeled, characterized, and disposed of by the operators in accordance with the appropriate guidelines; and

(iv) Deposit all waste material such as drill spoils and cuttings, construction debris, silt, excess dirt, excess gravel, or overburden resulting from this project in an upland location so that it does not enter waters of the state.

(c) Check drilling equipment daily for leaks and maintain it in good repair to prevent lubricants, grease, and any other deleterious materials from entering state waters.

NEW SECTION

WAC 220-660-460 Informal appeal of administrative actions. An informal appeal is an appeal to the department pursuant to chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for an informal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal under WAC 220-660-470.

This rule does not apply to any provisions in pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

(3) Any person with legal standing may request an informal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

(5) A request for informal appeal must be:

(a) Mailed to the:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
600 Capitol Way N.
Olympia, Washington 98501-1091;

(b) E-mail: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, e-mail address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) The log number or a copy of the HPA, or a copy of the order imposing civil penalties;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, e-mail address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-660-470. Formal review must be requested within the time periods specified in WAC 220-660-470.

NEW SECTION

WAC 220-660-470 Formal appeal of administrative actions. A formal appeal is an appeal to the pollution control hearings board pursuant to chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by the issuance, denial, provisioning, or modification of an HPA contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution of the problem without the need for a formal appeal.

(2) The department encourages aggrieved persons to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, the informal appeal process is not mandatory, and a person may proceed directly to a formal appeal.

This rule does not apply to any provisions in pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

(3) Any person with standing may request a formal appeal of the following department actions:

(a) The issuance, denial, provisioning, or modification of an HPA; or

(b) An order imposing civil penalties.

(4) As required by the Administrative Procedure Act, chapter 34.05 RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the pollution control hearings board (PCHB) and served on the department within thirty days from the date of receipt of the decision or order. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. The date of actual receipt; however, may not exceed forty-five days from the date of mailing.

(6) The request must be plainly labeled as "Request for Formal Appeal" and, pursuant to WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, e-mail address (if available), and phone number; and if represented by another, the representative's name, mailing address, e-mail address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date the department issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties;

(d) A copy of the order or permit you are appealing, and if appealing a permit decision, a copy of the permit application;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be:

(a) Mailed to:

HPA Appeals Coordinator
Department of Fish and Wildlife
Habitat Program
600 Capitol Way N.
Olympia, Washington 98501-1091;

(b) E-mail: HPAapplications@dfw.wa.gov;

(c) Fax: 360-902-2946; or

(d) Hand-delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the PCHB. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal to the PCHB, the appellant may apply to the PCHB for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

NEW SECTION

WAC 220-660-480 Compliance with HPA provisions. (1) **Technical assistance program:** Pursuant to chapter 43.05 RCW, the department will develop programs to encourage voluntary compliance with HPA provisions by providing technical assistance consistent with chapter 43.05 RCW. The programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods for the delivery of technical assistance. In addition, provisions of chapter 43.05 RCW require the department to provide, upon request, a list of organizations, including private companies, that provide technical assistance. This list must be compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(a) Technical assistance is defined in chapter 43.05 RCW as including:

(i) Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;

(ii) Information on methods to avoid compliance problems;

(iii) Assistance in applying for permits; and

(iv) Information on the mission, goals, and objectives of the program.

(b) "Technical assistance documents" means documents prepared to provide information specified in (a) of this subsection that is labeled a technical assistance document by the department. Technical assistance documents do not include notices of correction, violation, or enforcement action. Tech-

nical assistance documents do not impose mandatory obligations or serve as the basis for a citation.

(2) **Technical assistance visit:**

(a) Pursuant to RCW 43.05.030, a technical assistance visit is defined as a visit by the department to a project site or other location that:

(i) Has been requested or is voluntarily accepted; and

(ii) The department declares to be a technical assistance visit at the start of the visit.

(b) Notice of violation. During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a notice of violation to inform the person of any violations of law or department rules identified by the department as follows:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the project must achieve compliance;

(iv) Notice of the means to obtain any technical assistance services provided by the department or others; and

(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.

(c) A notice of violation is not a formal enforcement action and is not subject to appeal.

(3) **Notice of correction:**

(a) Procedures for correction of violations. If during any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that do not comply with applicable laws and rules enforced by the department and are not subject to penalties as provided for in subsection (4) of this section, the department may issue a notice of correction to the responsible party that must include:

(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;

(ii) A statement of what is required to achieve compliance;

(iii) The date by which the department requires compliance to be achieved;

(iv) Notice of the means to contact any technical assistance services provided by the department or others; and

(v) Notice of when, where, and to who in the department a person may file a request to extend the time to achieve compliance for good cause.

(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.

(c) If the department issues a notice of correction, it must not issue a civil penalty for the violations identified in the notice of correction unless the responsible party fails to comply with the notice.

(4) **Civil penalties:**

(a) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55 RCW or this chapter. The department must impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penal-

ized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation.

(b) The department may issue a civil penalty without first issuing a notice of correction, as provided in RCW 43.05.110 if:

(i) The person has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice of the same or similar type of HPA violation;

(ii) Compliance is not achieved by the date set by the department in a previously issued notice of correction, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date;

(iii) The violation has a probability of placing a person in danger of death or bodily harm, has a probability of causing more than minor environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or

(iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

(c) Appeal of a civil penalty. If a civil penalty order is not appealed in a timely manner under WAC 220-660-460 or 220-660-470, the civil penalty order is final and nonappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable.

(d) Payment of a civil penalty. The penalty imposed is due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty is due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and 34.05.578.

(e) Unpaid civil penalty. If the amount of any penalty is not paid within thirty days after it is due and payable, the attorney general, upon the request of the director, must bring an action in the name of the state of Washington in the superior court of Thurston County or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence must be the same as an ordinary civil action. All penalties recovered under this section must be paid into the state's general fund.

(f) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.

(5) **Time for compliance:** The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction under subsection (3) or (4) of this section may request an extension of time for good cause to achieve compliance. The person must request an extension from the department in writing and follow the procedures

specified by the department in the notice. The department must respond in writing within ten calendar days.

(6) **Criminal penalty:** Under RCW 77.15.300, it is a gross misdemeanor to construct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or to violate any requirements or conditions of the HPA for such construction or work.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-110-010	Purpose.
WAC 220-110-020	Definitions.
WAC 220-110-030	Hydraulic project approvals—Procedures.
WAC 220-110-031	Pamphlet hydraulic project approvals—Procedures.
WAC 220-110-032	Modification of technical provisions.
WAC 220-110-035	Miscellaneous hydraulic projects—Permit requirements and exemptions.
WAC 220-110-040	Freshwater technical provisions.
WAC 220-110-050	Bank protection.
WAC 220-110-060	Construction of freshwater docks, piers, and floats and the driving or removal of piling.
WAC 220-110-070	Water crossing structures.
WAC 220-110-080	Channel change/realignment.
WAC 220-110-085	Integration of hydraulic project approvals and forest practices applications.
WAC 220-110-100	Conduit crossing.
WAC 220-110-120	Temporary bypass culvert, flume, or channel.
WAC 220-110-130	Dredging in freshwater areas.
WAC 220-110-140	Gravel removal.
WAC 220-110-150	Large woody material removal or repositioning.
WAC 220-110-160	Felling and yarding of timber.
WAC 220-110-170	Outfall structures.
WAC 220-110-180	Pond construction.
WAC 220-110-190	Water diversions.
WAC 220-110-200	Mineral prospecting.
WAC 220-110-201	Mineral prospecting without timing restrictions.
WAC 220-110-202	Mineral prospecting with timing restrictions.

- WAC 220-110-206 Authorized work times and mineral prospecting equipment restrictions by specific state waters for mineral prospecting and placer mining projects.
- WAC 220-110-223 Freshwater lake bulkheads.
- WAC 220-110-224 Freshwater boat hoists, ramps, and launches.
- WAC 220-110-230 Saltwater technical provisions.
- WAC 220-110-240 Tidal reference areas.
- WAC 220-110-250 Saltwater habitats of special concern.
- WAC 220-110-270 Common saltwater technical provisions.
- WAC 220-110-271 Prohibited work times in saltwater areas.
- WAC 220-110-280 Bulkheads and bank protection in saltwater areas (nonsingle family residence).
- WAC 220-110-285 Single-family residence bulkheads in saltwater areas.
- WAC 220-110-290 Saltwater boat ramps and launches.
- WAC 220-110-300 Saltwater piers, pilings, docks, floats, rafts, ramps, boathouses, houseboats, and associated moorings.
- WAC 220-110-310 Utility lines.
- WAC 220-110-320 Dredging in saltwater areas.
- WAC 220-110-330 Marinas in saltwater areas.
- WAC 220-110-331 Aquatic plant removal and control technical provisions.
- WAC 220-110-332 Hand removal or control.
- WAC 220-110-333 Bottom barriers or screens.
- WAC 220-110-334 Weed rolling.
- WAC 220-110-335 Mechanical harvesting and cutting.
- WAC 220-110-336 Rotovation.
- WAC 220-110-337 Aquatic plant dredging.
- WAC 220-110-338 Water level manipulation.
- WAC 220-110-340 Informal appeal of administrative actions.
- WAC 220-110-350 Formal appeal of administrative actions.
- WAC 220-110-360 Penalties.

WSR 15-02-033**PERMANENT RULES****STATE BOARD FOR COMMUNITY
AND TECHNICAL COLLEGES**

[Filed December 30, 2014, 11:47 a.m., effective January 30, 2015]

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

Purpose: Office location update.

Citation of Existing Rules Affected by this Order:
Amending WAC 131-276-030.

Statutory Authority for Adoption: RCW 28B.50.400.

Adopted under notice filed as WSR 14-14-084 on June 30, 2014.

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

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

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

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

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

Date Adopted: December 30, 2014.

Beth Gordon
Executive Assistant
and Rules CoordinatorAMENDATORY SECTION (Amending WSR 98-22-062, filed 11/2/98, effective 12/3/98)**WAC 131-276-030 Description of organization of the state board for community and technical colleges.** The state board for community and technical colleges is a state agency organized under RCW 28B.50.050. The administrative office of the board and its staff are located at (~~the WEA Building, 319 East 7th Avenue~~) 1300 Quince Street S.E., Olympia, Washington.**WSR 15-02-034****PERMANENT RULES****DEPARTMENT OF HEALTH**

(Board of Nursing Home Administrators)

[Filed December 30, 2014, 3:55 p.m., effective January 30, 2015]

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

Purpose: WAC 246-843-231 Temporary practice permits (nursing home administrators). The board of nursing home administrators adopted amended rules to update requirements for issuance of a temporary practice permit to (1) applicants seeking nursing home administrator (NHA) licensure for interim placement only at a specific facility, and (2) to create a new category of temporary practice permit for applicants of permanent NHA licensure who have met all license requirements but are waiting for completion of a fingerprint-based criminal background check. The amended rules are needed to respond to possible licensing delays caused by national background checks that affect the public's access to health care.

Citation of Existing Rules Affected by this Order:
Amending WAC 246-843-231.

Statutory Authority for Adoption: RCW 18.52.061, 18.130.064, and 18.130.075.

Adopted under notice filed as WSR 14-21-069 on October 10, 2014.

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

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

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

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

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

Date Adopted: December 5, 2014.

Harry Aubert, Chair
Board of Nursing
Home Administrators

AMENDATORY SECTION (Amending WSR 00-01-072, filed 12/13/99, effective 1/13/00)

WAC 246-843-231 Temporary practice permits. ~~((+) A temporary practice permit may be issued for a period up to six months. A temporary practice permit holder is not eligible for a subsequent permit. A temporary practice permit shall be valid only for the specific nursing home for which it is issued and shall terminate upon the permit holder's departure from the nursing home, unless otherwise approved by the board. An applicant shall meet the following criteria:~~

~~(a) Submit temporary permit fee and application form approved by the secretary for initial credential;~~

~~(b) Submit verification from each state in which currently licensed that applicant is currently licensed and in good standing as a nursing home administrator in that state;~~

~~(c) Have a written agreement for consultation with a Washington state licensed nursing home administrator.~~

~~(2) Subsection (1)(b) of this section does not apply if the applicant is an administrator of a religious care facility acting under a limited license described in RCW 18.52.071.)~~ (1)

Temporary practice permit for applicants seeking licensure for interim placement at specific facilities.

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

(i) Holds an unrestricted active license in another state;

(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board:

(ii) A temporary permit holder shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

(i) The permit holder departs from the nursing home, unless otherwise approved by the board;

(ii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant must:

(i) Submit fees and a completed application for the permit;

(ii) Submit verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator; and

(iii) Submit a written agreement for consultation with a Washington state licensed nursing home administrator.

(2) Temporary practice permit for applicants seeking permanent licensure.

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards to those in Washington;

(ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

(i) The department of health issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for license;

(ii) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or

(iii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant must:

(i) Submit fees and a completed application for licensure as a nursing home administrator;

(ii) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check;

(iii) Provide verification of having an active unrestricted license as a nursing home administrator from another state that has substantially equivalent licensing standards in Washington; and

(iv) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

WSR 15-02-041
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Community Services Division)

[Filed January 2, 2015, 10:13 a.m., effective February 2, 2015]

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

Purpose: The department is amending the following WACs to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-412-0015 General information about your food assistance allotments, 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits?, 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?, 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASHCAP benefits?, 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food?, and 388-470-0005 How do resources affect my eligibility for cash assistance and Basic Food?

This WAC amendment was initiated under the filing of CR-103E WSR 14-20-103 that was effective September 30, 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 388-412-0015, 388-450-0185, 388-450-0190, 388-450-0195, 388-478-0060, and 388-470-0005.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120.

Other Authority:

- Support the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), per supplemental nutrition assistance program (SNAP) Administrative Notice 14-48: SNAP - Fiscal Year (FY) 2015 Cost-of-Living Adjustments dated August 4, 2014.
- Update Basic Food standards for federal FY 2015.
- Update the Basic Food standard utility allowance (SUA) and limited utility allowance (LUA) used when deter-

mining Basic Food benefits, to implement SNAP 10-6-WA-SUA dated July 24, 2014.

- Update the Basic Food resource limit adjustments for federal FY 2015 in accordance with USDA FNS, SNAP Administrative Notice 14-56 - FY 2015 resource limit adjustments.

Adopted under notice filed as WSR 14-22-077 on November 3, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: December 30, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-412-0015 General information about your food assistance allotments. (1) Your monthly allotment under the Washington Basic Food program, food assistance program for legal immigrants (FAP), Washington combined application project (WASHCAP), or the transitional food assistance (TFA) programs is the total dollar value of benefits your assistance unit (AU) receives for a calendar month.

(2) How we determine monthly allotments:

(a) We calculate your monthly allotment for federally funded Basic Food as described under WAC 388-450-0162;

(b) We calculate your monthly allotment for state-funded food assistance as described under WAC 388-400-0050.

(3) Maximum allotment:

(a) The maximum allotment for the number of people in your AU eligible for federally funded Basic Food benefits is described under WAC 388-478-0060.

(b) The maximum allotment for the number of people in your AU eligible for state-funded FAP benefits is set by the legislature in the biennial operating budget as described in WAC 388-400-0050.

(4) Prorated benefits in the first month - If we determine you are eligible for food assistance, your first month's benefits are calculated from the date you applied through the end of the month of your application. This is called proration and is based on a thirty-day month.

(a) If your prorated benefits for the first month are under ten dollars, you will not receive an allotment for the first month.

(b) If there was a delay in processing your application, we determine when your benefits start under WAC 388-406-0055.

(5) **Combined allotment for first and second month's benefits** - If you apply for benefits on or after the sixteenth of the month, and we determine you are eligible for food assistance, we issue both the first and second months benefits in one allotment if you are eligible for both months.

(6) **Minimum allotment** - Unless it is the first month of your certification period and your benefits are prorated as described in subsection (4) of this section, your monthly allotment will be at least:

(a) ~~((Fifteen))~~ Sixteen dollars if your AU has one or two members, and at least one person is eligible for federally funded Basic Food.

(b) ~~((Eleven))~~ Twelve dollars if your AU has one or two members, and all members of your AU are eligible for state-funded FAP.

(7) **Use of food assistance benefits** - Your food assistance benefits may only be used to buy eligible food items as described under WAC 388-412-0046. If you use your benefits in any other way, it is an intentional program violation under WAC 388-446-0015 and could result in fines, imprisonment, disqualification from receiving food assistance benefits, or any combination of these penalties.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$(152)) <u>155</u>
2	\$(152)) <u>155</u>
3	\$(152)) <u>155</u>
4	\$(163)) <u>165</u>
5	\$(191)) <u>193</u>
6 or more	\$(219)) <u>221</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

(a) Keep work, look for work, or accept work;

(b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

(a) Monthly rent, lease, and mortgage payments;

(b) Property taxes;

(c) Homeowner's association or condo fees;

(d) Homeowner's insurance for the building only;

(e) Utility allowance your AU is eligible for under WAC 388-450-0195;

(f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;

(g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

(i) AU intends to return to the home;

(ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and

(iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (4) from your AU's gross income. The result is your AU's countable income.

(3) Finally, we subtract one-half of your AU's countable income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred ~~((seventy-eight))~~ ninety dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred ~~((seventy-eight))~~ ninety dollars.

AMENDATORY SECTION (Amending WSR 14-04-050, filed 1/27/14, effective 2/27/14)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE (~~(1-1-2013)~~) 10/1/2014

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$(1,245) <u>1,265</u>	\$(958) <u>973</u>	\$(189) <u>194</u>	\$(1,580) <u>1,605</u>
2	((1,681)) <u>1,705</u>	((1,293)) <u>1,311</u>	((347)) <u>357</u>	((2,133)) <u>2,163</u>
3	((2,116)) <u>2,144</u>	((1,628)) <u>1,650</u>	((497)) <u>511</u>	((2,686)) <u>2,722</u>
4	((2,552)) <u>2,584</u>	((1,963)) <u>1,988</u>	((632)) <u>649</u>	((3,239)) <u>3,280</u>
5	((2,987)) <u>3,024</u>	((2,298)) <u>2,326</u>	((750)) <u>771</u>	((3,794)) <u>3,838</u>
6	((3,423)) <u>3,464</u>	((2,633)) <u>2,665</u>	((900)) <u>925</u>	((4,344)) <u>4,396</u>
7	((3,858)) <u>3,904</u>	((2,968)) <u>3,003</u>	((995)) <u>1,022</u>	((4,897)) <u>4,955</u>
8	((4,294)) <u>4,344</u>	((3,303)) <u>3,341</u>	((1,137)) <u>1,169</u>	((5,450)) <u>5,513</u>
9	((4,730)) <u>4,784</u>	((3,638)) <u>3,680</u>	((1,279)) <u>1,315</u>	((6,003)) <u>6,072</u>
10	((5,166)) <u>5,224</u>	((3,973)) <u>4,019</u>	((1,421)) <u>1,461</u>	((6,556)) <u>6,631</u>
Each Additional Member	+((436)) <u>440</u>	+((335)) <u>339</u>	+((142)) <u>146</u>	+((553)) <u>559</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

AMENDATORY SECTION (Amending WSR 14-12-085, filed 6/3/14, effective 7/4/14)

WAC 388-450-0195 Does the department use my utility costs when calculating my Basic Food or WASH-CAP benefits? (1) The department uses utility allowances

instead of the actual utility costs your assistance unit (AU) pays when we determine your:

(a) Monthly benefits under WAC 388-492-0070 if you receive WASHCAP; or

(b) Shelter cost income deduction under WAC 388-450-0190 for Basic Food.

(2) For Basic Food, "utilities" include the following:

(a) Heating or cooling fuel;

(b) Electricity or gas;

(c) Water (~~and sewer~~);

(d) Sewer;

~~(e) Well ((or septic tank)) installation/maintenance;~~

~~((e)) (f) Septic tank installation/maintenance;~~

~~(g) Garbage/trash collection; and~~

~~((f)) (h) Telephone service.~~

(3) We use the amounts below if you have utility costs separate from your rent or mortgage payment:

(a) If your AU has heating or cooling costs **or** receives more than twenty dollars in Low Income Home Energy Assistance Act (LIHEAA) benefits each year, you get a standard utility allowance (SUA) of four hundred (~~nine~~) fifteen dollars.

(b) If your AU does not qualify for the SUA and you have any two utility costs listed in subsection (2) of this section, you get a limited utility allowance (LUA) of three hundred thirty six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of sixty-five dollars.

~~((4) If your AU receives Basic Food on March 9, 2014, you receive the SUA through October 2014 regardless of your household's utility expenses unless you have a lapse in your Basic Food benefits.))~~

AMENDATORY SECTION (Amending WSR 13-18-005, filed 8/22/13, effective 10/1/13)

WAC 388-470-0005 How do resources affect my eligibility for cash assistance and Basic Food? (1) The following definitions apply to this chapter:

(a) **"We"** means the department of social and health services.

(b) **"You"** means a person applying for or getting benefits from the department.

(c) **"Fair market value (FMV)"** means the price at which you could reasonably sell the resource.

(d) **"Equity value"** means the FMV minus any amount you owe on the resource.

(e) **"Community property"** means a resource in the name of the husband, wife, or both.

(f) **"Separate property"** means a resource of a married person that one of the spouses:

(i) Had possession of and paid for before they were married;

(ii) Acquired and paid for entirely out of income from separate property; or

(iii) Received as a gift or inheritance.

(2) We count a resource to decide if your assistance unit (AU) is eligible for cash assistance or Basic Food when:

(a) It is a resource we must count under WAC 388-470-0045 and 388-470-0055;

(b) You own the resource. We consider you to own a resource if:

(i) Your name is on the title to the property; or

(ii) You have property that doesn't have a title; and

(c) You have control over the resource, which means the resource is actually available to you; and

(d) You could legally sell the resource or convert it into cash within twenty days.

(3) For cash assistance, you must try to make your resources available even if it will take you more than twenty days to do so, unless:

(a) There is a legal barrier; or

(b) You must petition the court to release part or all of a resource.

(4) When you apply for assistance, we count your resources as of:

(a) The date of your interview, if you are required to have an interview; or

(b) The date of your application, if you are not required to have an interview.

(5) If your total countable resources are over the resource limit in subsection (6) through (13) of this section, you are not eligible for benefits.

(6) For cash assistance, we use the equity value as the value of your resources.

(a) Applicants can have countable resources up to one thousand dollars.

(b) Recipients of cash assistance can have an additional three thousand dollars in a savings account.

(7) If your AU is categorically eligible (CE) as described in WAC 388-414-0001, you do not have a resource limit for Basic Food.

(8) If your AU is not CE under WAC 388-414-0001, your AU may have countable resources up to the following amount and be eligible for Basic Food:

(a) Three thousand two hundred fifty dollars if your AU has either an elderly or disabled individual; or

(b) Two thousand two hundred fifty dollars for all other AUs.

(9) If you own a countable resource with someone who is not in your AU, we count the portion of the resource that you own. If we cannot determine how much of the resource is yours:

(a) For cash assistance, we count an equal portion of the resource that belongs to each person who owns it.

(b) For Basic Food, we count the entire amount unless you can prove that the entire amount is not available to you.

(10) We assume that you have control of community property and you can legally sell the property or convert it to cash unless you can show that you do not.

(11) We may not consider an item to be separate property if you used both separate and community funds to buy or improve it.

(12) We do not count the resources of victims of family violence when:

(a) The resource is owned jointly with members of the former household; or

(b) Availability of the resource depends on an agreement of the joint owner; or

(c) Making the resource available would place the client at risk of harm.

(13) You may give us proof about a resource anytime, including when we ask for it or if you disagree with a decision we made, about:

(a) Who owns a resource;

(b) Who has legal control of the resource;

(c) The value of a resource;

(d) The availability of a resource; or

(e) The portion of a property you or another person owns.

WSR 15-02-051

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed January 5, 2015, 10:50 a.m., effective February 5, 2015]

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

Purpose: The department is changing the hours during which the unemployment claims centers will accept incom-

ing telephone calls into the live agent phone queue from 8:00 a.m. until 5:00 p.m. to 8:00 a.m. until 4:00 p.m. The deadline for filing weekly unemployment claims is changed to 4:00 p.m. Friday. There is no change in the hours during which individuals may file internet initial applications for benefits. WAC 192-140-005 is further amended to require claimants filing via paper to provide all requested information before the claim is accepted. In addition, the amended rule allows the agency to assist a claimant with filing a weekly claim without requiring the claimant to disclose his or her personal identification number. The goal of these changes is to improve customer service and reduce agency costs.

Citation of Existing Rules Affected by this Order: Amending WAC 192-110-005 and 192-140-005.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 14-21-181 on October 22, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

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

Date Adopted: December 31, 2014.

Dale Peinecke
Commissioner

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-110-005 Applying for unemployment benefits—General. (1) **How do I apply for benefits?**

(a) You may apply for benefits by:

(i) Calling the unemployment claims ~~((telecenter))~~ center listed in your local telephone directory; or

(ii) Using the department's internet web site. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.

(b) If you have a physical or sensory disability, or are in unusual circumstances that make((s)) filing by telephone or internet difficult, the commissioner may authorize other methods of applying for benefits.

(2) **When can I apply?**

(a) You may apply by telephone ~~((at any time between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Time) Monday through Friday))~~ (excluding state holidays) during the days and hours designated by the department, even if you are

working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.

(b) You may apply on the internet at any time.

(3) **When is my claim effective?** Your claim is effective on the Sunday of the week in which you file it.

(4) **What information am I required to provide?** The minimum information needed to process your application is your:

(a) Legal name; and

(b) Social Security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past two years. Other information may be requested in individual circumstances.

(5) **Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks.

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

WAC 192-140-005 Filing weekly claims for benefits.

(1) **How do I file my weekly claim for benefits?** You may file your claim ~~((by calling))~~ using the department's automated systems. The term "automated systems" includes the department's unemployment information and weekly claims telephone line((, using)) or the department's internet web site((, or filing)). You may also file a paper claim. At the agency's discretion, you may be allowed to file a weekly claim with the assistance of a claims center representative.

(2) **When do I file my claim?** You must file a claim for every week for which you want to be paid or have counted as your waiting week. Every week begins at 12:01 a.m. on Sunday and ends at midnight on Saturday. You must file your claim *after* the end of the week(s) you are claiming.

(a) File your telephone or internet claim after 12:01 a.m. Sunday, but before ~~((5:00))~~ 4:00 p.m. on Friday, following the week you are claiming. (In case of a legal holiday, file your claim before ~~((5:00))~~ 4:00 p.m. on the last working day of the week.)

(b) If you file by paper, file your claim anytime Sunday through Saturday following the week you are claiming. If you file by mail, your claim is considered filed on the postmarked date. If you file by fax, your claim is considered filed on the date of receipt.

(3) **How often do I file my claim?** File your claim weekly. The department may approve other filing schedules in cases of emergency or in unusual circumstances.

(4) **What happens if I miss a week?** If you do not claim a week, you must reopen your claim. See WAC 192-110-050.

(a) If you have not yet received your first payment, you may claim benefits for one week prior to the week in which you contact the ~~((telecenter))~~ claims center to reopen your claim.

(b) If you have received your first payment and not more than four consecutive weeks have elapsed since you last filed a claim, you may claim benefits for any of the four weeks

prior to the week in which you contacted the ~~((telecenter))~~ claims center to reopen your claim.

(c) Except as described in (a) and (b) of this subsection, we will consider unclaimed weeks late. The department will not pay you for these weeks unless you show good cause for not contacting the ~~((telecenter))~~ claims center earlier to reopen your claim.

(5) **What information do I have to report?** Your claim must include:

(a) The Saturday date of the week you are claiming;

(b) Answers to the questions~~((~~

~~((i) The telecenter)), the claims center cannot process a claim ((filed by telephone or internet)) unless all questions are answered;~~

~~((ii) The department will process a claim filed in writing if at least one question is answered and other information required by this subsection (5) is provided, but your eligibility for benefits will be in question and you will be asked to provide complete information, which could result in a denial of benefits;))~~

(c) Your personal identification number if filing by ~~((telephone or internet, or))~~ automated system, your signature if you filed ~~((your claim))~~ in writing or your verbal authorization if you filed with the assistance of a claims center representative;

(d) The amount and source of any pension you are receiving for the week claimed;

(e) Any holiday earnings received during the week claimed;

(f) Any vacation pay received during the week claimed, including the dates for which payment was received, if applicable; and

(g) Any earnings and the number of hours you worked during the week claimed.

(6) **What happens if I don't provide this information?** The department cannot process a ~~((telephone or internet))~~ claim filed via automated system that does not meet the requirements of subsection (5) of this section and you will receive instructions to contact the ~~((unemployment))~~ claims center. A written claim that does not meet these requirements is incomplete and the department will return it to you with a request for additional information.

WSR 15-02-056

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed January 5, 2015, 3:04 p.m., effective February 5, 2015]

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

Purpose: The proposed rule change will update TAKE CHARGE program eligibility criteria to comply with changes in state and federal law.

Citation of Existing Rules Affected by this Order: Amending WAC 182-532-720.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: The Patient Protection and Affordable Care Act, Public Law 111-148.

Adopted under notice filed as WSR 14-17-113 on August 19, 2014.

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

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

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

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

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

Date Adopted: January 5, 2015.

Jason R. P. Crabbe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-008, filed 7/25/13, effective 9/1/13)

WAC 182-532-720 TAKE CHARGE program—Eligibility. (1) The TAKE CHARGE program is for men and women. To be eligible for the TAKE CHARGE program, an applicant must:

(a) Be a United States citizen, U.S. National, or "qualified alien" as described in WAC 182-503-0530, and give proof of citizenship or qualified alien status and identity upon request from the medicaid agency;

(b) Provide a valid Social Security number (SSN);

(c) Be a resident of the state of Washington as described in WAC ~~((388-468-0005))~~ 182-503-0520;

(d) Have an income at or below two hundred ~~((fifty))~~ sixty percent of the federal poverty level as described in WAC 182-505-0100;

(e) Need family planning services;

(f) Have applied for categorically needy coverage, unless the applicant:

(i) Is a domestic violence victim who is covered under the alleged perpetrator's health insurance;

(ii) Is under eighteen years of age and is seeking confidential services; or

(iii) Has an income between one hundred fifty percent and two hundred sixty percent (inclusive) of the federal poverty level.

(g) Apply voluntarily for family planning services with a TAKE CHARGE provider; and

~~((g))~~ (h) Not be covered currently through another ((medical assistance)) Washington apple health program for family planning. If categorically needy coverage is approved for a TAKE CHARGE recipient, the individual will be enrolled in the categorically needy program.

(2) ~~((A client))~~ An applicant who is pregnant or sterilized is not eligible for TAKE CHARGE.

(3) An applicant who has concurrent coverage under a creditable health insurance policy as defined in WAC 182-12-109 is not eligible for TAKE CHARGE unless the applicant is seeking confidential services and is either under nineteen years old or is a domestic violence victim who is covered under the perpetrator's insurance.

(4) A client is authorized for TAKE CHARGE coverage for one year from the date the medicaid agency determines eligibility. Upon reapplication for TAKE CHARGE by the client, the medicaid agency may renew the coverage for an additional period of up to one year, or for the duration of the waiver, whichever is shorter.

WSR 15-02-060
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 6, 2015, 9:36 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose:

- Amend language to reflect 2011 agreement negotiated with the industry that allows professional and semi-professional sports teams to report coaches in Classification 6706 (athletic teams, equipment, premises) in the off season.
- Repeal Classification 7102 (NFL teams) because no employer has reported in 7102 for years.
- Amend language to include distinctions for classifying spas and eliminate the need for the current internal advisement.
- Amend language consolidating reforestation industry subclassifications with very low reporting to reduce the administrative burden on employers and department staff. The reporting in these subclassifications is too minimal for gathering data and comparing hazards.
- Amend language to clarify the verbiage in classifications describing farming operations to make them easier for customers and staff to understand and apply.

Citation of Existing Rules Affected by this Order: Amending WAC 296-17A-1007 Classification 1007, 296-17A-4802 Classification 4802, 296-17A-4803 Classification 4803, 296-17A-4804 Classification 4804, 296-17A-4805 Classification 4805, 296-17A-4806 Classification 4806, 296-17A-4808 Classification 4808, 296-17A-4809 Classification 4809, 296-17A-4810 Classification 4810, 296-17A-4811 Classification 4811, 296-17A-4812 Classification 4812, 296-17A-4813 Classification 4813, 296-17A-5004 Classification 5004, 296-17A-5006 Classification 5006, 296-17A-6109 Classification 6109, 296-17A-6204 Classification 6204, 296-17A-6501 Classification 6501, 296-17A-6706 Classification 6706, 296-17A-6707 Classification 6707, 296-17A-6809 Classification 6809, 296-17A-7301 Classification 7301, 296-17A-7302 Classification 7302 and 296-17A-7307 Classification 7307; and repealing WAC 296-17A-7102 Classification 7102.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 14-15-115 on July 22, 2015.

Changes Other than Editing from Proposed to Adopted Version: The proposed title of subclassification 6204-04, "Exercise facilities, gyms, fitness and martial arts centers, N.O.C." has been changed back to the current title "Exercise or health institutes, gymnasiums, health clubs."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 23, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 23, Repealed 1.

Date Adopted: January 6, 2015.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 10-18-024, filed 8/24/10, effective 10/1/10)

WAC 296-17A-1007 Classification 1007.

1007-08 Geophysical exploration, N.O.C.

Applies to contractors engaged in geophysical exploration, with no core drilling, and without seismic detection, who are not covered by another classification (N.O.C.). The more common methods of geophysical exploration are gravitational, electric and magnetic. In the gravitational method, delicate pendulums and torsion balances capable of detecting differences in the gravitational pull of the earth at various places enable the geologist to tell where oil is likely to be found. There are two electrical methods, resistivity and inductive. In the resistivity method, measurements are taken on an ohmmeter, which indicate the resistivity of the subsurface. The inductive method is somewhat comparable, but instead of determining the resistivity of the subsurface formations, the conductivity is measured enabling the geologist to determine the character of the subsurface being studied. The magnetic method is accomplished by means of a highly developed form of magnetic dipping needle with a telescope magnifier. The magnetic attraction exerted by magnetic rocks and formations causes the needle to deflect from its horizontal plane, thereby enabling a geologist to develop contour maps with lines of equal magnetic attraction. This classification includes prospectors who may specialize in particular instrumentation such as electrical, gravity, magnetic or seismic. The prospector studies structure of subsurface rock formations to locate petroleum deposits; conducts research

using geophysical instruments such as seismograph, gravimeter, torsion balance, and magnetometer, pendulum devices, and electrical resistivity apparatus to measure characteristics of the earth; computes variations in physical forces existing at different locations and interprets data to reveal subsurface structures likely to contain petroleum deposits; and determines desirable locations for drilling operations. This classification includes prospecting for mineral ores and the testing of soil for percolation when performed by employees of an employer subject to this classification.

This classification excludes core drilling and seismic geophysical exploration which are to be reported separately in classification 0103, and geophysical crews employed by oil companies who are to be reported in the classification applicable to the business.

Special note: When assigning classifications 1007-08, 4901-16 - Geologists, and 0103-10 - Seismic geophysical exploration, care must be taken to look beyond the word "geologist" to determine the actual nature of the activities being performed.

1007-09 Testing and inspecting of pipelines or utility lines using radiographic, video, infrared thermography or X-ray analysis process by contractor at industrial plants or construction sites

Applies to establishments engaged in the testing or inspecting of pipelines, utility lines or conduits for others, provided the testing or inspecting is not performed in conjunction with the construction of the pipeline. This classification includes testing or inspecting involving radiographic, video, infrared thermography or X-ray analysis processes such as the X raying of containers, inspecting of utility lines, and the drawing of oil samples on-site when performed by employees of an employer subject to this classification. Classification 1007-09 is assigned primarily to field activities.

This classification excludes testing or inspecting done in conjunction with construction which is to be reported separately in the appropriate construction classification.

1007-15 Inspection and grading bureaus, N.O.C.; log scaling and grading bureaus; lumber inspection services; weigh scale attendants, N.O.C.; weather stations; rainmaking - No aircraft; air flow/heat balancing and testing

Applies to establishments operating as *inspection and grading bureaus*, not covered by another classification (N.O.C.), including, but not limited to, those involved in inspecting and grading commodities such as logs, lumber, shingles, shakes, poles, and railroad ties. The commodity is examined and stamped with a grademark which indicates the grade, species, producer's name or number and other pertinent data. A certificate of inspection may be issued in lieu of a grademark. The purpose of the inspection is to grade, tally, and stamp only those products which meet certain required specifications and to cull those products which do not meet the established standards. *Log scaling and grading bureaus* measure the logs, and by applying log rule formulas, determine the net yield, usually expressed in board feet. A scale ticket containing descriptive data is attached to the end of the log. This classification also applies to *weigh scale attendants* not covered by another classification (N.O.C.), when the service is available to the general public, otherwise the weigh

scale attendants are to be included in the basic classification of the business. This classification includes establishments engaged exclusively in such services as auto emission control testing, air flow balancing and testing, the balancing and testing of heating, ventilating and air conditioning systems, hydrostatic testing of such objects as boilers, tanks, pipes and fittings using compressed air or water pressure to detect leaks, the strength testing of building material such as, but not limited to, asphalt, concrete and steel; and the testing or inspecting of steel weldments. This classification also includes *weather stations* which observe and record weather conditions for use in forecasting, and which read weather instruments, including thermometers, barometers, and hygrometers to ascertain elements such as temperature, barometric pressure, humidity, wind velocity, and precipitation. Weather data is transmitted and received also from other stations. A fully automated (computerized) weather station can be reported under classification 4904. This classification also covers rainmaking without the use of aircraft.

1007-16 Foresters (to be assigned only by reforestation underwriter)

~~((Applies to foresters engaged in forest management. Foresters may plan and direct forestation or reforestation projects, map forest areas, estimate standing timber and future growth, or manage timber sales. Foresters also may plan cutting programs to assure continuous production of timber, and determine methods of cutting and removing timber with a minimum of waste and environmental damage. They may plan and design forest fire suppression and fire prevention programs, plan and design construction of fire towers, trails, roads and fire breaks and may also plan and design projects for control of floods, soil erosion, tree diseases, and insect pests in forests. Foresters may specialize in one aspect of forest management.~~

~~This classification excludes manual labor or direct supervision of manual labor.~~

~~1007-18 Foresters and timber cruisers - Scientific tree, forestry, and watershed studies (to be assigned only by reforestation underwriter)~~

~~Applies to establishments engaged in scientific tree studies for others. Scientific tree studies are research oriented; random sample plots are measured and data such as the size of trees, species, disease and insect or animal damage, and seedling mortality, are recorded. Plots are maintained where each tree is tagged, its genealogy recorded, and growth statistics entered. A scion (a detached living shoot or twig) may be grafted onto a root stock and detailed records maintained of its genealogy and growth. Other data, such as fertilizers used, also may be maintained. These test plots are sometimes referred to as progeny plots or progeny studies. This classification includes scientific studies of watersheds or watershed restoration which involves the evaluation of slopes, road systems, streams and the entire ecosystem (an ecological community with its physical environment, regarded as a unit). This classification also includes precommercial thinning layouts or pruning inspections to determine if an area is ready for thinning or pruning.~~

This classification excludes manual labor or direct supervision of manual labor.) **Applies to:**

Foresters engaged in forest management.

Work in this classification includes, but is not limited to:

- Plan and direct forestation or reforestation projects;
- Map forest areas;
- Estimate standing timber, future growth, or manage timber sales;
- Plan cutting programs to assure continuous production of timber;
- Determine methods of cutting and removing timber with minimum of waste and environmental damage;
- Plan and design forest fire suppression and fire prevention programs;
- Plan and design construction of fire towers, trails, roads, and fire breaks;
- Design projects for control of floods, soil erosion, tree diseases, and insect pests;
- Perform tree auditing;
- Perform scientific, tree, forestry, and watershed studies for others; and
- Inspect precommercial thinning layouts or pruning operations.

What activities are not included in this classification?

- Tree auditing services while planting is in process (report in classification 5004); and
- Performing manual labor or direct supervision of manual laborers.

1007-19 Timber cruisers (to be assigned only by reforestation underwriter)

((Applies to timber cruisers engaged in cruising timber land to estimate the volume and quality of a timber stand through an on-site visual inspection. A timber cruiser collects data concerning forest conditions for appraisal, sales, administration, logging, land use, and forest management planning. A forest area is traversed on foot in an established pattern and sampling techniques applied. The height and diameter of each tree in a test site is recorded as are defects such as rot and bends, to estimate the useable wood in each tree. From the data collected a summary report is prepared giving the timber types, sizes, condition and outstanding features of an area, such as existing roads, streams, and communication facilities. Trees may be marked with spray paint to denote trail, boundary, or for cutting.

This classification excludes manual labor or direct supervision of manual labor.

1007-20 Foresters and timber cruisers—Tree auditing (to be assigned only by reforestation underwriter)

Applies to establishments engaged in tree auditing for others. This service is generally associated with new plantations and is the process of evaluating the quality and the rate of planting of new trees, as well as surveying newly planted sites on a periodic schedule to determine the survival rate.

This classification excludes tree auditing services when planting is in process, which is to be reported separately in classification 5004.

This classification excludes manual labor or direct supervision of manual labor.) **Applies to:**

Timber cruisers engaged in cruising timber land to estimate the volume and quality of a timber stand through an on-site visual inspection.

Work in this classification includes, but is not limited to:

- Collecting data concerning forest conditions for appraisal, sales, administration, logging, land use, and forest management planning;
- Traversing forest area on foot in an established pattern and applying sampling technique;
- Recording in a test site the height and diameter of each tree and defects such as rot and bends, to estimate the useable wood in each tree;
- Preparing from data collected a summary report giving the timber types, sizes, condition and outstanding features of an area, such as existing roads, streams and communication facilities; and
- Marking trees with spray paint to denote trails and boundaries, or for cutting.

What activities are not included in this classification?

- Performing manual labor or direct supervision of manual laborers.

1007-21 Environmental and ecological surveyor services, N.O.C.

Applies to establishments engaged in providing environmental and ecological surveying services not covered by another classification (N.O.C.) for others. Environmental or ecological surveying firms typically serve as consultants to industrial or commercial enterprises, governmental agencies or private citizens. Environmental engineer is a term applied to engineering personnel who apply knowledge of chemical, civil, mechanical, or other engineering disciplines to preserve the quality of life by correcting and improving various areas of environmental concern, such as air, soil, or water pollution. Services include identifying and projecting potential environmental impact resulting from proposed projects, assessing the source, severity and extent of environmental damage resulting from human or natural causes, and recommending solutions to protect or regain the natural balance between organisms and their environment. Activities of environmental surveying/consulting establishments include, but are not limited to, locating archaeological sites for preservation, researching and collecting field data on birds and insects, preparing impact statement for landowners and developers, stream and fish monitoring, botanical surveys, wetland surveys, soil and groundwater testing for contamination, air monitoring including industrial hygiene services, monitoring and testing at hazardous waste sites, providing advice on pollution control at its source, and developing a plan for cleaning up already recognized problems such as waste disposal sites, radon or asbestos contamination. Other services provided may include helping clients develop a system for complying with various governmental regulations. This classification includes employees of the environmental surveying service who conduct field work as well as those who are assigned to act as project managers or project superintendents to oversee the work of remediation contractors.

This classification excludes all types of remediation work which is to be reported separately in the classification applicable to the type of remediation work being performed, and surveyors employed by construction companies or other types of businesses who are to be reported separately in the applicable classifications.

Special note: When assigning classifications 1007 or 4901, care must be taken to look beyond the words "consulting" or "engineering" to determine the actual nature of the activities being performed.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5004 Classification 5004.

~~((This classification applies to establishments engaged in forestry and timberland management services. It applies to employees of contractors or of land owners. This classification includes all field crew supervisors and foremen assigned to oversee work covered by this classification including internal quality control audits regardless of whether their assigned duties include manual labor. Classification 5004, and related classification 1007 and 5006, cover various activities associated with the management of forests, range or timberland. These classifications have also been assigned to establishments engaged in erosion control projects and fish and wildlife habitat enhancement projects. *The industry covered by this series of classifications has special reporting requirements.* Reforestation establishments assigned to classifications 1007, 5004, and 5006 report work on a contract basis. These contracts may last a quarter or several quarters. Refer to WAC 296-17-35203(4) for specific reporting requirements. Classification 1007 applies to technical services such as identifying volume and species of trees in a section of timberland or a forest, auditing parcels planted by a tree planting contractor for quality control purposes, conducting environmental studies, testing growing techniques and similar activities. Classification 5004 covers various forms of work conducted in the forest or timberland generally associated with the overall care of these lands. Classification 5004 is used to report manual crew labor. Classification 5006 covers machinery operations on these lands such as clearing, slashing, hydro seeding, chemical spraying and forest firefighting. It will be common in the case of a forest fire to have employees reporting in both classification 5004 and 5006 for forest firefighting since some employees will operate bulldozers, loaders and tanker trucks while others will use chain saws and shovels. In some cases establishments subject to classification 5004 will use multiple subclassification codes on a single contract and premium report.~~

~~This classification excludes forestry related machine work used in connection with trail construction, slash burning, fire watch/patrol and forest firefighting, slashing, pile burning, roadside brushing, roadway dust/mud control which is to be reported separately in classification 5006 "forestry related machine work"; logging operations which are to be reported separately in classification 5001; logging road construction which is to be reported separately in classification 6902; and technical survey work which is to be reported separately in classification 1007.~~

5004-04 Animal damage control

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry and timberland services. Use of this classification is limited to services related to animal damage control such as placing salt blocks and hay for wildlife. This is done to provide food and nutritional supplements to forest wildlife as an alternative and preventative measure to reduce destruction to newly planted seedlings (trees) caused by feeding animals.~~

5004-05 Beaver trapping

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to trapping mountain beaver. This is done to prevent damage to trees caused by mountain beaver when feeding and building nests for rearing their young.~~

5004-06 Chemical spraying

Fertilizing services

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to chemical spraying. This is done to kill competing vegetation growing around young seedlings (chemical conifer release) and keep the brush on roadsides down.~~

~~This classification excludes manual conifer release which is to be reported separately in classification 5004-14.~~

5004-07 Cone picking

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to services related to cone picking which is done to obtain seed for new trees. Cone picking may occur on the ground or in the trees. All forms of cone picking are included within the scope of this classification.~~

5004-09 Hydro seeding services

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to hydro seeding abandoned roads and roadsides which is done primarily for erosion control and habitat development. This classification also includes manual labor associated with erosion control or habitat development projects.~~

5004-11 Pruning services

~~(to be assigned only by the reforestation underwriter)~~

~~Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to pruning lower tree branches. This is being done on an experimental basis on certain plots to aid in the production of clear wood (knot free) for future plywood and furniture demands.~~

5004-12 Tree netting services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to placing netting or paper sleeves over new tree growth to discourage animals from eating the growth. This is also referred to as bud capping.

5004-13 Tree planting services

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to planting trees in a forest (reforestation) or in privately owned timbered land. This is done to re-establish a tree population after logging or a fire.

5004-14 Tree thinning services including forest trail construction and brush clearing, N.O.C.

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in the removal of unmarketable trees with a chain saw, machete, or pruning loppers, brush clearing, manual tree slashing and constructing walking paths or trails. This is done to reduce competition of the remaining trees for water and nutrients, eliminate fire hazard and provide trails for management and recreational use. This classification includes manual conifer release.

This classification excludes chemical conifer release which is to be reported separately in classification 5004-06.

5004-18 Miscellaneous forestry services, N.O.C.

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry and timberland services not covered by another classification (N.O.C.). This classification is for miscellaneous manual labor on forest or timberland such as, but not limited to, manual forest firefighting.)

(to be assigned only by the reforestation underwriter)

Special note: Classification 5004, and related classifications 1007 and 5006, cover various activities associated with the management of forests, range, or timber land. These classifications are also assigned to establishments engaged in erosion control projects and fish and wildlife habitat enhancement projects. The industry covered by this series of classifications has special reporting requirements. Reforestation establishments assigned to classifications 1007, 5004, and 5006 report work on a contract basis. These contracts may last a quarter or several quarters. Refer to WAC 296-17-35203(4) for specific reporting requirements.

Applies to:

- Establishments engaged in forestry and timber land management services.
- Work conducted in the forest or timber land generally associated with the overall care of these lands.

Work in this classification includes:

- Employees of contractors and of land owners;
- Manual crew labor; and
- All field crew supervisors and foremen assigned to oversee work covered by this classification, including inter-

nal quality control audits, regardless of whether their assigned duties include manual labor.

What activities are not included in this classification?

- Machinery operations on these lands such as clearing, slashing, hydro seeding, chemical spraying, and forest firefighting (report in classification 5006);
- Forestry related machine work used in connection with trail construction, slash burning, fire watch/patrol and forest firefighting, slashing, pile burning, roadside brushing, roadway dust/mud control (report in classification 5006);
- Logging operations (report in classification 5001);
- Logging road construction (report in classification 6902);
- Identifying volume and species of trees in a section of timber land or a forest (report in classification 1007);
- Auditing parcels planted by a tree planting contractor for quality control purposes (report in classification 1007);
- Conducting environmental studies (report in classification 1007); and
- Testing growing techniques and similar activities (report in classification 1007).

For administrative purposes classification 5004 is divided into the following subclassifications:

5004-13 Tree planting services

This subclassification is limited to planting trees in a forest (reforestation) or in privately owned timbered land. This is done to reestablish a tree population after logging or a fire.

5004-14 Tree thinning services including forest trail construction and brush clearing, N.O.C.

This subclassification is limited to employees of an employer engaged in:

- The removal of unmarketable trees with a chain saw, machete, or pruning loppers;
- Brush clearing;
- Manual tree slashing; and
- Constructing walking paths or trails.

These activities are done to reduce competition of the remaining trees for water and nutrients, to eliminate fire hazard and to provide trails for management and recreational use.

This subclassification includes manual conifer release and pruning services. This classification excludes chemical conifer release (report in classification 5004-18 if using a backpack method, or 5006-08 if using a truck).

5004-18 Miscellaneous forestry services, N.O.C.

This subclassification is for miscellaneous manual labor on forest or timber land such as, but not limited to:

- Manual forest firefighting;
- Animal damage control;
- Beaver trapping;
- Chemical spraying;
- Fertilizer services;
- Cone picking;
- Hydro seeding;
- Stream restoration;
- Habitat development;
- Tree netting.

This classification excludes manual conifer release (report in classification 5004-14).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-5006 Classification 5006.

((This classification applies to establishments engaged in forestry and timberland management services. It applies to employees of contractors and of landowners. Classification 5006 and related classifications 1007 and 5004 cover various activities associated with the management of forests, range and timberland. These classifications have also been assigned to establishments engaged in erosion control projects and fish and wildlife habitat enhancement projects. *The industry covered by this series of classifications has special reporting requirements.* Establishments assigned to classifications 1007, 5004 and 5006 report work on a contract basis. These contracts may span a quarter or several quarters. Refer to WAC 296-17-35203(4) for specific reporting requirements. Classification 1007 applies to technical services such as identifying volume and species of trees in a section of timberland or a forest, auditing parcels planted by a tree planting contractor for quality control purposes, conducting environmental studies, testing growing techniques and similar activities. Classification 5004 covers various forms of work conducted in the forest or timberland generally associated with the overall care of these lands. Classification 5004 is used to report manual crew labor. Classification 5006 covers machinery operations on these lands such as, but not limited to, clearing, slashing, hydro seeding, chemical spraying and forest firefighting. It will be common in the case of a forest fire to have employees reporting in both classification 5004 and 5006 for forest firefighting since some employees will operate bulldozers, loaders and tanker trucks while others will use chain saws and shovels. In some cases establishments subject to classification 5006 will use multiple subclassification codes on a single contract and premium report.

5006-00 Forestry machine work—Brush clearing and chemical spraying

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in brush clearing using specialized tractors and chemical spraying.

5006-01 Forestry machine work—Dust control

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in spraying water on logging roads to reduce dust caused by log hauling trucks, logging equipment and other passenger traffic. Equipment consists of a water tanker truck equipped with a spray apparatus controlled from within the cab of the vehicle.

5006-02 Forestry machine work—Forest firefighting

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in forest firefighting using equipment

such as, but not limited to, water tanker trucks, bulldozers and loaders.

5006-03 Forestry machine work—Forest trail construction

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in forest trail construction using equipment such as, but not limited to, bulldozers and loaders.

5006-04 Forestry machine work—Scarifying

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in scarifying work using equipment such as, but not limited to, bulldozers and loaders.

5006-05 Forestry machine work—Slash burning

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in slash burning leftover vegetation and tree debris using equipment such as, but not limited to, bulldozers, loaders and water tanker trucks.

5006-06 Forestry machine work—Slash piling

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in piling leftover vegetation and tree debris (slash) using equipment such as, but not limited to, bulldozers and loaders.

5006-07 Forestry machine work—Slope grooming

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry or timberland services. Use of this classification is limited to employees of an employer subject to this classification engaged in removing vegetation and grading (leveling and smoothing) land using equipment such as, but not limited to, bulldozers and loaders.

5006-08 Miscellaneous forestry services, N.O.C.

(to be assigned only by the reforestation underwriter)

Applies to contractors and employees of landowners engaged in forestry and timberland services not covered by another classification (N.O.C.). This classification is for miscellaneous machine work on forest or timberland such as, but not limited to, hydro seeding and erosion control.))

(to be assigned only by the reforestation underwriter)

Special note: Classification 5006, and related classifications 1007 and 5004, cover various activities associated with the management of forests, range or timber land. These classifications are also assigned to establishments engaged in erosion control projects and fish and wildlife habitat enhancement projects. The industry covered by this series of classifications has special reporting requirements. Reforestation establishments assigned to classifications 1007, 5004,

and 5006 report work on a contract basis. These contracts may last a quarter or several quarters. Refer to WAC 296-17-35203(4) for specific reporting requirements.

Applies to:

• Establishments engaged in forestry and timber land management services;

• Machinery operations on these lands such as clearing, slashing, hydro seeding, chemical spraying, chemical conifer release and forest firefighting.

Work in this classification includes:

• Machinery operations;

• Employees of contractors and of land owners.

What activities are not included in this classification?

• Manual crew operations and labor such as, but not limited to, tree planting and tree thinning (report in 5004);

• Work conducted in the forest or timber land generally associated with the overall care of these lands (report in 5004);

• Logging operations (report in classification 5001);

• Logging road construction (report in classification 6902);

• Identifying volume and species of trees in a section of timber land or a forest (report in classification 1007);

• Auditing parcels planted by a tree planting contractor for quality control purposes (report in classification 1007);

• Conducting environmental studies (report in classification 1007); and

• Testing growing techniques and similar activities (report in classification 1007).

For administrative purposes classification 5006 is divided into the following subclassifications:

5006-02 Forestry machine work – Forest firefighting

This subclassification is limited to employees engaged in forest firefighting using equipment such as, but not limited to, water tanker trucks, bulldozers and loaders.

5006-08 Miscellaneous forestry services, N.O.C.

This subclassification is for miscellaneous machine work on forest or timber lands such as, but not limited to:

• Brush clearing;

• Chemical spraying;

• Dust control;

• Forest trail construction;

• Scarifying;

• Slash burning;

• Slash piling;

• Slope grooming;

• Stream restoration;

• Hydro seeding;

• Erosion control.

Equipment could include, but is not limited to, tanker trucks, bulldozers, and loaders.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6109 Classification 6109.

6109-00 Physicians, surgeons, and medical clinics, N.O.C.

Applies to establishments of licensed practitioners such as physicians and surgeons, and to medical clinics not cov-

ered by another classification (N.O.C.) engaged in the practice of general or specialized medicine and surgery. Physicians diagnose and treat a variety of diseases and injuries, order or execute various tests, analyses, and diagnostic images to provide information on a patient's condition, analyze reports and findings of tests and of examination, diagnose conditions, and administer or prescribe treatments and drugs. Physicians may also inoculate and vaccinate patients to immunize them from communicable diseases, or refer patients to a medical specialist or other practitioners for specialized treatment. They may also make house and emergency calls to attend to patients unable to visit the office. Surgeons examine patients to verify necessity of surgery, review reports of patient's general physical condition and medical history, reactions to medications, estimate possible risk to patient, and determine best operational procedure. Surgeons may specialize in a particular type of surgery. This classification includes licensed ophthalmologists who specialize in the diagnosis and treatment of diseases and injuries of the eyes, and examine patients for symptoms indicative of organic or congenital ocular disorders. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the physician's or surgeon's office or in a medical clinic, such as laboratory or X-ray technicians, and nurses.

This classification excludes psychologists and psychiatrists who are to be reported separately in classification 6109-10; optometrists who are to be reported separately in classification 6109-09; radiology and MRI referral clinics which are to be reported separately in classification 6109-17; orthotic referral clinics which are to be reported separately in classification 6109-14; and nutrition, diet, or weight loss clinics which are to be reported separately in classification 6109-12.

6109-01 Dentists and dental clinics

Applies to establishments of licensed dental practitioners and dental clinics engaged in the practice of general or specialized dentistry. Services provided by dental offices or clinics include, but are not limited to, examination of teeth and gums to determine condition, diagnosis of disease, injuries, or malformation, extractions, fillings, root canals, oral surgery, tooth replacement, cleaning, instruction on oral and dental hygiene and preventative care. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the dentist's office such as hygienists, and dental assistants or technicians.

6109-02 Chiropractors, N.O.C.

Applies to establishments of licensed practitioners not covered by another classification (N.O.C.) who are engaged in the practice of chiropractic medicine. Chiropractors diagnose and treat musculoskeletal conditions of the spinal column and extremities to prevent disease and correct abnormalities of the body believed to be caused by interference with the nervous system. They manipulate the spinal column and other extremities to adjust, align, or correct abnormalities caused by neurologic and kinetic articular dysfunction. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the chiropractor's office.

6109-04 Naturopaths, N.O.C.

Applies to establishments of health practitioners not covered by another classification (N.O.C.) who diagnose, treat, and care for patients, using a system of practice that bases treatment of physiological functions and abnormal conditions on natural laws governing the human body, relying on natural remedies such as, but not limited to, acupuncture, sunlight supplemented with diet, and naturopathic corrections and manipulations to treat the sick. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the naturopath's office.

6109-08 Physical therapists, N.O.C.

Applies to establishments of health practitioners not covered by another classification (N.O.C.) who are engaged in the practice of physical therapy, occupational therapy, respiratory therapy, or speech therapy. Therapists treat and rehabilitate people living with physical or mental disabilities or disorders, to develop or restore functions, prevent loss of physical capacities, and maintain optimum performance. Includes occupations utilizing means such as exercise, massage, heat, light, water, electricity, and specific therapeutic apparatus, usually as prescribed by a physician; or participation in medically oriented rehabilitative programs, including educational, occupational, and recreational activities. *Physical therapists* plan and administer medically prescribed physical therapy treatment for patients suffering from injuries, or muscle, nerve, joint and bone diseases, to restore function, relieve pain, and prevent disability. *Occupational therapists* plan, organize, and conduct occupational therapy programs to facilitate development and rehabilitation of ~~((the mentally, physically, or emotionally handicapped))~~ people living with mental, physical, or emotional disabilities. *Respiratory therapists* administer respiratory therapy care and life support to patients with deficiencies and abnormalities of the cardiopulmonary system, under the supervision of physicians and by prescription. *Speech therapists* specialize in diagnosis and treatment of speech and language problems, and engage in scientific study of human communication. This classification includes clerical office and sales personnel, as well as other employees engaged in therapy services and also includes travel to health facilities or other locations to administer therapy services.

6109-09 Optometrists, N.O.C.

Applies to establishments of optometrists not covered by another classification (N.O.C.). Optometrists are licensed practitioners, but do not hold a medical degree. An optometrist in general practice examines patients' eyes to determine the nature and degree of vision problems or eye diseases and prescribes corrective lenses or procedures, performs various tests to determine visual acuity and perception and to diagnose diseases and other abnormalities, such as glaucoma and color blindness. An optometrist may specialize in the type of services provided, such as contact lenses, low vision aids, or vision therapy, or in the treatment of specific groups such as children or elderly patients. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the optometrist's office.

This classification excludes optometrists employed by optical goods stores who are to be reported separately in clas-

sification 6308, and ophthalmologists who are to be reported separately in classification 6109-00.

6109-10 Psychologists and psychiatrists, N.O.C.

Applies to establishments of licensed practitioners not covered by another classification (N.O.C.) who are engaged in the diagnoses and treatment of patients with mental, emotional, or behavioral disorders. *Psychologists* are licensed practitioners who diagnose or evaluate mental and emotional disorders of individuals and administer programs of treatment. They interview patients in clinics, hospitals, prisons, and other institutions, and study medical and social case histories. *Psychiatrists* are licensed practitioners who diagnose and treat patients with mental, emotional, and behavioral disorders. They organize data obtained from the patient, relatives, and other sources, concerning the patient's family, medical history, and the onset of symptoms, and determine the nature and extent of mental disorder and formulate a treatment program utilizing a variety of psychotherapeutic methods and medications. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the doctor's office.

6109-12 Nutrition, diet, or weight loss clinics, N.O.C.

Applies to establishments engaged as nutrition, diet, or weight loss clinics not covered by another classification (N.O.C.) which provide programs whereby clients may achieve a healthy and permanent weight loss. The programs vary in approaches but most are based on the behavior modification theory, utilizing private counseling or group support meetings and seminars to educate individuals about their eating habits and proper eating patterns. Some programs may sell vitamin supplements or a line of food products to be used by their clients and may publish newsletters or other forms of literature for the benefit of their clients. This classification includes clerical office and sales personnel.

This classification excludes exercise programs which are to be reported separately in the appropriate classification.

6109-13 Childbirth classes

Applies to establishments providing childbirth education for expectant parents. Topics include, but are not limited to, expectations during pregnancy, breathing and relaxing techniques, and massage therapy. Literature and/or movies may be provided in addition to oral instruction. This classification includes clerical office and sales personnel.

6109-14 Orthotic referral clinics

Applies to establishments operating as clinics to provide care to patients with disabling conditions of the limbs and spine by fitting and preparing orthopedic braces under the direction of and in consultation with physicians. Orthotists examine and evaluate the patient's needs in relation to disease and functional loss, and assist in the design of an orthopedic brace. Orthotists select materials, make((s)) cast measurements, model modifications and layouts. When the brace is finished, they evaluate it on the patient, make adjustments to ensure correct fit, and instruct the patient in the use of the orthopedic brace. This classification also includes clinics of prosthetists who provide((s)) care to patients with partial or total absence of a limb by planning fabrication of, writing specifications for, and fitting the prosthesis under the guid-

ance of and in consultation with a physician. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the referral clinics.

This classification excludes the manufacture of orthopedic braces, splints or prostheses which is to be reported separately in the applicable classification.

6109-15 Midwife services

Applies to establishments engaged in the practice of midwifery. Midwives provide care for women undergoing medically uncomplicated pregnancy and low risk labor and delivery. The delivery may take place in a clinic setting or in the expectant mother's home. This classification includes clerical office and sales personnel.

6109-16 Licensed massage therapy, reflexology, and foot massage services

Applies to establishments of licensed practitioners who are engaged in the practice of massage therapy. Some massage therapists work in conjunction with physicians or sports teams, or at hospitals, rehabilitation facilities or convalescent homes. If a client is referred by a physician, the therapist will review the medical report and in conjunction with the client, will determine the nature of the massage (whether it is for relaxation or to correct or relieve a medical problem) and the modality to be used, such as deep-muscle work, trigger-point therapy, or joint rotation. Establishments providing reflexology and foot massage services are included in this classification. This classification includes clerical office and sales personnel as well as other employees engaged in ~~((licensed massage therapy))~~ these services.

This classification excludes massage therapists employed by a health club, gymnasium, sauna, or bath house who are to be reported separately in classification 6204; massage therapists employed by a business classified in 6501-01.

6109-17 Radiology and MRI referral clinics

Applies to establishments of licensed practitioners who are engaged in the practice of radiology and/or magnetic resonance imaging. Radiologists diagnose and treat diseases of the human body using X-ray and radioactive substances. They examine the internal structures and functions of the organ systems and make diagnoses after correlating the X-ray findings with other examinations and tests. They administer radiopaque substances by injection, orally, or as enemas, to render internal structures and organs visible on X-ray films or fluoroscopic screens. Radiologists may employ magnetic resonance imaging technologists to operate magnetic resonance imaging equipment which produces cross-sectional images (photographs) of a patient's body for diagnostic purposes. This classification includes clerical office and sales personnel, as well as other employees engaged in service in the clinics, such as nurses or technologists.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6204 Classification 6204.

~~((6204-00 Baths or saunas, N.O.C.~~

~~Applies to establishments engaged in operating baths or saunas not covered by another classification (N.O.C.). These~~

~~facilities offer a variety of services such as, but not limited to, hot tubs, saunas, steam rooms, Jacuzzis, sun tan beds and body shampoos. Massage therapy services are included in this classification when performed by employees of employers subject to this classification. This classification excludes licensed massage therapists that qualify for classification 6109.~~

~~6204-04 Exercise or health institutes, gymnasiums, health clubs~~

~~Applies to establishments engaged in operating exercise or health institutes, gymnasiums, or health clubs. These establishments accommodate a variety of exercise areas including, but not limited to, gymnasiums, swimming pools, racquetball, tennis, squash, and handball courts, jogging tracks, and weight rooms with nautilus equipment. Operations vary from location to location, but most offer facilities and services such as, but not limited to, locker rooms, showers, whirlpools, saunas, sun tanning booths, body toning equipment, aerobic, gymnastic, and martial arts classes, instruction or training in achieving physical fitness goals, nutrition counseling, towel service, child care, massages, pro shops and food and beverage services all of which are included when performed or conducted by employees of employers subject to this classification.~~

~~This classification excludes licensed massage therapists that qualify for classification 6109.))~~

Gyms, fitness centers, martial arts training, baths or saunas

Classification 6204 applies to businesses that offer activities and services for recreation, health, and fitness. Gyms typically include cardio workout machines, weight equipment, free weights, bicycle machines, and studio space for group exercise sessions and classes. These facilities may also offer additional items such as running tracks, tennis and racket ball courts, pools, tanning rooms, massage, saunas, baths, and gymnastic equipment. There may also be some retail sales and limited food and beverage services.

Businesses in this classification sometimes advertise as day spas. This classification includes day spas offering a soaking pool, bath, hot tub, sauna, or steam rooms. Businesses with these spa features may also offer aromatherapy, mud bath, body wrap, rub down, massage, or other personal beauty services.

Occupations reported in this classification may include:

Activity directors;
Personal trainers;
Instructors;
Facility managers;
Lifeguards;
Cleaning staff;
Massage therapists;
Spa attendant;
Esthetician;
Nutritional counselors;
Child care providers;
Food and beverage service workers;
Front desk staff;
Grounds keepers;
Maintenance personnel;

Scuba diving instructors providing lessons in a swimming pool, even if not employed by pool facility.

This classification excludes:

- Day spas or beauty shops which do not offer baths, soaking pools, or hot tubs that are reported separately in classification 6501.

- Massage therapy businesses that are reported separately in classification 6109.

- Golf courses that are reported separately in classification 6206.

- Clubs that offer members' fine dining, lounges, bars, conference rooms, and other services in addition to the athletic facilities, and are reported separately in classification 6205.

- Dance schools that are reported separately in classifications 6103 and 6104.

- Ski resorts that are reported separately in classification 6705.

- Scuba diving instruction not taking place in pools that is reported in classification 0202.

- Swim instructors employed by organizations that have no facility or pool that are to be reported in classification 6103.

For administrative purposes, classification 6204 is divided into the following subclassification(s):

6204-00 Baths, hot tubs, saunas, steam rooms

6204-04 Exercise or health institutes, gymnasiums, and health clubs

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6501 Classification 6501.

((6501-00 Barber shops

Applies to establishments engaged in providing barber and hair cutting services which may be performed in the shop, at the customer's home, or in hospitals. Barber services contemplated by this classification include, but are not limited to, shampooing and cutting hair, shaving or trimming mustaches or beards, and facials. Unique to this industry is the "booth renter." A booth renter performs cosmetology, barbering, or manicuring services in a shop, but is not an employee of the shop owner. They pay a fee for the use of the shop's booth and facilities. Classification 6501-00 applies to booth renters who elect optional coverage. This classification includes clerical office and sales personnel.

6501-01 Beauty parlors; sun tanning parlors

Applies to establishments engaged in providing beauty parlor or sun tanning parlor services which may be performed at the shop, at the customer's home, or in hospitals. Beauty parlor services contemplated by this classification include, but are not limited to, shampooing, cutting, styling or dyeing hair, manicures, pedicures, facials, and the use of body toning equipment. Indoor sun tanning booths may be operated as part of a beauty shop or conducted as a separate business. Unique to this industry is the "booth renter." A booth renter performs cosmetology, barbering, or manicuring services in a salon, but is not an employee of the salon owner. They pay a

fee for the use of the salon's booth and facilities. Classification 6501-01 applies to booth renters who elect optional coverage. This classification includes clerical office and sales personnel.

This classification excludes establishments engaged exclusively as nail salons which are to be reported separately in classification 6501-02.

6501-02 Cosmetologists and electrolysis studios; tattoo parlors; nail salons

Applies to establishments engaged in cosmetology and electrolysis services and to tattoo parlors or nail salons. Cosmetologists provide personalized instructions on the application of cosmetics. Some offer "permanent cosmetic" services such as, but not limited to, application of permanent eyeliner or restructuring eyebrows. Electrolysis involves the removal of facial or body hair by destroying hair roots with an electrified needle. Nail salons may specialize in the application of artificial fingernails. This classification includes clerical office and sales personnel.)

Barbers, salons, tattoo shops

Establishments in this classification offer personal grooming and beautification services for their customers. These businesses frequently advertise as a day spa but they do **not** operate baths, soaking pools, or steam rooms. Employers in this classification offer the following types of services:

- Barber:

- Beauty salon - Cosmetology:

- Hair styling;

- Hair removal, electrolysis, laser, threading, waxing;

- Manicure, pedicure;

- Esthetician services, facials, skin care, body scrubs;

- Tanning.

- Tattoo shop:

- Body art;

- Body piercing;

- Permanent cosmetics;

- Tattooing.

When a business provides multiple services listed above and also offers services such as massage or body wraps, these services are included in classification 6501. Barber and beauty services may also be performed at a customer's home or in hospitals. This classification includes all employees of the business.

Excluded from this classification are:

- Businesses providing baths, soaking pools, and hot tubs that also offer services listed in classification 6501 are assigned classification 6204.

- Massage therapy, foot massage, or reflexology businesses that are assigned classification 6109.

Note: Salons in this classification often operate by renting or leasing a booth or station to licensed individuals who are booth renters. Booth renters perform cosmetology, barbering, esthetics, or manicuring services for which a license is required under chapter 18.16 RCW. A booth renter pays a fee for the use of the shop's facility, receives no compensation from the owner, and performs services in the shop, but is not an employee of the shop owner and are exempt from coverage per RCW 51.12.020. These individuals may elect owner coverage.

For administrative purposes, classification 6501 is divided into the following subclassifications:

6501-00 Barber shops

6501-01 Beauty, tanning, and nail salons

6501-02 Tattoo, piercing shops

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6706 Classification 6706.

~~((6706-01 Athletic teams: Care of teams and equipment, operation of premises~~

~~Applies to employees of athletic teams who are engaged in the care of the team, its equipment, playing field/stadium/arena, and the operation of the premises it owns/leases to house their organization. Work contemplated by this classification includes, but is not limited to, trainers, laundry workers, janitors, stadium lighting and sound, ushers, security, parking attendants, and maintenance of a clubhouse/locker room and grounds when performed by employees of an employer subject to this classification.~~

~~This classification excludes players, coaches, managers, referees, and umpires who are to be reported separately in classifications 6707, 6809, or 7102 as applicable; management and maintenance of the stadium/arena by an owner or contractor which is to be reported separately in classification 4910; and ticket sales and ticket takers who work exclusively in an office environment, ticket sales booth or entrances and have no other duties in or about the employer's premises who may be reported separately in classification 4904.)~~ **Operations and facilities for sports teams**

Note: As used in this classification, the term "player" and "athlete" have the same meaning.

Applies to workers employed by all types of athletic teams. This classification includes employees who care for a team's athletes, their equipment, the playing field/stadium/arena, or operate facilities during games.

This classification includes the coaching staff and managers of amateur teams. However, when the only employees of an amateur sports team are coaching staff and standard exception employees, the team reports its coaching staff in classification 6103.

This classification also includes, but is not limited to:

- Trainers;
- Mascots;
- Announcers;
- Scorekeepers;
- Concessionaires;
- Laundry workers;
- Janitors;
- Stadium lighting and sound technicians;
- Ushers, security;
- Parking attendants;
- Staff who maintain clubhouse/locker room and grounds;
- Coaches and managers of professional and semiprofessional teams in the off-season only. Off-season follows the final competitive event. It begins after all athletes have left any premises used by their employer for player meetings,

training, or practices, and continues until the time any of the players are assembled together again, by their employer, in preparation for the upcoming season.

The following exposures are excluded:

- Professional and semiprofessional athletes (see classifications 6707 and 6809);
- Coaches and managers for professional and semiprofessional teams - Except in the off-season;
- Referees, umpires and other sports officials (see classifications 6707 and 6809);
- Ticket sales from office or booth with no other duties, which are reported in classification 4904;
- Businesses that own, or contract to maintain, a facility or stadium, but do not operate the facility for teams or sporting events classification 4910.

For administrative purposes, classification 6706 is divided into the following subclassification:

6706-01 Athletic teams: Operations and facilities

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6707 Classification 6707.

~~((6707-00 Football teams, N.O.C. Contact sports, N.O.C.~~

~~Applies to players, coaches, referees, and managers employed by a professional football team that is *not a member of the National Football League (NFL)* and professional wrestlers, roller derbies, and professional martial arts competitors and their managers, coaches and referees.~~

~~This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing field/stadium and care of the facility in which the team organization is housed who are to be reported separately in classification 6706, and officials of community or school amateur sporting events are to be reported separately in classification 6103.~~

~~*Special note:* Teams that are members of the NFL, including players, coaches, referees, and managers, are to be reported separately in classification 7102.~~

6707-01 Hockey teams

Applies to players, coaches, referees, and managers employed by a professional hockey team.

This classification excludes employees engaged in caring for the team and equipment, the care and operation of the arena/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events are to be reported separately in classification 6103.)

Classification 6707 professional and semiprofessional sports teams: contact sports

Applies to professional and semiprofessional athletes engaged in **contact** sports. It also includes:

- Coaches;
- Managers;
- Officials, such as referees.

It excludes:

• Employees of athletic teams who care for the team, its equipment, and operate its facilities, who are reported in classification 6706;

• Athletes, coaches, managers, and officials engaged in professional **noncontact** sports who are reported in classification 6809;

• Coaches, managers, and officials for amateur sports.

For administrative purposes, classification 6707 is separated into the following subclassifications:

6707-00 Football teams and other contact sports, N.O.C., such as wrestling, roller derbies, and the martial arts

6707-01 Hockey teams

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-6809 Classification 6809.

~~((6809-00 Baseball teams—Professional~~

~~Applies to players, umpires, coaches, and managers employed by a professional baseball team.~~

~~This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing field/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.~~

~~**6809-01 Basketball teams—Professional**~~

~~Applies to players, coaches, managers, and referees employed by a professional basketball team.~~

~~This classification excludes employees engaged in caring for the team and equipment, the care and operation of the arena/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.~~

~~**6809-02 Soccer teams—Professional**~~

~~**Noncontact sports, N.O.C.**~~

~~Applies to players, coaches, managers, and referees employed by a professional soccer team or noncontact sports teams that are not covered by another classification (N.O.C.).~~

~~This classification excludes employees engaged in caring for the team and equipment, the care and operation of the playing fields/stadium, and care of the facility in which the team organization is housed who are to be reported separately in classification 6706 and officials of community or school amateur sporting events who are to be reported separately in classification 6103.)~~

Classification 6809 professional and semiprofessional sports teams; noncontact sports

Applies to professional and semiprofessional athletes engaged in **noncontact** sports. It also includes:

• Coaches;

• Managers;

• Officials, such as referees.

It excludes:

• Employees of athletic teams who care for the team, its equipment, and operate its facilities, who are reported in classification 6706;

• Athletes, coaches, managers, and officials engaged in professional **contact** sports who are reported in classification 6707;

• Coaches, managers, and officials for amateur sports.

For administrative purposes, classification 6809 is separated into the following subclassifications:

6809-00 Professional and semiprofessional baseball teams

6809-01 Professional and semiprofessional basketball teams

6809-02 Professional and semiprofessional soccer teams and other noncontact sports, N.O.C., such as lacrosse, skiing, and curling

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-17A-7102 Classification 7102.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4802 Classification 4802.

~~((4802-02 Farms: Berry~~

~~Applies to establishments engaged in raising berries of all types. Work contemplated by this classification includes, but is not limited to, preparing soil for new plants, planting, fertilizing, weeding, pruning canes, cutting runners, installing posts and wire supports, tying vines, machine harvesting of berries, and installing or maintaining sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes roadside fruit stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately in classification 6403 provided all the conditions of the general reporting rules covering the operation of a secondary business are met.~~

~~This classification excludes fresh fruit packing operations which are to be reported separately in classification 2104; fruit cannery or freezer operations which are to be reported separately in classification 3902; winery operations which are to be reported separately in classification 3702; hand harvesting of berries which is to be reported separately in classification 4806; and any contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.~~

~~**Special note:** The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as, but not limited to, weeding, planting, irrigating, or fertilizing. Generally the work involves manual labor tasks as opposed to machine opera-~~

tions. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4802-03 Farms: Bulb-raising

Applies to establishments engaged in raising flowers and plants for bulbs. Work contemplated by this classification may take place in an open field or a greenhouse. Farming activities include, but are not limited to, preparing soil for new plants; planting, fertilizing, weeding, dead heading or cutting flowers, maintaining or installing sprinkler or irrigation systems, and machine digging and harvesting bulbs when performed by employees of an employer subject to this classification. Any subsequent grading, sorting, packing and shipping of bulbs is included within the scope of this classification as are roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes establishments engaged exclusively in the sale of fresh cut flowers and potted plants who are not involved in the cultivation of plants or flowers which are to be reported separately in classification 6404; hand picking of bulbs which is to be reported separately in classification 4806; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as, but not limited to, weeding, planting, irrigating, or fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4802-06 Picking of forest products, N.O.C.

Applies to establishments engaged exclusively in picking forest products that are not covered by another classification (N.O.C.) such as, but not limited to, holly, ferns, moss, cedar boughs, mushrooms, wild flowers, wild berries, cones, and tree bark. Work contemplated by this classification is limited to hand picking operations and is often accomplished through the aid of hand held cutting devices such as pruning shears or saws. Properties from which products are harvested from may be owned or leased. Operations not described

above are to be reported separately in the classification applicable to the work being performed.

Special note: The farm labor contractor provision, as described in the general reporting rules, is not applicable to this classification as such establishments are not engaged in a farming operation.

4802-11 Farms: Flower or vegetable seeds

Applies to establishments engaged in raising flowers, flowering plants or vegetable plants for seed. Work contemplated by this classification may take place in an open field or a greenhouse. Farming activities include, but are not limited to, preparing soil for new plants, planting, fertilizing, weeding, machine harvesting seeds, cutting fresh flowers, harvesting incidental fresh vegetables, maintaining or installing sprinkler or irrigation systems, and drying of the seed. Any subsequent grading, sorting, packing and shipping of seeds is included within the scope of this classification as is the incidental sale of fresh cut flowers or vegetables from roadside stands located at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes fresh vegetable packing operations which are to be reported separately in classification 2104; cannery or freezer operations which are to be reported separately in classification 3902; establishments engaged exclusively in the sale of fresh cut flowers and potted plants who are not involved in the cultivation of plants or flowers which are to be reported separately in classification 6404; hand gathering of seeds where no hand held cutting device is used which is to be reported separately in classification 4806; establishments engaged exclusively in the sale of fresh vegetables but are not involved in the cultivation of plants which are to be reported separately in classification 6403; and any contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4802-12 Farms: Field vegetable crops—Mechanically harvested

Applies to establishments engaged in raising field vegetable crops which are mechanically harvested. Work contemplated by this classification includes, but is not limited to,

preparing soil for new plants, planting, fertilizing, weeding, pruning, machine harvest of vegetables, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met. Typical crops include the following:

Beans, Green	Parsnips	Squash
Beets, Table	Potatoes	Tomatoes
Carrots	Radishes	Turnips
Corn, Sweet	Rhubarb	
Cucumbers	Rutabagas	

This classification excludes fresh vegetable packing operations which are to be reported separately in classification 2104; cannery or freezer operations which are to be reported separately in classification 3902; and any contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported in the classification applicable to the work being performed.

Special note: This classification differs from classification 4808 "diversified field crops" in that vegetable crops grown subject to classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the season and in smaller quantities. Although corn is technically a grain crop, it is widely accepted as a vegetable crop when harvested for fresh market as opposed to being left in the field to dry and used as feed, flour, or cereal grain. Corn grown subject to classification 4802 is for a fresh market, cannery or frozen food while the corn grown in classification 4808 is for grain, flour and feed.

The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4802-13 Farms: Flowers—Field growing Farms: Florists—cultivating or gardening

Applies to establishments engaged in raising flowers and flowering plants for sale. Work contemplated by this classification may take place in an open field or a greenhouse. Farming activities include, but are not limited to, preparing soil for new plants, planting, fertilizing, weeding, cutting fresh flow-

ers, and maintaining or installing sprinkler or irrigation systems. Any subsequent grading, sorting, packing and shipping of flowers is included within the scope of this classification as is the incidental collection of flower seed for use in future crops. This classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes establishments engaged exclusively in the sale of fresh cut flowers and potted plants who are not involved in the cultivation of plants or flowers which are to be reported separately in classification 6404 and any contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808-11 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **4802-02 Farms: Berry**

Applies to:

Establishments engaged in raising berries of all types.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning canes;
- Cutting runners;
- Installing posts and wire supports;
- Tying vines;
- Machine harvesting of berries;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

• Fresh fruit packing operations (report in classification 2104);

- Canneries or freezer operations (report in classification 3902);
- Winery operations (report in classification 3702);
- Hand harvesting of berries (report in classification 4806); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4802-03 Farms: Bulb raising

Applies to:

Establishments engaged in raising flowers and plants for bulbs.

Work in this classification includes, but is not limited to:

- Work done in an open field or a greenhouse;
- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Dead heading;
- Cutting flowers;
- Subsequent grading, sorting, packing, and shipping of bulbs;
- Maintaining or installing sprinkler or irrigation systems;
- Machine digging and harvesting bulbs.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants that are not involved in the cultivation of plants or flowers (report in classification 6404);
- Hand picking of bulbs (report in classification 4806); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4802-06 Picking of forests products, N.O.C.

Applies to:

Establishments engaged exclusively in picking forest products that are not covered by another classification (N.O.C.).

Work in this classification is limited to:

- Hand picking operations;
- Using hand-held cutting devices such as pruning shears or saws.

Typical crops:

<u>Cedar boughs</u>	<u>Moss</u>	<u>Wild flowers</u>
<u>Cones</u>	<u>Mushrooms</u>	
<u>Ferns</u>	<u>Tree bark</u>	
<u>Holly</u>	<u>Wild berries</u>	

Special note:

• The farm labor contractor provision, as described in the general reporting rules, is not applicable to this classification as such establishments are not engaged in a farming operation;

- Properties from which products are harvested from may be owned or leased; and
- Operations not described above are to be reported separately in the classification applicable to the work being performed.

4802-11 Farms: Flower or vegetable seeds

Applies to:

Establishments engaged in raising flowers, flowering plants or vegetable plants for seed.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Machine harvesting seeds;
- Drying of seeds;
- Cutting fresh flowers;
- Harvesting incidental fresh vegetables;
- Maintaining or installing sprinkler or irrigation systems;

- Subsequent grading, sorting, packing and shipping of seed.

Work may take place in an open field or a greenhouse.

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Fresh vegetable packing operations (report in classification 2104);

- Canneries or freezer operations (report in classification 3902);

- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants but not involved in the cultivation of plants or flowers (report in classification 6404);

- Hand gathering of seeds where no hand-held cutting device is used (report in classification 4806);

- Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4802-12 Farms: Field vegetable crops - Mechanically harvested

Fresh market

Applies to:

Establishments engaged in raising field vegetable crops that are mechanically harvested.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning;
- Harvesting vegetables mechanically;
- Maintaining or installing sprinkler or irrigation systems.

to:

Typical crops:

<u>Carrots</u>	<u>Radishes</u>	<u>Table beets</u>
<u>Cucumbers</u>	<u>Rhubarb</u>	<u>Tomatoes</u>
<u>Green beans</u>	<u>Rutabagas</u>	<u>Turnips</u>
<u>Parsnips</u>	<u>Squash</u>	
<u>Potatoes</u>	<u>Sweet corn</u>	

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

How is 4802-12 different from 4808 "Diversified field crops"?

- Work in 4802 is generally associated with plantings in smaller quantities that result in continuous harvests throughout the season. For example, although corn is technically a grain crop, it is widely accepted as a vegetable crop when harvested for fresh market, cannery, or frozen food.

- Work in 4808 is generally associated with vegetable crops that have a long growing season and are harvested when mature at the end of the season. These crops are left in the field to dry and are used as feed, flour, or cereal grain.

What activities are not included in this classification?

- Field vegetable crops harvested by hand (report in classification 4810);

- Fresh vegetable packing operations (report in classification 2104);

- Canneries or freezer operations (report in classification 3902); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4802-13 Farms: Flowers - Field growing

Farms: Florists - Cultivating or gardening

Applies to:

Establishments engaged in raising flowers and flowering plants for sale.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Cutting fresh flowers;
- Maintaining or installing sprinkler or irrigation systems;
- Subsequent grading, sorting, packing and shipping of flowers;
- Incidental collection of flower seeds for use in future crops.

Growing may take place in an open field or a greenhouse.

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Establishments engaged exclusively in the sale of fresh cut flowers and potted plants but not involved in the cultivation of plants or flowers (report in classification 6404); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-24-045, filed 12/1/07, effective 1/1/08)

WAC 296-17A-4803 Classification 4803.

~~(4803-02 Farms: Orchards—fruit tree crops~~

Applies to establishments engaged in operating fruit orchards of all types. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, harvesting tree fruit, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This

classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes fresh fruit packing operations which are to be reported separately in classification 2104; fruit cannery or freezer operations which are to be reported separately in classification 3902; winery operations which are to be reported separately in classification 3702; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: Prune harvesting is often accomplished by a person laying a canvas cover around the base and surrounding area of the tree. The tree is then shaken by hand causing the fruit to dislodge and fall to the canvas cover where it is picked by hand. Harvesting done by this method is subject to classification 4806 provided that the conditions set forth in classification 4806 have been met. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4803-04 Farms: Orchards—Nut tree crops

Applies to establishments engaged in operating nut producing orchards of all types. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, machine harvesting of nuts, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes the incidental sale of bulk or packaged nuts at roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes nut shelling and packaging operations which are to be reported separately in classification 3902; ground hand picking of nuts which is to be reported separately in classification 4806; and contractors hired by a farm operator to install, repair or build any farm

equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: Nut harvesting is often accomplished by a person laying a canvas cover around the base and surrounding area of the tree. The tree is then shaken by hand causing the nuts to dislodge and fall to the canvas cover where they are picked by hand. Harvesting done by this method is subject to classification 4806 provided that the conditions set forth in classification 4806 have been met. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4803-16 Farms, N.O.C.

Applies to establishments engaged in operating farms not covered by another classification (N.O.C.). Establishments in this classification include holly farms and the raising of sheep, goats, alpacas and llamas. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, pruning and otherwise maintaining trees, tending and feeding animals, raising crops for feed, erecting or mending fences, breeding animals, transporting animals to market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes the manufacturing of products made on the farm from animals on the farm such as, but not limited to bottled milk, cheese, yogurt, butter, and soap; spinning wool, woven fabrics, and craft items made from wool or fleeces. This classification also covers artificial insemination and veterinary care when performed by employees of an employer subject to this classification.

This classification excludes businesses primarily engaged in holly packing or wreath making who are to be reported separately in classification 6404 (florists), and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **4803-02 Farms: Orchards - Fruit tree crops**

Applies to:

Establishments engaged in operating fruit orchards of all types.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees;
- Planting trees;
- Fertilizing;
- Spraying;
- Fumigating;
- Weeding;
- Pruning;
- Harvesting tree fruit;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

• If the conditions in classification 4806 are met, prune harvesting done with the method of placing a canvas under the base of tree, the tree shaken by hand causing fruit to dislodge and fall to canvas, then picked up by hand, is subject to classification 4806.

What activities are not included in this classification?

• Fresh fruit packing operations (report in classification 2104);

• Canneries or freezer operations (report in classification 3902);

• Winery operations (report in classification 3702); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4803-04 Farms: Orchards - Nut tree crops

Applies to:

Establishments engaged in operating nut orchards of all types.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees;

- Planting trees;
- Fertilizing;
- Spraying;
- Fumigating;
- Weeding;
- Pruning;
- Machine harvesting of nuts;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

• If the conditions set forth in classification 4806 have been met, nut harvesting done with the method of placing a canvas under base of tree, the tree shaken by hand causing nuts to dislodge and fall to canvas, then picked up by hand, is subject to classification 4806.

What activities are not included in this classification?

• Nut shelling and packaging operations (report in classification 3902);

• Ground hand picking of nuts (report in classification 4806); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4803-16 Farms, N.O.C.**Applies to:**

Establishments operating farms not covered by another classification (N.O.C.).

Work in this classification includes, but is not limited to:

- Pruning;
- Maintaining trees;
- Tending and feeding animals;
- Raising crops for feed;
- Erecting or mending fences;
- Breeding animals;
- Transporting animals to market;

• Maintaining or installing sprinkler or irrigation systems;

• Manufacture of products made on the farm from animals on the farm. Products may include, but are not limited to, bottled milk, cheese, yogurt, butter, soap, spinning wool, woven fabrics, and craft items made from wool or fleeces;

• Artificial insemination and veterinary care when performed by employees of an employer subject to this classification.

Typical farms:

Alpacas

Llamas

Goats

Sheep

Holly farms

What activities are not included in this classification?

• Businesses primarily engaged in holly packing or wreath making (report in classification 6404); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4804 Classification 4804.**((4804-00 Farms: Poultry**

Applies to establishments engaged in operating poultry farms of all types. Poultry farms covered by this classification may be engaged in breeding and raising birds for human consumption or for sale to research laboratories or egg production farms. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, tending, feeding and watering birds, raising crops for feed, erecting or mending fences, cages and pens, breeding birds, cleaning pens and cages, transporting animals to market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification.

This classification excludes feed milling operations which are to be reported separately in classification 2101; the butchering and processing of poultry which is to be reported separately in classification 3304; and contractors hired by a farm operator to install, repair or build any farm equipment or

structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4804-03 Farms: Egg production

Applies to establishments engaged in operating egg production farms. Farms covered by this classification may also be engaged in raising brood stock for future egg production or sale to other farms. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, tending, feeding and watering birds, raising crops for feed, erecting or mending fences, cages and pens, breeding birds, cleaning pens and cages, transporting eggs to market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also includes any related packing or grading of eggs by farm employees, farm stand operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations may qualify to have those activities reported separately if the conditions as a multiple business is met.

This classification excludes feed milling operations which are to be reported separately in classification 2101; the butchering and processing of poultry which is to be reported separately in classification 3304; and contractors hired to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4804-05 Farms: Fur bearing animals

Applies to establishments engaged in raising fur bearing animals such as mink, fox and chinchilla for pelts (skins) or for sale. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, tending and breeding, feeding and killing animals, fleshing and drying skins, erecting or mending fences, erecting or maintaining kennels or cages, cleaning cages and kennels,

and veterinary care when performed by employees of an employer subject to this classification.

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to.

4804-06 Farms: Worm

Applies to establishments engaged in raising worms. Work contemplated by this classification includes, but is not limited to, the preparation of soils and soil mixes, maintaining proper soil moisture to encourage worm growth and reproduction, digging worms, sorting and packaging.

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, preparing soils, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to.

4804-07 Farms: Apiaries (bees)

Applies to establishments engaged in raising honey bees for making honey or for sale to growers or farmers who use them as pollinators or to laboratories or research centers. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, building structures to accommodate bee hives, collecting honey from hives, and growing vegetation and plants to support the production of honey or population of bees. This classification also includes the incidental processing and packaging of honey, honey comb and bees wax and the sale of honey at roadside stands located at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations may qualify to have those activities reported separately if the conditions in the multiple enterprise section of the general reporting rules are met. The raising of insects such as crickets has

also been assigned to this classification as is the collection of bees and bee hives from unrelated properties.

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to.

4804-08 Farms: Aviaries (birds)

Applies to establishments engaged in raising all varieties of birds including game birds and exotics such as, but not limited to, emu and ostrich for sale to pet dealers, other aviaries, retail customers, and laboratories or research centers. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, sheltering, tending, feeding and watering, raising crops for feed or protective covering, erecting or mending fences, cages, coops and pens, breeding birds, cleaning pens, cages and coops, transporting birds to market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also includes any store operations.

This classification excludes feed milling operations which are to be reported separately in classification 2101 and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to.

4804-09 Egg grading, candling and packing

Applies to establishments engaged in grading, candling, and packing eggs for either retail or wholesale markets. Work contemplated by this classification includes, but is not limited to, sorting, grading, washing, candling, packing eggs into cartons or crates, and transporting eggs to market. Establishments assigned to this classification are not engaged in raising poultry or operating egg production farms. This classification

includes store operations located at or near the packaging facility.

This classification excludes establishments engaged in egg breaking which are to be reported separately in classification 3902.

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.)) **4804-00 Farms: Poultry**

Applies to:

Establishments engaged in operating poultry farms of all types.

Work in this classification includes, but is not limited to:

• Breeding and raising birds for human consumption or for sale for research, laboratories or egg production farms;

• Sheltering;

• Tending;

• Feeding and watering birds;

• Raising crops for feed;

• Erecting or mending fences, cages and pens;

• Breeding birds;

• Cleaning pens and cages;

• Transporting animals to market;

• Maintaining or installing sprinkler or irrigation systems.

tems.

What activities are not included in this classification?

• Feed milling operations (report in classification 2101);

• Butchering and processing of poultry (report in classification 3304); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-03 Farms: Egg production

Applies to:

Establishments engaged in operating egg production farms.

Work in this classification includes, but is not limited to:

• Raising brood stock for future egg production or sale to other farms;

• Sheltering;

• Tending;

• Feeding and watering birds;

• Raising crops for feed;

- Erecting or mending fences, cages and pens;
- Breeding birds;
- Cleaning pens and cages;
- Related packing or grading of eggs;
- Transporting eggs to market;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

- Feed milling operations (report in classification 2101);
- Butchering and processing of poultry (report in classification 3304); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-05 Farms: Fur bearing animals**Applies to:**

Establishments engaged in raising fur bearing animals for pelts (skins) or for sale.

Work in this classification includes, but is not limited to:

- Sheltering;
- Tending;
- Breeding;
- Feeding;
- Killing animals;
- Fleshing and drying skins;
- Erecting or mending fences;
- Erecting, maintaining and cleaning kennels or cages;
- Veterinary care when performed by employees of an employer subject to this classification.

Typical animals:

Chinchilla

Mink

Fox

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as feeding animals, grooming, and cleaning kennels; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-06 Farms: Worm**Applies to:**

Establishments engaged in raising worms.

Work in this classification includes, but is not limited to:

- Preparation of soils and soil mixes;
- Maintaining proper soil moisture to encourage worm growth and reproduction;
- Digging worms;
- Sorting and packaging.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-07 Farms: Apiaries (bees)**Applies to:**

Establishments engaged in raising honey bees for making honey, or for sale to growers or farmers who use them as pollinators, or to laboratories or research centers. Also included is collection of bees and bee hives from unrelated properties, and raising of insects such as crickets.

Work in this classification includes, but is not limited to:

- Sheltering;
- Building structures to accommodate bee hives;
- Collecting honey from hives;
- Growing vegetation and plants to support the production of honey or population of bees;
- Processing and packaging of honey, honey comb and bees wax.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as collecting hives or bees, preparing soils for crops, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-08: Aviaries (birds)

Applies to:

Establishments engaged in raising and selling all varieties of birds including game birds and exotic birds.

Work in this classification includes, but is not limited to:

- Sheltering;
- Tending;
- Feeding and watering;
- Raising crops for feed or protective covering;
- Erecting or mending fences, cages, coops, and pens;
- Breeding birds;
- Cleaning pens, cages, and coops;
- Transporting birds to market;
- Maintaining or installing sprinkler or irrigation systems;
- Store operations.

Typical birds:

Game birds

Ostrich

Emu

What activities are not included in this classification?

• Feed milling operations (report in classification 2101); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning pens, weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4804-09 Egg grading, candling and packing

Applies to:

Establishments engaged in grading, candling, and packing eggs for retail or wholesale markets.

Work in this rate classification includes, but is not limited to:

• Sorting;

• Grading;

• Washing;

• Candling;

• Packing eggs into cartons or crates;

• Transporting eggs to market;

• Store operations located at or near packaging facility.

What activities are not included in this classification?

• Establishments engaged in egg breaking (report in classification 3902).

Special note:

• Establishments assigned to this classification are not engaged in raising poultry or operating egg production farms.

• The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4805 Classification 4805.

((4805-00 Nurseries, N.O.C.

Applies to establishments not covered by another classification (N.O.C.) that are engaged in the propagation and/or care of trees, shrubs, plants, and flowers pending sales to oth-

ers. Nurseries can be categorized into two general groups in that some nurseries are actively engaged in the propagation of trees, plants, and shrubs from seed, grafting or cuttings, while others simply buy stock from growers and resell to the public or to commercial customers. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, shrubs or plants, propagating trees, shrubs or plants, fertilizing, spraying, fumigating, watering and weeding plants, trees and shrubs, pruning trees and shrubs, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes incidental greenhouses which are typically maintained for the purpose of starting new plants, shrubs or trees and protecting plants from weather conditions. Greenhouses may also serve as holding areas for garden supplies, fertilizer, planting containers, and tools which are available for sale to the public. This classification also includes the incidental sale of bark, soils, decorative or crushed rock, and store operations. This classification does not apply to establishments engaged in propagating trees in connection with an orchard operation or Christmas tree farm which are to be reported separately in classification 4803 or classification 7307 as applicable, or to landscaping contractors who may raise plants, trees or shrubs to be used in connection with their own landscaping jobs who are to be reported separately in classification 0301 or 0308 as applicable.

This classification excludes establishments engaged in growing and harvesting flowers for sale to others which are to be reported separately in classification 4802 and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4805-05 Nurseries: Tree

Applies to establishments engaged in the propagation and/or care of trees for sale. Nurseries can be categorized into two general groups in that some nurseries are actively engaged in the propagation of trees from seed and grafting while others simply buy stock from growers and resell to the public or commercial customers. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, propagating trees, fertilizing, spraying, fumigating, watering, weeding, and pruning trees, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes incidental greenhouses which are typically maintained for the purpose of starting new trees and protecting them from weather conditions. Greenhouses may

also serve as holding areas for garden supplies, fertilizer, planting containers, and tools which are available for sale to the public. This classification also includes the incidental sale of beauty bark, soils, decorative or crushed rock, and store operations.

This classification excludes establishments engaged in propagating trees in connection with an orchard operation or Christmas tree farm which are to be reported separately in classification 4803 or classification 7307 as applicable; landscaping contractors who may raise trees to be used in connection with their landscaping jobs who are to be reported separately in 0301 or 0308 as applicable; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4805-06 Farms: Sod growing

Applies to establishments engaged in raising lawn sod for sale. Work contemplated by this classification includes, but is not limited to, preparing soil for new grass, planting grass seed, fertilizing, spraying, fumigating, watering, weeding, mowing grass, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. Sod farms may sell directly to the public from the farm or through landscape dealers and contractors.

This classification excludes the installation of sod at a customer's location; landscaping contractors who may raise sod to be used in connection with their landscaping jobs; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported in separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4805-07 Farms: Aquatic plants

Applies to establishments engaged in the propagation of aquatic plants for sale. Work contemplated by this classifica-

tion includes, but is not limited to, preparing aquatic tanks, fresh water ponds or salt water growing areas for new plants, care of aquatic growing beds including chemical treatments of beds to eliminate undesirable vegetation, and harvesting and packaging plants when performed by employees of an employer subject to this classification. Aquatic farms may sell plants directly to the public from the farm or through dealers and unrelated stores. This classification includes farm store operations.

This classification excludes establishments engaged in the harvesting, processing, or packaging of aquatic plants obtained from natural areas, where the husbandry of the resource is not an integral part of the operation, which are to be reported separately in classification 3304 and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4805-08 Farms: Shellfish

Applies to establishments engaged in the propagation, and harvesting, of shellfish for sale. Work contemplated by this classification includes, but is not limited to, preparing aquatic tanks or salt water growing areas for shellfish; care of aquatic growing beds including chemical treatments of beds to eliminate undesirable vegetation; and harvesting, shucking and packaging shellfish when performed by employees of an employer subject to this classification. Shellfish farms may sell directly to the public from a farm stand or store, located at or near the farm, or to dealers and unrelated stores.

This classification excludes establishments engaged in the harvesting, processing or packaging of shellfish obtained from natural areas of nonnavigable waters where the husbandry of the resource is not an integral part of the operation which are to be reported separately in classification 3304, employees working on or from a vessel, as a captain or member of that vessel's crew, who are to be insured under the federal Jones Act according to the provisions of maritime law, and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special notes: The distinction between risks assigned to this classification (4805-08) and those which are subject to the federal Jones Act is in the location of the work activity. Risks subject to classification 4805 are engaged in hand harvesting activities which includes the use of hand held tools or mechanical harvesting operations not on navigable waters, while those subject to the Jones Act are engaged in activities on a vessel while on navigable waters. The term "farm labor

contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as seeding of larvae to mother shells and planting shells to natural waters. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to.

4805-09 Christmas tree sales from U-cut or retail sales lots

Applies to establishments engaged in retail sales of Christmas trees. Work contemplated by this classification is limited to placing trees in stands or on racks for display purposes, showing trees to retail customers, cashiering, monitoring and directing traffic in the sales lot area, and loading trees into customer vehicles. Tree sales may be conducted at a farm location as in the case of a U-cut tree operation or at a seasonal sales lot.

This classification excludes all farming operations such as, but not limited to, preparation of soil for new trees, propagating and planting trees, fertilizing, spraying, fumigating, watering, weeding, pruning, and harvesting of trees, maintaining or installing sprinkler or irrigation systems which are to be reported separately in classification 7307; Christmas tree wholesalers and Christmas tree baling and packing operations which are to be reported separately in classification 7307; and contractors hired to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special notes: Establishments assigned to this classification (4805-09) should report hours in this classification *only during the fourth quarter of each year* since these sales are confined to the Christmas season. The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.)) **4805-00 Nurseries, N.O.C**

Applies to:

Establishments engaged in the propagation and/or care of trees, shrubs, and flowers pending sales to others, not covered by another classification (N.O.C).

These businesses are usually either:

- Nurseries actively engaged in the propagation of trees, plants, and shrubs from seed, grafting or cuttings; or
- Nurseries that buy stock from growers and resell to the public or to commercial customers.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees, shrubs or plants;
- Propagating trees, shrubs or plants;
- Fertilizing;
- Spraying;
- Fumigating;
- Watering;
- Weeding plants, trees and shrubs;
- Pruning trees and shrubs;
- Maintaining or installing sprinkler or irrigation systems;

- Incidental greenhouse operations which are typically maintained for the purpose of starting new plants, shrubs or trees and protecting plants from weather conditions. Greenhouses may also serve as holding areas for garden supplies, fertilizer, planting containers, and tools which are available for sale to the public;

- Incidental sale of bark, soils, decorative or crushed rock;

- Store operations.

What activities are not included in this classification?

- Establishments engaged in propagating trees in connection with an orchard operation or Christmas tree farm (report in classification 4803 or classification 7307 as applicable);

- Landscape contractors who may raise plants, trees or shrubs to be used in connection with their own landscaping jobs (report in classification 0301 or 0308 as applicable);

- Establishments engaged in growing and harvesting flowers for sale to others (report in classification 4802); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4805-05 Nurseries: Tree

Applies to:

Establishments engaged in the propagation and/or care of trees for sale.

These businesses are usually either:

- Nurseries actively engaged in the propagation of trees from seed and grafting; or

- Nurseries that buy stock from growers and resell to the public or to commercial customers.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees;

- Propagating trees;

- Fertilizing;

- Spraying;

- Fumigating;

- Watering;

- Weeding;

- Pruning;

- Maintaining or installing sprinkler or irrigation systems;

- Incidental greenhouse operations;

- Incidental sale of beauty bark, soils, decorative or crushed rock;

- Store operations.

What activities are not included in this classification?

- Establishments engaged in propagating trees in connection with an orchard operation or Christmas tree farm (report in classification 4803 or classification 7307 as applicable);

- Landscape contractors who raise trees to be used in connection with their own landscaping jobs (report in classification 0301 or 0308 as applicable); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4805-06 Farms: Sod growing

Applies to:

Establishments engaged in raising lawn sod for sale.

Work in this classification includes, but is not limited to:

- Preparing soil for new grass;

- Planting grass seed;

- Fertilizing;

- Spraying;

- Fumigating;

- Watering;

- Weeding;

- Mowing grass;

- Maintaining or installing sprinkler or irrigation systems.

Note: Sod farms may sell directly to the public from the farm or through landscape dealers and contractors.

What activities are not included in this classification?

- Installation of sod at a customer's location;

- Landscape contractors who may raise sod to be used in connection with their landscape jobs; and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4805-07 Farms: Aquatic plants**Applies to:**

Establishments engaged in the propagation of aquatic plants for sale.

Work in this classification includes, but is not limited to:

- Preparing aquatic tanks, fresh water ponds or salt water growing areas for new plants;
- Care of aquatic growing beds including chemical treatments of beds to eliminate undesirable vegetation;
- Harvesting;
- Packaging plants.

Note: Aquatic farms may sell plants directly to the public from the farm or through dealers and unrelated stores. This classification includes farm store operations.

What activities are not included in this classification?

- Establishments engaged in the harvesting, processing, or packaging of aquatic plants obtained from natural areas, where the husbandry of the resource is not an integral part of the operation (report in classification 3304); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4805-08 Farms: Shellfish**Applies to:**

Establishments engaged in the propagation and harvesting of shellfish for sale.

Work in this classification includes, but is not limited to:

- Preparing aquatic tanks or salt water growing areas for shellfish;
- Care of aquatic growing beds including chemical treatments of beds to eliminate undesirable vegetation;

- Harvesting;
- Shucking;
- Packaging shellfish.

Notes:

• Shellfish farms may sell directly to the public from a farm stand or store, located at or near the farm, or to dealers and unrelated stores.

• The distinction between risks assigned to this classification (4805-08) and those which are subject to the federal Jones Act is in the location of the work activity. Risks subject to classification 4805 are engaged in hand harvesting activities which includes the use of hand-held tools or mechanical harvesting operations not on navigable waters, while those subject to the Jones Act are engaged in activities on a vessel while on navigable waters.

What activities are not included in this classification?

• Establishments engaged in the harvesting, processing or packaging of shellfish obtained from natural areas of non-navigable waters where the husbandry of the resource is not an integral part of the operation (report in classification 3304);

• Employees working on or from a vessel, as a captain or member of that vessel's crew, who are to be insured under the federal Jones Act according to the provisions of maritime law; and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as seeding of larvae to mother shells and planting shells to natural waters; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4805-09 Christmas tree sales from U-cut or retail sales lots**Applies to:**

Establishments engaged in retail sales of Christmas trees.

Special note: Establishments assigned to 4805-09 should report hours in this classification only during the fourth quarter of each year, since these sales are confined to the Christmas season.

Work in this classification includes, but is not limited to:

- Placing trees in stands or on racks for display purposes;
- Showing trees to retail customers;
- Cashiering;
- Monitoring and directing traffic in the sales lot area;

- Loading trees into customer vehicles.

Note: Tree sales may be conducted at a farm location, as in the case of a U-cut tree operation, or at a seasonal sales lot.

What activities are not included in this classification?

• All farming operations such as, but not limited to, preparation of soil for new trees, propagating and planting trees;

- Fertilizing;
- Spraying;
- Fumigating;
- Watering;
- Weeding;
- Pruning;
- Harvesting;
- Maintaining or installing sprinkler or irrigation systems (report in classification 7307);

• Christmas tree wholesalers and Christmas tree baling and packing operations (report in classification 7307); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4806 Classification 4806.

~~((4806-01 Farms: Nuts, berries, prunes, or field flowers and bulbs - Hand harvesting~~

~~Applies to those employees of an employer who are engaged *exclusively* in hand harvesting nuts, berries, prunes, or field flowers or bulbs. This classification is limited to the harvest of crops which are picked from trees or from the ground, by hand and by a worker either sitting, kneeling, bending, stooping, or standing on the ground. This classification excludes any operation where ladders, stools, or other climbing devices are used; all operations where harvesting is accomplished or aided with hand held cutting devices or tools, and any mechanical picking or harvesting equipment including incidental workers who may or may not follow behind such machinery and collect the harvested crops by hand; the picking of wild berries or other products in forests or other lands not associated with farming operations; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.~~

~~Special note: Classification 4806 is not to be assigned to any grower as the single farming classification. Refer to classification 4802 for berry or flower and bulb raising operations and to classification 4803 for orchard operations.))~~

4806-01 Farms: Nuts, berries, prunes, or field flowers and bulbs - Hand harvesting

Applies to:

Farm employees engaged exclusively in hand harvesting nuts, berries, prunes, field flowers or bulbs.

Special note: Classification 4806 is not to be assigned to any grower as the single farming classification. Refer to clas-

sification 4802 for berry or flower and bulb raising operations, and to classification 4803 for orchard operations.

Work in this classification includes, but is not limited to:

• Harvest of crops which are picked from trees or from the ground, by hand and by a worker either sitting, kneeling, bending, stooping, or standing on the ground.

What activities are not included in this classification?

• Operations where ladders, stools, or other climbing devices are used;

• Operations where harvesting is accomplished or aided with hand-held cutting devices or tools;

• Use of mechanical picking or harvesting equipment including by incidental workers who may or may not follow behind such machinery and collect the harvested crops by hand;

• Picking of wild berries or other products in forests or other lands not associated with farming operations; and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4808 Classification 4808.

~~((4808-01 Farms: Diversified field crops~~

~~Applies to establishments engaged in growing a variety of grain, vegetable, or grass crops during a single season. Work contemplated by this classification includes, but is not limited to, preparing the soil for new crops, planting, fertilizing, weeding, harvesting, and maintaining or installing sprinkler or irrigation systems. Any subsequent grading, sorting, packing and shipping of farm products grown subject to this classification is included within the scope of this classification. This classification includes roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met. Typical crops include the following:~~

Alfalfa	Garlic	Rye
Barley	Grain	Sugar Beets
Beans, Dry	Grass Seed	Timothy
Clover	Hay	Wheat
Corn	Peas, Dry	

~~This classification excludes fresh vegetable packing operations which are to be reported separately in classification 2104; cannery or freezer operations which are to be reported separately in classification 3902; establishments engaged exclusively in the sale of fresh vegetables who are not involved in the cultivation of plants which are to be reported separately in classification 6403; and contractors~~

hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: This classification differs from classification 4802 "vegetable farm operations" in that vegetable crops grown subject to classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the season and in smaller quantities. See classification 4802-12 for additional information. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4808-02 Farms: Alfalfa, clover and grass seed

Applies to establishments engaged exclusively in raising alfalfa, clover, and grass crops for seed. Work contemplated by this classification includes, but is not limited to, preparing soil for crops, planting, fertilizing, machine harvesting, maintaining or installing sprinkler or irrigation systems, and drying of seed. Any subsequent grading, sorting, packing and shipping of seeds is included within the scope of this classification. Also included is the incidental sale of farm products from roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale.

This classification excludes establishments engaged in grading, sorting, and packaging seeds; or selling baled alfalfa or clover who are not engaged in growing operations which are to be reported separately in classification 2101; establishments engaged exclusively in grain or seed storage who are not engaged in growing operations which are to be reported separately in classification 2007; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4808-04 Farms: Hay

Applies to establishments engaged exclusively in raising hay or straw grass for sale, and includes the raising of such crops for seed. Work contemplated by this classification includes, but is not limited to, preparing soil for crops, planting, fertilizing, machine harvesting, maintaining or installing sprinkler or irrigation systems, and drying of seed. Any subsequent grading, sorting, packing and shipping of seeds is included within the scope of this classification. Also included is the incidental sale of farm products from roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale.

This classification excludes establishments engaged in grading, sorting, and packaging seeds, or selling baled hay who are not engaged in growing operations which are to be reported separately in classification 2101 and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4808-06 Farms: Cereal grain

Applies to establishments engaged in growing cereal grain crops. Work contemplated by this classification includes, but is not limited to, preparing the soil for new crops, planting, fertilizing, weeding, harvesting, and maintaining or installing sprinkler or irrigation systems. Any subsequent grading, sorting, packing and shipping of farm products grown subject to this classification is included within the scope of this classification. Also included is the incidental sale of farm products from roadside stands or operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Typical cereal grain crops include the following:

Barley	Rye
Corn	Wheat

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special notes: See classification 4802-12 for additional information relative to corn. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm

labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4808-07 Potato sorting and storage

Applies to establishments engaged in storing potatoes in storage warehouses or cellars. Work contemplated by this classification is limited to sorting the good potatoes from damaged ones or from debris such as vines or rocks, piling them into the storage area by size, and storing them until they are taken to processing or packing plants. Sorting may be done either in the field or at a storage warehouse. This classification also includes potato digging and piling when performed by employees of an employer engaged in storing potatoes but who is not engaged in growing potatoes.

This classification excludes fresh vegetable packing operations which are to be reported separately in classification 2104; cannery or freezer operations which are to be reported separately in classification 3902; potato chip manufacturing which is to be reported separately in classification 3906; establishments engaged exclusively in the sale of fresh vegetables who are not involved in the cultivation of plants which are to be reported separately in classification 6403; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

4808-08 Custom hay baling

Applies exclusively to a specialist farm labor contractor engaged in mowing, turning, and baling hay owned by others. This classification also includes the incidental loading of hay onto trucks and stacking of hay in a barn or warehouse when performed by employees of a specialist farm labor contractor engaged in mowing, turning, and baling hay for others.

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

4808-11 Custom farm services by contractor

Applies exclusively to contractors engaged in supplying and operating agricultural machinery and equipment at their customer's locations. Work contemplated by this classification involves preparing fields for crops, planting and cultivating crops, fertilizing, and harvesting operations using machinery and equipment such as, but not limited to, tractors, plows, fertilizer spreaders, combines, reapers, potato diggers, boom loaders and pickers. Contractors subject to this classification are generally not responsible for the overall care of the crops, but are merely hired to provide specified services, which involve the use of machinery and employee equipment operators. This classification also includes seasonal agricultural produce hauling from the field to a processing or storage plant when performed by employees of an employer not

engaged in the related farming operations associated with the crop being hauled.))

4808-01 Farms: Diversified field crops - Not for fresh market

Applies to:

Establishments engaged in growing a variety of grain, vegetable, or grass crops during a single season.

Work in this classification includes, but is not limited to:

• Preparing soil for new crops;

• Planting;

• Fertilizing;

• Weeding;

• Harvesting;

• Grading;

• Sorting;

• Packing;

• Shipping of farm products grown subject to this classification;

• Maintaining or installing sprinkler or irrigation systems.

Typical crops:

Alfalfa

Garlic

Rye

Barley

Grain

Sugar beets (for sugar)

Beans, dry

Grass seed

Timothy

Clover

Grass hay

Wheat

Corn (dry, silage)

Peas, dry

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

• This classification differs from classification 4802 "Vegetable farm operations" in that vegetable crops in classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the season and in smaller quantities. Crops grown in classification 4808 are generally used as feed, flour, or cereal grains, as opposed to crops grown in classification 4802, which are used for fresh market, cannery or frozen foods.

What activities are not included in this classification?

• Fresh vegetable packing (report in classification 2102);

• Canneries or freezer operations (report in classification 3902);

• Employers growing only cereal grain crops, such as barley, corn, rye, or wheat (report in subclassification 4808-06);

• Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4808-02 Farms: Alfalfa, clover, and grass seed

Applies to:

Establishments engaged exclusively in raising alfalfa, clover, and grass crops for seed.

Work in this classification includes, but is not limited to:

- Preparing soil for crops;
- Planting;
- Fertilizing;
- Machine harvesting;
- Drying of seeds;
- Grading;
- Sorting;
- Packing and shipping of seeds;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

• Grading, sorting, and packaging seeds; or selling baled alfalfa or clover by establishments not engaged in growing operations (report in classification 2101);

• Establishments engaged exclusively in grain or seed storage that are not engaged in growing operations (report in classification 2007); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of

farm they are providing services to or the type of crop involved.

4808-04 Farms: Hay

Applies to:

Establishments engaged exclusively in raising hay, which includes, but is not limited to, grass hay, straw, clover, alfalfa, and timothy.

Work in this classification includes, but is not limited to:

- Raising of hay crops for seed;
- Preparing soil for crops;
- Planting;
- Fertilizing;
- Machine harvesting;
- Grading;
- Sorting;
- Drying of seeds;
- Packing and shipping of seeds;
- Maintaining or installing sprinkler or irrigation systems.

Note:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

What activities are not included in this classification?

• Grading, sorting, and packaging seeds, or selling baled hay by establishments not engaged in growing operations (report in classification 2101); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4808-06 Farms: Cereal grains

Applies to:

Establishments engaged in growing cereal grain crops.

Work in this classification includes, but is not limited to:

- Preparing soil for new crops;
- Planting;
- Fertilizing;
- Weeding;
- Harvesting;
- Grading;
- Sorting;

- Packaging and shipping of farm products grown subject to this classification;

- Maintaining or installing sprinkler or irrigation systems.

Note:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

Typical crops:

<u>Barley</u>	<u>Rye</u>
<u>Corn</u>	<u>Wheat</u>

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4808-07 Potato sorting and storage

Applies to:

Establishments engaged in storing potatoes in storage warehouses or cellars.

Work in this classification includes, but is not limited to:

- Sorting good potatoes from damaged ones, or from debris such as vines or rocks;

- Piling potatoes into storage area by size, and storing them until they are taken to processing or packaging plants;

- Sorting done in either the field or at a storage warehouse;

- Potato digging and piling when performed by employees of an employer who stores potatoes, but who is not engaged in growing potatoes.

What activities are not included in this classification?

- Fresh vegetable packing operations (report in classification 2104);

- Canneries or freezer operations (report in classification 3902);

- Potato chip manufacturing (report in classification 3906);

- Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

4808-08 Custom hay baling

Applies:

Exclusively to a specialist farm labor contractor engaged in mowing, turning, and baling hay owned by others.

Work in this classification includes:

- Incidental loading of hay onto trucks;

- Stacking of hay in barns or warehouses.

Special note: The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

4808-11 Custom farm services by contractor

Applies:

Exclusively to contractors engaged in supplying and operating agriculture machinery and equipment at their customers' locations.

Typical equipment used:

<u>Boom loaders</u>	<u>Pickers</u>	<u>Reapers</u>
<u>Combines</u>	<u>Plows</u>	<u>Tractors</u>
<u>Fertilizer spreaders</u>	<u>Potato diggers</u>	

Work in this classification includes, but is not limited to:

- Preparing fields for crops;

- Planting;

- Cultivating crops;

- Fertilizing;

- Harvesting;

- This classification also includes seasonal agriculture produce hauling from the field to a processing or storage plant when performed by employees of an employer not engaged in the related farming operations associated with the crops being hauled.

What activities are not included in this classification?

- Contractors subject to this classification are generally not responsible for the overall care of the crops, but are merely hired to provide specified services, which involve the use of machinery and employee equipment operators;

- Hauling of agriculture produce from anywhere other than field to processing or storage plant is to be reported in classification 1102.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4809 Classification 4809.

~~((4809-01 Greenhouses, N.O.C.~~

~~Applies to establishments engaged in raising plants exclusively within greenhouses not covered by another classification (N.O.C.). Such establishments may specialize in growing only indoor, outdoor, or vegetable plants, while others will grow all types. The primary distinction between clas-~~

sification 4809 and other classifications where similar plants are grown is the exclusive use of greenhouses for the growing operations. Establishments subject to this classification will not have outdoor growing fields. All growing areas are confined to greenhouse operations. Work contemplated by this classification includes, but is not limited to, preparation of soils, planting seeds or cuttings into pots and trays, and watering and fertilizing plants. This classification includes related sales of plants and store operations.

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4809-04 Farms: Mushrooms

Applies to establishments engaged in the raising and harvesting of mushrooms for sale. Work contemplated by this classification includes, but is not limited to, preparation and sterilization of compost material, seeding composted trays, monitoring humidity and temperature controlled growing rooms, moving trays from growing rooms, harvesting mushrooms, and grading and sorting mushrooms. This classification also includes fresh packing of mushrooms for sale to others.

This classification excludes all cannery or freezer operations which are to be reported separately in classification 3902 and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported separately in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

4809-05 Farms: Sprouts

Applies to establishments engaged in the raising and harvesting of bean and alfalfa sprouts using hydroponic growing methods. Hydroponics growing is a method whereby vegetable crops are raised in trays and tanks within a temperature controlled building in a water solution containing inorganic

nutrients. Work contemplated by this classification includes, but is not limited to, preparation and cleaning of tanks and trays, preparation of water solutions, planting of seed into water solution, harvesting, and packaging of crops.

This classification excludes contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors that supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **4809-01 Greenhouses, N.O.C.**

Applies to:

Establishments engaged in raising plants exclusively within greenhouses not covered by another classification (N.O.C.).

Work in this classification includes, but is not limited to:

- Preparation of soils;
- Planting seeds or cuttings into pots and trays;
- Watering;
- Fertilizing plants;
- Related sales of plants and store operations.

Note: Some establishments may specialize in growing only indoor, outdoor or vegetable plants, while others will grow all types. The primary distinction between classification 4809 and other classifications where similar plants are grown is the exclusive use of greenhouses for the growing operations. Establishments subject to this classification will not have outdoor growing fields. All growing areas are confined to greenhouse operations.

What activities are not included in this classification?

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
 • Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
 • Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4809-04 Farms: Mushrooms**Applies to:**

Establishments engaged in the raising and harvesting of mushrooms for sale.

Work in this classification includes, but is not limited to:

- Preparation and sterilization of compost material;
- Seeding composted trays;
- Monitoring humidity and temperature controlled growing rooms;
- Moving trays from growing rooms;
- Harvesting;
- Grading and sorting;
- Fresh packing of mushrooms for sale to others.

What activities are not included in this classification?

• Canneries or freezer operations (report in classification 3902); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4809-05 Farms: Sprouts**Applies to:**

• Establishments engaged in the raising and harvesting of bean and alfalfa sprouts using hydroponic growing methods.

• Hydroponics growing is a method where vegetable crops are raised in trays and tanks within a temperature controlled building, in a water solution containing inorganic nutrients.

Work in this classification includes, but is not limited to:

- Preparation and cleaning of tanks and trays;
- Preparation of water solutions;
- Planting of seed into water solution;
- Harvesting;
- Packaging of crops.

What activities are not included in this classification?

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4810 Classification 4810.**~~((4810-00 Farms: Field vegetables and herbs, N.O.C.—hand harvesting~~**

~~Applies to establishments engaged in raising vegetables and herbs *which are harvested by hand* for sale and which are not covered by another classification (N.O.C.). Harvesting by hand could include the use of a hand-held cutting tool. Work contemplated by this classification includes, but is not limited to, preparing soil for new plants, planting, fertilizing, weeding, pruning, hand harvest of vegetables, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes the incidental sale of fresh vegetables from roadside stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately provided all the conditions of the general reporting rules covering the operation of a secondary business are met. Typical crops include the following:~~

Asparagus	Carrots	Lettuce	Rutabagas
Beans, Green	Cauliflower	Onions, Green	Spinach
Beets, Table	Celery	Parsnips	Squash
Broccoli	Corn, Sweet	Peppers	Tomatoes
Brussels Sprouts	Cucumbers	Radishes	Turnips
Cabbage	Kale	Rhubarb	

~~This classification excludes fresh vegetable packing operations which are to be reported separately in classification 2104; cannery or freezer operations which are to be reported separately in classification 3902; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.~~

~~**Special notes:** This classification differs from classification 4802 "field vegetable crops" in that vegetable crops grown subject to classification 4802 are machine harvested or harvested using a combination of machine and hand labor while vegetable crops covered in classification 4810 are harvested exclusively by hand. See classification 4802-12 for additional information. The term "farm labor contractor"~~

applies to specialty contractors that supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **4810-00 Farms: Field vegetable and herbs, N.O.C. - Hand harvesting for fresh market**

Applies to:

Establishments engaged in raising vegetables and herbs which are harvested by hand for sale and which are not covered by another classification (N.O.C.). Harvesting by hand could include the use of a hand-held cutting tool.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning;
- Hand harvest of vegetables;
- Maintaining or installing sprinkler or irrigation systems.

Typical crops:

<u>Asparagus</u>	<u>Carrots</u>	<u>Lettuce</u>	<u>Rutabagas</u>
<u>Beans, green</u>	<u>Cauliflower</u>	<u>Onions, green</u>	<u>Spinach</u>
<u>Beets, table</u>	<u>Celery</u>	<u>Parsnips</u>	<u>Squash</u>
<u>Broccoli</u>	<u>Corn, sweet</u>	<u>Peppers</u>	<u>Tomatoes</u>
<u>Brussels Sprouts</u>	<u>Cucumbers</u>	<u>Radishes</u>	<u>Turnips</u>
<u>Cabbage</u>	<u>Kale</u>	<u>Rhubarb</u>	

Notes:

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.
- This classification differs from classification 4802 "field vegetable crops" in that vegetable crops grown subject to classification 4802 are machine harvested or harvested using a combination of machine and hand labor, while vegetable crops covered in classification 4810 are harvested exclusively by hand. See classification 4802-12 for additional information.

What activities are not included in this classification?

- Fresh vegetable packing operations (report in classification 2104);
- Cannery or freezer operations (report in classification 3902); and

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4811 Classification 4811.

((4811-00 Farms: Hops

Applies to establishments engaged in raising hops for sale. Work contemplated by this classification includes, but is not limited to, preparing soil for new plants, planting, fertilizing, weeding, installing poles and wires, maintaining or installing sprinkler or irrigation systems, harvesting hops, the initial drying and baling, and all other operations incidental to the activity described above when done by employees of an employer subject to this classification. Any further processing of hops after the initial drying and baling is excluded.

This classification excludes establishments engaged in the production of hop pellets which are to be reported separately in classification 2101; establishments engaged in the manufacture of a liquid hop extract which are to be reported separately in classification 3701; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special notes: Hops is one of several ingredients used to flavor beer. Extra care should be taken when dealing with hop farms and processing plants to verify the operation and applicable classification. The term "and all other operations incidental to the activity described above" refers only to maintenance type work like mending fences, fixing or servicing kiln dryers, and working on tractors and equipment. The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of

the type of farm they are providing service to or the type of crop involved.

4811-01 Farms: Mint

Applies to establishments engaged in raising mint for sale. Work contemplated by this classification includes, but is not limited to, preparing soil for new plants, planting, fertilizing, weeding, maintaining or installing sprinkler or irrigation systems, harvesting mint, and mint distillation when performed by employees of an employer subject to this classification.

This classification excludes establishments engaged exclusively in the distillation of mint leaves to obtain a mint extract or mint oil who are not engaged in the raising of mint crops, which are to be reported separately in classification 3701, and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **4811-00 Farms: Hops**

Applies to:

Establishments engaged in raising hops for sale.

Work in this classification includes, but is not limited

to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Installing poles and wires;
- Harvesting hops;
- Initial drying and bailing;
- Maintaining or installing sprinkler or irrigation systems.

to:

What activities are not included in this classification?

• Further processing of hops after the initial drying and bailing;

• Production of hop pellets (report in classification 2101);

• Establishments engaged in the manufacture of a liquid hop extract (report in classification 3701); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

4811-01 Farms: Mint

Applies to:

Establishments engaged in raising mint for sale.

Work in this classification includes, but is not limited

to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Harvesting mint, and mint distillation when performed by employees of an employer subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

• Establishments engaged exclusively in the distillation of mint leaves to obtain a mint extract or mint oil that are not engaged in the raising of mint crops (report in classification 3701); and

• Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and

• Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

• Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and

• Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4812 Classification 4812.

((4812-00 Farms: Finfish and shellfish hatcheries

Applies to establishments engaged in hatchery operations for the raising of fin or shellfish, or their eggs. Work contemplated by this classification includes, but is not limited to, spawning of larvae, growing and testing algae (food for shellfish in larvae stage), seeding of shells in tanks, loading of seeded shells for shipment or transportation to natural

waters, spawning finfish, harvesting, and management of water flow temperature and exchange rate, and laboratory work when performed by employees of an employer subject to this classification. The term "harvest" includes the sale of seeded shells, larvae, fish eggs, and whole fish.

This classification excludes the placement of seeded shells or larvae into natural waters, harvesting of mature shellfish or the related processing and packaging of shellfish which are to be reported separately in classification 3304 or 4805 as applicable, and contractors hired by a farm operator to install, repair or build any hatchery equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: See classifications 4805 for related information. The farm labor contractor provision is not applicable to this classification.)) **4812-00 Farms: Finfish and shellfish hatcheries**

Applies to:

Establishments engaged in hatchery operations for the raising of finfish or shellfish, or their eggs.

Work in this classification includes, but is not limited to:

- Spawning of larvae;
- Growing and testing algae (food for shellfish in larvae state);

• Seeding of shells in tanks;
• Loading of seeded shells for shipment or transportation to natural waters;

- Spawning finfish;
- Harvesting;
- Management of water flow temperature and exchange rate;

• Laboratory work when performed by employees of an employer subject to this classification.

Note: The term "harvest" includes the sale of seeded shells, larvae, fish eggs, and whole fish.

What activities are not included in this classification?
• Placement of seeded shells or larvae into natural waters;

• Harvesting of mature shellfish or the related processing of packaging of shellfish (report in classification 3304 or 4805 as applicable); and

• Contractors hired by farm to install, repair or build any hatchery equipment or structures (report in the classification applicable to the work being performed).

Special note: See classification 4805 for related information. The farm labor contractor provision is not applicable to classification 4812.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-4813 Classification 4813.

((4813-00 Vineyards

Applies to establishments engaged in the planting, cultivating, pruning, and harvesting of grapes. Work contemplated by this classification includes, but is not limited to, preparing soil for new plants, planting, fertilizing, weeding, pruning vines, installing posts and wire supports, tying vines, machine or hand harvest of grapes, and maintaining or

installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification includes roadside fruit stands operated at or near the farm and farm store operations where a small stock of products not produced by the operation subject to this classification may also be offered for sale. Farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately in classification 6403 provided all the conditions of the general reporting rules covering the operation of a secondary business are met.

This classification excludes fresh fruit packing operations which are to be reported separately in classification 2104; fruit cannery or freezer operations and jam or syrup manufacturing which are to be reported separately in classification 3902; winery operations which are to be reported separately in classification 3702; and contractors hired by a farm operator to install, repair or build any farm equipment or structures who are to be reported separately in the classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors that supply laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. These farm labor contractors are to be reported in the classification that applies to the farm they are contracting with. Contractors that provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.)) **4813-00 Vineyards**

Applies to:

Establishments engaged in the planting, cultivating, pruning, and harvesting of grapes.

Work in this classification includes, but is not limited to:

- Preparing soil for new plants;
- Planting;
- Fertilizing;
- Weeding;
- Pruning vines;
- Installing posts and wire supports;
- Tying vines;
- Machine or hand harvest of grapes;
- Maintaining or installing sprinkler or irrigation systems.

Notes:

• Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

• If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.

What activities are not included in this classification?

• Fresh fruit packing operations (report in classification 2104);

- Canneries or freezer operations and jam or syrup manufacturing (report in classification 3902);
- Winery operations (report in classification 3702); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7301 Classification 7301.

((7301-00 Farms: Dairy

Applies to establishments engaged in the raising of dairy cattle for the purpose of milk production. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, tending and feeding animals, raising crops for feed, erecting or mending fences, breeding animals, milking animals, transporting animals to or from market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also covers artificial insemination and veterinary care when performed by employees of an employer subject to this classification.

This classification excludes contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301 and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as cleaning stalls or barns, weeding or planting crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.)) **7301-00 Farms: Dairy**

Applies to:

Establishments engaged in the raising of dairy cattle for the purpose of milk production.

Work in this classification includes, but is not limited to:

- Tending;
- Feeding animals;
- Raising crops for feed;
- Erecting or mending fences;
- Breeding;
- Milking;
- Transporting animals to or from market;
- Artificial insemination and veterinary care when performed by employees of employer subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Contractors hired by farm to install, repair, or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning stalls or barns, weeding or planting crops, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 12-24-067, filed 12/4/12, effective 1/4/13)

WAC 296-17A-7302 Classification 7302.

((7302-00 Farms: Livestock Animal stud service

Applies to establishments engaged in the raising of cattle, pigs, and horses for sale to others. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, tending and feeding animals, raising crops for feed, erecting or mending fences, breeding animals, transporting animals to or from market, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also covers artificial insemination and veterinary care when performed by employees of an employer subject to this classification. This classification also applies to establishments that provide animal stud services for others.

This classification excludes contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301 and

contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as cleaning stalls, grooming or earing for animals, weeding or planting crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

7302-02 Riding academies

Applies to establishments engaged as riding academies which offer services such as, but not limited to, instruction on riding horses or on the care of animals and the rental of horses. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, tending and feeding animals, training animals, cleaning stalls and barn areas, raising crops for feed, erecting or mending fences, breeding animals, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also covers artificial insemination and veterinary care when performed by employees of an employer subject to this classification.

This classification excludes contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301 and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as cleaning stalls, grooming or earing for animals, weeding or planting crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

7302-03 Boarding and/or training stables for pleasure or show horses

Applies to establishments that board and/or train pleasure or show horses for others. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, tending and feeding animals, cleaning stalls and barn areas, training animals, raising crops for feed, erecting or mending fences, and maintaining or installing sprinkler or

irrigation systems when performed by employees of an employer subject to this classification.

This classification excludes contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301 and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as cleaning stalls, grooming or earing for animals, weeding or planting crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

7302-04 Centers or trainers for race horses—Unlicensed by WHRC

Applies to establishments or individuals who train race horses for others, but who are not licensed as trainers or training centers by the Washington horse racing commission. Work contemplated by this classification is of a custodial nature that includes, but is not limited to, tending and feeding animals, cleaning stalls and barn areas, training animals, raising crops for feed, erecting or mending fences, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification.

This classification excludes individuals or centers that train nonrace horses which are to be reported separately in classification 7302-03; contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301; and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as cleaning stalls, grooming or earing for animals, weeding or planting crops, irrigating and fertilizing. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.)) **7302-00 Farms: Livestock**

Animal stud service

Applies to:

Establishments engaged in the raising of cattle, pigs, and horses for sale to others.

Work in this classification includes, but is not limited to:

- Tending;
- Feeding;
- Raising crops for feed;
- Erecting or mending fences;
- Breeding animals;
- Transporting animals to or from market;
- Artificial insemination and veterinary care when performed by employees of an employer subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning stalls, grooming or caring for animals, weeding or planting crops, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

7302-02 Riding academies

Applies to:

Establishments engaged as riding academies which offer services such as, but not limited to, instruction on riding horses, the care of animals, and the rental of horses.

Work in this classification includes, but is not limited to:

- Tending;
- Feeding animals;
- Training animals;
- Cleaning stalls and barn area;
- Raising crops for feed;
- Erecting or mending fences;
- Breeding animals;
- Artificial insemination and veterinary care when performed by employees of an employer subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services

such as cleaning stalls, grooming or caring for animals, weeding or planting crops, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

7302-03 Boarding and/or training stables for pleasure or show horses

Applies to:

Establishments that board and/or train pleasure or show horses for others.

Work in this classification includes, but is not limited to:

- Tending;
- Feeding animals;
- Cleaning stalls and barn areas;
- Training animals;
- Raising crops for feed;
- Erecting or mending fences;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning stalls, grooming or caring for animals, weeding or planting crops, irrigating and fertilizing; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

7302-04 Centers or trainers for race horses - Unlicensed by WHRC

Applies to:

Establishments or individuals who train race horses for others, but who are not licensed as trainers or training centers by the Washington horse racing commission.

Work in this classification includes, but is not limited to:

- Tending;

- Feeding animals;
- Cleaning stalls and barn areas;
- Training animals;
- Raising crops for feed;
- Erecting or mending fences;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Individuals or centers that train nonrace horses (report in classification 7302-03); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as cleaning stalls, grooming or caring for animals, weeding or planting crops, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-7307 Classification 7307.

((7307-00 Farms: Christmas tree

Applies to establishments engaged in operating Christmas tree farms. Work contemplated by this classification includes, but is not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning, harvesting, baling, packing, delivering trees, and maintaining or installing sprinkler or irrigation systems when performed by employees of an employer subject to this classification. This classification also applies to wholesale Christmas tree operations. Retail tree sales conducted at a farm location, as in the case of a U-cut tree operation, or at a seasonal sales lot away from the farm *may* be reported separately provided the conditions in classification 4805-09 have been met.

This classification excludes contractors engaged exclusively in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301 and contractors hired by a farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special notes: Establishments assigned to classification 4805-09 should report hours in this classification *only* during the fourth quarter of each year since these sales are confined to the Christmas season. Special care should be exercised

when assigning this classification as work covered by classification 5004 is similar in nature.

The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as planting trees, pruning, or harvesting. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.

7307-01 Tree farms, N.O.C.

Applies to establishments engaged in operating tree farms not covered by another classification, (N.O.C.) such as, but not limited to, cottonwood tree farms. Operations contemplated by this classification include, but are not limited to, preparing soil for new trees, planting trees, fertilizing, spraying, fumigating, weeding, pruning trees, and maintaining or installing sprinkler systems when performed by employees of an employer subject to this classification.

This classification excludes harvesting of trees which is to be reported separately in the appropriated logging classification based on the method of harvest; contractors engaged in the installation of sprinkler or irrigation systems who are to be reported separately in classification 0301; and contractors hired by a tree farm operator to build or repair fences or structures who are to be reported separately in the appropriate construction classification applicable to the work being performed.

Special note: The term "farm labor contractor" applies to specialty contractors who supply laborers to a farm operation for specified services such as planting trees, pruning, or harvesting. Generally the work involves manual labor tasks as opposed to machine operations. Farm labor contractors will be reported in the classification applicable to the farm with which they are contracting. Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "custom farm services" as the process involved in operating machinery is the same irrespective of the type of farm they are providing service to or the type of crop involved.) **7307-00 Farms: Christmas tree**

Wholesale Christmas tree operations

Applies to:

Establishments engaged in operating Christmas tree farms.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees;
- Planting trees;
- Fertilizing;
- Spraying;
- Fumigating;
- Weeding;
- Pruning;
- Harvesting;
- Baling;
- Packing;

- Delivering trees;
- Maintaining or installing sprinkler or irrigation systems.

Note: If the conditions in classification 4805-09 have been met, retail tree sales conducted at a farm location, as in the case of a U-cut tree operation, or at a seasonal sales lot away from the farm may be reported separately. Establishments assigned to classification 4805-09 should report hours in that classification only during the fourth quarter of each year since these sales are confined to the Christmas season.

What activities are not included in this classification?

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

Special note: Special care should be exercised when assigning classification 7307-00, as work covered by classification 5004 is similar in nature.

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as planting trees, pruning, or harvesting; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

7307-01 Tree farms, N.O.C.

Applies to:

Establishments engaged in operating tree farms not covered by another classification (N.O.C.), such as, but not limited to, cottonwood tree farms.

Work in this classification includes, but is not limited to:

- Preparing soil for new trees;
- Planting trees;
- Fertilizing;
- Spraying;
- Fumigating;
- Weeding;
- Pruning;
- Maintaining or installing sprinkler or irrigation systems.

What activities are not included in this classification?

- Harvesting of trees (report separately in the appropriate logging classification based on the method of harvest); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

What is a farm labor contractor?

• A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as planting trees, pruning or harvesting; and

- Generally the work involves manual labor tasks as opposed to machine operation.

What risk classification are farm labor contractors to report in?

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

WSR 15-02-061

**PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed January 6, 2015, 9:37 a.m., effective April 1, 2015]

Effective Date of Rule: April 1, 2015.

Purpose: The current mortality tables used to determine the funding needs for injured workers who are totally permanently disabled and for survivors of fatally injured workers are over thirty years old. These tables need to be updated for life expectancy and gender.

The pension discount rate is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The current pension discount rate of 6.5 percent is too high given market rates of long-term Treasury bonds, which are considered by the actuaries for establishing discount rates. The department has worked with the workers' compensation advisory committee (WCAC) to develop a plan that would reduce the pension discount rate from the current 6.5 percent to 6.4 percent and continue to adjust annually, through 2022, until it reaches 4.5 percent.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Adopted under notice filed as WSR 14-23-063 on November 18, 2014.

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

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

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

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

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

Date Adopted: January 6, 2015.

Joel Sacks
Director

NEW SECTION

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

- (i) Mortality tables from nationally recognized sources;
- (ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients; and
- (iii) A pension discount rate of 6.4 percent.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 15-02-072**PERMANENT RULES****SEATTLE COLLEGES**

[Filed January 6, 2015, 3:36 p.m., effective February 6, 2015]

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

Purpose: To change the name of the college from Seattle Community College[s] to Seattle Colleges.

Citation of Existing Rules Affected by this Order: Amending Title 132F WAC.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Other Authority: RCW 42.56.040.

Adopted under notice filed as WSR 14-14-051 on June 25, 2014.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 41, Repealed 0.

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

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

Date Adopted: January 6, 2015.

Jill Wakefield
Chancellor

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-01-010 Appointing authority. (1) The board of trustees of (~~Community~~) Seattle College District VI is the appointing authority for employees of the district, pursuant to RCW 28B.50.140. RCW 28B.10.528 provides that the board may delegate any of its powers and duties to the district president or his designee, and RCW 28B.50.140 (14) provides that the board may delegate any of its powers and duties to the district president. In District VI, the district president also carries the title of "chancellor."

(2) The board of trustees of (~~Community~~) Seattle College District VI delegates to the district president (or any acting district president or interim district president) the appointing authority for the campus presidents and the district office personnel.

(3) The president of (~~Community~~) Seattle College District VI designates, and the board of trustees delegates to the campus presidents (or any acting campus president or interim campus president) the appointing authority for their respective campuses.

(4) The chancellor or a campus president may designate another person to act as the respective appointing authority in his or her absence.

AMENDATORY SECTION (Amending Order 1970-2, filed 3/27/70)

WAC 132F-20-020 Adoption of rules. Upon adoption by the board of trustees of Seattle (~~Community College, Community~~) College District VI, these rules shall be in full force and effect.

Chapter 132F-104 WAC**SEATTLE (~~COMMUNITY~~) COLLEGE DISTRICT BOARD OF TRUSTEES—RULES AND REGULATIONS**

AMENDATORY SECTION (Amending WSR 03-16-015, filed 7/28/03, effective 8/28/03)

WAC 132F-104-010 Regular meetings of the (~~Community~~) Seattle College District VI board of trustees. The board of trustees will hold regular meetings in accordance with the Open Public Meetings Act, chapter 42.30 RCW, and other applicable law. These meetings will be held during eleven months of the year (except August) on the second Thursday, unless that day is a legal holiday, in which case the meeting will be on the next business day, or unless the date is otherwise modified by board action. The dates, times, and places for such regular meetings shall be specified by motions, resolutions, or other appropriate actions of the board, or otherwise in accordance with applicable law.

AMENDATORY SECTION (Amending WSR 94-18-070, filed 9/1/94, effective 10/2/94)

WAC 132F-108-040 Application for adjudicative proceeding. An application for an adjudicative proceeding

shall be in writing. Application forms are available at the following address:

Seattle ((Community)) College District VI
 1500 Harvard Avenue
 Seattle, Washington 98122

Written application for an adjudicative proceeding should be submitted to the above address within ((20)) twenty days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-003 Purpose. Pursuant to chapter 196, Laws of 1971 ex. sess., the board of trustees of ((Community)) Seattle College District No. 6 establishes the following rules to strengthen methods of administering employer-employee relations through the establishment of orderly methods of communication between academic employees of ((Community)) Seattle College District No. 6 and the board of trustees of ((Community)) Seattle College District No. 6.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-006 Request for election—Canvass of academic employees by independent and neutral person or association. Any organization of academic employees of ((Community)) Seattle College District No. 6 desiring to be recognized as the majority organization representing such employees pursuant to chapter 196, Laws of 1971 ex. sess., shall request in writing of the board of trustees of ((Community)) Seattle College District No. 6 that an election be held to determine whether a majority of such employees desire to designate it as their representative for the purposes of the act. Upon the receipt of such a request the board of trustees of ((Community)) Seattle College District No. 6 will request some independent and neutral person or association to determine whether thirty percent or more of the academic employees of ((Community)) Seattle College District No. 6 have indicated that they desire to be represented by that organization for such purposes. The independent and neutral person or association shall make such determination upon the basis of records of dues, paying memberships, signed authorizations to represent, or other reliable and probative evidence.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-009 Notice of election—Organizations to be included on ballot—Time for filing. If the independent and neutral person or association determines that thirty percent or more of the academic employees of ((Community)) Seattle College District No. 6 have indicated that they desire to be represented by that organization for such purposes, the board of trustees of ((Community)) Seattle College District No. 6 will publish a notice that it will hold an election as soon as practical to determine whether the academic employees of ((Community)) Seattle College District No. 6 desire the requesting organization or any other organi-

zation to represent them for the purposes of chapter 196, Laws of 1971 ex. sess. Any other organization of academic employees desiring to be designated as the majority organization representing such employees shall, within seven days after publication of such notice by the board of trustees of ((Community)) Seattle College District No. 6, file with the board of trustees a request in writing that its name be included on the ballot in the election to be held together with written proof of at least ten percent representation of the academic employees of the district. The request by this organization shall be submitted to the same neutral person or association designated pursuant to WAC 132F-112-006 who shall rule according to the criteria stated therein as to each request received pursuant to this section. No organization shall be permitted to have its name placed on the ballot used in the election unless such a request has been received within seven days after the publication of the notice that an election will be held.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-012 Contents of notice of election—Designation of chief election officer—Duties. The notice published by the board of trustees of ((Community)) Seattle College District No. 6, pursuant to WAC 132F-112-009, shall state the date, hours, and polling places for the election. The notice shall also designate a chief election officer of the election and charge him with the duty of preparing the ballots and promulgating instructions concerning the details of the election to be conducted pursuant to WAC 132F-112-003 through 132F-112-063.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-021 Ballots. The ballots used in any election held pursuant to WAC 132F-112-003 through 132F-112-063 shall be in the following form:

To select for representation purposes pursuant to chapter 196, Laws of 1971 ex. sess., a majority organization to represent academic employees of ((Community)) Seattle College District No. 6.

	Vote for one
ORGANIZATION X	<input type="checkbox"/>
ORGANIZATION Y	<input type="checkbox"/>
NO ORGANIZATION (neither)	<input type="checkbox"/>

Do not sign your name or put other identifying marks on this ballot. Should you incorrectly mark this ballot or otherwise spoil it, you may return it to the chief election officer or his inspector and obtain a new ballot.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-042 Election inspectors' duties after voting has terminated. When all voting has terminated at a polling place, the election inspectors will bring to the chief

election officer at the ((Community)) Seattle College District office the following:

- (1) Signed voting list of eligible academic employees((~~2~~));
- (2) All unused ballots((~~3~~));
- (3) All challenged ballots((~~and 4~~)); and
- (4) The sealed ballot box containing all ballots cast.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-048 Counting of ballots—Procedure—Certification of results of election—Retention of ballots—Signed voting lists. When ballot boxes from all voting places have been received by the chief election officer's inspector, he shall open them and thoroughly mix all ballots cast so that it is impossible to identify the polling place from which any particular ballot came. The ballots cast shall be separated into the categories as they have been cast for organizations participating in the election, for no organization, and void ballots which are unintelligible or for an organization not participating in the election. The ballots in these categories shall be counted by the chief election officer with the assistance of such of his election inspectors as shall be necessary in the presence of the inspectors for the organizations participating in the election. After the ballots have been so counted each inspector designated by the organizations to serve at the ((community)) Seattle College District office shall indicate by his signature upon the tally sheet that he agrees with the count made, or in case of disagreement, he shall write a short statement of his grounds for disagreement with the count. The chief election officer shall certify to the board of trustees the results of the election within forty-eight hours after the polls have been closed. The used ballots, the unused ballots, the challenged ballots, and the signed voting lists of eligible academic employees shall be kept by the chief election officer or some person designated by him for one year after the election.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-057 Persons eligible to vote—Definition of "academic employee." All academic employees of ((community)) Seattle College District No. 6 shall be eligible to vote pursuant to WAC 132F-112-003 through 132F-112-063 who are employed at the time of the election provided for by such rules and who: 1) Are employed on a full-time basis, or 2) if employed on a part-time basis, have been employed as an academic employee of the district for at least one other quarter (i.e., fall, winter, spring, or summer quarter) during either the current or the previous academic year. "Academic employee" shall mean any teacher, counselor, librarian, or department head, division head, or administrator, who is employed by ((community)) Seattle College District No. 6, with the exception of the chief administrative officer of the district.

AMENDATORY SECTION (Amending Order 3415, filed 4/27/72)

WAC 132F-112-060 Election determined by majority of valid votes cast—Runoff election. An organization of academic employees which receives a majority of the valid votes cast in an election held in accordance with WAC 132F-112-003 through 132F-112-063 shall be recognized as representing the academic employees of ((community)) Seattle College District No. 6 pursuant to chapter 196, Laws of 1971 ex. sess. If more than one organization of academic employees has participated in an election and a majority of the valid votes cast have not been either for representation by one of the organizations or for no representation, a runoff election shall be held. In such a runoff, only those two choices receiving the highest number of valid votes cast in the initial election shall appear on the ballot.

AMENDATORY SECTION (Amending Order 15, filed 4/24/74)

WAC 132F-113-010 Nepotism policy. WAC 132F-112-010 through 132F-112-040 shall be known as the ((community)) Seattle College VI nepotism policy.

AMENDATORY SECTION (Amending Order 15, filed 4/24/74)

WAC 132F-113-020 Definitions. (1) Major organizational component: The following are considered major organizational components of the Seattle ((Community)) College District.

- (a) North Seattle ((Community)) College
- (b) Seattle Central ((Community)) College
- (c) South Seattle ((Community)) College
- (d) Seattle ((Community)) College District office, including the president's office, employee relations, office for curriculum services, business services, facilities management and planning, and systems and computing services.

(2) Employee: Any individual who receives payment for services rendered to the Seattle ((Community)) College District is considered an employee of the district, except for outside vendors and contractors.

(3) Relatives: A family relationship is considered to exist between an employee *and*: Spouse, mother, father, child (including foster and adopted children), siblings, grandparents, cousins, uncles, aunts, nephews, nieces, and in-laws.

AMENDATORY SECTION (Amending Order 15, filed 4/24/74)

WAC 132F-113-040 Basic nepotism policy. In the appointment of its faculty and staff members, the Seattle ((Community)) College District seeks those persons qualified to fulfill the institution's teaching and service obligations. Accordingly, members of the same family may be appointed to district faculty and staff positions when it has been determined that they are the most qualified candidates for the position. However, according to state law a person may not be hired into a position that would result in a relationship where one individual is involved in the appointment, termination of

appointment, promotion, demotion, approval of salary increase or decrease of a member of the individual's family or of a person with whom there is substantial economic interest.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-010 Traffic rules and regulations. (1)

The motor vehicle and other traffic laws of the state of Washington shall be applicable upon all lands located within the state of Washington.

(2) The traffic code of the city of Seattle shall be applicable upon all lands located within the city of Seattle.

(3) These regulations shall be applicable to all state lands which are or may hereafter be devoted mainly to educational, public service, and other activities sponsored or endorsed by Seattle ((Community)) College District VI.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-020 Permits required for vehicles.

No person shall park or leave any vehicle, whether attended or unattended, upon any officially designated parking area of Seattle ((Community)) College District VI without a valid parking permit. No vehicle shall be parked in any parking area without a permit for that area, except state-owned vehicles used by the college.

(1) A valid permit is:

(a) An unexpired parking decal properly registered and displayed in accordance with instructions.

(b) An authorized temporary or visitor permit, displayed in accordance with the instructions on the permit.

(2) Parking permits are not transferable.

(3) The college reserves the right to refuse the issuance of a parking permit.

AMENDATORY SECTION (Amending Order 29, filed 10/10/75)

WAC 132F-116-100 Parking—Special exemptions.

(1) Consideration shall be given to provide parking for the following (on a space available basis):

(a) Members of the press, television and radio on official business.

(b) ((Vehicles)) Vehicles owned by contractors and their employees working on campus construction.

(2) Members of the college board of trustees and retired employees of the Seattle ((Community)) College District will be given complimentary annual permits.

(3) Federal, state, county, city and school district personnel on official business and in vehicles with tax exempt licenses.

AMENDATORY SECTION (Amending WSR 13-11-127, filed 5/21/13, effective 6/21/13)

WAC 132F-121-010 Definitions and general provisions. For purposes of this chapter:

(1)(a) Bullying is defined as the repeated use by one or more students of a written, verbal or electronic expression or

a physical act or gesture or any combination thereof, directed at another student or staff that:

(i) Intentionally causes physical or emotional imminent harm to the student or damage to the student's property;

(ii) Places the student in reasonable fear of harm to herself or himself or of damage to the student's property;

(iii) Creates an unlawful hostile environment at school for the student;

(iv) Infringes on the rights of the student at school; or

(v) Is conduct that is sufficiently severe or pervasive to cause material disruption to the ability of a student to participate or benefit in the education program.

(b) Cyber-bullying is defined as bullying through the use of technology or any electronic communication which shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic, or photo optical system including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include the creation of a web page or blog in which the creator posted content or messages, if the creation or impersonation creates any of the conditions constituting bullying in the student conduct code. Cyber-bullying shall also include the distribution by electronic means of a communication to more than one person or the posting of material on an electronic medium that may be accessed by one or more persons, if the distribution or posting creates any of the conditions constituting bullying in the student conduct code.

(2) The terms "college" and "campus" are used interchangeably, and each refers to any of the district's three colleges, North Seattle ((Community)) College, Seattle Central ((Community)) College, and South Seattle ((Community)) College. The Seattle Vocational Institute is considered to be part of Seattle Central ((Community)) College.

(3) "Day" means calendar day, unless specified otherwise, and deadlines shall be computed in accordance with WAC 10-08-080.

(4) "District" means the sixth state college district, the district administrative offices (Siegal Center), North Seattle ((Community)) College, Seattle Central ((Community)) College, South Seattle ((Community)) College, the Seattle Vocational Institute, and/or every other District VI educational facility, each separately and all together.

(5) "District community" includes, but is not limited to, the district itself and all enrolled students, employees, officers, and invitees of the district.

(6) "District property" includes all real property, buildings, and other facilities that are owned, leased, or controlled by the district or by the state for district purposes.

(7) "Vice-president for student services" means the person whom a college president has appointed to that position or has otherwise designated to perform the functions ascribed to that position in this chapter.

(8) An action or activity that may be authorized or taken by the district chancellor, a vice chancellor, a campus president, or a campus vice-president may also be authorized or taken by any other person whom that officer has specifically designated to perform that function on his/her behalf, but this officer retains responsibility for the function.

(9) After the adoption of these rules, if a statute or rule to which they refer is renumbered or otherwise amended, these rules shall be interpreted to the fullest extent possible to incorporate such amendment while still giving effect to their original purposes.

(10) Service of any document, notice, or copy under this chapter shall be made (a) by personal delivery, (b) by mailing to the recipient's last known address, which service shall be regarded as complete upon deposit in the U.S. mail properly stamped and addressed, or (c) as otherwise authorized by law or rule.

(11) The term "student" includes all persons taking courses at the district, either full-time or part-time. Persons who withdraw after allegedly violating the student code, who are not officially enrolled for a particular term but who have a continuing relationship with the district, or who have been notified of their acceptance for admission are considered "students" as are persons who are living in district resident halls, although not enrolled at the district.

AMENDATORY SECTION (Amending Order 12, filed 5/22/73)

WAC 132F-124-010 Financial obligations of students. Admission to or registration with the colleges of ((Community)) Seattle College District VI, conferring of degrees and issuance of academic transcripts may be withheld for failure to meet financial obligations to the college or district.

AMENDATORY SECTION (Amending Order 3, filed 9/20/72)

WAC 132F-136-010 Use of college facilities. Because the Seattle ((Community)) College is an educational institution provided and maintained by the people of the state, its campus, buildings, properties, and facilities shall be reserved at all times for those activities which either are related directly to its educational mission or are justifiable on the basis of their contributions to the cultural, social, or economic development of the state.

AMENDATORY SECTION (Amending Order 35, filed 11/21/77)

WAC 132F-136-060 Prohibited conduct at college facilities. (1) State law relative to public institutions govern the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful narcotics or drugs, not medically prescribed, on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities shall be subject to disciplinary action.

(2) A lottery or any other form of gambling is prohibited at Seattle ((Community)) College District.

(3) The use of tobacco is restricted by law and by regulations of the fire marshal to designated smoking areas.

(4) Destruction of property is also prohibited by state law in reference to public institutions.

AMENDATORY SECTION (Amending WSR 14-01-015, filed 12/6/13, effective 1/6/14)

WAC 132F-142-010 Statement of purpose. The Seattle ((Community)) Colleges are educational institutions provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the colleges. The public character of the colleges does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the colleges' facilities and grounds are dedicated. Accordingly, the colleges are designated public forums opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the colleges' responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The colleges recognize that college groups should be accorded the opportunity to utilize the facilities and grounds of the colleges to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

AMENDATORY SECTION (Amending WSR 14-01-015, filed 12/6/13, effective 1/6/14)

WAC 132F-142-020 Definitions. (1) "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

(2) "College group" means individuals who are currently enrolled students or current employees of the Seattle ((Community)) Colleges or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

(3) "Noncollege group" means individuals or groups who are not currently enrolled students or current employees of the Seattle ((Community)) Colleges.

(4) "Public forum areas" means those areas of each campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

(5) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

AMENDATORY SECTION (Amending WSR 14-01-015, filed 12/6/13, effective 1/6/14)

WAC 132F-142-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with the Seattle ((Community)) Colleges' rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups at North Seattle ((Community)) College and South Seattle ((Community)) College may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and those colleges and their campuses are not open to the general public except during these times. Due to Seattle Central ((Community)) College's urban setting, there are no temporal restrictions on first amendment activities at that college except as otherwise provided in these rules.

(4) Before engaging in first amendment activities, all noncollege groups are encouraged to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group are encouraged to provide the following information:

- (a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization"); and
- (b) The name, address, and telephone number of a contact person for the sponsoring organization; and
- (c) The date, time, and requested location of the activity; and
- (d) The type of sound amplification devices to be used in connection with the activity, if any; and
- (e) The estimated number of people expected to participate in the activity.

AMENDATORY SECTION (Amending WSR 87-08-026, filed 3/26/87)

WAC 132F-148-010 Policy statement. The policy of Seattle ((Community)) College District ((SCCD)) SCD is to provide equal opportunity to all its employees and applicants for employment, and to assure that there is no discrimination against any persons on the grounds of race, ethnicity, creed, color, religion, national origin, age, gender, sexual orientation, marital status, or the presence of any physical, sensory, or mental handicap, except where a disability may impede

performance to an acceptable level. However, reasonable accommodations will be made for known physical or mental limitations for all otherwise qualified persons of disability. The Seattle ((Community)) College is committed to affirmative action for Asians, Blacks, Hispanics, Native Americans, women, persons between the ages of 40 and 70, persons of disability, and disabled and Vietnam-era veterans. This policy extends to all areas of employment and to all relations with employees including recruitment, selection and placement, compensation, promotion and transfer, disciplinary measures, demotions, layoffs and terminations, testing and training, daily working conditions, awards and benefits, and other terms and conditions of employment.

The importance of fulfilling this policy is given top priority consideration in the day-to-day operations of the SCCD. All employees have been, and will continue to be, made aware that any violations of this policy by an employee shall result in appropriate disciplinary action, including termination, if warranted.

Affirmative action is a priority in the district because it insures equal employment opportunities for all applicants, while also assisting in ways to hire underrepresented groups in the district's labor force.

The successful implementation of this policy will depend upon a cooperative spirit and commitment to achieve the goals set forth. The district will work with the district minority task forces and the greater Seattle communities in seeing that the SCCD affirmative action plan/program, which is updated annually and included in the appendices of this manual, is implemented in a responsible and conscientious manner.

AMENDATORY SECTION (Amending WSR 85-13-076, filed 6/19/85)

WAC 132F-148-060 Personnel policies relative to affirmative action. (1) Age discrimination. Seattle ((Community)) College District will provide equal opportunity for all persons without regard to age. The district does not discriminate on the basis of age in any employment practices including hiring, promotion, demotion, transfer, recruitment, layoff and return from layoff, termination, fringe benefits, selection for training, and other terms of employment.

Further, the district does not specify a minimum or maximum age requirement on its advertisements for employees except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(2) Employment of Vietnam era veterans and disabled veterans. Seattle ((Community)) College District does not discriminate against Vietnam era veterans or disabled veterans in any employment practices including but not limited to hiring, promotion, demotion, transfer, compensation, layoff, fringe benefits, selection for training, and other terms and conditions of employment. Advertisements for positions are sent to all relevant offices and agencies.

(3) Employment of disabled persons. Seattle ((Community)) College District does not discriminate against any employee or applicant for employment because of a disability with regard to any position for which the employee or applicant is qualified. Further, the district does not discriminate

against disabled persons with regard to promotion, demotion, transfer, layoff or return from layoff, termination, compensation, fringe benefits, training opportunities, and other terms and conditions of employment.

The district will make reasonable accommodations within budgetary limits for those who are disabled to allow them to perform the duties of the jobs for which they are qualified.

Several (~~on-going~~) ongoing efforts are aimed at insuring nondiscrimination for disabled persons:

(a) Evaluation of physical accommodations to assure that they are accessible.

(b) Review of faculty and administrative job requirements to assure that they are job-related and do not screen out qualified disabled applicants.

(c) Review of administrative job descriptions to assure that they are accurate and are not written to exclude qualified disabled applicants.

(d) Periodic articles in district publications related to legal and other aspects of the employment of disabled persons.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-040 Borrower classification. Within the college community there are several readily identifiable library material user groups for which the character and intensity of use differs. The primary groups are credit and noncredit students, faculty, administrative personnel and nonacademic staff. Borrowers are classified as:

- (1) Credit students;
- (2) Employees of the district;
- (3) Continuing education, noncredit students;

The instructional resources center may extend services on proper identification to persons not affiliated with the college. Borrowing privileges may be extended to such persons if they reside within (~~Community~~) Seattle College District VI, or if they are a duly enrolled student or faculty member of one of the other state community colleges, or if they are spouses of (~~Community~~) Seattle College faculty, administrative or nonacademic staff members. The instructional resources center extends services to other libraries through the "interlibrary loan" process. These borrowers are classified as:

- (4) Community patrons;
- (5) Reciprocal students and faculty from other state community colleges;
- (6) Spouses of borrower class (2);
- (7) Retired faculty of (~~Community~~) Seattle College;
- (8) Other libraries through the "interlibrary loan" process.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-050 Identification card. Each student borrower is responsible for obtaining an official identification number affixed to his or her student body card by the college instructional resources center. Each nonstudent borrower is responsible for obtaining an official identification

card from the head librarian of the instructional resources center. Reciprocal students and faculty must provide official identification from their institutions in order to obtain a (~~Community~~) Seattle College identification card.

AMENDATORY SECTION (Amending Order 11, filed 4/19/73)

WAC 132F-164-010 Promulgation. Pursuant to the authority granted by RCW 43.19.190 and chapter 34.04 RCW the Seattle (~~Community~~) Seattle College District hereby promulgates the following rules and regulations with respect to bidding, bids, and contracts.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-010 Access to public records. (1) The Seattle (~~Community~~) Seattle College District VI is a community college district organized under RCW 28B.50.040. The Seattle (~~Community~~) Seattle College District VI's central office is located at 1500 Harvard Ave., Seattle, WA 98122. The Seattle (~~Community~~) Seattle College District VI has field offices at:

- 9600 College Way North, Seattle, WA 98103
- 6000 16th Ave. S.W., Seattle, WA 98103
- 1701 Broadway, Seattle, WA 98122
- 2120 South Jackson St., Seattle, WA 98144

(2) Any person wishing to request access to public records of Seattle (~~Community~~) Seattle College District VI, or seeking assistance in making such a request should contact the public records officer of the Seattle (~~Community~~) Seattle College District VI at:

Public Records Officer
Seattle (~~Community~~) Seattle College District VI
1500 Harvard Ave.
Seattle, WA 98122
206-934-3873
SCCDPublicRecordsRequest@seattlecolleges.edu

(3) The public records officer will oversee compliance with the act but another Seattle (~~Community~~) Seattle College District VI staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the Seattle (~~Community~~) Seattle College District VI will provide the "fullest assistance" to requestors; create and maintain for use by the public and Seattle (~~Community~~) Seattle College District VI officials an index to public records of the Seattle (~~Community~~) Seattle College District VI; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the Seattle (~~Community~~) Seattle College District VI.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-020 Purpose. (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with pub-

lished rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures Seattle ((Community)) College District VI will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Seattle ((Community)) College District VI and establish processes for both requestors and Seattle ((Community)) College District VI staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. The act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities under the act, the Seattle ((Community)) College District VI will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-030 Request for document inspection. (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the Seattle ((Community)) Colleges, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays. Records must be inspected at either the district office or at a field office when those records are stored or maintained at that location. To make arrangements to inspect records at a Seattle ((Community)) College District field office, contact the public records officer to schedule the inspection.

(2) **Records index.** An index of public records is available for use by members of the public, including nonexempt final orders, declaratory orders, interpretive statements, and policy statements, as defined by RCW 42.56.070(5), issued after June 30, 1990, by the board of trustees of the district, the presidents of the colleges, or their designees.

Form. The index shall reference final orders, declaratory orders, interpretive statements, or policy statements by one or more of the following classifications: Date of implementation, organizational unit, or subject matter.

Requests for access to indexes. Information regarding public inspection of indexes, their location, and a schedule for revising and updating these indexes can be obtained by contacting the public records officer.

(3) **Organization of records.** The Seattle ((Community)) College District VI will maintain its records in a reasonably organized manner. Seattle ((Community)) College District VI will take reasonable actions to protect records from damage and disorganization. A requestor shall not take Seattle ((Community)) College District VI records from Seattle ((Community)) College District VI offices without the permission of the public records officer or designee. A vari-

ety of records are available on the Seattle ((Community)) College District VI web site at www.seattlecolleges.edu. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) **Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the Seattle ((Community)) College District VI should make the request in writing on the Seattle ((Community)) College District VI request form, or by letter, fax, or e-mail addressed to the public records officer (SCCDPublicRecordsRequest@seattlecolleges.edu) and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 132F-168-060, standard photocopies will be provided at fifteen cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-040 Review of denials of public records. (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the appropriate vice-chancellor. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the Seattle ((Community)) College District VI's receipt of the petition, or within such other time as mutually agreed upon by the Seattle ((Community)) College District VI and the requestor.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the Seattle ((Community)) College District VI denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-050 Exemptions. The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by Seattle ((Community)) College District VI for inspection and copying:

(1) The Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g; the Uniform Trade Secrets Act, chapter 19.108 RCW; attorney-client privileged communications, RCW 5.60.060(2).

(2) Examination of individual files of Seattle ((Community)) College District students shall be in accordance with the provisions of district policy and procedure 380, student records.

(3) The Seattle ((Community)) College District VI is prohibited by statute from disclosing lists of individuals for commercial purposes.

(4) Pursuant to RCW 42.56.540, the Seattle ((Community)) College District VI reserves the right to seek to enjoin the examination of any specific record, the examination of which the district determines would clearly not be in the public interest and would substantially and irreparably damage any person or would substantially and irreparably damage vital governmental functions.

AMENDATORY SECTION (Amending WSR 14-07-091, filed 3/18/14, effective 4/18/14)

WAC 132F-168-060 Copying. (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain photocopies for fifteen cents per page. The district reserves the right to use outside vendors for large projects when an outside vendor can provide copies quicker or for less cost. The requestor will be required to pay the cost charged by the vendor.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Seattle ((Community)) College District VI will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of scanning existing Seattle ((Community)) College District VI paper or other nonelectronic records is four cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee. A statement of the factors and the manner used to determine this charge is available from the public records officer.

If the requestor asks that the electronic records be provided on CD or DVD, the requestor will be charged the cost of the CD or DVD. If the electronic records are too large to be e-mailed through the Seattle ((Community)) College District

e-mail system, they will be provided on CD or DVD, and the requestor will be charged accordingly.

(3) **Costs of mailing.** The Seattle ((Community)) College District VI may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Seattle ((Community)) College District VI.

AMENDATORY SECTION (Amending WSR 85-21-016, filed 10/7/85)

WAC 132F-200-010 Tenure. The board of trustees of Seattle ((Community)) College District VI reserves to itself the final determination of the granting of tenure to any academic employee of the district; the dismissal of a tenured academic employee; or the dismissal of a probationer during the term of his/her contract, pursuant to the policies of the board of trustees, the agreement with Seattle ((Community)) College federation of teachers and the laws of the state of Washington.

AMENDATORY SECTION (Amending Order 31, filed 9/20/76)

WAC 132F-325-010 Seattle ((Community)) College District environmental policy. (1) Capital projects proposed by Seattle ((Community)) College shall, to the fullest extent possible, be developed in a manner consistent with the provisions of the State Environmental Policy Act (SEPA) - Chapter 43.21C RCW, the council on environmental policy SEPA guidelines - Chapter 197-10 WAC, and the SBCCE SEPA implementation rules - WAC 131-24-030.

(2) The "responsible official" for the purposes of this policy, shall be the district president or the college presidents for their respective campuses.

AMENDATORY SECTION (Amending WSR 85-13-075, filed 6/19/85)

WAC 132F-419-010 Sexual harassment policy. Sexual harassment is an illegal activity and will not be tolerated in the Seattle ((Community)) College district. Students, faculty, and all other employees of the district shall be made aware that management will investigate all sexual harassment complaints. Awareness activities made available to all college groups will include appropriate training, workshops, and written materials providing information about sexual harassment, its prevention, and complaint procedures. Any employee or student who feels that she/he has been sexually harassed is encouraged to deal with the situation as outlined in the appropriate procedures.

In recognition of the fact that sex discrimination in the form of sexual harassment is a violation of section 703, Title VII of the Civil Rights Act of 1964 and chapter 49.60 RCW, which prohibits discrimination on the basis of race, color, religion, national origin, or sex, Seattle ((Community)) College District hereby declares that sexual harassment of students and/or staff by any member of the district community will not be tolerated.

(1) For purposes of this policy, sexual harassment will be defined as any behavior or action, either physical or verbal, which is sexual in nature and is uninvited, unwanted, or non-reciprocal(7); and:

((1)) (a) Submission to it is either an implicit or explicit condition of employment or educational opportunity; or

((2)) (b) Submission to, or rejection of it is used as a basis for employment or educational decisions; or

((3)) (c) It has the purpose or effect of negatively interfering with the individual's work or educational performance or creating an intimidating, hostile, or offensive work or educational environment.

(2) It may include, but is not limited to the following:

((4)) (a) Unwelcome and/or repeated sexual advances.

((5)) (b) Offensive, disparaging remarks about one's gender or appearance.

((6)) (c) Remarks about one's physical appearance which implies sexual interest.

((7)) (d) Subtle pressure for sexual activity.

((8)) (e) Unnecessary offensive brushes or touches.

((9)) (f) Offensive sexual graffiti.

((10)) (g) Physical aggression such as pinching, patting, or grabbing.

((11)) (h) Sexual innuendos.

((12)) (i) Written communications with sexual overtones.

((13)) (j) Sexually offensive remarks disguised as humor.

((14)) (k) Obscene gestures.

AMENDATORY SECTION (Amending WSR 85-13-075, filed 6/19/85)

WAC 132F-419-040 Formal complaint procedures.

If no satisfactory resolution can be achieved at the informal level, the complainant may file a formal written complaint according to the Seattle ((Community)) College District affirmative action plan formal complaint procedures.

**WSR 15-02-087
PERMANENT RULES
OFFICE OF**

ADMINISTRATIVE HEARINGS

[Filed January 7, 2015, 11:57 a.m., effective January 12, 2015]

Effective Date of Rule: January 12, 2015.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The reason for the January 12, 2015, effective date is that November 26, 2014, was the last day of operations for our Vancouver office, and we want to inform the public as soon as possible.

Purpose: (1) The office of administrative hearings closed our Vancouver office on November 26, 2014. The functions of this former office are now part of the Olympia field office.

(2) The office of administrative hearings changed the title of assistant deputy chief administrative law judge to assistant chief administrative law judge.

Citation of Existing Rules Affected by this Order: Amending WAC 10-04-020.

Statutory Authority for Adoption: RCW 34.12.030(6).

Adopted under notice filed as WSR 14-21-025 on October 3, 2014.

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

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

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

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

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

Lorraine Lee

Chief Administrative

Law Judge

AMENDATORY SECTION (Amending WSR 13-08-047, filed 3/28/13, effective 4/28/13)

WAC 10-04-020 Function—Organization—Offices.

The office of administrative hearings conducts impartial administrative hearings for state agencies and local governments pursuant to chapter 34.12 RCW. The office is under the direction of the chief administrative law judge.

Administrative law judges preside over hearings in adjudicative proceedings and issue initial or final orders, including findings of fact and conclusions of law.

The administrative office is located at 2420 Bristol Ct. SW, P.O. Box 42488, Olympia, Washington, 98504-2488. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday except legal holidays. Administrative law judges are assigned to field offices located in Olympia, Seattle, Spokane, Tacoma((Vancouver)), and Yakima. Each office is headed by an assistant ((deputy)) chief administrative law judge.

All written communications by parties pertaining to a particular case shall be filed with the field office, if any, assigned to the case, and otherwise with the chief administrative law judge or designee at the administrative office.