

WSR 21-06-005
PERMANENT RULES
WENATCHEE VALLEY COLLEGE

[Filed February 17, 2021, 3:31 p.m., effective March 20, 2021]

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

Purpose: On May 22, 2020, the United States Department of Education formally issued a final rule regarding amendments to Title IX of the Education Amendments of 1972. The new regulations address the grievance process for formal complaints of sexual harassment and have taken effect on August 14, 2020.

Citation of Rules Affected by this Order: New [Amending] chapters 132W-112 and 132W-115 WAC.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13); 20 U.S.C. § 1092(f); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq.

Adopted under notice filed as WSR 20-24-045 on November 23, 2020.

Date Adopted: February 17, 2021.

Jim Richardson
 President

AMENDATORY SECTION (Amending WSR 14-08-013, filed 3/20/14, effective 4/20/14)

WAC 132W-112-060 Freedom from sexual (~~harassment~~) misconduct. It is the responsibility of Wenatchee Valley College to ~~((provide and maintain a work and academic community which is free from sexual harassment. Sexual harassment violates federal and state law and will not be tolerated by Wenatchee Valley College. Any student or employee in violation of this policy and who engages in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or academic performance, will be subject to disciplinary action up to and including expulsion from the school or dismissal from employment))~~ maintain an academic work environment free of sexual harassment, which includes sexual harassment, sexual intimidation and sexual violence. Sexual harassment of faculty, staff or students is against the law and will not be tolerated. Sexual harassment violates the dignity of individuals and impedes the realization of the college's educational mission. The college is committed to preventing and addressing sexual harassment of faculty, staff and students through education and by encouraging faculty, staff and students to report any concerns or complaints about sexual harassment. Prompt corrective measures will be taken to stop sexual harassment whenever and wherever it occurs.

AMENDATORY SECTION (Amending WSR 14-09-009, filed 4/4/14, effective 5/5/14)

WAC 132W-115-080 Code of conduct. Wenatchee Valley College expects that its students, both on and off campus, conduct themselves in a manner that maintains high standards of integrity, honesty and morality at all times. A student who does not follow college rules will be subject to such action as may be deemed appropriate by designated col-

lege authorities. Conduct, either on or off campus, should be of such nature as not to reflect adversely on the reputation of the individual or the college. Students arrested for violation of criminal law on or off campus may also be subject to disciplinary action by the college. The following misconduct on college facilities is subject to disciplinary action:

(1) Intentionally or recklessly endangering, threatening, or causing physical harm to any person or oneself, or intentionally or recklessly causing reasonable apprehension of such harm.

(2) Harassment, bullying, abuse: No student shall physically, sexually, or emotionally harass, bully, abuse, coerce, intimidate, seriously embarrass, assault, or recklessly endanger any other person.

(3) Students engaging in any activity which inhibits or interferes with the orderly operation of Wenatchee Valley College or the ability of students and/or college personnel to perform their functions in an orderly environment shall be subject to disciplinary action. No student shall intentionally or recklessly interfere with normal college or college-sponsored activities or any form of emergency services.

(4) Unauthorized entry or use of college facilities.

(5) Knowingly violating the term of any disciplinary sanction imposed in accordance with the code.

(6) Theft of property or services; knowing possession of stolen property.

(7) Violating college policies or procedures by any student or by the guest of any student.

(8) Using tobacco products on the college premises.

(9) The consumption of alcoholic beverages on college property, except in accordance with state of Washington liquor license procedures. The unlawful (as a matter of local, state or federal law) manufacture, distribution, dispensing, possession or use of alcohol, legend drugs, narcotic drugs, or controlled substances including marijuana, on college property or during college-sponsored events, whether on or off campus except when use or possession of a legend drug, narcotic drug, or controlled substance other than marijuana is specifically prescribed by an appropriately licensed health care provider.

(10) Academic dishonesty, including cheating, plagiarism, or knowingly furnishing false information to the college.

(11) Forgery, alteration, or misuse of college documents, records, funds, or instruments of identification.

(12) Refusal to comply with the direction of college officials acting in the legitimate performance of their duties.

(13) Possession or use of firearms (licensed or unlicensed), explosives, dangerous chemicals, or other dangerous weapons or instruments. Legal defense sprays are not covered by this rule. Exceptions to this rule are permitted when the weapon is used in conjunction with an approved college instructional program or is carried by a duly commissioned law enforcement officer.

(14) Failure to comply with the college's network acceptable use policy, WashingtonOnline (WAOL) memorandum of understanding and/or misuse of computing equipment services and facilities, including use of electronic mail and the internet.

(15) Ethics violation: The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular trade, skill, craft or profession for which the student is taking courses or is pursuing as their educational goal or major. These ethics codes must be distributed to students as part of an educational program, course, or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.

(16) Hazing: Conspiracy to engage in hazing or participation in hazing another. Hazing shall include any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student or other person attending Wenatchee Valley College. Consent is no defense to hazing. The term does not include customary athletic events or other similar contests or competitions. Hazing is also a misdemeanor, punishable under state law.

(17) Initiation violation: Conduct associated with initiation into a student organization, association, or living group, or any pastime or amusement engaged in with respect to an organization, association or living group not amounting to a violation under the definition of hazing. Conduct covered by this definition may include embarrassment, ridicule, sleep deprivation, verbal abuse, or personal humiliation. Consent is no defense to initiation violation.

(18) Animals, with the exception of service animals, are not allowed on or in college facilities. All service animals on campus shall be under direct physical control, leashed by their owner or custodian and registered with the special populations coordinator.

(19) Gambling: Any form of gambling is prohibited.

(20) Sexual misconduct: The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 132W-115-110 (supplemental Title IX student conduct procedures).

(a) Sexual harassment. The term "sexual harassment" means unwelcome sexual or gender based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual intimidation. The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual inter-

course, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual intercourse between a person who is eighteen years of age or older, and a person who is under the age of sixteen.

(v) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(vi) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(I) The length of the relationship;

(II) The type of relationship; and

(III) The frequency of interaction between the persons involved in the relationship.

(vii) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(A) Fear for their safety or the safety of others; or

(B) Suffer substantial emotional distress.

(d) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or uncon-

scious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

AMENDATORY SECTION (Amending WSR 01-12-015, filed 5/25/01, effective 6/25/01)

WAC 132W-115-110 Procedures for resolving disciplinary violations. (1) The dean of student services is responsible for initiating disciplinary proceedings. The dean of student services may delegate this responsibility to members of his/her staff, and he/she may also establish committees or other hearing bodies to advise or act for him/her in disciplinary matters.

(2) In order that any informality in disciplinary proceedings not mislead a student as to the seriousness of the matter under consideration, the student involved shall be informed at the initial conference or hearing of the sanctions that may be involved.

(3) Upon initiation of formal disciplinary proceedings, the dean of student services or designee shall provide written notification to the student, either in person or by delivery via regular mail to the student's last known address, specifying the violations with which the student is charged. The dean of student services or designee shall set a time and place for meeting with the student to inform the student of the charges, the evidence supporting the charges, and to allow the student an opportunity to be heard regarding the charges and evidence.

(4) After considering the evidence in a case and interviewing the student or students involved, the dean of student services or designee may take any of the following actions:

(a) Terminate the proceeding, exonerating the student or students;

(b) Dismiss the case after whatever counseling and advice may be appropriate; not subject to the appeal rights provided in this code;

(c) Dismiss the case after verbally admonishing the student, not subject to the appeal rights provided in this code;

(d) Direct the parties to make a reasonable attempt to achieve a mediated settlement;

(e) Impose disciplinary sanctions directly, subject to the student's right of appeal as described in this chapter. The student shall be notified in writing of the action taken except that disciplinary warnings may be given verbally;

(f) Refer the matter to the academic regulations committee requesting their recommendation for appropriate action. The student shall be notified in writing that the matter has been referred to the academic regulations committee.

(5) This section shall not be construed as preventing the appropriate official from summarily suspending a student.

(6) If the dean of student services or his or her designee(s) has cause to believe that any student:

(a) Has committed a felony; or

(b) Has violated any provision of this chapter; and

(c) Presents an imminent danger either to himself or herself, other persons on the college campus or to the educa-

tional process; that student shall be summarily suspended and shall be notified by certified and regular mail at the student's last known address, or shall be personally served.

Summary suspension is appropriate only where (c) of this subsection can be shown, either alone or in conjunction with (a) or (b) of this subsection.

(7) During the summary suspension period, the suspended student shall not enter campus other than to meet with the dean of student services or to attend the hearing. However, the dean of student services or the college president may grant the student special permission to enter a campus for the express purpose of meeting with faculty, staff, or students in preparation for a probable cause hearing.

(8) When the president or his/her designee exercises the authority to summarily suspend a student, he/she shall cause notice thereof to be served upon that student by registered or certified mail at the student's last known address, or by causing personal service of such notice upon that student. The notice shall be entitled "notice of summary suspension proceedings" and shall state:

(a) The charges against the student including reference to the provisions of the student code or the law involved; and

(b) That the student charged must appear before the designated disciplinary officer at a time specified in the notice for a hearing as to whether probable cause exists to continue the summary suspension. The hearing shall be held as soon as practicable after the summary suspension.

(9) The summary suspension hearing shall be considered an emergency adjudicative proceeding. The proceeding must be conducted as soon as practicable with the dean of student services or designee presiding. At the summary suspension hearing, the dean of student services shall determine whether there is probable cause to believe that continued suspension is necessary and/or whether some other disciplinary action is appropriate.

(10) If the dean of student services, following the conclusion of the summary suspension proceedings, finds that there is probable cause to believe that:

(a) The student against whom specific violations of law or of provisions of this chapter are alleged has committed one or more of such violations; and

(b) That summary suspension of said student is necessary for the protection of the student, other students or persons on college facilities, college property, the educational process, or to restore order to the campus; and

(c) Such violation or violations of the law or of provisions of this chapter constitute grounds for disciplinary action, then the dean of student services may, with the written approval of the president, continue to suspend such student from the college and may impose any other disciplinary action as appropriate.

(11) A student who is suspended or otherwise disciplined pursuant to the above rules shall be provided with a written copy of the dean of student services' findings of fact and conclusions, as expressly concurred in by the president, which constituted probable cause to believe that the conditions for summary suspension existed. The student suspended pursuant to the authority of this rule shall be served a copy of the notice of suspension by personal service or by registered mail to said student's last known address within three working

days following the conclusion of the summary suspension hearing. The notice of suspension shall state the duration of the suspension or nature of other disciplinary action and the conditions under which the suspension may be terminated.

(12) The dean of student services is authorized to enforce the suspension of the summarily suspended student in the event the student has been served pursuant to the notice requirement and fails to appear at the time designated for the summary suspension proceeding.

(13) Any student aggrieved by an order issued at the summary suspension proceeding may appeal to the academic regulations committee. No such appeal shall be entertained, however, unless:

(a) The student has first appeared at the student hearing in accordance with subsection (9) of this section;

(b) The student has been officially notified of the outcome of the hearing;

(c) Summary suspension or other disciplinary sanction has been upheld; and

(d) The appeal conforms to the standards set forth in chapter 132W-109 WAC. The academic regulations committee shall, within five working days, conduct a formal hearing in the manner described in chapter 132W-109 WAC.

(14) Sexual misconduct proceedings. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

(15) Order of precedence. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision. This procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these hearing procedures conflict with Wenatchee Valley College's standard disciplinary procedures in this section.

(16) Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, the college may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

For purposes of this procedure, "sexual harassment" encompasses the following conduct:

(a) Quid pro quo harassment. A college employee conditioning the provision of an aid, benefit, or service of the college on an individual's participation in unwelcome sexual conduct.

(b) Hostile environment. Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the college's educational programs or activities, or employment.

(c) Sexual assault. Sexual assault includes the following conduct:

(i) Nonconsensual sexual intercourse. Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact. Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Incest. Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren and adopted children under the age of eighteen.

(iv) Statutory rape. Consensual sexual intercourse between someone who is eighteen years of age or older and someone who is under the age of sixteen.

(d) Domestic violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(e) Dating violence. Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(f) Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

(17) Title IX jurisdiction.

(a) This procedure applies only if the alleged misconduct:

(i) Occurred in the United States;

(ii) Occurred during a college educational program or activity; and

(iii) Meets the definition of sexual harassment as that term is defined in this procedure.

(b) For purposes of this procedure, an "educational program or activity" is defined as locations, events, or circum-

stances over which the college exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by Wenatchee Valley College.

(c) Proceedings under this procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this procedure does not prohibit the college from pursuing other disciplinary action based on allegations that the respondent violated other provisions of the college's student conduct code, WAC 132W-115-080.

(d) If the student conduct officer determines the facts in the investigation report are not sufficient to support Title IX jurisdiction and/or pursuit of a Title IX violation, the student conduct officer will issue a notice of dismissal in whole or part to both parties explaining why some or all of the Title IX claims have been dismissed.

(18) Initiation of discipline.

(a) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

(b) If the student conduct officer determines that there are sufficient grounds to proceed under these procedures, the student conduct officer will initiate a Title IX disciplinary proceeding by filing a written disciplinary notice with the chair of the student conduct committee and serving the notice on the respondent and the complainant, and their respective advisors. The notice must:

(i) Set forth the basis for Title IX jurisdiction;

(ii) Identify the alleged Title IX violation(s);

(iii) Set forth the facts underlying the allegation(s);

(iv) Identify the range of possible sanctions that may be imposed if the respondent is found responsible for the alleged violation(s);

(v) Explain that the parties are entitled to be accompanied by their chosen advisors during the hearing and that:

(A) The advisors will be responsible for questioning all witnesses on the party's behalf;

(B) An advisor may be an attorney; and

(C) The college will appoint the party an advisor of the college's choosing at no cost to the party, if the party fails to do so.

(c) Explain that if a party fails to appear at the hearing, a decision of responsibility may be made in their absence.

(19) Prehearing procedure.

(a) Upon receiving the disciplinary notice, the chair of the student conduct committee will send a hearing notice to all parties, in compliance with WAC 132W-115-010. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

(b) A party may choose to have an attorney serve as their advisor at the party's own expense. This right will be waived unless, at least five days before the hearing, the attorney files a notice of appearance with the committee chair with copies to all parties and the student conduct officer.

(c) In preparation for the hearing, the parties will have equal access to all evidence gathered by the investigator during the investigation, regardless of whether the college intends to offer the evidence at the hearing.

(20) Rights of parties.

(a) The college's student conduct procedures, WAC 132W-115-110 and this procedure shall apply equally to all parties.

(b) The college bears the burden of offering and presenting sufficient testimony and evidence to establish that the respondent is responsible for a Title IX violation by a preponderance of the evidence.

(c) The respondent will be presumed not responsible until such time as the disciplinary process has been finally resolved.

(d) During the hearing, each party shall be represented by an advisor. The parties are entitled to an advisor of their own choosing and the advisor may be an attorney. If a party does not choose an advisor, then the Title IX coordinator will appoint an advisor of the college's choosing on the party's behalf at no expense to the party.

(21) Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

(a) Relevance: The committee chair shall review all questions for relevance and shall explain on the record their reasons for excluding any question based on lack of relevance.

(b) Relevance means that information elicited by the question makes facts in dispute more or less likely to be true.

(c) Questions or evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant and must be excluded, unless such question or evidence:

(i) Is asked or offered to prove someone other than the respondent committed the alleged misconduct; or

(ii) Concerns specific incidents of prior sexual behavior between the complainant and the respondent, which are asked or offered on the issue of consent.

(d) Cross-examination required: If a party or witness does not submit to cross-examination during the live hearing, the committee must not rely on any statement by that party or witness in reaching a determination of responsibility.

(e) No negative inference: The committee may not make an inference regarding responsibility solely on a witness's or party's absence from the hearing or refusal to answer questions.

(f) Privileged evidence: The committee shall not consider legally privileged information unless the holder has effectively waived the privilege. Privileged information includes, but is not limited to, information protected by the following:

(i) Spousal/domestic partner privilege;

(ii) Attorney-client and attorney work product privileges;

(iii) Privileges applicable to members of the clergy and priests;

(iv) Privileges applicable to medical providers, mental health therapists, and counselors;

(v) Privileges applicable to sexual assault and domestic violence advocates; and

(vi) Other legal privileges identified in RCW 5.60.060.
(22) Initial order.

(a) In addition to complying with this section, the student conduct committee will be responsible for conferring and drafting an initial order that:

(i) Identifies the allegations of sexual harassment;

(ii) Describes the grievance and disciplinary procedures, starting with filing of the formal complaint through the determination of responsibility, including notices to parties, interviews with witnesses and parties, site visits, methods used to gather evidence, and hearings held;

(iii) Makes findings of fact supporting the determination of responsibility;

(iv) Reaches conclusions as to whether the facts establish whether the respondent is responsible for engaging in sexual harassment in violation of Title IX;

(v) Contains a statement of, and rationale for, the committee's determination of responsibility for each allegation;

(vi) Describes any disciplinary sanction or conditions imposed against the respondent, if any;

(vii) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to the college's education programs or activities; and

(viii) Describes the process for appealing the initial order to the college president.

(b) The committee chair will serve the initial order on the parties simultaneously.

(23) Appeals.

(a) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in this section.

(b) The president or their delegate will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).

(c) President's office shall serve the final decision on the parties simultaneously.

WSR 21-06-011

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 18, 2021, 7:28 p.m., effective March 21, 2021]

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

Purpose: WAC 246-828-025 and 246-828-290 hearing and speech. The department of health (department), in consultation with the board of hearing and speech (board), is amending WAC 246-828-025 and 246-828-290 to implement ESB 5210 (chapter 183, Laws of 2019) addressing consumer notification of assistive hearing technologies.

Citation of Rules Affected by this Order: Amending WAC 246-828-025 and 246-828-290.

Statutory Authority for Adoption: RCW 18.35.310.

Adopted under notice filed as WSR 20-19-146 on September 23, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-828-025(3): The definition of "hearing assistive technologies" is clarified to include "other technologies" as appropriate and that all such technologies are to improve sound quality or clarity of speech or sounds "with or without the presence of background noise."

WAC 246-828-290(4): The standard customer form was amended to add clarity, keep the language concise, and not be overly burdensome on the providers. Language was also added to clarify the customer must be notified orally and in writing.

A final cost-benefit analysis is available by contacting Kim-Boi Shaddock, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shaddock@doh.wa.gov.

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

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

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

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

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

Date Adopted: February 13, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 19-13-041, filed 6/12/19, effective 7/13/19)

WAC 246-828-025 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Board-approved institution of higher education" means:

(a) An institution offering a program in audiology or speech-language pathology leading to a master's degree or its equivalent, or a doctorate degree or its equivalent, that has been accredited by the council on academic accreditation in audiology and speech-language pathology, or an equivalent program.

(b) An institution offering a speech-language pathology assistant program or a speech, language, and hearing program approved by the state board for community and technical colleges, the higher education coordinating board, or an equivalent body from another state or province. Institutions where education was obtained outside of the United States or Can-

ada has an equivalency determination completed by the board. This program must lead to an associate of arts or sciences degree, certificate of proficiency, or bachelor of arts or sciences degree.

(c) A board-approved institution must integrate instruction in multicultural health as part of its basic education preparation curriculum under RCW 43.70.615.

(2) "Direct supervision" means the supervisor is on-site and in view during the procedures or tasks.

(3) "Hearing assistive technologies" means assistive listening systems or devices, and other technologies that increase the intelligibility, improves sound quality, or clarity of speech or sounds with or without the presence of background noise where hearing instruments alone may not provide optimal comprehension including, but not limited to, telecoil and Bluetooth.

(4) "Indirect supervision" means the procedures or tasks are performed under the supervising speech-language pathologist's, audiologist's, or hearing aid specialist's overall direction and control and the supervisor is accessible, but the supervisor's presence is not required during the performance of procedures or tasks.

~~((4))~~ (5) "Place or places of business" means a permanent address open to the public, which may include an "establishment" as defined in RCW 18.35.010(6), where a licensee engages in the fitting and dispensing of hearing instruments.

~~((5))~~ (6) "Postgraduate professional work experience" means a supervised full-time professional experience, or the part-time equivalent, as defined in these rules, involving direct patient or client contact, consultations, recordkeeping, and administrative duties relevant to a bona fide program of clinical work. Applicants who obtain an Au.D. at a board-approved institution of higher education are considered to have met the postgraduate professional work experience requirement.

~~((6))~~ (7) "Purchaser" or "buyer" means a patient, client, or legally authorized representative.

AMENDATORY SECTION (Amending WSR 15-14-092, filed 6/29/15, effective 7/1/15)

WAC 246-828-290 Purchaser rescission rights and right to notice of hearing assistive technologies. In addition to the receipt and disclosure information required by RCW 18.35.030, 18.35.185, 63.14.040 and 63.14.120, every retail agreement for the sale of hearing instruments must contain or have attached the following notice to buyer in twelve point font or larger. The language in part 1 under "Notice to Buyer" is intended to have the same legal effect as the notices required in RCW 63.14.040(2) and 63.14.120(3) and may be substituted for those notices.

The rights summarized in the "Notice to Buyer" must be made known to the purchaser before the contract is executed. The licensee must provide this "Notice to Buyer" in writing to the purchaser. The purchaser must acknowledge receipt of the "Notice to Buyer" by signing his or her name in the designated space following the "Notice to Buyer."

Notice to Buyer

NOTICE TO BUYER UNDER WASHINGTON STATE LAW CHAPTER 18.35 RCW

Do not sign this agreement before you read it or if any spaces intended for the agreed terms are blank. You are entitled to receive a copy of this agreement at the time you sign it. The seller's business address must be shown on the agreement.

Section 1 CANCELLATION - WITHIN THREE DAYS

You may cancel this agreement within three days, without explaining your reasons, if the seller solicited it in person and you signed it at a place other than the seller's business address.

To cancel this agreement without explaining your reasons, you must notify the seller in writing that you are canceling the agreement. You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the third business day after you signed this agreement.

Any merchandise you received under this agreement must be in its original condition. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement.

You will incur no additional liability for canceling the agreement.

Section 2 RESCISSION - WITHIN THIRTY DAYS

You may rescind (or terminate) the agreement within thirty days, for reasonable cause. This thirty-day period is called the "rescission period."

To rescind this agreement, you must notify the seller in writing that you are rescinding the agreement for reasonable cause pursuant to RCW 18.35.185(1). (Reasonable cause does not include cosmetic concerns or a mere change of mind.) You may deliver the written notice to the seller at the seller's business address. Alternatively, you may send the written notice by certified mail, return receipt requested, to the seller at the seller's business address.

Your written notice must be postmarked or delivered by midnight of the thirtieth day after delivery of the hearing instrument.

Any merchandise you received under this agreement must be in its original condition, except for normal wear and tear. You must return it to the seller's business address or make it available to the seller at the same place it was delivered to you.

The seller must refund to you all deposits, including any down payment, and must return to you all goods traded in as part of the agreement. However, for each hearing instrument you return, the seller may keep either one hundred fifty dollars or fifteen percent of the total purchase price, whichever is less, plus the price originally charged for custom-made earmolds.

The seller must refund your money and return your traded goods, or have them postmarked and in the mail to you, within ten business days after receiving your notice of rescission.

You will incur no additional liability for rescinding the agreement.

Section 3 EXTENSION OF RESCISSION PERIOD

If you notify the seller within the thirty-day rescission period that your hearing instrument has developed a problem that constitutes reasonable cause to rescind the agreement or that prevents you from evaluating your hearing instrument, the seller must extend the rescission period. The rescission period stops running on the date you notify the seller of the problem and starts running again on the date the seller notifies you that your hearing instrument is ready for redelivery.

You and the seller may agree to a rescission period longer than thirty days.

Whenever the rescission period is extended, the seller must provide you written notice of the last date upon which you may demand a refund and return of traded goods.

Section 4 NOTICE OF HEARING ASSISTIVE TECHNOLOGIES

Prior to initial fitting and purchase you must be informed, both orally and in writing, about the uses, benefits, and limitations of current hearing assistive technologies. Hearing assistive technologies can supplement your hearing instrument and increase the intelligibility and clarity of speech in environments where hearing instruments alone may not provide optimal comprehension. Hearing assistive technology options can enable hearing instruments to connect with phones, computers, electronic sound sources, and assistive listening systems, including the assistive listening systems, compliant with the Americans with Disabilities Act.

I am aware that the hearing instrument(s) referenced in this document include (please select all that apply):

- _____ Telecoil
- _____ Bluetooth
- _____ Other technology (specify) _____

By signing this receipt, you acknowledge that you have been informed of your rescission rights and your rights under Section 4 of this section, to receive oral and written information about hearing assistive technologies and that you have read and understand these rights.

_____ Signature of Purchaser	_____ Date
_____ Signature of Seller	_____ Date
_____ Delivery Acknowledgment - Signature of Purchaser	_____ Date

**WSR 21-06-014
PERMANENT RULES
CASCADIA COLLEGE**

[Filed February 19, 2021, 10:43 a.m., effective March 22, 2021]

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

Purpose: Adoption of expressive activities policy providing for the use of campus facilities by campus and non-campus groups for expressive activities, subject to reasonable time, place, and manner limitations.

Citation of Rules Affected by this Order: New WAC 132Z-142-010, 132Z-142-020, 132Z-142-030, 132Z-142-040, and 132Z-142-050.

Statutory Authority for Adoption: RCW 28B.50.140; and Administrative Procedure Act, chapter 34.05 RCW.

Adopted under notice filed as WSR 20-23-091 on November 17, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 0, Repealed 0.

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

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

Date Adopted: February 17, 2021.

M. Lily Allen
Rules Coordinator
Executive Assistant
to the President

Chapter 132Z-142 WAC

USE OF COLLEGE FACILITIES FOR EXPRESSIVE ACTIVITY

NEW SECTION

WAC 132Z-142-010 Purpose. This chapter contains the policies of Cascadia College concerning the use of campus facilities by campus and noncampus groups for engaging in free speech and other expressive activities. Cascadia College as an academic institution values freedom of inquiry and expression, civil discourse, and tolerance of competing viewpoints.

At the same time, campus facilities are intended primarily for use by campus groups for educational and related institutional purposes. The college intends to open the campus for expressive use by noncampus groups to the extent that such usage does not substantially and materially interfere with institutional purposes.

It is further intended, both with respect to campus and noncampus groups, that these expressive activity policies

shall be interpreted and applied consistently with applicable constitutional law.

NEW SECTION

WAC 132Z-142-020 Definitions. (1) **Campus facilities - Grounds and buildings.** The term "campus facilities" as used in this chapter means the grounds and buildings owned, leased, operated, or controlled by Cascadia College.

(a) **Grounds.** The campus "grounds" consist of those outdoor areas of the campus that are generally open and accessible to the public, including any commons, public square, plaza, patio, pedestrian mall, thoroughfare or walkway, multipurpose field, lawn, or open space.

(b) **Buildings.** The "buildings" of the campus consist of any academic or administrative building, student union, library, museum or gallery, auditorium, theater, concert or recital hall, laboratory, dining or residence facility, athletic or recreational facility, conference or event center, maintenance or storage facility, parking lot, and any other structure reserved by the college for designated institutional uses.

(2) **Campus and noncampus groups.** The term "campus groups" means individuals or groups of individuals affiliated with the college as students, faculty or staff, or invited guests sponsored by a recognized student or alumni organization, academic department, or administrative office of the college. A "noncampus group" means individuals or groups of individuals who are not so affiliated with the college.

(3) **Expressive activity.** The term "expressive activity" means the exercise of those rights of speech, petition, and assembly protected under the federal and state constitutions including, but not limited to, public speech or other expressive conduct, the circulation of petitions or distribution of literature, protests, demonstrations, rallies, picketing, and other gatherings to share information, ideas, beliefs, or viewpoints.

(4) **Public forum - Designated or limited.** A "public forum" for purposes of this chapter is either "designated" or "limited." A dedicated public forum is available for expressive use both by campus and noncampus groups. A limited forum is available for expressive use only by campus groups and may be limited to designated purposes.

NEW SECTION

WAC 132Z-142-030 Use of campus facilities for expressive activity. (1) **Campus grounds.** The grounds of the campus constitute designated public forums available for use for expressive activity both by campus and noncampus groups, as those terms are defined in WAC 132Z-142-020.

(2) **Campus buildings.** The buildings of the campus constitute limited public forums available for use for expressive activity only by campus groups, as those terms are defined in WAC 132Z-142-020, and may be limited to designated purposes. Campus buildings and other facilities are available for rent by noncollege groups in accordance with the college's facility rental policies.

(3) **Limits on usage.** The use of campus facilities by campus or noncampus groups for expressive activities is subject to reasonable time, place, and manner regulations as set forth in WAC 132Z-142-040.

(4) **Exception - Open public meetings.** Nothing in these rules is intended to apply to public participation in meetings of the college's governing board or associated student body that are required to be open to the public under the Open Public Meetings Act, chapter 42.30 RCW.

NEW SECTION

WAC 132Z-142-040 Limitations on use of campus facilities. Campus or noncampus groups using campus facilities for expressive activities shall be subject to the following rules governing the time, place, and manner of the expressive activity.

(1) **Disruption or interference.** The expressive activity must not substantially and materially disrupt or interfere with the college's essential academic or administrative functions or with the rights and privileges of the college's students, employees, or invitees.

(2) **Hours of activity.** Expressive activity on the campus grounds as defined in WAC 132Z-142-020 must be limited between the hours of 8:00 a.m. and 10:00 p.m. Expressive activity in campus buildings must be limited in accordance with the normal hours of operation and other rules applicable to the particular building.

(3) **Scheduling conflicts.** Campus facilities, including both "grounds" and "buildings" as defined in WAC 132Z-142-020, are not available for unscheduled expressive activities that conflict with previously scheduled uses of the facility.

(4) **Sound amplification.** Sound amplification, whether by artificial means or otherwise, must be maintained at a volume that does not substantially and materially disrupt or interfere with the college's essential academic or administrative functions.

(5) **Traffic obstruction.** The expressive activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic including, but not limited to, access by emergency vehicles or personnel. The activity must not otherwise interfere with access to campus facilities or to other campus activities or events.

(6) **Health and safety - Protection of property.** The expressive activity must not create health or safety hazards, pose safety risks to others, or cause damage to college property or the property of others. The activity must be conducted in compliance with applicable fire, health, safety, and sanitation regulations.

(7) **Advance notice requested.** Campus and noncampus groups are requested to notify the college reasonably in advance of a planned or scheduled expressive activity. Such notice does not involve any permit application or approval process. Advance notice is requested for the purpose of avoiding scheduling conflicts and making appropriate security and facility use arrangements. Groups providing the requested notice are encouraged to provide the name and contact information for their group; the date, time and place of the activity; and the estimated number of participants.

(8) **Cleanup - Repairs.** Campus and noncampus groups using campus facilities for expressive activities are expected to clean up after the activity and return the facilities to their original condition. Reasonable charges may be assessed

against responsible parties for the cost of any extraordinary cleanup or for repairing damaged property.

(9) **Camping prohibited.** There shall be no overnight camping anywhere on or in campus facilities, except as expressly authorized by the college for designated institutional purposes. Camping is defined to include sleeping, cooking, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(10) **Other applicable policies or rules.** The expressive activity must otherwise be conducted in compliance with any other applicable college policies and rules, local ordinances, and state or federal law.

NEW SECTION

WAC 132Z-142-050 Solicitation—Distribution of materials—Posting. (1) **Solicitation.** Commercial solicitation generally is not permitted on college property. Solicitation by campus and noncampus groups for other than commercial purposes is permitted to the same extent applicable to the distribution of materials under subsection (2) of this section. Space in campus buildings may be rented to noncampus groups for commercial or noncommercial purposes in accordance with college policies applicable to the particular campus facility.

(2) **Distribution of materials.**

(a) **Definition.** The term "materials" for purposes of this subsection means free literature or other tangible items, other than commercial advertising including, but not limited to, handbills, pamphlets, petitions, surveys, questionnaires, and other printed matter that is otherwise lawful.

(b) **Distribution on campus grounds.** Campus and non-campus groups may distribute materials anywhere on the campus grounds as defined in WAC 132Z-142-020, provided such distribution does not substantially and materially interfere with essential college functions and is otherwise in compliance with applicable time, place, and manner regulations under WAC 132Z-142-040.

(c) **Distribution in campus buildings.** The distribution of materials in campus buildings as defined in WAC 132Z-142-020 is limited to campus groups in accordance with college policies applicable to the particular facility.

(d) **Littering - Parking lots.** Littering is prohibited. The general distribution of materials by placing them on vehicle windshields in college parking lots is deemed to constitute littering.

(3) **Posting.** The posting by campus groups of noncommercial advertising or other printed announcements is permitted in designated locations and for designated purposes in accordance with policies applicable to the particular campus facility. Posting of noncommercial announcements by non-campus groups is permitted in areas designated for publicizing community events.

WSR 21-06-017
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed February 19, 2021, 12:43 p.m., effective April 1, 2021]

Effective Date of Rule: April 1, 2021.

Purpose: The purpose of these rules are to clarify the authority of the director to put in place enforceable parking restrictions anywhere on the capitol campus roadways and parking areas. Other changes were made to (1) distinguish between rules which apply to employees parking on the capitol campus and all other parkers, and (2) address the ability of the department's visitor services program to issue parking permits to event sponsors holding campus use permits for vehicles parking on the capitol campus.

Citation of Rules Affected by this Order: New 3; and amending 10.

Statutory Authority for Adoption: RCW 43.19.125, 46.08.150, and 43.19.011.

Adopted under notice filed as WSR 20-24-132 on December 2, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 3, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 10, Repealed 0.

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

Date Adopted: February 2, 2021.

Chris Liu
Director

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-015 Definitions. As used in this chapter, the following terms shall mean:

(1) "Building and grounds," "state capitol grounds," "capitol campus" defined. Those buildings and grounds over which the department of enterprise services exercises custody and control under RCW 43.19.125, 46.08.150, 79.24.300 through 79.24.320, and 79.24.710, which includes, but is not limited to, the west capitol campus, the east capitol campus, Sylvester Park, the Old Capitol Building, Capitol Lake, Marathon Park, Heritage Park, Centennial Park, ways open to the public, and adjoining lands and roadways, including the portion of Deschutes Parkway adjoining state lands.

(2) "Director" defined. The director of the department of enterprise services and any designee of the director.

(3) "Disabled" defined. Any person who has made application to the department of licensing and displays a valid permit under chapter 46.19 RCW.

(4) "Employee" defined. Any person assigned to a state facility, including state employees, vendors and their staff, concessionaires, contractors and consultants, who are performing duties that are similar to the duties of state employees or that are in direct support of the state agency functions performed at the facility.

(5) "Impound"/"impoundment" defined. To take and hold a vehicle, consistent with law, at the direction of a law enforcement officer(,) or the director or designee, subject to the procedures outlined in this chapter and in chapter 46.55 RCW. Such definition includes towing of an unauthorized vehicle.

(6) "Permit" defined. A written authorization to park on the capitol campus. Permits may be in the form of, but are not limited to, a sticker, a receipt issued by a parking meter, or other official document clearly indicating authorization to park on the capitol campus.

(7) "Vehicle" defined. Vehicle is defined the same as RCW 46.04.670 as amended by chapter 170, Laws of 2019, which includes bicycles among other vehicles.

~~((7))~~ (8) "Visitor" defined. Any person parking on the capitol campus or visiting a state facility who is not employed by the state or any employee whose primary duty station not located on the capitol campus at that facility.

~~((8))~~ (9) "Way open to the public" defined. Any road, alley, lane, parking area, parking structure, path, or any place private or otherwise adapted to and fitted for travel that is in common use by the public with the consent expressed or implied of the owner or owners, and further shall mean public play grounds, school grounds, recreation grounds, parks, park ways, park drives, park paths.

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-085 Marking. The marking of streets, parking lots and garages shall include, but not be limited to, the following:

(1) Yellow areas—No standing.

(2) White areas with hash marks or stripes—Crosswalks (no stopping in crosswalks) and no parking ~~((stalls (no stopping in parking stalls without a permit or payment of fee)))~~ or stopping areas.

(3) White areas ~~((with hash marks or stripes (ADA stall permitted use only)))~~—Parking stalls. May be marked with specific restrictions limiting use.

(4) Red areas—Emergency parking only and fire lanes (no stopping in emergency parking and fire lanes).

(5) Green areas—Electric vehicle stalls for charging purposes in accordance to RCW 46.08.185.

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-186 Parking time limits in metered areas or areas subject to a time restriction. (1) No person or entity shall park any vehicle on the state capitol grounds or in any area designated as metered parking for a consecutive

period of time longer than that period of time for which parking is ~~((permitted))~~ authorized in such areas, irrespective of the amount of time for which parking has been paid.

(2) Vehicles moved from one parking space to another or from one lot to another shall be assumed to have been parked continuously from the time they are initially parked in any time restricted area.

(3) A showing that the time period between when a vehicle is twice found parked in any time restricted area on the same day is more than the time allowed for parking in time restricted areas shall constitute a prima facie presumption that the vehicle has been parked in violation of this section.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-200-189 Service and delivery vehicles. Service or delivery vehicles may park in specifically designated areas on the state capitol grounds~~((, provided,))~~. A parking permit is ~~((obtained))~~ required before parking in such areas.

NEW SECTION

WAC 200-200-193 Parking restrictions on the state capitol grounds. (1) No vehicle shall be parked or remain parked at any place on the state capitol grounds where official signs, curbs, and/or ground markings prohibit parking in such place or at such time. Violators shall be subject to towing. Such signs or markings include, but are not limited to, "no parking" (with or without additional restrictions), "tow zone," "fire zone," and "parking prohibited."

(2) The director or its designee may install/erect permanent, temporary signs, or emergency barricades, paint marks, and other structures or directions upon the streets, curbs, and parking areas within the state capitol grounds. Drivers shall obey the signs, barricades, structures, markings, and directions.

(3) Parking spaces may not be used for other purposes such as the conduct of private business or the storage of personal property.

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-200 Authorization for issuance of employee permits. All employee parking on state capitol grounds shall be authorized through the issuance of valid parking permits unless otherwise authorized. These permits shall be issued by the director to state officials, state employees, state agencies for official cars, and to such other individuals as determined by the director to require parking to aid in carrying out state business. These permits shall not be transferred from one vehicle to another except as authorized by the director. All employee parking subject to permit on state capitol grounds shall be for official purposes only. ~~((Parking spaces may not be used for other purposes such as the conduct of private business or the storage of personal property.))~~

NEW SECTION

WAC 200-200-210 Display of permits. All permits shall be clearly displayed in the location indicated at the time of issuance or, if no location is indicated, in the front windshield of the vehicle.

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-220 Allocation of employee parking permits. Employee parking permits shall be allocated by the director in such manner as will best achieve the objectives of these regulations. Unless in the director's opinion the objectives of these regulations would otherwise be better served, the director shall observe the following priorities in the issuance of employee parking permits:

- (1) Disabled state employees and officials;
- (2) Car pools consisting of three or more persons per vehicle;
- (3) Other state employees, state officials, state agencies, and nonstate parkers.

NEW SECTION

WAC 200-200-265 Parking permits for events taking place on the capitol campus. (1) A vehicle may be issued a permit to park in a restricted parking area or other area for the purpose of participating as a vendor or sponsor of an event or providing transportation to an event permitted under chapter 200-220 WAC. Parking permits shall only be issued to the registered vehicle owner or operator who is participating as an event vendor or sponsor and shall:

- (a) Identify the parking location;
 - (b) Specify the duration parking is allowed;
 - (c) Whether overnight parking is allowed;
 - (d) Clearly display the parking permit from the front windshield of the vehicle.
- (2) Violators shall be subject to towing.

AMENDATORY SECTION (Amending WSR 15-23-062, filed 11/13/15, effective 12/14/15)

WAC 200-200-300 Monthly parking fee payments. Agencies and nonstate personnel will be billed by the parking office. State employee rental parking fees and any and all state employee parking permit fees shall be by payroll deduction. The person to whom the permit is issued, upon termination of use of such permit, shall notify the parking office prior to such termination of use.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-200-320 Responsibility of person to whom permit is issued. Any person or any governmental or private entity to whom a permit is issued pursuant to these regulations shall be responsible for all violations of these regulations involving that person's or entity's vehicle or permit: Provided, however, that such responsibility shall not relieve other persons or entities who violate these regulations.

AMENDATORY SECTION (Amending WSR 20-05-042, filed 2/12/20, effective 3/14/20)

WAC 200-200-361 Suspension and/or revocation of employee parking privileges. Repeated employee use of assigned parking spaces ((~~by~~)) for unauthorized vehicles or for nonofficial purposes or for the storage of personal property and/or the repeated transfer of parking permits from one vehicle to another as defined in WAC 200-200-360 may result in the suspension or revocation of the employee's parking privileges. Violations may result in suspension and/or revocation of any permits issued to the violator and/or removal, suspension, and/or revocation from the parking waiting list for parking on state capitol grounds.

AMENDATORY SECTION (Amending WSR 11-23-093, filed 11/17/11, effective 11/17/11)

WAC 200-200-500 Violations unlawful. A violation of any of these regulations is unlawful. All violators are subject to removal from the state capitol grounds by the Washington state patrol ((~~capitol detachment~~)).

WSR 21-06-020**PERMANENT RULES****FOREST PRACTICES BOARD**

[Filed February 22, 2021, 9:45 a.m., effective March 25, 2021]

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

Purpose: To make minor language corrections and clarify processes without changing the effect of the forest practices rules. Rule amendments include correcting outdated Revised Code of Washington and Washington Administrative Code references, grammatical corrections and clarifying sentence structure related to department of natural resources' forest riparian easement program.

Citation of Rules Affected by this Order: Amending WAC 222-08-010, 222-08-032, 222-12-030, 222-16-080, 222-20-017, 222-21-030, 222-21-032, 222-21-045, 222-22-080, and 222-30-020.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 20-24-130 on December 2, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: February 10, 2021.

Stephen Bernath
Chairman

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-08-010 Purpose. The purpose of this chapter is to describe the forest practices board, its organization and administrative procedures, and to provide rules implementing RCW 34.05.220 and chapters 42.52 and 42.56 RCW. The purpose of this chapter is also to set out department of natural resources procedures for administration of the forest practices regulatory program.

AMENDATORY SECTION (Amending WSR 18-07-012, filed 3/9/18, effective 4/9/18)

WAC 222-08-032 Function, organization, and office.

(1) The forest practices board was created by chapter 76.09 RCW to adopt forest practices rules as described in WAC 222-12-010.

(2) The board's membership as described in RCW 76.09.030(5), consists of thirteen members to include:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of commerce or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor so long as that member serves as an elected official;

(g) A member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(3) The governor-appointed members are appointed to four-year terms.

(4) The commissioner of public lands or designee shall chair the board.

(5) General public members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) Staff support is provided to the board as provided in RCW 76.09.030(((6))) (5). Staff shall perform the following duties under the general authority and supervision of the board:

(a) Act as administrative arm of the board;
(b) Act as records officer to the board;
(c) Coordinate the policies and activities of the board;
and

(d) Act as liaison between the board and other public agencies and stakeholders.

(7) The administrative office of the board is located at 1111 Washington Street S.E., Olympia, Washington. The board may sit or hold hearings anywhere in the state. The office hours are 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., Monday through Friday, except legal holidays and during board meetings. The board may be contacted at:

Forest Practices Board
c/o Department of Natural Resources
Forest Practices Division
P.O. Box 47012
Olympia, WA 98504-7012
Phone: 360-902-1400
Fax: 360-902-1428
Email: forest.practicesboard@dnr.wa.gov

(8) Any person may contact the board as indicated in subsection (7) of this section to obtain information on board activities.

AMENDATORY SECTION (Amending WSR 13-21-032, filed 10/8/13, effective 12/30/13)

WAC 222-12-030 Application information and classes of forest practices. Forest practices are divided into four classes as specified by RCW 76.09.050 and described in WAC 222-16-050. Review periods and application and notification requirements differ as follows:

(1) **Class I forest practices** require no application or notification, but do require compliance with all other forest practices rules.

(2) **Class II forest practices** require a notification to the department, and may begin five calendar days (or such lesser time as the department may determine) after receipt of a complete notification by the department.

(3) **Class III forest practices** must be approved or disapproved within thirty or fewer calendar days of receipt of a complete application by the department. The department is directed to approve or disapprove within fourteen calendar days Class III applications not requiring additional field review. Exceptions are:

(a) Multiyear applications must be approved or disapproved within forty-five days of receipt of a complete application by the department.

(b) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(c) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(4) **Class IV forest practices** are divided into "Class IV-special," and "Class IV-general," and must be approved or disapproved within thirty calendar days of receipt of a complete application by the department. Exceptions are:

(a) Small forest landowner long-term applications are reviewed in two steps as described in WAC 222-20-016.

(b) Applications including the project types listed in WAC 222-20-017 (4)(b), concurrence review, must be approved or disapproved within sixty days of receipt of a complete application by the department.

(c) If a detailed environmental statement is necessary, additional time for approval or disapproval as specified in RCW 76.09.050 will be required.

(5) In certain emergencies as defined in RCW ((7.09.060 (7)) [76.09.060(7)]) 76.09.060(7), the application or notification may be submitted within forty-eight hours after commencement of the practice.

AMENDATORY SECTION (Amending WSR 12-05-083, filed 2/17/12, effective 3/19/12)

WAC 222-16-080 Critical habitats (state) of threatened and endangered species. (1) Critical habitats (state) of threatened or endangered species and specific forest practices designated as Class IV-Special are as follows:

(a) Gray wolf (*Canis lupus*) - Harvesting, road construction, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of March 15 and July 30 or 0.25 mile from the den site at other times of the year.

(b) Grizzly bear (*Ursus arctos*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 1 mile of a known active den site, documented by the department of fish and wildlife, between the dates of October 1 and May 30 or 0.25 mile at other times of the year.

(c) Mountain (woodland) caribou (*Rangifera tarandus*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active breeding area, documented by the department of fish and wildlife.

(d) Oregon silverspot butterfly (*Speyeria zerene hippolyta*) - Harvesting, road construction, aerial or ground application of pesticides, or site preparation within 0.25 mile of an individual occurrence, documented by the department of fish and wildlife.

(e) Sandhill crane (*Grus canadensis*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known active nesting area, documented by the department of fish and wildlife.

(f) Northern spotted owl (*Strix occidentalis caurina*).

(i) **Within a SOSEA boundary** (see maps in WAC 222-16-086), except as indicated in ((~~(h)~~) (f)(ii)) of this subsection, harvesting, road construction, or aerial application of pesticides on suitable spotted owl habitat within a median home range circle that is centered within the SOSEA or on adjacent federal lands.

(ii) **Within the Entiat SOSEA**, harvesting, road construction, or aerial application of pesticides within the areas indicated for demographic support (see WAC 222-16-086 (2)) on suitable spotted owl habitat located within a median home range circle that is centered within the demographic support area.

(iii) **Outside of a SOSEA**, harvesting, road construction, or aerial application of pesticides, between March 1 and

August 31 on the seventy acres of highest quality suitable spotted owl habitat surrounding a northern spotted owl site center located outside a SOSEA. The highest quality suitable habitat shall be determined by the department in cooperation with the department of fish and wildlife. Consideration shall be given to habitat quality, proximity to the activity center and contiguity.

(iv) **Small parcel northern spotted owl exemption.** Forest practices proposed on the lands owned or controlled by a landowner whose forest land ownership within the SOSEA is less than or equal to 500 acres and where the forest practice is not within 0.7 mile of a northern spotted owl site center shall not be considered to be on lands designated as critical habitat (state) for northern spotted owls.

(g) Pacific pond turtle (*Actinemys marmorata*) - Harvesting, road construction, aerial application of pesticides, or site preparation within 0.25 mile of a known individual occurrence, documented by the department of fish and wildlife.

(h) Marbled murrelet (*Brachyramphus marmoratus*).

(i) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within an occupied marbled murrelet site.

(ii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat within a marbled murrelet detection area.

(iii) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction within suitable marbled murrelet habitat containing 7 platforms per acre outside a marbled murrelet detection area.

(iv) Harvesting, other than removal of down trees outside of the critical nesting season, or road construction outside a marbled murrelet detection area within a marbled murrelet special landscape and within suitable marbled murrelet habitat with 5 or more platforms per acre.

(v) Harvesting within a 300 foot managed buffer zone adjacent to an occupied marbled murrelet site that results in less than a residual stand stem density of 75 trees per acre greater than 6 inches in dbh; provided that 25 of which shall be greater than 12 inches dbh including 5 trees greater than 20 inches in dbh, where they exist. The primary consideration for the design of managed buffer zone widths and leave tree retention patterns shall be to mediate edge effects. The width of the buffer zone may be reduced in some areas to a minimum of 200 feet and extended to a maximum of 400 feet as long as the average of 300 feet is maintained.

(vi) Except that the following shall not be critical habitat (state):

(A) Where a landowner owns less than 500 acres of forest land within 50 miles of saltwater and the land does not contain an occupied marbled murrelet site; or

(B) Where a protocol survey (see WAC 222-12-090(14)) has been conducted and no murrelets were detected. The landowner is then relieved from further survey requirements. However, if an occupied marbled murrelet site is established, this exemption is void.

(2) The following critical habitats (federal) designated by the United States Secretary of the Interior or Commerce, or specific forest practices within those habitats, have been determined to have the potential for a substantial impact on

the environment and therefore are designated as critical habitats (state) of threatened or endangered species.

(3) For the purpose of identifying forest practices which have the potential for a substantial impact on the environment with regard to threatened or endangered species newly listed by the Washington fish and wildlife commission and/or the United States Secretary of the Interior or Commerce, the department shall after consultation with the department of fish and wildlife, prepare and submit to the board a proposed list of critical habitats (state) of threatened or endangered species. This list shall be submitted to the board within 30 days of the listing of the species. The department shall, at a minimum, consider potential impacts of forest practices on habitats essential to meeting the life requisites for each species listed as threatened or endangered. Those critical habitats (state) adopted by the board shall be added to the list in subsection (1) of this section. See WAC 222-16-050 (1)(b).

(4) For the purpose of identifying any areas and/or forest practices within critical habitats (federal) designated by the United States Secretary of the Interior or Commerce which have the potential for a substantial impact on the environment, the department shall, after consultation with the department of fish and wildlife, submit to the board a proposed list of any forest practices and/or areas proposed for inclusion in Class IV - Special forest practices. The department shall submit the list to the board within 30 days of the date the United States Secretary of the Interior or Commerce publishes a final rule designating critical habitat (federal) in the Federal Register. Those critical habitats included by the board in Class IV - Special shall be added to the list in subsection (2) of this section. See WAC 222-16-050 (1)(b).

(5)(a) The critical habitats (state) of threatened and endangered species and specific forest practices designated in subsections (1) and (2) of this section are intended to be interim. These interim designations shall expire for a given species on the earliest of:

(i) The effective date of a regulatory system for wildlife protection referred to in (b) of this subsection or of substantive rules on the species.

(ii) The delisting of a threatened or endangered species by the Washington fish and wildlife commission and by the United States Secretary of Interior or Commerce.

(b) The board shall examine current wildlife protection and department authority to protect wildlife and develop and recommend a regulatory system, including baseline rules for wildlife protection. To the extent possible, this system shall:

(i) Use the best science and management advice available;

(ii) Use a landscape approach to wildlife protection;

(iii) Be designed to avoid the potential for substantial impact to the environment;

(iv) Protect known populations of threatened and endangered species of wildlife from negative effects of forest practices consistent with RCW 76.09.010; and

(v) Consider and be consistent with recovery plans adopted by the department of fish and wildlife pursuant to RCW 77.12.020(6) or habitat conservation plans or 16 U.S.C. 1533(d) rule changes of the Endangered Species Act.

(6) Regardless of any other provision in this section, forest practices applications shall not be classified as Class IV -

Special based on critical habitat (state) (WAC 222-16-080 and 222-16-050 (1)(b)) for a species, if the forest practices are consistent with one or more of the following:

(a) Documents addressing the needs of the affected species provided such documents have received environmental review with an opportunity for public comment under the National Environmental Policy Act, 42 U.S.C. section 4321 et seq.:

(i) A habitat conservation plan and incidental take permit; or an incidental take statement covering such species approved by the Secretary of the Interior or Commerce pursuant to 16 U.S.C. § 1536(b) or 1539(a); or

(ii) An "unlisted species agreement" covering such species approved by the U.S. Fish and Wildlife Service or National Marine Fisheries Service; or

(iii) Other conservation agreement entered into with a federal agency pursuant to its statutory authority for fish and wildlife protection that addresses the needs of the affected species; or

(iv) A rule adopted by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service for the conservation of an affected species pursuant to 16 U.S.C. section 1533(d); or

(b) Documents addressing the needs of the affected species so long as they have been reviewed under the State Environmental Policy Act;

(i) A landscape management plan; or

(ii) Another cooperative or conservation agreement entered into with a state resource agency pursuant to its statutory authority for fish and wildlife protection;

(c) A special wildlife management plan (SWMP) developed by the landowner and approved by the department in consultation with the department of fish and wildlife;

(d) A landowner option plan (LOP) for northern spotted owls developed pursuant to WAC 222-16-100(1);

(e) A cooperative habitat enhancement agreement (CHEA) developed pursuant to WAC 222-16-105; or

(f) A take avoidance plan issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service prior to March 20, 2000;

(g) Surveys demonstrating the absence of northern spotted owls at a northern spotted owl site center have been reviewed and approved by the department of fish and wildlife and all three of the following criteria have been met:

(i) The site has been evaluated by the spotted owl conservation advisory group; and

(ii) As part of the spotted owl conservation advisory group's evaluation, the department's representative has consulted with the department of fish and wildlife; and

(iii) The spotted owl conservation advisory group has reached consensus that the site need not be maintained while the board completes its evaluation of rules affecting the northern spotted owl. The spotted owl conservation advisory group shall communicate its findings to the department in writing within sixty days of the department of fish and wildlife's approval of surveys demonstrating the absence of northern spotted owls.

In those situations where one of the options above has been used, forest practices applications may still be classified as Class IV-Special based upon the presence of one or more

of the factors listed in WAC 222-16-050(1), other than critical habitat (state) for the species covered by the existing plan or evaluations.

(7) The department, in consultation with the department of fish and wildlife, shall review each SOSEA to determine whether the goals for that SOSEA are being met through approved plans, permits, statements, letters, or agreements referred to in subsection (6) of this section. Based on the consultation, the department shall recommend to the board the suspension, deletion, modification or reestablishment of the applicable SOSEA from the rules. The department shall conduct a review for a particular SOSEA upon approval of a landowner option plan, a petition from a landowner in the SOSEA, or under its own initiative.

(8) The department, in consultation with the department of fish and wildlife, shall report annually to the board on the status of the northern spotted owl to determine whether circumstances exist that substantially interfere with meeting the goals of the SOSEAs.

AMENDATORY SECTION (Amending WSR 13-21-032, filed 10/8/13, effective 12/30/13)

WAC 222-20-017 *Applications that include forest practices hydraulic projects. (1) **Review for consistency with fish protection standards.** The department reviews forest practices applications that include forest practices hydraulic projects in Type S and F and associated Np Waters for consistency with fish protection standards.

(2) Preapplication consultation.

(a) Prospective applicants are encouraged to consult with the department and the department of fish and wildlife, including site visits as needed, prior to submitting a forest practices application to the department.

(b) Preapplication consultation helps to ensure that project design and specifications meet fish protection standards.

(c) Preapplication consultation should take place well before submitting an application to the department and well before the desired work windows.

(3) **Application time limits.** Except for applications involving project types listed in subsection (4)(b) of this section, application time limits for applications that include forest practices hydraulic projects are the same as those listed in WAC 222-20-020.

(4) **Review of forest practices hydraulic projects involving Type S and F Waters by the department of fish and wildlife.** The department of fish and wildlife's review of forest practices hydraulic projects is guided by WAC ((~~220-110-085~~) 220-660-060), and summarized in (a) and (b) of this subsection:

(a) Except for the particular review process for projects listed in (b)(i) of this subsection, the department of fish and wildlife reviews forest practices hydraulic projects involving Type S and F Waters as follows:

(i) The department of fish and wildlife either provides comments to the department or documents that the review has occurred without the need for comments.

(ii) Prior to commenting, or as soon as reasonably practical, the department of fish and wildlife will communicate

with the applicant regarding any concerns relating to consistency with fish protection standards.

(iii) The department of fish and wildlife will also strive to maintain communications with the department as concerns arise, and inform the department of its communications with applicants.

(b) **Concurrence review.**

(i) The following project types involving Type S and F Waters are subject to the department of fish and wildlife conducting a concurrence review according to the process outlined in WAC ((~~220-110-085~~) 220-660-060(3):

- Culvert installation or replacement, and repair at or below the bankfull width in Type S and F Waters that exceed five percent gradient;

- Bridge construction or replacement, and repair at or below the bankfull width of unconfined streams in Type S and F Waters; or

- Fill within the flood level-100 year of unconfined streams in Type S and F Waters.

(ii) After review of these projects, the department of fish and wildlife must provide written notification of concurrence or nonconcurrence to the department within thirty days of the department officially receiving a complete application, stating whether or not the project is consistent with fish protection standards and including any proposed changes needed to meet fish protection standards.

(iii) As indicated in WAC 222-20-020 (1)(e), the department approves, conditions, or disapproves such applications within sixty days of officially receiving an application. The department of fish and wildlife's review is completed within the first thirty days.

(5) **Disapproval.**

(a) An application will be disapproved if the department determines, after consultation with the department of fish and wildlife, that a forest practices hydraulic project in the application will result in direct or indirect harm to fish life, unless:

(i) Adequate mitigation can be assured by conditioning the application for the project; or

(ii) The project is modified satisfactorily.

(b) If disapproved, the department will provide a statement to the applicant in writing of the specific reason(s) why, and how the proposed project would adversely affect fish life.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-030 Documentation and standards. (1) **Forest practices application.** Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.

(2) **Forestry riparian easement application.** The landowner will provide the following information in a forestry riparian easement application:

(a) County tax parcel numbers of the property in the proposed easement premises;

(b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;

(c) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest land-

owner and documenting that the landowner is willing to sell or donate such easements to the state; and

(d) Documentation that qualifying timber (~~is harvested~~) within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

(3) **Baseline documentation.** The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:

(a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.

(4) **Forestry riparian easement contract.** The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(5) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of fifty years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.

(5) **Land description standards.**

(a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-032 Eligibility criteria. (1) Qualifying small forest landowners must complete a timber harvest to be eligible for a forestry riparian easement, unless a commercially reasonable harvest is not possible according to subsection (5) of this section or the only timber available to harvest meets the criteria of uneconomic to harvest according to subsection (6) of this section.

(2) The easement premises cannot contain unacceptable liabilities as determined by the small forest landowner office. Unacceptable liabilities include, but are not limited to, the presence of hazardous substances on the land or other condi-

tions that may create a liability to the department, any existing uses of the property that may jeopardize the protection of the easement premises and qualifying timber, and situations in which the applicant is unwilling or unable to provide reasonable protection against financial loss to the state.

(3) Where more than one person has an interest in property to be covered by a forestry riparian easement, all persons holding rights to control or affect the easement premises and qualifying timber must execute the easement documents or otherwise subordinate their interest to the easement being acquired by the state. This includes tenants in common, joint tenants, holders of reversionary interests, lien holders, and mortgages.

(4) **Commercially reasonable harvest.** The small forest landowner office will consider the following criteria to determine if an area covered by a forest practices application involves a commercially reasonable harvest. The proposed harvest must meet all five of the following requirements:

(a) The harvest unit is immediately adjacent to or physically connected to qualifying timber;

(b) The application is for a forest practice involving a timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023;

(d) The value of the timber in the harvest unit, excluding qualifying timber, equals or exceeds one thousand dollars (~~which is the minimum required by department of revenue for taxing purposes~~); and

(e) The value of the taxable harvest equals or exceeds the value of the qualifying timber established under WAC 222-21-045 unless otherwise approved by the small forest landowner office.

(5) **Commercially reasonable harvest is not possible.** The small forest landowner office will consider the following criteria to determine if a forest practices application for harvest may qualify for the forestry riparian easement program because it involves an area where a commercially reasonable harvest is not possible. The proposed harvest must meet all four of the following requirements:

(a) The forest practices application has been disapproved because the area covered by the application cannot be harvested due to forests and fish rule restrictions;

(b) The forest practices application involves a proposed timber harvest and the harvest would not result in a conversion to a use other than commercial timber operation;

(c) The landowner is not eligible for the twenty acre exemption under WAC 222-30-023; and

(d) The value of the qualifying timber equals or exceeds one thousand dollars (~~which is the minimum required by the department of revenue for taxing purposes~~).

(6) **Uneconomic to harvest.** The small forest landowner office will consider the following criteria to determine whether timber is qualifying timber because the forests and fish rules made it uneconomic to harvest. The proposed harvest must meet all four of the following requirements:

(a) The timber could have been included in a commercially reasonable harvest unit if there were no additional requirements imposed by the forests and fish rules;

(b) The area is not reasonably accessible economically because of requirements imposed by the forests and fish rules;

(c) There is no reasonable unit size alternative which, if used, would make the area economical to harvest; and

(d) The cost to access the harvest unit plus the cost to harvest would equal or exceed thirty-five percent of the stumpage value in the portion of the unit considered uneconomic. The small forest landowner office will determine these costs and values consistent with WAC 222-21-045. Costs include harvest, construction of nonpermanent roads and/or water crossing structures, and associated expenses. When using the small harvester tax return method to calculate stumpage values and allowable costs, the landowner may include actual timber appraisal and sale layout costs incurred as part of the cost calculations.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

WAC 222-21-045 Valuation. (1) **The small forest landowner office will calculate the compensation amount for forestry riparian easements by determining a value for the qualifying timber.** The office will use data gathered from or adjusted to the date the office received the complete forestry riparian easement application. The office will use the stumpage value determination method described in (a) of this subsection for qualifying timber that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to determine the highest compensation amount for the landowner.

(a) **Stumpage value determination method.** The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs on the date the office received a complete forestry riparian easement application. The landowner will provide:

(i) The reference for the stumpage value table and any other needed information for use of the table; and

(ii) Any information the landowner would like the office to consider in its cruise and valuation of the qualifying timber.

(b) **Small harvester tax return method.**

(i) The landowner must provide comprehensive mill or buyer information for each harvest unit associated with the forestry riparian easement including:

(A) The delivered value by species;

(B) The total volume by species; and

(C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the docu-

mentation, the office will determine the qualifying timber value using the stumpage value determination method.

(ii) The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.

(iii) The office will determine the adjusted stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the time adjusted mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the time adjusted stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

(iv) ~~The department determines the values of the timber species that exist in the easement premises ((will be valued)), not the species in the harvest area. The ((timber species in)) department determines the easement ((premises will be valued)) value~~ by multiplying the determined cruise volume of qualified timber in the easement premises by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091.

(2) **Determining the forestry riparian easement compensation.** The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.

(a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.

(b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:

Where:

Vq = the value of qualifying timber;

Vh = the value of harvested timber; and

t = the high impact of regulatory threshold (19.1 percent for western Washington, 12.2 percent for eastern Washington);

The compensation for easement = $\frac{((Vq/(Vq + Vh)) - t) * (Vq + Vh)}{2} + (t * (Vq + Vh)/2)$.

AMENDATORY SECTION (Amending WSR 11-12-009, filed 5/20/11, effective 6/20/11)

WAC 222-22-080 *Approval of watershed analysis.

(1) Upon receipt of the recommended prescriptions and management strategies resulting from a level 1 assessment under WAC 222-22-050, a level 2 assessment under WAC 222-22-060, or a reanalysis under WAC 222-22-090, the department shall select prescriptions. The department shall circulate the draft watershed analysis to the departments of ecology and fish and wildlife, affected Indian tribes, local governmental entities, forest landowners in the WAU, and the public for review and comment. The prescriptions recommended by the field managers' team shall be given substantial weight. Within thirty days of receipt of the recommended prescriptions and management strategies, the department shall review comments, revise the watershed analysis as appropriate, and approve or disapprove the watershed analysis for the WAU.

*(2) The department should notify any governmental agency or Indian tribe having jurisdiction over activities which are not regulated under chapter 76.09 RCW but which are identified in the draft analysis as having a potential for an adverse impact on identified fish, water, capital improvements of the state or its political subdivisions, or cultural resources.

*(3) The department shall approve the draft watershed analysis unless it finds:

(a) For any level 1 assessment or level 2 assessment, that:

(i) The team failed in a material respect to apply the methodology, indices of resource condition, or checklists set forth in the manual; or

(ii) A team meeting the criteria promulgated by the department and using the defined methodologies, indices of resource conditions, and checklists set forth in the manual could not reasonably have come to the conclusions identified in the draft level 1 or level 2 assessment; and

(b) The prescriptions will not accomplish the purposes and policies of this chapter and chapter 76.09 RCW.

(c) In making its findings under this subsection, the department shall take into account its ability to revise assessments under WAC 222-22-090.

*(4) If the department disapproves the draft watershed analysis, it shall set forth in writing a detailed explanation of the reasons for its disapproval.

(5) To become final under subsection (1) of this section, all watershed analyses must be reviewed under SEPA on a nonproject basis. SEPA review may take place concurrently with the public review in subsection (1) of this section. See WAC 222-10-035.

(6) As of July 1, 2011:

(a) Existing interim or draft prescriptions will expire; and

(b) A new draft watershed analysis or reanalysis will expire if the requirements in subsections (1) and (5) of this section are not met.

These expirations sunset the draft watershed analysis for the WAU and do not require SEPA review. The department shall notify the landowners in the WAU that the watershed analysis has expired.

(7) The department will not review or approve cultural resource management strategies because their implementation is voluntary.

AMENDATORY SECTION (Amending WSR 13-21-032, filed 10/8/13, effective 12/30/13)

WAC 222-30-020 *Harvest unit planning and design.

(1) Preapplication consultation and harvest-related forest practices hydraulic projects.

(a) Landowners contemplating forest practices hydraulic projects related to timber harvest are encouraged to consult with the department and the department of fish and wildlife prior to submitting an application to help ensure that project plans and specifications meet fish protection standards.

(b) Harvest-related forest practices hydraulic projects include, but are not limited to, projects associated with:

(i) Felling and bucking (WAC 222-30-050);

(ii) Cable yarding (WAC 222-30-060); and

(iii) Large woody material removal or repositioning (WAC 222-30-062).

(2) **Logging system.** The logging system, including forest biomass removal operations, should be appropriate for the terrain, soils, and timber type so that yarding or skidding can be economically accomplished and achieve the ecological goals of WAC 222-30-010 (2), (3) and (4) in compliance with these rules.

*(3) **Landing locations.** Locate landings to prevent damage to public resources. Avoid excessive excavation and filling.

*(4) **Western Washington riparian management zones.** (See WAC 222-30-021 and 222-30-023.)

*(5) **Eastern Washington riparian management zones.** (See WAC 222-30-022 and 222-30-023.)

*(6) **Riparian leave tree areas.** (See WAC 222-30-021, 222-30-022, and 222-30-023.)

*(7) **Forested wetlands.** Within the wetland, unless otherwise approved in writing by the department, harvest methods shall be limited to low impact harvest or cable systems. Where feasible, at least one end of the log shall be suspended during yarding.

(a) When forested wetlands are included within the harvest area, landowners are encouraged to leave a portion (thirty to seventy percent) of the wildlife reserve tree requirement for the harvest area within a wetland. In order to retain undisturbed habitat within forested wetlands, these trees should be left in clumps. Leave tree areas should be clumped adjacent to streams, riparian management zones, or wetland management zones where possible and they exist within forested wetlands. Green recruitment trees should be representative of the size and species found within the wetland. Leave nonmerchantable trees standing where feasible.

(b) If a RMZ or WMZ lies within a forested wetland, the leave tree requirement associated with those areas may be counted toward the percentages in (a) of this subsection.

(c) Where riparian associated wetlands are present in the outer zone of a RMZ, trees may be left in the zone to maximize wetland function. See WAC 222-30-021 *(1)(c)(ii).

(d) If the conditions described in (a) and (b) of this subsection are met, the distribution requirements for wildlife

reserve trees and green recruitment trees (subsection ((H+)) (12)(e) of this section) are modified as follows: For purposes of distribution, no point within the harvest unit shall be more than one thousand feet from a wildlife reserve tree and green recruitment tree retention area.

(e) Approximate determination of the boundaries of forested wetlands greater than three acres shall be required. Approximate boundaries and areas shall be deemed to be sufficient for harvest operations.

(f) The department shall consult with the department of fish and wildlife and affected Indian tribes about site specific impacts of forest practices on wetland-sensitive species in forested wetlands.

***(8) Wetland management zones (WMZ).** These zones shall apply to Type A and B Wetlands, as indicated in (a) of this subsection, and shall be measured horizontally from the wetland edge or the point where the nonforested wetland becomes a forested wetland, as determined by the method described in the board manual section 8, and shall be of an average width as described in (a) of this subsection. These zones shall not be less than the minimum nor more than the maximum widths described in (a) of this subsection. When these zones overlap a riparian management zone the requirement which best protects public resources shall apply.

***(a)** Wetland management zones (WMZ) shall have variable widths based on the size of the wetland and the wetland type, described as follows:

Wetland Management Zones

Wetland Type	Acres of Nonforested Wetland*	Maximum WMZ Width	Average WMZ Width	Minimum WMZ Width
A (including bogs)	Greater than 5	200 feet	100 feet	50 feet
A (including bogs)	0.5 to 5	100 feet	50 feet	25 feet
A (bogs only)	0.25 to 0.5	100 feet	50 feet	25 feet
B	Greater than 5	100 feet	50 feet	25 feet
B	0.5 to 5			25 feet
B	0.25 to 0.5	No WMZ required	No WMZ required	

* For bogs, both forested and nonforested acres are included.

(b) Within the WMZ, leave a total of seventy-five trees per acre of WMZ greater than six inches dbh in Western Washington and greater than four inches dbh in Eastern Washington, twenty-five of which shall be greater than twelve inches dbh including five trees greater than twenty inches dbh, where they exist. Leave trees shall be representative of the species found within the WMZ.

(c) Retain wildlife reserve trees where feasible. Type 1 and 3 wildlife reserve trees may be counted among, and need not exceed, the trees required in (b) of this subsection. Leave all cull logs on site.

(d) Partial-cutting or removal of groups of trees is acceptable within the WMZ. The maximum width of openings created by harvesting within the WMZ shall not exceed one hundred feet as measured parallel to the wetland edge. Openings within WMZs shall be no closer than two hundred feet. Landowners are encouraged to concentrate leave trees within the WMZ to the wetland edge.

***(e)** Tractors, wheeled skidders, or other ground based harvesting systems shall not be used within the minimum WMZ width without written approval of the department.

***(f)** When ten percent or more of a harvest unit lies within a wetland management zone and either the harvest unit is a clearcut of thirty acres or less or the harvest unit is a partial cut of eighty acres or less, leave not less than fifty percent of the trees required in (b) of this subsection.

***(9) Type A or B Wetlands.** Within the boundaries of Type A or B Wetlands the following shall apply:

(a) Individual trees or forested wetland areas less than 0.5 acre in size may occur. These trees have a high habitat value to the nonforested wetland. Leave individual trees or

forested wetlands less than 0.5 acre. These trees may be counted toward the WMZ requirements.

(b) Harvest of upland areas or forested wetlands which are surrounded by Type A or B Wetlands must be conducted in accordance with a plan, approved in writing by the department.

(c) No timber shall be felled into or cable yarded across Type A or B Wetlands without written approval of the department.

(d) Harvest shall not be allowed within a Type A Wetland which meets the definition of a bog.

(10) Future productivity. Harvesting shall leave the land in a condition conducive to future timber production except:

(a) To the degree required for riparian management zones; or

(b) Where the lands are being converted to another use or classified urban lands as specified in WAC 222-34-050.

(11) Wildlife habitat. This subsection is designed to encourage timber harvest practices that would protect wildlife habitats, provided, that such action shall not unreasonably restrict landowners action without compensation.

(a) The applicant should make every reasonable effort to cooperate with the department of fish and wildlife to identify critical habitats (state) as defined by the board. Where these habitats are known to the applicant, they shall be identified in the application or notification.

(b) Harvesting methods and patterns in established big game winter ranges should be designed to ensure adequate access routes and escape cover where practical.

(i) Where practical, cutting units should be designed to conform with topographical features.

(ii) Where practical on established big game winter ranges, cutting units should be dispersed over the area to provide cover, access for wildlife, and to increase edge effect.

(12) **Wildlife reserve tree management.** In areas where leaving wildlife reserve trees under this section will not create a significant fire hazard, or significant hazard to overhead power lines and operations that are proposed in the vicinity of wildlife reserve trees will not create a significant safety or residential hazard nor conflict with achieving conformance with the limitation of or performance with the provisions of chapter 76.04 RCW (snag falling law) and chapter 49.17 RCW (safety), wildlife reserve trees will be left to protect habitat for cavity nesting wildlife in accordance with the following:

(a) For the purposes of this subsection the following defines eastern and western Washington boundaries for wildlife reserve tree management. Beginning at the International Border and Okanogan National Forest boundary at the N1/4 corner Section 6, T. 40N, R. 24E., W.M., south and west along the Pasayten Wilderness boundary to the west line of Section 30, T. 37N, R. 19E.,

Thence south on range line between R. 18E. and R. 19E., to the Lake Chelan-Sawtooth Wilderness at Section 31, T. 35N, R. 19E.,

Thence south and east along the eastern wilderness boundary of Lake Chelan-Sawtooth Wilderness to the west line of Section 18, T. 31N, R. 19E. on the north shore of Lake Chelan,

Thence south on the range line between R. 18E. and R. 19E. to the SE corner of T. 28N, R. 18E.,

Thence west on the township line between T. 27N, and T. 28N to the NW corner of T. 27N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the Alpine Lakes Wilderness at Section 31, T. 26N, R. 17E.,

Thence south along the eastern wilderness boundary to the west line of Section 6, T. 22N, R. 17E.,

Thence south on range line between R. 16E. and R. 17E. to the SE corner of T. 22N, R. 16E.,

Thence west along township line between T. 21N, and T. 22N to the NW corner of T. 21N, R. 15E.,

Thence south along range line between R. 14E. and R. 15E. to the SW corner of T. 20N, R. 15E.,

Thence east along township line between T. 19N, and T. 20N to the SW corner of T. 20N, R. 16E.,

Thence south along range line between R. 15E. and R. 16E. to the SW corner of T. 18N, R. 16E.,

Thence west along township line between T. 17N, and T. 18N to the SE corner of T. 18N, R. 14E.,

Thence south along range line between T. 14E. and R. 15E. to the SW corner of T. 14N, R. 15E.,

Thence south and west along Wenatchee National Forest boundary to the NW corner of T. 12N, R. 14E.,

Thence south along range line between R. 13E. and R. 14E. to the SE corner of T. 10N, R. 13E.,

Thence west along township line between T. 9N, and T. 10N to the NW corner of T. 9N, R. 12E.,

Thence south along range line between R. 11E. and R. 12E. to the SE corner of T. 8N, R. 11E.,

Thence west along township line between T. 7N, and T. 8N to the Gifford Pinchot National Forest boundary,

Thence south along forest boundary to the SE corner of Section 33, T. 7N, R. 11E.,

Thence west along township line between T. 6N, and T. 7N to the SE corner of T. 7N, R. 9E.,

Thence south along Skamania-Klickitat County line to Oregon-Washington.

(b) In Western Washington, for each acre harvested three wildlife reserve trees, two green recruitment trees, and two down logs shall be left. In Eastern Washington for each acre harvested two wildlife reserve trees, two green recruitment trees, and two down logs shall be left. Type 1 wildlife reserve trees may be counted, at the landowner's option, either as a wildlife reserve tree or as a green recruitment tree. If adequate wildlife reserve trees are not available, no additional green recruitment trees will be required as substitutes. Landowners shall not under any circumstances be required to leave more than two green recruitment trees per acre for the purpose of wildlife reserve tree recruitment, or be required to leave Type 3 or 4 wildlife reserve trees.

(c) In Western Washington, only those wildlife reserve trees ten or more feet in height and twelve or more inches dbh shall be counted toward wildlife reserve tree retention requirements. In Eastern Washington, only those wildlife reserve trees ten or more feet in height and ten or more inches dbh shall be counted toward wildlife reserve tree retention requirements. Green recruitment trees, ten or more inches dbh and thirty or more feet in height and with at least one-third of their height in live crown, left standing after harvest may be counted toward green recruitment tree requirements. Green recruitment trees and/or wildlife reserve trees left to meet other requirements of the rules or those left voluntarily by the landowner shall be counted toward satisfying the requirements of this section. Large, live defective trees with broken tops, cavities, and other severe defects are preferred as green recruitment trees. Only down logs with a small end diameter greater than or equal to twelve inches and a length greater than or equal to twenty feet or equivalent volume shall be counted under (a) of this subsection. Large cull logs are preferred as down logs.

(d) In the areas where wildlife reserve trees are left, the largest diameter wildlife reserve trees shall be retained to meet the specific needs of cavity nesters. Where the opportunity exists, larger trees with numerous cavities should be retained and count as recruitment trees.

(e) In order to facilitate safe and efficient harvesting operations, wildlife reserve trees and recruitment trees may be left in clumps. For purposes of distribution, no point within the harvest unit shall be more than eight hundred feet from a wildlife reserve tree or green recruitment tree retention area. Subject to this distribution requirement, the location of these retention areas and the selection of recruitment trees shall be at the landowner's discretion. Closer spacing of retention areas through voluntary action of the landowner is encouraged. Wildlife reserve tree and green recruitment tree retention areas may include, but are not limited to, riparian management zones, riparian leave tree areas, other regulatory leave areas, or voluntary leave areas that contain wildlife reserve trees and/or green recruitment trees.

(f) In order to provide for safety, landowners may remove any Type 3 or 4 wildlife reserve tree, which poses a threat to humans working, recreating, or residing within the hazard area of that tree. In order to provide for fire safety, the distribution of wildlife reserve tree retention areas, described in (e) of this subsection, may be modified as necessary based on a wildlife reserve tree management plan proposed by the landowner and approved by the department.

*(13) **Channel migration zones.** No harvest, construction or salvage will be permitted within the boundaries of a channel migration zone except for the construction and maintenance of road crossings in accordance with applicable rules and the creation and use of yarding corridors consistent with WAC 222-24-020(6), 222-30-060(1), and 222-30-045(2).

(14) **Bankfull width.** No harvest or construction will be permitted within the bankfull width of any Type S or F Water or any buffered length of Type Np Water, except for the construction and maintenance of road crossings in accordance with applicable rules and creation and use of yarding corridors consistent with WAC 222-30-020 *(6) and 222-24-060(1). No salvage may take place within the bankfull width of any typed water (see WAC 222-30-045).

WSR 21-06-035

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed February 23, 2021, 4:40 p.m., effective March 26, 2021]

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

Purpose: Making editorial changes to chapter 51-50 WAC, Adoption and amendment of the 2018 International Building Code, correcting section reference and numbering errors.

Citation of Rules Affected by this Order: New 1; and amending 12.

Statutory Authority for Adoption: RCW 19.27.031, 19.27.074.

Adopted under notice filed as WSR 20-24-122 on December 2, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 12, Repealed 0.

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

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

Date Adopted: February 19, 2021.

Diane Glenn
Chair

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0310 Section 310—Residential Group R.

~~((310.2 Definitions. The following terms are defined in Chapter 2:~~

~~ADULT FAMILY HOME;
BOARDING HOUSE;
CHILD CARE;
CHILD CARE, FAMILY HOME;
CONGREGATE LIVING FACILITIES;
DORMITORY;
GROUP HOME;
GUEST ROOM;
LODGING HOUSE;
PERSONAL CARE SERVICE;
TRANSIENT.~~

310.4) 310.3 Residential Group R-2. Residential occupancies containing *sleeping units* or more than two *dwelling units* where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses* (nontransient) with more than 16 occupants
- Congregate living facilities* (nontransient) with more than 16 occupants
- Convents
- Dormitories*
- Fraternities and sororities
- Hotels (nontransient)
- Live/work units*
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

~~((310.5.3))~~ **310.4.3 Adult family homes, family home child care.** Adult family homes and family home child care facilities that are within a single-family home are permitted to comply with the *International Residential Code*.

~~((310.5.4))~~ **310.4.4 Foster family care homes.** Foster family care homes licensed by Washington state are permitted to comply with the *International Residential Code*, as an accessory use to a dwelling, for six or fewer children including those of the resident family.

~~((310.6))~~ **310.5 Residential Group R-4.** R-4 classification is not adopted. Any reference in this code to R-4 does not apply.

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-0412 Section 412—Aircraft-related occupancies.

412.2.2.1 Stairways. Stairways in airport traffic control towers shall be in accordance with Section 1011. Exit stairways shall be smokeproof enclosures complying with one of the alternatives provided in Section 909.20. Where interior exit stairways and ramps are pressurized in accordance with Sec-

tion 909.20.5, the smoke control pressurization system shall comply with the requirements specified in Section 909.6.3.

[F]((412.8.3)) 412.7.3 Means of egress. The means of egress from heliports, helipads and helistops shall comply with the provisions of Chapter 10. Landing areas located on buildings or structures shall have two or more means of egress. For landing areas less than 60 feet in length or less than 2,000

square feet (186 m²) in area, the second means of egress is permitted to be a fire escape, alternating tread device or ladder leading to the floor below. On Group I-2 roofs with heliports or helipads and helistops, rooftop structures enclosing exit stair enclosures or elevator shafts shall be enclosed with fire barriers and opening protectives that match the rating of their respective shaft enclosures below.

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-0504 Section 504—Building height and number of stories.

Table 504.3
Allowable Building Height in Feet Above Grade Plane^a

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A, B, E, F, M, S, U	NS ^b	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	270	180	85	85	70	60
H-1, H-2, H-3, H-5	NS ^{c,d}	UL	160	65	55	65	55	120	90	65	65	50	40
	S												
H-4	NS ^{c,d}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	140	100	85	85	70	60
I-1 Condition 1, I-3	NS ^{d,e}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	180	120	85	85	70	60
I-1 Condition 2, I-2	NS ^{d,e,f}	UL	160	65	55	65	55	65	65	65	65	50	40
	S ⁱ	UL	180	85									
I-4	NS ^{d,g}	UL	160	65	55	65	55	65	65	65	65	50	40
	S	UL	180	85	75	85	75	((270 ((180) <u>180</u>) <u>120</u>)	85	85	85	70	60
R ^h	NS ^d	UL	160	65	55	65	55	65	65	65	65	50	40
	S13D	60	60	60	60	60	60	60	60	60	60	50	40
	S13R	60	60	60	60	60	60	60	60	60	60	60	60
	S	UL	180	85	75	85	75	270	180	85	85	70	60

For SI: 1 foot = 304.8 mm.

UL = Unlimited; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable height above grade plane for Group R-2 occupancies.

Table 504.4
Allowable Number of Stories Above Grade Plane^{a,b}

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
A-1	NS	UL	5	3	2	3	2	3	3	3	3	2	1
	S	UL	6	4	3	4	3	9	6	4	4	3	2
A-2	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-3	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-4	NS	UL	11	3	2	3	2	3	3	3	3	2	1
	S	UL	12	4	3	4	3	18	12	6	4	3	2
A-5	NS	UL	UL	UL	UL	UL	UL	1	1	1	UL	UL	UL
	S	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL	UL
B	NS	UL	11	5	3	5	3	5	5	5	5	3	2
	S	UL	12	6	4	6	4	18	12	9	6	4	3
E	NS	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2
F-1	NS	UL	11	4	2	3	2	3	3	3	4	2	1
	S	UL	12	5	3	4	3	10	7	5	5	3	2
F-2	NS	UL	11	5	3	4	3	5	5	5	5	3	2
	S	UL	12	6	4	5	4	12	8	6	6	4	3
H-1	NS ^{c,d}	1	1	1	1	1	1	NP	NP	NP	1	1	NP
	S							1	1	1			
H-2	NS ^{c,d}	UL	3	2	1	2	1	1	1	1	2	1	1
	S							2	2	2			
H-3	NS ^{c,d}	UL	6	4	2	4	2	3	3	3	4	2	1
	S							4	4	4			
H-4	NS ^{c,d}	UL	7	5	3	5	3	5	5	5	5	3	2
	S	UL	8	6	4	6	4	8	7	6	6	4	3
H-5	NS ^{c,d}	4	4	3	3	3	3	2	2	2	3	3	2
	S							3	3	3			
I-1 Condition 1	NS ^{d,e}	UL	9	4	3	4	3	4	4	4	4	3	2
	S	UL	10	5	4	5	4	10	7	5	5	4	3
I-1 Condition 2	NS ^{d,e}	UL	9	4	3	4	3	3	3	3	4	3	2
	S ⁱ	UL	10	5				10	6	4			
I-2	NS ^{d,f}	UL	4	2	1	1	NP	NP	NP	NP	1	1	NP
	S	UL	5	3				7	5	1			
I-3	NS ^{d,e}	UL	4	2	1	2	1	2	2	2	2	2	1
	S	UL	5	3	2	3	2	7	5	3	3	3	2
I-4	NS ^{d,g}	UL	5	3	2	3	2	3	3	3	3	1	1
	S	UL	6	4	3	4	3	9	6	4	4	2	2

Occupancy Classification	Type of Construction												
	See Footnotes	Type I		Type II		Type III		Type IV				Type V	
		A	B	A	B	A	B	A	B	C	HT	A	B
M	NS	UL	11	4	2	4	2	4	4	4	4	3	1
	S	UL	12	5	3	5	3	12	8	6	5	4	2
R-1h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-2h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	8	5	4	3
R-3h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	3
	S13D	4	4									3	3
	S13R	4	4									4	4
	S	UL	12	5	5	5	5	18	12	5	5	4	4
R-4h	NS ^d	UL	11	4	4	4	4	4	4	4	4	3	2
	S13D	4	4									3	2
	S13R	4	4									4	3
	S	UL	12	5	5	5	5	18	12	5	5	4	3
S-1	NS	UL	11	4	2	3	2	4	4	4	4	3	1
	S	UL	12	5	3	4	3	10	7	5	5	4	2
S-2	NS	UL	11	5	3	4	3	4	4	4	4	4	2
	S	UL	12	6	4	5	4	12	8	5	5	5	3
U	NS	UL	5	4	2	3	2	4	4	4	4	2	1
	S	UL	6	5	3	4	3	9	6	5	5	3	2

UL = Unlimited; NP = Not permitted; NS = Buildings not equipped throughout with an automatic sprinkler system; S = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1; S13R = Buildings equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.2.

- a See Chapters 4 and 5 for specific exceptions to the allowable height in this chapter.
- b See Section 903.2 for the minimum thresholds for protection by an automatic sprinkler system for specific occupancies.
- c New Group H occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.5.
- d The NS value is only for use in evaluation of existing building height in accordance with the International Existing Building Code.
- e New Group I-1 and I-3 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6. For new Group I-1 occupancies Condition 1, see Exception 1 of Section 903.2.6.
- f New and existing Group I-2 occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.6 and Section 1103.5 of the *International Fire Code*.
- g For new Group I-4 occupancies, see Exceptions 2 and 3 of Section 903.2.6.
- h New Group R occupancies are required to be protected by an automatic sprinkler system in accordance with Section 903.2.8.
- i Group I-1, Condition 2 Assisted living facilities licensed in accordance with chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC shall be permitted to use the allowable number of stories for Group R-2 occupancies.

504.4.1 Stair enclosure pressurization increase. For Group R-1, R-2, and I-1 Condition 2 Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities as licensed by Washington state under chapter 246-337 WAC located in buildings of Type VA construction equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, the maximum number of stories permitted in Section 504.4 may be increased by one provided the interior exit stairways and ramps are pressurized in accordance with Sections 909.6.3

and 909.20. Legally required standby power shall be provided in accordance with Sections 909.11 and 2702.2.16 for buildings constructed in compliance with this section and be connected to stairway shaft pressurization equipment, elevators and lifts used for accessible means of egress (if provided), elevator hoistway pressurization equipment (if provided) and other life safety equipment as determined by the authority having jurisdiction. For the purposes of this section, legally required standby power shall comply with 2020 NEC

Section 701.12, options (C), (D), (E), (F), (H) or (J) or subsequent revised section number(s).

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-0716 Section 716—Opening protectives.

((716.5.9)) 716.2.6.1 Door closing. *Fire doors* shall be latching and self- or automatic-closing in accordance with this section.

- EXCEPTIONS:
1. *Fire doors* located in common walls separating *sleeping units* in Group R-1 shall be permitted without automatic- or *self-closing* devices.
 2. The elevator car doors and the associated hoistway enclosure doors at the floor level designated for recall in accordance with Section 3003.2 shall be permitted to remain open during Phase I emergency recall operation.
 3. In Group I-1, Condition 2 Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC, fire doors in dwelling and sleeping units opening to the corridor shall be permitted without automatic or self-closing devices when all of the following conditions exist:
 - 3.1 Each floor is constantly attended by staff on a 24-hour basis and stationed on that floor;
 - 3.2 The facility is provided with an NFPA 13 sprinkler system throughout;
 - 3.3 Doors shall be equipped with positive latching;
 - 3.4 Dwelling and sleeping units are not equipped with cooking appliances;
 - 3.5 Dwelling and sleeping units shall be equipped with a smoke detection system interconnected with the smoke detection system required by Section 907.2.6.1.

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-1107 Section 1107—Dwelling units and sleeping units.

1107.5 Group I. Accessible units and Type B units shall be provided in Group I occupancies in accordance with Sections 1107.5.1.1 through 1107.5.1.3.

1107.5.1.1 Accessible units in Group I-1, Condition 1. In Group I-1, Condition 1, at least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
 2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.

1107.5.1.2 Accessible units in Group I-1, Condition 2. In Group I-1, Condition 2, at least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 90 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
 2. In not more than 90 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.

1107.5.4 Group I-2 rehabilitation facilities. In hospitals and rehabilitation facilities of Group I-2 occupancies that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.4.
 2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.5.

1107.6.2.2.1 Type A units. In Group R-2 Occupancies containing more than 10 dwelling units or sleeping units, at least 5 percent, but not less than one, of the units shall be a Type A unit. All units on a site shall be considered to determine the total number of units and the required number of Type A units. Type A units shall be dispersed among the various classes of units, as described in Section 1107.6. Bedrooms in monasteries and convents shall be counted as *sleeping units* for the purpose of determining the number of units. Where the *sleeping units* are grouped into suites, only one *sleeping unit* in each suite shall count towards the number of required *Type A units*.

- EXCEPTIONS:
1. The number of Type A units is permitted to be reduced in accordance with Section 1107.7.
 2. Existing structures on a site shall not contribute to the total number of units on a site.

1107.5.1 Group I-1. Accessible units and Type B units shall be provided in Group I-1 occupancies in accordance with Sections 1107.5.1.1 through 1107.5.1.3.

1107.5.1.1 Accessible units in Group I-1, Condition 1. In Group I-1, Condition 1, at least 4 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
 2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

1107.5.1.2 Accessible units in Group I-1, Condition 2. In Group I-1, Condition 2, at least 10 percent, but not less than one, of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
 2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

1107.5.1.3 Type B units. In structures with four or more dwelling units or sleeping units intended to be occupied as a residence, every dwelling unit and sleeping unit intended to be occupied as a residence shall be a Type B unit.

- EXCEPTION: The number of Type B units is permitted to be reduced in accordance with Section 1107.7.

1107.5.2 Group I-2 nursing homes. Accessible units and Type B units shall be provided in nursing homes of Group I-2, Condition 1 occupancies in accordance with Sections 1107.5.2.1 and 1107.5.2.2.

1107.5.2.1 Accessible units. At least 50 percent but not less than one of each type of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 90 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
 2. In not more than 90 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

1107.5.4 Group I-2 rehabilitation facilities. In hospitals and rehabilitation facilities of Group I-2 occupancies that specialize in treating conditions that affect mobility, or units within either that specialize in treating conditions that affect mobility, 100 percent of the dwelling units and sleeping units shall be accessible units.

- EXCEPTIONS:
1. In not more than 50 percent of the accessible units, water closets shall not be required to comply with ICC A117.1 where such water closets comply with Section 1109.2.2.
 2. In not more than 50 percent of the accessible units, roll-in-type showers shall not be required to comply with ICC A117.1 where roll-in-type showers comply with Section 1109.2.3.

1107.6.2.3 Group R-2 other than live/work units, apartment houses, monasteries and convents. In Group R-2 occupancies, other than live/work units, apartment houses, monasteries and convents falling within the scope of Sections 1107.6.2.1 and 1107.6.2.2, accessible units and Type B units shall be provided in accordance with Sections 1107.6.2.3.1 and 1107.6.2.3.2. Bedrooms within congregate living facilities shall be counted as sleeping units for the purpose of determining the number of units. Where the sleeping units are grouped into suites, only one sleeping unit in each suite shall be permitted to count towards the number of required accessible units. Accessible units shall be dispersed among the various classes of units, as described in Section 1107.6.

AMENDATORY SECTION (Amending WSR 16-03-064, filed 1/19/16, effective 7/1/16)

WAC 51-50-1403 Section 1403—Performance requirements.

~~((1403.2))~~ **1402.2 Weather protection.** Exterior walls shall provide the building with a weather-resistant exterior wall envelope. The exterior wall envelope shall include flashing as described in Section ~~((1405.4))~~ **1404.4**. The exterior wall envelope shall be designed and constructed in such a manner as to prevent the accumulation of water within the wall assembly by providing a water-resistant barrier behind the exterior veneer, as described in Section ~~((1404.2))~~ **1403.2**, and a means for draining water that enters the assembly to the exterior. An air space cavity is not required under the exterior cladding for an exterior wall clad with lapped or panel siding made of plywood, engineered wood, hardboard, or fiber cement. Protection against condensation in the exterior wall assembly shall be provided in accordance with Section ~~((1405.3))~~ **1404.3**.

- EXCEPTIONS:
1. A weather-resistant exterior wall envelope shall not be required over concrete or masonry walls designed in accordance with Chapters 19 and 21, respectively.
 2. Compliance with the requirements for a means of drainage, and the requirements of Sections 1404.2 and 1405.4, shall not be required for an exterior wall envelope that has been demonstrated through testing to resist wind-driven rain, including joints, penetrations and intersections with dissimilar materials, in accordance with ASTM E 331 under the following conditions:
 - 2.1 Exterior wall envelope test assemblies shall include at least one opening, one control joint, one wall/eave interface and one wall sill. All tested openings and penetrations shall be representative of the intended end-use configuration.
 - 2.2 Exterior wall envelope test assemblies shall be at least 4 feet by 8 feet (1219 mm by 2438 mm) in size.
 - 2.3 Exterior wall envelope assemblies shall be tested at a minimum differential pressure of 6.24 pounds per square foot (psf) (0.297 kN/m²).
 - 2.4 Exterior wall envelope assemblies shall be subjected to a minimum test exposure duration of 2 hours.
 The exterior wall envelope design shall be considered to resist wind-driven rain where the results of testing indicate that water did not penetrate control joints in the exterior wall envelope, joints at the perimeter of openings or intersections of terminations with dissimilar materials.
 3. Exterior insulation and finish systems (EIFS) complying with Section 1408.4.1.

AMENDATORY SECTION (Amending WSR 19-02-038, filed 12/26/18, effective 7/1/19)

WAC 51-50-1406 ~~((Section 1406—Combustible materials on the exterior sides of exterior walls.))~~ **Reserved.**

~~((1406.3 Balconies and similar projections. Balconies and similar projections of combustible construction other than fire-retardant-treated wood shall be fire-resistance-rated where required by Table 601 for floor construction or shall be~~

of Type IV construction in accordance with Section 602.4.4. The aggregate length of the projections shall not exceed 50 percent of the building's perimeter on each floor.)

AMENDATORY SECTION (Amending WSR 20-21-021, filed 10/9/20, effective 11/9/20)

WAC 51-50-2900 Chapter 29—Plumbing systems.

SECTION 2901—GENERAL.

2901.1 Scope. The provisions of this chapter and the state plumbing code shall govern the erection, installation, *alteration*, repairs, relocation, replacement, *addition* to, use or maintenance of plumbing equipment and systems. Toilet and bathing rooms shall be constructed in accordance with Section 1210. Plumbing systems and equipment shall be constructed, installed and maintained in accordance with the state plumbing code.

2901.2 Health codes. In food preparation, serving and related storage areas, additional fixture requirements may be dictated by health codes.

2901.3 Fixed guideway transit and passenger rail systems. In construction of a fixed guideway and passenger rail system, subject to Section 3114, public plumbing fixtures are not required.

SECTION 2902—MINIMUM PLUMBING FACILITIES.

2902.1 Minimum number of fixtures. Plumbing fixtures shall be provided in the minimum number shown in Table 2902.1. Uses not shown in Table 2902.1 shall be determined individually by the *building official* based on the occupancy which most nearly resembles the proposed occupancy. The number of occupants shall be determined by this code. Plumbing fixtures need not be provided for unoccupied buildings or facilities.

2902.1.1 Fixture calculations. To determine the *occupant load* of each sex, the total *occupant load* shall be divided in half. To determine the required number of fixtures, the fixture ratio or ratios for each fixture type shall be applied to the *occupant load* of each sex in accordance with Table 2902.1. Fractional numbers resulting from applying the fixture ratios of Table 2902.1 shall be rounded up to the next whole number. For calculations involving multiple occupancies, such fractional numbers for each occupancy shall first be summed and then rounded up to the next whole number.

EXCEPTION: The total *occupant load* shall not be required to be divided in half where *approved* statistical data indicate a distribution of the sexes of other than 50 percent of each sex.

2902.1.1.1 Private offices. Fixtures only accessible to private offices shall not be counted to determine compliance with this section.

2902.1.1.2 Urinals in men's facilities. Where urinals in men's facilities are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced to less than one quarter (25%) of the minimum spec-

ified. For men's facilities serving 26 or more persons, not less than one urinal shall be provided.

2902.1.1.3 Urinals. Where urinals are provided in gender-neutral facilities, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases shall not be reduced less than one quarter (25 percent) of the minimum specified. Facilities serving 26 or more persons, not less than one urinal shall be provided.

2902.1.4 Family or assisted-use toilet and bath fixtures. Fixtures located within family or assisted-use toilet and bathing rooms required by Section 1109.2.1 are permitted to be included in the number of required fixtures for either the male or female occupants in assembly and mercantile occupancies.

2902.2 Separate facilities. Where plumbing fixtures are required, separate facilities shall be provided for each sex.

- EXCEPTIONS:**
1. Separate facilities shall not be required for *dwelling units* and *sleeping units*.
 2. Separate facilities shall not be required in structures or tenant spaces with a total *occupant load*, including both employees and customers, of 15 or less.
 3. Separate facilities shall not be required in mercantile occupancies in which the maximum occupant load is 100 or less.
 4. Separate facilities shall not be required in spaces primarily used for drinking or dining with a total occupant load, including both employees and customers, of 30 or fewer.
 5. Separate facilities shall not be required when gender-neutral facilities are provided in accordance with Section 2902.2.2.

2902.2.1 Family or assisted-use toilet facilities serving as separate facilities. Where a building or tenant space requires a separate toilet facility for each sex and each toilet facility is required to have only one water closet, two family or assisted-use toilet facilities shall be permitted to serve as the required separate facilities. Family or assisted-use toilet facilities shall not be required to be identified for exclusive use by either sex as required by Section 2902.4.

2902.2.2 Gender-neutral facilities. Gender-neutral toilet facilities, when provided, shall be in accordance with the following:

1. There is no reduction in the number of fixtures required to be provided for male and female in the type of occupancy and in the minimum number shown in Table 2902.1.
2. Gender-neutral multiuser toilet rooms shall have water closets and urinals located in toilet compartments in accordance with ICC A117.1.
3. Gender-neutral multiuser toilet room water closet and urinal compartments shall have full-height walls and a door enclosing the fixture to ensure privacy.
4. Gender-neutral toilet room water closet and urinal compartment doors shall be securable from within the compartment.
5. Gender-neutral toilet rooms provided for the use of multiple occupants, the egress door from the room shall not be lockable from the inside of the room.

6. Compartments shall not be required in a single-occupant toilet room with a lockable door.

2902.3 Employee and public toilet facilities. Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization. The number of plumbing fixtures located within the required toilet facilities shall be provided in accordance with Section 2902.1 for all users. Employees shall be provided with toilet facilities in all occupancies. Employee toilet facilities shall either be separate or combined employee and public toilet facilities.

EXCEPTION: Public toilet facilities shall not be required in:

1. Open or enclosed parking garages where there are no parking attendants.
2. Structures and tenant spaces intended for quick transactions, including takeout, pickup and drop-off, having a public access area less than or equal to 300 square feet (28 m²).
3. Fixed guideway transit and passenger rail systems constructed in accordance with Section 3112.

~~((2902.3.2))~~ **2902.3.3 Location of toilet facilities in occupancies other than malls.** In occupancies other than covered and open mall buildings, the required *public* and employee toilet facilities shall be located in each building not more than one story above or below the space required to be provided with toilet facilities, or conveniently in a building adjacent thereto on the same property, and the path of travel to such facilities shall not exceed a distance of 500 feet (152 m).

EXCEPTION: The location and maximum distances of travel to required employee facilities in factory and industrial occupancies are permitted to exceed that required by this section, provided that the location and maximum distance of travel are *approved*.

~~((2902.3.3 Location of toilet facilities in malls. In covered and open mall buildings, the required *public* and employee toilet facilities shall be located not more than one story above or below the space required to be provided with toilet facilities, and the path of travel to such facilities shall not exceed a distance of 300 feet (91,440 mm). In mall buildings, the required facilities shall be based on total square footage (m²) within a covered mall building or within the perimeter line of an open mall building, and facilities shall be installed in each individual store or in a central toilet area located in accordance with this section. The maximum distance of travel to central toilet facilities in mall buildings shall be measured from the main entrance of any store or tenant space. In mall buildings, where employees' toilet facilities are not provided in the individual store, the maximum distance of travel shall be measured from the employees' work area of the store or tenant space.~~

~~**2902.3.4 Pay facilities.** Where pay facilities are installed, such facilities shall be in excess of the required minimum facilities. Required facilities shall be free of charge.~~

~~**2902.3.5 Door locking.** Where a toilet room is provided for the use of multiple occupants, the egress door for the room shall not be lockable from the inside of the room. This section does not apply to family or assisted-use toilet rooms.~~

~~**2902.3.6 Prohibited toilet room location.** Toilet rooms shall not open directly into a room used for the preparation of food for service to the public.~~

~~**2902.4 Signage.** Required public facilities shall be provided with signs that designate the sex for separate facilities or indicate gender neutral facilities. Signs shall be readily visible and located near the entrance to each toilet facility. Signs for accessible toilet facilities shall comply with Section 1111.~~

~~**2902.4.1 Directional signage.** Directional signage indicating the route to the public toilet facilities shall be posted in a lobby, corridor, aisle or similar space, such that the sign can be readily seen from the main entrance to the building or tenant space.))~~

2902.5 Drinking fountain location. Drinking fountains shall not be required to be located in individual tenant spaces provided that public drinking fountains are located within a distance of travel of 500 feet of the most remote location in the tenant space and not more than one story above or below the tenant space. Where the tenant space is in a covered or open mall, such distance shall not exceed 300 feet. Drinking fountains shall be located on an accessible route. Drinking fountains shall not be located in toilet rooms.

2902.5.1 Drinking fountain number. Occupant loads over 30 shall have one drinking fountain for the first 150 occupants, then one per each additional 500 occupants.

EXCEPTIONS:

1. Sporting facilities with concessions serving drinks shall have one drinking fountain for each 1000 occupants.
2. A drinking fountain need not be provided in a drinking or dining establishment.

2902.5.2 Multistory buildings. Drinking fountains shall be provided on each floor having more than 30 occupants in schools, dormitories, auditoriums, theaters, offices and public buildings.

2902.5.3 Penal institutions. Penal institutions shall have one drinking fountain on each cell block floor and one on each exercise floor.

2902.5.4 Bottle filling stations. Bottle filling stations shall be provided in accordance with Sections 2902.5.4.1 through 2902.5.4.3.

2902.5.4.1 Group E occupancies. In Group E occupancies with an occupant load over 30, a minimum of one bottle filling station shall be provided on each floor. This bottle filling station may be integral to a drinking fountain.

2902.5.4.2 Substitution. In all occupancies that require more than two drinking fountains per floor or secured area, *bottle filling stations* shall be permitted to be substituted for up to 50 percent of the required number of drinking fountains.

2902.5.4.3 Accessibility. At least one of the required bottle filling stations shall be located in accordance with Section 309 ICC A117.1.

~~((2902.6))~~ **2902.7 Dwelling units.** Dwelling units shall be provided with a kitchen sink.

~~(2902.7)~~ **2902.8 Water.** Each required sink, lavatory, bathtub and shower stall shall be equipped with hot and cold running water necessary for its normal operation.

SECTION 2903—RESERVED.

SECTION 2904—RESERVED.

Table 2902.1
Minimum Number of Required Plumbing Fixtures^a
 (See Sections 2902.2 and 2902.3)

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
1	Assembly	A-1 ^d	Theaters and other buildings for the performing arts and motion pictures	1 per 125	1 per 65	1 per 200		—
		A-2 ^d	Nightclubs, bars, taverns, dance halls and buildings for similar purposes	1 per 40	1 per 40	1 per 75		—
			Restaurants, banquet halls and food courts	1 per 75	1 per 75	1 per 200		—
		A-3 ^d	Auditoriums without permanent seating, art galleries, exhibition halls, museums, lecture halls, libraries, arcades and gymnasiums	1 per 125	1 per 65	1 per 200		—
			Passenger terminals and transportation facilities	1 per 500	1 per 500	1 per 750		—
			Places of worship and other religious services	1 per 150	1 per 75	1 per 200		—
		A-4	Coliseums, arenas, skating rinks, pools, and tennis courts for indoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150	
A-5	Stadiums amusement parks, bleachers and grandstands for outdoor sporting events and activities	1 per 75 for first 1,500 and 1 per 120 for remainder exceeding 1,500	1 per 40 for first 1,520 and 1 per 60 for remainder exceeding 1,520	1 per 200	1 per 150		—	
2	Business	B	Buildings for the transaction of business, professional services, other services involving merchandise, office buildings, banks, light industrial and similar uses	1 per 25 for first 50 and 1 per 50 for the remainder exceeding 50		1 per 40 for first 80 and 1 per 80 for remainder exceeding 80		—
3	Educational	E ^e	Educational facilities	1 per 35	1 per 25	1 per 85	1 per 50	—
4	Factory and industrial	F-1 and F-2	Structures in which occupants are engaged in work fabricating, assembly or processing of products or materials	1 per 100		1 per 100		Check State (UPC)
5	Institutional	I-1	Residential care	1 per 10		1 per 10		1 per 8
		I-2	Hospitals, ambulatory nursing home care recipient ^b	1 per room ^c		1 per room ^c		1 per 15
			Employees, other than residential care ^b	1 per 25		1 per 35		—
			Visitors other than residential care	1 per 75		1 per 100		—
		I-3	Prisons ^b	1 per cell		1 per cell		1 per 15

No.	Classification	Occupancy	Description	Water Closets		Lavatories		Bathubs/ Showers
				Male	Female	Male	Female	
			Reformatories, detention centers and correctional centers ^b	1 per 15		1 per 15		1 per 15
			Employees ^b	1 per 25		1 per 35		—
		I-4	Adult day care and child day care	1 per 15		1 per 15		1
6	Mercantile	M	Retail stores, service stations, shops, salesrooms, markets and shopping centers	1 per 500		1 per 750		—
7	Residential	R-1	Hotels, motels, boarding houses (transient)	1 per sleeping unit		1 per sleeping unit		1 per sleeping unit
		R-2	Dormitories, fraternities, sororities and boarding houses (not transient)	1 per 10		1 per 10		1 per 8
			Apartment house	1 per dwelling unit		1 per dwelling unit		1 per dwelling unit
		R-3	One- and two-family dwellings	1 per dwelling unit		1 per 10		1 per dwelling unit
			Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
		R-4	Congregate living facilities with 16 or fewer persons	1 per 10		1 per 10		1 per 8
8	Storage	S-1 S-2	Structures for the storage of goods, warehouses, storehouses and freight depots, low and moderate hazard	1 per 100		1 per 100		Check State (UPC)

- a. The fixtures shown are based on one fixture being the minimum required for the number of persons indicated or any fraction of the number of persons indicated. The number of occupants shall be determined by this code, except with respect to Group E occupancies the provisions of note "e" shall apply.
- b. Toilet facilities for employees shall be separate from facilities for inmates or care recipients.
- c. A single-occupant toilet room with one water closet and one lavatory serving not more than two adjacent patient sleeping units shall be permitted where such room is provided with direct access from each patient sleeping unit and with provisions for privacy.
- d. The occupant load for seasonal outdoor seating and entertainment areas shall be included when determining the minimum number of facilities required.
- e. For Group E occupancies: The number of occupants shall be determined by using a calculation of 100 square feet gross building area per student for the minimum number of plumbing fixtures.

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-3304 Section 3304—Site work.

~~((3304.5.1))~~ **3304.2 Fire watch during construction.** Where required by the fire code official, a fire watch shall be provided during nonworking hours for new construction that exceeds 40 feet (12,192 mm) in height above the lowest adjacent grade.

- EXCEPTIONS:
1. New construction that is built under the IRC.
 2. New construction less than 5 stories and 50,000 square feet per story.

NEW SECTION

WAC 51-50-480810 Energy conservation.

810.1 Minimum requirements. Level 2 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11C WAC).

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

WAC 51-50-480811 ~~((Energy conservation-))~~ Reserved.

~~((811.1 Minimum requirements. Level 2 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11 WAC-))~~

AMENDATORY SECTION (Amending WSR 20-01-090, filed 12/12/19, effective 7/1/20)

WAC 51-50-480907 ~~((Reserved-))~~ Energy conservation.

907.1 Minimum requirements. Level 3 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11C WAC).

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

WAC 51-50-480908 ((Energy conservation)) Reserved.

~~((908.1 Minimum requirements. Level 3 alterations to existing buildings or structures shall comply with the Washington State Energy Code (chapter 51-11 WAC).))~~

WSR 21-06-041

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 24, 2021, 2:00 p.m., effective April 1, 2021]

Effective Date of Rule: April 1, 2021.

Purpose: Chapter 246-492 WAC, Vital statistics data release, the department of health (department) adopted a new chapter of rule to prescribe the direct and indirect identifiers for birth and fetal death records that the department will use to disclose vital records information to researchers, government agencies conducting nonresearch public health work, and the public; establish a formalized procedure for requesting vital records data; and create new fees for data files, analysis, and data requests.

Citation of Rules Affected by this Order: New WAC 246-492-001, 246-492-010, 246-492-020, 246-492-100, 246-492-200, 246-492-300, 246-492-400, 246-492-500, and 246-492-990.

Statutory Authority for Adoption: ESSB 5332 (chapter 148, Laws of 2019).

Adopted under notice filed as WSR 20-23-097 on November 17, 2020.

Changes Other than Editing from Proposed to Adopted Version: WAC 246-492-001 was amended to add media organizations to the purpose and scope.

WAC 246-492-300 was amended to add new subsection (7) to clarify that the department of health must comply with chapter 42.48 RCW regarding requests for research on live human subjects.

WAC 246-492-300(8) was amended to provide clarity to the rule without changing the effect.

WAC 246-492-990 was amended to reduce the standard data file fee for preliminary standard data files, clarify the annual final standard data file fee, and waive the annual final standard file fee if a requestor has received all preliminary data files for a single data set for a single calendar year.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 0, Repealed 0.

Date Adopted: February 23, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

Chapter 246-492 WAC

VITAL STATISTICS DATA RELEASE

NEW SECTION

WAC 246-492-001 Vital statistics data release—Purpose and scope. Vital records data is used by government agencies, tribes, researchers, private entities, media organizations, and individuals for assessment, public health surveillance, and epidemiological study. The rules in this chapter provide the requirements for requesting vital records data from the department.

- (1) The rules establish the following:
 - (a) Application submission requirements;
 - (b) Process for agency to approve or deny requests;
 - (c) Direct and indirect identifiers for birth and fetal death records; and
 - (d) Fees for data files, analysis, and data requests.
- (2) The rules in this chapter do not address the process to request certificates or informational copies of vital records, which has been promulgated in chapter 246-491 WAC.

NEW SECTION

WAC 246-492-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

- (1) "Analytic services" means a service provided by the department that includes working with vital records data in order to disseminate requested information to customers. This service includes, but is not limited to, data analysis for calculating and providing specific counts, rates, and other statistics; building and distributing aggregate reports; linkage of data; and producing record level data files and subsets of data files for customers.
- (2) "Custom data request" means a specialized vital records data request or data file created and released by the department. Custom data request does not mean standard data file.
- (3) "Data" means a data file containing multiple records.
- (4) "Department" means the department of health.
- (5) "Direct identifier" means a single data element that identifies an individual person.

(6) "Fetal death" means any product of conception that shows no evidence of life, such as breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles after complete expulsion or extraction from the individual who gave birth that is not an induced termination of pregnancy and:

(a) Has completed twenty or more weeks of gestation as calculated from the date the last menstrual period of the individual who gave birth began, to the date of expulsion or extraction; or

(b) Weighs three hundred fifty grams or more, if weeks of gestation are not known.

(7) "General data inquiry request" means a request for information that can be answered with use of vital records data, but without the need for extensive investigation, analysis, report building or data file production.

(8) "Government agencies" includes state boards, commissions, committees, departments, educational institutions, or other state agencies which are created by or pursuant to statute, other than courts and the legislature; county or city agencies, United States federal agencies, and federally recognized tribes and tribal organizations.

(9) "Human research review board" is a standing institutional review board operating under chapter 42.48 RCW.

(10) "Indirect identifier" means a single data element that on its own does not identify an individual person, but when combined with other indirect identifiers can be used to identify an individual person.

(11) "Individual" means a natural person.

(12) "Infant death" means a death of a child under one year of age.

(13) "Public health purpose" means a purpose that seeks to support or evaluate public health activities, which include, but are not limited to, health surveillance; identifying population health trends; health assessments; implementing educational programs; program evaluation; developing and implementing policies; determining needs for access to services and administering services; creating emergency response plans; promoting healthy lifestyles; and preventing, detecting, and responding to infectious diseases, injury, and chronic and inheritable conditions. Public health purpose does not include research as defined in this section.

(14) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes.

(15) "Secretary" means the secretary of the department of health.

(16) "Standard data file" means routine statewide vital records data created and released by the department. Standard data file does not mean specialized custom data requests and data files.

(17) "State" means Washington state unless otherwise specified.

(18) "State registrar" means the person appointed by the secretary to administer the vital records system under RCW 70.58A.030.

(19) "Vital record" or "record" means a report of a vital life event that has been registered and supporting documentation.

(20) "Vital statistics" means the aggregated data derived from vital records, including related reports, and supporting documentation.

NEW SECTION

WAC 246-492-020 Direct and indirect identifiers. (1)

The department may disclose vital records information for persons named in any birth, death, or fetal death record in accordance with chapter 70.58A RCW and this chapter.

(2) The department may aggregate data from birth and fetal death records, and may release such aggregated data with either direct identifiers or indirect identifiers, or both, in accordance with chapter 70.58A RCW and this chapter.

(3) Birth record direct and indirect identifiers are as follows:

Birth Record Item	Direct or Indirect Identifier
Child Name	Direct Identifier
Child Date of Birth	Indirect Identifier
Child Time of Birth	Indirect Identifier
Child Sex	Indirect Identifier
Type of Birthplace	Indirect Identifier
Planned Birthplace, if different	Indirect Identifier
Name of Facility	Direct Identifier
County of Birth	Indirect Identifier
City of Birth	Indirect Identifier
Mother/Parent Name	Direct Identifier
Mother/Parent Date of Birth	Indirect Identifier
Mother/Parent Birthplace	Indirect Identifier
Mother/Parent Social Security Number	Direct Identifier
Do you want to get a Social Security Number for your child?	Indirect Identifier
Mother/Parent Residence: Number and Street	Direct Identifier
Mother/Parent Residence: City/County	Indirect Identifier
Mother/Parent Residence: Country	Indirect Identifier
Mother/Parent Residence: State	Indirect Identifier
Mother/Parent Residence: Zip Code	Indirect Identifier
Mother/Parent Tribal Reservation	Indirect Identifier
Mother/Parent Residence Inside City Limits?	Indirect Identifier

Birth Record Item	Direct or Indirect Identifier
Mother/Parent Length at Current Residence	Indirect Identifier
Mother/Parent Telephone Number	Direct Identifier
Mother/Parent Mailing Address: Number and Street	Direct Identifier
Mother/Parent Mailing Address: Country	Indirect Identifier
Mother/Parent Mailing Address: State	Indirect Identifier
Mother/Parent Mailing Address: City	Indirect Identifier
Mother/Parent Mailing Address: Zip Code	Indirect Identifier
Mother/Parent Occupation	Indirect Identifier
Mother/Parent Industry	Indirect Identifier
Mother/Parent Education Level	Indirect Identifier
Mother/Parent Hispanic Origin?	Indirect Identifier
Mother/Parent Race	Indirect Identifier
Mother/Parent Current Height	Indirect Identifier
Mother/Parent Prepregnancy Weight	Indirect Identifier
Were WIC benefits utilized during pregnancy?	Indirect Identifier
Cigarette Smoking Before and During Pregnancy	Indirect Identifier
Mother/Parent Marital Status	Indirect Identifier
Father/Parent Name	Direct Identifier
Father/Parent Date of Birth	Indirect Identifier
Father/Parent Birthplace	Indirect Identifier
Father/Parent Social Security Number	Direct Identifier
Father/Parent Occupation	Indirect Identifier
Father/Parent Industry	Indirect Identifier
Father/Parent Education Level	Indirect Identifier
Father/Parent Hispanic Origin?	Indirect Identifier
Father/Parent Race	Indirect Identifier
Date of First Prenatal Care Visit	Indirect Identifier
Date of Last Prenatal Care Visit	Indirect Identifier
Total Number of Prenatal Visits During Pregnancy	Indirect Identifier
Number of Previous Live Births	Indirect Identifier
Date of Last Live Birth	Indirect Identifier

Birth Record Item	Direct or Indirect Identifier
Number of Pregnancy Outcomes	Indirect Identifier
Date of Last Other Pregnancy Outcomes	Indirect Identifier
Date Last Normal Menses Began	Indirect Identifier
Mother/Parent Weight at Delivery	Indirect Identifier
Was mother/parent transferred to higher level care for maternal medical or fetal indications for delivery?	Indirect Identifier
Principle Source of Payment for Delivery	Indirect Identifier
Birth Weight	Indirect Identifier
Infant Head Circumference	Indirect Identifier
Obstetric Estimate of Gestation	Indirect Identifier
Apgar Score	Indirect Identifier
Plurality	Indirect Identifier
Birth Order	Indirect Identifier
Was infant transferred within 24 hours of delivery?	Indirect Identifier
Is infant living at the time of report?	Indirect Identifier
Is infant being breastfed?	Indirect Identifier
Risk Factors in this Pregnancy	Indirect Identifier
Infections Present and/or Treated During Pregnancy	Indirect Identifier
Maternal Morbidity	Indirect Identifier
Method of Delivery	Indirect Identifier
Obstetric Procedures	Indirect Identifier
Onset of Labor	Indirect Identifier
Characteristics of Labor and Delivery	Indirect Identifier
Abnormal Conditions of the Newborn	Indirect Identifier
Congenital Anomalies of the Newborn	Indirect Identifier
Attendant Name	Direct Identifier
Attendant Title	Indirect Identifier
NPI of person delivering the baby	Direct Identifier
Certifier Name	Direct Identifier
Certifier Title	Indirect Identifier
Date Certified	Indirect Identifier

(4) Fetal death record direct and indirect identifiers are as follows:

Fetal Death Record Item	Direct or Indirect Identifier
Fetus Name	Direct Identifier
Fetus Sex	Indirect Identifier
Fetus Date of Delivery	Indirect Identifier
Fetus Time of Delivery	Indirect Identifier
Type of Birthplace	Indirect Identifier
Name of Facility	Direct Identifier
Facility ID	Indirect Identifier
Location of Delivery	Direct Identifier
Zip Code of Delivery	Indirect Identifier
County of Delivery	Indirect Identifier
Mother/Parent Name	Direct Identifier
Mother/Parent Date of Birth	Indirect Identifier
Mother/Parent Birthplace	Indirect Identifier
Mother/Parent Residence: Number and Street	Direct Identifier
Mother/Parent Residence: City/County	Indirect Identifier
Mother/Parent Residence: Country	Indirect Identifier
Mother/Parent Residence: State	Indirect Identifier
Mother/Parent Residence: Zip Code	Indirect Identifier
Mother/Parent Tribal Reservation	Indirect Identifier
Mother/Parent Residence Inside City Limits?	Indirect Identifier
Mother/Parent Length at Current Residence	Indirect Identifier
Father/Parent Name	Direct Identifier
Father/Parent Date of Birth	Indirect Identifier
Father/Parent Birthplace	Indirect Identifier
Name of Person Completing Cause of Death	Direct Identifier
Title of Person Completing Cause of Death	Indirect Identifier
Date Signed by Person Completing Cause of Death	Indirect Identifier
Name of Person Delivering Fetus	Direct Identifier
Title of Person Delivering Fetus	Indirect Identifier
NPI of Person Delivering Fetus	Direct Identifier
Method of Disposition	Indirect Identifier

Fetal Death Record Item	Direct or Indirect Identifier
Date of Disposition	Indirect Identifier
Place of Disposition	Indirect Identifier
Location of Disposition	Indirect Identifier
Name of Funeral Facility	Indirect Identifier
Address of Funeral Facility	Indirect Identifier
Initiating Cause/Condition	Indirect Identifier
Other Significant Causes or Conditions	Indirect Identifier
Estimated Time of Fetal Death	Indirect Identifier
Was an autopsy performed?	Indirect Identifier
Was a histological placental examination performed?	Indirect Identifier
Were autopsy or histological placental examination results used in determining the cause of death?	Indirect Identifier
Date Received by County Registrar	Indirect Identifier
Weight of Fetus	Indirect Identifier
Obstetric Estimate of Gestation	Indirect Identifier
Plurality	Indirect Identifier
Birth Order	Indirect Identifier
Mother/Parent Education	Indirect Identifier
Mother/Parent of Hispanic Origin?	Indirect Identifier
Mother/Parent Race	Indirect Identifier
Mother/Parent Occupation	Indirect Identifier
Mother/Parent Industry	Indirect Identifier
Mother/Parent Marital Status	Indirect Identifier
Mother/Parent Height	Indirect Identifier
Did mother/parent get WIC food for herself during this pregnancy?	Indirect Identifier
Mother/Parent Prepregnancy Weight	Indirect Identifier
Mother/Parent Weight at Delivery	Indirect Identifier
Date Last Normal Menses Began	Indirect Identifier
Date of First Prenatal Care Visit	Indirect Identifier
Date of Last Prenatal Care Visit	Indirect Identifier
Total Number of Prenatal Visits for this Pregnancy	Indirect Identifier
Number of Previous Live Births	Indirect Identifier

Fetal Death Record Item	Direct or Indirect Identifier
Number of other Pregnancy Outcomes	Indirect Identifier
Cigarette Smoking Before and During Pregnancy	Indirect Identifier
Was mother transferred to higher level care for maternal medical or fetal indications for delivery?	Indirect Identifier
Father/Parent Education	Indirect Identifier
Father/Parent Hispanic Origin	Indirect Identifier
Father/Parent Race	Indirect Identifier
Father/Parent Occupation	Indirect Identifier
Father/Parent Industry	Indirect Identifier
Risk Factors in this Pregnancy	Indirect Identifier
Method of Delivery	Indirect Identifier
Congenital Anomalies of the Fetus	Indirect Identifier
Maternal Morbidity	Indirect Identifier
Infections Present and/or Treated During this Pregnancy	Indirect Identifier

(5) The department may release data files linked with birth or fetal death record items. When data files are released by the department in a form or format that is linked with birth or fetal death data, the linked data will be treated with the same restrictions as the most restrictive record item in the linked birth and fetal death data files.

(6) The department may calculate additional data items from the birth or fetal death record items listed in subsections (3) and (4) of this section. These calculated data items shall maintain the same direct or indirect identifier categorization as the most restrictive record items listed in subsections (3) and (4) of this section from which the department derived the additional calculated data.

(7) The department may deidentify birth or fetal death record items listed in subsections (3) and (4) of this section that are direct identifiers. The department may release such deidentified items as an indirect identifier.

(8) The department may limit or restrict the release of vital record items in data files to maintain confidentiality standards and protect the information for persons named in any birth, death, or fetal death record.

NEW SECTION

WAC 246-492-100 Requests for birth or fetal death record data that contains direct identifiers for research purposes. (1) A researcher requesting birth or fetal death record data that contains direct identifiers for research purposes must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to a researcher requesting data from the department until all

the requirements of this section have been completed to the satisfaction of the state registrar.

(2) A researcher submitting a data request under this section must submit all of the following to the department:

(a) A completed records request form associated with the human research review board application that contains all the information required in subsection (3) of this section;

(b) Approval from the human research review board of the research proposal for which the data is being requested;

(c) A signed confidentiality agreement with the department; and

(d) All fees required by WAC 246-492-990.

(3) A researcher submitting a data request under this section must submit all of the following information on the records request form provided by the human research review board to the state registrar for review and approval:

(a) Project title;

(b) Principal investigator name, title, and contact information (telephone number and email address);

(c) Study abstract that includes:

(i) Description of the proposed research study and objectives;

(ii) Research study design and analysis plan;

(iii) Duration of research study;

(iv) The plan for dissemination of the results and a certification that the researcher will abide by the department's small numbers guidelines in the dissemination of results; and

(v) A plan for the return or destruction of the information at the conclusion of the research study.

(d) Vital records data elements needed to complete the research study;

(e) Years of the requested data; and

(f) Geographic area of interest of the research study.

(4) The state registrar may request additional information regarding the research proposal. If additional information is requested, the researcher must submit the information within thirty days of the state registrar's request or the request for data may be denied.

(5) If the researcher submitting a data request under this section receives an exempt determination letter from the human research review board, the researcher may:

(a) If the researcher is a governmental agency and will use the data for a public health purpose, comply with the provisions of WAC 246-492-200; or

(b) Submit a request to receive data pursuant to WAC 246-492-300.

(6) The state registrar may deny a request for data for research purposes if the researcher submitting a data request under this section fails to meet the requirements of this section or chapter 70.58A RCW, or for the reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the researcher may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-200 Requests from government agencies for birth and fetal death record data that contains direct identifiers for nonresearch public health purposes.

(1) A government agency requesting birth and fetal death record data that contains direct identifiers for nonresearch public health purposes must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to a government agency requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the state registrar.

(2) A government agency submitting a data request under this section from the department for nonresearch public health purposes must submit all of the following to the department in the form or format required by the state registrar:

(a) A completed application on the form provided by the department;

(b) A signed data sharing agreement with the department that conforms with WAC 246-492-400;

(c) All information required in subsection (3) of this section; and

(d) All fees required by WAC 246-492-990.

(3) A government agency submitting a data request under this section from the department for nonresearch public health purposes must submit to the state registrar all of the following information:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and organization privacy officer;

(b) Purpose or intended use of the data being requested;

(c) Justification of how the purpose or intended use of the data meets the definition of a public health purpose;

(d) Length of time and frequency of the data being requested;

(e) State if any contact with subjects is proposed, provide justification of why and how this achieves the public health purpose, and the methods that will be used for contacting subjects;

(f) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information, including stored information;

(g) Provision for return or destruction of the information at the conclusion of use;

(h) Geographic area of interest;

(i) Names and titles of all persons who will have access to the data;

(j) The plan for use of the data and certification to abide by the department's small numbers guidelines;

(k) Vital records data elements needed to achieve the public health purpose; and

(l) Years of the requested data.

(4) The state registrar may request additional information regarding the request for birth and fetal death record data for public health purposes. If additional information is requested, the government agency must submit the information within thirty days of the state registrar's request or the request for data may be denied.

(5) If the state registrar determines the request for data submitted pursuant to this section is in fact for research pur-

poses, the state registrar will require the government agency to comply with the provisions of WAC 246-492-100.

(6) If the state registrar suspects or is unsure if the request for data submitted pursuant to this section is for research purposes, the state registrar may require the government agency to comply with the provisions of WAC 246-492-100.

(7) The state registrar may deny a request for data for nonresearch public health purposes if the government agency fails to meet the requirements of this section or chapter 70.58A RCW, or for the reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the government agency may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-300 Requests from individuals or entities for birth and fetal death data that contains indirect identifiers, infant death data, death data, or marriage and divorce data. (1) This section applies to the following data requests:

(a) Birth and fetal death data that contains only indirect identifiers;

(b) Infant death data that contains indirect identifiers;

(c) Death data files; and

(d) Marriage and divorce data files.

(2) All requests for data under this section must comply with the requirements of chapter 70.58A RCW and this section. The department will not release data to an individual or entity requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the state registrar.

(3) The data released pursuant to this section will only be in the data file format prescribed by the state registrar.

(4) An individual or entity submitting a data request under this section must submit all of the following on the form or in the format required by the state registrar:

(a) A completed application on the form provided by the department;

(b) A signed data sharing agreement with the department that conforms with WAC 246-492-400;

(c) All information required in subsection (5) of this section; and

(d) All fees required by WAC 246-492-990.

(5) An individual or entity submitting a data request under this section must submit all of the following information to the state registrar:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and the organization privacy officer;

(b) Purpose or intended use of the data being requested;

(c) Length of time data is needed or length of the project;

(d) For requests of death, marriage, or divorce data only: State if any contact with subjects is proposed and provide justification why;

(e) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information including storage of data, and provision for return or destruction of the information at the conclusion of use;

(f) Geographic area of interest;

(g) Names and titles of all persons who will have access to the data;

(h) The plan for dissemination of the results and certification to abide by the department's small numbers guidelines; and

(i) Type of vital records data and years requested.

(6) The state registrar may request additional information regarding the request for data under this section. If additional information is requested, the individual or entity must submit the information within thirty days of the state registrar's request or the request for data may be denied.

(7) To comply with chapter 42.48 RCW, the state registrar may require the requesting individual or entity to comply with provisions of WAC 246-492-100, if the state registrar determines the request for data submitted pursuant to this section may be used for research purposes on live human subjects.

(8) The individual or entity must download the data from the secured file transfer site within two weeks. If after the two weeks, the requestor has not retrieved the data, the individual or entity must submit a new request and payment.

(9) The state registrar may permit the local deputy registrar to release death data to a requesting entity in a format prescribed by the state registrar upon a signed data sharing agreement with the department. A local deputy registrar permitted by the state registrar to release death data shall require the entity receiving the death data from the local deputy registrar to sign a data sharing agreement with the local deputy registrar. The local deputy registrar can only release the following information:

(a) Decedent's name;

(b) Date of death;

(c) Date of birth;

(d) Date filed;

(e) Age of decedent;

(f) Gender of decedent;

(g) Decedent's residence city and state; and

(h) County of death.

(10) The state registrar may deny a request if the individual or entity fails to meet the requirements of this section or chapter 70.58A RCW, or for reasons permitted by chapter 70.58A RCW. If the state registrar denies a request under this section, the individual or entity may appeal the decision by requesting a brief adjudicative proceeding pursuant to WAC 246-10-501 through 246-10-505, and RCW 70.58A.550.

NEW SECTION

WAC 246-492-400 Vital statistics data sharing agreements. (1) All written data sharing agreements with the department for the release of vital records data must comply with the requirements of chapter 70.58A RCW and this section.

(2) A data sharing agreement with the department is required for the following:

(a) Government agencies requesting birth and fetal death record data that contains direct identifiers for nonresearch public health purposes;

(b) Individuals or entities requesting birth and fetal death record data that contains only indirect identifiers;

(c) Individuals or entities requesting infant death data that contains indirect identifiers;

(d) Individuals or entities requesting death, marriage, or divorce record data; and

(e) Government agencies requesting vital records in the conduct of official duties as permitted by chapter 70.58A RCW.

(3) The department may use standard form data sharing agreements for all data requests, consistent with the provisions of this section and chapter 70.58A RCW. If the department elects to use a standard form data sharing agreement for data requests, the requestor shall sign the standard form data sharing agreement prepared by the department pursuant to this subsection. The department will not negotiate the terms of standard form data sharing agreements with a requestor, except for circumstances in subsection (4) of this section.

(4) For data sharing agreements with government agencies, the department may deviate from the standard form data sharing agreement if the government agency is legally prohibited from signing provisions of the standard form data sharing agreement due to constitutional or other statutory provisions. The ultimate decision to modify the standard form data sharing agreement to accommodate a government agency's data request lies solely with the department. The government agency wishing to modify a term of the standard form data sharing agreement under this subsection must submit all of the following to the department in writing:

(a) All of the specific terms of the standard form data sharing agreement that the government agency is legally prohibited from complying with;

(b) An explanation of why the government agency is legally prohibited from complying with the term or terms; and

(c) Citation to the law or rule that prohibits it from complying with the term or terms of the standard form data sharing agreement.

(5) An individual or entity requesting vital records data under this section must comply with all the terms and conditions of the data sharing agreement. If the individual or entity violates the data sharing agreement, then the individual or entity may be guilty of a misdemeanor under RCW 70.58A.-590(1), will result in the immediate termination of the data sharing agreement, and result in denial of vital records data in the future.

NEW SECTION

WAC 246-492-500 Data file production. (1) The department retains the discretion to determine what form or format is most appropriate to provide to a particular requestor. Where the department provides data files on a routine schedule, the department may automate file production. The department may manually produce data files when deemed appropriate by the state registrar. Nothing in this chapter should be deemed to entitle any requestor to receive

data in a particular form or format, and nothing in this chapter should be deemed to require the state registrar to produce the data in a particular form or format.

(2) Where the department provides data files on a routine schedule, the department may, in the discretion of the state registrar, allow a requestor to update their original data request with the department. If the department permits a requestor to update their data request, the requestor must pay the fee required by WAC 246-492-990(5).

NEW SECTION

WAC 246-492-990 Vital statistics data fees. (1) The department shall collect nonrefundable fees as follows:

(a) One hundred seventy-five dollars per preliminary standard data file;

(b) Three hundred fifty dollars per annual final standard data file;

(c) Two hundred dollar flat fee for up to two hours of analytic services or general data inquiry requests;

(d) Any analytic services or general data inquiry requests that exceed two hours, in addition to subsection (1)(b) of this section, will be charged an hourly fee of one hundred dollars; and

(e) Fifty dollars per standard data file for students with proof of valid student status.

(2) For custom data file requests, the department shall collect nonrefundable fees as follows:

(a) Three hundred fifty dollars per data file; and

(b) One hundred dollars per hour to create the custom data file.

(3) For data requests where data files are provided on a routine schedule, the department shall collect nonrefundable fees as follows:

(a) A one-time initial automation program creation fee of one thousand five hundred dollars;

(b) One hundred seventy-five dollars per data file; and

(c) An annual maintenance fee of one thousand five hundred dollars.

(4) If a requestor has received all preliminary data files for a single data set for a single calendar year and has paid the fees for such data sets required by subsection (1)(a) of this section, the department may waive the annual final standard file fee in subsection (1)(b) of this section for the same year and same data set.

(5) For existing data requests with an established automation program in existence at the time of the adoption of the rule, the department may waive the initial automation program creation fee of one thousand five hundred dollars in subsection (3)(a) of this section.

(6) Updates to data requests allowed by WAC 246-492-500(2) will be assessed a fee by the department equivalent to the actual costs incurred by the department in order to update the data request.

(7) The department, at the discretion of the state registrar, may waive fees for data requests for the following:

(a) Requests from state legislators or legislative staff;

(b) Local health jurisdictions receiving standard data files prescribed by the state registrar;

(c) Tribes, tribal organizations within the state, and Indian health service designated tribal epidemiology centers serving tribes within the state, receiving standard data files prescribed by the state registrar; and

(d) Government agencies during a state of emergency, if the data is used for official duties to aid the state of emergency response.

WSR 21-06-042

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed February 24, 2021, 3:28 p.m., effective March 27, 2021]

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

Purpose: The proposed rule replaces "Chemical dependency professional" with "substance use disorder professional." This change aligns with RCW 18.205.020.

Citation of Rules Affected by this Order: Amending WAC 182-533-0327.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: RCW 18.205.020.

Adopted under notice filed as WSR 21-03-075 on January 19, 2021.

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

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

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

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

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

Date Adopted: February 24, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-12-060, filed 5/26/16, effective 6/26/16)

WAC 182-533-0327 Maternity support services—Professional staff qualifications and interdisciplinary team. (1) MSS providers must use qualified professionals, as specified in this section.

(a) Behavioral health specialists who are currently credentialed, certified, or licensed in Washington by the department of health under chapters 246-809, 246-810, 246-811, and 246-924 WAC as one of the following:

(i) Licensed mental health counselor.

(ii) Licensed independent clinical social worker.

(iii) Licensed social worker.

- (iv) Licensed marriage and family therapist.
- (v) Licensed psychologist.
- (vi) Associate mental health counselor.
- (vii) Associate independent clinical social worker.
- (viii) Associate social worker.
- (ix) Associate marriage and family therapist.
- (x) Certified counselor.
- (xi) Certified ~~((chemical dependency))~~ substance use disorder professional.

(b) Certified dietitians who are currently registered with the commission on dietetic registration and certified by the Washington state department of health under chapter 246-822 WAC.

(c) Community health nurses who are currently licensed as registered nurses in the state of Washington by the department of health under chapter 246-840 WAC.

(d) Community health workers (CHWs) who have a high school diploma or the equivalent and:

- (i) Have a minimum of one year of health care and/or social services experience.
- (ii) Carry out all activities under the direction and supervision of a professional member or supervisor of the MSS interdisciplinary team.
- (iii) Complete a training plan developed by their provider.

(2) The provider's qualified staff must participate in an MSS interdisciplinary team consisting of at least a community health nurse, a certified registered dietitian, a behavioral health specialist, and, at the discretion of the provider, a community health worker.

(a) The interdisciplinary team must work together to address risk factors identified in a client's care plan.

(b) Each qualified staff member acting within her/his area of expertise must address the variety of client needs identified during the maternity cycle.

(c) An MSS interdisciplinary team case conference is required at least once prenatally for clients who are entering MSS during pregnancy, and are eligible for the maximum level of service. Using clinical judgment and the client's risk factors, the provider may decide which interdisciplinary team members to include in case conferencing.

(3) All Indian health programs, tribes, and any MSS provider within a county with fewer than fifty-five medicaid births per year are required to have at least one MSS interdisciplinary team member, as described in subsection (1) of this section:

- (a) A behavioral health specialist;
- (b) A registered dietitian; or
- (c) A community health nurse.

WSR 21-06-046

PERMANENT RULES

DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed February 25, 2021, 10:12 a.m., effective March 28, 2021]

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

Purpose: WAC 246-847-051(4) and 246-847-190, enforcement of AIDS education and training rules. The occupational therapy practice board is repealing these requirements in response to ESHB 1551 (chapter 76, Laws of 2020).

Citation of Rules Affected by this Order: Repealing WAC 246-847-190; and amending WAC 246-847-051.

Statutory Authority for Adoption: RCW 18.59.130.

Other Authority: ESHB 1551.

Adopted under notice filed as WSR 20-24-046 on November 23, 2020.

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

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

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

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

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

Date Adopted: January 22, 2021.

Sunny Anderson, OTA
Chair

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-051 Military equivalence. A graduate of a United States military occupational therapy assistant course that is substantially equivalent to the requirements in chapters 18.59 RCW and 246-847 WAC may apply for licensure in this state when the following additional requirements have been submitted to the department:

(1) Proof of completion of the military's residency program included in their education program in lieu of the field work required under WAC 246-847-150;

(2) Proof of successfully passing the national certification examination as specified in WAC 246-847-080; and

(3) Proof of completion of the online jurisprudence examination for occupational therapy with a passing score of one hundred percent(~~(= and~~

~~(4) An attestation to the completion of seven hours of HIV/AIDS awareness training as specified in chapter 246-12 WAC, Part 8).~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-847-190 AIDS education and training.

WSR 21-06-047
PERMANENT RULES
DEPARTMENT OF HEALTH

(Occupational Therapy Practice Board)

[Filed February 25, 2021, 10:29 a.m., effective March 28, 2021]

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

Purpose: WAC 246-847-125 Applicants currently licensed in other states or territories, the occupational therapy practice board amended the rule to clarify requirements for continued competency for occupational therapist and occupational therapy assistant out-of-state applicants that have been licensed for less than two years.

Citation of Rules Affected by this Order: Amending WAC 246-847-125.

Statutory Authority for Adoption: RCW 18.59.130.

Adopted under notice filed as WSR 20-24-043 on November 23, 2020.

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4883, fax 360-236-2901, TTY 711, email kathy.weed@doh.wa.gov, website doh.wa.gov.

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

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

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

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

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

Date Adopted: January 22, 2021.

Sunny Anderson, OTA
 Chair

AMENDATORY SECTION (Amending WSR 18-09-032, filed 4/11/18, effective 8/1/18)

WAC 246-847-125 Applicants currently licensed in other states or territories. ~~((Any))~~ An initial applicant currently licensed to practice as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States as provided in RCW 18.59.070(2), may be licensed by endorsement. An applicant ~~((s must))~~ shall comply with the requirements for licensure as specified in chapters 18.59 RCW and 246-847 WAC and submit proof of:

(1) Current licensure from another United States jurisdiction;

(2) Having passed the examinations as defined in WAC 246-847-080; and

(3) For applicants who have been licensed in another jurisdiction for at least two years, completion of thirty hours

of continued competency within the two-year period immediately preceding ~~((the application))~~ licensure.

WSR 21-06-050
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-16—Filed February 25, 2021, 12:55 p.m., effective March 28, 2021]

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

Purpose: The fish and wildlife commission approved amendatory language that increases the level of oversight and environmental protection required of grazing permits issued by the department of fish and wildlife. This language (1) requires that permits be consistent with WDFW's mission and management objectives, (2) clarifies various requirements of commission review of permits, (3) removes redundant language within the rule, (4) establishes the option of discontinuing permits upon expiration, and (5) adds other minor clarifications to procedure and/or definition.

Citation of Rules Affected by this Order: Amending WAC 220-500-200 Livestock grazing on department of fish and wildlife lands.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.047, and 77.12.210.

Adopted under notice filed as WSR 20-08-099 and 20-18-060 on March 30, 2020, and August 31, 2020, respectively.

Changes Other than Editing from Proposed to Adopted Version: (1) In subsection (1) of the rule proposed in WSR 20-18-060, previous language about "desired ecological condition" was removed. That language was retained in the adopted rule amendments. (2) In subsection (3) of the proposed rule, language requiring permits to be submitted to the commission for review was replaced with language requiring the commission to approve permits before the department could issue them. The adopted amendments eliminated language about commission approval and retained the previous language about commission review. (3) Also in subsection (3) of the proposed rule, previous language authorizing the department to issue permits unless the commission had disapproved them within thirty days was removed. This removal was directly connected with the subject in change (2) above, wherein grazing permits would have needed commission approval rather than commission review. The adopted amendments eliminated the proposed requirement of commission review and retained the language authorizing permit issuance unless the commission disapproves within thirty days. (4) In subsection (4) of the proposed rule, a reference to commission review and approval of certain permits was found. This reference was modified to refer only to commission review in the adopted rule amendments.

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

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

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

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

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

Date Adopted: February 12, 2021.

Larry M. Carpenter, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-500-200 Livestock grazing on department of fish and wildlife lands. All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the (~~Washington Department of Fish and Wildlife, 600 North Capitol Way~~) department at P.O. Box 43200, Olympia, Washington ((~~98501-1091~~)) 98504-3200.

(1) The director is authorized to (~~enter into~~) issue grazing permits when the director determines that (~~the~~) the grazing permits will be consistent with the desired ecological conditions for those lands (~~and~~) and with the department's mission, management objectives, and strategic plan. (~~Except for temporary permits, or permits that are being renewed or renegotiated with existing permittees, grazing permits shall first be submitted to the commission, which may review the permit to ensure it conforms with commission policy. If, within thirty days, the commission has not disapproved the permit, the director shall be deemed authorized to enter into that permit.~~)

(2) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. The director may advertise and sell a permit to use department lands for grazing at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so.

(3) The term of each grazing permit shall be no greater than five years. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee, negotiate a new permit with a new grazing operator, or sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. The director may grant a term longer than five years only with the prior approval of the commission.

(4) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need be charged.

(5) ~~Except for temporary permits lasting less than two weeks, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological condition, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.~~

(6) ~~The director may cancel a permit (a) for noncompliance with the terms and conditions of the permit, or (b) if the area described in the permit is included in a land use plan determined by the agency to be a higher and better use, or (c) if the property is sold or conveyed, or (d) if damage to wildlife or wildlife habitat occurs.~~

(7)) (2) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need necessarily be charged.

(3) With the following three exceptions, grazing permits shall first be submitted to the commission, which may review the permits to ensure that they conform to commission policy:

(a) Temporary permits;

(b) Permits that are being renewed or renegotiated for acreage where the department has permitted nontemporary grazing during the previous ten years; and

(c) Permits that are being issued for acreage acquired by the department within the previous twelve months.

If, within thirty days, the commission has not disapproved a permit, the director shall be deemed authorized to issue that permit.

(4) A permit issued without commission review on acreage acquired by the department within the previous twelve months must not exceed an initial duration of three years, and may not be subsequently reissued before being submitted to the commission for review.

(5) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee or with a new grazing operator, decline to reissue the permit and provide notice of and rationale for nonrenewal by the end of the calendar year of the most recent permitted grazing season, or advertise and sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. No grazing permit shall have a term exceeding five years unless the commission grants prior approval for a longer term.

(6) Except for temporary permits where grazing on department managed lands is allowed for the equivalent of fewer than fourteen total days, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological conditions, fish and wildlife ben-

efits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. Grazing management lands will address ecosystem standards referenced in RCW 77.12.-204. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.

(7) The director may cancel a permit:

(a) For noncompliance with the terms and conditions of the permit;

(b) If the area described in the permit is included in a land use plan determined by the agency to be a higher and better use;

(c) If the property is sold or conveyed; or

(d) If damage to wildlife or wildlife habitat occurs.

Notice of and rationale for cancellation will be provided to the permittee as far in advance as possible.

(8) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses, consistent with applicable seasons and rules, unless such lands have been closed by action of the commission or emergency order (~~(e)~~) by the director.

WSR 21-06-052

PERMANENT RULES

WASHINGTON STATE LOTTERY

[Filed February 25, 2021, 2:19 p.m., effective March 28, 2021]

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

Purpose: Amendments to chapter 315-04 WAC, Licensure procedure, will provide clear and consistent direction in the licensing of lottery retailers for applicants, licensees, and staff. Additionally, amendments to this chapter will streamline processes and align rule language with current practices.

Citation of Rules Affected by this Order: Amending WAC 315-04-010, 315-04-020, 315-04-030, 315-04-060, 315-04-065, 315-04-070, 315-04-085, 315-04-090, 315-04-095, 315-04-130, 315-04-132, 315-04-160, 315-04-170, 315-04-180, 315-04-200, 315-04-205, 315-04-210, and 315-04-230.

Statutory Authority for Adoption: RCW 67.70.040 (1), (3).

Adopted under notice filed as WSR 21-02-048 on December 31, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 18, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 18, Repealed 0.

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 18, Repealed 0.

Date Adopted: February 25, 2021.

Kristi Weeks

Director of Legal Services

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-010 Lottery retailers. The director shall license as lottery retailers such persons who will best serve the public interest and convenience, promote the sale of tickets, and meet the eligibility criteria for application and licensure. "Lottery retailer," formerly known as "licensed agent," means a person licensed by the director and shall have the same meaning as licensed agent. Said lottery retailers shall be authorized to sell such tickets as in the director's opinion will promote the best interests of the commission and produce maximum revenue, but a lottery retailer need not be authorized to sell tickets for all games operated by the director. A lottery retailer or applicant may be required to post a surety bond, security deposit, or ((cash in lieu of a bond)) savings certificate in such terms and conditions as the director may require.

AMENDATORY SECTION (Amending WSR 00-24-100, filed 12/6/00, effective 1/6/01)

WAC 315-04-020 License application eligibility. ~~((Any person may submit an application for licensure except:~~

~~(1) No person may submit an application for licensure who is under 18 years of age.~~

~~(2) No person may submit an application who will))~~ An applicant for a lottery retail license must:

(1) Be at least eighteen years of age.

(2) Not be engaged, or intend to be engaged, exclusively in the business of selling tickets.

(3) ((No person may submit an application for licensure who is)) Not be a member or employee of the commission or who is the spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member or employee of the commission.

(4) ((No person may submit an application who is)) Not be, or ((is)) not be owned or controlled by or affiliated with, a vendor or contractor of the commission or director for the development, operation, management, security or any other aspect of a specific game.

(5) ((No person may submit an application who is not)) Be legally registered and licensed to conduct business in the state of Washington or ((who has not)) have submitted an application for a business license in the state of Washington.

~~((The submission of an application shall not entitle any person to receipt of a license to act as a lottery retailer. An application may be denied for any reason permitted by statute or these rules.))~~

AMENDATORY SECTION (Amending WSR 86-01-060, filed 12/16/85)

WAC 315-04-030 License application. (1) Any eligible person may apply for a license to act as a lottery retailer by first filing with the director ~~((an))~~ a completed application on a form approved by the director, together with any supplement thereto, which shall include, but not be limited to, authorization to investigate criminal history, financial records and financial sources, said forms and supplements to be signed under oath.

(2) The submission of an application shall not entitle any person to receive a license to act as a lottery retailer. An application may be denied for any reason permitted by statute or these rules.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-060 Provisional license. A provisional license temporarily authorizes a lottery retailer to conduct the sale of tickets pending processing of the general license ~~((or application renewal))~~.

(1) The director may issue a provisional license to an applicant for a general license after receipt of a person's fully completed lottery retailer's application, the authorization of a complete personal background check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the general license or ninety days from the date the provisional license is issued, whichever occurs first. The provisional license may be extended by the director for one additional ninety-day period of time.

(2) If the ownership of an existing lottery retailer location changes, the director may issue a provisional license to the new owner. The provisional license shall expire twenty ~~((working))~~ days from the date of issuance if the director has not received the new owner's fully completed lottery retailer's application and authorization of a complete personal background check. If the required materials have been timely received by the director and a preliminary background check has been completed, the provisional license shall expire at the time of issuance of the general license or ninety days from the date the provisional license is issued, whichever occurs first.

AMENDATORY SECTION (Amending WSR 03-11-054, filed 5/19/03, effective 6/19/03)

WAC 315-04-065 Promotional license. (1) The director may issue a promotional license for a marketing promotion for a period not exceeding one hundred eighty days for the sale of scratch and/or ~~((online))~~ draw game tickets.

(2) The director may establish financial and criminal history or other criteria for the issuance of a promotional license based on the duration of the promotion and the variety and quantity of tickets to be sold by the applicant.

(3) The director may waive any license fees or charges in issuing a promotional license and may establish procedures to streamline payments by promotional retailers to the lottery.

(4) Any retailer issued a promotional license must apply for and be issued a provisional/general license as set forth in this chapter 315-04 WAC and lottery policy in order to con-

tinue to sell lottery tickets after the expiration of ~~((his/her))~~ the promotional license.

AMENDATORY SECTION (Amending WSR 87-10-043, filed 5/4/87)

WAC 315-04-070 License charges. (1) A charge of twenty-five dollars shall be assessed for each license application submitted to the lottery. This charge is to ~~((reimburse))~~ offset the lottery's ~~((for))~~ processing costs incident to licensure ~~((and relicensure))~~.

(2) All fees established in this section or other sections of this Title 315 WAC, are not refundable.

AMENDATORY SECTION (Amending WSR 01-12-039, filed 5/30/01, effective 6/30/01)

WAC 315-04-085 Accessibility for persons with disabilities. Pursuant to lottery rules and policy, lottery retailers shall comply with state and federal laws prohibiting discrimination against and requiring accessibility for persons with disabilities~~((s))~~ including, but not limited to, the Americans with Disabilities Act of 1990 and chapter 49.60 RCW. Prior to any sale of lottery tickets, new lottery retailers must certify that they comply with state and federal laws or must submit a plan that ensures that they will comply within a reasonable amount of time. ~~((Within time limits specified by the lottery, retailers who hold lottery licenses at the time this rule takes effect must certify that they comply with state and federal laws or must submit a plan that ensures that they will comply within a reasonable amount of time.))~~

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-090 License issuance eligibility. (1) The director may issue a license to any person to act as a lottery retailer who meets the eligibility criteria established by chapter 67.70 RCW, and these rules.

(2) Before issuing a license, the director ~~((shall))~~ may consider:

(a) The financial responsibility and security of the person and its business or activity;

(b) The results of any background check;

(c) The ~~((background and))~~ reputation of the person in the community for honesty and integrity;

~~((e))~~ (d) The type of business owned or operated by the person to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery;

~~((f))~~ (e) The conformance of businesses located in residential areas to local land use and zoning codes, regulations, and ordinances;

~~((g))~~ (f) The accessibility of the person's place of business or activity to the public;

~~((h))~~ (g) The sufficiency of existing licenses to serve the public convenience;

~~((i))~~ (h) The volume of expected sales;

~~((j))~~ (i) The veracity of the information supplied in the application for a lottery retailer license; and

~~((+))~~ (j) The person's indebtedness to the state of Washington, local subdivisions of the state, and/or the United States government.

(3) The director may condition the issuance of any license upon the posting of a bond, security deposit, or ~~((cash in lieu of a bond))~~ savings certificate in such terms and conditions as the director may require.

AMENDATORY SECTION (Amending WSR 10-14-010, filed 6/24/10, effective 7/25/10)

WAC 315-04-095 Retailer credit criteria. (1) The director shall deny a lottery retailer license to any applicant whose credit is found to be poor as defined in this section.

(2) The director may grant a lottery retailer license to an applicant whose credit is rated as marginal or minimum as defined in this section. Provided, the director shall require:

(a) Applicants whose credit is rated as marginal as defined in this section to obtain a surety bond, security deposit, or savings certificate under terms and conditions established by the director prior to issuance of the license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond, security deposit, or certificate shall be in the amount of three thousand five hundred dollars unless the director determines a higher amount is required.

(b) Applicants whose credit is rated as minimum as defined in this section may be required to obtain a surety bond or ~~((post cash in lieu of a bond))~~ security deposit under terms and conditions established by the director ~~((or submit three letters of credit to the lottery))~~ prior to issuance of a lottery retailer license. Such surety bond must be secured from a company licensed to do business in the state of Washington. The bond or cash shall be in the amount of three thousand five hundred dollars unless the director determines a higher amount is required, based on ~~((sales volume and))~~ financial solvency of the retailer.

(3) In the event the retailer's credit is rated as poor or marginal as defined in this section subsequent to the issuance of the license the director may:

(a) Revoke or suspend a retailer's license; and/or

(b) Require such a retailer to secure a surety bond from a company licensed to do business in the state of Washington, submit a security deposit, or post a savings certificate under terms and conditions established by the director. The surety bond, security deposit, or savings certificate shall be in the amount of three thousand five hundred dollars unless the director determines, based on sales volume and financial solvency of the retailer, a higher amount is required.

(4) Credit rating is defined as the ability to meet financial obligations when they become due. It includes current reporting accounts payable and public financial record information including, but not limited to, court records~~(s)~~ and other public records up to three years prior to the lottery's credit check request, and reports from credit bureaus or other credit reporting agencies up to ~~((three))~~ two years prior to the lottery's credit check request. A significant incident may include a lien, judgment, bankruptcy, involuntary collection action, or any similar incident ~~((which))~~ that reflects on the individual's willingness and ability to pay creditors. A numerical rat-

ing of "one" represents excellent credit. A numerical rating of "nine" represents involuntary collection.

(a) A "poor" credit rating indicates public record showing three or more significant incidents within the past three years.

(b) A "marginal" credit rating indicates public record information showing one or more significant incidents within the past three years.

(c) A "minimum" credit rating indicates the information is insufficient for evaluation.

(d) An "acceptable" credit rating indicates that there have been no significant incidents in the public record within the past three years. Provided, at least three accounts must be evaluated in order to receive an "acceptable" rating.

(5) Credit rating checks shall be conducted as follows:

(a) Corporation business credit ratings shall be checked. Personal credit ratings of the corporate officers and owners of ten percent or more equity in the corporation may also be checked.

(b) Sole proprietors and partnership business credit ratings shall be checked. Personal credit ratings of:

(i) The sole proprietor and his or her spouse; or

(ii) All partners and their spouses shall also be checked.

(c) Findings shall be applied in accordance with subsections (1), (2), and (3) of this section.

(d) Financial solvency status for licensees previously required to post a surety bond, security deposit, or savings certificate under this section shall be reviewed annually by the lottery for status improvement and possible reduction or release of the requirement.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-130 Death or incapacity of licensee. (1)

In the event of the proven incapacity, death, receivership, bankruptcy, or assignment for benefit of creditors of any lottery retailer, upon approval of the director, the license may be transferred to a court appointed or court confirmed guardian, executor or administrator, receiver, trustee, or assignee for the benefit of creditors, who may continue to operate the activity under the license, subject to the provisions of chapter 67.70 RCW and these rules.

(2) The person to whom a license is transferred hereunder must be otherwise qualified to hold a license.

(3) The license following transfer shall be void upon that person ceasing to hold such a court appointed or court confirmed position.

(4) The director may condition the transfer of any license under this section upon the posting of a bond ~~((or cash in lieu of a bond))~~, security deposit, or savings certificate in such terms and conditions as the director may require.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-132 Change of business structure, ownership, or officers. (1) Every change of business structure of a person to whom a license has been issued must be reported to the lottery prior to the change. A change of business structure shall mean the change from one form of business organi-

zation to another, such as from sole proprietorship to partnership or corporation.

(2) Every substantial change of ownership of a person to whom a license has been issued must be reported to the lottery prior to the change. A substantial change of ownership shall mean the transfer of ten percent or more equity, or the addition or deletion of an owner of ten percent or more of the person.

(3) Every change of officers of a person to whom a license has been issued must be reported to the lottery not later than ten days following the effective day of the change.

(4) If the substantial change of ownership involves the addition or deletion of one or more owners or officers, the lottery retailer shall submit a license application reflecting the change(s) and any other documentation the director may require.

(5) If the substantial change of ownership involves the addition of one or more owners or officers who does not have on file with the lottery current "personal history information" and "criminal history information" forms, the director may require each such owner or officer to submit the required forms.

(6) Failure to comply with these requirements may result in suspension or revocation of the license.

AMENDATORY SECTION (Amending WSR 86-01-060, filed 12/16/85)

WAC 315-04-160 Display of material. Lottery retailers shall display lottery point-of-sale material approved by the director in a manner which is readily seen by and available to the public. Upon request, the director may make additional point-of-sale materials available to lottery retailers at no cost or at such costs as determined by the director. Lottery retailers are responsible for the maintenance and security of point-of-sale and other materials or signage provided by the lottery and accepted by the retailer. Lottery retailers may use and/or display other promotional and point-of-sale material, provided, it is in accord with the image and/or theme established by the lottery(⌘) including, but not limited to, design, script style, color scheme, and logo; and it is consonant with the dignity of the state. The director may require removal of objectionable material and/or its use be discontinued.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-170 Tickets convenient to public. (1) Every lottery retailer shall make the purchase of tickets convenient and readily accessible to the public.

(2) Unless otherwise agreed by the director in writing, each lottery retailer shall make tickets available for sale during its normal business hours at the location designated on its lottery retailer license, master business license, and lottery retailer contract.

AMENDATORY SECTION (Amending WSR 16-13-090, filed 6/15/16, effective 7/16/16)

WAC 315-04-180 Obligations of lottery retailers.

(1)(a) Upon acceptance of a pack of instant tickets from the

director, the retailer shall be responsible for the condition and security of the pack. The retailer shall hold the pack in its own safekeeping until it is ready to begin sale of the pack. Immediately prior to beginning sale, the retailer shall place the pack in "activated" status ~~((in the lottery's instant ticket accounting system (ITAS)))~~ on the lottery-issued terminal. Placement in activated status designates that the tickets in the pack may be sold, and prizes in the pack may be paid. Tickets must not be sold before being placed in active status.

(b) In the event that instant tickets accepted by the retailer are lost, stolen, or in any way unaccounted for prior to their being placed in activated status ~~((on ITAS)),~~ the retailer shall, upon discovery of their disappearance, immediately notify the director of each pack or portion of a pack so unaccounted for, lost, or stolen. The retailer may be required to provide the director a police report or other evidence of the pack's disappearance. The retailer may be charged twenty-five dollars for each pack or portion of a pack unaccounted for, lost, or stolen.

(c) A retailer may return an unopened pack, at no charge, to the director at any time prior to the pack having been placed in activated status. Within thirty days of the official end of an instant game, a retailer shall return to the director all packs never activated in that game.

(d) Upon placement of a pack in activated status, the retailer shall be liable to the director for payment for the pack, in the amount calculated under WAC 315-06-035. Payment for a pack shall be due to the director (1) no later than fifty calendar days after the pack has been placed in activated status or when eighty percent of the low tiered prizes have been validated, thereby validating the pack; or (2) payment for a pack shall be due to the director no later than twenty-one days after activation. The director shall not reimburse the retailer for any ticket losses which occur after activation of the pack from which the tickets came, except as allowed by WAC 315-04-210(2) or 315-06-190.

(e) Each lottery retailer and lottery license applicant shall sign and comply with a lottery ~~((instant))~~ retailer ~~((agreement))~~ contract. Failure to sign or to comply shall result in revocation or denial of a retailer's lottery license.

(2) Each lottery retailer shall abide by the law, these rules, and all other directives or instructions issued by the director.

(3) Each lottery retailer grants to the director an irrevocable license to enter upon the premises of the lottery retailer in which tickets may be sold or any other location under the control of the lottery retailer where the director may have good cause to believe lottery materials and/or tickets are stored or kept in order to inspect said lottery materials and/or tickets and the licensed premises.

(4) All property given, except tickets, to a lottery retailer remains the property of the director, and, upon demand, the lottery retailer agrees to deliver forthwith the same to the director. The lottery retailer also agrees to be responsible for the maintenance and security of such property.

(5) All books and records pertaining to the lottery retailer's lottery activities shall be made available for inspection and copying, during the normal business hours of the lottery retailer and between 8:00 a.m. and 5:00 p.m., Monday through Friday, upon demand by the director.

(6) All books and records pertaining to the lottery retailer's lottery activities shall be subject to seizure by the director without prior notice.

(7) No lottery retailer shall advertise or otherwise display advertising in any part of the lottery retailer's premises as a licensed location which may be considered derogatory or adverse to the operations or dignity of the lottery.

AMENDATORY SECTION (Amending WSR 07-11-154, filed 5/22/07, effective 6/22/07)

WAC 315-04-200 Denial, suspension or revocation of a license. The director may deny an application for or suspend or revoke any license issued pursuant to these rules ~~((for one or more of the following reasons))~~ if:

(1) ~~((Failure))~~ The applicant, lottery retailer, or any employee or representative of the lottery retailer:

~~((a) Failure))~~ (a) Fails to meet or maintain the eligibility criteria for license application and issuance established by chapter 67.70 RCW, or these rules;

~~((b) Failure))~~ (b) Fails to account for lottery tickets received or the proceeds of the sale of tickets or to post a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

~~((c) Failure))~~ (c) Fails to pay to the lottery any obligation when due;

~~((d) Violating))~~ (d) Violates any of the provisions of chapter 67.70 RCW, or these rules;

~~((e) Failure))~~ (e) Fails to file any return or report or to keep records required by the director or by these rules;

~~((f) Failure))~~ (f) Fails to pay any federal, state, or local tax or indebtedness;

~~((g) Failure))~~ (g) Commits any fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the lottery;

~~((8) If public convenience is adequately served by other licensees;~~

~~((9) Failure))~~ (h) Fails to sell a sufficient number of tickets to meet administrative costs;

~~((10) If there is a history of thefts or other forms of losses of tickets or revenue there from;~~

~~((11) Failure))~~ (i) Fails to follow the instructions of the director for the conduct of any particular game or special event;

~~((12) Failure))~~ (j) Fails to follow security procedures of the director for the handling of tickets or for the conduct of any particular game or special event;

~~((13))~~ (k) Makes a misrepresentation of fact to the purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event or the status of a ticket;

~~((14) Failure))~~ (l) Fails to comply with lottery point-of-sale requirements which have been published and disseminated to lottery retailers;

~~((15) Failure or inability))~~ (m) Fails or is unable to meet financial obligations as they fall due in the normal course of business;

~~((16) If there is a))~~ (n) Delays in accounting or depositing in the designated depository the revenues from the ticket sales;

~~((17))~~ (o) Has violated, or failed or refused to comply with any of the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW (Gambling Act), or chapter 7, Laws of 1982 2nd ex. sess., or when a violation of any provisions of chapter 7, Laws of 1982 2nd ex. sess., has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

~~((18))~~ (p) Knowingly causes, aids, abets, or conspires with another to cause any person to violate any of the laws of this state;

~~((19))~~ (q) Has obtained a license by fraud, misrepresentation, concealment, or through inadvertence or mistake;

~~((20))~~ (r) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any misdemeanor, involving any gambling activity or physical harm to individuals or involving moral turpitude, or of any misdemeanor within the past six months of the license application date, or of any felony within ten years of the license application date; except as specifically provided by law, the provisions of chapter 9.96A RCW apply. However, RCW 9.96A.020 does not apply to a person who is required to register as a sex offender under RCW 9A.44.130;

~~((21))~~ (s) Makes a misrepresentation of, or fails to disclose, a material fact to the commission or director on any report, record, application form, or questionnaire required to be submitted to the commission or director. Misrepresentation of, or failure to disclose, criminal history shall be considered a material fact for purposes of this section;

~~((22))~~ (t) Denies the commission or director or their authorized representatives, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted, or fails to promptly produce for inspection or audit any book, record, document, or item required by law or these rules;

~~((23))~~ (u) Is subject to current prosecution or pending charges, or a conviction which is under appeal, for any of the offenses indicated under subsection ~~((20))~~ (1)(r) of this section: Provided, That at the request of an applicant for an original license, the director may defer decision upon the application during the pendency of such prosecution or appeal;

~~((24))~~ (v) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in lottery or gambling or related activities would be inimical to the proper operation of an authorized lottery or gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain;

~~((25))~~ (w) Is a career offender or a member of a career offender cartel or an associate of a career offender or career offender cartel in such a manner which creates probable cause to believe that the association is of such a nature as to

be inimical to the policy of this state or to the proper operation of the authorized lottery or gambling or related activities in this state. For the purposes of this section, career offender shall be defined as any person whose behavior is pursued in an occupational manner or context for the purpose of economic gain utilizing such methods as are deemed criminal violations of the public policy of this state. A career offender cartel shall be defined as any group of persons who operate together as career offenders.

(2) Public convenience is adequately served by other licensees.

(3) There is a history of theft or other form of loss of tickets or revenue from the locations specified on the license or another licensed location owned or operated, in part or total, by the same licensed retailer or applicant.

AMENDATORY SECTION (Amending WSR 91-11-033, filed 5/9/91, effective 6/9/91)

WAC 315-04-205 Reapplication following license denial or revocation. Unless otherwise specified in the final decision or order, the director shall not grant a license based on reapplication less than ninety days following the agency's final decision or order of denial or revocation under WAC 315-04-200.

AMENDATORY SECTION (Amending WSR 94-11-027, filed 5/6/94, effective 6/6/94)

WAC 315-04-210 Procedure if license is terminated, suspended or revoked. (1) Upon termination, revocation, or suspension of a lottery retailer's license for any reasons whatsoever, the lottery retailer must, by a date designated by the director, render a final lottery accounting and surrender all lottery property, as well as unsold lottery tickets which have been placed in activated status, to the director.

(2) The director shall reimburse each retailer whose license is terminated, suspended, or revoked for payments made for unsold tickets which had been placed in activated status prior to termination, suspension, or revocation which the retailer returns to the director.

AMENDATORY SECTION (Amending WSR 87-01-057, filed 12/16/86)

WAC 315-04-230 Licensing of enterprises operated by or subject to jurisdiction of Indian tribes. (1) The director is authorized to license as lottery retailers businesses which are operated by federally recognized Indian tribes, or operated upon lands subject to the jurisdiction of such Indian tribes, if the tribal council of the tribe having jurisdiction has passed an ordinance or resolution agreeing to the following provisions:

(a) All matters relating to the issuance, suspension, and revocation of such license, as well as the manner in which the sale of lottery tickets is conducted by the licensee, shall be governed exclusively by the laws of the state of Washington, and no inconsistent tribal laws, ordinances, resolutions, or rules exist or will be enacted.

(b) In the event of litigation involving the issuance, suspension, or revocation of any such license, the conduct of the

business as a lottery retailer, the financial relationship between any licensee and the lottery or any other matter connected with the lottery or its operation, the courts of the state of Washington shall have jurisdiction, and venue shall be proper only in Thurston County.

(c) Administrative disputes shall be submitted to the jurisdiction of the director, Washington state lottery, or any lawfully appointed designee thereof, and shall be conducted in accordance with Washington state law.

(d) Lottery employees and vendors, including investigators and enforcement officers, may enter upon trust lands and property including lands owned by the tribe or its members, solely for the purposes of conducting investigations and enforcing the provisions of chapter 67.70 RCW.

(2) A certified copy of such ordinance or resolution shall be filed along with the application for licensure of any business located on Indian lands, or operated by an Indian tribe.

(3) In the event any law of the state of Washington relating to matters contained in subsection (1) of this section is enacted, modified, or repealed, tribal laws, ordinances, resolutions, or rules must be changed to be consistent with the revised laws of the state of Washington. The director may (a) suspend licenses issued pursuant to this section pending tribal council action to make such changes, and/or (b) revoke such licenses if the required changes are not made within ninety days.

WSR 21-06-054

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed February 25, 2021, 3:44 p.m., effective March 28, 2021]

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

Purpose: WAC 246-335-510 Definitions—Home health, the department of health adopted amendments to WAC 246-335-510(3) to add physician assistants to the list of practitioners authorized to order home health services and to sign plans of care.

This rule amendment permanently adopts emergency rule amendments initially filed on June 1, 2020, as WSR 20-12-075 and continued in subsequent emergency rule packages, WSR 20-20-029 and 21-04-059. This change expands health care facilities' ability to provide appropriate care for individuals who no longer need to be in a hospital or other health care facility, while allowing health care facility resources to be used more effectively, facilitating the response to the public health emergency created by the coronavirus disease (COVID-19) pandemic.

The rule amendment is consistent with Section 3708 of H.R. 748 Coronavirus Aid, Relief and Economic Security (CARES) Act, passed in response to the COVID-19 pandemic, and corresponding regulatory changes to 42 C.F.R. 484.2 and 409.43. Amending the department's rules to allow physician assistants to order home health services will not only align department rules with federal regulation, but also allow health care facilities to better respond to the COVID-19 pandemic.

Citation of Rules Affected by this Order: Amending WAC 246-335-510.

Statutory Authority for Adoption: RCW 70.127.120.

Other Authority: 42 U.S.C. 1395f.

Adopted under notice filed as WSR 20-23-089 on November 17, 2020.

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

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

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

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

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

Date Adopted: February 23, 2021.

Jessica Todorovich
Chief of Staff
for Umair A. Shah, MD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 18-06-093, filed 3/6/18, effective 4/6/18)

WAC 246-335-510 Definitions—Home health. The definitions in the section apply throughout WAC 246-335-505 through 246-335-560 unless the context clearly indicates otherwise:

(1) "Acute care" means care provided by an in-home services agency licensed to provide home health services for patients who are not medically stable or have not attained a satisfactory level of rehabilitation. These patients require frequent monitoring by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, a respiratory therapist licensed under chapter 18.89 RCW, an occupational therapist licensed under chapter 18.59 RCW, a speech therapist licensed under chapter 18.35 RCW, a dietitian or nutritionist as defined in subsection (5) of this section, or social worker licensed under chapter 18.320 RCW to assess health status and progress.

(2) "Assessment" means an evaluation performed by an appropriate health care professional of a patient's needs.

(3) "Authorizing practitioner" means the individual practitioners licensed in Washington state, or another state according to the exemption criteria established in chapters 18.57, 18.71, and 18.79 RCW, and authorized to approve a home health plan of care:

(a) A physician licensed under chapter 18.57 or 18.71 RCW;

(b) A podiatric physician and surgeon licensed under chapter 18.22 RCW; ~~((c))~~

(c) A physician assistant licensed under chapter 18.71A or 18.57A RCW; or

(d) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW.

(4) "Cardiopulmonary resuscitation" or "CPR" means a procedure to support and maintain breathing and circulation for a person who has stopped breathing (respiratory arrest) or whose heart has stopped (cardiac arrest).

(5) "Dietitian or nutritionist" means a person certified as such under chapter 18.138 RCW or registered by the Academy of Nutrition and Dietetics as a registered dietitian nutritionist; certified by the board for certification of nutrition specialists as a certified nutrition specialist; or certified by the American Clinical Board of Nutrition as a diplomate of the American Clinical Board of Nutrition.

(6) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health aide" means an individual who is a nursing assistant certified or nursing assistant registered under chapter 18.88A RCW.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include, but are not limited to, nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(11) "Home medical supplies or equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(12) "Licensed practical nurse" or "LPN" means an individual licensed under chapter 18.79 RCW.

(13) "Licensed nurse" means a licensed practical nurse or registered nurse under chapter 18.79 RCW.

(14) "Maintenance care" means care provided by in-home services agencies licensed to provide home health services that are necessary to support an existing level of health, to preserve a patient from further failure or decline, or to manage expected deterioration of disease. Maintenance care consists of periodic monitoring by a licensed nurse, therapist, dietitian or nutritionist, or social worker to assess a patient's health status and progress.

(15) "Medication administration" means assistance with the application, instillation, or insertion of medications according to a plan of care, for patients of an in-home services agency licensed to provide home health services and are

under the direction of appropriate agency health care personnel. The assistance is provided in accordance with the Nurse Practice Act as defined in chapters 18.79 RCW and 246-840 WAC and the nursing assistant scope of practice as defined in chapters 18.88A RCW and 246-841 WAC.

(16) "Palliative care" means specialized care for people living with serious illness. Care is focused on relief from the symptoms and stress of the illness and treatment whatever the diagnosis. The goal is to improve and sustain quality of life for both the patient, loved ones, and other care companions. It is appropriate at any age and at any stage in a serious illness and can be provided along with active treatment. Palliative care facilitates patient autonomy, access to information, and choice. The palliative care team helps patients and families understand the nature of their illness, and make timely, informed decisions about care.

(17) "Patient" means an individual receiving home health services.

(18) "Professional medical equipment assessment services" means periodic care provided by a registered nurse licensed under chapter 18.79 RCW, a physical therapist licensed under chapter 18.74 RCW, an occupational therapist licensed under chapter 18.59 RCW, a respiratory therapist licensed under chapter 18.89 RCW, or dietitian or nutritionist as defined in subsection (5) of this section within their scope of practice, for patients who are medically stable, for the purpose of assessing the patient's medical response to prescribed professional medical equipment, including, but not limited to, measurement of vital signs, oximetry testing, and assessment of breath sounds and lung function (spirometry).

(19) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(20) "Social worker" means a person with a degree from a social work educational program accredited and approved as provided in RCW 18.320.010 or who meets qualifications provided in 42 C.F.R. Sec. 418.114 as it existed on January 1, 2012.

(21) "Telehealth" means a collection of means or methods for enhancing health care, public health, and health education delivery and support using telecommunications technology. Telehealth encompasses a broad variety of technologies and tactics to deliver virtual medical, health, and education services.

(22) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. "Telemedicine" does not include the use of audio-only telephone, facsimile, or electronic mail.

(23) "Therapist" means an individual who is:

(a) A physical therapist licensed under chapter 18.74 RCW;

(b) A respiratory therapist licensed under chapter 18.89 RCW;

(c) An occupational therapist licensed under chapter 18.59 RCW;

(d) A speech therapist licensed under chapter 18.35 RCW; or

(e) A massage therapist licensed under chapter 18.108 RCW.

(24) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

WSR 21-06-060
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-24—Filed February 26, 2021, 12:20 p.m., effective March 29, 2021]

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

Purpose: Recreational clam and oyster seasons are adjusted based on recent clam and oyster population survey data, recreational harvest projections, and negotiations affecting intertidal treaty and nontreaty fisheries, along with public health considerations. Seasons will be opened or extended on some public beaches and closed, removed, or shortened on others. These amendments reflect openings and closures based on current data.

Citation of Rules Affected by this Order: Amending WAC 220-330-110 and 220-330-140.

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

Adopted under notice filed as WSR 21-03-090 on January 20, 2021. Preproposal filed as WSR 20-22-107 on November 4, 2020.

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

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

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

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

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

Date Adopted: February 26, 2021.

Kelly Susewind
Director

AMENDATORY SECTION (Amending WSR 20-05-019, filed 2/7/20, effective 3/9/20)

WAC 220-330-110 Clams other than razor clams, and mussels—Areas and seasons. It is lawful to take, dig for, and possess clams and mussels for personal use from public tidelands year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

- (1) Ala Spit: All public tidelands of Ala Spit are open May 1 through May 31 only.
- (2) Alki Park: Closed year-round.
- (3) Alki Point: Closed year-round.
- (4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.
- (5) Bay View State Park: Closed year-round.
- (6) Belfair State Park: Open January 1 through ~~(May)~~ March 31 and August 1 through ~~(December 31)~~ September 30 only.
- (7) Blaine Marine Park: Closed year-round.
- (8) Blake Island State Park Marina: Closed year-round.
- (9) Blowers Bluff North: Closed year-round.
- (10) Brown's Point Lighthouse: Closed year-round.
- (11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.
- (12) Cama Beach State Park: Closed year-round.
- (13) Camano Island State Park: Closed year-round.
- (14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.
- (15) Coupeville: Closed year-round.
- (16) Cultus Bay: Closed year-round.
- (17) Dash Point State Park: Open September 1 through May 31 only.
- (18) Dave Mackie County Park: Closed year-round.
- ~~((18))~~ (19) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary, south to Rosario Head (48° 25.03'N, 122° 39.98'W) are closed year-round.
- (20) Des Moines City Park: Closed year-round.
- ~~((19))~~ (21) Discovery Park: Closed year-round.
- ~~((20))~~ (22) DNR-142: Closed year-round.
- ~~((21))~~ (23) DNR-144 (Sleeper): Closed year-round.
- ~~((22))~~ (24) Dockton County Park: Closed year-round.
- ~~((23))~~ (25) Dosewallips State Park: The area defined by boundary markers and signs posted on the beach is open June ~~((15))~~ 1 through September 30 only.
- ~~((24))~~ (26) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.
- ~~((25))~~ (27) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except tidelands identified as prohibited or unclassified by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.
- ~~((26))~~ (28) Duckabush: Open November 1 through April 30 only.
- ~~((27))~~ (29) Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.
- ~~((28))~~ (30) Eagle Creek: Open June 1 through August 31 only.
- ~~((29))~~ (31) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.
- ~~((30))~~ (32) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.
- ~~((31))~~ (33) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.
- ~~((32))~~ (34) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.
- ~~((33))~~ (35) Fay Bainbridge Park: Closed year-round.
- ~~((34))~~ (36) Fort Flagler State Park: Open January 1 through April 15 and ~~(July)~~ June 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.
- ~~((35))~~ (37) Freeland County Park: Open October 1 through May 31 only.
- ~~((36))~~ (38) Frye Cove County Park: Open May 1 through May 31 only.
- ~~((37))~~ (39) Fudge Point State Park: Closed year-round.
- ~~((38))~~ (40) Gertrude Island: All tidelands of Gertrude Island are closed year-round.
- ~~((39))~~ (41) Golden Gardens: Closed year-round.
- ~~((40))~~ (42) Graveyard Spit: Closed year-round.
- ~~((41))~~ (43) Guillemot Cove Nature Reserve: Closed year-round.
- (44) Guss Island: All tidelands of Guss Island are closed year-round.
- ~~((42))~~ (45) Hoodspout: Tidelands at Hoodspout Salmon Hatchery are closed year-round.
- ~~((43))~~ (46) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.
- ~~((44))~~ (47) Howarth Park/Darlington Beach: Closed year-round.
- ~~((45))~~ (48) Illahee State Park: Open April 1 through July 31 only.
- ~~((46))~~ (49) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open ~~(August 15)~~ September 1 through September 30 only.
- ~~((47))~~ (50) Joemma Beach State Park: Closed year-round.
- ~~((48))~~ (51) Kayak Point County Park: Closed year-round.
- ~~((49))~~ (52) Kitsap Memorial State Park: Closed year-round.
- ~~((50))~~ (53) Kopachuck State Park: Open April 1 through May 31 only.
- ~~((51))~~ (54) Lent Landing (Port Washington Narrows): Closed year-round.
- ~~((52))~~ (55) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.
- ~~((53))~~ (56) Lincoln Park: Closed year-round.
- ~~((54))~~ (57) Lions Park (Bremerton): Closed year-round.
- ~~((55))~~ (58) Lofall: Closed year-round.

~~((56))~~ (59) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((57))~~ (60) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((58))~~ (61) Long Point West: Closed year-round.

~~((59))~~ (62) Lower Roto Vista Park: Closed year-round.

~~((60))~~ (63) March Point Recreation Area: Closed year-round.

~~((61))~~ (64) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((62))~~ (65) Meadowdale County Park: Closed year-round.

~~((63))~~ (66) Mee-Kwa-Mooks Park: Closed year-round.

~~((64))~~ (67) Monroe Landing: Closed year-round.

~~((65))~~ (68) Mukilteo: Closed year-round.

~~((66))~~ (69) Mystery Bay State Park: Open October 1 through April 30 only.

~~((67))~~ (70) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are closed year-round.

~~((68))~~ (71) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((69))~~ (72) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((70))~~ (73) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.

~~((71))~~ (74) North Beach County Park: Closed year-round.

~~((72))~~ (75) Oak Bay County Park: Closed year-round.

~~((73))~~ (76) Oak Harbor: Closed year-round.

~~((74))~~ (77) Oak Harbor Beach Park: Closed year-round.

~~((75))~~ (78) Oak Harbor City Park: Closed year-round.

~~((76))~~ (79) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((77))~~ (80) Old Mill County Park (Silverdale): Closed year-round.

~~((78))~~ (81) Olympia Shoal: Closed year-round.

~~((79))~~ (82) Pat Carey Vista Park: Closed year-round.

~~((80))~~ (83) Penrose Point State Park: Open March 1 through April 30 only, except that portion of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((81))~~ (84) Picnic Point County Park: Closed year-round.

~~((82))~~ (85) Pitship Point: Closed year-round.

~~((83))~~ (86) Pitt Island: All tidelands on Pitt Island are closed year-round.

~~((84))~~ (87) Pleasant Harbor State Park: Closed year-round.

~~((85))~~ (88) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((86))~~ (89) Point Defiance: Closed year-round.

~~((87))~~ Point No Point South: Closed year-round.

~~((88))~~ Point Whitney Lagoon: Open January 1 through May 31 only.

~~((89))~~ (90) Point Whitney Tidelands (~~excluding~~) and Point Whitney Lagoon(~~h~~): Open January 1 through (~~May 31~~) April 30 only.

~~((90))~~ (91) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((91))~~ (92) Port Gamble Heritage Park Tidelands: Open January 1 through (~~May 15 and July 15 through December 31~~) April 30 only.

~~((92))~~ (93) Port Gardner: Closed year-round.

~~((93))~~ (94) Port Townsend Ship Canal/Portage Beach: (~~Open January 1 through April 15 only~~) Closed year-round.

~~((94))~~ (95) Post Point: Closed year-round.

~~((95))~~ Potlatch DNR tidelands: Open April 1 through July 31 only.

(96) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through (~~July 31~~) April 30 only.

(97) Priest Point County Park: Closed year-round.

(98) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

(99) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed to the harvest of clams year-round, except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

(100) Quilcene Bay Boat Ramp: Open January 1 through April 30 only.

(101) Retsil: Closed year-round.

~~((101))~~ (102) Richmond Beach Saltwater Park: Closed year-round.

~~((102))~~ (103) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((103))~~ (104) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((104))~~ (105) Saltwater State Park: Closed year-round.

~~((105))~~ (106) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48° 34.47'N, 122° 26.64'W) are closed year-round.

~~((106))~~ (107) Scenic Beach State Park: Closed year-round.

~~((107))~~ (108) Seahurst County Park: Closed year-round.

~~((108))~~ (109) Semiahmoo County Park: Closed year-round.

~~((109))~~ (110) Semiahmoo Marina: Closed year-round.

~~((110))~~ (111) Sequim Bay State Park: Open January 1 through June 30 only.

~~((111))~~ (112) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((112))~~ (113) Silverdale Waterfront Park: Closed year-round.

~~((113))~~ (114) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((114))~~ (115) Skagit Bay Estuary Wildlife Areas: All public tidelands of Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area, Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((115))~~ (116) South Carkeek Park: Closed year-round.

~~((116))~~ (117) Southworth: Closed year-round.

~~((117))~~ (118) Spencer Spit State Park: Open March 1 through July 31 only.

~~((118))~~ (119) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

~~((119))~~ (120) Taylor Bay: Closed year-round.

~~((120))~~ (121) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

~~((121))~~ (122) Triton Cove Tidelands: Open June 1 through August 31 only.

~~((122))~~ (123) Twanoh State Park: Open August ~~((15))~~ 1 through September 30 only.

~~((123))~~ (124) Walker County Park: Closed year-round.

~~((124))~~ (125) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

~~((125))~~ (126) West Pass Access: Closed year-round.

~~((126))~~ (127) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open August 1 through September 30 only.

~~((127))~~ (128) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

~~((128))~~ (129) Wolfe Property State Park: Open January 1 through May 15 only.

~~((129))~~ (130) Woodard Bay Natural Resource Conservation Area: Closed year-round.

~~((130))~~ (131) It is lawful to take, dig for, and possess clams and mussels, not including razor clams, for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

AMENDATORY SECTION (Amending WSR 20-05-019, filed 2/7/20, effective 3/9/20)

WAC 220-330-140 Oysters—Areas and seasons. It is lawful to take and possess oysters for personal use from public tidelands year-round except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: All public tidelands of Ala Spit open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay Center Oyster Reserve (Willapa Harbor reserves): Palix River channel, extending from the Palix River bridge to beyond Bay Center to the north of Goose Point, is closed year-round.

(5) Bay View State Park: Closed year-round.

(6) Belfair State Park: Open January 1 through ~~((May))~~ March 31 and August 1 through ~~((December 31))~~ September 30 only.

(7) Blaine Marine Park: Closed year-round.

(8) Blake Island State Park Marina: Closed year-round.

(9) Blowers Bluff North: Closed year-round.

(10) Brown's Point Lighthouse: Closed year-round.

(11) Budd Inlet: All state-owned tidelands of Budd Inlet south of a line drawn from the southern boundary of Burfoot Park west to the opposite shore near 68th Avenue N.W. are closed year-round.

(12) Cama Beach State Park: Closed year-round.

(13) Camano Island State Park: Closed year-round.

(14) Chuckanut Bay: All tidelands of Chuckanut Bay north of the railroad trestle are closed year-round.

(15) Coupeville: Closed year-round.

(16) Cultus Bay: Closed year-round.

(17) Dash Point State Park: Open September 1 through May 31 only.

(18) Dave Mackie County Park: Closed year-round.

~~((18))~~ (19) Deception Pass State Park: Open year-round, except the tidelands of Rosario Bay from the northern park boundary to Rosario Head (48° 25.03'N, 122° 39.98'W) are closed year-round.

(20) Des Moines City Park: Closed year-round.

~~((19))~~ (21) Discovery Park: Closed year-round.

~~((20))~~ (22) DNR-142: Closed year-round.

~~((21))~~ (23) DNR-144 (Sleeper): Closed year-round.

~~((22))~~ (24) Dockton County Park: Closed year-round.

~~((23))~~ (25) Dosewallips State Park: Open year-round only in the area defined by boundary markers and signs posted on the beach.

~~((24))~~ (26) Dosewallips State Park South: Closed year-round south of the line defined by boundary markers and signs posted on the beach.

~~((25))~~ (27) Drayton Harbor: All public tidelands of Drayton Harbor are open year-round, except the tidelands identified as prohibited or ~~((approved))~~ unclassified by the department of health and defined by boundary markers and signs posted on the beach are closed year-round.

~~((26))~~ (28) Duckabush: Open November 1 through April 30 only.

~~((27))~~ (29) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.

~~((28))~~ (30) East San de Fuca: Tidelands east of the Rolling Hills Glencairn Community dock are closed year-round.

~~((29))~~ (31) Eld Inlet Oyster Reserves (Mud Bay reserves): Closed year-round.

~~((30))~~ (32) English Camp: Tidelands between the National Park Service dinghy dock to the southern park boundary are closed year-round.

~~((31))~~ (33) Evergreen Rotary Park (Port Washington Narrows): Closed year-round.

~~((32))~~ (34) Fay Bainbridge Park: Closed year-round.

~~((33))~~ (35) Fort Flagler State Park: Open January 1 through April 15 and ~~(July)~~ June 1 through December 31 only, except that portion of Rat Island and the spit west and south of the park boundary is closed year-round from two white posts on the north end of the island at the vegetation line south to the end of the island.

~~((34))~~ (36) Freeland County Park: Open October 1 through May 31 only.

~~((35))~~ (37) Frye Cove County Park: Open May 1 through May 31 only.

~~((36))~~ (38) Fudge Point State Park: Closed year-round.

~~((37))~~ (39) Gertrude Island: All tidelands of Gertrude Island are closed year-round.

~~((38))~~ (40) Golden Gardens: Closed year-round.

~~((39))~~ (41) Graveyard Spit: Closed year-round.

~~((40))~~ (42) Guillemot Cove Nature Reserve: Closed year-round.

(43) Guss Island: All tidelands of Guss Island are closed year-round.

~~((41))~~ (44) Hoodspout: Tidelands at the Hoodspout Salmon Hatchery are closed year-round.

~~((42))~~ (45) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

~~((43))~~ (46) Howarth Park/Darlington Beach: Closed year-round.

~~((44))~~ (47) Illahee State Park: Open April 1 through July 31 only.

~~((45))~~ (48) Indian Island County Park/Lagoon Beach: From the jetty boundary with Port Townsend Ship Canal east to the beach access stairs on Flagler Road near milepost 4 open ~~(August 15)~~ September 1 through September 30 only.

~~((46))~~ (49) Joemma Beach State Park: Closed year-round.

~~((47))~~ (50) Kayak Point County Park: Closed year-round.

~~((48))~~ (51) Kitsap Memorial State Park: Closed year-round.

~~((49))~~ (52) Kopachuck State Park: Open April 1 through May 31 only.

~~((50))~~ (53) Lent Landing (Port Washington Narrows): Closed year-round.

~~((51))~~ (54) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round, except the western shoreline of Liberty Bay from the unincorporated Kitsap County line south to Virginia Point is open October 1 through April 30 only.

~~((52))~~ (55) Lincoln Park: Closed year-round.

~~((53))~~ (56) Lions Park (Bremerton): Closed year-round.

~~((54))~~ (57) Lofall: Closed year-round.

~~((55))~~ (58) Long Island Oyster Reserve, Diamond Point and Pinnacle Rock (Willapa Harbor reserves): Diamond Point on the northwest side of Long Island between reserve monuments 39 and 41 and Pinnacle Rock on the southwest side of Long Island between reserve monuments 58 and 59 is open year-round.

~~((56))~~ (59) Long Island Slough Oyster Reserve (Willapa Harbor reserves): Closed year-round.

~~((57))~~ (60) Long Point West: Closed year-round.

~~((58))~~ (61) Lower Roto Vista Park: Closed year-round.

~~((59))~~ (62) March Point Recreation Area: Closed year-round.

~~((60))~~ (63) McNeil Island: All tidelands of McNeil Island are closed year-round.

~~((61))~~ (64) Meadowdale County Park: Closed year-round.

~~((62))~~ (65) Mee-Kwa-Mooks Park: Closed year-round.

~~((63))~~ (66) Monroe Landing: Closed year-round.

~~((64))~~ (67) Mukilteo: Closed year-round.

~~((65))~~ (68) Mystery Bay State Park: Open October 1 through April 30 only.

~~((66))~~ (69) Nahcotta Tidelands: State-owned tidelands east of the Willapa Bay Field Station and Nahcotta Tidelands interpretive site are open year-round.

~~((67))~~ (70) Nemah Oyster Reserve (Willapa Harbor reserves): Oyster reserves between reserve monuments 10 and 11 are closed year-round.

~~((68))~~ (71) Nisqually National Wildlife Refuge: All state-owned tidelands of the Nisqually River delta south of a line drawn from Luhr Beach boat ramp to Sequelitchew Creek are closed year-round.

~~((69))~~ (72) North Bay (Case Inlet): All state-owned tidelands north of the power transmission lines and those extending 1,900 feet south of the power transmission lines along the eastern shore are open March 1 through April 30 and September 1 through September 30, from one hour before official sunrise until one hour after official sunset only.

~~((70))~~ (73) North Beach County Park: Closed year-round.

~~((71))~~ (74) Oak Bay County Park: Closed year-round.

~~((72))~~ (75) Oak Harbor: Closed year-round.

~~((73))~~ (76) Oak Harbor Beach Park: Closed year-round.

~~((74))~~ (77) Oak Harbor City Park: Closed year-round.

~~((75))~~ (78) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

~~((76))~~ (79) Old Mill County Park (Silverdale): Closed year-round.

~~((77))~~ (80) Olympia Shoal: Closed year-round.

~~((78))~~ (81) Pat Carey Vista Park: Closed year-round.

~~((79))~~ (82) Penrose Point State Park: Open March 1 through April 30 only, except that part of Mayo Cove within the commercially prohibited growing area is closed year-round.

~~((80))~~ (83) Pitship Point: Closed year-round.

~~((81))~~ (84) Picnic Point County Park: Closed year-round.

~~((82))~~ (85) Pitt Island: Closed year-round.

~~((83))~~ (86) Pleasant Harbor State Park: Closed year-round.

~~((84))~~ (87) Pleasant Harbor WDFW Boat Launch: Closed year-round.

~~((85))~~ (88) Point Defiance: Closed year-round.

~~((86))~~ Point No Point South: Closed year-round.

~~(87)~~ Point Whitney Lagoon: Open January 1 through July 31 only.

~~((88))~~ (89) Point Whitney Tidelands ~~((excluding))~~ and Point Whitney Lagoon~~(s)~~: Open January 1 through ~~((July))~~ August 31 only.

~~((89))~~ (90) Port Angeles Harbor: All public tidelands of Port Angeles Harbor and interior tidelands of Ediz Hook are closed year-round.

~~((90))~~ (91) Port Gamble Heritage Park Tidelands: Open January 1 through ~~((May 15 and July 15 through December 31))~~ April 30 only.

~~((91))~~ (92) Port Gardner: Closed year-round.

~~((92))~~ (93) Port Townsend Ship Canal/Portage Beach: ~~((Open January 1 through April 15 only))~~ Closed year-round.

~~((93))~~ (94) Post Point: Closed year-round.

~~((94) Potlatch DNR Tidelands: Open April 1 through July 31 only.)~~

(95) Potlatch State Park and Potlatch DNR tidelands: Open April 1 through ~~((July 31))~~ April 30 only.

(96) Priest Point County Park: Closed year-round.

(97) Purdy Spit County Park: The southern shore of the spit from the boat ramp east to the southern utility tower near Purdy Bridge is open April 1 through April 30 only.

(98) Quilcene Bay Tidelands: All state-owned tidelands in Quilcene Bay north of a line drawn from the Quilcene Boat Haven to Fisherman's Point are closed year-round except those state-owned tidelands on the west side of the bay north of the Quilcene Boat Haven are open year-round.

(99) Quilcene Boat Ramp: Open January 1 through April 30 only.

(100) Retsil: Closed year-round.

~~((100))~~ (101) Richmond Beach Saltwater Park: Closed year-round.

~~((101))~~ (102) Salt Creek Recreation Area (DNR-419): Closed year-round.

~~((102))~~ (103) Saltair Beach (Kingston Ferry Terminal): Closed year-round.

~~((103))~~ (104) Saltwater State Park: Closed year-round.

~~((104))~~ (105) Samish Bay: Public tidelands of Samish Bay between Scotts Point and a point on the shore (48°34.47'N, 122°26.64'W) are closed year-round.

~~((105))~~ (106) Scenic Beach State Park: Closed year-round.

~~((106))~~ (107) Seahurst County Park: Closed year-round.

~~((107))~~ (108) Semiahmoo County Park: Closed year-round.

~~((108))~~ (109) Semiahmoo Marina: Closed year-round.

~~((109))~~ (110) Sequim Bay State Park: Open January 1 through June 30 only.

~~((110))~~ (111) Shine Tidelands State Park: Open January 1 through May 15 only.

~~((111))~~ (112) Silverdale Waterfront Park: Closed year-round.

~~((112))~~ (113) Sinclair Inlet: All public tidelands of Sinclair Inlet west of a line drawn from the intersection of Bancroft Road and Beach Drive East northerly to Point Herron are closed year-round.

~~((113))~~ (114) Skagit Bay Estuary Wildlife Areas: All public tidelands of the Skagit Bay Estuary Wildlife Area, Fir Island Farms Reserve Wildlife Area, Island Wildlife Area,

Camano Island Wildlife Area and Leque Island Wildlife Area are closed year-round.

~~((114))~~ (115) South Carkeek Park: Closed year-round.

~~((115))~~ (116) Southworth: Closed year-round.

~~((116))~~ (117) Spencer Spit State Park: Open March 1 through July 31 only.

~~((117))~~ (118) Stuart Island State Park - Reid Harbor (South Beach): Closed year-round.

~~((118))~~ (119) Taylor Bay: Closed year-round.

~~((119))~~ (120) Totten Inlet Oyster Reserve (Oyster Bay reserves): Closed year-round.

~~((120))~~ (121) Walker County Park: Closed year-round.

~~((121))~~ (122) West Pass Access: Closed year-round.

~~((122))~~ (123) West Penn Cove: From the property boundary at the Grasser's Lagoon access on Highway 20 to the dock extending across the tidelands from Captain Whidbey Inn on Madrona Road is open August 1 through September 30 only.

~~((123))~~ (124) Willapa River Oyster Reserve (Willapa Harbor reserves): Reserves located in the Willapa River channel extending west and upriver from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel are closed year-round.

~~((124))~~ (125) Wolfe Property State Park: Open January 1 through May 15 only.

~~((125))~~ (126) Woodard Bay Natural Resource Conservation Area: Closed year-round.

~~((126))~~ (127) It is lawful to take and possess oysters for personal use from the Pacific Ocean beaches from November 1 through March 31 only.

WSR 21-06-067

PERMANENT RULES GAMBLING COMMISSION

[Filed February 26, 2021, 4:11 p.m., effective March 29, 2021]

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

Purpose: The gambling commission is considering adopting new and amending current rules to implement the new sports wagering law, HB 2638, passed by the legislature during the 2020 session. A new state regulatory structure will need to be created to cover all aspects of sports wagering consistent with any new tribal-state sports wagering compact amendment. This rule would allow individuals and/or organizations to apply to begin the preclicensing investigation process prior to the adoption of final sports wagering licensing rules. The intent of this rule is to authorize staff to begin the agency's typical preclicensing investigation process that it utilizes for licensing of all other types of gambling activities within its jurisdiction. The agency expects starting this process early will help the agency and potential licensees who anticipate applying for a future sports wagering license by hopefully finalizing the preclicensing investigation process before future licensing rules and regulations are final.

Citation of Rules Affected by this Order: New WAC 230-03-408 Applying for sports wagering preclicensing investigation.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.075, 9.46.153.

Adopted under notice filed as WSR 21-03-072 on January 19, 2021.

Changes Other than Editing from Proposed to Adopted Version: Technical edits were made between the proposed language and the adopted language. These edits include using the term "prelicensing investigation" instead of "prelicensing qualification" and removing the term "letter" to allow the agency more flexibility in how it informs applicants about the final status of their prelicensing investigation application.

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

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

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

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

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

Date Adopted: February 24, 2021.

Ashlie Laydon
Rules Coordinator

NEW SECTION

WAC 230-03-408 Applying for sports wagering prelicensing investigation. (1) Any individual or organization anticipating applying for a future license to provide equipment and/or services for sports wagering pursuant to a tribal-state compact may apply for a prelicensing investigation.

(2) To apply, the applicant and each substantial interest holder will go through a prelicensing investigation to determine if the applicant and substantial interest holders are initially qualified.

(3) It is the responsibility of each applicant and persons who have a substantial interest therein to establish by clear and convincing evidence the necessary qualifications.

(4) A prelicensing investigation of the applicant includes, but is not limited to:

(a) Identification of all substantial interest holders of the applicant; and

(b) Conducting a criminal history background investigation on all substantial interest holders; and

(c) Verification that cash, goods or services for the startup of the operations or the continuation of the business is from a qualified source; and

(d) Compliance with all other applicable rules and laws.

(5) You are required to complete an online application, submit any required supplemental documentation, and submit a five thousand dollar deposit for us to begin the prelicensing investigation process.

(6) We may request additional information during our prelicensing investigation. All work will stop until we receive the requested information. You must provide us with the required items within thirty days of notification or we will administratively close your prelicensing application.

(7) You must pay all costs associated with the prelicensing investigation.

(a) We will give you an estimate of the anticipated costs based on the information we have received at that time.

(b) You will be asked to pay the additional deposit to cover the anticipated costs, such as staff time to conduct the prelicensing investigation, travel time, and travel costs.

(c) We may amend our estimate during our prelicensing investigation process.

(d) You will have thirty days to submit any additional balance requested. We will not work on the application until we have received all funds requested. Failure to pay the balance within the required time frame will result in administrative closure of the application and all unused funds will be refunded.

(e) We will stop the prelicensing investigation process if the cost of our investigation exceeds the balance and request additional funds to cover the anticipated costs to continue our investigation. We will resume work upon receipt of the requested deposit to cover anticipated costs to complete the investigation.

(f) Any unused funds will be refunded.

(g) We will retain funds to cover all costs incurred if you withdraw your application or if your application is denied.

(8) Upon completion of a prelicensing investigation, a determination regarding an applicant's qualification will be made. Applicants who are qualified will receive a prelicensing investigation approval from us stating the determination is made based on the information and representations made by the applicant up to that date.

(9) Applicants are required to provide notice of any changes to the organization or substantial interest holders after a prelicensing investigation approval has been issued and will be required to pay for any additional investigation costs.

(10) A prelicensing investigation approval is not a sports wagering license. You must apply for a sports wagering license once a sports wagering tribal-state compact(s) and future licensing rules are effective.

(11) Prelicensing investigation approval will be valid for one year from the date of issuance. The term of this approval can be extended by the director or designee if the year term is about to expire and sports wagering licensing rules are not in effect.

(12) Applicants who are determined to be unqualified to receive a prelicensing investigation approval will be given the following options:

(a) Have thirty days to correct the issue that keeps them from being qualified; or

(b) Withdraw their application; or

(c) Receive an application denial.

WSR 21-06-082
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed March 1, 2021, 4:37 p.m., effective April 1, 2021]

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

Purpose: Alternative learning experience requirements were recodified in August 2020 as chapter 392-550 WAC. In this process, the codified timeline for implementation of an intervention plan, previously codified at WAC 392-121-182 (7)(a)(ii)(B), was unintentionally omitted. This rule making corrects that drafting error and maintains the established intervention plan requirement.

Citation of Rules Affected by this Order: Amending WAC 392-550-025.

Statutory Authority for Adoption: RCW 28A.232.010.

Adopted under notice filed as WSR 20-23-114 on November 18, 2020.

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

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

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

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

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

Date Adopted: March 1, 2021.

Chris P. S. Reykdal
 State Superintendent
 of Public Instruction

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

WAC 392-550-025 Alternative learning experience requirements. (1) Written student learning plan.

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs.

(b) A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress.

(c) The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(d) The written student learning plan must include the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv)(A) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(B) This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan;

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan; and

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

(2) **Contact.** Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(a) Direct personal contact must:

(i) Be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) At minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(b) In-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other

learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(c) Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(3) Monthly progress evaluation.

(a) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section.

(b) The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communicate the progress evaluation to the student.

(c) Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan;

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher;

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame;

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan;

(vi)(A) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the stu-

dent's progress grades in the online course or courses to determine whether a student's progress is satisfactory.

(B) School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress.

(C) The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(4) Intervention plan.

(a) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student within five school days of the date of the monthly progress evaluation.

(b) An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher.

(c) At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(d) An intervention plan is not required if the evaluation is delivered within the last five school days of the year.

(5) **Continued enrollment.** If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

WSR 21-06-090

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed March 2, 2021, 9:37 a.m., effective April 2, 2021]

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

Purpose: This repeals all of chapter 181-97 WAC. Chapter 181-97 WAC was authorized by RCW 28A.625.360. This statute was repealed in 2009. There was no other policy in

chapter 181-97 WAC other than the policy that was repealed in 2009.

Citation of Rules Affected by this Order: Repealing chapter 181-97 WAC.

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

Adopted under notice filed as WSR 21-01-041 on December 8, 2020.

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

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Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 5.

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

Date Adopted: February 25, 2021.

Maren Johnson
Rules Coordinator