

WSR 14-15-017
PROPOSED RULES
DEPARTMENT OF AGRICULTURE

[Filed July 7, 2014, 7:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-086.

Title of Rule and Other Identifying Information: Chapter 16-06 WAC, Public records.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Second Floor, Conference Room 259, Olympia, WA 98504, on August 27, 2014, at 9:00 a.m.

Date of Intended Adoption: September 12, 2014.

Submit Written Comments to: Teresa Norman, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m. August 27, 2014.

Assistance for Persons with Disabilities: Contact WSDA receptionist by August 20, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-06 WAC to:

- Update the department's description, organization, and contact information.
- Establish a set scanning charge for reproducing paper records into electronic format.
- Increase the minimum total cost that applies before the department will begin to charge for the reproduction of public records, from the current amount of \$10.00 to \$20.00.

This rule making does not propose to change, and is separate from, rule making proposed in the CR-101 filed on December 23, 2013, requesting comments on WAC 16-06-210(29), which relates to the release of information for animal numbers, acreage, nutrients generated and exported, and crop yields in numeric ranges in response to a request for public records.

Reasons Supporting Proposal: These changes are necessary to clarify the charges the department will bill for reproducing paper records into electronic format in response to public records requests. These changes are also a part of the department's ongoing commitment to regulatory improvement under executive orders 06-02, 05-03, and 97-02.

Statutory Authority for Adoption: RCW 43.17.060, 42.56.040, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

Name of Proponent: Washington state department of agriculture (WSDA), governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Pam Potwin, Olympia, (360) 902-1935.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030(1) requires that WSDA prepare a small business economic impact statement (SBEIS) if proposed rules will impose more than minor costs on affected businesses or industry. The department has analyzed the economic effects of the pro-

posed revisions and has concluded that they do not impose more than minor costs on small businesses. In most cases the proposed amendments decrease potential charges for receiving copies of public records from the department. Therefore, an SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

July 7, 2014
 Julie D. Morgan
 Chief of Staff

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-160 Description of department (~~organization~~), address and telephone number of Olympia administrative offices. (~~The administrative offices of the Washington state department of agriculture are~~) Headquartered in Olympia and located in the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 42560, Olympia, Washington 98504-2560, the department employs personnel in every county in Washington. The department serves the people of Washington state by supporting the agricultural community and promoting consumer and environmental protection since 1913. The information telephone number is ((360) 902-1800) 360-902-1800. The department is organized into seven (~~divisions~~) functional areas:

- (1) Director's office;
- (2) Administrative services (~~division~~);
- (3) Animal services division;
- (4) Commodity inspection division;
- (5) Food safety and consumer services division;
- (6) Pesticide management division; and
- (7) Plant protection division.

The department maintains service locations or major field offices around the state. (~~Several of these offices are headed by a supervisor or chief.~~) The administrative offices located in Olympia can assist persons in locating office locations around the state. The department's organization chart is available upon request from the Public Records Officer (~~and the Human Resources Office~~), Washington State Department of Agriculture, P.O. Box 42560, Olympia, Washington 98504-2560, phone 360-902-1935, fax 360-902-2092 and also on the agency web site. The public is encouraged to view the organization chart on the web site.

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-180 Public records officer. (1) Any person wishing to request access to the department's public records, or seeking assistance in making a public records request, should contact the public records officer.

(2) You may contact the public records officer (~~by mail~~) at the Washington State Department of Agriculture, 1111 Washington Street SE, P.O. Box 42560, Olympia, Washington 98504-2560, by telephone at ((360) 902-1800) 360-902-1935, by fax at 360-902-2092, or by e-mail at: publicdisclosure@agr.wa.gov.

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

(4) The public records officer will oversee compliance with the Public Records Act, but a designee of the public records officer may process the request or otherwise fulfill the duties of the public records officer. The public records officer will provide the fullest assistance to requestors.

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-200 Costs of disclosure. (1) No fee will be charged for the inspection of public records.

(2) The department charges a fee of fifteen cents per page of ~~((copy))~~ photocopy when copy charges exceed ~~((ten))~~ twenty dollars for providing copies of public records. The department may also charge actual costs of mailing, including the cost of the shipping container. This charge is the amount necessary to reimburse the department for copying costs incident to the disclosure request.

(3) The department may charge the actual cost involved for the duplication of tape recordings, video tapes, photographs, slides, postage, or delivery if these costs exceed ~~((ten))~~ twenty dollars.

(4) The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(5) Electronic records: The department ~~((may charge the actual costs incurred for providing recordings in electronic format, such as the cost of scanning records or the cost of providing records on a CD-ROM))~~ charges a fee of five cents per page of scanned copy when the costs exceed twenty dollars and the records are converted from paper to electronic format, upon request. There will be no charge for e-mailing electronic records to a requestor unless another cost applies.

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-210 Exemptions. The Public Records Act provides that a number of types of information or records are exempt from public inspection and copying. In addition, records are exempt from disclosure if any other statute exempts or prohibits disclosure. Requestors should be aware of the following exemptions to public disclosure specific to department records. This list is not exhaustive and other exemptions may apply:

(1) Personal information in any files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy (reference RCW 42.56.230~~((2))~~) (3).

(2) Investigative records (reference RCW 42.56.240).

(3) Test questions, scoring keys, and other examination data used to administer a license (reference RCW 42.56.250 (1)).

(4) Records that are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts (reference RCW 42.56.290).

(5) Lists of individuals requested for commercial purposes (reference RCW 42.56.070(9)).

(6) ~~((Social Security numbers are confidential and not subject to disclosure except when expressly required by or governed by other law (reference RCW 41.56.250; for full text, see subsection (9) of this section).))~~ Records related to the entry of prohibited agricultural products imported into Washington state or that had Washington state as a final destination received from the United States Department of Homeland Security or the United States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(12)).

(7) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required or governed by other law (reference RCW 42.56.230 ~~((4))~~) (5).

(8) Applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant (reference RCW 42.56.250(2)).

(9) Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers and emergency contact information of employees or volunteers of a public agency, and the names, dates of birth, residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, Social Security numbers, and emergency contact information of dependents of employees or volunteers of a public agency that are held by any agency in personnel records, public employment related records, or volunteer rosters, or are included in any mailing list of employees or volunteers of any public agency (reference RCW 42.56.250(3)).

(10) Information provided for the semi-annual report for fertilizers, minerals and limes that would reveal the business operation of the person making the report (reference RCW 15.54.362(5) and 42.56.380(2)).

(11) The semiannual report required in the Commercial Feed Act is not a public record, and any information given in such report which would reveal the business operation of the person making the report is exempt from disclosure, and information obtained by the department from other governmental agencies or other sources that is used to verify information received in the report is exempt from public disclosure (reference RCW 15.53.9018).

(12) The department has the authority to publish reports of official seed inspections, seed certifications, laboratory statistics, verified violations of this chapter, and other seed branch activities which do not reveal confidential information regarding individual company operations or production (reference RCW 15.49.370(8)).

(13) Business related information obtained under the Organic Food Products Act concerning an entity certified under that act or an applicant for certification under RCW 15.86.110, and records whose disclosure is prohibited by the federal Organic Certification Act, 7 U.S.C. Sec. 6515(g) and the rules adopted under that act (reference RCW 42.56.380 (1)).

(14) Consignment information contained on phytosanitary certificates issued by the department under chapters 15.13, 15.17, and 15.49 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States Department of Agriculture, or on applications for phytosanitary certification required by the department (reference RCW 42.56.380(4)).

(15) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by the former chapter 15.110 RCW or chapter 43.325 RCW (the energy freedom loan program) (reference RCW 42.56.270(4)).

(16) Information obtained under RCW 15.19.080 regarding the purchases, sales, or production of an individual American ginseng grower or dealer (reference RCW 42.56.380(6)).

(17) Financial statement information required to determine whether or not an applicant for a license to operate a warehouse under chapter 22.09 RCW, agriculture commodities, meets minimum net worth requirements (reference RCW 22.09.040(9)).

(18) All financial statement information to determine whether or not an applicant for a license to be a grain dealer under chapter 22.09 RCW meets the minimum net worth requirements (reference RCW 22.09.045(7)).

(19) Information submitted by an individual or business to the department of agriculture under the requirements of chapters 16.36, 16.57, and 43.23 RCW for the purpose of ((participating in a state or national animal identification system)) herd inventory management for animal disease traceability, is exempt from disclosure. This information includes animal ownership, numbers of animals, locations, contact information, movements of livestock, financial information, the purchase and sale of livestock, account numbers or unique identifiers issued by government to private entities, and information related to livestock disease or injury that would identify an animal, a person or location. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete (reference RCW 42.56.380(9)).

(20) Results of testing for animal diseases (~~not required to be reported under chapter 16.36 RCW that is done at the request~~) from samples submitted by or at the direction of the animal owner or the owner's designee and that can be identified to a particular business or individual is exempt from disclosure (reference RCW 42.56.380(10)).

(21) Information that can be identified to a particular business and that is collected under chapter 15.17 RCW, standards of grades and packs, and specifically RCW 15.17.140(2) and 15.17.143 for certificates of compliance (reference RCW 42.56.380(7)).

(22) Financial statement information provided under RCW 16.65.030 (1)(d), public livestock markets, is confidential information and not subject to public disclosure (reference RCW 16.65.030 (1)(d) and 42.56.380(8)).

(23) Privileged or confidential information or data that contains trade secrets, commercial, or financial information

and is required and submitted under the Washington Pesticide Control Act (reference RCW 15.58.060 (1)(c) and 15.58.065).

(24) Except for release of statistical information not descriptive of any readily identifiable person or persons, all financial and commercial information and records supplied by persons to the department with respect to export market development projects (reference RCW 43.23.270 and 42.56.270(3)).

(25) Information submitted by an applicant under chapter 17.24 RCW that is privileged or confidential because it contains trade secrets or commercial or financial information (reference RCW 17.24.061).

(26) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, and 16.67 RCW, or required by the department to administer these chapters or the department's programs (reference RCW 42.56.380(3)).

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

(a) To the department for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or

(b) To the department or commodity boards or commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.89, 15.100, or 16.67 RCW, with respect to domestic or export marketing activities or individual producer's production information (reference RCW 42.56.380(5)).

(28) Farm plans developed by conservation districts, unless the farm plan is used for the application or issuance of a permit (reference RCW 42.56.270(17)).

(29) Under RCW 42.56.610 and 90.64.190, information identifying the number of animals; volume of livestock nutrients generated; number of acres covered by the plan or used for land application of livestock nutrients; livestock nutrients transferred to other persons; and crop yields in plans, records, and reports obtained by state and local agencies from dairies, animal feeding operations, and concentrated animal feeding operations not required to apply for a National Pollutant Discharge Elimination System permit is disclosable in the following ranges:

(a) Number of animals: Beef cattle

- 1 to 19
- 20 to 159
- 160 to 299
- 300 to 999
- 1,000 to 5,999
- 6,000 to 10,999
- 11,000 to 15,999
- 16,000 to 20,999
- 21,000 to 25,999
- 26,000 to 31,199
- 31,200 to 37,439
- 37,440 to 44,999
- 45,000 and above

(b) Number of animals: Mature dairy cattle	1,110,788 to 1,332,945
1 to 37	1,332,946 and above
38 to 199	(g) Number of animals: Broilers (all ages)
200 to 699	1 to 199
700 to 1,699	200 to 999
1,700 to 2,699	1,000 to 17,999
2,700 to 3,699	18,000 to 37,499
3,700 to 4,699	37,500 to 124,999
4,700 to 5,699	125,000 to 212,499
5,700 to 6,839	212,500 to 299,999
6,840 and above	300,000 and above
(c) Number of animals: Dairy heifers	(h) Number of animals: Horses
1 to 49	1 to 19
50 to 149	20 to 79
150 to 299	80 to 149
300 to 999	150 to 499
1,000 to 1,999	500 to 849
2,000 to 2,999	850 to 1,199
3,000 to 3,999	1,200 to 1,549
4,000 and above	1,550 and above
(d) Number of animals: Swine (fifty-five pounds or greater)	(i) Livestock nutrients generated or exported by volume (ft ³ /day)
1 to 19	1 to 74
20 to 159	75 to 134
160 to 399	135 to 299
400 to 749	300 to 449
750 to 2,499	450 to 749
2,500 to 4,249	750 to 1,499
4,250 to 5,999	1,500 to 2,499
6,000 to 7,749	2,500 to 4,999
7,750 and above	5,000 to 8,499
(e) Number of animals: Swine (less than fifty-five pounds)	8,500 to 11,999
1 to 99	12,000 to 15,999
100 to 499	16,000 and above
500 to 1,099	(j) Livestock nutrients generated or exported by weight (tons/year)
1,100 to 1,999	1 to 5,256
2,000 to 2,999	5,257 to 10,512
3,000 to 9,999	10,513 to 21,024
10,000 to 16,999	21,025 to 42,048
17,000 to 23,999	42,049 to 84,096
24,000 to 30,999	84,097 to 164,184
31,000 and above	164,185 to 262,734
(f) Number of animals: Layers (all ages)	262,735 to 394,200
1 to 199	394,201 to 558,384
200 to 999	558,385 to 722,634
1,000 to 10,999	722,635 to 919,734
11,000 to 24,999	919,735 to 1,051,134
25,000 to 81,999	1,051,135 and above
82,000 to 138,999	(k) Number of acres covered by the plan or used for land application of livestock nutrients
139,000 to 195,999	0 to 25
196,000 to 252,999	26 to 65
253,000 to 309,999	66 to 120
310,000 to 371,999	121 to 300
372,000 to 446,399	301 to 550
446,400 to 535,679	551 to 900
535,680 to 642,815	901 to 1,300
642,816 to 771,379	1,301 to 1,800
771,380 to 925,655	1,801 to 2,500
925,656 to 1,110,787	

2,501 to 3,200
 3,201 to 4,000
 4,001 to 6,000
 6,001 to 9,000
 9,001 to 11,500
 11,501 to 14,000
 14,001 and above
 (l) Crop yields - tons/acre
 0 to 1
 1.1 to 2
 2.1 to 3.5
 3.6 to 5
 5.1 to 7
 7.1 to 9
 9.1 to 12
 12.1 to 14.5
 14.6 to 17
 17.1 to 19.5
 19.6 to 22
 22.1 to 26
 26.1 and above

(30) Records of international livestock importation that can be identified to a particular animal, business, or individual received from the United States Department of Homeland Security or the United States Department of Agriculture that are not disclosable by the federal agency under federal law including 5 U.S.C. Sec. 552 (reference RCW 42.56.380(11)).

(31) A person aggrieved by a violation of chapter 17.21 RCW or the rules adopted under that chapter is entitled, on request, to have his or her name protected from disclosure in any communication with persons outside the department and in any record published, released, or made available to persons outside the department except as provided in RCW 17.21.340 (1)(a)(ii).

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-220 Review of denial of request for inspection or copying of public records. (1) Any person who objects to the initial denial of a records request may petition in writing to the ~~((public records officer))~~ administrative regulations program manager for a review of that decision. The petition shall include a copy of, or reasonably identify, the written statement by the department denying the request.

(2) The ~~((public records officer))~~ administrative regulations program manager will immediately consider the petition and either affirm or reverse the denial within two business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree to.

(3) Under RCW 42.56.530, if the department 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) Any person may obtain court review of a denial of a public records request under RCW 42.56.550 at the conclu-

sion of two business days after the initial denial, regardless of any internal administrative appeal.

AMENDATORY SECTION (Amending WSR 09-03-032, filed 1/12/09, effective 2/12/09)

WAC 16-06-250 Processing of public records requests—Electronic records. (1) Requesting electronic records: The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records:

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

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

(c) When electronic records require redaction, or are contained in a proprietary data base, or otherwise cannot be reasonably provided in an electronic format, the department will provide paper copies of the records to the requestor.

(3) Customized access to data bases: With the consent of the requestor, the department may provide customized access under RCW ~~((43.105.280))~~ 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The department may charge a fee consistent with RCW ~~((43.105.280))~~ 43.41A.130 for customized access.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-06-165 Department organization description by division and program.

WSR 14-15-023

WITHDRAWAL OF PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed July 8, 2014, 1:44 p.m.]

Please withdraw proposed rule, WSR 14-09-077 filed on April 18, 2014. The proposal as filed has been removed from public hearing by the board for additional consideration and will be refiled for a September date.

David Brenna
 Senior Policy Analyst

WSR 14-15-031
PROPOSED RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed July 9, 2014, 11:49 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): NWCAA, 1600 South Second Street, Mount Vernon, WA 98273, on August 28, 2014, at 9:00 a.m.

Date of Intended Adoption: September 11, 2014.

Submit Written Comments to: Mark Buford, NWCAA, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by August 28, 2014, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber by August 21, 2014, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Update the effective dates under NWCAA Section 104 to ensure that the most recent versions of the referenced regulations are adopted (amended NWCAA Section 104).
- Adopt by reference the following federal rules: 40 C.F.R. Part 50 (National Primary and Secondary Ambient Air Quality Standards), 40 C.F.R. 60 Subpart Ga (Standards of Performance for Nitric Acid Plants), 40 C.F.R. 60 Subpart OOOO (Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution), 40 C.F.R. 63 Subpart UUUUU (National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units), 40 C.F.R. 63 Subpart EEEEEEE (National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category), 40 C.F.R. 63 Subpart HHHHHHH (National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production), and 40 C.F.R. Part 65 (Consolidated Federal Air Rule) (amended NWCAA Section 104).
- Revise how fees are published for the outdoor burning program (NWCAA Section 502), the agricultural burning program (NWCAA Section 504), and the asbestos program (NWCAA Section 570). Currently, these fees are set and published in the NWCAA rule. The NWCAA is proposing to streamline the publishing of the fees by removing these fee schedules from our regulation and publishing them as separate board-approved documents. In addition, the fee section of the NWCAA rule (NWCAA Section 324) is being modified to clarify how fees are set (amended NWCAA Sections 324, 502, 504, and 570).
- Revise to better reflect current implementation and improve clarity in the outdoor burning program (NWCAA Section 502), the agricultural burning program (NWCAA Section 504), and asbestos program

(NWCAA Section 570) along with the fugitive dust requirements in NWCAA Section 550. Also, improve consistency with RCW (state law) and WAC (state regulations) (amended NWCAA Sections 324, 502, 504, 550, and 570).

New/Amended Regulation Section Derivations:

Amended NWCAA 324.8, new language.

New NWCAA 324.9, new language.

New NWCAA 324.10, new language.

New NWCAA 324.20, based on former NWCAA 324.8.

Amended NWCAA 502.3, "Impaired Air Quality" definition, new definition based on WAC 173-425-030.

Amended NWCAA 502.3, "Nonattainment Area" definition, new definition based on NWCAA Section 200.

Amended NWCAA 502.3, "Silvicultural Burning" definition, new definition based on WAC 173-425-030.

Amended NWCAA 502.3, "Urban Growth Area" definition, revised definition based on WAC 173-425-030.

Amended NWCAA 550.1, based on WAC 173-400-040(9).

Amended NWCAA 550.2, renumbered from NWCAA 502.4.

Amended NWCAA 550.3, new language.

Distributions for Section Being Replaced:

Former NWCAA 324.8, see NWCAA 324.20.

Amended NWCAA 502.3, "Commercial Outdoor Burning" with definition, deleted.

Amended NWCAA 502.3, "Nonattainment Area" former definition, deleted.

Amended NWCAA 502.3, "Silvicultural Burning" former definition, deleted.

Former NWCAA 502.7, deleted.

Former NWCAA 502.8, see NWCAA 502.6(F) and 502.5 (A)(4).

Former NWCAA 550.2, deleted.

Former NWCAA 550.3, deleted.

Former NWCAA 550.4, see NWCAA 550.2.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141(1).

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South 2nd Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

July 9, 2014

Mark Buford

Assistant Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of State Law that are in effect as of August 6, 2014 (~~February 20, 2013~~), which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except – -035, -036, -040(1), -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of August 6, 2014 (~~February 20, 2013~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards); 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYYY, ZZZZ, CCCCC, EEEEE, FFFFF, GGGG, MMMMM, NNNNN, QQQQQ, SSSSS, TTTTT, VVVVV, ZZZZZ, AAAAAA, DDDDDD, EEEEEE, and HHHHHH; 40 CFR Part 65 (Consolidated Federal Air Rule); and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014

AMENDATORY SECTION

SECTION 324 - FEES

324.1 Annual Registration Fees

(A) All registered air pollution sources shall pay the appropriate fee(s), which shall be established to cover the cost of administering the program, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. (~~The NWCAA shall levy annual registration program fees as set forth in Section 324.1(C) to cover the costs of administering the registration program.~~)

(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of (~~twenty-five~~) 25 percent (~~((25%))~~) of the registration fee for failure to pay the registration fee within (~~thirty (30))~~ 30 days after the due date. The late penalty shall be in addition to the registration fee.

~~((C) All registered air pollution sources shall pay the appropriate registration fee(s) as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.)~~

324.2 New Source Review Fees

(A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

(B) The applicable fee(s) shall be established to cover the direct and indirect costs of processing an application, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or

undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice.

324.7 Order Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program, adjusted periodically based on the three-year average change of the "December annual average – Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.8 Asbestos Program Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.9 Agricultural Burning Fee. The applicable fee(s) shall be established as described in RCW 70.94.6528 and WAC 173-430-041 as referenced in NWCAA 104.1 as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.10 Outdoor Burning Fee. The applicable fee(s) shall be established to cover the cost of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.20 ((8)) Procedure for Adoption and Revision of Fee Schedules. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule or proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedules or proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012, March 14, 2013, September 11, 2014

AMENDATORY SECTION

SECTION 502 - OUTDOOR BURNING

502.1 PURPOSE. This section establishes a program to implement the limited burning policy authorized by sections of the Washington Clean Air Act (chapter 70.94 RCW as referenced in NWCAA 104.1) pertaining to outdoor burning. ~~((The limited outdoor burning policy requires Ecology and other agencies to:~~

~~A. Reduce outdoor burning to the greatest extent practical, consistent with the laws and regulations of the State of Washington.~~

~~B. Establish a permit program for limited burning, including procedures by which outdoor burning may be conducted.~~

~~C. Foster and encourage the development of reasonable alternatives to outdoor burning.))~~

502.2 APPLICABILITY.

(A)((-)) This section specifically applies to:

(1)((-)) Residential burning.

(2)((-)) Land clearing burning.

(3)((-)) Recreational fires.

(4)((-)) Indian ceremonial fires.

(5)((-)) Weed abatement fires.

(6)((-)) Fire((-)fighting instruction fires.

(7)((-)) Rare and endangered plant regeneration fires.

(8)((-)) Storm or flood debris burning.

(9) Tumbleweed burning.

(10) ~~((9))~~ Other outdoor burning.

(B)((-)) This section does not apply to:

(1)((-)) Agricultural burning (which is governed by chapter 173-430 WAC as referenced in NWCAA 104.1);

(2)((-)) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements); and

(3)((-)) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70.94 RCW as referenced in NWCAA 104.1).

502.3 DEFINITIONS. Unless a different meaning is clearly required by context, words and phrases used in this section shall have the following meanings:

~~((A-)) AGRICULTURAL BURNING – ((means outdoor burning)) Fires regulated under ((€))chapter 173-430 WAC as referenced in NWCAA 104.1, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.~~

~~((B-)) AIR POLLUTION EPISODE – ((means a)) A period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in ((€))chapter 173-435 WAC as referenced in NWCAA 104.1.~~

~~((C-)) COMMERCIAL OUTDOOR BURNING – means outdoor burning conducted as part of any commercial or business operation.~~

~~((D-)) CONSTRUCTION/DEMOLITION DEBRIS – ((means any)) All material manufactured for or resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.~~

~~((E-))~~ FIRE(-)FIGHTING(~~(ER))~~ INSTRUCTION FIRES – ~~((means-f))~~ Fires for instruction in methods of fire(-)fighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

~~((E-))~~ FIREWOOD – ~~((means-b))~~ Bare, untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

~~((G-))~~ IMPAIRED AIR QUALITY – A first or second stage impaired air quality condition declared by Ecology or the NWCAA in accordance with WAC 173-433-140 as referenced in NWCAA 104.1. ~~((for purposes of outdoor burning, means a condition declared by Ecology or the NWCAA when meteorological conditions are conducive to an accumulation of air contaminants, concurrent with at least one of the following criteria (WAC 173-433-140):~~

1. Particulate that is ten microns and smaller in diameter (PM₁₀) at or above an ambient level of sixty micrograms per cubic meter measured on a 24-hour average (RCW 70.94.473); or

2. Carbon monoxide at or above an ambient level of eight parts of contaminant per million parts of air by volume (ppm) measured on an eight-hour average; or

3. Particulate that is two and one-half microns or smaller in diameter (PM_{2.5}) at or above an ambient level of 15 micrograms per cubic meter of air measured on a 24-hour average; or

4. Air quality that threatens to exceed other limits established by the NWCAA.)

~~((H-))~~ INDIAN CEREMONIAL FIRE – ~~((means-f))~~ Fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

~~((I-))~~ LAND CLEARING BURNING – ~~((means-o))~~ Outdoor burning of trees, stumps, shrubbery or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused). ~~((RCW 70.94.6526))~~

~~((J-))~~ NATURAL VEGETATION – ~~((means-u))~~ Unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

~~((K-))~~ NONATTAINMENT AREA – ~~((means-a))~~ A clearly delineated geographic area designated by the Environmental Protection Agency at 40 CFR Part 81 as exceeding (or that contributes to ambient air quality in a nearby area that exceeds) a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated non-attainment. ~~((clearly delineated geographic area which has been designated by the Environmental Protection Agency because it does not meet (or it contributes to ambient air quality in a nearby area that does not meet) a national ambient air quality standard or standards for one or more of the criteria pollutants, which include carbon monoxide, particulate matter (PM₁₀ and PM_{2.5}), sulfur dioxide, nitrogen dioxide, lead, and ozone.))~~

~~((L-))~~ NONURBAN AREAS – ~~((means-u))~~ Unincorporated areas within a county that are not designated as an urban growth area.

~~((M-))~~ NUISANCE – ~~((f))~~ For purposes of outdoor burning, ~~((means))~~ an emission of smoke or any other air contaminant

~~((emission))~~ from an outdoor fire that unreasonably interferes with the use and enjoyment of the property upon which it is deposited.

~~((N-))~~ OTHER OUTDOOR BURNING – ~~((means-o))~~ Outdoor burning other than ~~((agricultural burning, silvicultural burning,))~~ residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires, fire(-)fighting instruction fires, rare and endangered plant regeneration fire, Indian ceremonial fires, and recreational fires. It includes, but is not limited to, any outdoor burning necessary to protect public health and safety.

~~((O-))~~ OUTDOOR BURNING – ~~((means-t))~~ The combustion of any material in an open fire or in an outdoor container ~~((; other than an incinerator, furnace, or other combustion device approved in advance by the NWCAA.))~~ without providing for the control of combustion or the control of emissions from the combustion. Outdoor burning means all types of outdoor burning except agricultural burning, burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements), and silvicultural burning.

~~((P-))~~ PERMITTING AGENCY – ~~((means-t))~~ The agency responsible for issuing permits for a particular type of outdoor burning (including adopting a general permit) and/or enforcing all requirements of this section unless another agency agrees to be responsible for certain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6) as referenced in NWCAA 104.1.

~~((Q-))~~ POLLUTANTS EMITTED BY OUTDOOR BURNING – ~~((means-e))~~ Carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

~~((R-))~~ RARE AND ENDANGERED PLANT REGENERATION FIRES – ~~((means-f))~~ Fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

~~((S-))~~ REASONABLE ALTERNATIVE – ~~((means-a))~~ A method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning, including, but not limited to, waste reduction, recycling, energy recovery or incineration, and landfill disposal.

~~((T-))~~ RECREATIONAL FIRE – ~~((means-e))~~ Cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

~~((U-))~~ RESIDENTIAL BURNING – ~~((means-t))~~ The outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on ~~((the maintained area of residential property (i.e.))~~ lands immediately adjacent and in close proximity to a human dwelling(~~(h))~~) and burned on such lands by a ~~((the property owner and/or any other))~~ responsible person.

~~((V-))~~ RESPONSIBLE PERSON – ~~((means-a))~~ Any of the following:

(1) Any person who has applied for and received a permit for outdoor burning, or

(2) ~~((a))~~ Any person allowing, igniting or attending to an outdoor fire, or

(3) ~~((a))~~ Any person who owns or controls property on which an outdoor fire occurs.

~~((W-))~~ SILVICULTURAL BURNING – ~~((means outdoor burning))~~ Fires relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

(1) Abating a forest fire hazard;

(2) Prevention of a forest fire hazard;

(3) Instruction of public officials in methods of forest firefighting;

(4) Any silvicultural operation to improve the forest lands of the state; and

(5) Silvicultural burning used to improve or maintain fire-dependent ecosystems for rare plants or animals within the state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. ~~((on any unimproved land the Department of Natural Resources protects pursuant to RCW 70.94.030(20), RCW 70.94.6534, RCW 70.94.6540 and pursuant to Chapter 76.04 RCW-))~~

~~((X-))~~ STORM OR FLOOD DEBRIS BURNING – ~~((means f))~~ Fires consisting of natural vegetation deposited on lands by storms or floods that have occurred in ~~((, within))~~ the previous two years and resulted in ~~((, in which))~~ an emergency being ~~((was))~~ declared or proclaimed in the area by the city, county, or state government and burned on such lands by ~~((the property owner or))~~ a responsible person. ~~((his or her designee-))~~

~~((Y-))~~ TUMBLEWEED BURNING – ~~((means o))~~ Outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off ~~((;))~~ and rolled about ~~((;))~~ by the wind.

~~((Z-))~~ URBAN GROWTH AREA – ~~((means a))~~ Land, generally including and associated with an incorporated city, designated by a county for urban growth under ~~((An area defined by))~~ RCW 36.70A.030.

~~((AA-))~~ WEED ABATEMENT FIRES – ~~((means any o))~~ Outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, the Agricultural Burning rule.

502.4 PROHIBITIONS AND RESTRICTIONS APPLYING TO ALL OUTDOOR BURNING. The following general requirements apply to all outdoor burning regulated by this section, including any outdoor burning allowed without a permit, unless a specific exception is stated in this section. A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section.

(A) ~~((-))~~ No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under NWCAA 502.6 ~~((WAC 173-425-040))~~, or where it requires a permit under NWCAA 502.5(B) ~~((WAC 173-425-060(2)))~~, unless a permit has been issued and is in effect.

~~((B- A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section-))~~

(B) ~~((C-))~~ PROHIBITED MATERIALS. It shall be unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition

debris, metal or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned ~~((-E))~~ except as follows ~~((when authorized by the NWCAA))~~:

(1) ~~((-))~~ Aircraft crash rescue training fires approved and conducted in compliance with RCW 70.94.6528 as referenced in NWCAA 104.1 may contain uncontaminated petroleum products. ~~((RCW 70.94.6528))~~

(2) ~~((-))~~ ~~((O))~~ Ecology or the NWCAA may allow the limited burning of prohibited materials for other fire ~~((-))~~ fighting instruction fires, including those that are exempt from permits under NWCAA 502.5 (B)(6) ~~((WAC 173-425-060(2)(f), and))~~.

(3) ~~((o))~~ Other outdoor burning necessary to protect public health and safety ~~((RCW 70.94.6528))~~, containing limited prohibited materials, may be allowed by Ecology or the NWCAA).

~~((3- Diseased animals and other infested material when ordered by a duly authorized health officer, as required, to keep the infestation from spreading-))~~

4. Dangerous material when ordered by a fire protection agency to dispose of materials presenting danger to life, property, or public welfare may be burned, if no approved practical alternative method of disposal is available.)

~~((C))~~ ~~((D-))~~ HAULED MATERIAL.

(1) No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited.

(2) ~~((+))~~ Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit. ~~((2-))~~ Any property used for this ~~((e))~~ purpose ~~((of outdoor burning, where outdoor burning of the material is allowed))~~ on an on-going basis ~~((;))~~ must be:

(a) ~~((-))~~ ~~((Be-))~~ Limited to the types of burning listed in WAC 173-351-200 (5)(b) as referenced in NWCAA 104.1 (criteria for municipal solid waste landfills), and

(b) ~~((-))~~ Approved in accordance with other laws, including ~~((WAC))~~ chapter 173-304 WAC as referenced in NWCAA 104.1 (minimum functional standards for solid waste handling) and ~~((WAC))~~ chapter 173-400 WAC as referenced in NWCAA 104.1 (general regulations for air pollution sources). ~~((RCW 70.94.6524))~~

~~((D))~~ ~~((E-))~~ CURTAILMENTS. During episodes or periods of impaired air quality, ~~((the))~~ a responsible person ~~((responsible))~~ for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(1) ~~((-))~~ No outdoor fire shall be ignited in a geographical area where:

(a) ~~((-))~~ ~~((Where))~~ Ecology has declared an air pollution episode; ~~((RCW 70.94.6512 and 70.94.6516))~~ ~~((o))~~

(b) ~~((-))~~ ~~((Where))~~ Ecology or the NWCAA has declared an impaired air quality condition for the county; or ~~((where the air quality has been identified-))~~

(c) ~~((-))~~ ~~((Where-t))~~ The appropriate fire protection authority has declared a fire danger burn ban, unless the NWCAA grants an exception.

(2) ~~((-))~~ ~~((The))~~ A responsible person ~~((responsible))~~ for an outdoor fire shall ~~((must))~~ extinguish the fire when an air

pollution episode, ~~((or))~~ an impaired air quality condition, or fire danger burn ban that applies to the burning~~((s))~~ is declared.

(a) ~~((3-))~~ Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall ~~((will))~~ constitute prima facie evidence of unlawful outdoor burning.

(b) ~~((4-))~~ Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall ~~((will))~~ constitute prima facie evidence of unlawful outdoor burning.

(E) ~~((F-))~~ UNLAWFUL OUTDOOR BURNING/NUISANCE~~((s))~~
It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

~~((1. Any person affected by outdoor burning may file a complaint with the permitting agency or other designated enforcing agency.~~

~~2. Any agency responding to an outdoor burning complaint should attempt to determine if the burning on any particular property is unlawful.~~

~~3. Any person responsible for such unlawful outdoor burning must immediately extinguish the fire.)~~

(F) ~~((G-))~~ BURNING IN OUTDOOR CONTAINERS. Outdoor containers (such as burn barrels and other wood waste incinerators not regulated under NWCAA Section 458 ~~((WAC 173-400-070(1)))~~), used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 ~~((one-half))~~ inch, and they may only be used in compliance with this section.

(G) ~~((H-))~~ OTHER GENERAL REQUIREMENTS.

(1)~~((s))~~ A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(2)~~((s))~~ No fires are to be within 50 ~~((fifty))~~ feet of structures.

(3)~~((s))~~ Permission from a landowner~~((s))~~ or owner's designated representative~~((s))~~ must be obtained before starting an outdoor fire.

502.5 OUTDOOR BURNING PERMIT PROGRAM/REQUIREMENTS.

(A)~~((s))~~ PERMIT PROGRAM. ~~((General Requirements.))~~

(1)~~((s))~~ The NWCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning.

(2)~~((s))~~ The NWCAA may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each type of burning and determine the type of permit appropriate for each where a permit is required.

(3)~~((s))~~ Permitting agencies may use a verbal, electronic, written, or general permit~~((s))~~ established by rule for any type of outdoor burning that requires a permit~~((s))~~ ~~((Provided that a written permit should be used, where feasible, for certain types of burning.))~~.

(4)~~((s))~~ A written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under NWCAA 502.6 (A), (B), or (C), ~~((or other outdoor burning has been banned under WAC 173-425-040 (1), (2), or (3)))~~ and other outdoor burning (except any other outdoor burning necessary to protect public health and safety).

(5) Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is paid.

~~((6. Permits issued under section 502.5 shall provide that:~~

~~a. Prohibited material shall not be burned.~~

~~b. Outdoor burning shall not be conducted during a period of impaired air quality.~~

~~c. No reasonable alternative is available.~~

~~d. No outdoor burning shall be conducted in areas that exceed federal or state ambient air quality standards for carbon monoxide and/or PM₁₀. Such areas shall be defined as nonattainment areas for these pollutants.~~

~~e. Failure to abide by conditions of an outdoor burning permit shall be unlawful.~~

~~f. The rule for a general permit must establish periods of time when any burning under the permit must occur and must include all appropriate conditions for burning such as requirements for good combustion and restricting burning to specific weather conditions.)~~

(B)~~((s))~~ TYPES OF BURNING THAT REQUIRE A PERMIT. Except as otherwise stated, a permit is required for the following types of outdoor burning ~~((in all areas of the state))~~:

(1)~~((s))~~ Residential burning (except in nonurban areas of any county with an unincorporated population of less than 50,000 ~~((fifty thousand))~~);

(2)~~((s))~~ Land clearing burning;

(3)~~((s))~~ Storm or flood debris burning;

(4)~~((s))~~ Tumbleweed burning (except in counties with a population of less than 250,000 ~~((two hundred fifty thousand))~~);

(5)~~((s))~~ Weed abatement fires;

(6)~~((s))~~ Fire~~((s))~~fighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over 10,000 ~~((ten thousand))~~, and all other fire~~((s))~~fighting instruction fires, except ~~((EXCEPT))~~:

(a)~~((s))~~ Fire~~((s))~~fighting instruction fires for training to fight structural fires as provided in RCW 52.12.150; ~~((and))~~

(b)~~((s))~~ Aircraft crash rescue fires as provided in RCW 70.94.650~~((5))~~ ~~((28))~~ as referenced in NWCAA 104.1; and

(c)~~((s))~~ Forest fires ~~((as provided in RCW 70.94.6528.))~~;

(7)~~((s))~~ Rare and endangered plant regeneration fires;

(8)~~((s))~~ Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement);

(9)(-) Recreational fires with a total fuel area greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than 50,000 (fifty thousand)); and

(10)(-) Other outdoor burning if specifically authorized by the NWCAA ((local air authority or ecology)).

(C)(-) FEES.

(1. Permitting agencies may charge a fee for any permit issued, provided that a fee must be charged for all permits issued for weed abatement fires and fire fighting instruction fires.)

(2.) The fee for outdoor burning permits shall be as established in NWCAA 324.10. The amount of the fee ((All fees must be set by rule and must)) will not exceed the level necessary to recover the costs of administering and enforcing a permit program.

(TYPE OF PERMIT	FEE
Annual training (single location)	\$325.00/year
Extinguisher Training	\$25.00/training exercise
Structure training	\$150.00/training exercise
Weed abatement	\$2.00/acre; \$25.00 minimum per location))

(D. PERMIT DECISIONS.-

1. Permitting agencies must approve with conditions, or deny outdoor burning permits as needed to achieve compliance with this section.

2. All permits must include conditions to satisfy general prohibitions and requirements that apply to all outdoor burning.

3. All permits may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions.

4. Permitting agencies may also include conditions to comply with other laws pertaining to outdoor burning.

5. Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is discharged.)

(D) ((E.)) ((RESIDENTIAL BURNING BY GENERAL PERMIT)) REQUIREMENTS FOR RESIDENTIAL BURNING.

(1. A general permit for residential burning is adopted for use:

a. Where the NWCAA has adopted the general permit by reference, and

b. Any designated enforcing agencies have agreed that a general permit is appropriate for residential burning, and

c. The public has been notified where the permit applies.

2. All burning under a general permit must:

a. Comply with condition (4) of this subsection.

b. Be restricted to the first and second weekends (Saturday and Sunday) in April and the third and fourth weekends in October unless the enforcing agency substitutes alternative

days and adequate notice of the substitution is provided to the public. Alternative days may only be substituted if conditions on the prescribed days are unsuitable due to such things as poor air quality, high fire danger, unfavorable meteorology, likely interference with a major community event, or difficulty for enforcement.

3. The NWCAA may adopt a general permit for residential burning that prescribes a different set of days, not to exceed eight days per year, provided that adequate public notice of where and when the permit will apply is given.)

((4.)) The following conditions apply to all residential burning allowed without a permit under NWCAA 502.5 (B)(1) ((, in the nonurban areas of any county with an unincorporated population of less than fifty thousand, without a permit)) or allowed under a general, verbal, written, or electronic permit. Persons unable to meet these requirements and the requirements in NWCAA 502.4 ((and any other requirements)) must apply for and receive a written permit before burning. Failure to comply with all applicable requirements voids any applicable permit.

(1) ((a.)) ((The)) A responsible person ((responsible)) for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions of each day.

(2) ((b.)) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(3) ((c.)) The fire must not include prohibited materials as listed in NWCAA 502.4(B).((, construction/demolition debris, or any substance other than natural vegetation.))

(4) ((d.)) The fire must not include materials hauled from another property.

(5) ((e.)) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(6) ((f.)) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(7) ((g.)) No fires are to be within 50 ((fifty)) feet of structures.

(8) ((h.)) Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

(9) ((i.)) Any burn pile must not be larger than four feet in diameter and three feet high.

(10) ((j.)) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(11) ((k.)) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 ((one-half)) inch.

(12) ((l.)) No fire is allowed ((permitted)) within 500 ((five hundred)) feet of forest slash.

(E) ((F.)) FIELD RESPONSE AND ENFORCEMENT

(1)(-) Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible

for field response to outdoor burning complaints and enforcement of all permit conditions and requirements unless another agency has agreed to be responsible.

(2)(-) Except for enforcing Section 502.4 (E)(1)(d), the NWCAA will be responsible for enforcing any requirements that apply to burning that are prohibited or exempt from permits in areas of its jurisdiction, unless another agency agrees to be responsible.

(3)(-) Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed if they discover noncompliance.

502.6 AREAS AND TYPES OF PROHIBITED OUTDOOR BURNING.

(A)(-) NONATTAINMENT AREAS. ~~((Nonattainment areas-))~~ Residential burning and land clearing burning shall not occur ~~((may not be allowed))~~ in any areas ~~((of the state))~~ that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning ~~((as identified in WAC 173-425-040(1))~~). These areas are limited to all nonattainment areas and former nonattainment areas for carbon monoxide, particulate matter (PM₁₀ and PM_{2.5}), sulfur dioxide, nitrogen dioxide, and lead.

(B)(-) URBAN GROWTH AREAS. ~~((Urban Growth Areas-))~~ No person shall cause or allow ~~((R))~~ residential burning and land clearing burning ~~((may not be allowed))~~ in any urban growth areas, ~~((except as follows:~~

1. Residential burning and land clearing burning may be allowed, until December 31, 2006, in urban growth areas for incorporated cities with a population of less than five thousand that are neither within nor contiguous with any areas identified in section 502.6(A).

2. Residential burning and land clearing burning may be allowed, until December 31, 2006, in urban growth areas that do not include an incorporated city.

(C)(-) CITIES OVER 10,000 POPULATION. ~~((Cities over 10,000 population-))~~ Residential burning and land clearing burning shall not occur ~~((may not be allowed))~~ in any cities having a population greater than 10,000 ~~((ten thousand))~~ people, ~~((after December 31, 2000.))~~ Cities having this population must be identified by using the most current population estimates available for each city.

(D)(-) HIGH DENSITY AREAS. ~~((High density areas-))~~ Land clearing burning shall not occur ~~((may not be allowed))~~ in any area having a general population density of 1,000 ~~((one thousand))~~ or more persons per square mile, ~~((after December 31, 2000, if the area is contiguous with any area where land clearing burning has already been, or must be, prohibited under subsection (A), (B), or (C) of this section. Land clearing burning may not be allowed in any other areas having this density after December 31, 2006.))~~ All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles.

(E)(-) AREAS WITH A REASONABLE ALTERNATIVE TO BURNING. ~~((Areas with a reasonable alternative to burning-))~~ Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires and other outdoor burning of organic refuse shall not occur ~~((may not be allowed))~~ in any area ~~((of the state))~~, including

the areas identified in subsections 502.6(A) through ~~((-~~) 502.6(D), when a reasonable alternative for that type of burning is found to exist in the area for that type of burning. A reasonable alternative for a particular type of burning exists when the alternative is available and reasonably economical and less harmful to the environment as defined in WAC 173-425-040(5) as referenced in NWCAA 104.1.

~~((F. By December 31, 2000 and at least every third year thereafter, each local air authority, and ecology in cooperation with counties must determine whether any reasonable alternative for a particular type of burning, where burning of that type is allowed, exists. Determinations for other outdoor burning must be made on a permit-by-permit basis to determine whether an alternative is available and reasonably economical and less harmful to the environment. A reasonable alternative exists when the option is available, reasonably economical, and less harmful to the environment as stated in WAC 173-425-040(5).))~~

(F) No person shall cause or allow outdoor burning at permanently-located business establishments excluding land clearing operations.

~~((502.7-ADDITIONAL REQUIREMENTS FOR LAND CLEARING BURNING-The following "best available burning practices" shall be used when land clearing burns are conducted on land not subject to the Forest Protection Assessment (RCW 76.04.610). Land clearing burning conducted on lands subject to the Forest Protection Assessment is regulated by the Washington Department of Natural Resources under WAC 332-24-201.~~

A. No land clearing fire shall be larger than fifty (50) feet in diameter and be located less than five times the fire diameter size from any structure.

B. At least one fan rated and operated at 6,000 cubic feet per minute must be on site for each twenty-five (25) feet of fire diameter and must be used to facilitate ignition and burning.

C. Material for a fire must be free of excess dirt and machine stacked by an excavator or equivalent machine, which must be on site and employed until fire is fully extinguished. The ratio of stack height to burn pile diameter shall be as high as possible but no less than 1:2.

D. The number of fires per parcel, defined as a single, integrated, land area that is being cleared by a party, shall not exceed more than two piles per excavator, except that, two additional fires may be lit when the two fires are approximately seventy-five percent consumed.

E. A person qualified to operate stacking or equivalent machinery shall be present at the immediate fire site during burning.

F. Burning shall be conducted in such a manner as to prevent any smoke and/or particulate matter from being emitted that is or is likely to restrict visibility on a public road or airport landing strip.

G. Outdoor fires for the purpose of land clearing burning must have a written permit from the appropriate fire permitting agency. Notwithstanding the restrictions listed in sections 502.6(A) through 502.6(F) above, all land clearing fires must meet any additional conditions listed on the permit and all other applicable air pollution regulations.

~~H. No fires shall be permitted for the burning of material generated from land clearing projects located in areas where a burn ban exists.~~

~~I. It shall be unlawful for any person to cause or allow the burning of material generated from land clearing projects located in areas where a burn ban exists.~~

~~J. It shall be unlawful for any person to cause or allow the burning of any land clearing material that has not been generated on that site.)~~

~~((502.8 Additional requirements for commercial establishments.~~

~~A. No outdoor burning is allowed at permanently located commercial establishments excluding land clearing operations. The Northwest Clean Air Agency may issue fire permits on a case-by-case basis for extenuating circumstances e.g., mitigating an immediate threat to human health or safety.)~~

PASSED: January 8, 1969 ((June 14, 2001)) AMENDED: June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, September 11, 2014

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 504 – AGRICULTURAL BURNING

504.1 Purpose. This Section establishes fees and controls for agricultural burning in the NWCAA jurisdiction in order to minimize adverse health effects and environmental impacts, consistent with best management practices and the responsibilities of the NWCAA under ~~chapter ((WAC)) 173-430 WAC as referenced in NWCAA 104.1, RCW 70.94.6528 as referenced in NWCAA 104.1, 70.94.6532 as referenced in NWCAA 104.1, and 70.94.6524 as referenced in NWCAA 104.1. All agricultural burning as defined in chapter ((WAC))~~

Fee Level	Section	Local-Administration	Research	Ecology-Administration
\$25.00	WAC 173-430-040 (4)(a)(i)	\$12.50	\$12.50	\$0
\$50.00	WAC 173-430-040 (4)(a)(ii)	\$12.50	\$12.50	\$25.00
2007 – \$2.00 per acre	WAC 173-430-040 (4)(b)(i)	\$1.25 per acre	\$0.25 per acre	\$0.50 per acre
2008 and beyond – \$2.25 per acre	WAC 173-430-040 (4)(b)(ii)	\$1.25 per acre	\$0.50 per acre	\$0.50 per acre))

PASSED: February 14, 1973 AMENDED: ~~((By Adoption of WAC 18-16 January 24, 1972;))~~ August 9, 1978, June 7, 1990, May 9, 1996, May 14, 1998, November 12, 1998, November 8, 2007, September 11, 2014

AMENDATORY SECTION

SECTION 550 - PREVENTING PARTICULATE MATTER FROM BECOMING AIRBORNE

550.1 The owner or operator of a source or activity that generates fugitive dust, including, but not limited to, material handling, building construction or demolition, abrasive blasting, roadways and lots, shall employ reasonable precautions

173-430 WAC as referenced in NWCAA 104.1 shall be conducted in accordance with the provisions of that chapter.

504.2 Applicability. This Section applies to agricultural burning in all areas of the NWCAA jurisdiction unless specifically exempted. Nothing in Section 504 shall apply to silvicultural burning or other outdoor burning ~~((Chapter 173-425 WAC))~~. Propane flaming for the purpose of vegetative debris removal is considered agricultural burning.

504.3 Conditions. All agricultural burning, except for agricultural burning that is incidental to commercial agricultural activities ~~((RCW 70.94.6524))~~, requires a permit and payment of a fee issued by the NWCAA.

504.4 Fees. In accordance with RCW 70.94.6528 as referenced in NWCAA 104.1, the NWCAA shall assess a fee for all agricultural burning permits as specified in NWCAA 324.9. ((All agricultural burning permits require a fee in accordance with Chapter 70.94.6528. Propane flaming for the purpose of vegetative debris removal is considered agricultural burning (WAC 173-430-030(1)). The fee shall be the greater of the minimal fee level and the variable fee level.))

~~((504.41 Minimum fee levels:~~

~~504.411 Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~504.412 Fifty dollars for orchard tear out burning per calendar year per agricultural operation based on burning debris of up to twenty acres or equivalent.~~

~~504.42 Variable fee levels (based on acreage or equivalent):~~

~~504.421 Through calendar year 2007, the fee is two dollars per acre.~~

~~504.422 Beginning in calendar year 2008, the fee is two dollars and twenty five cents per acre.~~

~~504.43 Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration. The permit fee shall be distributed as follows:~~

to prevent fugitive dust from becoming airborne and must maintain and operate the source or activity to minimize emissions. ((It shall be unlawful for any person or operation to cause or permit material to be handled, transported or stored without using Reasonably Available Control Technology to prevent the release of fugitive particulate matter to the ambient air.))

~~((50.2 It shall be unlawful for any person to cause or permit a building or its appurtenances to be constructed, altered, repaired or demolished, or conduct abrasive blasting, without using Reasonably Available Control Technology to~~

prevent the release of fugitive particulate matter to the ambient air:

550.3 It shall be unlawful for any person to cause or permit the release of fugitive particulate matter to the ambient air from public or private lots, roadways, or open areas without using Reasonably Available Control Technology.)

550.2 ((4)) It shall be unlawful for any person to cause or allow ((permit)) the emission of particulate matter which becomes deposited upon the property of others in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interferes with enjoyment of life and property.

550.3 For this section, reasonable precautions may include, but are not limited to:

(A) Applying and reapplying water as necessary on materials and/or surfaces (e.g., access roads, etc.);

(B) Using enclosed conveyors, containment, and covered containers when handling and transferring materials;

(C) Covering loads when transporting material;

(D) Limiting vehicle speed on unpaved surfaces;

(E) Paving or installing quarry spalls at exit aprons;

(F) Cleaning vehicle tires and undercarriages before exiting to paved public roadways; and

(G) Promptly cleaning material that has been tracked out onto paved public roadways.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, October 14, 1987, April 14, 1993, November 12, 1999, July 14, 2005, September 11, 2014

AMENDATORY SECTION

SECTION 570 - ASBESTOS CONTROL STANDARDS

570.1 The Board of Directors of the Northwest Clean Air Agency recognize that asbestos is a serious health hazard. Any asbestos fibers released into the air can be inhaled and can cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board has, therefore, determined that any asbestos emitted to the ambient air is air pollution. Because of the seriousness of the health hazard, the Board of Directors has adopted this regulation to control asbestos emissions from asbestos removal projects in order to protect the public health. In addition, the Board has adopted these regulations to coordinate with the EPA asbestos NESHAP, the OSHA asbestos regulation, the Washington Department of Labor and Industries asbestos regulations, the Washington Department of Ecology Dangerous Waste regulation, and the solid waste regulations of Island, Skagit and Whatcom Counties.

570.2 DEFINITIONS

((a)) AHERA BUILDING INSPECTOR ((means a)) - A person who has successfully completed the training requirements for a building inspector established by EPA Asbestos Model Accreditation Plan((; -Interim Final Rule)) (40 CFR Part 763, Appendix C to Subpart E, I.B.3) and whose certification is current.

((b)) AHERA PROJECT DESIGNER ((means a)) - A person who has successfully completed the training requirements for

an abatement project designer established by EPA regulations (40 CFR 763.90(g)) and whose certification is current.

((c)) ASBESTOS ((means t)) - The asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

((d)) ASBESTOS-CONTAINING MATERIAL ((means a)) - Any material containing more than one percent ((+1%)) asbestos as determined using the method specified in EPA regulations Appendix A, Subpart F, 40 CFR Part 763, Section I, Polarized Light Microscopy.

((e)) ASBESTOS-CONTAINING WASTE MATERIAL ((means a)) - Any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or HEPA filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

((f)) ASBESTOS PROJECT ((means a)) - Any activity involving the abatement, renovation, demolition, removal, salvage, clean up, or disposal of asbestos-containing material, or any other action that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of stored asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

((g)) ASBESTOS SURVEY ((means a)) - A written report describing an inspection using the procedures contained in EPA regulations (40 CFR 763.86), or an alternate method that has received prior written approval from the Control Officer, to determine whether materials or structures to be worked on, renovated, removed, or demolished (including materials on the outside of structures) contain asbestos.

((h)) COMPETENT PERSON ((means a)) - A person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the NWCAA to take prompt corrective measures to eliminate them, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

((i)) COMPONENT ((means a)) - Any equipment, pipe, structural member, or other item covered or coated with, or manufactured from, asbestos-containing material.

((j)) DEMOLITION ((means w)) - Wrecking, razing, leveling, dismantling, or burning of a structure, making all or part of the structure permanently uninhabitable or unusable.

((k)) FRIABLE ASBESTOS-CONTAINING MATERIAL ((means a)) - Asbestos-containing material that, when dry, can be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Such materials include, but are not limited to, thermal system insulation, surfacing material, and cement asbestos products.

~~((h))~~ LEAK-TIGHT CONTAINER ~~((means a))~~ - A dust-tight and liquid-tight container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

~~((m))~~ NONFRIABLE ASBESTOS-CONTAINING MATERIAL ~~((means a))~~ - Asbestos-containing material that, when dry, cannot be crumbled, disintegrated, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal.

~~((n))~~ OWNER-OCCUPIED, SINGLE-FAMILY RESIDENCE ~~((means a))~~ - Any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is currently used by one family who owns the property as their ~~((domic))~~ primary or seasonal residence. This term includes houses, mobile homes, trailers, detached garages, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property or multiple-family units, nor does this term include any mixed-use building, structure, or installation that contains a residential unit.

~~((o))~~ PERSON ~~((means a))~~ - Any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

~~((p))~~ RENOVATION ~~((means a))~~ - Altering a facility or a component in any way, except demolition.

~~((q))~~ SURFACING MATERIAL ~~((means m))~~ - Material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing materials on structural members, or other materials on surfaces for decorative purposes.

~~((r))~~ SUSPECT ASBESTOS-CONTAINING MATERIAL ~~((means m))~~ - Material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material, fire barriers, gaskets, flooring material, and siding.

~~((s))~~ THERMAL SYSTEM INSULATION ~~((means m))~~ - Material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

570.3 ASBESTOS SURVEY REQUIREMENTS

(A) ~~((#))~~ Requirements for Renovations

It shall be unlawful for any person to cause or allow a renovation unless the property owner or the owner's agent determines whether there are suspect asbestos-containing materials in the work area and obtains an asbestos survey of any suspect asbestos-containing materials by an AHERA building inspector. An AHERA building inspector is not required for asbestos surveys associated with the renovation of an owner-occupied, single-family residence.

(1) If there are no suspect materials in the work area, this determination shall either be posted at the work site or communicated in writing to all contractors involved in the renovation.

(2) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(3) Except for renovations of an owner-occupied, single-family residence, only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(4) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

(B) ~~((b))~~ Requirements for Demolitions

It shall be unlawful for any person to cause or allow any demolition unless the property owner or the owner's agent obtains an asbestos survey by an AHERA building inspector of the structure to be demolished.

(1) It is not required that an AHERA building inspector evaluate any material presumed to be asbestos-containing material.

(2) Only an AHERA building inspector may determine that a suspect material does not contain asbestos.

(3) A summary of the results of the asbestos survey shall either be posted by the property owner or the owner's agent at the work site or communicated in writing to all persons who may come into contact with the material.

570.4 NOTIFICATION REQUIREMENTS

(A) ~~((#))~~ General Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the NWCAA on approved forms, in accordance with the advance notification period requirements contained in 570.4~~((D))~~ of this Regulation.

(1) The duration of an asbestos project shall be commensurate with the amount of work involved.

(2) Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per calendar year) of any asbestos-containing material.

(3) Notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window glazing, or roofing. All other asbestos project and demolition requirements remain in effect except as provided by Section 570.

(4) Notification is required for all demolitions of structures with a greater than 120 square feet footprint even if no asbestos-containing material is present. All other demolition requirements remain in effect.

(5) The written notification shall be accompanied by the appropriate nonrefundable fee as set forth in 324.8 ~~((570.4(d)))~~ of this Regulation unless prior arrangements for payment have been made with the NWCAA.

(6) A copy of the notification, all amendments to the notification, the asbestos survey, and any Order of Approval for an alternate means of compliance shall be available for inspection at all times at the asbestos project or demolition site.

(7) Notification for multiple asbestos projects or demolitions may be filed by a property owner on one form if all the following criteria are met:

(a) ~~((A))~~ The work will be performed continuously by the same contractor; and

(b) ~~((B))~~ A work plan is submitted that includes: a map of the structures involved in the project including the site address for each structure; the amount and type of asbestos-containing material in each structure; and the schedule for performing asbestos project and demolition work. For proj-

ects where a detailed work schedule cannot be provided the asbestos contractor and/or the demolition contractor shall participate in the NWCAA's work schedule fax program and will continue to participate in the program throughout the duration of the project.

(8) Annual Notification

A property owner may file one annual notification for asbestos projects to be conducted on one or more structures, vessels, or buildings during each calendar year if all of the following conditions are met:

(a) ((A)) The annual notification shall be filed with the NWCAA before commencing work on any asbestos project included in an annual notification;

(b) ((B)) The total amount of asbestos-containing material for all asbestos projects from each structure, vessel, or building in a calendar year under this section is less than 260 linear feet on pipes or less than 160 square feet on other components; and

(c) ((C)) The property owner submits quarterly written reports to the Control Officer on NWCAA-approved forms within 15 days after the end of each calendar quarter.

(B) ((b)) Mandatory Amendments

~~((1) Mandatory Amendments)~~

An amendment shall be submitted to the Control Officer for the following changes in a notification:

(1) ((A)) Increases in the project type or job size category that increase the fee or change the advance notification period;

(2) ((B)) Changes in the type of asbestos-containing material that will be removed; or

(3) ((C)) Changes in the start date, completion date, or work schedule, including hours of work. Asbestos contractors or property owners participating in the NWCAA work schedule fax program are not required to submit amendments for work schedule changes occurring between the start and completion dates.

(C) ((e)) Emergencies

The Control Officer may waive the advance notification period, if the property owner submits a written request that demonstrates to the Control Officer that an asbestos project or demolition must be conducted immediately because of any of the following:

(1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

(2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

(3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

(4) The project must proceed to avoid imposing an unreasonable burden.

(D) ((d)) Notification Period ~~((and Fees))~~

Project	((Size or Type))	Notification Period	((Fee))
<u>Asbestos Project</u> <u>Residential – Owner-Occupied – ((-)) Single Family Residence</u> <u>10 - 259 linear feet or 48 - 159 square feet)*</u> <u>260 - 999 linear feet or 160 - 4999 square feet</u> <u>> 1000 linear feet or > 5000 square feet) ((asbestos project and/or demolition))</u>	((AH))	Prior Notice 3 days 10 days 10 days	((25))
((AH Other)) Demolitions with no ((a)) <u>Asbestos</u> ((p)) Project	((AH))	10 days	((0))
((Asbestos Project*))	((10-259 linear ft. 48-159 square feet.))	((3 days))	((150))
((Asbestos Project))	((260-999 linear ft. 160-4,999 sq. ft.))	((10 days))	((300))
((Asbestos Project))	((> 1,000 linear ft. > 5,000 sq. ft.))	((10 days))	((500))
Emergency Classification (NWCAA 570.4(C))	((570.4(e))	Prior Notice	((0))
Amendments (NWCAA 570.4(B))	((570.4(b))	Prior Notice	((0))
((Alternate Means of Compliance (demolitions or friable asbestos-containing materials))	((570.7 (a) or (e))	((10 days))	((Add'l fee equal to project fee))
((Alternate Means of Compliance (non-friable asbestos-containing materials))	((570.7(b))	((10 days))	((Add'l fee equal to project fee))
Annual Notification (NWCAA 570.4 (A)(8))	((570.4 (a)(8))	Prior Notice	((500))

*Demolitions with asbestos projects involving less than 10 linear feet or less than 48 square feet may submit an asbestos project notification under this project category and will be eligible for the 3-day notification period.

The Control Officer may waive the (~~asbestos project fee and~~) notification period, by written authorization, for disposal of unused and intact or abandoned (without the knowledge or consent of the property owner) asbestos-containing materials. All other asbestos project and demolition requirements remain in effect.

570.5 ASBESTOS REMOVAL REQUIREMENTS PRIOR TO RENOVATION OR DEMOLITION

(A) (~~(a)~~) Removal of Asbestos Prior to Renovation or Demolition

Except as provided in 570.6(~~(7)~~)(~~C~~)(~~(e)~~) of this Regulation, it shall be unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

(B) (~~(b)~~) Exception for Hazardous Conditions

Asbestos-containing material need not be removed prior to a demolition, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

570.6 PROCEDURES FOR ASBESTOS PROJECTS

(A) (~~(a)~~) Training Requirements

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety and Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to (~~asbestos projects conducted as part of a renovation in an owner-occupied, single-family residence performed by the resident owner of the dwelling~~) individuals who work on asbestos projects on their own single family residence(s), no part of which is used for any commercial purpose.

(B) (~~(b)~~) Asbestos Removal Work Practices

Except as provided in 570.6(~~(7)~~)(~~C~~)(~~(e)~~) of this Regulation, it shall be unlawful for any person to cause or allow the removal of asbestos-containing material unless all the following requirements are met:

(1) The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only.

(2) If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

(3) Absorbent, asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Any unsaturated, absorbent, asbestos-containing materials exposed during removal shall be immediately saturated with a liquid wetting agent.

(4) Nonabsorbent, asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent, asbestos-containing materials exposed during removal shall be immediately coated with a liquid wetting agent.

(5) Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material are exempt from the requirements of 570.6 (~~B~~)(~~(b)~~)(3) and 570.6 (~~B~~)(~~(b)~~)(4) if all access to the asbestos-containing material is welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

(6) Except for surfacing materials being removed inside a negative pressure enclosure, asbestos-containing materials that are being removed, have been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or a lower floor, not dropped, thrown, slid, or otherwise damaged.

(7) All asbestos-containing waste material shall be sealed in leak-tight containers as soon as possible after removal but no later than the end of each work shift.

(8) All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers while saturated with a liquid wetting agent. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers while coated with a liquid wetting agent.

(9) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

(10) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

(11) Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

(12) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

(C) (~~(c)~~) Method of Removal for Nonfriable Asbestos-Containing Roofing Material

The following asbestos removal method shall be employed for asbestos-containing roofing material that has been determined to be nonfriable by a Competent Person or an AHERA Project Designer:

(1) The nonfriable asbestos-containing roofing material shall be removed using methods such as spud bar and knife. Removal methods such as sawing or grinding shall not be employed;

(2) Dust control methods shall be used as necessary to assure no fugitive dust is generated from the removal of nonfriable asbestos-containing roofing material;

(3) Nonfriable asbestos-containing roofing material shall be carefully lowered to the ground to prevent fugitive dust;

(4) After being lowered to the ground, the nonfriable asbestos-containing roofing material shall be immediately transferred to a disposal container; and

(5) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material.

570.7 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos projects regulated under these rules including, but not limited to, the U.S. Environmental Protection Agency, the Occupational Safety and Health Administration, and the Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

570.8 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

(A) ~~((A))~~ Except as provided in 570.8(C) ~~((C))~~ of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 days of removal at a waste disposal site authorized to accept such waste.

(B) ~~((B))~~ Waste Tracking Requirements

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless the following requirements are met:

(1) Maintain waste shipment records, beginning prior to transport, using a form that includes the following information:

(a) ~~((A))~~ The name, address, and telephone number of the waste generator;

(b) ~~((B))~~ The approximate quantity in cubic meters or cubic yards;

(c) ~~((C))~~ The name and telephone number of the disposal site operator;

(d) ~~((D))~~ The name and physical site location of the disposal site;

(e) ~~((E))~~ The date transported;

(f) ~~((F))~~ The name, address, and telephone number of the transporter; and

(g) ~~((G))~~ A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable international and government regulations.

(2) Provide a copy of the waste shipment record to the disposal site at the same time the asbestos-containing waste material is delivered.

(3) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

(4) If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and a cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

(5) Retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site, for at least 2 years.

(C) ~~((C))~~ Temporary Storage Site

A person may establish a facility for the purpose of collecting and temporarily storing asbestos-containing waste material if the facility is approved by the Control Officer and all the following conditions are met:

(1) Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons;

(2) All asbestos-containing waste material shall be stored in leak-tight containers and the leak-tight containers shall be maintained in good condition;

(3) The storage area must be locked except during transfer of asbestos-containing waste material; and

(4) Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 days.

(D) ~~((D))~~ Disposal of Asbestos Cement Pipe

Asbestos cement pipe used on public right-of-ways, public easements, or other places receiving the prior written approval of the Control Officer may be buried in place if the pipe is covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste.

PASSED: November 12, 1998 AMENDED ~~((Amended))~~: July 14, 2005, November 8, 2007, September 11, 2014

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-15-034
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed July 9, 2014, 2:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-18-015.

Title of Rule and Other Identifying Information: New WAC 181-79A-132 requires teachers holding an endorsement in special education, early childhood special education, English language learners or bilingual also hold a second endorsement in a different area.

Hearing Location(s): Doubletree by Hilton, Spokane City Center, 322 North Spokane Falls Court, Spokane, WA 99201, on September 18, 2014, at 8:30.

Date of Intended Adoption: September 18, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 11, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by September 11, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Endorsements in special education and English learners are demonstrations of a teacher's competencies in working with the characteristics of a student. Content expertise is required for teachers to be properly assigned to courses, regardless of the characteristics of the student. The rule change requires future certificates issued include a content endorsement in addition to the student characteristic endorsement.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

July 9, 2014

David Brenna

Senior Policy Analyst

NEW SECTION

WAC 181-79A-132 Dual endorsement requirement.

Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a special education, early childhood special education, bilingual education, or English language learner endorsement after September 1, 2016, must earn and/or hold a second endorsement in another endorsement area. Special education, early childhood special education, bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area.

WSR 14-15-051

PROPOSED RULES

BUILDING CODE COUNCIL

[Filed July 11, 2014, 3:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-028.

Title of Rule and Other Identifying Information: Amendments to chapter 51-50 and 51-51 WAC: Section 1203 [of] the 2012 International Building Code and Section R408 of the 2012 International Residential Code.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-5366, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Include requirements for black, six mil polyethylene ground cover in crawl-spaces in both the 2012 IBC and IRC. This requirement was previously located [in] all editions of the Washington State Energy Code since 1980 but not in the reformatted 2012 Energy Code as it was believed this was already a requirement within the 2012 International Building and Residential Code. This is also the subject of an emergency rule currently in place under WSR 14-08-012.

Reasons Supporting Proposal: RCW 19.27A.025 and 19.27A.045.

Statutory Authority for Adoption: RCW 19.27.074, 19.27.031.

Statute Being Implemented: Chapter 19.27 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 41011, Olympia, WA 98504-1449, (360) 407-9278; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. It was determined there was no economic impact because this has been a requirement of the codes since 1980 and as such is common practice, but was mistakenly omitted when reformatting the current Washington State Energy Code.

A cost-benefit analysis is not required under RCW 34.05.328. The State building code council is not a listed agency under RCW 34.05.328 (5)(a)(i). This rule is not considered to be substantive; its function is to provide economic relief in certain instances and make some noneditorial corrections to the text.

June 13, 2014
 C. Ray Allshouse
 Council Chair

AMENDATORY SECTION (Amending WSR 13-04-067, filed 2/1/13, effective 7/1/13)

WAC 51-50-1203 Section 1203—Ventilation.

1203.1 General. Buildings shall be provided with natural ventilation in accordance with Section 1203.4, or mechanical ventilation in accordance with the *International Mechanical Code*.

1203.2 Attic spaces. Enclosed *attics* and enclosed rafter spaces formed where ceilings are applied directly to the underside of roof framing members shall have cross ventilation for each separate space by ventilation openings protected against the entrance of rain and snow. Blocking and bridging shall be arranged so as not to interfere with the movement of air. An airspace of not less than 1 inch (25 mm) shall be provided between the insulation and the roof sheathing. The net free ventilating area shall not be less than 1/150th of the area of the space ventilated.

- EXCEPTIONS:
1. The net free cross-ventilation area shall be permitted to be reduced to 1/300 provided not less than 50 percent and not more than 80 percent of the required ventilating area provided by ventilators located in the upper portion of the space to be ventilated at least 3 feet (914 mm) above eave or cornice vents with the balance of the required *ventilation* provided by eave or cornice vents.
 2. The net free cross-ventilation area shall be permitted to be reduced to 1/300 where a Class I or II vapor retarder is installed on the warm-in-winter side of the ceiling.
 3. *Attic* ventilation shall not be required when determined not necessary by the *building official* due to atmospheric or climatic conditions.
 4. Unvented attic assemblies (spaces between the ceiling joists of the top story and the roof rafters) shall be permitted if all the following conditions are met:
 - 4.1 The unvented attic space is completely contained within the building thermal envelope.
 - 4.2 No interior vapor retarders are installed on the ceiling side (attic floor) of the unvented attic assembly.
 - 4.3 Where wood shingles or shakes are used, a minimum 1/4 inch (6 mm) vented air space separates the shingles or shakes and the roofing underlayment above the structural sheathing.
 - 4.4 In Climate Zones 5B and 6B, any air-impermeable insulation shall be a Class II vapor retarder, or shall have a Class II vapor retarder coating or covering in direct contact with the underside of the insulation.
 - 4.5 Either items a, b, or c below shall be met, depending on the air permeability of the insulation directly under the structural roof sheathing.
 - a. Air-impermeable insulation only. Insulation shall be applied in direct contact to the underside of the structural roof sheathing.
 - b. Air-permeable insulation only. In addition to the air-permeable insulation installed directly below the structural sheathing, rigid board or sheet insulation shall be installed directly above the structural roof sheathing as specified in Table 1203.2.1 for condensation control.

- c. Air-impermeable and air-permeable insulation. The air-impermeable insulation shall be applied in direct contact to the underside of the structural roof sheathing as specified in Table 1203.2.1 for condensation control. The air-permeable insulation shall be installed directly under the air-impermeable insulation.
- i. Climate Zone #1 - R-10 minimum rigid board or air-impermeable insulation R-value.
- ii. Climate Zone #2 - R-25 minimum rigid board or air-impermeable insulation R-value.
- d. Where preformed insulation board is used as the air-impermeable insulation layer, it shall be sealed at the perimeter of each individual sheet interior surface to form a continuous layer.

**Table 1203.2.1
 Insulation for Condensation Control**

CLIMATE ZONE	MINIMUM RIGID BOARD ON AIR-IMPERMEABLE INSULATION R-VALUE ^a
4C	R-15
5B	R-20
6B	R-25

^a Contributes to but does not (~~supersede~~) supersede the requirements for insulation in the Washington State Energy Code ((WAC)) chapter 51-11 WAC).

1203.3 Under-floor ventilation. The space between the bottom of the floor joists and the earth under any building except spaces occupied by basements or cellars shall be provided with ventilation openings through foundation walls or exterior walls. Such openings shall be placed so as to provide cross ventilation of the under-floor space. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

1203.4 Natural ventilation. For other than Group R Occupancies, natural ventilation of an occupied space shall be through windows, doors, louvers or other openings to the outdoors. The operating mechanism for such openings shall be provided with ready access so that the openings are readily controllable by the building occupants. Group R Occupancies shall comply with the *International Mechanical Code*.

1203.6 Radon resistive construction standards. The criteria of this section establishes minimum radon resistive construction requirements for Group R Occupancies.

1203.6.1 Application. The requirements of Section 1203.6 shall be adopted and enforced by all jurisdictions of the state according to the following subsections.

1203.6.1.1 All jurisdictions of the state shall comply with Section 1203.6.2.

1203.6.1.2 Clark, Ferry, Okanogan, Pend Oreille, Skamania, Spokane, and Stevens counties shall also comply with Section 1203.6.3.

1203.6.2 State wide radon requirements.

1203.6.2.1 Crawlspace. All crawlspaces shall comply with the requirements of this section.

1203.6.2.2 Ventilation. All crawlspaces shall be ventilated as specified in Section 1203.3.

If the installed ventilation in a crawlspace is less than one square foot for each 300 square feet of crawlspace area, or if the crawlspace vents are equipped with operable louvers, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with Sections 1203.6.3.2.6 and 1203.6.3.2.7.

1203.6.2.3 Crawlspace plenum systems. In crawlspace plenum systems used for providing supply air for an HVAC system, aggregate, a permanently sealed soil gas retarder membrane and a radon vent pipe shall be installed in accordance with Section 1203.6.3.2. Crawlspace shall not be used for return air plenums.

In addition, an operable radon vent fan shall be installed and activated. The fan shall be located as specified in Section 1203.6.3.2.7. The fan shall be capable of providing at least 100 cfm at 1-inch water column static pressure. The fan shall be controlled by a readily accessible manual switch. The switch shall be labeled "RADON VENT FAN."

1203.6.3 Radon prescriptive requirements.

1203.6.3.1 Scope. This section applies to those counties specified in Section 1203.6.1.2. This section establishes prescriptive construction requirements for reducing the potential for radon entry into all Group R Occupancies, and for preparing the building for future mitigation if desired.

In all crawlspaces, except crawlspace plenums used for providing supply air for an HVAC system, a continuous air barrier shall be installed between the crawlspace area and the occupied area to limit air transport between the areas. If a wood sheet subfloor or other material is utilized as an air barrier, in addition to the requirements of Section 502.1.6.2 of the Washington State Energy Code, all joints between sheets shall be sealed.

1203.6.3.2 Floors in contact with the earth.

1203.6.3.2.1 General. Concrete slabs that are in direct contact with the building envelope shall comply with the requirements of this section.

EXCEPTION: Concrete slabs located under garages or other than Group R Occupancies need not comply with this chapter.

1203.6.3.2.2 Aggregate. A layer of aggregate of 4-inch minimum thickness shall be placed beneath concrete slabs. The aggregate shall be continuous to the extent practical.

1203.6.3.2.3 Gradation. Aggregate shall:

1. Comply with ASTM Standard C-33 Standard Specification for Concrete Aggregate and shall be size No. 8 or larger size aggregate as listed in Table 2, Grading Requirements for Course Aggregate; or

2. Meet the 1988 Washington State Department of Transportation Specification 9-03.1 (3) "Coarse Aggregate for Portland Cement Concrete," or any equivalent successor

standards. Aggregate size shall be of Grade 8 or larger as listed in Section 9-03.1 (3) C, "Grading"; or

3. Be screened, washed pea gravel free of deleterious substances in a manner consistent with ASTM Standard C-33 with 100 percent passing a 1/2-inch sieve and less than 5 percent passing a No. 16 sieve. Sieve characteristics shall conform to those acceptable under ASTM Standard C-33.

EXCEPTION: Aggregate shall not be required if a substitute material or system, with sufficient load bearing characteristics, and having approved capability to provide equal or superior air flow, is installed.

1203.6.3.2.4 Soil-gas retarder membrane. A soil-gas retarder membrane, consisting of at least one layer of virgin polyethylene with a thickness of at least 6 mil, or equivalent flexible sheet material, shall be either placed directly under all concrete slabs so that the slab is in direct contact with the membrane, or on top of the aggregate with 2 inches minimum of fine sand or pea gravel installed between the concrete slab and membrane. The flexible sheet shall extend to the foundation wall or to the outside edge of the monolithic slab. Seams shall overlap at least 12 inches. The membrane shall also be fitted tightly to all pipes, wires, and other penetrations of the membrane and sealed with an approved sealant or tape. All punctures or tears shall be repaired with the same or approved material and similarly lapped and sealed.

1203.6.3.2.5 Sealing of penetrations and joints. All penetrations and joints in concrete slabs or other floor systems and walls below grade shall be sealed by an approved sealant to create an air barrier to limit the movement of soil-gas into the indoor air.

Sealants shall be approved by the manufacturer for the intended purpose. Sealant joints shall conform to manufacturer's specifications. The sealant shall be placed and tooled in accordance with manufacturer's specifications. There shall be no gaps or voids after the sealant has cured.

1203.6.3.2.6 Radon vent. One continuous sealed pipe shall run from a point within the aggregate under each concrete slab to a point outside the building. Joints and connections shall be permanently gas tight. The continuous sealed pipe shall interface with the aggregate in the following manner, or by other approved equal method. The pipe shall be permanently connected to a "T" within the aggregate area so that the two end openings of the "T" lie within the aggregate area. A minimum of 5 feet of perforated drain pipe of 3 inches minimum diameter shall join to and extend from the "T." The perforated pipe shall remain in the aggregate area and shall not be capped at the ends. The "T" and its perforated pipe extensions shall be located at least 5 feet horizontally from the exterior perimeter of the aggregate area.

The continuous sealed pipe shall terminate no less than 12 inches above the eave, and more than 10 horizontal feet from a woodstove or fireplace chimney, or operable window. The continuous sealed pipe shall be labeled "radon vent." The label shall be placed so as to remain visible to an occupant.

The minimum pipe diameter shall be 3 inches unless otherwise approved. Acceptable sealed plastic pipe shall be smooth walled, and may include either PVC schedule 40 or ABS schedule of equivalent wall thickness.

The entire sealed pipe system shall be sloped to drain to the subslab aggregate.

The sealed pipe system may pass through an unconditioned attic before exiting the building; but to the extent practicable, the sealed pipe shall be located inside the thermal envelope of the building in order to enhance passive stack venting.

- EXCEPTION: A fan for subslab depressurization system includes the following:
1. Soil-gas retarder membrane as specified in Section 1203.6.3.2.4;
 2. Sealing of penetrations and joints as specified in Section 1203.6.3.2.5;
 3. A 3-inch continuous sealed radon pipe shall run from a point within the aggregate under each concrete slab to a point outside the building;
 4. Joints and connections shall be gas tight, and may be of either PVC schedule 40 or ABS schedule of equivalent in wall thickness;
 5. A label of "radon vent" shall be placed on the pipe so as to remain visible to an occupant;
 6. Fan circuit and wiring as specified in Section 1203.6.3.2.7 and a fan.

If the subslab depressurization system is exhausted through the concrete foundation wall or rim joist, the exhaust terminus shall be a minimum of 6 feet from operable windows or outdoor air intake vents and shall be directed away from operable windows and outdoor air intake vents to prevent radon reentrainment.

1203.6.3.2.7 Fan circuit and wiring and location. An area for location of an in-line fan shall be provided. The location shall be as close as practicable to the radon vent pipe's point of exit from the building, or shall be outside the building shell; and shall be located so that the fan and all downstream piping is isolated from the indoor air.

Provisions shall be made to allow future activation of an in-line fan on the radon vent pipe without the need to place new wiring. A 110 volt power supply shall be provided at a junction box near the fan location.

1203.6.3.2.8 Separate aggregate areas. If the 4-inch aggregate area underneath the concrete slab is not continuous, but is separated into distinct isolated aggregate areas by a footing or other barrier, a minimum of one radon vent pipe shall be installed into each separate aggregate area.

- EXCEPTION: Separate aggregate areas may be considered a single area if a minimum 3-inch diameter connection joining the separate areas is provided for every 30 feet of barrier separating those areas.

1203.6.3.2.9 Concrete block walls. Concrete block walls connected to below grade areas shall be considered unsealed surfaces. All openings in concrete block walls that will not remain accessible upon completion of the building shall be sealed at both vertical and horizontal surfaces, in order to create a continuous air barrier to limit the transport of soil-gas into the indoor air.

AMENDATORY SECTION (Amending WSR 13-04-068, filed 2/1/13, effective 7/1/13)

WAC 51-51-0408 Section R408—Under-floor space.

R408.1 Ventilation. The under-floor space between the bottom of the floor joists and the earth under any building (except space occupied by a basement) shall have ventilation openings through foundation walls or exterior walls. A ground cover of six mil (0.006 inch thick) black polyethylene or approved equal shall be laid over the ground within crawl spaces. The ground cover shall be overlapped six inches minimum at the joints and shall extend to the foundation wall.

- EXCEPTION: The ground cover may be omitted in crawl spaces if the crawl space has a concrete slab floor with a minimum thickness of two inches.

R408.2 Openings for under-floor ventilation. The minimum net area of ventilation openings shall not be less than 1 square foot (0.0929 m²) for each 300 square feet (28 m²) of under-floor area. Required openings shall be evenly placed to provide cross ventilation of the space except one side of the building shall be permitted to have no ventilation openings. Ventilation openings shall be covered for their height and width with any of the following materials provided that the least dimension of the covering shall not exceed 1/4 inch (6.4 mm):

1. Perforated sheet metal plates not less than 0.070 inch (1.8 mm) thick.
2. Expanded sheet metal plates not less than 0.047 inch (1.2 mm) thick.
3. Cast-iron grill or grating.
4. Extruded load-bearing brick vents.
5. Hardware cloth of 0.035 inch (0.89 mm) wire or heavier.
6. Corrosion-resistant wire mesh, with the least dimension being 1/8 inch (3.2 mm).

- EXCEPTION: The total area of ventilation openings shall be permitted to be reduced to 1/1,500 of the under-floor area where the ground surface is covered with an approved Class I vapor retarder material and the required openings are placed to provide cross ventilation of the space. The installation of operable louvers shall not be prohibited. If the installed ventilation is less than 1/300, or if operable louvers are installed, a radon vent shall be installed to originate from a point between the ground cover and soil. The radon vent shall be installed in accordance with the requirements of Appendix F (Radon) of this code.

R408.3 Unvented crawl space. Ventilation openings in under-floor spaces specified in Sections R408.1 and R408.2 shall not be required where:

1. Exposed earth is covered with a continuous Class I vapor retarder. Joints of the vapor retarder shall overlap by 6 inches (152 mm) and shall be sealed or taped. The edges of the vapor retarder shall extend at least 6 inches (152 mm) up the stem wall and shall be attached and sealed to the stem wall; and a radon system shall be installed that meets the requirements of Appendix F (Radon) of this code.
2. Continuously operated mechanical exhaust ventilation is provided at a rate equal to 1 cubic foot per minute (0.47 L/s) for each 50 square feet (4.7 m²) of crawlspace floor area. Exhaust ventilation shall terminate to the exterior.

EXCEPTION: Plenum in existing structures complying with Section M1601.5, if under-floor space is used as a plenum.

WSR 14-15-053
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed July 11, 2014, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-033.

Title of Rule and Other Identifying Information: Amendment to chapter 51-11R WAC, the Washington State Energy Code, Residential provisions.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-9088, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, peggy.bryden@des.wa.gov, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Section R403.4.2, Hot water piping insulation, replaces the require[d] R-4 insulation with R-3 insulation for hot water piping found in the 2009 edition of the code. This requirement is currently in effect under the emergency rule filed under WSR 13-23-095 and 14-08-011.

Reasons Supporting Proposal: RCW 19.27A.025 and 19.27A.045.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapters 19.27, 19.27A, and 34.05 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 41011, Olympia, WA 98504-1449, (360) 407-9278; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not impose additional costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not a listed agency under RCW 34.05.328 (5)(a)(i).

June 13, 2014
C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 13-20-121, filed 10/1/13, effective 11/1/13)

WAC 51-11R-40340 Section R403.4—Service hot water systems.

R403.4 Service hot water systems. Energy conservation measures for service hot water systems shall be in accordance with Sections R403.4.1 through R403.4.3.

R403.4.1 Circulating hot water systems (Mandatory). Circulating hot water systems shall be provided with an automatic or *readily accessible* manual switch that can turn off the hot water circulating pump when the system is not in use.

R403.4.2 Hot water pipe insulation (Prescriptive). Insulation for hot water pipe shall have a minimum thermal resistance (*R*-value) of (~~(R-4)~~) R-3.

R403.4.3 Electric water heater insulation. All electric water heaters in unheated spaces or on concrete floors shall be placed on an incompressible, insulated surface with a minimum thermal resistance of R-10.

WSR 14-15-054
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed July 11, 2014, 4:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-033.

Title of Rule and Other Identifying Information: Amendments to chapter 51-11C WAC, the Washington State Energy Code, Commercial provisions.

Hearing Location(s): Fire Department Training Center, 1618 South Rebecca Street, Spokane, WA, on September 12, 2014, at 10 a.m.; and at DES Presentation Room, 1500 Jefferson S.E., Olympia, WA 98504, on October 10, 2014, at 10 a.m.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Ray Allshouse, P.O. Box 41449, Olympia, WA 98504-1449, e-mail sbcc@ga.wa.gov [sbcc@ga.wa.gov], fax (360) 586-9088, by October 24, 2014.

Assistance for Persons with Disabilities: Contact Peggy Bryden by September 2, 2014, (360) 407-9280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Makes editorial changes to the following sections of the residential energy portion of the Washington State Energy Code:

Section C202.18-R is amended to modify the definitions of refrigerated warehouse cooler and freezer to provide greater clarity on when a warehouse is refrigerated versus just conditioned.

Section C402.4.5.2 is amended to correct language on requirements for maximum damper leakage. The initial model code language contained an error in the coordination of class type and leakage rates for motorized dampers. The language is corrected to require the less stringent of the two

references. An exemption was also added to allow for off the shelf packaged equipment for return air dampers.

Section C403.2.4.4 is modified to direct the user to additional requirements for dampers within the envelope section of the code.

Reasons Supporting Proposal: RCW 19.27A.025 and RCW 19.27A.045.

Statutory Authority for Adoption: RCW 19.27A.025, 19.27A.045.

Statute Being Implemented: Chapters 19.27, 19.27A, and 34.05 RCW.

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

Name of Proponent: State building code council, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Krista Braaksma, P.O. Box 41011, Olympia, WA 98504-1449, (360) 407-9278; and Enforcement: Local jurisdictions.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes that they do not impose additional costs to affected small businesses and could result in reduced costs.

A cost-benefit analysis is not required under RCW 34.05.328. The state building code council is not a listed agency under RCW 34.05.328 (5)(a)(i).

June 13, 2014
C. Ray Allshouse
Council Chair

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-20218 Section C202.18—R.

READILY ACCESSIBLE. Capable of being reached quickly for operation, renewal or inspection without requiring those to whom ready access is requisite to climb over or remove obstacles or to resort to portable ladders or access equipment (see "*Accessible*").

REFRIGERATED WAREHOUSE COOLER. An enclosed storage space (~~capable of being refrigerated to temperatures above 32°F that can be walked into and~~) that has a total chilled storage area of 3,000 ft² or greater and is designed to maintain a temperature of greater than 32°F but less than 55°F.

REFRIGERATED WAREHOUSE FREEZER. An enclosed storage space (~~capable of being refrigerated to temperatures at or below 32°F that can be walked into and~~) that has a total chilled storage area of 3,000 ft² or greater and is designed to maintain a temperature at or below 32°F.

REPAIR. The reconstruction or renewal of any part of an existing building.

RESIDENTIAL BUILDING. For this code, includes detached one- and two-family dwellings and multiple single-family dwellings (townhouses) as well as Group R-2, R-3 and R-4 buildings three stories or less in height above grade plane.

ROOF ASSEMBLY. A system designed to provide weather protection and resistance to design loads. The system consists of a roof covering and roof deck or a single component serving as both the roof covering and the roof deck. A roof assembly

includes the roof covering, underlayment, roof deck, insulation, vapor retarder and interior finish.

R-VALUE (THERMAL RESISTANCE). The inverse of the time rate of heat flow through a body from one of its bounding surfaces to the other surface for a unit temperature difference between the two surfaces, under steady state conditions, per unit area ($h \cdot \text{ft}^2 \cdot ^\circ\text{F}/\text{Btu}$) [$\text{m}^2 \cdot \text{K}/\text{W}$].

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

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-40245 Section C402.4.5—Air intakes, exhaust openings, stairways and shafts.

C402.4.5 Air intakes, exhaust openings, stairways and shafts. Stairway enclosures and elevator shaft vents and other outdoor air intakes and exhaust openings integral to the building envelope shall be provided with dampers in accordance with Sections C402.4.5.1 and C402.4.5.2.

C402.4.5.1 Stairway and shaft vents. Stairway and shaft vents shall be provided with Class I motorized dampers with a maximum leakage rate of 4 cfm/ft² (20.3 L/s • m²) at 1.0 inch water gauge (w.g.) (249 Pa) when tested in accordance with AMCA 500D.

Stairway and shaft vent dampers shall be installed with controls so that they are capable of automatically opening upon:

1. The activation of any fire alarm initiating device of the building's fire alarm system; or
2. The interruption of power to the damper.

C402.4.5.2 Outdoor air intakes (~~and~~), exhaust(~~s~~) outlets, relief outlets, and return openings. *Outdoor air supply, exhaust openings and relief outlets shall be provided with Class I(~~A~~) motorized dampers which close automatically when the system is off. (~~Return air dampers shall be equipped with motorized dampers.~~)* Dampers shall have a maximum leakage rate of 4 cfm/ft² (20.3 L/s • m²) at 1.0 inch water gauge (w.g.) (249 Pa) when tested in accordance with AMCA 500D.

Return air openings used for airside economizer operation shall be equipped with Class I motorized dampers. Dampers shall have a maximum leakage rate of 4 cfm/ft² (20.3 L/s • m²) at 1.0 inch water gauge (w.g.) (249 Pa) when tested in accordance with AMCA 500D.

See also section C403.2.4.4 for additional requirements from damper shut-off controls.

- EXCEPTIONS:**
1. Gravity (nonmotorized) dampers having a maximum leakage rate of 20 cfm/ft² (101.6 L/s • m²) at 1.0 inch water gauge (w.g.) (249 Pa) when tested in accordance with AMCA 500D are permitted to be used for relief openings in buildings less than three stories in height above grade if equipment has less than 5,000 cfm total supply flow. Gravity (nonmotorized) dampers for ventilation air intakes shall be protected from direct exposure to wind.
 2. (~~Gravity (nonmotorized) dampers for ventilation air intakes shall be protected from direct exposure to wind.~~)

- 3.) Gravity dampers smaller than 24 inches (610 mm) in either dimension shall be permitted to have a leakage of 40 cfm/ft² (203.2 L/s • m²) at 1.0 inch water gauge (w.g.) (249 Pa) when tested in accordance with AMCA 500D.
- 4.) Gravity (nonmotorized) dampers in Group R occupancies where the design outdoor air intake or exhaust capacity does not exceed 400 cfm (189 L/s).
- 4. Motorized dampers on return air openings in unitary packaged equipment that have the minimum leakage rate available from the manufacturer shall be deemed to comply.

AMENDATORY SECTION (Amending WSR 13-04-056, filed 2/1/13, effective 7/1/13)

WAC 51-11C-403244 Section C403.2.4.4—Shutoff damper controls.

C403.2.4.4 Shutoff damper controls. Both outdoor air supply and exhaust ducts shall be equipped with motorized dampers that will automatically shut when the systems or spaces served are not in use or during building warm-up, cooldown, and setback.

See also section C402.4.5 for additional damper requirements and maximum leakage rates.

- EXCEPTIONS:
- 1. Gravity relief dampers serving systems less than 5,000 cfm total supply shall be permitted in buildings less than three stories in height.
 - 2. Gravity dampers shall be permitted for buildings of any height located in Climate Zones 1, 2 and 3.
 - 3. Gravity (nonmotorized) dampers in Group R occupancies where the design outdoor air intake or exhaust capacity does not exceed 400 cfm (189 L/s).
 - 4. Systems serving areas which require continuous operation.
 - 5. Combustion air intakes.
 - 6. Operation of dampers shall be allowed during ventilation purge one hour before expected occupancy and for unoccupied period precooling during the cooling season.
 - 7. Dampers are not required in systems where specifically prohibited by the *International Mechanical Code*.

WSR 14-15-081
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
 [Filed July 17, 2014, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-065.

Title of Rule and Other Identifying Information: Chapter 392-190 WAC, Equal educational opportunity—Unlawful discrimination prohibited.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Old Capitol Building, Brouillet Conference Room, 4th Floor, 600 Washington Street S.E., Olympia, WA 98504-7200, on August 28, 2014, at 9:00 a.m.

Date of Intended Adoption: August 29, 2014.

Submit Written Comments to: Calandra Sechrist, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail equity@k12.wa.us, fax (360) 664-2967, by August 25, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by August 22, 2014, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are intended to (1) revise the complaint procedure in WAC 392-190-065 through 392-190-075 to more effectively address allegations of discrimination within Washington public schools; (2) clarify the requirements and scope of OSPI monitoring under chapters 28A.640 and 28A.642 RCW; and (3) increase readability of the rules. OSPI anticipates that the revised rules will result in a less adversarial and more cooperative process to resolve discrimination complaints and will ease the financial and emotional burden on families and school districts when confronting these issues.

Reasons Supporting Proposal: The proposed revisions to chapter 392-190 WAC are necessary to provide a more efficient and equitable resolution of discrimination complaints for both school districts and families, and are responsive to concerns and recommendations by stakeholders. The revisions are intended to encourage school districts to resolve concerns about discrimination at the lowest level possible and reduce the likelihood that these matters will be taken to court. Additional changes are needed to increase readability and clarify requirements.

Statutory Authority for Adoption: RCW 28A.640.020 and 28A.642.020.

Statute Being Implemented: Chapters 28A.640 and 28A.642 RCW.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Yvonne Ryans, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6162.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

July 17, 2014
 Randy Dorn
 State Superintendent
 of Public Instruction

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-005 Purpose—Elimination of unlawful discrimination in public schools. The purpose of this chapter is to establish rules ~~((and regulations which))~~ to implement chapters 28A.640 and 28A.642 RCW. ~~((The referenced enactments))~~ Chapters 28A.640 and 28A.642 RCW prohibit discrimination on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or

military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability in Washington public schools, including public charter schools. Broad federal regulations implementing Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and Titles VI and VII of the Civil Rights Act of 1964 similarly prohibit discrimination based on sex, race, creed, religion, color, national origin, and disability~~(s)~~ in federally assisted education programs or activities. As a result, several substantive areas have been similarly identified and addressed by both state and federal enactments.

~~((It is the intent of this chapter to encompass those similar substantive areas addressed by federal civil rights authorities and in some aspects extend beyond those authorities. Accordingly, compliance with relevant federal civil rights law should constitute compliance with those similar substantive areas treated in this chapter, but school districts should be aware that compliance with federal civil rights laws alone may not constitute compliance with this chapter.))~~

In accordance with chapters 28A.640 and 28A.642 RCW and RCW 28A.710.040, it is unlawful for any public school district or public charter school to discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal with regard to any program or activity conducted by or on behalf of a school district or public charter school including, but not limited to, recreational and athletic activities, extracurricular activities, pre-school, adult education, community education, and vocational-technical program activities.

In accordance with RCW 28A.640.020 and 28A.642.020, the office of superintendent of public instruction will develop guidelines to supplement this chapter and to guide its interpretation and administrative enforcement of chapters 28A.640 and 28A.642 RCW.

NEW SECTION

WAC 392-190-007 Compliance with federal law. For purposes of administrative enforcement of this chapter, and unless otherwise provided in this chapter, the office of superintendent of public instruction adopts the definitions, requirements, and procedural safeguards set forth under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, Title IX of the Education Amendments of 1972, and Title VI of the Civil Rights Act of 1964.

COUNSELING AND GUIDANCE SERVICES

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-010 Counseling and guidance services—~~((Career opportunities—Internal procedures))~~ Course and program enrollment. (1) ~~((No school district shall engage in discrimination))~~ School districts and public

charter schools must not discriminate against any person on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal in the counseling or guidance of students ~~((in grades K-12)).~~

(2) Each school district and public charter school must ~~((devise))~~ develop and use materials, orientation programs, and counseling techniques that ~~((will))~~ encourage participation in all school programs and courses of study, including career and vocational technical programs and employment opportunities, based on factors other than sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. School districts and public charter schools must encourage students to explore subjects ~~((and))~~, activities, and occupations not traditional for their sex.

(3) Each school district ~~((which))~~ and public charter school that uses testing and other materials for counseling students must not use different materials for students based on their sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal. A school district or public charter school may use different materials for students on the basis of their sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal if:

(a) ~~((Such))~~ The different materials ~~((cover))~~ address the same occupations and interest areas; and

(b) The use of ~~((such))~~ different materials is ~~((demonstrated to be))~~ essential to eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(4) Each school district and public charter school must develop and use internal procedures ~~((for ensuring))~~ to ensure that all tests and appraisal instruments related to guidance counseling, career and vocational guidance materials, work/study programs and opportunities, and educational scheduling ~~((and/or))~~ or placement do not discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(5) If a school district or public charter school concludes that the use of ~~((such))~~ instruments, materials, or programs ~~((results))~~ has resulted in a substantially disproportionate number of students who are members of one of the groups identified in WAC 392-190-005 ~~((to be placed))~~ in any particular course of study or classification, the school district or

charter school must take ~~((such immediate))~~ prompt action ~~((as is necessary to assure))~~ to ensure that ~~((such))~~ the disproportion is not the result of discrimination in the instrument~~((;))~~ or material, or its application.

(6) At least annually, each school district and public charter school must review student enrollment data within courses and programs disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. In its review of this data, the school district or public charter school must determine whether a substantially disproportionate number of students within these categories are enrolled in a particular course or program. Where a school district or public charter school finds that a particular ~~((class))~~ course or program contains a substantially disproportionate number of students who are members of any one of the ~~((groups))~~ categories identified in ~~((WAC 392-190-005))~~ this section, the district or charter school must take ~~((such immediate))~~ prompt action ~~((as is necessary to assure))~~ to ensure that ~~((such))~~ the disproportion is not the result of discrimination ~~((on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal)),~~ including in:

- (a) The identification and selection of students;
- (b) Course and program enrollment criteria;
- (c) Tests and appraisal instruments;
- (d) Academic, career, and vocational guidance materials~~((;))~~;
- (e) Work/study programs and opportunities~~((, and))~~;
- (f) Educational scheduling ~~((and/or))~~ or placement by counselors; and
- (g) Other factors related to course and program enrollment.

TRAINING

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-020 ~~((In-service))~~ Training—Staff responsibilities—Bias awareness. Each school district ~~((must, where appropriate, include sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal, bias awareness and elimination training sessions in such in-service training programs as are conducted or provided for certificated and/or classroom personnel))~~ and public charter school must offer or provide training to administrators and certificated and classroom personnel (1) regarding their responsibilities under this chapter, and (2) to raise awareness of and eliminate bias based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression or identity,

the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal.

RECREATIONAL AND ATHLETIC ACTIVITIES

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-025 Recreational and athletic activities. ~~((No person shall))~~ (1) Except as provided under this section, school districts and public charter schools must not, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including)),~~ gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal, ~~((be excluded))~~ exclude any person from participation in, ~~((be denied))~~ deny any person the benefits of, or otherwise ~~((be discriminated))~~ discriminate against any person in any interscholastic, club, or intramural athletics or recreational activity offered or sponsored by ~~((a))~~ the school district~~((, and no school district shall))~~ or charter school. School districts and public charter schools must not provide any ~~((such))~~ athletic~~((s))~~ or recreational activity separately on such basis, except as provided in this section.

(2) A school district or public charter school may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a school district or public charter school operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of this section, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports in which the purpose or major activity involves bodily contact.

(3) A school district or public charter school that operates or sponsors interscholastic, club, or intramural athletics must provide equal athletic opportunities for members of both sexes within each school. The following factors must be considered when determining whether equal opportunities are available:

- (a) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
- (b) Provision of equipment and supplies;
- (c) Scheduling of games and practice time, including the use of playfields, courts, gyms, and pools;
- (d) Travel and per diem allowances, if any;
- (e) Opportunity to receive coaching and academic tutoring;
- (f) Assignment and compensation of coaches, tutors, and game officials;
- (g) Provision of locker rooms and practice and competitive facilities;
- (h) Provision of medical and training facilities and services, including the availability of insurance;

(i) Provision of housing and dining facilities and services, if any; and

(j) Publicity and awards.

(4) Unequal aggregate expenditures within a school district or public charter school for members of each sex or unequal expenditures for separate male and female teams alone will not constitute noncompliance with this section, but the failure to provide necessary funds for recreational and athletic activities for members of one sex may be considered in assessing the equality of opportunity for members of each sex.

(5) Where individual students with disabilities cannot participate in existing activities even with reasonable modifications and necessary accommodations, aids, or services, a school district or public charter school may offer opportunities for students with disabilities to participate in separate or different recreational or athletic activities.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-030 ~~((General—))~~ **Recreational and athletic activities—((Sex discrimination—Equal opportunity factors considered)) Annual athletic evaluation.** Each school district and public charter school must evaluate ~~((its))~~ the recreational and athletic program at each school at least once each year to ensure that equal opportunities are available to members of both sexes with respect to interscholastic, club, or intramural athletics ~~((which))~~ that are operated, sponsored, or otherwise provided by the school district or charter school.

In determining whether equal opportunities are available to members of both sexes ~~((with respect to interscholastic, club or intramural athletics)),~~ each school district and public charter school conducting an evaluation required by this section ~~((, and the office of superintendent of public instruction upon receipt of a complaint pursuant to WAC 392-190-075,))~~ must consider ~~((several factors, including but not limited to the following where provided by a school district:~~

(1) Whether the selection of sports and levels of competition effectively accommodates the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) The scheduling of games and practice times including the use of playfields, courts, gyms, and pools;

(4) Transportation and per diem allowances, if any;

(5) The opportunity to receive coaching and academic tutoring;

(6) The assignment and compensation of coaches, tutors, and game officials;

(7) The provision of medical and training facilities and services including the availability of insurance;

(8) The provision of housing, laundry, and dining facilities and services, if any; and

(9) Publicity and awards.

Unequal aggregate expenditures within a school district for members of each sex or unequal expenditures for separate male and female teams will not alone constitute noncompliance with this chapter, but the failure to provide the necessary funds for recreational and athletic activities for members of

one sex may be considered in assessing the equality of opportunity for members of each sex)) each of the factors listed under WAC 392-190-025(3).

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-040 **Recreational and athletic activities—((Sex discrimination—))** **Student athletic interest** ~~((—Required survey instrument))~~ **survey.** (1) The superintendent of public instruction must develop a survey instrument to assist each school district ~~((in the determination of))~~ and public charter school in determining male and female student interest ((for male/female)) in participation in specific sports. With the office of superintendent of public instruction's approval, school districts and public charter schools may modify or amend the content of the survey instrument if necessary to clarify and assist in evaluating student interest.

(2) ((A survey instrument must be administered by each school district at all grade levels where interscholastic, intramural and other sports and recreational activities are conducted.)) Each school district and public charter school must administer the survey developed under this section at least once every three years at each school and grade level where interscholastic, intramural, and other athletics are conducted. The school district or public charter school must consider the results of the survey ((must be considered in the program)) when planning and ((development in the area of)) developing recreational and athletic activities offered within the school district or charter school and when determining whether equal opportunities are available to members of both sexes under WAC 392-190-025 and 392-190-030.

~~((3) A survey instrument developed pursuant to this section must be administered at least once every three years within each school district. School districts may modify or amend the content of the survey instrument if the district deems it necessary to clarify and assist in the evaluation of student interest. If a school district intends to modify or amend the instrument, the district must provide the office of superintendent of public instruction with a copy of the proposal for approval prior to its administration.))~~

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-045 **Recreational and athletic activities—((Sex discrimination—))** **Facilities.** A school district ~~((which))~~ or public charter school that provides athletic facilities for members of one sex, including showers, toilets, and training room facilities for athletic purposes, must provide comparable facilities for members of the opposite sex. ((Such facilities may be provided as either separate facilities or must be scheduled and used separately by members of each sex.)) A school district or public charter school may provide separate facilities for male and female students or schedule the facilities equitably for separate use. This section ((shall not be interpreted to)) does not require the construction of additional facilities.

ACCESS TO COURSE OFFERINGS

NEW SECTION**WAC 392-190-046 Access to course offerings.** (1)

Each school district and public charter school must ensure that no student is denied or limited in their ability to participate in or benefit from its course offerings on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.

(2) Course offerings include all education programs and activities offered or sponsored by a school district or public charter school, whether those programs or activities take place in a school district's or charter school's facilities or elsewhere.

NEW SECTION

WAC 392-190-048 Access to course offerings—Student discipline. At least annually, each school district and public charter school must review data on disciplinary actions taken against students within each school disaggregated by sex, race, limited-English proficiency (i.e., English language learners), and disability, including students protected under Section 504 of the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act. This review must include, but is not limited to, short-term suspensions, long-term suspensions, and expulsions. In reviewing this data, each school district or public charter school must determine whether it has disciplined a substantially disproportionate number of students within any of the categories identified in this section. If a school district or public charter school finds that it has disciplined a substantially disproportionate number of students who are members of one of the categories identified in this section, the school district or charter school must take prompt action to ensure that the disproportion is not the result of discrimination.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-050 Access to course offerings—~~((Generally—))~~**Separate** ~~((sessions or groups—When permissible))~~ **programs or activities.** ~~((No school district shall))~~ Except as provided under this section, school districts and public charter schools must not provide any course or otherwise carry out any of its ((education)) programs or activities separately on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ((including)), gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal or require or refuse participation therein by any of its students on such basis. This section ((shall)) does not ((be construed to)) prohibit:

(1) The grouping of students in physical education classes and activities by demonstrated ability as assessed by objective standards of individual performance developed and

applied without regard to sex. Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the school district or public charter school must ~~((immediately))~~ **promptly** implement appropriate standards ~~((which))~~ that do not have such effect;

(2) The separation of students by sex within physical education classes or activities offered for students ~~((in grades 7 through 12))~~ if:

(a) It can ~~((clearly))~~ be shown under the factual circumstances involved in the particular case(;) that ~~((the maintenance of))~~ **maintaining** a separate physical education class or activity for boys and girls ~~((truly constitutes))~~ is the best method of providing both sexes ~~((as a whole,))~~ with an equal opportunity to participate in ~~((such))~~ the class or activity; and

(b) ~~((At the same time, a test of substantial equality between the two classes or activities can be found to have been met;))~~ The separated classes or activities are substantially equal.

(3) ~~((Separate sessions for boys and girls with respect to those))~~ The separation of students by sex for classes or portions of classes ((which)) that deal ((exclusively)) primarily with human sexuality;

(4) Classes ~~((and/or))~~ and activities ~~((which a school district may establish or maintain))~~ with requirements based on vocal range or quality, which may result in a chorus or choruses of one or predominantly one sex; and

(5) Classes, courses, or placement of students based on the student's individual language skill development ~~((and/or))~~ or based on the student's needs as identified in the student's individualized education program under the Individuals with Disabilities Education Act.

TEXTBOOKS AND INSTRUCTIONAL MATERIALS

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-055 Textbooks and instructional materials—~~((Scope))~~ **Instructional materials policy—Elimination of bias.** (1) ~~((It is the intent of this section to eliminate bias pertaining to))~~ School districts and public charter schools must not discriminate on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ((including)), gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal ((in connection with any form of instruction provided by a school district)) through the use of any textbooks or instructional materials, including reference materials and audio-visual materials.

(2) ~~((The))~~ Each school district and public charter school must adopt an instructional materials policy ((of each school district required by RCW 28A.320.230 must incorporate therein, as part of the selection criteria, a specific statement requiring the elimination of)) that includes selection criteria designed to eliminate bias ((pertaining to)) based on sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ((including)), gender expression or identity, the presence of

any sensory, mental, or physical disability, ~~((or))~~ and the use of a trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials. Each school district and public charter school must use the screening criteria adopted under this section to identify and eliminate bias in all textbooks and instructional materials, including reference materials and audio-visual materials.

~~(3) ((The instructional materials committee of each school district must establish and maintain appropriate screening criteria designed to identify and eliminate bias pertaining to sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of trained dog guide or service animal in all textbooks and instructional materials including reference materials and audio-visual materials. Such selection criteria must be consistent with the selection criteria identified in chapter 392-204 WAC, as now or hereafter amended. One of the aids to identification of bias in instructional materials is the *Washington Models for the Evaluation of Bias Content in Instructional Materials* published by the superintendent of public instruction.~~

~~(4) In recognition of the fact that current instructional materials which)) If instructional materials that contain bias ((may not)) cannot be replaced immediately, each school district ((should)) and public charter school must acquire supplemental instructional materials or aids to be used concurrent with existing materials ((for the purpose of countering)) to counter the bias content ((thereof)).~~

~~((5)) (4) Nothing in this section is intended to prohibit the use or assignment of supplemental instructional materials, such as classic and contemporary literary works, periodicals, and technical journals ((which, although)), that are educationally necessary or advisable even though they contain bias((-are educationally necessary or advisable)).~~

HARASSMENT

NEW SECTION

WAC 392-190-0555 Discriminatory harassment. (1)

For purposes of administrative enforcement of this chapter, a school district or public charter school violates a student's rights regarding discriminatory harassment, including sexual harassment, when the following conditions are met:

(a) The alleged conduct is based on a student's sex, race, creed, religion, color, national origin, sexual orientation, gender expression or identity, honorably discharged veteran or military status, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal;

(b) The alleged conduct is sufficiently severe, persistent, or pervasive that it limits or denies a student's ability to participate in or benefit from the school district's or public charter school's course offerings, including any educational program or activity (i.e., creates a hostile environment); and

(c) The school district or public charter school, upon notice, fails to take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environ-

ment, prevent its recurrence, and, as appropriate, remedy its effects.

(2) For purposes of administrative enforcement of this chapter, the office of superintendent of public instruction deems a school district or public charter school to have notice of discriminatory harassment if a reasonable employee knew, or in the exercise of reasonable care should have known, about the harassment.

(3) Nothing in this chapter is intended to diminish or otherwise modify an individual's right to bring an action under state or federal law alleging that the individual has been harmed by conduct or communication related to the individual's sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression or identity, presence of any sensory, mental, or physical disability, or use of a trained dog guide or service animal that creates a hostile or abusive educational or workplace environment.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-056 Sexual harassment—Definitions.

(1) As used in this chapter, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature between two or more individuals if:

(a) Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining an education or employment;

(b) Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's education or employment; or

(c) That conduct or communication has the purpose or effect of substantially interfering with an individual's educational or work performance, or of creating an intimidating, hostile, or offensive educational or work environment.

(2) For the purpose of this definition, sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

~~((3) School districts must be guided by federal and state case law in their interpretation of sexual harassment complaints and will need to determine sexual harassment on a case-by-case basis. Nothing in this chapter should be construed as diminishing or otherwise modifying an individual's right to bring an action under state or federal law alleging that the individual has been harmed by conduct or communication related to the individual's sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal that creates a hostile or abusive educational or workplace environment.))~~

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-057 Sexual harassment policy—~~(Adoption date)~~**Required criteria.** In order to eliminate sexual harassment in connection with any responsibility, function, or activity within the jurisdiction of a school district or public charter school, a sexual harassment policy must be adopted and implemented by each district ~~((no later than June 30, 1995))~~ and charter school. This policy must apply to all school district and public charter school employees, volunteers, parents, and students(;) including, but not limited to, conduct between students. This policy must incorporate the following criteria:

(1) Definitions consistent with ~~((the categories in RCW 28A.640.020 (2)(f)))~~ WAC 392-190-056;

~~((2))~~ (2) ~~((District and staff responsibilities;~~

~~((3))~~ (3) ~~Informal grievance procedures;~~

~~((4))~~ (4) ~~Grievance))~~ Responsibilities of employees and volunteers;

(3) Investigative and complaint procedures consistent with WAC 392-190-065 through 392-190-075 ~~((of this chapter));~~

~~((5))~~ ~~Investigative procedures and reasonable and prompt timelines;~~

~~((6))~~ (4) Remedies available to ~~((victims))~~ targets of sexual harassment;

~~((7))~~ (5) Disciplinary actions against violators, which must conform with collective bargaining agreements and state and federal laws;

~~((8))~~ (6) Reprisal, retaliation, and false accusations prohibition;

~~((9))~~ (7) Dissemination and implementation of the policy; and

~~((10))~~ (8) Internal review of the policy.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-058 Sexual harassment~~((Procedures))~~ **policy—Notification.** ~~((1))~~ School district policies on sexual harassment must be reviewed by the superintendent of public instruction considering the criteria established under WAC 392-190-057 as part of the monitoring process established in RCW 28A.640.030. The superintendent of public instruction must supply upon request sample sexual harassment policies to school districts.

~~((2))~~ (1) The school district's or public charter school's sexual harassment policy must be easily understood and conspicuously posted throughout each school building(;) and provided to each employee(, volunteer and student.

~~((3))~~ Reasonable efforts must be made to inform all students and their parents about the district's sexual harassment policy and procedures.

~~((4))~~ A copy of the).

(2) Information about the school district's or public charter school's sexual harassment policy and complaint procedure must appear in any publication of ~~((the))~~ a school ~~((or))~~, school district ~~((setting))~~, or public charter school that sets forth the rules, regulations, procedures, and standards of conduct for the school ~~((or))~~, school district, or charter school.

~~((5))~~ (3) Each school district and public charter school must develop a process for discussing the district's or charter school's sexual harassment policy. The process must ensure the discussion addresses the definition of sexual harassment and issues covered in the sexual harassment policy.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-059 Harassment, intimidation, and bullying prevention policy and procedure—~~(Adoption date)~~ **School districts.** (1) ~~((By August 1, 2011,))~~ Each school district must adopt ~~((or amend if necessary))~~ a harassment, intimidation, and bullying prevention policy and procedure as provided for in RCW 28A.300.285.

(2) ~~((When monitoring school districts' compliance with this chapter pursuant to WAC 392-190-076, the office of superintendent of public instruction will review such policies and procedures to ensure that they provide that students will not be harassed, intimidated, or bullied because of their sex, race, creed, religion, color, national origin, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal.))~~ If the allegations in a written report of harassment, intimidation, or bullying pursued under the school district's procedure adopted under RCW 28A.300.285 indicate a potential violation of this chapter or the guidelines adopted under WAC 392-190-005, the school district staff member who receives the report must promptly notify the district employee designated under WAC 392-190-060. Or, if during the course of an investigation of harassment, intimidation, or bullying, the district becomes aware of a potential violation of this chapter or the guidelines adopted under WAC 392-190-005, the school district staff member investigating the report must promptly notify the district employee designated under WAC 392-190-060. Upon receipt of this information, the designated employee must notify the complainant that their complaint will proceed under the discrimination complaint procedure in WAC 392-190-065 through 392-190-075. In these cases, the investigation and response timeline set forth in WAC 392-190-065 begins when the school district knows or should have known that a written report of harassment, intimidation, or bullying involves allegations that the school district has violated this chapter or the guidelines adopted under WAC 392-190-005.

(3) This section is not intended to limit the scope of RCW 28A.300.285.

EMPLOYMENT

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-0591 Public school employment and contract practices—Nondiscrimination. (1) ~~((No school district shall))~~ School districts and public charter schools must not, on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal

~~((by a person with a disability))~~, exclude any person from participation in, deny any person the benefit of, or subject any person to discrimination in employment, recruitment, promotion ~~((or))~~, advancement, consideration, or selection, whether full time or part time, in connection with employment by a school district or public charter school.

(2) Each school district and public charter school must make all employment decisions in a nondiscriminatory manner and ~~((shall))~~ must not limit, segregate, or classify any person in any way ~~((which))~~ that could adversely affect a person's employment opportunities or status on the basis of sex, race, creed, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal ~~((by a person with a disability))~~.

(3) ~~((No school district shall))~~ School districts and public charter schools must not enter into any contractual or other relationship that directly or indirectly has the effect of subjecting any person to discrimination in connection with employment on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation ~~((including))~~, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal ~~((by a person with a disability))~~ including, but not limited to, relationships with employment and referral agencies, ~~((with))~~ labor unions, and ~~((with))~~ organizations providing or administering fringe benefits to employees.

(4) ~~((No school district shall))~~ School districts and public charter schools must not grant preferential treatment to applications for employment ~~((on the basis of))~~ based on an applicant's enrollment at any education institution or entity ~~((which))~~ that only or predominately admits ~~((as))~~ students ~~((only or predominately individuals or groups))~~ on the basis of sex, race, color, or national origin~~((;))~~ if the giving of such preferences has the effect of discriminating on the basis of sex, race, color, or national origin.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-0592 Public school employment—Affirmative action program. (1) ~~((Each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions which are consistent with the intent of chapters 28A.640 and 28A.642 RCW.))~~ Each school ~~((district's))~~ district and public charter school must develop an affirmative action employment plan or program ~~((must include at least the following provisions respecting discrimination on the basis of sex))~~ that includes appropriate provisions designed to eliminate discrimination on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.

(2) With respect to sex discrimination, a school district's or public charter school's affirmative action employment plan or program must include:

(a) The requirement to:

(i) Maintain credential requirements for all personnel without regard to sex;

~~((b))~~ (ii) Make no differentiation in pay scale on the basis of sex;

~~((c))~~ (iii) Make no differentiation in the assignment of school duties on the basis of sex except where such assignment would involve duty areas or situations such as, but not limited to, a shower room(s), where persons might be disrobed;

~~((d))~~ (iv) Provide the same opportunities for advancement for males and females;

~~((e))~~ (v) Make no difference in conditions of employment on the basis of sex including, but not limited to, hiring practices, leaves of absence, hours of employment, and assignment of~~((;))~~ or ~~((pay))~~ payment for~~((;))~~ instructional and noninstructional duties; and

~~((f))~~ (b) Such other provisions as may be required by the superintendent of public instruction ~~((designed))~~ to facilitate ~~((the effective achievement of all))~~ reasonable affirmative action goals and objectives and to eliminate discrimination in public school employment ~~((respecting the elimination of discrimination on the basis of sex.~~

~~(2) Notwithstanding the requirements of this chapter respecting discrimination on the basis of sex, each school district must develop and/or incorporate within any existing affirmative action employment program appropriate provisions to eliminate discrimination on the basis of race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation including gender expression or identity, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability.~~

~~(3) Each affirmative action employment program of a school district must be filed with the office of superintendent of public instruction.~~

~~(4) The board of directors of each school district must adopt and implement an affirmative action employment program required by this section as expeditiously as possible but in no event later than September 30, 2011).~~

COMPLIANCE AND COMPLAINT PROCEDURES

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-060 Compliance—~~((Local))~~ School district or public charter school—Designation of responsible employee—Notification. (1) The superintendent of each school district or the public charter school governing board must ~~((immediately))~~ designate at least one employee who ~~((shall be))~~ is responsible ~~((directly to the superintendent))~~ for monitoring and coordinating the district's or charter school's compliance with this chapter and the guidelines adopted under WAC 392-190-005. The employee designated ~~((pursuant to))~~ under this section ~~((shall also be charged with the responsibility to investigate any complaint(s)))~~ is also

responsible for investigating any complaints communicated to the school district ((pursuant to)) or public charter school under WAC 392-190-065.

(2) Each school district and public charter school must, once each year or more often as deemed necessary, publish notice in a manner ~~((which))~~ that is reasonably calculated to inform all students, students' parents and guardians, and employees of ((the name, office address and telephone number of the employee or employees appointed pursuant to this section and)) the complaint ((and appeal)) procedure set forth in WAC 392-190-065, 392-190-070 and 392-190-075 ((as now or hereafter amended)). School districts and public charter schools must provide this notice in a language that each parent and guardian can understand, which may require language assistance for parents and guardians with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

(3) Each school district and public charter school must include a nondiscrimination statement in written announcements, notices, recruitment materials, employment application forms, and other publications made available to all students, parents, or employees. The statement must include:

(a) Notice that the district or public charter school may not discriminate in any programs or activities on the basis of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression or identity, the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal;

(b) The name or title, office address, and telephone number of the employee or employees designated under this section, as well as the employees designated to ensure compliance with Section 504 of the Rehabilitation Act of 1973 and Title IX of the Education Amendments of 1972; and

(c) Pursuant to the Boy Scouts of America Equal Access Act, notice that the school district or public charter school provides equal access to the Boy Scouts of America and any other youth group listed in Title 36 of the United States Code as a patriotic society.

(4) School districts and public charter schools must not adopt any policy, procedure, or practice that would limit a person's right to file a complaint under this chapter or have the effect of discouraging any person from utilizing the complaint procedure in WAC 392-190-065 through 392-190-075. School districts and public charter schools must not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right secured by this chapter or the guidelines adopted under WAC 392-190-005 or because the individual has made a complaint or participated in an investigation under this chapter.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-065 Compliance—Complaint procedure—School district ((superintendent)) or public charter school. Each school district and public charter school must establish a discrimination complaint procedure that, at a minimum, includes the following requirements:

(1) Anyone may file a complaint with a school district or public charter school alleging that the district or charter school has violated this chapter or the guidelines adopted under WAC 392-190-005. The complaint must be(=

~~(a) Written;~~

~~(b) Signed by the complainant; and~~

~~(c) Set forth))~~ written and describe the specific acts, conditions, or circumstances alleged to violate this chapter or the ((specific acts, conditions, or circumstances that would be prohibited by this chapter)) guidelines adopted under WAC 392-190-005.

(2) A school district or local charter school may establish a complaint filing deadline. The filing deadline must be no less than one year after the occurrence that is the subject matter of the complaint. A complaint filing deadline may not be imposed if the complainant was prevented from filing a complaint due to:

(a) Specific misrepresentations by the school district or public charter school that it had resolved the problem forming the basis of the complaint; or

(b) Withholding of information by the school district or public charter school that was required to be provided under this chapter or the guidelines adopted under WAC 392-190-005.

(3) Complaints may be submitted by mail, fax, electronic mail, or hand delivery to any district, school, or charter school administrator or to any employee designated under WAC 392-190-060. Any district, school, or charter school administrator who receives a complaint that meets the criteria in this section must promptly notify the employee designated under WAC 392-190-060.

(4) Upon receipt of the complaint, the employee or employees designated ~~((pursuant to))~~ under WAC 392-190-060 must provide the complainant a copy of the school district's or public charter school's discrimination complaint procedure, investigate the allegation, and ((effect)) ensure a prompt resolution of the complaint.

~~((2))~~ (5) Following the completion of the investigation, the designated employee or employees must provide the district superintendent, charter school administrator, or designee with a full written report of the complaint and the results of the investigation. The district superintendent, charter school administrator, or designee must respond in writing to the complaining party ~~((as expeditiously as possible but in no event later than))~~ within thirty calendar days ((following receipt of such complaint by the school district)) after the school district or public charter school received the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. If an extension is needed, the school district or public charter school must notify the complainant in writing of the reasons for the extension and the anticipated response date. At the time the school district or public charter school responds to the complainant, the school district or charter school must send a copy of the response to the office of superintendent of public instruction.

~~((3))~~ (6) The response of the school district superintendent, charter school administrator, or designee required by this section must include:

(a) A summary of the results of the investigation;

(b) Whether the school district or public charter school has failed to comply with this chapter or the guidelines adopted under WAC 392-190-005;

(c) Notice of the complainant's right to appeal ~~((to the school board, as set forth in))~~ under WAC 392-190-070, ~~((and must identify))~~ including where and to whom the appeal must be filed~~((. The superintendent's response must also clearly state either:~~

(a) That the school district denies the allegations contained in the complaint received; or

(b) The reasonable); and

(d) If the school district or public charter school has failed to comply with this chapter or the guidelines adopted under WAC 392-190-005, the corrective measures deemed necessary to ~~((eliminate any such act, condition, or circumstance within the school district))~~ correct the noncompliance. Any ~~((such))~~ corrective measures ~~((deemed necessary))~~ must be instituted as expeditiously as possible but ~~((in))~~ no ~~((event))~~ later than thirty calendar days ~~((following))~~ after the school ~~((district superintendent's mailing of a))~~ district's or public charter school's written response to the complainant ~~((required by this section)), unless otherwise agreed to by the complainant.~~

~~((4))~~ The complaint procedure required by this section must not prohibit the processing of grievances by an employee bargaining representative and/or a member of a bargaining unit pursuant to grievance procedures established at the school district level by local bargaining agreement.

~~(5))~~ (7) The school district's or public charter school's response to the complainant must be in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.

(8) The complainant and the school district ~~((and complainant))~~ or public charter school may agree to resolve the complaint in lieu of an investigation. If the complaint is resolved to the satisfaction of the parties involved, no further action is necessary under this section.

(9) Nothing in this section prohibits a school district or public charter school from adopting a separate procedure to resolve informal (i.e., verbal) complaints or allegations. An informal complaint procedure must not limit a complainant's right to file a formal complaint under this section. When utilizing an informal complaint procedure, school districts and public charter schools must notify complainants about their right to file a formal complaint under this section.

(10) Nothing in this section is intended to modify or supersede any grievance procedure provided for in a school district or public charter school collective bargaining agreement.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-070 Compliance—Appeal procedure—~~((Local school board))~~ School district or public charter school. ~~((1))~~ A complainant has a right to appeal the school district superintendent's response provided in WAC 392-190-065(2), to the school district board of directors. The appeal must be filed with the secretary of the school board on

or before the tenth calendar day following the date upon which the complainant received the superintendent's response.

~~(2) In the event a school district superintendent fails to timely respond to a complaint communicated pursuant to WAC 392-190-065, a complainant has a right to an appeal to the board of directors. The appeal must be filed with the secretary of the school board on or before the tenth calendar day following the expiration of the response period provided by WAC 392-190-065(2).~~

~~(3) An appeal to the board of directors pursuant to this section shall require the board of directors to schedule a hearing to commence on or before the twentieth calendar day following the filing of the written notice of appeal, unless otherwise agreed to by the complainant and the school district superintendent, or for good cause. The complainant and the school district superintendent must be allowed to present such witnesses and testimony as the board deems relevant and material. Unless otherwise agreed to by the complainant and the school district superintendent, or for good cause, the board of directors must render a written decision on or before the tenth calendar day following the termination of the hearing, and must provide a copy to all parties involved. The written decision must include notice of the complainant's right to appeal to the superintendent of public instruction as set forth in WAC 392-190-075, and must identify where and to whom the appeal must be filed.)~~ (1) A school district's or public charter school's complaint procedure required under WAC 392-190-065 must provide an option to appeal the decision of the school district superintendent, charter school administrator, or designee to a party or board that was not involved in the initial complaint or investigation.

~~(2) A school district or public charter school may establish a time limit to file appeals. Appeal time limits must be no less than ten calendar days from the date the complainant received the school district's or public charter school's response under WAC 392-190-065.~~

~~(3) The school district or public charter school must provide a written appeal decision to the complainant in a timely manner, not to exceed thirty calendar days from the date the school district or charter school received the appeal, unless otherwise agreed to by the complainant. The appeal decision must include notice of the complainant's right to file a complaint with the superintendent of public instruction under WAC 392-190-075. The school district or charter school must send a copy of the appeal decision to the office of superintendent of public instruction.~~

~~(4) The school district's or public charter school's appeal decision must be provided in a language the complainant can understand, which may require language assistance for complainants with limited-English proficiency, in accordance with Title VI of the Civil Rights Act of 1964.~~

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-075 Compliance—~~((Contested case—Duty of the))~~ Complaint procedure—Office of superintendent of public instruction. ~~((1))~~ In the event a complainant disagrees with the decision of a school district board

of directors rendered pursuant to WAC 392-190-070, the complainant may appeal the board's decision to the superintendent of public instruction. For purpose of hearing an appeal under this section, the superintendent of public instruction must conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal. Decisions in cases appealed pursuant to this section may be made by an administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.300.120.

(2) A notice of appeal must be received by the superintendent on or before the twentieth calendar day following the date upon which the complainant received written notice of the school board's decision. The notice is deemed received when the notice is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the superintendent of public instruction. The notice must be in writing and must set forth (a) a concise statement of the portion or portions of the school board's decision which is appealed from, and (b) the relief requested by the complainant/appellant.

(3) Appeals to the superintendent shall be conducted de novo. The complainant/appellant must have the responsibility for prosecuting the appeal and the school district/respondent shall have the duty of defending the school district's decision or the portion of the decision appealed.) (1) If a complainant disagrees with the school district's or public charter school's appeal decision under WAC 392-190-070, or if the school district fails to comply with the procedures in WAC 392-190-065 or 392-190-070, the complainant may file a complaint with the office of superintendent of public instruction. A complaint must be received by the office of superintendent of public instruction within twenty calendar days after the complainant received the school district's or public charter school's written appeal decision, unless the office of superintendent of public instruction grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand delivery. A complaint must be in writing and include:

(a) A description of the specific acts, conditions, or circumstances alleged to violate this chapter or the guidelines adopted under WAC 392-190-005 and the facts on which the complaint is based;

(b) The name and contact information, including an address, of the complainant;

(c) The name and address of the school district or public charter school subject to the complaint;

(d) A copy of the school district's or public charter school's complaint and appeal decisions under WAC 392-190-065 and 392-190-070;

(e) A proposed resolution of the complaint or relief requested; and

(f) If the allegations regard a specific student, the complaint must also include:

(i) The name and address of the student, or in the case of a homeless child or youth, contact information for the student; and

(ii) The name of the school and school district, or public charter school, the student attends.

(2) Upon receipt of a complaint, the office of superintendent of public instruction may initiate an investigation, which may include reviewing relevant information or conducting an independent on-site review. The office of superintendent of public instruction may, at its discretion, investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the school district or public charter school under WAC 392-190-065 or 392-190-070.

(3) Following an investigation, the office of superintendent of public instruction will make an independent determination as to whether the school district or public charter school has failed to comply with this chapter or the guidelines adopted under WAC 392-190-005. The office of superintendent of public instruction will issue a written decision to the complainant and the school district or public charter school that addresses each allegation in the complaint and any other noncompliance issues that the office of superintendent of public instruction has identified in the investigation. The written decision will include the corrective actions deemed necessary to correct any noncompliance and any documentation the school district or public charter school must provide to ensure that the corrective action is completed.

(4) All corrective actions must be completed within the timelines established in the written decision unless the office of superintendent of public instruction grants an extension. If timely compliance by a school district or public charter school is not achieved, the office of superintendent of public instruction may take actions to ensure compliance. Such actions may include, but are not limited to, referring the school district or public charter school to appropriate state or federal agencies empowered to order compliance with the law or the initiation of sanctions or corrective measures under WAC 392-190-080.

(5) A complaint may be resolved at any time when, before the conclusion of an investigation, the complainant, the school district, or the public charter school voluntarily agrees to resolve the complaint. The office of superintendent of public instruction may provide technical assistance and dispute resolution methods necessary to resolve a complaint.

NEW SECTION

WAC 392-190-0751 Mediation. (1) A school district or public charter school may offer mediation, at the district's or charter school's expense, to resolve complaints at any time during the complaint procedure set forth in WAC 392-190-065 through 392-190-075. The purpose of mediation is to offer both the complainant and the school district or public charter school an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the complaint through the use of an impartial mediator.

(2) Mediation must be voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process.

(3) Mediation cannot be used to deny or delay a complainant's right to utilize the complaint procedure set forth in WAC 392-190-065 through 392-190-075 or to deny any other rights afforded under this chapter or under chapters 28A.640 or 28A.642 RCW.

(4) Mediation must be conducted by qualified and impartial mediators. An individual who serves as a mediator:

(a) May not be an employee of any school district, public charter school, or other public or private agency that is providing education or related services to a student who is the subject of the mediation process; and

(b) Must not have a personal or professional conflict of interest.

(5) A person who otherwise qualifies as a mediator is not an employee of a school district, public charter school, or other public agency solely because he or she is paid by the school district, charter school, or agency to serve as a mediator.

(6) If the parties resolve a dispute through the mediation process, the parties may execute a legally binding agreement that:

(a) Sets forth that resolution;

(b) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent complaint, due process hearing, or civil proceeding; and

(c) Is signed by both the complainant and a representative of the school district or public charter school who has the authority to bind the district or charter school.

(7) The complainant and the school district or public charter school may agree to extend the timelines set forth in WAC 392-190-065 through 392-190-075 to pursue mediation.

(8) The office of superintendent of public instruction does not sign, approve, or endorse any mediation agreements reached by the parties. However, the office of superintendent of public instruction may assist both parties in understanding pertinent legal standards and possible remedies.

MONITORING

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-076 Monitoring—Duty of the superintendent of public instruction. (1) The office of superintendent of public instruction must monitor school districts' and public charter schools' compliance with this chapter, chapters 28A.640 and 28A.642 RCW, and the ~~((rules and))~~ guidelines adopted ~~((in furtherance thereof))~~ under WAC 392-190-005.

(2) Procedures for monitoring school districts and public charter schools may include, but are not limited to:

(a) Investigation of complaints under WAC 392-190-075;

(b) Collection, review, and analysis of data and other information;

~~((b) Conduct))~~ (c) Performance of on-site visits and interviews; and

~~((e))~~ (d) Review of any compliance issues, including reviews by those agencies referenced in WAC 392-190-077.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-077 Monitoring ~~((results—Compliance))~~ Procedures—Results. (1) Following its monitoring of a school district ~~((pursuant to))~~ or public charter school under WAC 392-190-076, the office of superintendent of public instruction must notify the district~~((s))~~ or charter school of any findings of ~~((identified))~~ noncompliance with this chapter, chapters 28A.640 and 28A.642 RCW ~~((and))~~, or the ~~((rules and))~~ guidelines adopted ~~((in furtherance thereof))~~ under WAC 392-190-005. This notification of noncompliance must initiate a process of correction, verification, and validation to ensure that the noncompliance is corrected within a compliance period identified by the office of superintendent of public instruction. The compliance period must be no longer than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan ~~((is))~~ will be required. The school district or public charter school will have thirty calendar days after its receipt of the notice of noncompliance to:

(a) Accept the findings contained in the notification of noncompliance; ~~((or))~~

(b) Provide the office of superintendent of public instruction with supplemental information that may serve as a basis for amending the notification of noncompliance; or

(c) Provide any revisions to the proposed corrective action plan.

(2) If the school district or public charter school provides the office of superintendent of public instruction with supplemental information, the office of superintendent of public instruction must respond to the school district or charter school with a final monitoring report within thirty calendar days after receipt of the supplemental information.

(3) If the school district or public charter school does not timely address the identified noncompliance with corrective actions, the superintendent of public instruction may, at his or her discretion, undertake actions to ensure the school ~~((district))~~ district's or charter school's compliance. Such actions may include, but are not limited to, referring the school district or public charter school to appropriate state or federal agencies empowered to order compliance with the law, or the initiation of ~~((an office of superintendent of public instruction complaint against the school district))~~ sanctions or corrective measures under WAC 392-190-080.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-079 ~~((Complaints issued by superintendent of public instruction))~~ Monitoring—Appeal procedure. (1) A complainant, school district, or public charter school that desires to appeal the written decision of the office of superintendent of public instruction issued ~~((pursuant to WAC 392-190-078))~~ under WAC 392-190-075 or 392-190-077 may file an appeal with the superintendent of public instruction in accordance with the adjudicative proceedings in RCW 34.05.413 through 34.05.494, and the administrative practices and procedures of the superintendent of public instruction in chapter 392-101 WAC. To initiate review under this section, a complainant, school district, or public

charter school must file a written notice with the superintendent of public instruction within thirty calendar days following the date of receipt of the office of superintendent of public instruction's written decision under WAC 392-190-075 or 392-190-077.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction must conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-080 (~~(Compliance)~~) Violations—Permissible sanctions. In the event a school district or public charter school is found to be in violation of the requirements of this chapter, the superintendent of public instruction may, by appropriate order pursuant to chapter 34.05 RCW, impose an appropriate sanction or institute appropriate corrective measures including, but not limited to:

(1) The termination of all or part of state apportionment or categorical moneys to the offending school district or public charter school;

(2) The termination of specified programs wherein (~~(such))~~ the violation or violations are found to be flagrant in nature;

(3) The institution of a mandatory affirmative action program within the offending school district or public charter school; and

(4) The placement of the offending school district or public charter school on probation with appropriate sanctions until such time as compliance is achieved or is assured, whichever is deemed appropriate in the particular case by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 11-09-024, filed 4/13/11, effective 5/14/11)

WAC 392-190-081 Concurrent claims and remedies(~~(—Other remedies)~~). (1) Except as provided in subsections (2) and (3) of this section, nothing in this chapter (~~(shall be construed as denying)~~) is intended to deny an aggrieved person from simultaneously pursuing other available administrative, civil, or criminal remedies for an alleged violation of the law.

(2) A complaint made (~~(pursuant to))~~ under WAC 392-190-065 (~~(or))~~ through 392-190-075 (~~(will))~~ may be held in abeyance (~~(during the pendency))~~ pending the outcome of any proceeding in state or federal court or before a local, state or federal agency in which the same claim or claims are at issue, whether under RCW 28A.640.040, 28A.642.040, or any other law.

(3) Where the complainant elects to pursue simultaneous claims in more than one forum, the factual and legal determinations issued by the first tribunal to rule on the claims may, in some circumstances, be binding on all or portions of the claims pending before other tribunals.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-190-015 Counseling and guidance—Sex discrimination—Duty of certificated and classroom personnel—Coordination of effort.
- WAC 392-190-026 Recreational and athletic—Sex discrimination—Equal opportunities—Separate teams.
- WAC 392-190-035 Recreational and athletic activities—Elementary and secondary level.
- WAC 392-190-078 Monitoring results—Complaints issued by superintendent of public instruction.

WSR 14-15-084

PROPOSED RULES

SPOKANE REGIONAL CLEAN AIR AGENCY

[Filed July 17, 2014, 1:50 p.m.]

Supplemental Notice to WSR 14-10-054.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article III - Variances.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on September 4, 2014, at 9:30 a.m.

Date of Intended Adoption: September 4, 2014.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by August 18, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by August 18, 2014, (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Highlights of revisions to original proposal in WSR 14-10-054 are as follows:

- Refer to submittal of "application" versus "request."
- Refer to "SRCAA" versus "Agency."
- Clarify that if denied by ecology pursuant to Section 3.01.B.2, SRCAA will not review the variance application.
- Require that application be made using forms provided by SRCAA.
- For applications submitted pursuant to Section 3.01.B.2 (variance from SRCAA regulations and ecology rules), a filing fee must be submitted at the same time ecology's written approval is submitted to SRCAA pursuant to Section 3.01.J.
- Fees in Section 3.02.A are incorporated into the fee schedule.
- Applicable fees apply to applications which are considered incomplete.

- Add a fee reduction/refund provision in Section 3.02.B.

Reasons Supporting Proposal: The revisions clarify the variance request process.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2), 70.94.181.

Statute Being Implemented: RCW 70.94.141, 70.94.380(2), 70.94.181.

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

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. SRCAA is not required under chapter 19.85 RCW to file small business economic impact statements.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

July 17, 2014
Matt Holmquist
Compliance Administrator

ARTICLE III - VARIANCES

SECTION 3.01 VARIANCES—APPLICATION FOR—CONSIDERATIONS—LIMITATIONS—RENEWALS—REVIEW

A. Applicability (RCW 70.94.181)

Any person, or group of persons, who ~~((own or is in control of any plant, building, structure, establishment, processor equipment))~~ is directly impacted by any SRCAA rule or regulation, may apply to the Board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the Board may require. ~~((The Board may grant such variance, provided that variances to state rules shall require Ecology's approval, prior to being issued by the Board.))~~ The total time period for a variance and renewal of such variance shall not exceed one year.

B. General Process

The Board may grant a variance to SRCAA rules or regulations. However, if the variance sought also requires a variance from state rules, Ecology must first issue its approval.

1. If the variance pertains to a SRCAA regulation only, the applicant must submit the variance application to SRCAA and the decision to approve or deny the variance will be made by the Board.

2. If the variance pertains to a SRCAA regulation and a state rule, the applicant must submit the variance application concurrently to both SRCAA and Ecology. If approved by Ecology, the variance application may then be reviewed and processed by SRCAA with the decision to approve or deny the variance being made by the Board. Approval of such a variance is contingent upon approval by both Ecology and

SRCAA. If denied by Ecology, SRCAA will not review the variance.

a. Per 40 CFR 52.2476(b), any change to a provision of the state implementation plan described in 40 CFR 52.2476(a) must be submitted by Ecology for approval by EPA in accordance with the requirements of 40 CFR 51.104. In accordance with 40 CFR 51.104, variances approved under this Article shall not be included in orders or permits provided for in RCW 70.94.152 (Notice of Construction) or RCW 70.94.161 (Operating Permits) until such time as the variance has been accepted by the EPA as part of an approved State Implementation Plan in 40 CFR Part 52, subpart WW.

C. Conditions for Granting a Variance

Pursuant to RCW 70.94.181(1), ~~((V))~~variances may be issued by ~~((either Ecology, where Ecology has retained jurisdiction, or))~~ the Board~~((, but only after public involvement per WAC 173-400-171,))~~ if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health, safety, or the environment; and

2. Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

The interests of the applicant, other owners of property likely to be affected by the emissions, and the general public must also be considered pursuant to Section 3.01.E and RCW 70.94.181(2).

~~((B))~~ D. Complete Application

In addition to the requirements of Section 3.01.A above, applicants~~((tions))~~ seeking a variance must submit an accurate and complete application. Application must be made using forms provided by SRCAA. An application is not deemed complete until all of the information identified below is received. At a minimum, applicants must submit all of the following information: ~~((shall not be considered complete unless the applicant provides:))~~

1. A list of interested parties and neighbors within 500 feet or more of the property on which the variance is proposed to occur, including mailing addresses, or as deemed necessary by the Control Officer.

2. The specific laws and/or regulations from which a variance is being sought.

3. How compliance with rules or regulations from which the variance is sought would produce serious hardship to the applicant without equal or greater benefits to the public.

4. An explanation of the time period for which the variance is sought; not to exceed one year.

5. How the applicant will comply with the applicable laws and/or regulations following expiration of the variance so as to alleviate the need for a renewal of a variance, if one is approved.

6. An explanation, if applicable, as to why there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved.

7. If alternatives are available, what the cost of the alternatives are. Supporting documentation must be provided.

8. Detailed maps of the site subject to the variance application.

9. Any additional information requested by SRCAA prior to, during, or following submittal of the application.

10. The variance application must be complete and accurate and a statement to this effect by the applicant must be included in the application. Incomplete or inaccurate applications may be returned to the applicant for completion or correction.

11. If the variance application requires Ecology's approval pursuant to Section 3.01.B, the applicant must demonstrate to SRCAA that a variance application has been approved by Ecology (i.e. submit a copy of Ecology's written decision to approve the variance to SRCAA).

~~(E)~~ E. Public Notice and Public Hearing

Variance may be issued only after public involvement per WAC 173-400-171. No variance shall be granted pursuant to this section until the Board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public. The Board shall conduct a fact-finding public hearing, upon due notice being published and sent to all interested parties within 500 feet of the property on which the variance is proposed. The Control Officer may require notice to parties beyond 500 feet, if deemed necessary. A 30-day advance public notice shall be published in a newspaper of general circulation in the area of the proposed variance and shall include the following information:

1. The time, date, and place of the hearing;
2. The name and address of the owner or operator and the source;
3. A brief description of the variance request; and
4. The deadline for submitting written comments to ~~(the Agency)~~ SRCAA.

For variances from state rules, SRCAA may determine that public notice and public hearing conducted by Ecology satisfies the provision in WAC 173-400-171.

~~(D)~~ F. Variance Limitations

Any variance or renewal thereof shall be granted within the requirements of Section 3.01.A and C of this Regulation for not more than one (1) year under conditions consistent with the reasons therefore, and within the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in the view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein, shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in Sections 3.01.~~(D)~~E.1 and 3.01.~~(D)~~E.2 of this Regulation, it shall be for not more than one (1) year.

~~(E)~~ G. Renewal

Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the Board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the Board finds that renewal is justified. No renewal shall be granted except on application therefore. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of a ~~(n)~~ complete and accurate application for renewal, the Board shall give public notice of such application in accordance with rules and regulations of Ecology or ~~(the Authority)~~ SRCAA.

~~(F)~~ H. Appeal Process

A variance or renewal shall not be a right of the applicant or holder thereof, but shall be granted at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof only under the provisions of Chapter 34.05 RCW, as ~~(now)~~ of the effective date of this regulation or thereafter amended.

~~(G)~~ I. Emergency Provisions

Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 (Air Pollution Episodes) to any person or his or her property.

~~(H)~~ J. Processing Period

Unless the applicant and the Board agree to a continuance, ~~(A)~~ an application for a variance, or for the renewal thereof, submitted to the Board pursuant to ~~(this)~~ Section 3.01.B.1 shall be approved or disapproved by the Board within sixty-five (65) days of ~~(receipt)~~ SRCAA determining that the application for a variance is accurate and complete and receiving the filing fee reference in Section 3.02.A ~~(unless the applicant and the Board agree to a continuance)~~. If approval from Ecology is required per Section 3.01.B.2, and unless the applicant and the Board agree to a continuance, approval or denial by the Board shall occur within sixty-five (65) days of receipt of all of the following: an accurate and complete application, Ecology's written decision to approve the variance, and the filing fee referenced in Section 3.02.A.

~~(I. Per 40 CFR 52.2476(b), Variances, approved under this Article, shall not be included in orders or permits provided for in RCW 70.94.152 or RCW 70.94.161 until such time as the variance and has been accepted by the EPA as part of an approved SIP, in accordance with 40 CFR 51.104.)~~

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

~~(FILING)~~ FEES

A. Fees.

Except as provided in Section 3.02.B, below, the filing fees, all legal fees, legal notice fees, and all hourly fees incurred by SRCAA must be paid by the applicant regardless of whether the variance is granted, denied, or determined to be incomplete.

1. Filing Fees

For applications submitted pursuant to Section 3.01.B.1 (SRCAA-only regulations), a ((A)) filing fee as specified in Section 10.08 of this Regulation and SRCAA's fee schedule shall be submitted at the time of application and shall be applied to the final invoice fee. For applications submitted pursuant to Section 3.01.B.2 (SRCAA regulations and Ecology rules), a filing fee as specified in Section 10.08 of this Regulation and SRCAA's fee schedule shall be submitted at the same time Ecology's written approval is submitted to SRCAA pursuant to Section 3.01.J and shall be applied to the final invoice fee.

2. Legal Fees/Legal Notice Fees.

The applicant shall also be responsible to pay all legal fees incurred by SRCAA directly attributed to the application for a variance and costs associated with any legal notice(s) required pursuant to this Article.

3. Hourly Fees

An hourly fee, as established in Section 10.08((D)) of this Regulation and SRCAA's fee schedule, shall also be assessed to, and paid by, the applicant for applications reviewed by SRCAA pursuant to this Article.

B. Reduced Fees or Refunds.

The applicant may request that some portion of the variance fees be waived or refunded if it is demonstrated to the Board that SRCAA's variance application process didn't fully and accurately inform the applicant of the variance process described in Sections 3.01-3.02.A of this Regulation. Such request must be made in writing no later than thirty (30) days after denial or approval of the variance by the Board. Any fee reductions or refunds shall be at the full discretion of the Board.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SPOKANE REGIONAL CLEAN AIR AGENCY (SRCAA) FEE SCHEDULE, SECTION 10.08 – MISCELLANEOUS FEES

10.08 - Miscellaneous Fees

A. Miscellaneous Fees		
Description	Fees	
Miscellaneous	Emission reduction credit	\$67/hour
	Variance request application	\$250/filing (applied to final invoice fee)
		\$67/hour review and processing
		actual SRCAA legal fees
	actual legal notice fee(s)	
Alternate opacity	\$67/hour	
Other	\$67/hour	

Reviser's note: The spelling error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical error in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 14-15-087
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed July 17, 2014, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-074.

Title of Rule and Other Identifying Information: Chapter 392-143 WAC, Transportation—Specifications for school buses.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Wanamaker Conference Room, 600 South Washington Street, Olympia, WA 98504-7200, on August 26, 2014, at 3:30 p.m.

Date of Intended Adoption: August 27, 2014.

Submit Written Comments to: Allan J. Jones, P.O. Box 74200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, fax (360) 586-6124, by August 18, 2014.

Assistance for Persons with Disabilities: Contact Wanda Griffin by August 24, 2014, TTY (360) 664-3631 or (360) 725-6132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed change would allow school district[s] to purchase and operate a multifunction school activity bus (MFSAB) for the non-home-to-school transportation of students.

Reasons Supporting Proposal: This proposed change would allow districts to purchase an MFSAB. This vehicle would allow a non-CDL driver to transport up to fourteen passengers, instead of the current nine passengers. Safety is not reduced as these vehicles will meet school bus construction standards and will be required to have lap-shoulder belts. This change will provide additional flexibility for districts while reducing costs. These vehicles are not included in the school bus depreciation system.

Statutory Authority for Adoption: RCW 46.61.380.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Allan J. Jones, OSPI, (360) 725-6122; Implementation: Catherine Slagle, OSPI, (360) 725-6136; and Enforcement: JoLynn Berge, OSPI, (360) 725-6301.

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

July 17, 2014
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "School bus" means every vehicle with a seating capacity of more than ten persons including the driver regularly used to transport students to and from school or in connection with school activities.

(2) "School bus specifications manual" means that manual published by the superintendent of public instruction.

(3) "School district" means either a school district or an educational service district.

(4) "School bus operation permit" means that form issued by the superintendent of public instruction to a school district, which is required prior to the use of any school bus for the transportation of students. No school bus operation permit is valid for any school bus which does not meet the Federal Motor Vehicle Safety Standards implemented April 1, 1977.

(5) "Inspection officer" means an employee of the Washington state patrol designated by the chief of the Washington state patrol to inspect school buses.

(6) "SPI Form 1028" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved, for used buses previously inspected by the Washington state patrol.

(7) "SPI Form 1029" means that form distributed by the superintendent of public instruction upon which the inspection officer indicates that the school bus has been inspected and approved upon initial purchase, used buses not previously inspected by the Washington state patrol, and buses which have undergone rehabilitation or modification.

(8) "Major repairs" means repairs to or rebuilding of the frame, steering, suspension, or braking systems. Major repairs to braking systems does not include routine maintenance such as replacing brake shoes, pads or drums.

(9) "MFSAB" means a multifunction school activity bus as defined by the National Highway Traffic Safety Administration.

AMENDATORY SECTION (Amending WSR 12-01-075, filed 12/19/11, effective 1/19/12)

WAC 392-143-070 Other vehicles used to transport students. All vehicles with a seating capacity including the driver of ten persons or less shall not be required to meet school bus specifications. Such vehicles regularly used to transport students to and from school or in connection with school activities shall carry the approved school bus first-aid kit, fire extinguisher, and highway warning kit. These vehicles also shall pass a safety inspection routinely conducted at the intervals outlined in WAC 392-143-035.

An exception to the above is that a MFSAB with a seating capacity of less than sixteen passengers, including the driver, may be used to transport students and is required to have Washington state patrol inspections, initial and annual, for the appropriate class vehicle. An MFSAB shall not be used in home-to-school transportation where any stop configuration would require the use of alternately flashing school bus warning lights if the vehicle were a school bus. An MFSAB shall be equipped with a lap-shoulder belt or other nonlap belt system in all seating positions and shall not be painted school bus yellow.

All vehicles used to transport students with a manufacturer rated seating capacity including the driver greater than ten persons shall be required to meet school bus specifications.

WSR 14-15-089
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed July 18, 2014, 7:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-020.

Title of Rule and Other Identifying Information: WAC changes – Recreational conveyances inspection program. WACs being reviewed are WAC 352-44-020 Recreational conveyances—Certification, 352-44-050 Recreational conveyances—Safety inspections, 352-44-080 Recreational conveyances—Simulated load test, and new WAC 352-44-130 Fees, inspection and plan review.

Hearing Location(s): Ilwaco Community Building, 210 First Avenue North, Ilwaco, WA 98624, on September 18, 2014, at 9:00.

Date of Intended Adoption: September 18, 2014.

Submit Written Comments to: Nata Hurst, 1111 Israel Road S.W., Olympia, WA 98504-2650, e-mail nata.hurst@parks.wa.gov, fax (360) 586-0207, by September 12, 2014.

Assistance for Persons with Disabilities: Contact Becki Ellison at becki.ellison@parks.wa.gov or by calling (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updating WAC 352-44-020 to have certificate timing match operating use, add ability for other inspections as needed. Revoking WAC 352-44-050 Recreational conveyances—Safety inspections, information is covered in other RCW and WACs. Revoking WAC 352-44-080 Recreational conveyances—Simulated load test. State parks has adopted ANSI B77.1 current edition. Having a WAC cover the same issue is not necessary and may cause a conflict. New WAC 352-44-130 Fees, inspection and plan review, set fees for responsibilities under chapters 79A.40 and 79A.45 RCW.

Reasons Supporting Proposal: Updates bring the WACs in to alignment of current practice.

Statutory Authority for Adoption: RCW 79A.40.030.

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

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Nata Jo Hurst, 1111 Israel Road, Olympia, WA 98504, (360) 902-8638.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

July 18, 2014
Valeria Evans
Management Analyst

WSR 14-15-114
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed July 22, 2014, 8:28 a.m.]

AMENDATORY SECTION (Amending Order 20, filed 7/31/14)

WAC 352-44-020 Recreational conveyances—Certification. Each conveyance for persons generally engaging in winter sports recreational activities, as described in RCW ((70.88.010)) 79A.40.010, shall have a current ((~~annual~~) seasonal) certificate to operate on a form approved and provided by the commission. Said certificate ((~~shall be for an annual term of one year beginning January 1 of each year~~) covers either winter or summer. Additional inspections may be made as deemed necessary by the director.) No conveyance shall be operated for use by the public unless a valid current certificate has been issued by the director. The certificate shall be:

- (1) Signed by the director.
- (2) Posted in a conspicuous location at the main loading terminal during periods of operation for public use.
- (3) Adequately protected from the elements.

NEW SECTION

WAC 352-44-130 Fees, inspection and plan review. To cover the costs of implementing the commission's responsibilities under chapters 79A.40 and 79A.45 RCW and as outlined in this chapter, the commission has adopted the following schedule of fees. The owner or operator of the ski area equipment shall pay the commission the following costs and fees:

- (1) The actual costs incurred by the commission to retain an inspector to inspect, review plans, and file a report on recreational devices connected with the recreational conveyance operation; and
- (2) An administrative fee, not to exceed twenty-eight percent of the actual costs incurred by the commission in subsection (1) of this section, to defray the commission's administrative costs associated with this program.

The director shall invoice the owner/operator for the costs incurred, which invoice shall be paid within thirty days of receipt. The director shall have the ability, at his/her sole discretion, to lower or waive an administrative fee if the director deems it appropriate.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|----------------|---|
| WAC 352-44-050 | Recreational conveyances—Safety inspections. |
| WAC 352-44-080 | Recreational conveyances—Simulated load test. |

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-077.

Title of Rule and Other Identifying Information: Establish rates for farm internship program risk classifications and update reporting rules for workers' compensation insurance. This rule making is necessary as a result of SSB 5123 (chapter 131, Laws of 2014) effective June 12, 2014, which establishes a farm internship program for small employers in a variety of counties.

Hearing Location(s): Labor and Industries (L&I), 7273 Linderson Way S.W., Room S117, Tumwater, WA 98501, on August 26, 2014, at 1:00 p.m.

Date of Intended Adoption: September 3, 2014.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, e-mail joanne.attwood@lni.wa.gov, fax (360) 902-5830, by 5:00 p.m., August 26, 2014.

Assistance for Persons with Disabilities: Contact office of information and assistance by August 21, 2014, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish rates for farm internship program classifications and update reporting rules for workers' compensation insurance. This rule making is necessary as a result of SSB 5123 (chapter 131, Laws of 2014) effective June 12, 2014, which establishes a farm internship program for small employers in a variety of counties.

Reasons Supporting Proposal: Without this rule making, rates for the farm internship classifications could not take effect. The new rates and updated reporting rule are necessary to ensure proper reporting of hours and collection of premiums for employers participating in the farm internship program.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: [L&I], governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, (360) 902-4777; Implementation: Les Hargrave, Tumwater, Washington, (360) 902-4298; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any exist-

ing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

July 22, 2014
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 10-17-028, filed 8/9/10, effective 9/9/10)

WAC 296-17-31014 Farming and agriculture. (1) Does this same classification approach apply to farming or agricultural operations?

Yes, but it may not appear so without further explanation. We classify farming and agricultural operations by type of crop or livestock raised. This is done because each type of grower will use different processes and grow or raise multiple crops and livestock which have different levels of hazards. It is common for farmers and ranchers to have several basic classifications assigned to their account covering various types of crops or livestock. If you fail to keep the records required in the auditing recordkeeping section of (~~this manual~~) chapter 296-17 WAC, and we discover this, we will assign all worker hours for which records were not maintained to the highest rated classification applicable to the work performed.

(2) I am involved in diversified farming and have several basic classifications assigned to my business. Can I have one classification assigned to my account to cover the different types of farming I am involved in?

Yes, your account manager can assist you in determining the single classification that will apply to your business. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(3) How do you determine what single farming classification will be assigned to my business?

The approach used to assign a single classification to a farming business is much the same as we use for construction or erection contractors. To do this, we will need a break down of exposure (*estimate of hours to be worked by your employees*) by type of crop or livestock being cared for (*classification*). This information will be used to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We will select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate that we produced from the estimated hours. Classification 4806 is not to be assigned to any grower as the single farming classification.

(4) How will I know what single farming classification you have assigned to my business?

We will send you a written notice of the basic classification that will apply to your business.

(5) If I requested a single classification for my farming operation can I change my mind and use multiple classifications?

Yes, but you will need to call your account manager to verify the applicable classifications.

The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

(6) I am a farm labor contractor. How is my business classified?

If you are a farm labor contractor we will assign the basic classification that applies to the type of crop being grown, or livestock being cared for. If you contract to supply both machine operators and machinery on a project, all operations are to be assigned to classification 4808.

(7) Farm internship pilot program. Who may participate in the farm internship pilot program created by the department as a result of Title 49 RCW, effective (~~June 10, 2014~~) June 12, 2014?

Small farms with annual sales of less than two hundred fifty thousand dollars per year located in San Juan (~~and~~), Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, and Thurston counties that receive a special certification from the department may have farm interns. Employers who qualify may report no more than three farm interns. Farm internship program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816.

NEW SECTION

WAC 296-17-89506 Farm internship program industrial insurance, accident fund, stay at work fund, medical aid fund, and supplemental pension by class.

Base Rates Effective June 12, 2014			
Class	Accident Fund	Stay at Work Fund	Medical Aid Fund
4814	0.1295	0.0025	0.1379
4815	0.2757	0.0053	0.3291
4816	0.4551	0.0088	0.4899

**WSR 14-15-115
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES**

[Filed July 22, 2014, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-10-065.

Title of Rule and Other Identifying Information: Rules applicable to the classification and reporting of:

- Professional sports teams (WAC 296-17A-6706, 296-17A-6707, 296-17A-6809, and 296-17A-7102);
- Employers operating spas (WAC 296-17A-6109, 296-17A-6204, and 296-17A-6501);
- Reforestation employment (WAC 296-17A-1007, 296-17A-5004, and 296-17A-5006);
- Farming operations (WAC 296-17A-4802, 296-17A-4803, 296-17A-4804, 296-17A-4805, 296-17A-4806, 296-17A-4808, 296-17A-4809, 296-17A-4810, 296-17A-4811, 296-17A-4812, 296-17A-4813, 296-17A-7301, 296-17A-7302, and 296-17A-7307).

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Room S117, Tumwater, WA 98504, on September 12, 2014, at 9:30 a.m.

Date of Intended Adoption: January 6, 2015.

Submit Written Comments to: Richard Bredeson, Department of Labor and Industries, P.O. Box 44148, Tumwater, WA 98504-4148, e-mail Richard.Bredeson@lni.wa.gov, fax (360) 902-5830, by September 12, 2014, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by August 21, 2014, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- Amending language to reflect the agreement negotiated with the industry in 2011 that allows professional and semi-professional sports teams to report coaches in Classification 6706 during the off season.
- Repeal Classification 7102 because no employer has reported in 7102 for years.
- Amending language to include distinctions for spas and eliminate the need for the current advisement on classifying spas.
- Amending language to consolidating [consolidate] some 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.
- Amending language to clarify the verbiage in classifications describing farming operations to make them easier to understand and apply.

These proposed changes will not change employer rates or reporting requirements.

Reasons Supporting Proposal: These changes will make it easier for agency staff and customers to understand and apply the risk classifications and subclassifications for workers' compensation, and help ensure fair and consistent rating for employers. As part of this rule making, the department also intends to review these chapters as required by SSB 5679 (chapter 30, Laws of 2013 2nd sp. sess.) to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: Washington state department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Richard Bredeson, Tumwater, Washington, (360) 902-4985; Implementation: Les Hargrave, Tumwater, Washington, (360) 902-4298; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers, they are exempted from a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers, and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

July 22, 2014

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; rain-making - 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 and 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 "consult-

ing" 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 internal 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 covered 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, diag-

nose 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 classification 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 guidance 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 facilities, gyms, fitness and martial arts centers, N.O.C.

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 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.

4802-03 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, cones, cedar boughs, mushrooms, wild flowers, wild berries, moss, 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 flowers, 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.

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);

- Landscaping 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;

- Landscaping 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 classification 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:

Barley

Rye

Corn

Wheat

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:

Boom loaders

Pickers

Reapers

Combines

Plows

Tractors

Fertilizer spreaders

Potato diggers

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</u>	<u>Cucumbers</u>	<u>Radishes</u>	<u>Turnips</u>
<u>Sprouts</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 caring 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 caring 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 caring 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 caring 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.

terms.

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 14-15-116
WITHDRAWL OF PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed July 22, 2014, 9:07 a.m.]

The office of financial management is requesting to withdraw the proposed rule modification filed on July 2, 2014, as WSR 14-14-121.

If you have any questions, please contact Kristie Wilson at (360) 407-4139.

Roselyn Marcus
Assistant Director
Legal and Legislative Affairs

WSR 14-15-126
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 22, 2014, 2:18 p.m.]

Supplemental Notice to WSR 14-09-109.

Preproposal statement of inquiry was filed as WSR 14-06-080.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1600 WorkFirst—Sanctions.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on August 26, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 27, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m. on August 26, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by August 12, 2014, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration, is proposing to amend WAC 388-310-1600 to reduce the time period before closure of TANF/SFA due to failure to meet WorkFirst requirements without good cause.

This is a supplemental notice to WSR 14-09-109, filed on April 23, 2014. A public hearing was held May 27, 2014. Proposed changes have been made based on comments received as part of the public hearing process.

Reasons Supporting Proposal: The proposed amendments are necessary to implement the WorkFirst program changes outlined in the agency detail, rec sums for the supplemental budget (ESSB 6002) that passed the legislature on March 13, 2014.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08.025 and chapters 74.08A and 74.12 RCW and ESSB 6002 Agency Detail, Rec Sums.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090 and chapters 74.08A and 74.12 RCW.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Kelly, CSD Policy, DSHS, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4556.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

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

July 18, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-042, filed 10/27/11, effective 12/1/11)

WAC 388-310-1600 WorkFirst—Sanctions. Effective ((July 1, 2010)) November 1, 2014.

(1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance ((~~sanction~~)) case staffing. The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance ((~~sanction~~)) case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance ((~~sanction~~)) case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an ((~~IRP~~)) individual responsibility plan to help you with your situation, including referrals to appropriate services.

(e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What happens in my noncompliance (~~(sanction)~~) case staffing?

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

~~(ii)~~ (ii) What happens if you are sanctioned (~~(and stay in sanction)~~);

~~((iii))~~ (iii) How you can participate and get out of sanction status;

~~((iv))~~ (iv) How you and your family benefit when you participate in WorkFirst activities;

~~((v))~~ (v) That (~~(if you continue to refuse to participate, without good cause,)~~) your case may be closed after you have been in sanction status for (~~(four))~~ two months in a row;

~~((vi))~~ (vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030;

~~((vii))~~ (vii) How to reapply if your case is closed; and

~~((viii))~~ (viii) That upon your third (~~(noncompliance)~~) sanction case closure after March 1, 2007, you may be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA.

(b) If you do not come to your noncompliance (~~(sanction)~~) case staffing, we will make a decision based on the information we have and send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) What happens if we do a home visit because you didn't attend your noncompliance case staffing?

If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).

(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.

(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.

(6) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?

(a) Before you are placed in sanction, a (~~(supervisor))~~ supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a (~~(supervisor))~~ supervisory employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request (~~(a fair))~~ an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.

(d) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

~~((6))~~ **(7) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you (~~(do not qualify for your full grant. This is called being))~~ are placed in WorkFirst sanction status.

~~((7))~~ **(8) Are there penalties when you or someone in your household goes into sanction status?**

((8)) When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting). Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

~~((b))~~ (a) If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status, you will receive a grant reduction sanction penalty.

(i) Your grant is reduced by one person's share or forty percent, whichever is more.

(ii) The reduction is effective the first of the month following ten-day notice from the department; and

(iii) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.

(i) Your case may be closed the first of the month following the ten-day notice from the department.

(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.

(A) Your grant is reduced by one person's share or forty percent, whichever is more.

(B) The reduction is effective the first of the month that your grant is reopened; and

(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(9) What happens before your case is closed due to sanction?

Before we close your case due to sanction status, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How you can request an administrative hearing if you disagree with this decision;

(d) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (13).

(10) What happens if my sanction grant reduction penalty started before November 1, 2014?

If you are in sanction and entered sanction before November 1, 2014, your case may be closed after you have been in sanction for four months in a row.

~~((8))~~ **(11) How do I end the penalties and get out of sanction status?**

To ~~((stop))~~ end the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

~~((e))~~ **(12) What happens when I get out of sanction status before my case is closed?**

When you ~~((leave))~~ get out of sanction status before your case is closed, your grant will be restored to the level

you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

~~((9))~~ **(13) What if I reapply for TANF or SFA (~~and I was in sanction status when my case closed~~) and I was in sanction status when my case closed?**

If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (14). If your case (~~eloses~~) closed for another reason while you (~~are~~) were in sanction status and is reopened, you will (~~start out where you left off in~~) reopen in month two of sanction status.

~~((That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.~~

~~(10) What happens if I stay in sanction status?~~

~~(a) We will send information to a supervisor or designee with a recommendation to close your case.~~

~~(b) A supervisor or designee will make the final decision.~~

~~(c) If the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.~~

~~(11) What happens when a supervisor or designee approves closure of my case?~~

~~When a supervisor or designee approves closure of your case, we will send you a letter to tell you:~~

~~(a) What you failed to do;~~

~~(b) When your case will be closed;~~

~~(c) How to request a fair hearing if you disagree with this decision;~~

~~(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and~~

~~(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).~~

~~(12))~~ **(14) What if I reapply for TANF or SFA after (~~a supervisor or designee approved case closure and my case was closed~~) my case is closed due to sanction?**

~~((If a supervisor or designee approves case closure and we close your case;))~~ (1) Except as specified in subsection (14)(2) if you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(2) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this time-frame:

(a) We will undo your case closure sanction penalty, and we will not count the closure toward permanent disqualification under subsection (15); and,

(b) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.

~~((13)) (15) What happens if a (supervisor or designee) supervisory level employee approves case closure for the third time?~~

If we close your case for sanction at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 14-15-139
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
[Filed July 23, 2014, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-113 on December 31, 2013.

Title of Rule and Other Identifying Information: WAC 220-36-023 Grays Harbor fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on August 26, 2014, at 1:00 p.m. - 3:00 p.m.

Date of Intended Adoption: On or after August 26, 2014.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW) Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by August 19, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by August 19, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rule changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Reasons Supporting Proposal: These proposed rule changes will protect species of fish listed as endangered while supporting commercial salmon fishing in Grays Harbor.

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

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Barbara McClellan, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Grays Harbor while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and nonlocal species of fish listed under the federal Endangered Species Act as threatened or endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:

None - these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor that are closed to commercial harvest methods, and explain legal gear requirements. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:

The proposed rules as [are] similar to previous years and primarily only adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?

The proposed rules do not affect the harvestable numbers of salmon available to commercial fisher[s] licensed to fish in Grays Harbor. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore no costs for compliance are anticipated.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So:

Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restric-

tions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

July 23, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-027, filed 9/9/13, effective 10/10/13)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, and chum salmon(~~(, and white sturgeon)~~), and shad as provided (~~(for)~~) in this section and in the times and area identified in the chart below.

Time:	Areas:
((7:00 a.m. October 10 through 7:00 p.m. October 10, 2013;	Area 2A and that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam (N 46.96978, W 123.88022) and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of Area 2D at the Highway 101 Bridge.
7:00 a.m. October 24 through 7:00 p.m. October 24, 2013;	Area 2A and Area 2D.

Time:	Areas:
7:00 a.m. October 25 through 7:00 p.m. October 25, 2013;	
7:00 a.m. October 29 through 7:00 p.m. October 29, 2013;	
6:00 p.m. November 7 through 6:00 p.m. November 9, 2013; and	
6:00 p.m. November 10 through 6:00 p.m. November 12, 2013.	
7:00 a.m. November 1 through 7:00 p.m. November 1, 2013;	Area 2C
7:00 a.m. November 2 through 7:00 p.m. November 2, 2013;	
7:00 a.m. November 6 through 7:00 p.m. November 6, 2013; and	
7:00 a.m. November 14 through 7:00 p.m. November 14, 2013.))	
<u>12:00 p.m. October 1 through 11:59 p.m. October 1;</u>	<u>Area 2A and that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam (N 46.96978, W 123.88022) and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of Area 2D at the Highway 101 Bridge.</u>
<u>6:00 a.m. October 22 through 6:00 p.m. October 22;</u>	<u>Area 2A and Area 2D</u>
<u>7:00 a.m. October 29 through 7:00 p.m. October 29;</u>	
<u>5:00 p.m. November 3 through 5:00 p.m. November 5;</u>	
<u>AND</u>	
<u>12:00 p.m. November 11 through 11:59 p.m. November 12.</u>	
<u>12:00 p.m. October 28 through 11:59 p.m. October 29;</u>	Area 2C
<u>12:00 p.m. November 4 through 11:59 p.m. November 5;</u>	
<u>AND</u>	
<u>12:00 p.m. November 12 through 11:59 p.m. November 12.</u>	

Gear:

(2) Gear restrictions:

(a) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches in diameter or greater.

(b) Areas 2A and 2D from October 1 through October ~~(15, 2013))~~ 10, tangle net gear only.

(i) It is unlawful to use set net gear.

(ii) Single-wall nets are required.

(iii) Maximum mesh size must not exceed four and one-quarter inches. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(iv) Strings/slackers are required, and nets may hang no more than 28 feet from cork line to lead line.

~~((It is unlawful to use set net gear.))~~

(v) Net construction must include sufficient floatation to ensure the cork line remains at the surface when in the act of fishing.

(c) Areas 2A and 2D from October ~~((16))~~ 11 through November 30 ~~((, 2013.))~~, gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iii) It is unlawful to use a gillnet to fish for salmon ~~((or white sturgeon))~~ if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

(d) Area 2C ~~((August 16))~~ from October 1 through November 30 ~~((, 2013.))~~, gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) Mesh size must not exceed ~~((eight and one-half inch maximum))~~ nine inches.

(iii) It is unlawful to use a gillnet to fish for salmon ~~((or white sturgeon))~~ if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches

above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river or bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead and wild (unmarked) coho must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A, 2C, and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

~~((b) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in a recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (d) of this subsection.~~

~~(e) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.~~

~~(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.~~

~~Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.)~~

(4) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, or hatchery coho marked by a healed scar at the site of the

adipose fin, or shad, is prohibited in Area 2C from October 1 through November 30.

(6) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

~~((5))~~ (7) Report all encounters of green sturgeon to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on ~~((October 4, 2013))~~ September 22, for openings in Areas 2A ~~(and), 2C, or 2D.~~

~~((6) Retention of any species other than coho or chum, or white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, or hatchery Chinook marked by a healed sear at the site of the adipose fin, is prohibited in Areas 2A and 2D from October 1 through November 30, 2013.~~

(7) Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.

(8) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

(9) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(10) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size, and all green sturgeon, obtain available information from tags without removing the tags.

~~((11))~~ (10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices

workshop and has in his or her possession a department-issued certification card.

WSR 14-15-142
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
[Filed July 23, 2014, 8:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-12-043.

Title of Rule and Other Identifying Information: WAC 139-05-300 Requirement of in-service training.

Hearing Location(s): Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room E-154, Burien, WA 98148, on September 10, 2014, at 10 a.m.

Date of Intended Adoption: September 10, 2014.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail shirsch@cjtc.state.wa.us, fax (206) 835-7928, by September 1, 2014.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by September 8, 2014, TTY (206) 835-7300 or (206) 835-7372.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes establish a requirement that all reserve peace officers reserve [require] a minimum of twenty-four hours of in-service training annually.

Reasons Supporting Proposal: Reserve peace officers have the same authority as fully commissioned peace officers when called to duty; therefore, these changes will require reserve officers to meet the same in-service requirements as fully commissioned peace officers.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Tisha Jones, Burien, Washington, (206) 835-7332; Implementation and Enforcement: Leanna Bidinger, Burien, Washington, (206) 835-7307.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

A cost-benefit analysis is not required under RCW 34.05.328. The changes are not new, as they [are] simply mirroring the language of RCW 43.101.220.

July 23, 2014
Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-16-098, filed 8/4/09, effective 9/4/09)

WAC 139-05-300 Requirement for in-service training. The commission recognizes that continuing education

and training is the cornerstone for a successful career as a peace officer in providing competent public safety services to the communities of Washington state.

(1) Effective January 1, 2006, every peace officer certified under RCW 43.101.095 will complete a minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2006, for incumbent officers.

(b) The in-service training requirement for each newly hired officer must begin on January 1st of the calendar year following their certification as a result of successful completion of the basic law enforcement academy, equivalency academy, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(2) Effective January 1, 2015, every reserve peace officer as defined by WAC 139-05-810 will complete a minimum of twenty-four hours of in-service training annually.

(a) This requirement is effective January 1, 2015, for incumbent reserve peace officers.

(b) The in-service training requirement for each newly appointed reserve peace officer/tribal peace officer must begin on January 1st of the calendar year following their appointment as a result of successful completion of the basic reserve law enforcement academy, basic reserve academy equivalency process, or approved waiver as provided by WAC 139-03-030.

(c) Training may be developed and provided by the employer or other training resources.

(d) The commission will publish guidelines for approved in-service training.

(3) All records for training required for this rule must be maintained by the employing agency and be available for review upon request by an authorized commission representative.

(a) The commission will maintain records of successfully completed commission-registered courses.

(b) Upon request, the commission will furnish a record-keeping template for use by agencies to track training.

~~((3))~~ (4) The sheriff or chief of an agency may approve an extension of three months for ~~((certified))~~ peace officers in their employ by notification in writing to the commission, identifying those specific officers.

(a) A sheriff or chief may request a three-month personal extension of the requirement by doing so in writing to the commission.

(b) Written requests submitted under the provision of this subsection must be received by December 1st of the calendar year in question.

Preproposal statement of inquiry was filed as WSR 14-11-068.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): Lighty 403, WSU Pullman, Pullman, Washington, on September 10, 2014, at 4:00 p.m.

Date of Intended Adoption: October 24, 2014.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by September 10, 2014.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by September 8, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are intended to bring the standards of conduct for students in line with current university practice, promote compliance with federal and state laws, allow for communication to parties using electronic mail, and ensure that the standards of conduct are consistently applied and enforced.

Statutory Authority for Adoption: RCW 28B.30.150.

Rule is necessary because of federal law, 42 U.S.C. 13925.

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Adam Jussel, Director, Student Standards and Accountability, Lighty Services 260, Pullman, Washington 99164-1064, (509) 335-4532; Implementation: Melynda Huskey, Assistant Vice-President and Dean of Students, Office of the Dean of Students, French Administration 134, Pullman, Washington 99164-1013, (509) 335-2193; and Enforcement: John Fraire, Vice-President, Student Affairs and Enrollment, Lighty Services 360, Pullman, Washington 99164-1066, (509) 335-5900.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

July 23, 2014

Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial, confidential except to the extent permitted by law and these stan-

WSR 14-15-144

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed July 23, 2014, 9:07 a.m.]

Original Notice.

dards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community.

Washington State University is guided by a commitment to excellence embodied in a set of core values. The university aims to create an environment that cultivates individual virtues and institutional integrity in the community. The mission of the university is supported when students uphold and take responsibility for the full scope of these values. The university's core values are identified in its strategic plan. Under the terms of enrollment, students acknowledge the university's authority to take disciplinary action for conduct on or off university property that is detrimental to the university's core values. Students who violate the university standards of conduct are subject to discipline, which may include temporary or permanent removal from the university.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-005 Good standing. The award of a degree and/or diploma is conditioned upon the student's good standing in the university and satisfaction of all university graduation requirements. "Good standing" means the student has resolved any ~~((unpaid fees or))~~ acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of ~~((any))~~ the misconduct. The university shall have the sole authority in determining whether to withhold the degree and/or diploma in cases where the student is not in good standing due to acts of misconduct, has not resolved any acts of academic or behavior misconduct, or has not complied with all sanctions imposed as a result of misconduct. The university shall deny the award of a degree if the student is dismissed from the university based on his or her misconduct. Neither diplomas nor transcripts are sent until students have resolved any unpaid fees and resolved any acts of academic or behavioral misconduct and complied with all sanctions imposed as a result of misconduct. (See also ~~((rule))~~ academic regulation 45 in the university general catalog.)

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-010 Definitions. (1) The term "accused student" means any student accused of violating the standards of conduct for students (this chapter).

(2) The term "~~((appellate))~~ appeals board" means any person or persons authorized by the vice-president for student affairs to consider an appeal from a university conduct board's or conduct officer's determination as to whether a stu-

dent has violated the standards of conduct for students ~~((or from the))~~ and any sanctions imposed ~~((by the student conduct officer)).~~

(3) The term "cheating" includes, but is not limited to:

(a) Use of unauthorized materials in taking quizzes, tests, or examinations, or giving or receiving unauthorized assistance by any means, including talking, copying information from another student, using electronic devices, or taking an examination for another student.

(b) Use of sources beyond those authorized by the instructor in writing papers, preparing reports, solving problems, or carrying out other assignments.

(c) Acquisition or possession of tests or other academic material belonging to a member of the university faculty or staff when acquired without the permission of the university faculty or staff member.

(d) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes, but is not limited to:

(i) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

(ii) Counterfeiting a record of internship or practicum experiences;

(iii) Submitting a false excuse for absence or tardiness or a false explanation for failing to complete a class requirement or scheduled examination at the appointed date and time.

(e) Engaging in any behavior for the purpose of gaining an unfair advantage specifically prohibited by a faculty member in the course syllabus or class discussion.

(f) Scientific misconduct. Falsification, fabrication, plagiarism, or other forms of dishonesty in scientific and scholarly research are prohibited. Complaints and inquiries involving cases of scientific misconduct are managed according to the university's policy for responding to allegations of scientific misconduct. A finding of scientific misconduct is subject to sanctions by the office of student standards and accountability. The policy for responding to allegations of scientific misconduct may be reviewed by contacting the vice-president for research.

(g) Unauthorized collaboration on assignments.

(h) Intentionally obtaining unauthorized knowledge of examination materials.

(i) Plagiarism. Presenting the information, ideas, or phrasing of another person as the student's own work without proper acknowledgment of the source. This includes submitting a commercially prepared paper or research project or submitting for academic credit any work done by someone else. The term "plagiarism" includes, but is not limited to, the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(j) Unauthorized multiple submission of the same work.

(k) Sabotage of others' work.

(l) Tampering with or falsifying records.

(4) The term "complainant" means any ~~((person))~~ party, including the university, who submits a charge alleging that a student violated the standards of conduct for students.

(5) The term "faculty member" for purposes of this chapter, means any person hired by the university to conduct classroom or teaching activities or who is otherwise considered by the university to be a member of its faculty.

(6) The term "gender identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to the person at birth.

(7) The term "may" is used in the permissive sense.

(8) The term "member of the university community" includes any person who is a student, faculty member, university official, ~~((or)) any ((other)) person employed by the university, or any person with a relationship with the university.~~ A person's status in a particular situation is determined by the vice-president for student affairs or designee.

~~(9) ((The term "organization" means any number of persons who have complied with the formal requirements for university recognition.~~

~~(10))~~ The term "policy" means the written regulations of the university as found in, but not limited to, the standards of conduct for students, residence life handbook, the university web page and computer use policy, and graduate/undergraduate catalogs.

(10) The term "recognized student organization" means any number of persons who have complied with the formal requirements for university recognition.

(11) The term "shall" is used in the imperative sense.

(12) The term "student" includes all persons taking courses at the university, either full-time or part-time, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after allegedly violating the standards of conduct for students, who are not officially enrolled for a particular term but who have a continuing relationship with the university (including suspended students) or who have been notified of their acceptance for admission are considered "students" as are persons who are living in university residence halls, although not enrolled in this institution.

(13) The term "student conduct officer" means a university official authorized by the vice-president for student affairs to manage conduct complaints including the imposition of sanctions upon any student(s) found to have violated the standards of conduct for students.

(14) The term "university" means all locations of Washington State University.

(15) The term "university conduct board" means those persons who, collectively, have been authorized by the vice-president for student affairs to determine whether a student has violated the standards of conduct for students and to impose sanctions when a ~~((rules violation has been committed))~~ student is found responsible by the board to have violated these standards of conduct.

(16) The term "academic integrity hearing board" means those teaching faculty who, collectively, have been authorized by the university or college to review an instructor's determination that a student violated university academic integrity policies and whether or not the outcome proposed by the instructor is in keeping with the instructor's published policies.

(17) The term "university official" includes any person employed by the university, performing assigned administrative or professional responsibilities.

(18) The term "university premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the university (including adjacent streets and sidewalks).

(19) The vice-president for student affairs is that person designated by the university president to be responsible for the administration of the standards of conduct for students.

AMENDATORY SECTION (Amending WSR 12-04-049, filed 1/30/12, effective 3/1/12)

WAC 504-26-100 Composition of conduct and ~~((appellate))~~ appeals boards. (1) The university conduct board shall be composed of five individuals appointed by the vice-president for student affairs ~~((Two students, two faculty members, and a fifth person, who may be))~~ and comprised of students and persons who are any category of university employee ~~((and who)).~~ The chairperson of the conduct board shall be named by the vice-president for student affairs ~~((as the chairperson of the board))~~ and may be any category of university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice-president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees or students, provided that the student members have had at least one academic year of service on the university conduct board. Three persons constitute a quorum of the appeals board.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-103 Decisions. Decisions made by a university conduct board and/or student conduct officer become final twenty-one days after the date the decision is signed, unless an appeal is filed ~~((prior to))~~ before that date.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-200 Jurisdiction of the standards of conduct for students. The standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. These standards of conduct may be applied to behavior conducted online, via electronic mail or other electronic means.

Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a stu-

dent's conduct even if the student withdraws from school, takes a leave of absence, or graduates while a disciplinary matter or investigation is pending. (~~Definitions from these standards are incorporated into the Washington State University's Executive Policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct.~~) The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-201 Misconduct—Rules and regulations. Any student or recognized student organization found to have committed, assisted, conspired, or attempted to commit the following misconduct (WAC 504-26-202 through ~~(504-26-226)~~ 504-26-230) is subject to the disciplinary sanctions outlined in WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-202 Acts of dishonesty. Acts of dishonesty(~~(s)~~) include, but are not limited to, those listed in this chapter:

(1) Academic integrity violations including, but not limited to, cheating as defined in WAC 504-26-010.

(2) Knowingly furnishing false information to any person, including university officials, faculty members, or ~~(office)) administrators.~~

(3) Forgery, alteration, or misuse of any university document or record, or instrument of identification whether issued by the university or other state or federal agency.

(4) Fraud or misrepresentation.

AMENDATORY SECTION (Amending WSR 14-11-025, filed 5/12/14, effective 6/12/14)

WAC 504-26-204 Abuse of ~~(self or)~~ others or disruption or interference with the university community. Abuse of others or disruption or interference with the university community includes, but is not limited to:

(1) Physical abuse, threats, intimidation, and/or other conduct (~~(which)) that~~ threatens (~~(or))~~ endangers, harms, or undermines the health (~~(or))~~ safety, or welfare of the university community or any person, (including one's self) including, but not limited to, domestic or intimate partner violence.

(2) Conduct that disrupts the university community or prevents other students, employees, or guests of the university from completing their duties.

(3) Conduct that interferes with or disrupts the university's mission, operations, or activities.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-209 Violation of university policy, rule, or regulation. Violation of any university policy, rule, or regulation published electronically on the university web site or in hard copy including, but not limited to, Washington

State University's alcohol and drug policy, executive policy 15 (policy prohibiting discrimination, sexual harassment and sexual misconduct), and housing and residence life policy.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-212 Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages (except as expressly permitted by university regulations, and federal, state, and local laws), or public intoxication (~~(are prohibited)~~). Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under twenty-one years of age.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-215 Obstruction. Obstruction of the free flow of persons, including pedestrian or vehicular traffic on university premises or at university-sponsored or supervised functions.

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-216 Disorderly conduct. Conduct that is disorderly, lewd, or indecent; disturbing the peace; or assisting or encouraging another person to disturb the peace (~~(on university premises or at functions sponsored by, or participated in by, the university or members of the academic community))~~).

AMENDATORY SECTION (Amending WSR 12-04-049, filed 1/30/12, effective 3/1/12)

WAC 504-26-218 Computer abuses or theft. Theft or other abuse of computer facilities and resources, including but not limited to:

(1) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(2) Unauthorized transfer of a file.

(3) Unauthorized use of computer hardware.

(4) Use of another individual's identification and/or password.

(5) Use of computing facilities and resources to interfere with the work of another student, faculty member, or university official.

(6) Use of computing facilities and resources to send obscene, harassing, or threatening messages.

(7) Use of computing facilities and resources to interfere with normal operation of the university computing system.

(8) Use of computing facilities and resources in violation of any law, including copyright laws.

(9) Any violation of the university computer use policy found (~~(at http://public.wsu.edu/forms/HTML/EPM/EP4_Electronic_Communication_Policy.htm)~~) in the university's executive policy 4 (electronic communication policy).

AMENDATORY SECTION (Amending WSR 08-05-001, filed 2/6/08, effective 3/8/08)

WAC 504-26-219 Abuse of the student conduct system. Abuse of the student conduct system((s)) including, but not limited to:

- (1) Failure to obey any notice from a university conduct board or other university official to appear for a meeting or hearing as part of the student conduct system.
- (2) Willful falsification, distortion, or misrepresentation of information before a university conduct proceeding.
- (3) Disruption or interference with the orderly conduct of a university conduct board proceeding.
- (4) Filing fraudulent charges or initiating a university conduct proceeding in bad faith.
- (5) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.
- (6) Attempting to influence the impartiality of a member of the university conduct system prior to, and/or during the course of, any university conduct board proceeding.
- (7) Harassment (verbal, written, or physical) and/or intimidation of a member of a university conduct board (~~(prior to)~~), any individual involved in the conduct process, or any conduct officer before, during, and/or after any university conduct proceeding.
- (8) Failure to comply with ~~((the))~~ or failure to complete any term or condition of any disciplinary sanction(s) imposed under the standards of conduct for students.
- (9) Influencing or attempting to influence another person to commit an abuse of the university conduct system.
- (10) Violation of probation or any probationary conditions.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-303 International and national exchange programs. Students who participate in any university-sponsored or sanctioned international or national study program shall observe the following rules and regulations:

- (1) The laws of the host country and/or state;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying; ~~((and))~~
- (3) Any other agreements related to the student's study program; and
- (4) These standards of conduct for students.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-304 ((Group)) Recognized student organization conduct. Sororities, fraternities, and recognized ~~((groups))~~ student organizations shall comply with the standards of conduct for students and with university policies. When a member or members of a recognized student organization violates the standards of conduct for students, the recognized student organization and/or individual members may be subject to appropriate sanctions authorized by these standards in accordance with the university's group

accountability guidelines issued by the office of student standards and accountability.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students. ~~((A complaint is prepared in writing and directed to a student conduct officer.))~~ Any complaint is to be submitted as soon as possible after the event takes place, preferably within thirty days.

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or as a university conduct board hearing.

(a) When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.

(b) If the possible or recommended sanction is expulsion or suspension, the matter is referred to the university conduct board.

(c) Matters other than those listed in (a) and (b) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the

accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) The conduct officer or university conduct board's determinations are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

AMENDATORY SECTION (Amending WSR 12-04-049, filed 1/30/12, effective 3/1/12)

WAC 504-26-402 Conduct officer actions. (1) Any student charged by a conduct officer with a violation of any provision of standards of conduct for students is notified of the basis for the charge or charges and of the time, date, and place of a conference between the student and the conduct officer through one of the ~~((following))~~ procedures in WAC 504-26-401(5).

~~((a) The conduct officer provides notice by personal delivery or by regular United States mail addressed to the stu-~~

~~dent or student organization at his, her, or its last known address. Duplicate notice may be provided by electronic mail.~~

~~(b) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files. The student or student organization is responsible for maintaining an updated mailing address on file with the registrar.~~

~~(c)) Any request to extend the time and/or date of the conduct officer conference/hearing should be addressed to the conduct officer.~~

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student is informed of the potential sanctions involved at the initial conference or hearing.

(3) After a review of the evidence and interviewing the student(s) involved in the case, the conduct officer may take any of the following actions:

(a) Terminate the proceeding ~~((, thereby exonerating))~~ and enter a finding that the accused student or ~~((students))~~ recognized student organization is not responsible for the alleged conduct violation;

(b) Dismiss the ~~((ease))~~ investigation, which may be reopened at a later date if relevant information that was unknown to the conduct officer arises;

(c) Impose appropriate sanctions as provided in WAC 504-26-405. Such sanctions are subject to the student's right of appeal as provided in these standards of conduct; or

(d) Refer the matter to the university conduct board pursuant to WAC 504-26-401(3).

(4) The conduct officer may consider the student's past contacts with the office of student standards and accountability in determining an appropriate sanction and/or deciding whether to refer the case for a university conduct board hearing.

(5) The student is notified in writing of the determination made by the conduct officer within ten business days of the proceeding. The notice includes information regarding the student's right to appeal pursuant to WAC 504-26-407.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-403 Conduct board proceedings. (1) Any student charged by a conduct officer with a violation of any provision of the standards of conduct for students that is to be heard by a conduct board is provided notice ~~((by personal delivery or by regular United States mail addressed to the student or student organization at her, his, or its last known address.~~

~~(a) If the student is no longer enrolled at the time notice is sent, the notice is sent to the student's permanent address recorded in the registrar's files.~~

~~(b) The student or student organization is responsible for keeping an updated mailing address on file with the registrar))~~ as described in WAC 504-26-401(5).

(2) The written notice shall be completed by the conduct officer and shall include:

(a) The specific complaint, including the university policy or regulation allegedly violated;

(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;

(c) The time, date, and place of the hearing;

(d) A list of the witnesses who may be called to testify, to the extent known;

(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406. (~~Ordinarily, the hearing occurs within fifteen days of notice.~~)

(b) Requests to extend the time and/or date for hearing must be addressed to the chair of the university conduct board (~~Requests made by an accused student~~), and must be copied to the office of student standards and accountability (~~requests made by the office of student standards and accountability must be copied to the accused student~~). A request for extension of time is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) (~~The complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist them in understanding the student conduct process. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, or to participate directly in any university conduct hearing. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the sched-~~

~~uled date and time for the university conduct board hearing because delays are not normally allowed due to the scheduling conflicts of an advisor.~~

~~(vi))~~ The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The conduct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board. The chair of the university conduct board shall have the discretion to determine admissibility of evidence.

~~((vii))~~ (vi) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair.

~~((viii))~~ (vii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

~~((ix))~~ (viii) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged.

~~((x) The university conduct board's determination is made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.~~

(xi) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of the university conduct board shall have the discretion to determine admissibility of evidence.

(b) If the accused student is found responsible for any of the charges brought against the accused, the board may, at that time, consider the student's past contacts with the office of student standards and accountability in determining an appropriate sanction.

(c) The accused student or recognized student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or recognized student organization shall receive written

notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered ~~((or))~~, deposited in the U.S. mail, or electronically mailed, and a statement of how to file an appeal.

~~(i) ((The conduct board's written decision is sent by regular mail or personal delivery, and may also be sent by electronic mail to the accused student's or the president of the student organization's last known address, as set forth in the registrar's files.~~

~~((ii)))~~ The written decision is the university's initial order.

~~((iii)))~~ (ii) If the student or recognized student organization does not appeal the conduct board's decision ~~((within))~~ before twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as an audio record, of all university conduct board hearings (not including deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing ~~((by providing))~~ provide separate facilities, and/or ~~((by permitting))~~ permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

AMENDATORY SECTION (Amending WSR 12-04-049, filed 1/30/12, effective 3/1/12)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student or recognized student organization that suspension ~~((or))~~, expulsion, loss of recognition, or any other sanction outlined in this section may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor~~((s))~~; and she or he is not eligible to serve on the university conduct or appeals board.

(c) Loss of privileges. Denial of specified privileges for a designated period of time.

(d) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of ~~((an))~~ a recognized student organization).

(g) Residence hall suspension. Separation of the student from ~~((the))~~ a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from ~~((the))~~ a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this standards of conduct for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A recognized student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a student conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice-president for student affairs.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3)(a) In determining an appropriate sanction (~~for a violation of the standards of conduct for students, a student's or student organization's~~), the conduct officer or relevant board may consider any record of past contacts with the office of student standards and accountability ((may be considered)), and the nature and severity of such past contact(s).

(b) The conduct board and/or appeals board may consider suspending or expelling any student found responsible for violating the university's sexual misconduct code (WAC 504-26-221).

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-406 Interim suspension. In certain circumstances, the vice-president for student affairs, or a designee, may impose an interim suspension prior to the university conduct board hearing or at any time prior to the university's final order.

(1) Interim suspension may be imposed only in situations involving an immediate danger to the health, safety or welfare of:

(a) Any part of the university community or public at large; or

(b) The student's own physical safety and well-being.

(2) Conduct that creates an ongoing disruption of, or interference with, the operations of the university and that prevents other students, employees, or invitees from members of the university community from completing their duties as employees or students, is conduct harmful to the welfare of members of the university community.

(3) During the interim suspension, a student may be denied access to the residence halls, and/or to the campus (including classes), and/or all other university activities or privileges for which the student might otherwise be eligible, as the vice-president for student affairs or designee may determine to be appropriate.

(4) The vice-president for student affairs or designee ordering an interim suspension prepares a brief written decision containing the reasons for the decision (both the factual

basis and the conclusions as to why those facts constitute a violation of the standards of conduct for students), and the policy reasons for the interim suspension. The vice-president of student affairs or designee sends copies of the decision by personal delivery (~~((or))~~), by regular U.S. mail, or by electronic mail to all persons or offices bound by it (including, at a minimum, the suspended student and the office of student standards and accountability).

(5) The interim suspension does not replace the regular hearing process, which shall proceed to hearing as quickly as feasible, ordinarily within five working days of the notice of the interim suspension where the accused student has not consented to a longer time frame.

AMENDATORY SECTION (Amending WSR 12-04-049, filed 1/30/12, effective 3/1/12)

WAC 504-26-407 Review of decision. (1) ~~((A decision reached))~~ The findings and sanctions rendered by the university conduct board or a ((sanction imposed by the)) student conduct officer may be appealed by the complainant ((or)) and accused student(s) in the manner prescribed in the decision letter containing the university's ((decision)) findings and sanctions. Such appeal must be made ((within)) before twenty-one days of the date of the decision letter. The director of student standards and accountability provides a copy of the appeal request by one party to the other party (parties).

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and supporting documents for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by

the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and ~~((make determinations based on))~~ take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered ~~((or mailed))~~, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon

as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

NEW SECTION

WAC 504-26-408 Interim measures. (1) While any complaint of sex discrimination is pending, the university may take a number of interim actions in order to ensure the preservation of the educational experience and the overall university environment of the party bringing the complaint. These actions may include, but are not limited to:

(a) A no contact order imposed on either party;

(b) Residence hall room change for one or more involved parties;

(c) Changes in academic schedules or assignments for one or both parties.

(2) As stated in the university's housing policies, the university reserves the right to assign roommates, to change room or hall assignments, and/or to consolidate vacancies by requiring residents to move from one room to another in the event such reassignments are determined to be necessary by the university.

(3) Interim measures are not sanctions imposed under WAC 504-26-405.

AMENDATORY SECTION (Amending WSR 11-11-031, filed 5/11/11, effective 6/11/11)

WAC 504-26-501 Records. (1) Standards of conduct for students records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and the university policy on student educational records (chapter 504-21 WAC).

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student standards and accountability.

(4) Personally identifiable student information is redacted to protect ~~((another student's))~~ other students privacy.

(5) A student may authorize release of his or her own disciplinary record to a third party in compliance with ~~((the Family Educational Rights and Privacy Act))~~ FERPA ~~((+))~~ (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by making a written request to the office of student standards and accountability.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(7) The university informs the complainant of the outcome of any disciplinary proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)

(8) The university may not communicate a student's disciplinary record to any person or agency outside the university without the prior written consent of the student, except as required or permitted by law. Exceptions include but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

AMENDATORY SECTION (Amending WSR 06-23-159, filed 11/22/06, effective 12/23/06)

WAC 504-26-602 Periodic review. The standards of conduct for students are reviewed every three years under the direction of the director of student (conduct officer) standards and accountability.

WSR 14-15-145

PROPOSED RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed July 23, 2014, 9:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-17-017.

Title of Rule and Other Identifying Information: WAC 246-840-740 Sexual misconduct, proposing amendments to sexual misconduct standards for practitioners licensed by the nursing care quality assurance commission.

Hearing Location(s): Red Lion Hotel Pasco, 2525 North 20th Avenue, Pasco, WA 99301, on September 12, 2014, at 1:30 p.m.

Date of Intended Adoption: September 12, 2014.

Submit Written Comments to: Mary Dale, Nursing Care Quality Assurance Commission, P.O. Box 47864, Olympia, WA 98504-7864, e-mail <http://www3.doh.wa.gov/policy-review/>, fax (360) 236-4738, by September 5, 2014.

Assistance for Persons with Disabilities: Contact Mike Hively by August 29, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The sexual misconduct rule adopted in 1999 is being updated to strengthen the terms and definitions, to add clarity to existing rules, and to add additional requirements. These amendments will help nurses, nursing technicians, and patients understand what constitutes sexual misconduct or boundary violations. By

clarifying the boundaries of prohibited conduct, these amendments will assist in appropriate disciplinary action relating to sexual misconduct or boundary violations.

Reasons Supporting Proposal: The nursing care quality assurance commission has noted deficiencies in the original sexual misconduct rules adopted in 1999. Enforcement of the rules has proven challenging and potentially subject to inconsistent interpretations, which has contributed to confusion among licensees and the public. Updating the sexual misconduct rules will establish clear standards of conduct, thereby aiding in consistent enforcement and transparent expectations of professional behavior.

Statutory Authority for Adoption: RCW 18.79.110 and 18.130.050.

Statute Being Implemented: RCW 18.79.110, 18.130.050, and 18.130.180.

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

Name of Proponent: Nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mary Dale, 111 Israel Road S.E., Tumwater, WA, (360) 236-4744.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Anne Schuchmann, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4712, fax (360) 236-4738, e-mail anne.schuchmann@doh.wa.gov.

July 23, 2014

Paula R. Meyer, MSN, RN

Executive Director

Nursing Care Quality

Assurance Commission

AMENDATORY SECTION (Amending WSR 07-19-131, filed 9/19/07, effective 10/20/07)

WAC 246-840-740 Sexual misconduct prohibited.
~~(((1) What is the nursing commission's intent in prohibiting this type of misconduct?~~

~~Sexual or romantic conduct with a client or the client's family is serious misconduct because it harms the nurse/client relationship and interferes with the safe and effective delivery of nursing services. A nurse or nursing technician does not need to be "assigned" to the client in order for the nurse/client relationship to exist. The role of the nurse or nursing technician in the nurse/client relationship places the nurse or nursing technician in the more powerful position and the nurse or nursing technician must not abuse this power. Under certain circumstances, the nurse/client relationship continues beyond the termination of nursing services. Not only does sexual or romantic misconduct violate the trust and confidence held by health care clients towards nursing staff, but it also undermines public confidence in nursing. Nurses and nursing technicians can take measures to avoid allega-~~

tions of such misconduct by establishing and maintaining professional boundaries in dealing with their clients.

(2) What conduct is prohibited?

Nurses and nursing technicians shall never engage, or attempt to engage, in sexual or romantic conduct with clients, or a client's immediate family members or significant others. Such conduct does not have to involve sexual contact. It includes behaviors or expressions of a sexual or intimately romantic nature. Sexual or romantic conduct is prohibited whether or not the client, family member or significant other initiates or consents to the conduct. Such conduct is also prohibited between a nursing educator and student.

Regardless of the existence of a nurse/client relationship, nurses and nursing technicians shall never use patient information derived through their role as a health care provider to attempt to contact a patient in pursuit of a nurse's own sexual or romantic interests or for any other purpose other than legitimate health care.

(3) What should a nurse or nursing technician do to avoid allegations of sexual or romantic misconduct?

Establishing and maintaining professional boundaries is critical to avoiding even the appearance of sexual or romantic misconduct. Nurses and nursing technicians can take certain preventative steps to make sure safeguards are in place at all times, such as:

- (a) Setting appropriate boundaries with patients, physically and verbally, at the outset of professional relationships, and documenting such actions and the basis for such actions;
- (b) Consulting with supervisors regarding difficulties in establishing and maintaining professional boundaries with a given client; and/or
- (c) Seeking reassignment to avoid incurring a violation of these rules.

(4) What about former clients?

A nurse or nursing technician shall not engage or attempt to engage a former client, or former client's immediate family member or significant other, in sexual or romantic conduct if such conduct would constitute abuse of the nurse/client relationship. The nurse/client relationship is abused when a nurse or nursing technician uses and/or benefits from the nurse's professional status and the vulnerability of the client due to the client's condition or status as a patient.

(a) Due to the unique vulnerability of mental health and chemical dependency clients, nurses and nursing technicians are prohibited from engaging in or attempting to engage in sexual or romantic conduct with such former clients, or their immediate family or significant other, for a period of at least two years after termination of nursing services. After two years, sexual or romantic conduct may be permitted with a former mental health or chemical dependency client, but only if the conduct would not constitute abuse of the nurse/client relationship.

(b) Factors which the commission may consider in determining whether there was abuse of the nurse/client relationship include, but are not limited to:

- (i) The amount of time that has passed since nursing services were terminated;
- (ii) The nature and duration of the nurse/client relationship, the extent to which there exists an ongoing nurse/client relationship following the termination of services, and

whether the client is reasonably anticipated to become a client of the nurse in the future;

(iii) The circumstances of the cessation or termination of the nurse/client relationship;

(iv) The former client's personal history;

(v) The former client's current or past mental status, and whether the client has been the recipient of mental health services;

(vi) The likelihood of an adverse impact on the former client and others;

(vii) Any statements or actions made by the nurse during the course of treatment suggesting or inviting the possibility of sexual or romantic conduct;

(viii) Where the conduct is with a client's immediate family member or significant other, whether such a person is vulnerable to being induced into such relationship due to the condition or treatment of the client or the overall circumstances.

(5) Are there situations where these rules do not apply?

These rules do not prohibit:

(a) The provision of nursing services on an urgent, unforeseen basis where circumstances will not allow a nurse or nursing technician to obtain reassignment or make an appropriate referral;

(b) The provision of nursing services to a spouse, or family member, or any other person who is in a preexisting, established relationship with the nurse or nursing technician where no evidence of abuse of the nurse/client relationship exists.)

(1) Sexual misconduct. A nurse or nursing technician shall not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus, or any sexualized body part except as consistent with accepted standards of practice for examination, diagnosis, and treatment and within the nurse or nursing technician's scope of practice;

(c) Rubbing against a patient or client or key party for other than a legitimate health care purpose;

(d) Kissing, hugging, touching, fondling, or caressing of a romantic or sexual nature;

(e) Examination of or touching genitals without using gloves;

(f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client, or key party;

(i) Removing patient or client's clothing or gown or draping without consent, emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the nurse or nursing technician;

(k) Masturbation or other sex act by the nurse or nursing technician in the presence of the patient, client, or key party;

(l) Suggesting or initiating a discussion of the possibility of a dating, sexual, or romantic relationship after the professional relationship ends;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting, accepting, or going on a date with an individual the nurse or nursing technician knows, or reasonably should know, to be a patient, client, or key party;

(o) Discussing the sexual history, acts, or fantasies of the nurse or nursing technician;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client, or key party's body, appearance, sexual history, or sexual orientation for other than legitimate health care purposes;

(r) Any behavior including any verbal or physical contact which may reasonably be interpreted as sexually demeaning, humiliating, embarrassing, threatening, or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, for other than legitimate health care purposes or at the request of and for the benefit of, the patient, client, or key party; and

(t) Showing a patient, client, or key party sexually explicit photographs, for other than legitimate health care purposes.

(2) A nurse or nursing technician shall not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information or access to health care information to contact the patient, client or key party for other than legitimate health care.

(3) A nurse or nursing technician shall not engage, or attempt to engage, in sexual misconduct defined in subsection (1) of this section with a person he or she knows or should know is a former patient, client, or key party within two years after the provider-patient/client relationship ends, except as specified in subsection (5) of this section.

(4) After the two-year period of time described in subsection (3) of this section, a nurse or nursing technician shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) The patient, client, or key party will seek or require additional services from the nurse or nursing technician.

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

(5) A nurse who has provided psychological or psychiatric diagnostic or therapeutic services to a patient shall never engage, or attempt to engage, in sexual misconduct as defined in subsection (1) of this section with a former patient, former client, or former key party.

(6) When evaluating whether a nurse or nursing technician is prohibited from engaging, or attempting to engage, in sexual misconduct, the commission will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the provider-patient relationship;

(b) Transfer of care to another nurse or nursing technician;

(c) Duration of the provider-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the nurse or nursing technician and the patient or client during the time between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the nurse or nursing technician;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability;

(i) Normal revisit cycle for the profession and service; and

(j) Imbalance of power in the nurse-patient relationship.

(7) Patient, client, or key party initiation or consent does not excuse or negate the nurse or nursing technician's responsibility.

(8) These rules do not prohibit:

(a) Providing health care services in case of emergency where the services cannot or will not be provided by another nurse or nursing technician;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to the nursing and nursing technician professions; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the nurse or nursing technician where there is no evidence of, or potential for, exploiting the patient or client, unless prohibited by another statute or rule.

(9) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sexual offense listed in RCW 9.94A.030.

(10) Definitions. For the purposes of this section, these terms shall have the following meaning:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian, and person authorized to make health care decisions for the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with standards of practice for the nursing and nursing technician professions. The activity must be within the scope of practice of the nurse or nursing technician.

(d) "Nurse" means a registered nurse, licensed practical nurse, or advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(e) "Nursing technician" means a nursing student, registered under chapter 18.79 RCW and preparing for registered

nurse licensure, who is employed in a hospital licensed under chapter 70.41 RCW, a nursing home licensed under chapter 18.51 RCW, or a clinic.

(f) "Patient" or "client" means an individual who receives health care from a nurse or nursing technician.

WSR 14-15-147

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 23, 2014, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-037.

Title of Rule and Other Identifying Information: WAC 182-537-0700 School-based health care services for children in special education—School district documentation requirements.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on August 26, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than September 27, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by August 26, 2014, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Kelly Richters by August 22, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this amendment is to clarify requirements related to how records may be signed. Electronic signatures are prohibited unless a physical disability makes it impossible for the provider to hand write his or her signature.

Reasons Supporting Proposal: This rule change is necessary to eliminate provider uncertainty regarding electronic signatures.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Mick Pettersen, HCA, P.O. Box 45504, Olympia, WA, (360) 725-1842; Implementation and Enforcement: James Harvey, HCA, P.O. Box 45530, Olympia, WA, (360) 725-1153.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

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

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-05-017, filed 2/7/13, effective 3/10/13)

WAC 182-537-0700 School-based health care services for children in special education—School district documentation requirements. (1) ~~((For the purposes of this chapter, providers must document all health care related services as specified in the medicaid agency's current, published school-based health care services for children in special education medicaid provider guide. Assistants, as defined in WAC 182-537-0350, who provide health care related services must have their supervisor co-sign any documentation in accordance with the supervisory requirements for the provider type.~~

~~(2) Health care related documentation must include, at a minimum:)) Providers must document in writing all health care related services in the manner set out in this section. WAC 182-502-0020, and the medicaid agency's program-specific provider guide.~~

(2) The following documentation must be maintained for each client:

- (a) Professional assessment reports;
- (b) Evaluation and reevaluation reports;
- (c) Individualized education program (IEP); and
- (d) Treatment notes for each date of service ~~((the provider billed the agency.~~

~~Treatment notes must include the following information:~~

- ~~(i) Activity and intervention involved;~~
- ~~(ii) Child's name;~~
- ~~(iii) Child's ProviderOne client ID;~~
- ~~(iv) Date of birth;~~
- ~~(v) Date of service, actual time in and time out, and the number of billed units for the service;~~
- ~~(vi) Indication if the treatment note was for individual or group therapy; and~~
- ~~(vii) Original signature of the licensed provider, title, and National provider identifier (NPI) number.~~

~~(3) As described in WAC 182-502-0020, all records must be legible and easily and readily available to the agency upon request)) that give a clear, comprehensive picture of the care being provided, the response to each intervention, and that include the:~~

- (i) Child's name;
- (ii) Child's ProviderOne client ID;
- (iii) Child's date of birth;
- (iv) Activity and intervention performed;
- (v) Date of service;
- (vi) Time-in;
- (vii) Time-out;
- (viii) Number of units billed for the service; and
- (ix) Whether the treatment described in the note was individual or group therapy.

(3) All required documentation must include the provider's handwritten signature, title, and National Provider Identifier (NPI) number.

(a) Signature by stamp or electronic means is acceptable only if the provider is unable to sign by hand due to a physical disability.

(b) Assistants practicing under WAC 182-537-0350 must have a supervisor cosign all documents in the manner required by subsection (3) of this section.

WSR 14-15-154
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed July 23, 2014, 11:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-103.

Title of Rule and Other Identifying Information: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), proposed amendments to authorizing retailer rules to reflect changes in federal requirements and agency policy.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Point Plaza East Room 251, Tumwater, WA 98504, on September 16, 2014, at 1:30 p.m.

Date of Intended Adoption: September 16, 2014.

Submit Written Comments to: Daniel O'Neill, P.O. Box 47886, Olympia, WA 98504-7886, e-mail Daniel.O'Neill@doh.wa.gov, fax (360) 236-2345, by September 12, 2014.

Assistance for Persons with Disabilities: Contact Jane Basler by September 12, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amends chapter 246-790 WAC which regulates the department's food delivery system within the WIC program. The proposal provides support for the operation of the WIC nutrition program, assists in recontracting with retail partners, and maximizes agency options for determining participant access. Proposed changes will allow for necessary clarifications and consistency with federal rules and directives, including expanding the proposed definition of "full line grocery store" and updating definitions. The proposed rule also provides a solid foundation for WIC modernization, including fulfilling federal directives to implement an electronic benefit transfer system for WIC.

Reasons Supporting Proposal: Stakeholder and contractor transparency, increased accountability, and reduced costs related to the appeals process. Also, in order to continue to receive federal funding the rules need to be in compliance with federal recontracting regulations.

Statutory Authority for Adoption: RCW 43.70.120.

Statute Being Implemented: RCW 43.70.120.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Daniel O'Neill, 310 Israel Road S.E.,

Tumwater, WA 98501, (360) 236-3681; and Enforcement: Janet Charles, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-3697.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

See Reviser's note below.

A copy of the statement may be obtained by contacting Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-3681, fax (360) 236-2345, e-mail daniel.o'neill@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Daniel O'Neill, 310 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-3681, fax (360) 236-2345, e-mail daniel.o'neill@doh.wa.gov

July 22, 2014

John Wiesman, DrPH, MPH
Secretary

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 14-16 issue of the Register.