WSR 15-07-043

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-131723, General Order R-578—Filed March 12, 2015, 9:44 a.m., effective April 12, 2015]

In the matter of amending, adopting, and repealing rules in chapter 480-109 WAC relating to the Energy Independence Act (EIA).

SYNOPSIS

The Washington utilities and transportation commission (commission) adopts revised rules implementing chapter 19.285 RCW, the EIA. The commission's goals in this rule making are to incorporate legislative changes to the EIA since the commission's rules were first adopted in 2007, identify commission decisions and preferred practices implementing the EIA, and engage with stakeholders to address and resolve ambiguity where appropriate. The rules we adopt today are divided into sections addressing the EIA's energy efficiency resource standard (EERS) and the EIA's renewable portfolio standard (RPS). We defer our consideration of a reporting requirement for energy and emissions intensity metrics pending more discussion of methodology. The rules addressing the EERS generally codify our existing biennial conservation process, the use of advisory groups, and the use of conservation cost recovery adjustments. We also support conservation programs for low-income customers by modifying utilities' treatment of these important programs. The rules addressing the RPS generally incorporate our existing reporting process, including three options for calculating incremental hydropower and a new methodology for calculating incremental cost. Finally, we consider the application of these revised rules. While we have reviewed prior orders for consistency with these rules, we direct utilities to review existing orders and tariffs for consistency with the adopted rules, and make filings to remedy any conflicts.

I. INTRODUCTION

1 **STATUTORY OR OTHER AUTHORITY**: The commission takes this action under Notice No. WSR 14-18-084, filed with the code reviser on September 3, 2014. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and 19.285.080.

2 **STATEMENT OF COMPLIANCE**: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION**: The commission adopts this rule on the date this order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE**: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES**: This order amends, adopts, and repeals the following sections of the Washington Administrative Code: Amending WAC 480-109-010 Purpose and scope, 480-109-020 Application of rules, 480-109-030 Exemptions from rules in chapter 480-109 WAC, 480-109-040 Additional requirements and 480-109-050 Severability; adopting WAC 480-109-060 Definitions, 480-109-070 Administrative penalties, 480-109-100 Conservation resources and energy efficiency resource standard, 480-109-110 Conservation advisory group, 480-109-120 Conservation planning and reporting, 480-109-130 Conservation recovery adjustment, 480-109-200 Renewable portfolio standard, 480-109-210 Renewable portfolio standard reporting, 480-109-220 Alternatives to the renewable resource requirement and 480-109-999 Adoption by reference; and repealing WAC 480-109-001 Purpose and scope, 480-109-002 Application of rules, 480-109-003 Exemptions from rules in chapter 480-109 WAC, 480-109-004 Additional requirements, 480-109-006 Severability, and 480-109-007 Definitions.

II. PROCEDURAL HISTORY

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) with the code reviser on October 2, 2013, at WSR 13-20-127.

8 The statement advised interested persons that the commission was considering entering a rule making to consider whether the commission should modify rules in chapter 480-109 WAC to implement the statutory changes and provisions of chapter 19.285 RCW. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3). Pursuant to the notice, the commission convened a workshop for interested stakeholders on November 12, 2013, and solicited written comments by December 2, 2013. On April 9, 2014, the commission issued a notice announcing that it published informal draft revisions to the rules and soliciting written comments from stakeholders by May 9, 2014. The commission held a second workshop on May 15, 2014, where it received comments from stakeholders regarding the informal draft revisions to the rules.

9 **NOTICE OF PROPOSED RULE MAKING**: The commission filed a notice of proposed rule making (CR-102) with the code reviser on September 3, 2014, at WSR 14-18-084. The notice provided interested persons the opportunity to submit written comments to the commission by October 6, 2014. The commission scheduled this matter for oral comment and adoption on Wednesday, November 5, 2014, at 1:30 p.m., in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA.

10 **RULE-MAKING HEARING**: The commission considered the proposed rules for adoption at a rule-making hearing on November 5, 2014, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Jeffrey D.

Goltz.[1] The commission heard oral comments from Clint Kalich, representing Avista Corporation (Avista); Etta Lockey and Mary Wiencke, representing Pacific Power & Light Company (Pacific Power); Eric Englert, representing Puget Sound Energy (PSE); Mary Kimball, representing public counsel section of the Washington office of attorney general (public counsel); and Dina Dubson Kelley and Megan Decker, representing Renewable Northwest (RN); and Joshua Weber, representing Industrial Customers of Northwest Utilities (ICNU).

[1] Since the November 5, 2014, adoption hearing, Commissioner Goltz retired, and the governor appointed Ann Rendahl as commissioner. Commissioner Rendahl joins in this order, having reviewed the proposed rules, the comments submitted in response to the proposed rules, and attended the adoption hearing while holding a staff position with the commission.

III. DISCUSSION

11 The commission's goals in this proceeding are to:

- Promulgate rules consistent with legislative changes made to the EIA since the commission's rules were first adopted in 2007,
- Incorporate in rules commission precedents and preferred practices in implementing the EIA, and
- Engage with stakeholders to address and resolve ambiguity where appropriate.

12 In this part of the order we provide a short overview of the rules we adopt today and the rationale for changes from the proposed rules or departures from commission precedent. Attachment A is a summary of oral comments made at the adoption hearing, written comments provided to us by stakeholders in response to the proposed rules, and our consideration of those comments. Some minor issues not discussed in this order are addressed in Attachment A to this order. Attachment A is hereby incorporated into, and made part of, this order.

A. Energy efficiency resource standard rules

13 WAC 480-109-100 through 480-109-130 describe the process that an investor-owned electric utility ("utility" as defined in WAC 480-109-060(31)) must follow to meet the requirement in RCW 19.285.040(1) to "pursue all available conservation that is cost-effective, reliable, and feasible." The utility industry and energy policy professionals use the term "energy efficiency resource standard" to describe state laws that require utilities to acquire conservation.[2] We adopt this standard industry terminology as the title of WAC 480-109-100. The EIA contemplates a biennial conservation process for each utility, and we developed the conservation process, as codified in this rule making, over three biennial periods.[3]

[2] Annie Gilleo, Anna Chittum, Kate Farley, Max Neubauer, Seth Nowak, David Ribeiro, and Shruti Vaidyanathan, *The 2014 State Energy Efficiency Scorecard*, American Council for an Energy-Efficient Economy Report No. U1408, at 21 (October 2014), available at http://aceee.org/research-report/u1408.

[3] The commission's orders evaluating each utility's biennial conservation filings can be found in the dockets described in the following table.

Utility	2010-2011 Biennium	2012-2013 Biennium	2014-2015 Biennium
Avista	UE-100176	UE-111882	UE-132045
Pacific Power	UE-100170	UE-111880	UE-132047
Puget Sound Energy	UE-100177	UE-111881	UE-132043

14 WAC 480-109-100 details the process a utility must use to identify conservation potential, develop a conservation portfolio, implement conservation programs, adaptively manage a conservation portfolio, and evaluate conservation using cost-effectiveness tests. WAC 480-109-110 describes the process for, and role of stakeholder involvement in, a utility's conservation advisory group. WAC 480-109-120 discusses conservation plans and reports that a utility must file with the commission. Finally, WAC 480-109-130 provides the process that a utility must use to recover the costs of its conservation programs.

1. Pro rata

15 RCW 19.285.040 (1)(b) requires utilities to set a biennial conservation target "no lower than the qualifying utility's pro rata share" of its ten year conservation potential. This statutory requirement is reflected in WAC 480-109-100 (3)(b) of this adopted rule. The EIA does not define "pro rata," but the rules the commission promulgated in 2007 included a definition at WAC 480-109-007(14). The rules we adopt today change this definition.

16 Interpretation of the term "pro rata" was contested in the 2007 rule making. Some parties argued that when there is no statutory definition, the dictionary definition of "equal proportions" prevails, while others argued that the commission's definition should provide flexibility to account for uneven ramp rates typically found in new conservation programs. In 2007, the commission promulgated rules providing flexibility in the definition of "pro rata" because utilities needed to ramp up their conservation programs to comply with the EIA, in some cases doubling their conservation efforts.

17 Now that we are in the third biennial cycle of conservation, programs are no longer ramping up and we find that there is less need for this flexibility, and a greater need for consistency and certainty.

18 In this rule, we propose a new definition of "pro rata" in WAC 480-109-060(19), consistent with its customary definition meaning equal proportions. This definition requires a utility's biennial conservation target to be at least twenty percent of its ten year conservation potential.

19 Northwest Energy Coalition (NWEC) supports the commission's proposed definition as the plain meaning of "pro rata," citing its arguments from the 2007 rule making.[4] PSE and Pacific Power suggest retaining the flexibility provided in the current rule, and argue that this definition is inconsistent with the methodology found in the Northwest Power and Conservation Council's (council) Sixth Regional Power Plan (Power Plan).[5]

[4] May 9, 2014, Comments of NWEC, at 5.

[5] October 6, 2014, Pacific Power comment form, Comment 1; October 6, 2014, PSE comment form, Comment 1.

20 In projecting the conservation potential of the region, the council does not establish targets for specific utilities or indicate how individual utility targets should be established.

Specifically, the EIA refers to the council's methodology in RCW 19.285.040 (1)(a) when describing the projection of a utility's ten year conservation potential, but the EIA does not mention the council's methodology in RCW 19.285.040 (1)(b) when establishing utilities' biennial conservation target. Therefore, using our definition of "pro rata" for the purpose of establishing an individual utility's conservation target does not conflict with the council's methodology for projecting conservation potential.

21 We note that Avista and Pacific Power's approved 2014-2015 biennial conservation targets are lower than would be required under this definition.[6] This order does not adjust Avista and Pacific Power's 2014-2015 biennial conservation targets; rather, the new definition of "pro rata" will apply when we set utilities' 2016-2017 biennial conservation targets.

[6] *Avista,* UE-132045, Order 01 (December 19, 2013); *Pacific Power*, UE-132047, Order 01 (December 19, 2013).

2. Transmission voltage

22 The proposed rules included a definition of transmission voltage in WAC 480-109-060(30). PSE and Pacific Power suggested that the commission remove this definition as it is inconsistent with the way transmission voltage is defined by the utilities and other government agencies.[7] To address this concern, we remove the definition and add to WAC 480-109-100 (3)(c)(iii) and 480-109-200 (8)(b) "For the purposes of this subsection, transmission voltage is one hundred thousand volts or higher." This more focused use of the term "transmission voltage" better reflects the limited use of that term in the statute and reduces the potential for misinterpretation.

[7] October 6, 2014, Pacific Power comment form, Comment 2; October 6, 2014, PSE comment form, Comment 6.

3. Energy efficiency resource standard

23 WAC 480-109-100 codifies with minor changes the current process utilities use to identify conservation potential, develop, implement and adaptively manage conservation programs, establish and comply with biennial conservation targets, and evaluate conservation using cost-effectiveness tests. The commission established this process in previous orders approving utility biennial conservation plans and reports, with conditions, over the last three biennia. These orders imposed conditions on each utility that were negotiated by each utility, commission staff and stakeholders. The substance of the conditions varied slightly from utility to utility. For this section of the rule, our goal is to standardize those requirements and resolve ambiguity.

i. Pursue all

24 RCW 19.285.040(1) requires utilities to "pursue all available conservation that is cost-effective, reliable, and feasible." During the review of recent biennial conservation reports, parties disagreed about whether simply acquiring sufficient conservation to meet a biennial conservation target fulfills the requirement in the statute to "pursue all available conservation that is cost-effective, reliable, and feasible," or whether additional actions were necessary.[8] This rule explicitly addresses this issue.

[8] Dockets UE-100170, UE-100176, and UE-170177, *In the Matter of Evaluating Electric Utility Conservation Achievements Under the Energy Independence Act, chapters 19.285 RCW and 480-109 WAC,* Staff Comments, at 6-7 (July 16, 2012). See also Dockets UE-100170, UE-100176, and UE-170177, *In the Matter of Evaluating Electric Utility Conservation Reports Under the Energy Independence Act, chapters 19.285 RCW and 480-109 WAC,* Staff comments, at 14-15 (March 5, 2010).

25 WAC 480-109-100(1) defines the process utilities must follow to meet the obligation to pursue all required conservation. The steps of this process are consistent with the process utilities currently follow to manage their conservation efforts prudently. First, a utility must identify the cost-effective, reliable, and feasible conservation potential in its service territory, as required by RCW 19.285.040 (1)(a). WAC 480-109-100(2) provides additional detail about how a utility develops its ten year conservation potential.

26 Second, a utility must develop a portfolio designed to acquire available conservation identified in the potential. Utilities currently develop conservation portfolios designed to achieve or even exceed the biennial conservation target, the requirements for which are described in additional detail in WAC 480-109-100(3). As conservation programs have matured through the implementation of the EIA, it has become apparent that there are more types of conservation available than just end-use efficiency measures. As a result, the rule identifies a list of conservation types in WAC 480-109-100 (1)(b) that utilities must consider in the development of conservation portfolios.

27 The third, and arguably most important part of the conservation process required by RCW 19.285.040(1), is to implement programs that acquire cost-effective conservation savings. Utilities retain the responsibility to implement these programs.

28 Fourth, utilities must engage in adaptive management of conservation portfolios, to ensure that portfolios appropriately respond to changing market conditions during a biennium. Adaptive management of a conservation portfolio includes conducting pilot programs of new technologies or new approaches to engage customers in conservation, as described in WAC 480-109-100 (1)(c), and is part of pursuing all achievable conservation resources.

29 In addition to the process identified in WAC 480-109-100(1), we added a definition of the phrase "pursue all" in WAC 480-109-060(21) to make it clear that pursuing all available conservation that is cost-effective, reliable, and feasible is a more rigorous process than just acquiring enough conservation to meet the biennial target.

30 PSE suggested deleting the definition of "pursue all" in WAC 480-109-060(21) because the language redefined the requirements of the law to activities beyond approval of conservation forecasts and biennial targets.[9] Public counsel commented that it does not believe that the language of WAC 480-109-060(21) and 480-109-100(1) establish separate requirements beyond the law, and that the proposed rule will help ensure a robust process for conservation portfolio development, implementation, and adaptive management.[10]

[9] October 6, 2014, PSE comment form, Comment 4.

[10] October 6, 2014, Public counsel comment form, Comment 1.

31 We reject PSE's argument that WAC 480-109-060(21) and 480-109-100(1) establish new requirements.

Rather, the rule language describes a process that the utilities are already largely required to follow by statute, rule, and commission orders. We believe that each of these steps is an important element of ensuring prudent expenditure of ratepayer funds on conservation resources. Utilities' current conservation processes and plans are generally consistent with the rule we adopt today. Currently, each utility implements programs to acquire conservation savings from end-use efficiency, behavioral programs, and market transformation; additionally, each utility considers the availability of savings from production and distribution efficiency in the development of its biennial conservation plans. The only element of process we are listing explicitly for the first time is the consideration of all of the types of conservation in WAC 480-109-100 (1)(b).

32 Avista voiced uncertainty at the May 15, 2014, workshop regarding how a utility would demonstrate compliance with the requirements of WAC 480-109-100(1). Utilities will demonstrate compliance by submitting the plans and reports required in WAC 480-109-120 that document the actions taken to meet these requirements. Should a stakeholder believe a utility is deficient in meeting the requirements of WAC 480-109-100(1), it is appropriate for that stakeholder to raise the issue with the advisory group. Failing resolution through the advisory group process, a stakeholder may raise the issue with the commission during our review of the plans or reports in WAC 480-109-120. The commission retains the authority to impose appropriate conditions on the utility to remedy the deficiency, although the requirements of this section are not subject to the monetary penalties of RCW 19.285.060(1).

33 PSE suggested that the use of the phrase "emerging conservation technologies" in WAC 480-109-100 (1)(a)(iv) introduces ambiguity and could impact the development of conservation potential assessments.[11] We recognize that there is no single industry definition of "emerging conservation technologies" and do not attempt to define the term in this rule. However, our intention is that "emerging conservation technologies" encompasses technologies that are available but not widely deployed, face barriers to achieving market penetration, or are under development.[12] We look to utilities and their advisory groups to determine which technologies are appropriate to consider adding to a conservation portfolio.

[11] October 6, 2014, PSE comment form, Comment 7.

[12] The council also considers emerging technologies where appropriate. "[T]he conservation assessment incorporates new conservation opportunities brought about by technological advances." Sixth Northwest Conservation and Electric Power Plan, Northwest Power and Conservation, at 4-4 (February 2010), available at http://www.nwcouncil.org/media/6365/SixthPowerPlan_Ch4.pdf.

34 We are not persuaded by PSE's second argument that assessing emerging technologies would complicate conservation potential assessments. During program implementation, utilities must consider conservation savings from a variety of sources, including emerging technologies, as part of adaptive management of their conservation portfolios. This work is essential to the development of new programs during a biennium, and is not reserved to the conservation potential assessment.

35 Lastly, we make a few minor changes to improve clarity and consistency with the statute. PSE suggested that WAC 480-109-100 (1)(c) specify that pilots should be expected to be cost-effective within the current or immediately subsequent biennium.[13] We agree, and add "within the current or immediately subsequent biennium" to WAC 480-109-100 (1)(c).

[13] October 6, 2014, PSE comment form, Comment 8.

36 In WAC 480-109-100 (2)(a) we add the word "available" so the rule more closely mirrors RCW 19.285.040(1). Similarly, we replace "all achievable conservation" in WAC 480-109-100 (3)(a) with "all available conservation that is cost-effective, reliable and feasible" to improve consistency with the statute.

37 PSE and NWEC suggested that consistent language be used in the three places of WAC 480-109-100 (3)(c) that describe "the immediately subsequent two" biennia or biennial conservation targets.[14] We agree and change the proposed rule to provide consistency.

[14] October 6, 2014, PSE comment form, Comment 11; October 6, 2014, Comments of NWEC, at 1.

ii. Energy savings values and protocols

38 WAC 480-109-100(5) codifies existing precedent requiring utilities to use the regional technical forum's (RTF) unit energy savings values and protocols, unless a utility demonstrates to its advisory group that another value or protocol is based on generally accepted methods, impact evaluation data, or other reliable and relevant data that include verified savings levels. The proposed rule allowed non-RTF values to be used only by commission order. Pacific Power, PSE, and public counsel commented that requiring a commission order to use non-RTF values would create a significant administrative burden. We agree and remove the provision requiring a commission order for the use of non-RTF values.

iii. Low-income conservation

39 We recognize that conservation measures implemented at low-income residences have significant nonenergy benefits that are difficult to quantify, such as improved health, safety, and comfort. Low-income conservation programs often face higher barriers, and therefore costs, than other programs, such as generally older housing stock, a higher proportion of renters, and the availability of disposable income. As a result, utility low-income programs may struggle to demonstrate cost-effectiveness.

40 Utilities contract with community action agencies to determine participant eligibility and implement conservation measures. When agencies use federal weatherization assistance program funds, the conservation measures must be evaluated for cost-effectiveness using the savings-to-investment ratio (SIR) or targeted residential energy analysis tools (TREAT model), as described in the *Weatherization Manual* developed and maintained by the Washington state department of commerce (commerce), and which we adopt by reference in WAC 480-109-999(2). Using this approach, cost-effectiveness is determined on a project-by-project basis.

41 WAC 480-109-100 (10)(a) allows utilities to fully fund low-income conservation measures that are determined to be cost-effective consistent with the procedures in the

Weatherization Manual, as well as associated repairs, administrative costs, and health and safety improvements. The *Weatherization Manual* is used by agencies across the state, and we believe using this existing framework could lessen the administrative burden on utilities and the community action agencies. WAC 480-109-100 (10)(b) allows utilities to exclude low-income conservation from portfolio-level cost-effectiveness screens. The SIR is a different cost-effectiveness test than the utilities use for the rest of the conservation portfolio, so it is reasonable to make separate calculations. In recognition that low-income conservation programs have significant nonenergy benefits, we find it appropriate for utilities to maintain robust low-income conservation offerings despite the unique barriers these programs face.

42 WAC 480-109-100 (10)(c) requires utilities to count savings from low-income conservation programs toward biennial conservation targets consistent with the test used to evaluate low-income program cost-effectiveness.

43 The proposed rule, WAC 480-109-100(8), addressed low-income conservation and we received substantial comments from stakeholders on this issue, both before and after the adoption hearing. The energy project commented that commerce had updated the title of the *Weatherization Manual* since we initiated this rule making.[15] It suggested that the rule allow the use of the priority list developed by commerce and approved by the United States Department of Energy. The energy project also noted that the SIR indicates which measures should be installed, but fails to give an indication of what portion of the cost utilities should cover.

[15] October 6, 2014, Comments of the energy project.

44 We appreciate the energy project's first comment and have used the updated title of the *Weatherization Manual* in the adopted rule. In our effort to reduce the administrative burden of low-income conservation programs, we agree with the energy project's suggestion to include the priority list of measures and the adopted rule allows for its use at WAC 480-109-100 (10)(a).

45 We also agree with the energy project that community action agencies face significant challenges in securing sufficient funding to cover costs not paid by utilities. Utilities do not always pay the full amount of low-income conservation measures or associated administrative costs. WAC 480-109-100 (10)(a) allows, and we encourage, utilities to fully fund low-income conservation measures determined to be cost-effective using the procedures of the *Weatherization Manual*, as well as associated repairs, administrative costs, and health and safety improvements. The rule does not require utilities to fully cover all of these costs because we are concerned that such a requirement could be in conflict with utilities' existing contracts with community action agencies. Further, it is appropriate for the utilities to discuss the level of incentive payments with their advisory groups.

46 Pacific Power suggested striking all references to evaluating the cost-effectiveness of low-income conservation programs until a review of all the possible ramifications of such a change could be evaluated with its advisory group.[16] Pacific Power also raised concerns about how the SIR would impact the conservation potential assessment and integrated resource planning.

[16] October 6, 2014, Pacific Power comment form, Comment 8.

47 Acknowledging Pacific Power's first concern, we revise the rule language to allow, rather than require, utilities to pursue low-income conservation that is cost-effective consistent with the procedures of the *Weatherization Manual*. We recognize that there may be implementation challenges, and expect the utilities to consult with their advisory groups and community action agencies prior to making any change. Regarding Pacific Power's second concern, we note that conservation potential assessments and integrated resource plans consider the total amount of conservation available and do not distinguish between low-income and nonlow-income residential conservation opportunities. Utilities determine the appropriate mix of low-income residential and other measures to pursue in the course of developing a conservation portfolio, not in the development of a conservation potential assessment or integrated resource plan.[17] Therefore, there is no conflict between using the procedures of the *Weatherization Manual* and conservation potential assessments and integrated resource plans.

[17] The different steps discussed here are outlined in WAC 480-109-100 (1)(a).

48 PSE commented that requiring utilities to use the procedures of the *Weatherization Manual* would increase administrative burden and costs.[18] To address this concern of increased burdens and costs, we revise the rule language to be permissive rather than mandatory. We expect utilities to explore with their advisory groups and community action agencies ways to minimize the administrative burden of implementing WAC 480-109-100(10), while maintaining sufficient review of cost and savings assumptions.

[18] October 6, 2014, PSE comment form, Comment 17.

49 ICNU suggested that WAC 480-109-100 (8)(a) specify that the portfolio-level cost-effectiveness analysis include administrative costs, in light of the increasing administrative costs that will be incurred in implementing the proposed rule.[19] We decline to do this. First, we expect the change to use the procedures of the *Weatherization Manual* to reduce administrative costs. Second, we find this change unnecessary because administrative costs are already included in the portfolio-level cost-effectiveness test.

[19] October 6, 2014, ICNU comment form, Comment 1.

50 NWEC commented that recognizing the unique benefits and costs of low-income conservation programs is appropriate and that the use of the procedures in the *Weatherization Manual* is appropriate for determining the cost-effectiveness.[20] Further, NWEC suggested that the rule clarify that the *Weatherization Manual* may be updated over time and that utilities should use the most current version. We believe the inclusion of the *Weatherization Manual* in WAC 480-109-999(2) achieves this flexibility.

[20] October 6, 2014, Comments of NWEC, at 2.

4. Conservation advisory group

51 WAC 480-109-110 codifies, with minor changes, certain conditions of our orders approving biennial conservation

plans over the last three biennia regarding utility engagement with conservation advisory groups.[21] As utility conservation efforts have matured with the implementation of the EIA, so have our expectations for utility engagement with their conservation advisory groups. Therefore, we find it appropriate to codify in rule those requirements that we do not expect to change in the future.

[21] *See supra*, n.3, listing commission orders approving biennial conservation plans with conditions.

52 Although this section incorporates many of the conditions found in utilities' current conservation orders, we did not include every condition in rule. Certain conditions lack broad applicability across companies or biennia, and in those cases we find it appropriate to use different approaches for different utilities. The full effect of other newer conditions is not yet known. Therefore, we do not believe them ripe for inclusion in rule at this time. As conservation programs continue to evolve and mature under the EIA, we expect that some conditions will stabilize, some will cease to be necessary, and others will be added as utilities address new challenges.

53 WAC 480-109-110(1) describes the range of issues we expect utilities to discuss with their advisory groups. In the proposed rule, subsection (1) addressed specific aspects of conservation programs and measures. In the rule we adopt today, we add "conservation programs and measures" to WAC 480-109-110 (1)(a) to make explicit that conservation advisory groups should address all aspects of conservation programs and measures.

54 WAC 480-109-110(2) requires utilities to meet at least four times per year, with reasonable notice provided. The format of these meetings is not specified because we encourage advisory groups to hold meetings in formats other than in person. WAC 480-109-110(3) standardizes the timing in which utilities must provide draft filings to conservation advisory groups. WAC 480-109-110(4) requires utilities to inform conservation advisory groups of company or commission public meetings addressing conservation programs, tariffs, or the development of conservation potential assessments.

i. New programs

55 WAC 480-109-110 (1)(m) requires utilities to discuss the development and implementation of new and pilot programs with their conservation advisory groups. Public counsel commented that the proposed rule did not include a specific requirement for utilities regarding new programs that are initiated mid-biennium and not included in the biennial or annual conservation plans.[22] Public counsel noted that each of the utilities was subject to a condition requiring the utility to present the details of new programs to its advisory group, and suggested similar language for WAC 480-109-120 (1)(c). Public counsel's suggested language would have also required utilities to file an update or addendum to the biennial or annual conservation plan when new programs go into effect.

[22] October 6, 2014, public counsel comment form, Comment 3.

56 We agree with public counsel that utilities should discuss new programs with conservation advisory groups, and add WAC 480-109-110 (1)(m). However, we reject public counsel's suggestion requiring utilities to file an update or addendum to the relevant conservation plan in all circumstances because we believe that would place an unnecessary administrative burden on utilities. While an update or addendum to the relevant conservation plan is appropriate when utilities make significant additions or modifications to their conservation programs, we decline to adopt a rule that would require such a filing in all circumstances. A utility should file an update or addendum to its relevant conservation plan when requested by its conservation advisory group as a result of significant additions or modifications to conservation programs.

ii. Advance notice of filings exception

57 WAC 480-109-110(3) requires utilities to provide conservation advisory groups with a draft copy of filings thirty days in advance of the filing. The purpose of this requirement is to give advisory group members sufficient time to ask questions and suggest possible changes, and to give utilities sufficient time to address suggested changes in the filings.

58 PSE objected to this requirement because, unlike other utilities, it is required under its current ordering conditions to provide a draft sixty days in advance of the effective date of filings and meet specific biennial conservation plan deliverable dates.[23] Additionally, PSE requested that an exception to the advance filing requirement be allowed for the annual conservation cost recovery adjustment filing required in WAC 480-109-100 - 480-109-130.

[23] October 6, 2014, PSE comment form, Comment 20. See also *Puget Sound Energy*, Docket UE-132043, Order 01, Attachment A, Condition (8)(d).

59 We recognize that due to the limited availability of information required for the conservation cost recovery adjustment filing, it would be difficult for PSE to provide a draft thirty days prior to filing with the commission. Further, the current conditions for each utility require the annual conservation cost recovery adjustment filings to be made sixty days before its effective date. We believe this provides sufficient time for the review, and therefore, in the adopted rule we exempt the conservation cost recovery adjustment filings at WAC 480-109-130 from the advance notification of filings requirement at WAC 480-109-110(3).

60 PSE and NWEC suggested that the rule allow utilities to provide a copy of filings concurrent with filing with the commission.[24] We reject this suggestion. Although circumstances may arise that delay or prevent a utility from providing an advance copy of filings to its conservation advisory group, a utility may request an exemption from the rule as provided by WAC 480-109-030 and 480-07-110. We believe this provision provides sufficient flexibility in extraordinary circumstances.

[24] October 6, 2014, PSE comment form, Comment 20; October 6, 2014, Comments of NWEC, at 2.

5. Conservation planning and reporting

61 WAC 480-109-120 codifies the current conservation planning and reporting process with minor changes. In odd-numbered years, a utility submits a biennial conservation plan. In even-numbered years, it submits a biennial conserva-

tion report and annual conservation plan. Each year, a utility submits an annual conservation report.

62 WAC 480-109-120 (1)(a) requires utilities to file a biennial conservation plan on or before November 1 of odd-numbered years. Taken together with the advance notice provision of WAC 480-109-110(3), this rule requires utilities to provide an electronic copy of its biennial conservation plan to its advisory group thirty days earlier, in early October.[25] Other sections of the rule require utilities to file an annual conservation plan on or before November 15 of even-numbered years, annual conservation reports on or before June 1 of each year, and biennial conservation reports on or before June 1 of even-numbered years. Nothing in this rule relieves a utility of the obligations found in its conservation orders and attached conditions lists.[26] A utility may request modification or clarification of its orders as needed.

[25] The requirements of a utility's conservation order and attached conditions list continue to apply. For example, condition 8(d) in Attachment A of Order 01 in Docket UE-132043 requires PSE to provide its advisory group a draft ten year conservation potential and two year target by August 1, 2015; draft program details, including budgets, by September 1, of the same year; and draft program tariffs by October 1, of the same year.

[26] The requirements of a utility's conservation order and attached conditions list continue to apply. For example, condition 8(a) in Attachment A of Order 01 in Docket UE-132043 requires PSE to file an annual conservation plan by December 1. PSE must comply with condition 8(a) and WAC 480-109-120(2) by filing by November 15. Similarly, condition 8(b) in Attachment A of Order 01 in Docket UE-132047 requires Pacific Power to file an annual conservation report by March 31. Pacific Power must comply with condition 8(b) and WAC 480-109-120(3) by filing its annual conservation report by March 31.

63 This section also describes the contents, process for publication, and process for review of the various plans and reports. We are particularly pleased that this process provides the commission with an independent third-party evaluator's review of utilities' conservation potential and achievement.

64 PSE objected to the use of the term "evaluation" in proposed WAC 480-109-120 (3)(b)(iv) regarding portfolio- and program-level cost-effectiveness.[27] Elsewhere in the rule, the term "evaluation" refers to impact, market, or process evaluations, typically those conducted by independent third parties. PSE also commented that the language in WAC 480-109-120 (3)(b)(iv) and (4)(b)(iv), which also addresses cost-effectiveness reporting, should be consistent.

[27] October 6, 2014, PSE comment form, Comment 26.

65 We believe that it is appropriate for utilities to provide a narrative discussion of the inputs to and results of cost-effectiveness tests in annual and biennial conservation reports, and that such a discussion is consistent with the summary of steps taken to adaptively manage conservation programs required in WAC 480-109-120 (3)(b)(vi). We remove the word "evaluation" to prevent confusion with the independent third-party evaluations required in WAC 480-109-120 (3)(b)(v), and to promote consistency between the subsections (3)(b)(iv) and (4)(b)(iv). We also make grammatical edits to this subsection to clarify that a utility must report the portfolio- and program-level cost-effectiveness of conservation savings.

i. Commerce reporting

66 RCW 19.285.070 requires each qualifying utility to report to commerce on its annual progress toward meeting its targets. Commerce promulgated rules requiring consumer-owned utilities to submit this report.[28] Commerce does not have authority to adopt rules regarding investor-owned utilities, as the EIA reserves that authority for the commission.[29] Currently, the commission asks investor-owned utilities to provide the report described in WAC 194-37-060 to commerce, and proposed WAC 480-109-120 (3)(c) makes this an explicit requirement.

[28] WAC 194-37-060.

[29] RCW 19.285.080(1).

67 PSE objected to the requirement that each utility file with commerce the report described in WAC 194-37-060 because that chapter of the Washington Administrative Code does not apply to investor-owned utilities such as PSE.[30] Additionally, PSE asserted that it *provides* the reports to commerce, rather than *files* them with commerce.[31]

[30] October 6, 2014, PSE comment form, Comment 27.

[31] October 6, 2014, PSE comment form, Comment 27.

68 We accept PSE's wording modification in WAC 480-109-120 (3)(c) and replace the word "file" with "submit." We also modify WAC 480-109-120 (5)(c) to clarify that the report referenced is the commerce report discussed here. However, we decline to accept PSE's argument that investor-owned utilities should not be required to submit reports to commerce. The reason our rules require investor-owned utilities to submit this conservation report is precisely because commerce lacks the authority to do so. State and federal policy makers rely on commerce's state wide data in evaluating energy policy. Requiring investor-owned utilities to report data in the same format as consumer-owned utilities enables administrative efficiency at commerce and ensures consistency in data from both investor- and consumer-owned utilities. Therefore, the rules we adopt today require investor-owned utilities to submit conservation reports in the form required by WAC 194-37-060.

6. Conservation cost recovery adjustment

69 We make several clarifications to proposed WAC 480-109-130, which codifies existing procedures utilities use to recover the costs of conservation programs. We add the word "cost" to the title and in subsections (1) and (2) to clarify that the tariff is for the recovery of costs. Accordingly, we modify proposed WAC 480-109-120 (3)(b)(iii) to reflect the new title of this section.

70 PSE requested several changes to the substance of this section. First, PSE requested that we add the word "all" to subsection (1).[32] We agree, and add the word "all" to clarify that filings must not exclude expected changes in conservation costs and amortization of deferred balances.

[32] October 6, 2014, PSE comment form, Comment 30.

71 Second, PSE requested that we modify this section to allow the recovery of nonconservation costs through this tariff, as PSE currently does.[33] We decline PSE's request, because it is our preference that these tariffs include only the costs of conservation programs. These adjustments often appear on bills as a "conservation program charge," establishing an expectation that it only includes conservation costs.

[33] October 6, 2014, PSE comment form, Comment 30.

72 Though we express our clear preference against the recovery of nonconservation costs from these tariffs, we see no need for a rigid rule prohibiting it. As PSE points out, in fact-specific circumstances we have allowed the recovery of nonconservation costs through these tariffs. Nothing in this rule prohibits the recovery of nonconservation costs through these adjustments, so there is no need to modify the proposed rules as PSE suggests.

73 Third, PSE requested that we add "or other rate recovery mechanisms as allowed in RCW 80.28.303 *et. seq.*" to the end of subsection (1).[34] WAC 480-109-130 merely codifies our existing practice, and is not intended to add new requirements to conservation cost recovery adjustments. Moreover, RCW 80.28.303(5) allows the commission to adopt "any other policies or programs intended to encourage utility investment in improving efficiency." The commission's existing practice, and the rule that codifies it, is consistent with RCW 80.28.303. We therefore decline to make the change proposed by PSE.

[34] October 6, 2014, PSE comment form, Comment 30.

74 Fourth, PSE requested that the inclusion of conservation cost recovery procedures in tariffs be permissive, not mandatory, because accounting procedures are more appropriately placed in accounting rules rather than tariffs.[35] This section of the rule is modeled after WAC 480-90-233, the commission's purchased gas adjustment rule, which requires the inclusion of procedures in the tariff. We intend for our rules on cost recovery adjustments to be consistent and detailed; therefore we decline to make the suggested change.

[35] October 6, 2014, PSE comment form, Comment 30.

75 Fifth, PSE suggested requiring a "subsequent true-up" to recover actual program costs of the prior year.[36] The commission's purchased gas adjustment rule provides for recovery of actual program costs of the prior year without a subsequent true-up. In effect, each year's conservation cost recovery adjustment filing serves the function of a true-up for the previous year, because, as described in the third sentence of WAC 480-109-130(3), utilities must "include the effects of variations in actual sales on the recovery of conservation costs in the prior year." For the reasons described in the paragraph above, we decline to make this change.

[36] October 6, 2014, PSE comment form, Comment 31.

76 Finally, PSE suggested two clarifications to the second sentence of proposed WAC 480-109-130(3). The first highlights the forward-looking nature of conservation cost recovery and the second clarifies use of the term "program" versus "measure." We accept PSE's addition of "forward-looking" before budgeted conservation, and accept the substitution of "programs" for "measures" in both places in the same sentence. This change allows PSE to recover direct administrative costs through the tariff and maintain its existing practice.

B. Renewable portfolio standard rules

77 WAC 480-109-200 through 480-109-220 describe the process that a utility must follow to meet the requirement in RCW 19.285.040(2) to acquire eligible renewable resources. The commission developed this renewable portfolio standard reporting process over the last three years.[37]

[37] The commission's orders evaluating each utility's renewable portfolio standard filings are in the dockets listed in the following table.

Utility	2012	2013	2014
Avista	UE-120791	UE-131056	UE-140801
Pacific Power	UE-120813	UE-131063	UE-140802
Puget Sound Energy	UE-120802	UE-131072	UE-140800

78 WAC 480-109-200 details the method for calculating a utility's renewable resource targets by year, the process for acquiring and using certificates for compliance with the EIA, and three options for calculating the amount of incremental hydropower eligible for EIA compliance. WAC 480-109-210 discusses renewable portfolio standard reports that a utility must file with the commission. WAC 480-109-220 describes alternatives to the renewable resource requirement.

1. Certificate definition

79 We revise proposed WAC 480-109-060(3) to add a definition of the term "certificate." This simplifies the rule by allowing a single word to refer to the ownership of nonpower attributes of energy from eligible renewable resources.

80 The EIA defines "renewable energy credit" (REC) in RCW 19.285.030(20), to mean a "tradable certificate of proof of [energy from] an eligible renewable resource where the generation facility is not powered by fresh water." In other words, the EIA allows the use of incremental hydropower to meet the state's RPS, but prohibits incremental hydropower from producing RECs.[38]

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

[38] Under RCW 19.285.030 (12)(b), incremental electricity produced as a result of efficiency improvements at certain hydroelectric generation facilities after March 31, 1999, is an "eligible renewable resource," and "eligible renewable resources" may be used to meet the RPS requirement in RCW 19.285.040 (2)(a).

81 This prohibition created an unwieldy proposed rule, where we used the cumbersome paired terms "renewable energy credits and qualifying hydroelectric generation" and "renewable energy credits and eligible renewable resources" to reference the ownership of nonpower attributes of energy from an eligible renewable resource. Providing a definition of the term "certificate" simplifies the rule by allowing for a single word to mean the ownership of the nonpower attributes of renewable energy credits and qualifying hydroelectric generation.

82 Proposed WAC 480-109-210(6) required the final compliance report to include a list of the "renewable energy credits" retired in WREGIS. Because the rules we adopt today replace the term "renewable energy credits" with "certificates," we are aware that we are expanding this requirement to include WREGIS documentation of energy from qualifying hydroelectric generation. This is appropriate in light of proposed WAC 480-109-200(3) requirement that "All eligible renewable resource generation … used for util-

ity compliance with the renewable energy standards must be registered in WREGIS, regardless of facility ownership."[39]

[39] As discussed in ¶ 88, the version of WAC 480-109-200(3) we adopt today slightly modifies the proposed rule, but does not alter its meaning.

2. Renewable portfolio standard

83 WAC 480-109-200 details a utility's renewable resource targets by year, the process for acquiring and using WREGIS certificates for compliance with the EIA, the available methods for calculating incremental hydropower, and the use of qualified biomass energy.

i. WREGIS registration

84 Proposed WAC 480-109-200(3) required that "All eligible renewable resource generation and all renewable energy credits used for utility compliance with the renewable energy standards must be registered in WREGIS, regardless of facility ownership." We require the use of WREGIS because RCW 19.285.030(20) authorizes commerce to select a renewable energy credit tracking system, and the department selected WREGIS.[40]

[40] WAC 194-37-040(17); WAC 194-37-210. The Western Renewable Energy Generation Information System has a web site at http://www.wregis.org.

85 The intent of this subsection is to codify commerce's decision and our precedent requiring utilities to use WREGIS to prevent double counting of renewable energy credits and qualifying hydroelectric generation.

86 The phrase "regardless of facility ownership" is a significant codification of our prior orders. In orders discussing the 2014 RPS reports, the commission ordered each utility to file a final compliance report listing the certificate numbers in WREGIS for every megawatt-hour and renewable energy credit that Avista, Pacific Power, and PSE retired to meet the January 1, 2014, target.[41] We separate "every megawatt-hour" and "renewable energy credit" because we require each megawatt-hour of incremental hydropower used for RPS compliance to be registered in WREGIS.

[41] *PSE*, Docket UE-140800, Order 01 ¶ 29 (July 31, 2014); *Avista,* Docket UE-140801, Order 01 ¶ 28 (July 31, 2014); *Pacific Power*, Docket UE-140802, Order 01 ¶ 28 (July 31, 2014).

87 Regardless of facility ownership, we require registration of each megawatt-hour of incremental hydropower used to further the statute's goals of tracking RPS compliance and preventing any two utilities from using the same megawatt-hour for compliance. In every order entered regarding utilities' RPS reports, the commission has expressed concern about double counting.[42] While we cannot and do not direct consumer-owned utilities to register their resources in WREGIS, we do have the authority and responsibility to ensure that eligible renewable generation claimed by investor-owned utilities is counted only once. It is appropriate to do this by requiring that ownership of all eligible renewable generation be verified and documented within WREGIS.

[42] *See supra*, n.37. Our most recent orders include this discussion at *PSE*, Docket UE-140800, Order 01 ¶ 29 (July 31, 2014); *Avista,* Docket UE-140801, Order 01 ¶ 28 (July 31, 2014); *Pacific Power*, Docket UE-140802, Order 01 ¶ 28 (July 31, 2014).

88 We make four clarifying changes to WAC 480-109-200(3). We title this subsection "WREGIS registration." We change "renewable resource generation and all renewable energy credits" to "hydropower generation and all renewable energy credits" to clarify that the requirement to register hydropower generation is in addition to the requirement to register RECs. We modify "renewable energy standards" to "renewable resource target" to match the title of WAC 480-109-200(1). These clarifications do not modify the substantive requirements of the proposed rule.

89 The fourth clarification we make is to add a sentence making explicit that "[a]ny megawatt-hour of eligible hydropower or renewable energy credit that a utility uses for compliance must have a corresponding certificate retired in the utility's WREGIS account." This sentence was not included in the proposed rule, however, as we discuss below, it codifies the commission's decisions in prior orders and is a logical extension of the registration requirement discussed above.[43]

[43] The commission stated in its 2012 final compliance reports: "[A] utility must retire any WREGIS certificates associated with the RECs and generation being used for compliance. Retirement of the certificates means the corresponding credits are no longer available for use." *PSE*, Docket UE-120802, Order 02 ¶ 11 (July 24, 2014); *Pacific Power*, Docket UE-120813, Order 02 ¶ 10 (July 24, 2014); *see Avista,* Docket UE-120791, Order 02 ¶ 11 (July 24, 2014).

90 We include this requirement because a certificate that is not retired may be sold or traded. The only way to prevent multiple utilities from using the same megawatt-hour for compliance is to retire the certificate associated with that megawatt-hour. Thus, to comply with the EIA's requirement to "use eligible renewable resources or acquire equivalent renewable energy credits" means retiring "any WREGIS certificates associated with the RECs and generation being used for compliance."[44] Preventing double counting is consistent with the EIA's policy to increase "the use of appropriately sited renewable energy facilities," and is a central premise of the renewable portfolio standard in the law.[45]

[44] RCW 19.285.040 (2)(a); *PSE*, Docket UE-120802, Order 02 ¶ 11 (July 24, 2014); *Pacific Power*, Docket UE-120813, Order 02 ¶ 10 (July 24, 2014); *Avista,* Docket UE-120791, Order 02 ¶ 11 (July 24, 2014).

[45] RCW 19.285.020.

91 NWEC and RN commented in support of the WREGIS registration requirement.[46]

[46] October 6, 2014, Comments of RN and NWEC, at 3.

92 Avista asserts that the EIA does not require WREGIS registration of qualifying hydroelectric generation, and that this requirement will disqualify a significant amount of incremental hydropower it purchased because the seller does not wish to participate in WREGIS.[47] Avista suggests that a consumer-owned utility certify that there is no double counting of its incremental hydropower.[48] In an order discussing Avista's 2014 RPS report, the commission responded:

[T]he EIA does not expressly require eligible hydropower resources to be registered in WREGIS, but neither does the statute preclude the commission from adopting such a requirement. We conclude that the commission has discretion under the EIA to take actions to further the statute's goals of tracking RPS compliance and ensuring that resources are

not being double counted. We exercise that discretion to require Avista to register in WREGIS all incremental hydropower facilities on which the company intends to rely to demonstrate RPS compliance.[49]

[47] October 6, 2014, Comments of Avista, at 3-4.

[48] *Id*.

[49] *Avista,* Docket UE-140801, Order 01 ¶ 15 (July 31, 2014).

The commission issued orders with the same language in discussing the 2014 reports for Pacific Power and PSE.[50] The rules we adopt today codify this precedent.

[50] *PSE*, Docket UE-140800, Order 01 ¶ 15 (July 31, 2014); *Pacific Power*, Docket UE-140802, Order 01 ¶ 14 (July 31, 2014).

93 Public Utility District No. 1 of Chelan County (Chelan PUD), which owns qualifying hydroelectric generation that utilities purchase, submitted comments addressing the WREGIS registration process.[51] From these comments, it appears that Chelan PUD engaged in discussions with WREGIS and believes that it can register its incremental hydropower with WREGIS. Chelan PUD encourages us to consider the timing of the review by the state auditor's office, and our review, of incremental hydropower production.

[51] October 6, 2014, Chelan PUD, *UTC Draft Incremental Hydro Language*.

94 We considered the comments of Chelan PUD and the review process in this proceeding. The rule we adopt today requires a utility to file a final compliance report two years after the target year, demonstrating that it retired certificates in WREGIS for the target year.[52] We find, based on the record in this proceeding, that registration of certificates in WREGIS does not present a significant administrative burden on utilities.[53] Our rule provides utilities two years between the target year and the final compliance report. That is sufficient time for the owners of qualifying hydroelectric facilities to register their incremental hydropower production in WREGIS, transfer the certificates to a utility, and for that utility to retire the certificates.[54]

[52] WAC 480-109-210(6).

[53] At the adoption hearing, Avista noted that it registers its incremental hydropower facilities in WREGIS and does not find the administrative burden to be onerous. Clint Kalich for Avista, November 5, 2014, Audio Recording, at 6:55-11:15.

[54] If a utility purchasing incremental hydropower is unable to comply with this requirement when submitting its 2013 final compliance report in 2015, it may provide documentation and request a one-time exemption from this rule. The commission's orders regarding the 2014 RPS reports included clear direction regarding this issue. *See supra*, nn.49-50. Therefore, we do not anticipate that compliance with the rule will present a problem in the 2014 or subsequent final compliance reports.

ii. Incremental hydropower calculation

95 We now discuss the process that utilities use for calculating incremental hydropower. Proposed WAC 480-109-200(7) incorporated the commission's precedent regarding how utilities calculate the incremental production of their upgraded hydropower facilities, which may be counted as eligible renewable energy.[55] While the EIA recognizes incremental hydropower as an eligible renewable resource, it does not prescribe how utilities should calculate it. A stakeholder workgroup convened under Docket UE-110523 identified three methods for a utility to make this calculation; we have recognized and allowed each of those methods. We incorporate these methods into the rule with minor refinements based on stakeholder comments and experience reviewing the methods during the last two RPS reporting cycles.

[55] RCW 19.285.030 (12)(b).

96 We revise proposed WAC 480-109-200 (7)(a) to make several clarifications. We require that a utility must use the same method across all hydropower facilities that it owns to prevent a utility from selecting a different method for each facility based on which method offers the most favorable outcome for that facility. We prohibit a utility from changing methods to prevent a utility from selecting a different method each year based on which method offers the most favorable outcome given that year's circumstances. Additionally, requiring each utility to use one method will lessen the administrative burden on the commission and stakeholders reviewing the RPS reports.

iii. Incremental hydropower: Method one

97 WAC 480-109-200(7)(b) explains method one. In this method, a utility determines the river discharge at a given facility during the target year, then runs it through two power-curve production models, one representing the preupgrade facility and the other representing the upgraded facility. The utility reports the difference between the two as the facility's incremental hydropower production.

iv. Incremental hydropower: Method two

98 WAC 480-109-200 (7)(c) explains method two. In this method, a utility determines the river discharge at a facility during each year of a historical period of at least five consecutive years, then runs each year's discharge through two power-curve production models - one representing the preupgrade facility and the other representing the upgraded facility. The utility then calculates the mean production of the preupgrade facility and the mean production of the postupgrade facility during the historical period, then determines an efficiency gain factor by dividing the mean production of the upgraded facility by the mean production of the preupgrade facility and subtracting one. Once this is done, the utility multiplies the facility's production each year by the factor that it calculates and reports the resulting figure as the facility's incremental hydropower production. Pacific Power uses method two for calculations from the facilities it owns.

v. Incremental hydropower: Method three

99 WAC 480-109-200 (7)(d) explains method three. This method is similar to method two in that a utility determines the river discharge at a facility during each year of a historical period of consecutive years, then runs each year's discharge through two power-curve production models. However, rather than determining a factor as in method two, the utility subtracts the mean production of the preupgrade facility from the mean production of the upgraded facility and reports the difference as the facility's incremental hydropower production in perpetuity. Since the reporting began in 2012, staff has consistently expressed reservations with this method, which as a one-time calculation would not capture the effect of future changes in long-term stream flow patterns.[56] As a result, the proposed rule characterized method

three as a pilot method. Avista uses method three for calculations from its facilities.

[56] Dockets UE-140800, UE-140801, and UE-140802, commission staff comments regarding 2014 Renewable Resource Reports, at 7 (June 30, 2014).

100 We revise the treatment of method three from the proposed rule to remove language that designates method three as a pilot method that would expire after 2017. This change makes the rule more closely reflect the commission's intent outlined in previous orders. In the order approving Avista's 2013 RPS target, the commission agreed with Staff's assertion that comparing method three, which calculates incremental hydropower production using solely historical data, to method two, which includes an annual calculation, will aid the evaluation of method three.[57] Method three may prove less reliable over time because climate models indicate that the region's summer river flows may decline over time.[58] To address this matter, the commission directed Avista, the only utility using method three at the time, to provide an analysis in its final compliance report comparing the amount of incremental hydropower that the company claimed since 2012 using method three to what it would have claimed had it used method two over the same period.[59]

[57] *Avista*, Docket UE-131056, Order 01 ¶ 26 (September 9, 2013).

[58] United States Environmental Protection Agency, *Climate Impacts in the Northwest* (January 13, 2015, 1:41 PM), http://www.epa.gov/climatechange/impacts-adaptation/northwest.html.

[59] *Avista,* Docket UE-131056, Order 01 ¶ 44 (September 9, 2013).

101 In comments on the proposed rule, Avista objected to method three's designation as a pilot method, arguing that such treatment was not consistent with the commission's order in the 2013 RPS docket and unfairly prejudged the method.[60] Avista also provided a comparison of the results of method three to the other two methods over a ten year period for its facilities on the Clark Fork River.[61] This analysis showed that the variance between the methods is small, and that the company actually would have claimed slightly less incremental hydropower over that period under method three than it would have with either of the other methods.[62]

[60] October 6, 2014, Comments of Avista, at 4-6.

[61] October 6, 2014, Comments of Avista, at 4-6.

[62] October 6, 2014, Comments of Avista, at 4-5.

102 Based on the analysis Avista provided on October 6, 2014, we agree that designating method three as a pilot method is not appropriate. Avista's analysis demonstrates that method three provided an accurate calculation of incremental hydropower production by the company's facilities between 2002 and 2011. We therefore revise the proposed rule by removing the pilot designation in the first sentence of WAC 480-109-200 (7)(d) and adding a new subsection regarding the five-year evaluation. In the rule we adopt today, WAC 480-109-200 (7)(e) states that beginning in 2019 and every five years thereafter, any utility using method three must provide an analysis comparing that method with one of the other two methods for every year method three was used. Given that no other utility is currently using method three, and that Avista provided data demonstrating that method three is performing satisfactorily for its facilities on the Clark Fork River at present, it is appropriate to "reset" the five-year clock to begin in 2019.[63]

[63] October 6, 2014, Comments of Avista, at 4-6. Avista also owns incremental hydropower facilities on the Spokane River, but did not provide the comparison for those smaller facilities. The Clark Fork River facilities comprise approximately eighty-nine percent of the certificates generated from eligible hydropower facilities that Avista owns. *Avista*, Docket UE-140801, Compliance Report of Avista Corporation, at 5 (May 30, 2014).

103 We also add the last sentence of WAC 480-109-200 (7)(e) to clarify that the commission may order a utility to use a different method if the analysis shows that the utility claimed a significantly different amount of incremental hydropower using method three compared to what it would have claimed using one of the other methods.

vi. Incremental hydropower: Historical period length

104 The commission discussed the length of the historical period required for the calculation in methods two and three in each RPS compliance cycle. Beginning in 2013, staff consistently advocated a historical period of at least five years, with a preference for at least ten years of data.[64] In a notice issued on April 9, 2014, the commission asked stakeholders to: (1) Consider changing river discharge rates as a result of climatic variability and cyclical climate patterns, and (2) examine the incremental hydro models and recommend an appropriate number of years for the historical period used in methods 2 and 3, balancing the commission's desire for increased precision against the administrative burden of managing large data sets. Avista was the only utility to provide a full response to this request.

[64] Dockets UE-131056, UE-131063, and UE-131072, staff comments regarding 2013 RPS Reports, at 18 (July 1, 2013).

105 Avista analyzed periods of five, ten, twenty, and eighty years, and based on the tradeoffs between increased accuracy and increased administrative burden, recommended a period of at least ten years.[65] PSE did not respond to the question in written comments, but company representatives stated at the May 15, 2014, workshop that the period should probably be longer than five years. Pacific Power stated that five years is appropriate because that was the consensus reached by the workgroup in Docket UE-110523, but did not provide analysis in support of its statement.[66] At the May 15, 2014, workshop Pacific Power informed the commission that it recently updated its method two calculation to include a six year historical period, an approach consistent with the requirements in Oregon. Pacific Power stated that it would like to use the same method in both states, as performing two different calculations would impose additional administrative burden.

[65] May 9, 2014, Comments of Avista, at 2-3.

[66] May 9, 2014, Comments of Pacific Power, at 5.

106 As methods two and three vary in their ability to account for long-term variation in river flows, it is appropriate to require different historical periods for methods two and three. Method two uses a historical period to determine a factor that is then applied to actual generation each year. As a result, actual river discharge and the resulting generation in the target year is the most important variable driving how

much incremental hydropower a utility claims. Method three's calculation, by contrast, is based solely on the historical period and not on actual river discharge and generation in the target year. Therefore, in method two it is less important to require a long historical period that accounts for a broad range of river flow conditions, as use of actual river discharge and generation each year will ensure that long-term variations are reflected in the calculation. By the same logic, it is more important to ensure that method three's historical period is large enough to account for a wide range of river discharge conditions.[67]

[67] Dockets UE-140800, UE-140801, and UE-140802, staff comments on 2014 Renewable Resource Reports, 7 (June 30, 2014).

107 In weighing the concerns raised by staff and stakeholders, we agree with Pacific Power that a historical period of at least five years is appropriate to use with method two, given that method's reliance on actual generation data each year. Any gains in accuracy that could be achieved by using a historical period of more than six years would likely not justify the increased burden. Accordingly, we require that method two calculations use a historical period of at least five years.

108 As noted above, we believe that method three requires a longer historical period to account for the wide variability of river discharge conditions. Ten years represents a fair tradeoff between the need for greater accuracy and our desire to limit the administrative burden on utilities.

3. Renewable portfolio standard reporting

109 WAC 480-109-210 outlines the components of RPS reports that utilities must file with the commission and the two-step reporting process for monitoring RPS compliance. In this process, each utility must file an annual report by June 1 that identifies the resources that the utility has acquired or contracted to acquire to meet its target for that year. Then, as explained in proposed WAC 480-109-210(6), the utility must file a second report within two years, documenting that it retired enough WREGIS certificates to meet its target. This process is unchanged from the proposed rule and consistent with the process the commission has required in previous orders.[68]

[68] See e.g., *Avista*, Docket UE-131056, Order 01 ¶ 2 (September 9, 2013); *Pacific Power*, Docket UE-131063, Order 01 ¶ 2 (September 9, 2013); *PSE*, Docket UE-131072, Order 01 ¶ 2 (September 9, 2013). *Avista*, Docket UE-120791, Order 01 ¶ 54 (September 13, 2012); *Pacific Power*, Docket UE-120813, Order 01 ¶ 60 (September 13, 2012); *PSE*, Docket UE-120802, Order 01 ¶ 50 (September 13, 2012).

110 The section also prescribes a uniform methodology that utilities must employ in calculating the incremental cost of RPS compliance, as required by RCW 19.285.070(1). It institutes additional reporting requirements to assist staff in reviewing the prudency of the utilities' renewable resource and certificate management.

111 RN and NWEC ask us to clarify that "the target year" in WAC 480-109-210(1) refers to the target of the same year in which the report is filed.[69] That is out [our] intent. However, we decline to change "the" to "that," as NWEC suggests, because we believe the rule and this order clearly reflect our intent.

[69] October 6, 2014, Comments of RN and NWEC, at 1.

i. Incremental cost methodology

112 RCW 19.285.070 requires utilities to report "the incremental cost of eligible renewable resources and the cost of renewable energy credits." RCW 19.285.050 (1)(b) defines this as:

> [T]he difference between the levelized delivered cost of the eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

113 However, the EIA does not prescribe precisely how this calculation should be performed. The absence of a defined method for calculating incremental costs has resulted in diverging approaches among utilities, which, according to staff, "precludes a valid assessment of the overall added expense to Washington ratepayers of complying with the renewable portfolio standard."[70] There is a clear public interest in publishing incremental cost data that is accurate and comparable across utilities.

[70] Dockets UE-131056, UE-131063, and UE-131072, Staff comments regarding 2013 RPS Reports, at 12 (July 1, 2013).

114 The methodology we codify today emerged from a collaborative and iterative process involving staff, utility representatives, and other stakeholders.[71] Stakeholders provided a number of constructive, clarifying comments that we incorporated into the rules adopted today, and we are not aware of any outstanding concerns related to this methodology.[72]

[71] We recognize that the incremental cost methodology we adopt today does not include all the benefits associated with renewable resources. Other benefits may include reduced exposure to fuel price risk, reduced carbon emissions, reduced exposure to market price risk, and potentially lower market prices. While the complexity of creating an incremental cost framework precluded the type of in-depth analysis that would have been required to address these topics in this proceeding, we may choose to address them in the future.

[72] October 30, 2014, Supplemental comments of PSE; November 7, 2014, Additional comments of Avista.

a. Historic acquisitions

115 We add language to proposed WAC 480-109-210 (2)(a)(i) clarifying that where a utility calculates the incremental cost of historic resource acquisitions, it must use the information that was available at the time of the resource's acquisition.

b. Renewable resource integration study

116 ICNU asks us to clarify that a utility's renewable resource incremental cost should be the same as that determined in the wind integration study of the utility's most recent integrated resource plan.[73] Our intent in WAC 480-109-210 (2)(a)(i)(A) is to give each utility the ability to determine integration costs based on the unique characteristics of its system, and ICNU's proposal is consistent with that intent. We revise proposed WAC 480-109-210 (2)(a)(i)(A) to incorporate this suggestion, but use the more generic phrase "renewable resource integration study" rather than "wind integration study."

[73] October 6, 2014, ICNU comment form, Comment 2.

c. Eligible resource capacity value

117 Proposed WAC 480-109-210 (2)(a)(i)(B) instructed utilities to estimate the amount of capacity a renewable resource produces by modeling the renewable resource's output at the time of the utility's peak. We revise this subsection to give utilities more flexibility in determining the capacity value of a renewable resource.

118 RN commented that the proposed rule offered an inaccurately low capacity value by examining only the production of a renewable resource in a single hour of the year.[74] Instead, RN suggested that utilities use an approximation of the effective load carrying capability method, which determines a capacity value for renewable resources based on their contribution to reducing outages on the utility's system. At hearing, ICNU and Avista suggested requiring a utility to value capacity in the same way it does in its integrated resource plan.[75] This would allow a utility [to] use a capacity value vetted by stakeholders in the utility's advisory group, and ultimately reviewed and acknowledged by the commission. We note that Pacific Power has adopted a version of the effective load carrying capability approach for modeling the capacity value of renewable resources in the company's 2015 integrated resource plan, with the support of its advisory group.

[74] October 6, 2014, Comments of Renewable Northwest and NWEC, at 1-2.

[75] Clint Kalich for Avista, November 5, 2014, Audio Recording, at 15:00; Joshua Weber for ICNU, November 5, 2014, Audio recording, at 1:25:00-1:26:00.

119 While we support the use of approximations of the effective load carrying capability method, we recognize that this topic is the subject of ongoing research and we decline to require the use of a specific method at this time. Rather, we revise proposed WAC 480-109-210 (2)(a)(i)(B) to state that a utility must "[i]dentify the capacity value of each eligible renewable resource as calculated in the utility's most recent integrated resource plan acknowledged by the commission." This approach allows utilities to adopt emerging best practices after advisory group and commission review.

d. Noneligible resource cost assumption

120 Proposed WAC 480-109-210 (2)(a)(i)(E) requires utilities to use their most recently acknowledged integrated resource plan for determining the lowest cost, noneligible resource for the capacity portion of the incremental cost calculation. Avista suggested allowing utilities to use cost information from other sources, on the grounds that the cost information included in the most recently acknowledged integrated resource plan may be outdated. We recognize Avista's concern and in the rule we adopt today allow a utility to use cost information from another source, with documentation of that source and an explanation of why the cost data in that source is more accurate than the cost data in the utility's last integrated resource plan.

121 Pacific Power asks us to clarify that in a purchase power agreement, the life of the facility should equal the term of the agreement.[76] We clarify proposed WAC 480-109-210 (2)(a)(i)(E) by adding "or contract length" to the length of time over which the noneligible resource's energy and capacity costs may be levelized.

[76] October 6, 2014, Comments of Pacific Power, at 3.

e. Legacy resources

122 In comments on the proposed rule, Avista also suggested that utilities use zero dollars as the incremental cost of any eligible renewable resource that was acquired prior to the EIA's passage in 2006. Avista argued that since the EIA was not a factor in the acquisition of those resources, their costs should not be considered incremental for purposes of the EIA.[77]

[77] October 6, 2014, Comments of Avista, at 8.

123 We decline to implement this suggestion, because doing so would assign a cost of zero to a large portion of the incremental hydropower resources that utilities use for compliance. While we recognize that the EIA may not have had an impact on a utility's decision to upgrade a hydropower facility prior to 2006, it does allow use of any renewable resource acquired after March 31, 1999, for compliance.[78] Given that incremental hydropower facilities upgraded between 1999 and 2006 represent a significant share of the resources utilities use to meet their renewable resource target, Avista's suggestion would skew the incremental cost calculation. A complete and accurate incremental cost calculation includes the costs of all eligible incremental hydropower. Furthermore, the cost data for the noneligible resource to which the incremental hydropower resources will be compared are readily available in utilities' integrated resource plans.

[78] RCW 19.285.030(12).

124 However, since the passage of the EIA, the Legislature has amended the law to allow certain qualified biomass facilities acquired prior to March 31, 1999, to count as eligible resources.[79] It is likely that these older qualified biomass facilities were significantly depreciated before the Legislature allowed their use to meet the RPS, and will likely have a very small incremental cost. This does not justify the administrative burden associated with performing the calculation described in WAC 480-109-210 (2)(a). Therefore, we add subsection (2)(a)(i)(G), allowing a utility using an older qualified biomass facility to deem its incremental cost as zero.

[79] RCW 19.285.030(18).

ii. Certificate sales

125 WAC 480-109-210 (2)(f) requires utilities to report the sale of certificates to the commission. PSE suggests that we delete this requirement because the EIA does not explicitly require that a utility disclose sales, and PSE is concerned that the reporting may disclose confidential information. We decline to delete this section, and note that the commission has rules for handling confidential information that PSE may invoke in its filing. Additionally, we note that utilities will include much of this information in the accounting of REC sales required by WAC 480-109-210 (2)(a)(ii) for an accurate calculation of incremental costs.

126 Pacific Power asks us to clarify that this requirement only applies to the sales of RECs allocated to Washington. We agree and make that clarification.

4. Alternatives to the renewable resource requirement

127 Proposed WAC 480-109-220 describes the alternatives to the RPS provided for in the EIA. Early in this proceeding, RN and NWEC requested that we modify the opening sentence of this section "to avoid the erroneous implication that qualifying for an alternative to the renewable energy target *completely* eliminates the need to use or acquire eligible renewable energy or RECs in that year."[80] We agree and in the proposed rule we added "fully" as the third word of this section and to WAC 480-109-210 (2)(b), clarifying that it does not excuse a utility from using renewable energy to fulfill as much of its RPS obligation as possible. RN and NWEC support this proposal.[81]

[80] May 9, 2014, Comments of RN and NWEC, at 6 (emphasis added); December 2, 2013, Comments of RN and NWEC, at 6.

[81] October 6, 2014, Comments of RN and NWEC, at 4.

C. Energy and emissions intensity metrics rules

128 Proposed WAC 480-109-300 described reporting requirements for energy and emissions intensity metrics.[82] Under this proposed rule, utilities must report annual values for each metric for the preceding ten calendar years. Metrics must be based on the annual energy or emissions from all generating resources providing service to customers in Washington, regardless of the location of the generating resources. For unknown generation, or "spot market" purchases, the utility shall report emission metrics using the average electric power carbon dioxide emissions rate described as the net system mix in the Washington state electric utility fuel mix disclosure reports compiled by commerce pursuant to RCW 19.29A.080. The report must include narrative text and graphics describing trends and analysis of the likely causes of changes, or lack thereof, in the metrics.

[82] The report shall include the following metrics: (a) Average MWh per residential customer, (b) average MWh per commercial customer, (c) MWh per capita, (d) million tons of CO2 emissions, and (e) comparison of annual million tons of CO2 emissions to 1990 emissions.

129 In written and oral comments, RN and NWEC supported the inclusion of this section. RN cited the work of the 2013 Climate Legislative and Executive Workgroup, which identified the EIA as the state's most effective policy for reducing greenhouse gases,[83] and stated at the hearing that the reporting requirements in this section will provide important performance metrics to evaluate the effectiveness of the EIA.[84]

[83] October 6, 2014, Comments of RN and NWEC, at 3. The workgroup was established by the legislature. E2SSB 5802. Chapter 6, Laws of 2013. State of Washington Climate Legislative and Executive Workgroup (CLEW), Evaluations of Approaches to Reduce GHG Emissions in Washington State, October 14, 2013.

[84] Dina Dubson Kelley for RN, November 5, 2014, Audio recording, at 1:00:02.

130 In contrast, PSE and Pacific Power recommended deleting this section in its entirety. PSE questioned the need for additional reports not specifically required in statute.[85] Pacific Power also commented that this section lacks "appropriate statutory support or authorization," and that the multi-jurisdictional nature of its operations would make complying with this section unduly burdensome.[86] Avista commented that the reporting requirements contemplated in this section warrant further discussion, and recommended that the commission hold a workshop.[87]

[85] October 6, 2014, Comments of PSE, at 38.

[86] October 6, 2014, Comments of Pacific Power, at 1.

[87] October 6, 2014, Comments of Avista, at 9.

131 For the reasons we discuss below, we reject the utilities' requests to delete this section in its entirety. However, as there remain sufficient concerns over the methodology for reporting certain metrics, we do not adopt the rules in this order today. Instead, we direct staff to engage in further discussion with stakeholders to develop an appropriate methodology for the per capita measurement, as well as guidelines to allocate emissions for multistate utilities. After additional discussion, we plan to consider for adoption a proposed rule that includes reporting requirements for energy and emissions intensity metrics.

132 First, the commission has a responsibility to "ensure the proper implementation and enforcement of [the EIA] as it applies to investor-owned utilities."[88] In this role, the commission has a duty to ensure that the EIA is implemented in a manner consistent with the policy goals of the statute. The EIA includes a stated policy goal to "increas[e] energy conservation."[89] While the existing reporting requirements enable the commission to track biennial compliance, the statute contains no further guidance on how or how often the commission should track utilities' long-term progress toward meeting the state's conservation goals. We believe that developing energy intensity metrics is reasonable, and consistent with the EIA's goal to increase energy conservation in the state.

[88] RCW 19.285.080(1).

[89] RCW 19.285.020.

133 The EIA further states a policy to "protect clean air and water." Reducing greenhouse gas emissions clearly fits within this broad policy goal.[90] In its January 2014 report to the legislature, the CLEW attributed more reductions in greenhouse gas emissions to the EIA over the next twenty years than any other state policy.[91] While neither the drafters of Initiative 937 nor the legislature has specified how to measure the EIA's impact on the carbon intensity of generation used to serve Washington customers, establishing metrics to assess the EIA's effectiveness in reducing greenhouse gas emissions is appropriate.

[90] *Id.*

[91] The report attributed 10.9 $MMTCO_{2e}$ of greenhouse gas emissions reductions to the Energy Independence Act in 2035. *A Report to the Legislature on the Work of the Climate Legislative and Executive Workgroup*, at 10 (January 2014), available at http://www.governor.wa.gov/sites/default/files/documents/CLEWfinalCombinedReport20140130.pdf.

134 In addition to its authority under the EIA, the commission also has authority under RCW 80.04.080 to require companies subject to its jurisdiction to file periodic or special reports. Such reports include information based on metrics to assess the EIA's impact on the carbon intensity of generation used to serve Washington customers.

135 Second, we do not agree that reporting requirements would be unduly burdensome. At the adoption hearing, Pacific Power and PSE indicated that the data needed to cal-

culate these metrics is available, and will likely continue to be available in the future.[92]

[92] Etta Lockey and Mary Wiencke for Pacific Power, November 5, 2014, Audio recording, at 34:00-41:00; Eric Englert for PSE, November 5, 2014 Audio recording, at 57:00-60:00.

136 Pacific Power and PSE raised concerns about the use of non-utility data, such as census data, to report the MWh per capita metric in proposed WAC 480-109-300 (2)(c).[93] We recognize that it may be difficult to reconcile utility service territories with census tract data. At the adoption hearing, PSE suggested that we consider adopting a metric for MWh *per customer*, instead of *per capita,* or use a factor to determine the number of people per meter.[94] The impact of this change would depend on the average number of people per meter in each utility's service territory. Proposed WAC 480-109-300 (2)(a) and (b) provide energy intensity metrics on a *per customer* basis. Our intent in proposing the MWh *per capita* metric is to compare energy intensity across service territories while removing other factors, such as the number of multifamily dwellings and the average family size in each service territory.

[93] October 6, 2014, Comments of Pacific Power, at 2.

[94] Eric Englert for PSE, November 5, 2014, Audio recording, at 59:00.

137 At the adoption hearing, PSE stated that this challenge could be addressed by simply specifying the source of the *per capita* data.[95] The company further speculated that it could obtain the data needed to meet this reporting requirement going back to the "early 2000s." Pacific Power also raised concerns about the administrative burden of the ten year look back required in the proposed rule.[96] Pacific Power stated that, while it is not impossible to gather the necessary data, it would be "a burdensome exercise" to compile data going back ten years on a system-wide basis and allocate it to Washington.[97] The result would not be the actual MWh delivered to Washington, but an approximation based on cost allocation across the six states in which the company operates. We recognize that Pacific Power does not currently allocate system-wide emissions on a state-by-state basis, and that it has no similar reporting requirement in other jurisdictions.

[95] Eric Englert for PSE, November 5, 2014, Audio recording, at 57:30.

[96] Etta Lockey for Pacific Power, November 5, 2014, Audio recording, at 33:00.

[97] Mary Wiencke for Pacific Power, November 5, 2014, Audio recording, at 37:10-39:00.

138 As the companies acknowledge, the data required to calculate the proposed metrics is readily available.[98] Collecting this data and reporting on energy and emissions intensity metrics will be instructive in guiding state energy policy. It may assist in the state's efforts in meeting the statutory obligation to reduce greenhouse gas emissions, and prove useful in the event state or federal regulations of carbon dioxide emissions are adopted in the future.[99] However, given that questions remain concerning the appropriate methodology for collecting the data, we find it premature to adopt the proposed rule in this order. We encourage staff to work with stakeholders to clarify the appropriate methodology and options for calculating these metrics. While we do not believe a full workshop is necessary to develop these methodologies, we do request further comments and discussion. Today we file a proposed rule-making continuance regarding these metrics. Once stakeholders and staff discuss the methodology further, we will consider adopting a rule requiring reporting of energy and emissions intensity metrics.

[98] Etta Lockey and Mary Wiencke for Pacific Power, November 5, 2014, Audio recording, at 34:00-41:00; Eric Englert for PSE, November 5, 2014 Audio recording, at 57:00-60:00.

[99] RCW 70.235.020.

D. Application

139 The proposed rules in chapter 480-109 WAC, as revised by this order, are applicable to plans and reports filed with the commission on or after the date the rules are effective. The rules in chapter 480-109 WAC we adopt in this order do not require the revision of plans or reports approved by commission order prior to the effective date of the rules.

140 The rules in chapter 480-109 WAC we adopt in this order are applicable to commission orders discussing the requirements of the chapter that are currently in effect. The commission has reviewed its orders that discuss the requirements of chapter 480-109 WAC to determine if those orders are consistent with the revised rules. However, we request that the utilities review these orders as well to ensure consistency. If a utility determines that a prior commission order that currently imposes a requirement on that utility conflicts with the rules we adopt in this order, that utility must petition the commission for modification of that order within thirty days of the effective date of these rules.

141 The rules in chapter 480-109 WAC we adopt in this order are also applicable to the utilities' tariffs. Utilities must review their tariffs that discuss the requirements of chapter 480-109 WAC and ensure those tariffs are in compliance with the rules we adopt in this order. If a utility determines that its tariff conflicts with the revised rules, that utility must file a revised tariff with the commission within sixty days of the effective date of these rules.

IV. COMMISSION ACTION

142 After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, adopt, and repeal the rules as proposed in the CR-102 at WSR 14-18-084 with the changes described above and in Attachment A.

143 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE**: After reviewing the entire record, the commission determines that chapter 480-109 WAC should be amended, adopted, and repealed to read as set forth in Attachment B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 10, Amended 5, Repealed 6.

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.

V. ORDER

THE COMMISSION ORDERS:

144 The commission amends, adopts, and repeals chapter 480-109 WAC sections to read as set forth in Attachment B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

145 This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

146 Utilities must review commission orders that discuss the requirements we adopt in chapter 480-109 WAC and determine if those orders are in compliance with the rules adopted in this order. If a utility determines that a prior commission order that currently imposes a requirement on that utility conflicts with the adopted rules, that utility must petition the commission for modification of that order within thirty days of the effective date of the rules.

147 Utilities must review their tariffs that discuss the requirements of chapter 480-109 WAC and determine if those tariffs are in compliance with the revised rules. If a utility determines that its tariff conflicts with the adopted rules, that utility must file a revised tariff within sixty days of the effective date of the rules.

DATED at Olympia, Washington, March 12, 2015.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Ann E. Rendahl, Commissioner

Attachment A
(Comment Summary Matrix)

Appendix A: Comment Summary and Commission Response
Energy Independence Act Rule Making, Docket UE-131723

Section	Commenter	Comment	Commission Response
"Biomass energy" WAC 480-109-060 (2)(b)(ii)	Avista	"Old growth forests" are not defined in the rule. Avista suggests the commission should hold a workshop on this issue so that a definition may be included in the rules by mid-2015.	The commission believes that this issue is not ripe for inclusion in this rule. The commission prefers to address this issue in the context of Avista's 2015 and 2016 RPS reports, as Avista is the only utility planning to use biomass energy at this time.
"Distributed generation" WAC 480-109-060(11)	PSE	Restore the definition of "distributed generation" used in RCW 19.285.030(11).	The commission declines PSE's suggested revision and adopts the definition of "distributed generation" used in the proposed rule because it restricts the use of the distributed generation multiplier to appropriate situations. This definition is consistent with the commerce's proposed rule WAC 194-37-136, which if adopted will result in a uniform state policy. (WSR 15-02-076, filed January 7, 2015.)
"Pro rata" WAC 480-109-060(19)	PSE, Pacific Power	Restore the existing WAC definition of "pro rata." The proposed definition is inconsistent with the methodologies used by the council in development of the 6th power plan, and does not recognize the differences in availability of resource potential within the forecast period, the rate at which emerging technologies become available in the market, or the barriers to ramping up in hard-to-reach markets (PSE and Pacific Power). Restore existing WAC 480-109-010 (2)(b): "each utility must fully document how it prorated its ten-year potential to determine the minimum level for its biennial conservation target." (Pacific Power).	The commission adopts the definition of "pro rata" used in the proposed rule. As discussed in the adoption order, the existing rule language allowed more flexibility for utilities to ramp up conservation acquisition to the levels required by the EIA. Now that the conservation programs are more mature, this flexibility is no longer appropriate. The proposed language is consistent with the plain meaning of the term "pro rata."
"Pursue all" WAC 480-109-060(21)	PSE	Remove definition of "pursue all." RCW 19.285.040 clearly describes what utilities are required to do to demonstrate that they are pursuing all conservation. This definition redefines those requirements.	The commission retains the definition in the proposed rule, which is consistent with the EIA. See the adoption order for additional discussion.

Section	Commenter	Comment	Commission Response
	Public Counsel	Public counsel supports the definition in the proposed rule, and does not believe that it establishes a separate requirement outside of the biennial conservation target.	
Cofiring WAC 480-109-060 (25)(i)	NWEC	Remove cofiring. Cofiring is a process, not a resource.	The commission agrees that cofiring is a process, but it is appropriate [to] include cofiring in the definition of "renewable resource" to show that cofiring may be used to meet renewable resource targets.
Single large facility WAC 480-109-060(28)	PSE	Restore definition in RCW 19.285.040 (1)(c)(ii). To add clarity, PSE proposes adding: "… premises of a single customer who participated in a utility conservation program and whose annual …"	While staff agreed with this revision, the commission declines to adopt it. RCW 19.285.040 (1)(c) is a new statutory provision, therefore the commission prefers to use a definition that does not add to the statutory language.
"Transmission voltage" WAC 480-109-060(30)	PSE and Pacific Power	Remove the definition of "transmission voltage." This definition may be inconsistent with classification of transmission voltage used for FERC rates. PSE classifies transmission voltage as 55kV and above.	To address this concern, we remove the definition and add "For the purposes of this subsection, transmission voltage is 100,000 volts or higher," to WAC 480-109-100 (3)(c)(iii) and 480-109-200 (8)(b).
Process for pursuing all conservation—Identify potential WAC 480-109-100 (1)(a)(i)	Pacific Power	Replace "potential of possible technologies and conservation programs and measures" with "conservation potential," as they are separate concepts.	This subsection describes the entire process for identifying "conservation potential." We reject Pacific Power's request and retain this longer description of the entire process utilities must use to identify their cost-effective, reliable and feasible conservation potential. To clarify that this identification takes place at the measure level, we delete "programs and."
Process for pursuing all conservation—Develop portfolio WAC 480-109-100 (1)(a)(ii)	NWEC	Add a sentence or clause saying the utility would need to provide supporting materials or documentation to demonstrate that no cost-effective, reliable and feasible conservation was available from one of the sources listed.	The commission rejects this suggestion, as the requirement to provide this documentation is encompassed in the rule. The rule appropriately requires utilities to consult with their advisory groups regarding the development of conservation potential assessments in WAC 480-109-110 (1)(e) and provide documentation of the development of the biennial conservation plan in WAC 480-109-120 (1)(b)(iv). Accordingly, utilities must provide supporting evidence to their advisory groups when certain types of conservation are not available.
Process for pursuing all conservation—Emerging technologies WAC 480-109-100 (1)(a)	PSE	The term "emerging" is misleading. Remove "a utility must research emerging conservation technologies, and assess the potential …." The proposed language is ambiguous and may lead to misinterpretations and stakeholder disagreements. For example, PSE is unclear whether this research would be required in the IRP or as a part of the conservation process.	The commission retains the language in the proposed rule. As discussed in the adoption order, it is necessary for utilities to research emerging technologies as part of an effective adaptive management strategy.
Pilots WAC 480-109-100 (1)(c)	PSE	The proposed language is ambiguous. PSE proposes: "A utility may implement pilot projects when appropriate and expected to produce cost-effective savings *within the current or immediately subsequent biennium*, as long as the overall portfolio remains cost-effective."	The commission agrees that it is appropriate to provide a time frame for implementing pilot projects, and adopted PSE's proposed language in WAC 480-109-100 (1)(c).
Conservation potential WAC 480-109-100 (2)(b)	PSE	WAC 480-109-100 (2)(b) add: ", meaning specifically that utilities must utilize the following approach in developing the potential: (i) Technical Potential: An estimate of the amount of conservation potential available without regard to market barriers; (ii) Achievable Potential: The subset of Technical Potential the utility could expect to achieve given market barriers; (iii) Economic Potential: The subset of Technical Potential that is cost[-]effective.[;] (iv) Avoided energy portfolio costs must reflect the 10% credit from the Northwest Power Act.["]	The commission agrees with PSE's comment but implements it by adopting the Sixth Northwest Conservation and Electric Power Plan by reference in WAC 480-109-999.

Section	Commenter	Comment	Commission Response
Conservation potential WAC 480-109-100 (2)(c)	PSE and Pacific Power	• Remove "its unit energy savings value, and the source of that value." UES values are documented in individual measure workbooks and are available when requested. Providing this information in the report will result in addition of hundreds of pages. UES values may not transfer easily from the CPA to program savings values because program savings are impacted by program delivery mechanisms (PSE). • Revise: "the projection must include a list of each measure category used in the potential, ~~its unit energy savings value~~, and the source of that value." (Pacific Power).	The commission declines to adopt these revisions. It is necessary for utilities to file a list of all unit energy savings with their ten year conservation potential for stakeholders to conduct a thorough review of this information during the biennial conservation target setting process.
Biennial conservation target WAC 480-109-100(3)	NWEC	Subsections (a) and (b) should reference cost-effective conservation.	As discussed in the adoption order, the commission has revised this section to refer to "available conservation that is cost-effective, reliable, and feasible."
Excess Conservation WAC 480-109-100 (3)(c)	PSE NWEC	• Subsection (c): The proposed language is inconsistent with RCW. Use the language in RCW 19.285.040 (1)(c)(i) (PSE). • Subsection (c) should say "biennia" instead of "biennium" (NWEC). • This language provides appropriate guidance as to the use of excess conservation. We believe that the legislative intent was for excess conservation to be used to mitigate a shortfall in future biennial periods (NWEC). • Subsections (i) and (ii) should be written the same. (i) "each of the subsequent two" vs. (ii) "each of the immediate two subsequent …" (NWEC).	The commission rejects PSE's argument that the proposed language is inconsistent with the statute. The proposed language allows for excess conservation to be used toward meeting targets, but specifies that it may not be used to adjust conservation potential or targets. This language is consistent with the intent of the statute. The commission adopts NWEC's proposed changes to WAC 480-109-100 (3)(c)(i) and (ii) to clarify that excess conservation may be used to meet up to twenty percent of each of the "immediately subsequent two biennial targets."
Prudence WAC 480-109-100(4)	PSE	Replace with: "A utility must demonstrate the prudence and cost-effectiveness of its conservation programs to the commission after the savings are achieved." This is an inaccurate citation to RCW 19.285.050(2), which says: "an investor-owned utility is entitled to recover all prudently incurred costs associated with compliance with this chapter."	The commission declines to adopt PSE's suggested language because it fails to account for the ongoing review of conservation savings occurring in the advisory groups before, during, and subsequent to conservation achievement. To address PSE's concern, the commission adopts changes to clarify that a utility retains the responsibility to demonstrate the prudence of all conservation expenditures, "consistent with RCW 19.285.050(2)."
Energy savings WAC 480-109-100(5)	Public Counsel PSE Pacific Power	• "By commission order" may cause confusion or create new burdensome processes. Revise: "…by the regional technical forum, except as provided in this subsection. ~~or by commission order. The commission will consider a unit energy savings value or protocol that is~~ If a utility utilizes unit energy savings values or protocols other than those established by the regional technical forum such values or protocols must be:" (Public counsel). • Revise to match PSE's conditions in subsections (6)(b) and (6)(c) in Attachment A of Order 01, Docket UE-132043. The proposed language implies that companies will need to seek approval from their advisory groups to implement new measures after the plan and target have been approved (PSE). • Add "When making changes or proposing new measures," and "standard protocol savings estimation methodologies approved … or provide an explanation for why not" (Pacific Power). • Subsection (5)(b) replace "for this" with "or" (Pacific Power).	The commission believes that these concerns are addressed by reverting to the version of this section in the August 2014 draft rule, which does not mention "by Commission Order."

Section	Commenter	Comment	Commission Response
High efficiency cogeneration WAC 480-109-100(6)	PSE NWEC	• Replace "certified" with "verified" by a professional engineer (PSE). • This should include the statutory language stating that high-efficiency cogeneration shall be "counted towards meeting the biennial conservation target in the same manner as other conservation savings" (RCW 19.285.040 (1)(d)(ii)) (NWEC).	The commission declines to adopt these changes. A professional engineer's training and experience qualifies her to design and certify the performance of cogeneration plants. Thus, it is appropriate to require any technical reports regarding performance claims of high-efficiency cogeneration to be certified by a professional engineer in accordance with RCW 18.43.070, and WAC 196-23-020. The commission declines to adopt NWEC's revision because WAC 480-109-100(6) states "a utility may count as conservation savings" high efficiency cogeneration, which encompasses the statutory language.
Cost-effectiveness evaluation and low-income programs WAC 480-109-100 (8)(a)	ICNU	Add: "costs included in the portfolio level analysis include conservation-related administrative costs." Administrative costs will be incurred if the proposed rule is adopted, particularly the carbon-intensity metric reporting.	The commission declines to adopt ICNU's proposed revision. As discussed in the adoption order, we believe that ICNU's concerns regarding low-income programs are addressed by the addition of WAC 480-109-100(10). Administrative costs associated with reporting carbon-intensity metrics are not conservation-related. Thus, utilities may not collect these costs through the conservation recovery adjustment.
	Pacific Power	Remove "except low-income conservation programs."	The commission declines to remove the exception for low-income programs, and modifies this section to state, "… except programs described in WAC 480-109-100(10)." See the adoption order for additional discussion.
Cost-effectiveness evaluation of Low-income programs WAC 480-109-100 (8)(b)* ** WAC 480-109-100(10) in the rule as adopted.*	Pacific Power	• Subsection (8)(b): Delete entire subsection and subparts. Until the ramifications of this proposed change have been reviewed, it is prudent to continue to apply the same cost-effectiveness tests to all programs. It isn't possible to use this screening for measures within the CPA and IRP planning phases. Some measures might be cost-effective if installed in a low-income home, but not in a non-low-income home (Pacific Power). • Subsection (8)(b)(i) Requires a utility to evaluate low-income conservation programs using the SIR or the council's method. This suggests that a utility has the choice between the two methodologies (Pacific Power).	The commission adds WAC 480-109-100(10) to address low-income conservation, described in detail in the adoption order. The commission believes this new subsection addresses the concerns of all stakeholders. The commission appreciates the stakeholders' contributions to the development of the revised language.
	PSE	• The proposed language would add layers of review and processing, and increase the administrative costs to the low-income program: 1. It would require an entirely new tracking and reporting system, cause the agency to have to track two sets of data. 2. Commerce already verifies the application of the SIR model. Requiring utilities to perform the test is redundant. 3. If the agencies were required to perform TREAT modeling for each project, the cost-effectiveness of the program would be at risk. • Subsection (8)(b)(i) replace with: "(i) A utility must base its low-income program cost-effectiveness reporting on data provided by low-income agencies. This data may be based on the SIR method for priority matrix measures and measures recommended by TREAT models."	
	NWEC	The rules should clarify that utilities should use the most current weatherization manual for the SIR. The treatment of low-income programs is appropriate, and the emphasis on cost-effectiveness at the portfolio level is consistent with the "bundled" measure approach, and provides appropriate benefits to customers.	

Section	Commenter	Comment	Commission Response
	Energy Project	The title of the *Weatherization Manual* changed; include the new title in the rule. Implicit in the adoption of the *Weatherization Manual* is the acceptance of the use of a priority list of measures that agencies can install without running a computer program to develop a site specific calculation of an SIR. The SIR calculation fails to recognize all of the benefits that accrue from the work while counting all the repair costs (life of the structure, health of occupants).	
Incentives WAC 480-109-100(9)	NWEC	Biennial conservation plan proceedings are comprehensive and an appropriate place for a discussion of the merits and impacts of a utility incentive.	We add the word "utility" to the title and the second sentence to clarify that this subsection refers to "utility incentives."
Conservation advisory groups WAC 480-109-110(1)	PSE	• Subsection (1)(d) replace "evaluation" with "review." • Subsections (1)(e) and (g) clarify that advisory group members "may" participate and review, if they elect to.	The commission rejects PSE's proposed revisions. First, it is appropriate for advisory groups to determine what level of rigor is satisfactory for the biennial evaluation of conservation achievement. Second, both conservation and IRP advisory groups have a role in conservation potential assessments and developing supply curves. Each utility is currently required by order to engage its conservation advisory group in the development of the conservation potential assessment within the IRP. It is appropriate to maintain this requirement in the rule.
Conservation advisory groups - meetings WAC 480-109-110(2)	NWEC	The meetings can be either in-person or telephonic.	The rule does not specific [specify] the type of meeting, therefore it is inclusive of telephonic or electronic meetings, and no change is necessary.
Advance notification of filings WAC 480-109-110(3)	PSE NWEC	• Replace with: "Except as provided in WAC 480-109-120 (reporting), and with the exception of conservation recovery filings, a utility will provide its advisory group an electronic copy of all conservation-related tariff filings that the utility intends to submit to the commission at least two months prior to the requested effective date. When extraordinary circumstances dictate, a utility may provide its advisory group with a copy of the filing concurrent with the commission filing" (PSE). • It seems appropriate to provide the utilities an exemption from this requirement under certain circumstances (i.e. when speed is essential) (NWEC).	The commission agrees that it is not necessary to require advance notification of conservation cost recovery adjustment filings, and adopts an exemption for filings required by WAC 480-109-130. The commission acknowledges the concern regarding extraordinary circumstances, but rejects the proposed revision. In extraordinary circumstances, a utility may petition the commission for an exception from the rule.
Conservation advisory groups - advance notification of meetings WAC 480-109-110(4)	PSE	"Public meetings" is too vague. Replace with: "A utility will notify its conservation advisory group of public meetings that the utility schedules to discuss the development of its conservation potential assessment or integrated resource plan."	The commission adopts language to clarify each utility must notify its advisory group of "company and commission" meetings. This revision requires the utility to notify its conservation advisory group of public meetings held by the utility, and commission open meetings regarding the utility's conservation programs.
Biennial conservation plan WAC 480-109-120	PSE	WAC 480-109-120 (1)(b)(i): Replace "achievable" with "economic cost-effective."	We replace "ten-year achievable conservation potential" with "ten-year conservation potential" to correspond to the new title of WAC 480-109-100(2). We also add WAC 480-109-120 (1)(c) to clarify that the ten year conservation potential in this section is the same as that in WAC 480-109-100(2).
		WAC 480-109-120 (1)(b)(iv): Replace "description" with "summary overview."	The commission declines to adopt this change, which would weaken the requirement.
		WAC 480-109-120 (1)(b)(vi)(B): Add "Where individually identifiable,".	The commission declines to adopt this revision. It is appropriate for each utility to discuss its EM&V budgets with its advisory group.

Section	Commenter	Comment	Commission Response
Biennial conservation plan - new programs WAC 480-109-120	Public Counsel	The proposed rule does not include any specific requirement in the event a utility establishes new programs mid-biennium. The utility should file an addendum or update to its biennial conservation plan and provide the program details to the advisory group and allow for review and comment. This is part of the 2014-15 conditions, and it should be included in the rule.	The commission agrees that a utility should present new programs to its advisory group, and has adopted this requirement in WAC 480-109-110 (1)(m). An addendum or update may be appropriate for major additions, but should not be required by rule.
Annual conservation report WAC 480-109-120 (3)(b)	PSE	WAC 480-109-120 (3)(b)(ii): Replace "description" with "*high-level discussion* of the *key sources of* variance between the planned and actual savings." A description of "any" variance will increase the administrative burden on utilities.	The commission declines to adopt PSE's suggestion to change "description" to the less rigorous term "high-level discussion," which would weaken the requirement. The commission accepts PSE's suggestion to change "source of any variance" to "key sources of variance." Annual conservation reports should explain the reasons for substantive variations, not list every potential cause of variation.
	PSE	WAC 480-109-120 (3)(c): Remove requirement to file with commerce. Reports are "provided to" rather than filed with commerce. Replace with: "A utility must file a conservation report with the commission in the same docket as its current biennial conservation plan."	The commission adopts a change to clarify that utilities "submit," rather than "file" the report with commerce, to more accurately reflect the process by which the utilities provide this information.
Cost-effectiveness reports WAC 480-109-120 (3)(b)(iv) and (4)(b)(iv)	PSE	Make the language in WAC 480-109-120 (3)(b)(iv) and 480-109-120 (4)(b)(iv) consistent.	The commission agrees with PSE's comment and made the language consistent. As discussed in the adoption order, both portfolio- and program-level cost-effectiveness are useful information to guide adaptive management decisions, and should be included in annual conservation reports. We do not require the program-level cost-effectiveness in the biennial conservation plans to lessen the administrative burden.
Third-party evaluations WAC 480-109-120 (4)(b)(v)	NWEC PSE	NWEC believes this language is appropriate. PSE suggests replacing "evaluation" with "review," and add "as deemed necessary by a utility's advisory group."	The commission believes that it is appropriate for utilities to provide a narrative discussion We decline to adopt PSE's suggestion to change "evaluation" to "review." Independent third-party evaluations are required in existing commission orders, and are consistent with current practice. It is appropriate for advisory groups to determine the scope of the cost-effectiveness discussions in the reports.
Publication of EERS and RPS reports WAC 480-109-120(6) and 480-109-210(4)	PSE	The plans contain confidential and sensitive data. The proposed requirement could result in a reduction of the amount of detail provided to the CRAG.	The commission does not intend these sections to require utilities to publish confidential information. A utility should provide work papers and supporting documentation to its advisory group, but confidential information as defined in WAC 480-07-160 may be redacted.
	PSE	Replace with: "A summary of the last two conservation plans and conservation accomplishment reports required in this section must be posted and maintained on the utility's web site."	The commission agrees with PSE's suggestion that providing a summary of EERS reports to the public would be helpful. We adopt revisions to this section to also require utilities to post a summary of planned and actual savings and expenditures on their web sites. Further codifying our precedent, we clarify that a utility must post EERS and RPS plans and reports on its web site within thirty days of commission acknowledgment of the plan or order approving the report.

Section	Commenter	Comment	Commission Response
Conservation cost recovery adjustment WAC 480-109-130(1)	PSE	This rule needs to work in conjunction with RCW 80.28.303. Not sure how this proposed rule would coexist with existing settlement agreements. Revise to say: "Utilities must file with the commission for recovery of all expected conservation costs and other approved costs and amortization of deferred balances. A utility may include its conservation recovery procedures in its tariff, or other rate recovery mechanisms as allowed in RCW 80.28.303 *et. seq.*".	We add the word "all" to clarify that filings must not exclude expected changes in conservation costs and amortization of deferred balances. As described in the adoption order, we decline PSE's request to add "other approved costs," because it is our preference that these tariffs include only the costs of conservation programs. As described in the adoption order, we decline PSE's request to add "or other rate recovery mechanisms as allowed in RCW 80.28.303 et. seq." to the end of subsection (1). As described in the adoption order, we require the inclusion of procedures in the tariff.
Conservation cost recovery adjustment WAC 480-109-130(3)	PSE	Replace second sentence with: "Utilities shall base conservation recovery rates on forward-looking budgeted conservation program costs for the future year with a subsequent true-up to recover only actual program costs of the prior year. Utilities must also include the effects of variations in actual sales on recovery of conservation costs in the prior year."	As described in the adoption order, we accept the addition of "forward-looking" before budgeted conservation and the substitution of "programs" for "measures" in both places in the same sentence; we decline to add "with a subsequent true-up."
Renewable portfolio standard WAC 480-109-200	PSE	Replace "portfolio standard" with "renewable resource" or "renewable energy target" throughout.	The commission rejects this proposed revision as "renewable portfolio standard" is an industry-standard term.
WREGIS registration WAC 480-109-200(3)	Avista Chelan PUD RN/NWEC jointly	• This requirement will disqualify a significant amount (15,000 + MWh) of qualifying renewable energy to the detriment of customers. Revise to clarify that all eligible generation owned by IOUs must be registered in WREGIS, and state that the commission-regulated utility shall (a) encourage such noncommission regulated entity to register its facilities in WREGIS. When unsuccessful, the IOU shall (b) provide documentation provided by the noncommission regulated utility to the state auditor and a written certification by an executive officer attesting to the fact that such eligible resources were used for compliance with the act and are not [to] be used for compliance by another entity (Avista, Chelan PUD). • This requirement is appropriate and provides consistency with other resources (RN/NWEC).	The commission retains the requirement that all eligible generation must be registered in WREGIS. As described in the adoption order, the public interest in preventing double counting justifies any administrative burden imposed on utilities.
Renewable energy credit multipliers WAC 480-109-200(4)	RN/NWEC	This language is consistent with the commission's declaratory order in Docket UE-111663.	The commission retains the proposed rule's language that the multipliers do not create additional renewable energy credits.
Incremental hydro: Method 1 WAC 480-109-200(7)	Chelan PUD	WREGIS requires that generation be reported on a monthly basis for each generating unit, within seventy-five days of the period of generation. There is a way to do a "prior period adjustment." Agencies that review a utility's usage of Method 1 should do so on a timeline that will ensure that the utility can use the incremental hydro for compliance.	The commission declines to adopt any changes to Method 1. The commission encourages utilities using Method 1 to work closely with staff to address these concerns prior to filing a final RPS compliance report. WREGIS provides ample flexibility to adjust previously reported monthly generation for up to two years. Further, WAC 480-109-210(6) provides two years after for utilities to submit their final RPS compliance reports.
Incremental hydro: Method 2 WAC 480-109-200(7)	Chelan PUD	Remove "river discharge of each year in the historical period for" to accommodate Chelan PUD's method. Entities using Method 2 could follow the standard WREGIS operating guidelines for reporting generation, as the percentage factor would be known in advance.	The commission declines to adopt changes to Method 2. The proposed rule calls for an average river discharge calculated over a period of "at least five years." Thus, this language does not preclude the use of all available years.
	Pacific Power NWEC	• PacifiCorp supports the use of a five year historical period for Method 2 (Pacific Power). • Subsection (iv) should say, "calculating …" and (v) should say, "multiplying …" (NWEC).	The commission appreciates Pacific Power's support of the five year minimum historical period in Method 2. The commission adopts NWEC's grammatical corrections.

Section	Commenter	Comment	Commission Response
Incremental hydro: Method 3 WAC 480-109-200(7)	Avista	Remove reference to Method 3 as a pilot method. Method 3 provides a valid estimate of expected benefits from hydro upgrades over time, and more certainty about the amount of energy to include in the reports. If the 2017 reporting period provides evidence that Method 3 is not providing a fair valuation of hydro upgrades, then the commission can take up the issue at that time.	As discussed in the adoption order, we adopt changes to this section that remove the reference to Method 3 as a "pilot method" and adjust when utilities using Method 3 must compare it to one of the other two methods. The commission adopts language clarifying that, if that analysis finds a significant different between Method 3 and one of the other methods, it may order a utility to use a different method in future reporting years.
RPS reporting WAC 480-109-210(1)	RN/NWEC	Clarify that the annual report details the resources that utilities acquired or contracted to acquire by January 1 of that same target year.	The commission recognizes this concern and provides clarification in the adoption order.
Incremental cost calculation WAC 480-109-210 (2)(a)(i)	RN/NWEC PSE	• The proposed rule includes integration costs for the eligible resource, but not the noneligible resource (RN/NWEC). • In supplemental comments filed on October 30, 2014, PSE rescinded its October 6 comments on this section (PSE).	The commission declines to adopt any changes that may contemplate the incorporation of "integration costs" or ancillary services associated with noneligible resources into the incremental cost calculation. The commission believes that the literature on this topic is not sufficiently developed, and that this issue is not ripe for inclusion in the rule at this time.
Incremental cost calculation WAC 480-109-210 (2)(a)(i)(A)	ICNU	Subsection (2)(a)(i)(A): Add: "including integration costs calculated consistently with its IRP, including its wind integration study, …".	As described in the adoption order, we agree that it is appropriate for a utility to use the integration costs calculated consistently with its IRP, and adopt changes to this subsection.
Incremental cost calculation—One-time component WAC 480-109-210 (2)(a)(i)(B)	RN/NWEC Avista ICNU	• Suggest the rule require utilities to use an effective load carrying capacity methodology, a less volatile and more reliable method for calculating capacity contributions. Subsection (a)(i)(B) **Capacity.** Calculate the capacity credit for each eligible resource by multiplying the resource's nameplate capacity by its percentage capacity value, which must be determined by modeling ~~the eligible resource's output, in megawatts, at the time of the utility's annual system peak~~ or accurately approximating the resource or resource type's effective load carrying capability. (RN/NWEC). • Avista and ICNU suggest using the capacity value the utility identified in its integrated resource plan.	While the commission declines to adopt Renewable Northwest's suggestion to require the use of an effective load carrying capability, we express support for the usage of that and similar methodologies in [the] adoption order. We adopt Avista and ICNU's suggestion, and encourage utilities to adopt best practices as they emerge in this developing field of research, in consultation with their respective IRP advisory groups.
Incremental cost calculation—One-time component WAC 480-109-210 (2)(a)(i)(E)	Avista	Subsection (2)(a)(i)(E) the latest IRP may be three years old, and may not reflect the lowest-cost noneligible resource (i.e. fluctuations in natural gas and wind prices.). Add: "Or where cost information in the IRP is no longer substantially representative of the lowest-cost, noneligible capacity resource, provide detailed documentation of the costs used, and why the figures are superior to those contained in the latest IRP."	The commission agrees that the rule should allow utilities to use updated cost information when the information in its IRP is out-of-date. The commission adopts new language in this subsection to allow a utility to use cost information from another source, provided that it also provides documentation and an explanation of why it used an alternative source.
Incremental cost calculation—One-time component WAC 480-109-210 (2)(a)(i)(E)	Pacific Power	• It is unclear what action, if any, will need to be taken in order to update the incremental cost calculation if the underlying inputs change. • Subsection (2)(a)(i)(E): If the eligible resource is a PPA, the rule should be clear that the life of the facility should be set equal to the term of the PPA.	The commission believes that the one-time nature of the incremental cost calculation means that underlying inputs do not change, and that no revisions to the rule are necessary to address Pacific Power's first comment. To address Pacific Power's second comment, the commission adopts the addition of "contract length" to the length of time over which the noneligible resource's energy and capacity costs may be levelized.
Incremental cost calculation WAC 480-109-210 (2)(a)(i)(F)	RN/NWEC	• Subsection (a)(i)(F) should include a sentence stating that the end result of this calculation may be a negative number. • The proposed rule should provide for accounting of fuel price risk.	The commission adopts language clarifying that the result of the incremental cost calculation may be a negative number. The commission believes that the issue of fuel price risk is not ripe for inclusion in the current rule.

Section	Commenter	Comment	Commission Response
Incremental cost calculation WAC 480-109-210 (2)(a)(i)(G)	Avista	Add: Subsection (G) Preact qualifying resources. Any qualifying resources acquired or committed to prior to November 2006 shall be attributed a cost of zero in the incremental cost calculation.	The commission adopts a new subsection in WAC 480-109-210 (2)(a)(i)(G) to allow utilities to deem the incremental cost of "legacy resources" as zero dollars. As discussed in the adoption order, the small cost of these facilities does not justify the burden of estimating these costs.
Annual calculation of revenue requirement WAC 480-109-210 (2)(a)(ii)	Avista Snohomish PUD (SnoPUD)	• This calculation double counts the energy value, as energy sales already are subtracted from each eligible resource's cost in WAC 480-109-210 (2)(a)(i)(F) (SnoPUD). • Subsection (C) "Subtract the revenue from the sales of any renewable energy credits and/or any revenue from the sale of nonpower attributes associated with energy from eligible facilities; and" (SnoPUD). • Avista withdrew its comment regarding this section via e-mail on November 6, 2014.	The commission declines to adopt any changes to the annual calculation of the revenue requirement ratio. The commission disagrees that this calculation results in double counting.
Alternative compliance WAC 480-109-210 (2)(b)	NWEC RN/NWEC	• Revise: "… other information in its report to demonstrate that it qualifies to use ~~that~~ the alternative compliance mechanism in WAC 480-109-220 (1) or (3)." (NWEC). • This clarifies that the alternative compliance mechanisms may be used to lessen, but not eliminate the requirement to deliver renewable energy and/or retire RECs on behalf of customers (RN/NWEC).	The proposed rule clearly communicates the concepts in NWEC's revision to WAC 480-109-210 (2)(b), so we decline to make this change.
Eligible resources WAC 480-109-210 (2)(d)	PSE	Delete section. The purpose of the annual report is to report what resources the utility used to comply in a past target year. It is not necessary to list all eligible renewable resources. Major resources will go through the ratemaking process first before they are used for compliance.	The commission declines to delete this subsection, which is consistent with commission orders in Dockets UE-120802 and UE-131072.
Multistate allocations WAC 480-109-210 (2)(e)	RN/NWEC	NWEC and RN support. Ideally, this provision could also direct the utility to ensure that any fuel mix disclosure in the impacted states reflects the proper allocation of the eligible renewable resource based on cost allocation to each state.	The commission adopts the use of "certificate" throughout this section, consistent with the definition in WAC 480-109-060(3). The commission declines to adopt rules regarding fuel mix disclosure, which is reported to commerce under RCW 19.29A.060.
Certificate sales WAC 480-109-210 (2)(f)	PSE	Delete section. The law does not require that a utility disclose this proprietary and confidential information. The proceeds from REC sales are already handled through an accounting petition.	The commission declines to delete this section. The proposed rule does not require utilities to disclose confidential information. A utility may file this information confidentially under RCW 80.04.095.
	Pacific Power	The requirements should specify that they only apply to the sales of RECs allocated to Washington. Reporting all REC sales would be a significant administrative burden.	The commission agrees that this rule applies only to the sales of RECs allocated to Washington. The commission adopts clarifying language in WAC 480-109-210 (2)(f).
Report review WAC 480-109-210(4) See also WAC 480-109-120(6)	Avista	Limit the posting of historical RPS and conservation reports on utility web sites to ten years.	The commission declines to limit the posting of historical reports. All reports should be available for public review. The commission adopts changes to this section to require that reports be posted within thirty days of commission order approving the reports, and provided to any person upon request.
Energy and emissions intensity metrics WAC 480-109-300	PSE Pacific Power Avista	• Delete section. This data is already available, and these reporting requirements are not specifically enumerated in chapter 19.285 RCW. The "unknown generation sources" section lacks any established methodology. There are no benchmarks against which to compare. What will happen with the data? (PSE).	The commission declines to delete this section. This reporting requirement is necessary to track progress toward meeting the objectives of the statute, to "increase energy conservation" and "protect clean air and water." As described in the adoption order, the commission plans to adopt this section at a later date. The commission does not believe that this reporting requirement is unduly burdensome.

Section	Commenter	Comment	Commission Response
		• Delete section. This type of reporting is extensive for a multijurisdictional company. The company does not collect information about its customers on a per capita basis. This could require burdensome parsing of census data. It may be more efficient for the commission to compile utility emissions data from each IOU and determine its desired per capita metric. If per capita requirements remain in this rule[,] providing the source for per capita calculations should be in rule (Pacific Power). • Emissions-related metrics subsections (2)(d) and (e) warrant further discussion. The commission should hold a workshop (Avista).	
	Pacific Power	Subsections (2)(a) and (b): If the commission keeps this section, it should revise to: "average MWh per residential customer" and "average MWh per commercial customer."	The commission agrees with this revision.
	NWEC	For clarity, revise the third sentence to "customers of that utility in Washington."	The commission agrees with this revision.
		Add MWh per industrial customer.	The commission declines to accept this proposed additional requirement. Due to large historic swings in industrial load, this is not a reliable long-term trend metric.
		Subsections (d) and (e): Should these include CO_2 equivalent emissions?	The commission declines to accept this revision. The difference between CO_2 emissions and CO_2 equivalent emissions for combustion technologies is not significant enough to impact trending data.
n/a	PSE	In supplemental comments, PSE suggests adding a new section describing what occurs if the rules go into effect before January 1, 2015.	We adopt the rules after January 1, 2015, so this addition is not necessary.

Attachment B
(Chapter 480-109 WAC - RULES)

AMENDATORY SECTION (Amending WSR 07-24-012, filed 11/27/07, effective 12/28/07)

WAC 480-109-010 ((~~Conservation resources.~~)) Purpose and scope. (((~~1) By January 1, 2010, and every two years thereafter, each utility must project its cumulative ten-year conservation potential.~~

~~(a) This projection need only consider conservation resources that are cost-effective, reliable and feasible.~~

~~(b) This projection must be derived from and reasonably consistent with one of two sources:~~

~~(i) The utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used by the conservation council in its most recent regional power plan. A utility may, with full documentation on the rationale for any modification, alter the conservation council's methodologies to better fit the attributes and characteristics of its service territory.~~

~~(ii) The utility's proportionate share, developed as a percentage of its retail sales, of the conservation council's current power plan targets for the state of Washington.~~

~~(2) Beginning January 2010, and every two years thereafter, each utility must establish a biennial conservation target.~~

~~(a) The biennial conservation target must identify all achievable conservation opportunities.~~

~~(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year cumulative achievable conservation potential. Each utility must fully document how it prorated its ten-year cumulative conservation potential to determine the minimum level for its biennial conservation target.~~

~~(c) The biennial conservation target may be a range rather than a point target.~~

~~(3) On or before January 31, 2010, and every two years thereafter, each utility must file with the commission a report identifying its ten-year achievable conservation potential and its biennial conservation target.~~

~~(a) Participation by the commission staff and the public in the development of the ten-year conservation potential and the two-year conservation target is essential. The report must outline the extent of public and commission staff participation in the development of these conservation metrics.~~

~~(b) This report must identify whether the conservation council's plan or the utility's IRP and acquisition process were the source of its ten-year conservation potential. The report must also clearly state how the utility prorated this ten-year projection to create its two-year conservation target.~~

~~(c) If the utility uses its integrated resource plan and related information to determine its ten-year conservation~~

~~potential, the report must describe the technologies, data collection, processes, procedures and assumptions the utility used to develop these figures. This report must describe and support any changes in assumptions or methodologies used in the utility's most recent IRP or the conservation council's power plan.~~

~~(4) Commission staff and other interested persons may file written comments regarding a utility's ten-year achievable conservation potential or its biennial conservation target within thirty days of the utility's filing.~~

~~(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open public meeting.~~

~~(b) The commission, considering any written or oral comments, may determine that additional scrutiny is warranted of a utility's ten-year achievable conservation potential or biennial conservation target. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.~~

~~(c) Upon conclusion of the commission review, the commission will determine whether to approve, approve with conditions, or reject the utility's ten-year achievable conservation potential and biennial conservation target.~~)) The purpose of this chapter is to establish rules that electric utilities must use to comply with the requirements of the Energy Independence Act, chapter 19.285 RCW.

AMENDATORY SECTION (Amending WSR 07-24-012, filed 11/27/07, effective 12/28/07)

WAC 480-109-020 ((~~Renewable resources.~~)) Application of rules. (((~~(1) Each utility must meet the following annual targets.~~

~~(a) By January 1 of each year beginning in 2012 and continuing through 2015, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least three percent of its load for the remainder of each year.~~

~~(b) By January 1 of each year beginning in 2016 and continuing through 2019, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its load for the remainder of each year.~~

~~(c) By January 1 of each year beginning in 2020 and continuing each year thereafter, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least fifteen percent of its load for the remainder of each year.~~

~~(2) Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1 of the target year.~~

~~(3) In meeting the annual targets of this subsection, a utility must calculate its annual load based on the average of the utility's load for the previous two years.~~

~~(4) A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.~~)) (1) The rules in this chapter apply to any electric utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(2) Any affected person may ask the commission to review the interpretation of these rules by a utility by making an informal complaint under WAC 480-07-910, Informal complaints, or by filing a formal complaint under WAC 480-07-370, Pleadings—General.

(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable law. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.

AMENDATORY SECTION (Amending WSR 07-24-012 and 08-01-037, filed 11/27/07 and 12/10/07, effective 12/28/07 and 1/10/08)

WAC 480-109-030 ((~~Alternatives to the renewable resource requirement.~~)) Exemptions from rules in chapter 480-109 WAC. ((~~Instead of meeting its annual renewable resource target in WAC 480-109-020, a utility may make one of three demonstrations.~~

~~(1) A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a combination of both. The incremental cost of an eligible renewable resource is the difference between the levelized delivered system cost of the eligible renewable resource and the levelized delivered cost of an equivalent amount of reasonably available nonrenewable resource. The system analysis used will be reasonably consistent with principles used in the utility's resource planning and acquisition analyses.~~

~~(2) A utility may demonstrate that events beyond its reasonable control that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.~~

~~(3) A utility may demonstrate all of the following:~~

~~(a) Its weather-adjusted load for the previous three years on average did not increase.~~

~~(b) After December 7, 2006, all new or renewed ownership or purchases of electricity from nonrenewable resources other than daily spot purchases were offset by equivalent renewable energy credits.~~

~~(c) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.~~)) The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exemptions from and modifications to commission rules; conflicts involving rules).

AMENDATORY SECTION (Amending WSR 07-24-012, filed 11/27/07, effective 12/28/07)

WAC 480-109-040 ((~~Annual reporting~~)) Additional requirements. ((~~(1) On or before June 1, 2012, and annually thereafter, each utility must file a report with the commission and the department regarding its progress in meeting its conservation and renewable resource targets during the preceding year.~~

~~(a) The report must include the conservation target for that year, the expected and actual electricity savings from conservation, and all expenditures made to acquire conservation.~~

~~The report may count electricity savings from new high-efficiency cogeneration facilities owned and used by a retail electric customer operating within the utility's service area towards the utility's conservation target during the biennium when the cogeneration facility commences operation. The electricity savings reported for each high-efficiency cogeneration facility is the amount of energy consumption avoided by the sequential production of electricity and useful thermal energy from a common fuel source.~~

~~(b) The report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by January 1 of the target year, the amount (in megawatt-hours) and cost of each type of eligible renewable resource used, the amount (in megawatt-hours) and cost of renewable energy credits acquired, the type and cost (per megawatt-hour) of the least-cost substitute resources available to the utility that do not qualify as eligible renewable resources, the incremental cost of eligible renewable resources and renewable energy credits, and the ratio of this investment relative to the utility's total annual retail revenue requirement.~~

~~(c) The report must state if the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-030 instead of meeting its renewable resource target. A utility using an alternative compliance mechanism must include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.~~

~~(d) The report must describe the steps the utility is taking to meet the renewable resource requirements for the current year. This description should indicate whether the utility plans to use or acquire its own renewable resources, plans to or has acquired contracted renewable resources, or plans to use an alternative compliance mechanism.~~

~~(2) Commission staff and other interested persons may file written comments regarding a utility's report within thirty days of the utility's filing.~~

~~(a) After reviewing any written comments, the commission will decide whether to hear oral comments regarding the utility's filing at a subsequent open meeting.~~

~~(b) The commission, considering any written or oral comments, may determine that additional scrutiny of the report is warranted. If the commission determines that additional review is needed, the commission will establish an adjudicative proceeding or other process to fully consider appropriate revisions.~~

~~(c) Upon conclusion of the commission review of the utility's report, the commission will issue a decision determining whether the utility complied with its conservation and renewable resource targets. If the utility is not in compliance, the commission will determine the amount in megawatt-hours by which the utility was deficient in meeting those targets.~~

~~(3) If a utility revises its report as a result of the commission review, the utility must submit the revised final report to the department.~~

~~(4) All current and historical reports required in subsection (1) of this section must be posted on the utility's web site and a copy of any report must be provided to any person upon request.~~

~~(5) Each utility must provide a summary of this report to its customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on this report.~~)) (1) These rules do not relieve any utility from any of its duties and obligations under the laws of the state of Washington.

(2) The commission retains its authority to impose additional or different requirements on any utility in appropriate circumstances, consistent with the requirements of law.

AMENDATORY SECTION (Amending WSR 07-24-012, filed 11/27/07, effective 12/28/07)

WAC 480-109-050 ((~~Administrative penalties.~~)) Severability. ((~~(1) A utility that fails to achieve either its conservation target or its renewable resource target must pay an administrative penalty for each megawatt-hour of shortfall in the amount of fifty dollars adjusted annually, beginning in 2007, to reflect changes in the gross domestic product-implicit price deflator, as published by the Bureau of Economic Analysis of the United States Department of Commerce or its successor.~~

~~(2) Administrative penalties are due within fifteen days of a commission determination, pursuant to WAC 480-109-040(2), that a utility failed to achieve its conservation or renewable resource target.~~

~~(3) A utility that pays an administrative penalty under subsection (2) of this section, must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty, the reason it was incurred and whether the utility expects to seek recovery of the penalty amounts in rates. The utility must provide this notification in a bill insert, a written publication mailed to all retail electricity customers, or another approach approved by the commission.~~

~~(4) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed under this section. The approval of an accounting order to defer penalties does not constitute approval of recovery of penalties in rates. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. If a utility seeks to recover deferred administrative penalties in rates, the utility must demonstrate the prudence of its decisions and actions when it failed to meet the renewable resource targets or one of the compliance alternatives provided in WAC 480-109-030, or the energy conservation targets. When assessing~~

~~a request for recovery of deferred administrative penalties, the commission will consider the intent of the Energy Independence Act, other laws governing commission actions, policies and precedents of the commission, and the commission's responsibility to act in the public interest.~~)) If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

NEW SECTION

WAC 480-109-060 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual retail revenue requirement" means the total revenue the commission authorizes a utility an opportunity to recover in Washington rates pursuant to a general rate proceeding or other general rate revision.

(2) "Biomass energy" means:

(a) The electrical energy produced by a generation facility powered by:

(i) Organic by-products of pulping and the wood manufacturing process;

(ii) Animal manure;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Untreated wooden demolition or construction debris;

(vi) Food waste and food processing residuals;

(vii) Liquors derived from algae;

(viii) Dedicated energy crops; and

(ix) Yard waste.

(b) Biomass energy does not include:

(i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome arsenic;

(ii) Wood from old growth forests; or

(iii) Municipal solid waste.

(3) "Certificate" means proof of ownership, registered in WREGIS, of the nonpower attributes associated with a megawatt-hour of generation from an eligible renewable resource.

(4) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3)(c).

(5) "Commission" means the Washington utilities and transportation commission.

(6) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(7) "Cost-effective" means, consistent with RCW 80.52.-030, that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "Council" means the Northwest Power and Conservation Council.

(9) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(10) "Department" means the department of commerce or its successor.

(11) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a nameplate capacity of not more than five megawatts alternating current. An integrated cluster is a grouping of generating facilities located on the same or contiguous property having any of the following elements in common: Ownership, operational control, or point of common coupling.

(12) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where:

(i) The facility is located in the Pacific Northwest; or

(ii) The electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services.

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest, where the additional generation does not result in new water diversions or impoundments;

(c) Hydroelectric generation from a project completed after March 31, 1999, where the generation facility is located in irrigation pipes, irrigation canals, water pipes whose primary purpose is for conveyance of water for municipal use, and wastewater pipes located in Washington, where the generation does not result in new water diversion or impoundments;

(d) Qualified biomass energy; or

(e) For a qualifying utility that serves customers in other states, electricity from a generation facility powered by a renewable resource other than freshwater that commenced operation after March 31, 1999, where:

(i) The facility is located within a state in which the qualifying utility serves retail electrical customers; and

(ii) The qualifying utility owns the facility in whole or in part or has a long-term contract with the facility of at least twelve months.

(13) "High-efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source resulting in a reduction in customer load where under normal operating conditions the useful thermal energy output is no less than thirty-three percent of the total energy output. The reduction in customer load is determined by multiplying the annual electricity output of the cogeneration facility by a fraction equal to one minus the ratio of:

(a) The heat rate (in British thermal units per megawatt hour) of the cogeneration facility based on the additional fuel requirements attributable to electricity production and excluding the fuel that would be required to produce all other useful energy outputs of the project without cogeneration, divided by the heat rate (in British thermal units per mega-

watt hour) of a combined cycle natural gas-fired combustion turbine. The heat rate of the combustion turbine must be based on a facility using best commercially available technology on a new and clean basis.

(b) Calculation of the reduction in customer load is made with the following formula:

$$\text{Megawatt-hours reductions in customer load} = \begin{pmatrix}\text{Annual}\\ \text{megawatt-hours}\\ \text{of cogen. elect.}\end{pmatrix} \times \left[1 - \left(\frac{\text{heat rate based on fuel used for electric portion of cogen.}}{\substack{\text{heat rate for a new clean natural gas fired combined cycle}\\ \text{combustion turbine using best available commercial technology}}}\right)\right]$$

(14) "Incremental cost" means the difference between the levelized delivered cost of an eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(15) "Integrated resource plan" or "IRP" means the filing made every two years by an electric utility in accordance with WAC 480-100-238, integrated resource planning.

(16) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers. Load does not include off-system sales or electricity delivered to transmission-only customers.

(17)(a) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource including, but not limited to, the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the onsite capture and destruction of methane or other greenhouse gases at a facility through a digester system, landfill gas collection system, or other mechanism, which may be separately marketable as greenhouse gas emission reduction credits, offsets, or similar tradable commodities. However, these separate avoided emissions may not result in or otherwise have the effect of attributing greenhouse gas emissions to the electricity.

(18) "Pacific Northwest" has the same meaning as defined for the Bonneville Power Administration in section 3 of the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(19) "Pro rata" means the calculation dividing the utility's projected ten-year conservation potential into five equal proportions to establish the minimum biennial conservation target.

(20) "Production efficiency" means investments and actions that save electric energy from power consuming equipment and fixtures at an electric generating facility. The installation of electric power production equipment that increases the amount of power generated for the same energy input is not production efficiency in this chapter or conservation under RCW 19.285.030(4) because no reduction in electric power consumption occurs.

(21) "Pursue all" means an ongoing process of researching and evaluating the range of possible conservation technologies and programs, and implementing all programs which are cost-effective, reliable and feasible.

(22) "Qualified biomass energy" means electricity produced from a biomass energy facility that:

(a) Commenced operation before March 31, 1999;

(b) Contributes to the qualifying utility's load; and

(c) Is owned either by:

(i) A qualifying utility; or

(ii) An industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(23) "Regional technical forum" means the advisory committee established by the council.

(24) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(25) "Renewable resource" means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Landfill gas;

(f) Wave, ocean, or tidal power;

(g) Gas from sewage treatment facilities;

(h) Biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006;

(i) Generation facilities in which fossil and combustible renewable resources are cofired in one generating unit that is located in the Pacific Northwest and in which the cofiring commenced after March 31, 1999. These facilities produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources; or

(j) Biomass energy, where the eligible renewable energy produced by biomass facilities is based on the portion of the fuel supply that is made up of eligible biomass fuels.

(26) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation.

(27) "River discharge" means the total volume of water passing through, over and around all structural components of a hydroelectric facility over a given time.

(28) "Single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a utility whose recent annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(29) "System cost" means, consistent with RCW 80.52.-030, an estimate of all direct costs of a project or resource over its effective life including, if applicable, the costs of distribution to the consumer and among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

(30) "Target year" means the twelve-month period commencing January 1st and ending December 31st used for compliance with the renewable portfolio standard requirement in WAC 480-109-200(1).

(31) "Utility" means an electrical company that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(32) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is the renewable energy credit tracking system designated by the department according to RCW 19.285.030(20).

(33) "Year" means the twelve-month period commencing January 1st and ending December 31st.

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

NEW SECTION

WAC 480-109-070 Administrative penalties. (1) A utility that fails to achieve either its conservation target or its renewable resource target must pay an administrative penalty for each megawatt-hour of shortfall in the amount of fifty dollars adjusted annually, beginning in 2007, to reflect changes in the gross domestic product-implicit price deflator, as published by the Bureau of Economic Analysis of the United States Department of Commerce or its successor.

(2) Administrative penalties are due within fifteen days of a commission determination, pursuant to WAC 480-109-210(2), that a utility failed to achieve its conservation or renewable resource target.

(3) A utility that pays an administrative penalty under subsection (2) of this section, must notify its retail electric customers within three months of incurring a penalty stating the size of the penalty, the reason it was incurred and whether the utility expects to seek recovery of the penalty amounts in rates. The utility must provide this notification in a bill insert, a written publication mailed to all retail electricity customers, or another approach approved by the commission.

(4) A utility may request an accounting order from the commission authorizing the deferral of the cost of any administrative penalty assessed under this section. The approval of an accounting order to defer penalties does not constitute approval of recovery of penalties in rates. A utility may seek to recover deferred administrative penalties in a general rate case or power cost only type rate proceeding. If a utility seeks to recover deferred administrative penalties in rates, the utility must demonstrate the prudence of its decisions and actions when it failed to meet the renewable resource targets or one of the compliance alternatives provided in WAC 480-109-220, or the energy conservation targets. When assessing a request for recovery of deferred administrative penalties, the commission will consider the intent of the Energy Independence Act, other laws governing commission actions, policies and precedents of the commission, and the commission's responsibility to act in the public interest.

NEW SECTION

WAC 480-109-100 Energy efficiency resource standard. (1) **Process for pursuing all conservation.**

(a) **Process.** A utility's obligation to pursue all available conservation that is cost-effective, reliable, and feasible includes the following process:

(i) **Identify potential.** Identify the cost-effective, reliable, and feasible potential of possible technologies and conservation measures in the utility's service territory.

(ii) **Develop portfolio.** Develop a conservation portfolio that includes all available, cost-effective, reliable, and feasible conservation. A utility must develop programs to acquire available conservation from all of the types of conservation identified in (b) of this subsection. If no cost-effective, reliable and feasible conservation is available from one of the types of conservation, a utility is not obligated to acquire such a resource.

(iii) **Implement programs.** Implement conservation programs identified in the portfolio to the extent the portfolio remains cost-effective, reliable, and feasible. Implementation methods shall not unnecessarily limit the acquisition of all available conservation that is cost-effective, reliable and feasible.

(iv) **Adaptively manage.** Continuously review and update as appropriate the conservation portfolio to adapt to changing market conditions and developing technologies. A utility must research emerging conservation technologies, and assess the potential of such technologies for implementation in its service territory.

(b) **Types.** Types of conservation include, but are not limited to:

(i) End-use efficiency;

(ii) Behavioral programs;

(iii) High-efficiency cogeneration;

(iv) Production efficiency;

(v) Distribution efficiency; and

(vi) Market transformation.

(c) **Pilots.** A utility must implement pilot projects when appropriate and expected to produce cost-effective savings within the current or immediately subsequent biennium, as long as the overall portfolio remains cost-effective.

(2) **Ten-year conservation potential.** By January 1, 2010, and every two years thereafter, a utility must project its cumulative ten-year conservation potential.

(a) This projection must consider all available conservation resources that are cost-effective, reliable, and feasible.

(b) This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must doc-

ument the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used in the Northwest Conservation and Electric Power Plan.

(c) The projection must include a list of each measure used in the potential, its unit energy savings value, and the source of that value.

(3) **Biennial conservation target.** Beginning January 2010, and every two years thereafter, a utility must establish a biennial conservation target.

(a) The biennial conservation target must identify, and quantify in megawatt-hours, all available conservation that is cost-effective, reliable, and feasible.

(b) The biennial conservation target must be no lower than a pro rata share of the utility's ten-year conservation potential.

(c) **Excess conservation.** No more than twenty-five percent of any biennial target may be met with excess conservation savings allowed by this subsection. Excess conservation may only be used to mitigate shortfalls in the immediately subsequent two biennia and may not be used to adjust a utility's ten-year conservation potential or biennial target. The presence of excess conservation does not relieve a utility of its obligation to pursue the level of conservation in its biennial target.

(i) Cost-effective conservation achieved in excess of a biennial conservation target may be used to meet up to twenty percent of each of the immediately subsequent two biennial targets.

(ii) A utility may use single large facility conservation savings achieved in excess of its biennial target to meet up to five percent of each of the immediately subsequent two biennial conservation targets.

(iii) Until December 31, 2017, a utility with an industrial facility located in a county with a population between ninety-five thousand and one hundred fifteen thousand that is directly interconnected with electricity facilities that are capable of carrying electricity at transmission voltage, may use cost-effective excess conservation savings from that industrial facility to meet the subsequent two biennial conservation targets. For purposes of this subsection, transmission voltage is one hundred thousand volts or higher.

(4) **Prudence.** A utility retains the responsibility to demonstrate the prudence of all conservation expenditures, consistent with RCW 19.285.050(2).

(5) **Energy savings.** A utility must use unit energy savings values and standard protocols approved by the regional technical forum, unless a unit energy savings value or standard protocol is:

(a) Based on generally accepted methods, impact evaluation data, or other reliable and relevant data that includes verified savings levels; and

(b) Presented to its advisory group for review. The commission retains discretion to determine an appropriate value or protocol.

(6) **High efficiency cogeneration.** A utility may count as conservation savings a portion of the electricity output of a high efficiency cogeneration facility in its service territory that is owned by a retail electric customer and used by that customer to meet its heat and electricity needs. Heat and electricity output provided to anyone other than the facility owner is not available for consideration in determining conservation savings. High efficiency cogeneration savings must be certified by a professional engineer licensed by the Washington department of licensing.

(7) **Applicable sectors.** A utility must offer a mix of conservation programs to ensure it is serving each customer sector, including programs targeted to the low-income subset of residential customers.

(8) **Cost-effectiveness.** A utility's conservation portfolio must pass a cost-effectiveness test consistent with that used in the Northwest Conservation and Electric Power Plan. A utility must evaluate conservation using cost-effectiveness tests consistent with those used by the council, and as required by the commission, except as provided by subsection (10) of this section.

(9) **Utility incentives.** A utility may propose to the commission positive incentives designed to stimulate the utility to exceed its biennial conservation target as identified in RCW 19.285.060(4). Any proposed utility incentive must be included in the utility's biennial conservation plan.

(10) **Low-income conservation.**

(a) A utility may fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with the *Weatherization Manual* maintained by the department. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility may fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low-income conservation measures.

(b) A utility may exclude low-income conservation from portfolio-level cost-effectiveness calculations.

(c) A utility must count savings from low-income conservation toward meeting its biennial conservation target. Savings may be those calculated consistent with the procedures in the *Weatherization Manual*.

NEW SECTION

WAC 480-109-110 Conservation advisory group. (1) **Scope of issues.** A utility must maintain and use an external conservation advisory group of stakeholders to advise the utility on conservation issues including, but not limited to:

(a) Conservation programs and measures.

(b) Updates to the utility's evaluation, measurement, and verification framework.

(c) Modification of existing, or development of new evaluation, measurement, and verification methods.

(d) Independent third-party evaluation of portfolio-level biennial conservation achievement.

(e) Development of conservation potential assessments, as required by RCW 19.285.040 (1)(a) and WAC 480-109-100(2).

(f) The methodology, inputs, and calculations for cost-effectiveness.

(g) The data sources and values used to develop and update supply curves.

(h) The need for tariff modifications or mid-biennium program corrections.

(i) The appropriate level of and planning for:

(i) Marketing conservation programs;

(ii) Incentives to customers for measures and services; and

(iii) Impact, market, and process evaluations.

(j) Programs for low-income residential customers.

(k) Establishment of the biennial conservation target and program achievement results compared to the target.

(l) Conservation program budgets and actual expenditures compared to budgets.

(m) Development and implementation of new and pilot programs.

(2) **Advisory group meetings.** A utility must meet with its conservation advisory group at least four times per year. Conservation advisory group members may request additional meetings. A utility must provide reasonable advance notice of all conservation advisory group meetings.

(3) **Advance notification of filings.** Except for the conservation cost recovery adjustment filing required in WAC 480-109-130, a utility must provide its conservation advisory group an electronic copy of all conservation filings that the utility intends to submit to the commission at least thirty days in advance of the filing. The filing cover letter must document the amount of advance notice provided to the conservation advisory group.

(4) **Advance notification of meetings.** A utility must notify its conservation advisory group of company and commission public meetings scheduled to address its conservation programs, its conservation tariffs, or the development of its conservation potential assessment.

NEW SECTION

WAC 480-109-120 Conservation planning and reporting. (1) **Biennial conservation plan.**

(a) On or before November 1st of every odd-numbered year, a utility must file with the commission a biennial conservation plan.

(b) The plan must include, but is not limited to:

(i) A request that the commission approve its ten-year conservation potential and biennial conservation target.

(ii) The extent of public participation in the development of the ten-year conservation potential and the biennial conservation target.

(iii) The ten-year conservation potential, the biennial conservation target, biennial program details, biennial program budgets, and cost-effectiveness calculations.

(iv) A description of the technologies, data collection, processes, procedures and assumptions the utility used to develop the figures in (b)(iii) of this subsection.

(v) A description of and support for any changes from the assumptions or methodologies used in the utility's most recent conservation potential assessment.

(vi) An evaluation, measurement, and verification plan for the biennium including, but not limited to:

(A) The evaluation, measurement, and verification framework;

(B) The evaluation, measurement, and verification budget; and

(C) Identification of programs that will be evaluated during the biennium.

(c) For the purposes of this section, ten-year conservation potential is derived pursuant to WAC 480-109-100(2).

(2) **Annual conservation plan.** On or before November 15th of each even-numbered year, a utility must file with the commission, in the same docket as its current biennial conservation plan, an annual conservation plan containing any changes to program details and annual budget.

(3) **Annual conservation report.**

(a) On or before June 1st of each year, a utility must file with the commission, in the same docket as its current biennial conservation plan, an annual conservation report regarding its progress in meeting its conservation target during the preceding year.

(b) The annual conservation report must include, but is not limited to:

(i) The biennial conservation target.

(ii) Planned and claimed electricity savings from conservation, including a description of the key sources of variance between the planned and actual savings.

(iii) Budgeted and actual expenditures made to acquire conservation through the conservation cost recovery adjustment described in WAC 480-109-130.

(iv) The portfolio- and program-level cost-effectiveness of the actual electricity savings from conservation.

(v) All program evaluations completed in the preceding year.

(vi) A discussion of the steps taken to adaptively manage conservation programs throughout the preceding year.

(c) A utility must submit to the department a conservation report as described in WAC 194-37-060, and file a copy of that report with the commission in the same docket as its current biennial conservation plan.

(4) **Biennial conservation report.**

(a) On or before June 1st of each even-numbered year, a utility must file with the commission, in the same docket as its current biennial conservation plan, a biennial conservation report regarding its progress in meeting its conservation target during the preceding two years.

(b) The biennial conservation report must include:

(i) The biennial conservation target;

(ii) Planned and claimed electricity savings from conservation;

(iii) Budgeted and actual expenditures made to acquire conservation;

(iv) The portfolio-level cost-effectiveness of the actual electricity savings from conservation;

(v) An independent third-party evaluation of portfolio-level biennial conservation savings achievement;

(vi) A summary of the steps taken to adaptively manage conservation programs throughout the preceding two years; and

(vii) Any other information needed to justify the conservation savings achievement.

(c) A utility must provide a summary of the biennial conservation report to its customers by bill insert or other suitable method within ninety days of the commission's final action on the report.

(d) A utility may file the annual conservation report and the biennial conservation report together as one report, provided that the report includes all of the information required in subsections (3) and (4) of this section and states that it serves as both the annual conservation report and the biennial conservation report.

(5) **Plan and report review.**

(a) Interested persons may file written comments regarding the biennial conservation plan and biennial conservation report within thirty days of the utility's filing.

(b) Upon conclusion of the commission review of the utility's biennial report or plan, the commission will issue a decision accepting or rejecting the calculation of the utility's conservation target; or determining whether the utility has acquired enough conservation resources to comply with its conservation target. If the utility does not meet its biennial conservation target described in WAC 480-109-100, the commission will determine the amount in megawatt-hours by which the utility was deficient.

(c) If a utility revises its annual or biennial conservation report as a result of the commission review, the utility must submit a revised copy of the report required in WAC 480-109-120 (3)(c) to the department.

(d) Annual plans and reports may be reviewed through the commission's open meeting process, as described in chapter 480-07 WAC.

(6) **Publication of reports.** All conservation plans and reports required by chapter 19.285 RCW and this section since January 1, 2010, as well as a summary of planned and actual savings and expenditures reflected in the plans and reports, must be posted and maintained on the utility's web site. Plans and reports must be posted on the utility's web site within thirty days of commission acknowledgment of the plan or order approving the report. A copy of any such plan, report, or summary must be provided to any person upon request.

NEW SECTION

WAC 480-109-130 Conservation cost recovery adjustment. (1) Utilities must file with the commission for recovery of all expected conservation cost changes and amortization of deferred balances. A utility must include its conservation cost recovery procedures in its tariff.

(2) A utility must make a conservation cost recovery filing no later than June 1st of each year, with a requested effective date at least sixty days after the filing. If the utility believes that a filing is unnecessary, then it must file a request for exception and supporting documents no later than May 1st of each year demonstrating why a rate change is not necessary.

(3) A utility may not accrue interest or incur carrying charges on deferred conservation cost balances. Utilities must base conservation recovery rates on forward-looking budgeted conservation program costs for the future year with revisions to recover only actual program costs of the prior year. Utilities must also include the effects of variations in actual sales on the recovery of conservation costs in the prior year.

NEW SECTION

WAC 480-109-200 Renewable portfolio standard. (1) **Renewable resource target.** Each utility must meet the following annual targets.

(a) By January 1st of each year beginning in 2012 and continuing through 2015, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least three percent of its two-year average load for the remainder of each target year.

(b) By January 1st of each year beginning in 2016 and continuing through 2019, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least nine percent of its two-year average load for the remainder of each target year.

(c) By January 1st of each year beginning in 2020 and continuing each year thereafter, each utility must use sufficient eligible renewable resources, acquire equivalent renewable energy credits, or a combination of both, to supply at least fifteen percent of its two-year average load for the remainder of each target year.

(2) **Credit eligibility.** Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1st of the target year.

(3) **WREGIS registration.** All eligible hydropower generation and all renewable energy credits used for utility compliance with the renewable resource target must be registered in WREGIS, regardless of facility ownership. Any megawatt-hour of eligible hydropower or renewable energy credit that a utility uses for compliance must have a corresponding certificate retired in the utility's WREGIS account.

(4) **Renewable energy credit multipliers.** The multipliers described in this subsection do not create additional renewable energy credits. A utility may count retired certificates at:

(a) One and two-tenths times the base value where the eligible resource:

(i) Commenced operation after December 31, 2005; and

(ii) The developer of the facility used apprenticeship programs approved by the Washington state apprenticeship and training council.

(b) Two times the base value where the eligible resource was generated by distributed generation and:

(i) The utility owns the distributed generation facility or has purchased the energy output and the associated renewable energy credits; or

(ii) The utility has contracted to purchase the associated renewable energy credits.

(c) A utility that uses a multiplier described in this subsection for compliance must retire the associated certificate at the same time. A utility may not transact the multipliers described in this subsection independent of the associated base value certificate.

(5) **Target calculation.** In meeting the annual targets of this section, a utility must calculate its annual target based on the average of the utility's load for the previous two years.

(6) **Integration services.** A renewable resource within the Pacific Northwest may receive integration, shaping, storage or other services from sources outside of the Pacific Northwest and remain eligible to count towards a utility's renewable resource target.

(7) **Incremental hydropower calculation.**

(a) **Method selection.** A utility must use one of the following methods to calculate the quantity of incremental electricity produced by eligible efficiency upgrades to any hydropower facility, regardless of ownership, that is used to meet the annual targets of this section. A utility shall use the same method for calculating incremental hydropower production at all of the facilities it owns. Once the commission approves a utility's method for calculating incremental hydropower production, that utility shall not use another method unless authorized by the commission.

(b) **Method one.** An annual calculation performed by:

(i) Determining the river discharge for the facility in the target year;

(ii) Measuring the total amount of electricity produced by the upgraded hydropower facility during the target year;

(iii) Using a power curve-based production model to calculate how much energy the pre-upgrade facility would have generated under the same river discharge observed in the target year; and

(iv) Subtracting the model output in (b)(iii) of this subsection from the measurement in (b)(ii) of this subsection to determine the quantity of eligible renewable energy produced by the facility during the target year.

(c) **Method two.** An annual application of a percentage to total production performed by:

(i) Determining the river discharge for the facility over a historical period of at least five consecutive years;

(ii) Using power curve-based production models to calculate the facility's generation under the river discharge of each year in the historical period for the pre-upgrade state and the post-upgrade state;

(iii) Calculating the arithmetic mean of generation in both the pre-upgrade and post-upgrade states over the historical period;

(iv) Calculating a factor by dividing the arithmetic mean post-upgrade generation by the arithmetic mean pre-upgrade generation and subtracting one; and

(v) Multiplying the facility's observed generation in the target year by the factor calculated in (c)(iv) of this subsection to determine the share of the facility's observed generation that may be reported as eligible renewable energy.

(d) **Method three.** A one-time calculation of the quantity of renewable energy performed by:

(i) Determining the river discharge for the facility over a historical period of at least ten consecutive years;

(ii) Using a production model to calculate the facility's generation in megawatt-hours under the river discharge of each year in the historical period for the pre-upgrade state and the post-upgrade state;

(iii) Calculating the arithmetic mean generation of the pre-upgrade and post-upgrade states over the historical period in megawatt hours; and

(iv) Subtracting the arithmetic mean pre-upgrade generation from the arithmetic mean post-upgrade generation to determine the amount of eligible renewable generation for the target year.

(e) **Five-year evaluation.** Any utility using method three shall provide, beginning in its 2019 renewable portfolio standard report and every five years thereafter, an analysis comparing the amount of incremental hydropower the utility reported in every year using method three to the amount of incremental hydropower the utility would have reported over the same period using one of the other two methods. If the commission determines that this analysis shows a significant difference between method three and one of the other methods, it may order the utility to use a different method in the future reporting years.

(8) **Qualified biomass energy.** Beginning January 1, 2016, only a utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its annual target obligation.

(a) A utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(b) A utility may acquire renewable energy credits from a qualified biomass energy resource hosted by an industrial facility only if the facility is directly interconnected to the utility at transmission voltage. For purposes of this subsection, transmission voltage is one hundred thousand volts or higher. The number of renewable energy credits that the utility may acquire from an industrial facility for the utility's target compliance may not be greater than the utility's renewable portfolio standard percentage times the industrial facility load.

(c) A utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or utility.

NEW SECTION

WAC 480-109-210 Renewable portfolio standard reporting. (1) **Annual report.** On or before every June 1st, each utility must file an annual renewable portfolio standard report with the commission and the department detailing the resources the utility has acquired or contracted to acquire to meet its renewable resource obligation for the target year.

(2) **Annual report contents.** The annual renewable portfolio standard report must include the utility's annual load for the prior two years, the total number of megawatt-hours from eligible renewable resources and/or renewable resource credits the utility needed to meet its annual renewable energy target by January 1st of the target year, the amount (in megawatt-hours) of each type of eligible renewable resource used, and the amount of renewable energy credits acquired. Additionally, the annual renewable portfolio standard report must include the following:

(a) **Incremental cost calculation.** To calculate its incremental cost, a utility must:

(i) Make a one-time calculation of incremental cost for each eligible resource at the time of acquisition or, for his-

toric acquisitions, the best information available at the time of the acquisition:

(A) **Eligible resource levelized cost.** Determine the levelized cost of each eligible resource, including integration costs as determined by the utility's most recently completed renewable resource integration study, using the utility's commission-approved weighted average cost of capital at the time of the resource's acquisition as the discount rate;

(B) **Eligible resource capacity value.** Identify the capacity value of each eligible renewable resource as calculated in the utility's most recent integrated resource plan acknowledged by the commission;

(C) **Noneligible resource selection.** Select and document the lowest-reasonable-cost, noneligible resource available to the utility at the time of the eligible resource's acquisition for each corresponding eligible resource;

(D) **Noneligible levelized energy cost.** For each noneligible resource selected in (a)(i)(C) of this subsection, determine the cost of acquiring the same amount of energy as expected to be produced by the eligible resource, levelized over a time period equal to the facility life or contract length of the eligible resource and at the same discount rate used in (a)(i)(A) of this subsection;

(E) **Noneligible levelized capacity cost.** Calculate the levelized capital cost of obtaining an equivalent amount of capacity provided by the eligible resource, as determined in (a)(i)(B) of this subsection, from a noneligible resource. This cost must be levelized over a period equal to the facility life or contract length of the eligible resource and at the same discount rate used in (a)(i)(A) of this subsection. To make this calculation, a utility must use the lowest-cost, noneligible capacity resource identified in its most recent integrated resource plan acknowledged by the commission. However, if a utility determines that cost information in the integrated resource plan is no longer accurate, it may use cost information from another source, with documentation of the source and an explanation of why the source was used.

(F) **Calculation.** Determine the incremental cost of each eligible resource by subtracting the sum of the levelized costs of the noneligible resources calculated in (a)(i)(D) and (E) of this subsection from the levelized cost of the eligible resource determined in (a)(i)(A) of this subsection. The result of this calculation may be a negative number.

(G) **Legacy resources.** Any eligible resource that the utility acquired prior to March 31, 1999, is deemed to have an incremental cost of zero.

(ii) **Annual calculation of revenue requirement ratio.** To calculate its revenue requirement ratio, a utility must annually:

(A) Sum the incremental costs of all eligible resources used for target year compliance;

(B) Add the cost of any unbundled renewable energy credits purchased for target year compliance;

(C) Subtract the revenue from the sales of any renewable energy credits and energy from eligible facilities; and

(D) Divide the total obtained in (a)(ii)(A) through (C) of this subsection by the utility's annual revenue requirement, which means the revenue requirement that the commission established in the utility's most recent rate case, and multiply by one hundred.

(iii) **Annual reporting.** In addition to the revenue requirement ratio calculated in (a)(ii) of this subsection, the utility must:

(A) Report its total incremental cost as a dollar amount and in dollars per megawatt-hour of renewable energy generated by all eligible renewable resources in the calculation in (a)(i) of this subsection; and

(B) Multiply the dollars per megawatt-hour cost calculated in (a)(iii)(A) of this subsection by the number of megawatt-hours needed for target year compliance.

(b) **Alternative compliance.** State whether the utility is relying upon one of the alternative compliance mechanisms provided in WAC 480-109-220 instead of fully meeting its renewable resource target. A utility using an alternative compliance mechanism must use the incremental cost methodology described in this section and include sufficient data, documentation and other information in its report to demonstrate that it qualifies to use that alternative mechanism.

(c) **Compliance plan.** Describe the resources that the utility intends to use to meet the renewable resource requirements for the target year.

(d) **Eligible resources.** A list of each eligible renewable resource that serves Washington customers, for which a utility owns the certificates, with an installed capacity greater than twenty-five kilowatts. Resources with an installed capacity of less than twenty-five kilowatts may be reported in terms of aggregate capacity. The list must include:

(i) Each resource's WREGIS registration status and use of certificates, whether it be for annual target compliance, a voluntary renewable energy program as provided for in RCW 19.29A.090, or owned by the customer; and

(ii) Eligible resources being included in the report for the first time and documentation of their eligibility.

(e) **Multistate allocations.**

(i) If a utility serves retail customers in more than one state, the utility must allocate certificates consistent with the utility's most recent commission-approved interstate cost allocation methodology. The report must show how the utility applied the allocation methodology to arrive at the number of certificates allocated to Washington ratepayers.

(ii) After documenting the number of certificates allocated to Washington ratepayers, a utility may transfer certificates to or from Washington ratepayers. The report must document the compensation provided to each jurisdiction's ratepayers for such transfers.

(f) **Sales.** If a utility sold certificates, report the number of certificates that it sold, their WREGIS certificate numbers, their source, and the revenues obtained from the sales. For multistate utilities, these requirements only apply to certificates that were allocated to the utility's Washington service territory according to (e) of this subsection.

(3) **Report review.**

(a) Interested persons may file written comments regarding a utility's annual renewable portfolio standard report within thirty days of the utility's filing.

(b) Upon conclusion of the commission review of the utility's annual renewable portfolio standard report, the commission will issue a decision accepting or rejecting the calculation of the utility's renewable resource target; determining whether the utility has generated, acquired or arranged to

acquire enough renewable energy credits or qualifying generation to comply with its renewable resource target; and determining the eligibility of new renewable resources pursuant to subsection (2)(d) of this section.

(c) If a utility revises its annual renewable portfolio standard report as a result of the commission review, the utility must submit the revised final annual renewable portfolio standard report to the department.

(4) **Publication of reports.** All renewable portfolio standard reports required by chapter 19.285 RCW and this section since January 1, 2012, must be posted and maintained on the utility's web site. Reports must be posted on the utility's web site within thirty days of the commission order approving the report. A copy of any such report must be provided to any person upon request.

(5) **Customer notification.** Each utility must provide a summary of its annual renewable portfolio standard report to its customers by bill insert or other suitable method. This summary must be provided within ninety days of final action by the commission on the report.

(6) **Final compliance report.** Within two years following submission of its annual renewable portfolio standard report, a utility must submit, in the same docket, a final renewable portfolio standard compliance report that lists the certificates that it retired in WREGIS for the target year. If a utility does not meet its annual target described in WAC 480-109-200, the commission will determine the amount in megawatt-hours by which the utility was deficient.

NEW SECTION

WAC 480-109-220 Alternatives to the renewable resource requirement. Instead of fully meeting its annual renewable resource target in WAC 480-109-200, a utility may make one of three demonstrations.

(1) **Cost cap.** A utility may invest at least four percent of its total annual retail revenue requirement on the incremental costs of eligible renewable resources, renewable energy credits, or a combination of both.

(2) **Force majeure.** A utility may demonstrate that events beyond its reasonable control that could not have been reasonably anticipated or ameliorated, prevented it from meeting the renewable energy target. Such events may include weather-related damage, mechanical failure, strikes, lockouts, or actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource owned by or under contract to a qualifying utility.

(3) **No load growth.** A utility may demonstrate all of the following:

(a) Its weather-adjusted load for the previous three years prior to the target year on average did not increase.

(b) After December 7, 2006, all new or renewed ownership or purchases of electricity from nonrenewable resources other than coal transition power and daily spot purchases were offset by equivalent renewable energy credits.

(c) It invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

NEW SECTION

WAC 480-109-999 Adoption by reference. In this chapter, the commission adopts by reference all, or portions of, the publications identified below. They are available for inspection at the commission branch of the Washington state library. The publications, publication dates, references within this chapter, and availability of the resources are as follows:

(1) *Northwest Conservation and Electric Power Plan* as published by the Northwest Power and Conservation Council.

(a) The commission adopts the sixth version published in 2010.

(b) This publication is referenced in WAC 480-109-100.

(c) Copies of *Sixth Northwest Conservation and Electric Power Plan* are available from the Northwest Power and Conservation Council at http://www.nwcouncil.org/energy/powerplan/6/plan/.

(2) *Weatherization Manual* as published by the Washington state department of commerce.

(a) The commission adopts the version published in April 2009, and revised July 2014.

(b) This publication is referenced in WAC 480-109-100.

(c) Copies of *Weatherization Manual* are available from the Washington state department of commerce at http://www.commerce.wa.gov/Programs/services/weatherization/Pages/WeatherizationTechnicalDocuments.aspx.

(3) The unit energy savings values as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the unit energy savings with status of "Active" or "Under Review" on August 1, 2014.

(b) This information is referenced in WAC 480-109-100.

(c) The spreadsheets containing the unit energy savings values are available for download at http://rtf.nwcouncil.org/measures/Default.asp.

(4) The standard protocols as published by the Northwest Power and Conservation Council's Regional Technical Forum.

(a) The commission adopts the standard protocols with status of "Active" or "Under Review" on August 1, 2014.

(b) This information is referenced in WAC 480-109-100.

(c) The spreadsheets containing the standard protocols are available for download at http://rtf.nwcouncil.org/protocols/Default.asp.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-109-001	Purpose and scope.
WAC 480-109-002	Application of rules.
WAC 480-109-003	Exemptions from rules in chapter 480-109 WAC.
WAC 480-109-004	Additional requirements.
WAC 480-109-006	Severability.
WAC 480-109-007	Definitions.

WSR 15-08-043
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UT-140680, General Order R-580—Filed March 26, 2015, 11:47 a.m., effective April 26, 2015]

In the matter of amending, adopting, and repealing rules in chapter 480-120 WAC, Telephone companies; chapter 480-121 WAC, Registration and competitive classification of telecommunications companies; chapter 480-122 WAC, Washington telephone assistance program; chapter 480-123 WAC, Universal service; chapter 480-140 WAC, Commission general—Budgets; and chapter 480-143 WAC, Commission general—Transfers of property; due to competitive changes within the telecommunications industry.

1 **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 14-24-097, filed with the code reviser on December 2, 2014. The commission has authority to take this action pursuant to chapter 19.122 RCW, RCW 19.122.053, 80.01.040, and 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The commission adopts these rules on the date this order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULES:** RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about adopted rules. The statement must identify the commission's reasons for adopting the rules, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. This order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES**: This order amends, adopts, or repeals the following sections of the Washington Administrative Code:

Amending WAC 480-120-011 Application of rules, 480-120-015 Exemptions from rules in chapter 480-120 WAC, 480-120-021 Definitions, 480-120-026 Tariffs, 480-120-071 Extension of service, 480-120-083 Cessation of telecommunications services, 480-120-104 Information to consumers, 480-120-122 Establishing credit—Residential services, 480-120-123 Establishing credit—Business services, 480-120-147 Changes in local exchange and intrastate toll services, 480-120-165 Customer complaints, 480-120-217 Using privacy listings for telephone solicitation, 480-120-255 Information delivery services, 480-120-256 Caller identification service, 480-120-262 Operator service providers (OSPs), 480-120-339 Streamlined filing requirements for Class B telecommunications company rate increases, 480-120-349 Retaining and preserving records and reports, 480-120-352 Washington Exchange Carrier Association (WECA), 480-120-359 Accounting for telecommunications companies not classified as competitive, 480-120-382 Annual report for competitively classified telecommunications companies, 480-120-385 Annual report for telecommunications companies not classified as competitive, 480-120-411 Network maintenance, 480-120-439 Service quality performance reports, 480-120-999 Adoption by reference, 480-121-040 Granting or denying applications for registration, 480-121-065 Customer notice requirements—Petition for competitive classification of a service or company, 480-123-010 Federal universal service contracts, 480-123-020 Definitions, 480-123-030 Contents of petition for eligible telecommunications carriers, 480-123-060 Annual certification of eligible telecommunications carriers, 480-123-070 Annual certifications and reports, 480-123-080 Annual plan for universal service support expenditures, 480-123-999 Adoption by reference, 480-140-010 Definitions, 480-140-040 What to file and 480-143-100 Application of rules; adopting WAC 480-120-258 Collocation, 480-120-259 Washington telephone assistance program and 480-120-445 Damage reporting requirements; and repealing WAC 480-120-105 Company performance standards for installation or activation of access lines, 480-120-112 Company performance for orders for nonbasic services, 480-120-124 Guarantee in lieu of deposit, 480-120-125 Deposit or security—Telecommunications companies, 480-120-127 Protecting customer prepayments, 480-120-132 Business offices, 480-120-148 Canceling registration, 480-120-218 Using subscriber list information for purposes other than directory publishing, 480-120-219 Severability, 480-120-252 Intercept services, 480-120-325 Definitions, 480-120-331 Filing information, 480-120-335 Additional reports, 480-120-344 Expenditures for political or legislative activities, 480-120-355 Competitively classified companies, 480-120-365 Issuing securities, 480-120-369 Transferring cash or assuming obligations, 480-120-375 Affiliated interests—Contracts or arrangements, 480-120-389 Securities report, 480-120-395 Affiliated interest and subsidiary transactions report, 480-120-399 Access charge and universal service reporting, 480-120-440 Repair standards for service interruptions and impairments, excluding major outages, 480-120-540 Terminating access charges, 480-120-560 Collocation, 480-121-011 Application of rules, 480-121-015 Exemptions from rules in chapter 480-121 WAC, 480-121-016 Additional requirements, 480-121-017 Severability, 480-121-018 Delivery of a filing, 480-121-026 Rejecting a filing, 480-122-010 Definitions, 480-122-020 Washington telephone assistance program rate, 480-122-050 Other charges, and 480-122-080 Accounting.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on May 7, 2014, at WSR 14-10-081.

8 The statement advised interested persons that the commission was considering amending or eliminating requirements in existing rules to address regulatory changes at both the federal and state levels, adapt to technological changes in the telecommunications industry, and ensure that the commission's rules are competitively neutral. The commission

also informed interested persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies and the commission's list of telecommunications attorneys. Pursuant to the notice, the commission received written comments on June 9, 2014.

9 **SUPPLEMENTAL PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a supplemental preproposal statement of inquiry (supplemental CR-101) on July 11, 2014, at WSR 14-15-046.

10 The statement advised interested persons that in addition to the considerations stated in the WSR 14-10-081 notice, the commission would also consider establishing damage reporting requirements for telecommunications companies in accordance with the Underground Utilities Act, chapter 19.122 RCW, enacted in 2011 to take effect January 1, 2013, which requires facility operators to report damage events to the commission within forty-five days with specific descriptive data about the event. The commission provided notice of this additional inquiry to the same persons to whom the commission provided the WSR 14-10-081 notice. The commission conducted a workshop on all issues under consideration in this rule making on July 28, 2014.

11 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on December 2, 2014, at WSR 14-24-097. The commission scheduled this matter for oral comment and adoption under that notice for 1:30 p.m., Thursday, February 12, 2015, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by January 6, 2015.

12 **WRITTEN COMMENTS:** The commission received written comments in response to the WSR 14-24-097 notice from CenturyLink; T-Mobile West LLC; the Washington Independent Telecommunications Association (WITA); Joint Competitive Local Exchange Carriers Integra Telecom of Washington, Inc. (and affiliates) (Integra) and XO Communications Services LLC; AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications of America, Inc. (collectively AT&T); and Level 3 Communications, LLC. Summaries of all written comments and the commission's responses are contained in Appendix A, which is attached to, and made part of, this order.

13 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on Thursday, February 12, 2015, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Ann E. Rendahl. The commission heard comments from AT&T, CenturyLink, Integra, public counsel, and WITA, none of whom raised new issues but all of whom supported the proposed rules, stood by their written comments, or emphasized some of the suggested changes included in their written comments.

14 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to the proposed rules. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A.

15 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, adopt, or repeal the rules as proposed in the CR-102 at WSR 14-24-097 with the changes described below.

16 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 14-24-097:

WAC 480-120-439 Service quality performance reports. AT&T recommends that the commission further revise this rule to delete the references to WAC 480-120-105 and 480-120-112 in subsection (1) because those rules are among the rules to be repealed in this order. AT&T also recommends that the reference to subsection (2) be deleted from subsection (2) because the referenced subsection has been deleted. The commission agrees with these recommendations and strikes that language.

WAC 480-120-445 Damage reporting requirements. CenturyLink expresses concern that the notification requirement from the facility operator in subsection (2) of this new rule is not included in the statute on which the rule is based. CenturyLink also contends that the language results in an enforcement and compliance issue that would be more effectively handled by commission staff. Finally, the company argues the rule would create unnecessary additional cost and administrative burden for facility operators. To address these concerns, we modify the rule to provide that, in determining compliance with this requirement, the commission will consider whether the facility operator made a reasonable effort under the circumstances to provide the notification. In addition, the modification identifies some of the types of circumstances the commission may consider.

WAC 480-123-070 Annual certifications and reports. The commission recognizes that the text included in a note at the end of the first paragraph in the proposed rule should be included in the provisions of the rule itself. Accordingly, we strike that note and add the same text in a new subsection (8) of this rule.

WAC 480-123-070 Annual certifications and reports, 480-123-080 Annual plans for universal service support expenditures. AT&T contends that the requirement to file gross capital expenditures and maintenance expense in WAC 480-123-070 (1)(a) and in 480-123-080(1) is too broad and would apply to information beyond the commission's authority to regulate for wireless service providers. AT&T suggests that the language be revised to require the company to file capital expenditures and operating expense made with federal high-cost support received by the ETC. The commission agrees with this suggestion and modifies the language in these subsections accordingly.

WAC 480-123-080 Annual plans for universal service support expenditures. WITA states that its member companies do not have "budgeted" data on capital expenditures and operating expenses required under subsection (1) of this rule at the time they must file that information. WITA, therefore, recommends that the commission substitute "planned" for "budgeted" in that subsection. The commission agrees and makes that substitution.

17 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that the rules in the WAC sections listed in paragraph 6 above should be amended, adopted, or repealed to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 35, Repealed 34.

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.

ORDER

THE COMMISSION ORDERS:

18 The commission amends, adopts, or repeals the sections in chapters 480-120, 480-121, 480-122, 480-123, 480-140, and 480-143 WAC listed in paragraph 6 of this order to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

19 This order and the rule set out below, after being recorded in the order register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01 and 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, March 26, 2015.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Philip B. Jones, Commissioner
Ann E. Rendahl, Commissioner

Appendix A
Comment Summary Matrix

UT-140680 WAC Rules Review
CR-102 Summary of Company Comments
February 2, 2015

WAC	WAC Title	Joint CLECs Integra & XO	Level 3	Staff
480-120-104	Information to consumers.	General comment - the joint CLECs support the proposed rules.	(1) Level 3 agrees with CenturyLink's first round of comments for WAC 480-120-104 that the level of information to the customer should be deleted and let the market dictate the level of information the company discloses to the customer. (2) Level 3 believes subsection (1), (2), (the company must inform the customer or direct the customer to the company's web site for the information listed in this subsection) should remain in this rule.	Staff believes all of this rule should be retained.

WAC	WAC Title	CenturyLink	Staff
480-120-133	Response to time for calls to business office or repair center during regular business hours.	CenturyLink proposes this rule should be eliminated. The company indicates that customers can place an order without talking to a company representative. The company offers two alternatives: (1) Deleting the rule would eliminate outdated metrics. (2) Retain the rule for calls to the repair center where the customer does need to talk with a company representative.	Staff's review concentrated on reducing the reporting requirements for the companies. Staff still relies on the rules to ensure the companies are giving customers good service by looking at other methods to gather operating data.

WAC	WAC Title	CenturyLink	Staff
480-120-172	Discontinuance of service.	CenturyLink proposed changes to this in subsection (8)(b), electronic notices. CenturyLink notes that the scheduled disconnect cannot be until after 5:00 p.m. on the second business day after the notice since the company does not disconnect service after 5:00 p.m. Thus the scheduled disconnect for CenturyLink customers will not occur until the third day. CenturyLink proposes reducing the required call attempts from two to one call. CenturyLink notes that the company calls over 14,000 Washington residential customers each month.	CenturyLink is proposing this rule because the company does not disconnect service after 5:00 p.m. The company has the ability to change their process if they believe it is necessary to disconnect the customer on the second day. Staff believes the rule should be retained.

WAC	WAC Title	CenturyLink	Staff
480-120-174	Payment arrangements.	Subsection (1) requires the company to restore service on an unpaid account if the customers agrees to a six-month payment plan. The company asserts that monitoring these plans is manual and labor intensive and ultimately adds additional months of free service before the company disconnects the customer. The company indicates this rule does not exist in any other state and proposes to delete subsection (1) of this rule.	Staff believes this rule should not be changed. This rule allows for a partial payment once every five years. Thus customers cannot continually use this rule to avoid keeping current on its bill.

WAC	WAC Title	Level 3	Staff
480-120-258	Collocation.	Level 3 agrees that the collocation rule be retained.	Staff agrees.

WAC	WAC Title	CenturyLink	Staff
480-120-438	Trouble report standard.	CenturyLink proposes to eliminate this rule because of the changes in various other service quality metrics and reports.	Staff recommends the rule should be retained to establish the quality of service standard for auditing purposes.

WAC	WAC Title	AT&T	Level 3	Staff
480-120-439	Service quality performance reports.	AT&T recommends that the rule be modified to delete references to WAC 480-120-105, company performance standards and 480-120-112. The company also recommends to [in] WAC 480-120-439(2) to change "Notwithstanding subsections (1) and (2)…" to "Notwithstanding subsection (1)."	Level 3 recommends that the "3 year records retention" be changed. The company notes that it must keep all records during the three year period. The company asserts that would be burdensome and proposes that the language should be changed to "all records that the company <u>reasonably determines</u> would <u>be</u> relevant, in the case of a complaint or investigation," (underlined proposed by Level 3.)	**AT&T** - proposed changes are acceptable with staff. **Level 3 -** proposed changes should not be accepted by the commission. Staff has reduced the reporting requirements of the ILECs and CLECs. Neither the company nor staff are able to accurately forecast future issues relating to service quality and staff is reluctant to have the carriers decide what information may be relevant for a future complaint.

WAC	WAC Title	CenturyLink	Staff
480-120-445	Damage reporting requirements.	CenturyLink states it is already complying with the requirements of chapter 19.122 RCW. CenturyLink recommends removing the notification requirements in subsection (2) from the facility operators, and suggests that the process of notifying an excavator who damages their facilities may be more suited as a function of commission staff.	Staff does not agree with the company's proposal and believes the responsibility of notifying the excavator in subsection (2) should remain with the facilities operator. The ILECs and CLECs have alarms on their networks to advise their employees when their system is down. The facility operator dispatches technicians to repair their facilities and will probably be on site while the excavator is still at the site. Staff also believes notification by the facility operators about the requirements set forth in chapter 19.122 RCW, including RCW 19.122.053 and information concerning the safety committee, may help to prevent multiple damage incidents by the same excavator.

WAC	WAC Title	AT&T	T-Mobile	Staff
480-123-030	Contents of petition for eligible telecommunications carriers.	AT&T supports the language in WAC 480-123-030 [(1)](g) defining back up power requirements.	T-Mobile supports the change to subsection [(1)](g) for backup power.	Staff agrees.

WAC	WAC Title	T-Mobile	Staff
480-123-060	Annual certification of eligible telecommunications carriers.	T-Mobile supports changing the due date of the report from July 31st to July 1st.	Staff agrees.

WAC	WAC Title	AT&T	CenturyLink	T-Mobile	WITA	Staff
480-123-070	Annual certification and reports.	Subsection (1)(a) requires the company to file gross capital expenditures and maintenance expense. AT&T states the language is too broad and the commission does not have the authority to review financial data that is not related to the company's ETC projects. The company suggests that the language be limited to "capi-	CenturyLink proposes that the rules for WAC 480-123-060, 480-123-070 and 480-123-080 should be modified to require only information from FCC Form 481 along with an officer affidavit attesting to the proper	T-Mobile believes that the FCC Form 481 will provide all of the information the commission needs and intends [to] reference the 481 in its annual certification filing.	WITA expresses a concern that the WITA members do not have "budgeted" data it [at] the time of the filing. WITA recommends that the language is changed to removing the word "budgeted" with the following "… the	(1) **AT&T** - staff agrees with the change suggested by AT&T. (2) **CenturyLink and T-Mobile** - staff believes that the FCC Form 481 will provide most of the information but not all of the information needed by staff. Staff will request any additional information it needs after staff

WAC	WAC Title	AT&T	CenturyLink	T-Mobile	WITA	Staff
		tal expenditures and operating expense made with federal high-cost support received by the ETC."	use of the funds.		company's planned expenditures…".	has reviewed each company's filing. (3) **WITA** - staff agrees with WITA's recommendation to change "budgeted" to "planned."

WAC	WAC Title	AT&T	Staff
480-123-080	Annual plan for universal service.	AT&T also recommends the proposed changes to WAC 480-123-070 be inserted in this rule.	Staff agrees with the change suggested by AT&T.

Appendix B
Chapters 480-120, 480-121, 480-122, 480-123, 480-140, 480-143 WAC - RULES

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-011 Application of rules. (1) The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates ((~~and~~)) or services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.

(2) Tariffs filed by companies must conform to these rules. If the commission accepts a tariff that conflicts with these rules, the acceptance is not a waiver of these rules unless the commission specifically approves the variation consistent with WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC). Tariffs that conflict with these rules without approval are superseded by these rules.

(3) Any affected person may ask the commission to review the interpretation of these rules by a company or customer by posing an informal complaint under WAC 480-07-910 (Informal complaints), or by filing a formal complaint under WAC 480-07-370 (Pleading—General).

(4) No deviation from these rules is permitted without written authorization by the commission. Violations will be subject to penalties as provided by law.

AMENDATORY SECTION (Amending WSR 05-06-051, filed 2/28/05, effective 3/31/05)

WAC 480-120-015 Exemptions from rules in chapter 480-120 WAC. The commission may grant an exemption from the provisions of any rule in this chapter in the same manner and consistent with the standards and according to the procedures set forth in WAC 480-07-110 (Exceptions from and modifications to ((~~the rules in this chapter; special~~)) commission rules).

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-021 Definitions. The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"Access charge" means a rate charged by a local exchange company to an interexchange company for the origination, transport, or termination of a call to or from a customer of the local exchange company. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"Access line" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"Affiliate" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"Affiliated interest" means a person or corporation as defined in RCW 80.16.010.

"Ancillary services" means all local service features excluding basic service.

"Applicant" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"Average busy hour" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Basic service" means service that includes the following:

- Single-party service;
- Voice grade access to the public switched network;
- Support for local use;
- Dual tone multifrequency signaling (touch-tone);
- Access to emergency services (E911);
- Access to operator services;
- Access to interexchange services;
- Access to directory assistance; and
- Toll limitation services.

"Business" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"Business office" means an office or service center provided and maintained by a company.

"Business service" means service other than residential service.

"Busy season" means an annual, recurring, and reasonably predictable three-month period of the year when a

switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Call aggregator" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

"Category of service" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

"Central office" means a company facility that houses the switching and trunking equipment serving a defined area.

"Centrex" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

"Class A company" means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"Class B company" means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class B company is specified in WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

"Commercial mobile radio service (CMRS)" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

"Commission (agency)" in a context meaning a state agency, means the Washington utilities and transportation commission.

"Company" means any telecommunications company as defined in RCW 80.04.010.

"Competitively classified company" means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

"Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, whether through the ownership of voting shares, by contract, or otherwise.

"Customer" means a person to whom the company is currently providing service.

"Customer premises equipment (CPE)" is equipment located on the customer side of the SNI (other than a company) and used to originate, route, or terminate telecommunications.

"Department" means the department of social and health services.

"Discontinue; discontinuation; discontinued" means the termination or any restriction of service to a customer.

"Drop facilities" means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

"Due date" means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

"Eligible telecommunications carrier (ETC)" means a carrier designated as an ETC pursuant to 47 U.S.C. Sec. 214(e).

"Emergency response facility" means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

"Exchange" means a geographic area established by a company for telecommunications service within that area.

"Extended area service (EAS)" means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

"Facility or facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

"Force majeure" means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

"Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"Interexchange company" means a company, or division thereof, that provides long distance (toll) service.

"Interoffice facilities" means facilities connecting two or more telephone switching centers.

"InterLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

"IntraLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

"Local access and transport area (LATA)" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Local calling area" means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

"Local exchange company (LEC)" means a company providing local exchange telecommunications service.

"Major outages" means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand customers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or

more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

"Missed commitment" means orders for exchange access lines for which the company does not provide service by the due date.

"Order date" means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff.

"Pay phone" or **"pay telephone"** means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

"Pay phone services" means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

"Pay phone service provider (PSP)" means any corporation, company, partnership, or person who owns or operates and makes pay phones available to the public.

"Payment agency" means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

"Person" means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

"Prior obligation" means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

"Proprietary" means owned by a particular person.

"Provision" means supplying telecommunications service to a customer.

"Public access line (PAL)" means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

"Public safety answering point (PSAP)" means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

"Radio communications service company" has the meaning found in RCW 80.04.010, except that for the purposes of this section it includes only those companies providing two-way voice communication as a common carrier.

"Residential service" means basic service to a household.

"Restricted basic service" means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

"Results of operations" means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

"Service interruption" means a loss of or impairment of service that is not due to, and is not, a major outage.

"Service provider" means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

"Special circuit" means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

"Standard network interface (SNI)" means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

"Station" means a telephone instrument installed for a customer to use for toll and exchange service.

"Subscriber list information (SLI)" means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"Subsidiary" means any company in which the telecommunications company owns directly or indirectly five percent or more of the voting securities, unless the telecommunications company demonstrates it does not have control.

"Support structure" means the trench, pole, or conduit used to provide a path for placement of drop facilities.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"Telemarketing" means contacting a person by telephone in an attempt to sell one or more products or services.

"Toll restriction" or **"toll restricted"** means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

"Traffic" means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

"Trouble report" means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

"Trunk" means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

"Washington telephone assistance program" means the program of local exchange service discounts administered by the department.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-026 Tariffs. Companies that provide their customers with tariffed services must file those tariffs in accordance with chapter 480-80 WAC, Utilities general—Tariffs and contracts. This rule does not apply to companies competitively classified under RCW 80.36.320.

AMENDATORY SECTION (Amending WSR 08-19-001 and 08-20-113, filed 9/3/08 and 9/30/08, effective 10/4/08 and 10/31/08)

WAC 480-120-071 Extension of service. (1) This rule applies to local exchange companies receiving federal high-cost universal service support.

(2) **Definitions.** The following definitions apply to this section unless the context clearly indicates otherwise:

"Applicant" means any person applying to a telecommunications company for new ((~~tariffed~~)) residential basic local exchange service. Applicant does not include developers requesting service for developments.

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, permitting fees, rights of way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.

"Developer" means any owner of a development who offers it for disposition, or an agent of such an owner.

"Development" means land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units.

"Distribution plant" means telephone equipment and facilities necessary to provide new ((~~tariffed~~)) residential basic local exchange service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premises and the company distribution plant at the applicant's property line. For drop wire installed after January 15, 2001, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.

"Extension of service" means an extension of company distribution plant for new ((~~tariffed~~)) residential basic local exchange service to a location where no distribution plant of the extending company exists at the time an extension of service is requested. An extension is constructed at the request of one or more applicants for service. Extensions of service do not include trenches, conduits, or other support structure for placement of company-provided facilities from the applicant's property line to the premises to be served. Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.

"Extraordinary cost" means a substantial expense resulting from circumstances or conditions beyond the control of the company that are exceptional and unlikely to occur in the normal course of planning and constructing facilities contemplated by this rule.

"Order date" as defined in WAC 480-120-021 (Definitions) means the date when an applicant requests service unless a company identifies specific actions a customer must first complete in order to be in compliance with ((~~tariffs or~~)) commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required to be completed by the applicant, the order date becomes the date the company receives the completed application for extension of service.

"Premises" means any structure that is used as a residence, but does not include predominantly commercial or industrial structures.

((~~"Tariffed" means offered under a tariff filed with the commission.~~))

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when the intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for construction huts, sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

((~~(2) **Tariffed**~~)) (3) **Residential basic local exchange service.**

(a) Each ((~~company required to file tariffs under RCW 80.36.100, and each company required to do so under an alternative form of regulation, must have on file with the commission an extension of service tariff for residential basic local exchange service consistent with this rule. Each company must extend service consistent with its tariff and this section.~~

~~(b)~~)) wire line ETC must, within seven business days of an applicant's initial request, ((~~each company to which (a) of this subsection applies must~~)) provide the applicant with an application for extension of service. The company must also provide the applicant a brief explanation of the extension of service rules((~~, including the requirement that subsequent applicants must contribute to the cost of a previously built extension that is less than five years old~~)).

((~~(c)~~)) (b) The company must process applications that require an extension of service in a timely manner((~~, consistent with the following:~~

~~(i) When there will be no charge for an extension of service as a result of the allowances required under subsection (3) of this section, the company must construct the extension and provide new tariffed residential basic local exchange service within thirteen months of the order date unless the commission grants the company's request to charge the applicant for extraordinary extension of service costs.~~

~~(ii) For an extension of service that exceeds the allowances provided under subsection (3) of this section, within one hundred twenty days of the order date, the company must provide the applicant a bill for the estimated cost of construction of the extension of service under subsection (4)(a) of this section. The company must include with the bill a notice to the applicant of the right to be reimbursed for a portion of the cost by a subsequent applicant as provided under subsection (5) of this section.~~

~~(iii) When the company bills for the estimated construction charges, including extraordinary costs as allowed in this section, it must complete the extension of service and provide new tariffed residential basic local exchange service within twelve months after the applicant meets the payment terms established by the company (e.g., payment in full, partial payment on a schedule). If there are multiple applicants under subsection (4)(b) of this section, then all applicants must meet the payment terms established by the company~~)).

((~~(3)~~)) (4) **Allowances.**

(a) A ((~~company's tariff~~)) company must allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The ((~~tariff~~)) company may allow for an extension of service for distances over the allowance ((~~at no charge to the applicant~~)).

(b) The applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance. ((~~When the applicant meets the company's payment terms under subsection (2)(c)(iii) of this section, the company must construct the extension of service.~~)) The ((~~company's tariff~~)) company must permit multiple applicants to aggregate their allowances when an extension of service to two or more applicants would follow a single construction path.

((~~(c) If the company determines that the first one thousand feet of an extension of service will involve extraordinary costs, the company may petition for permission to charge the applicant(s) for those costs. The petition must be in the form required under WAC 480-07-370 (1)(b)(ii) and the company must file the petition within one hundred twenty days after the order date. The company must provide notice to the applicant of the petition.~~

~~(4)~~)) (5) **Determining costs and billing for extensions of service longer than allowances.**

(a) The company must estimate the cost of the service extension that is attributable to distribution plant that must be extended beyond the applicable allowance established under subsection ((~~(3)~~)) (4)(b) of this section.

(b) ((~~When two or more applicants request service and aggregate their allowances, and it is still necessary to construct an extension of service longer than the aggregated incremental allowances, the company must bill each applicant for an equal portion of the allowable charge (e.g., when two applicants aggregate allowances, the charge is divided by two; when five applicants aggregate allowances, the charge is divided by five). Multiple applicants may agree to divide the bill among themselves in amounts different from those billed as long as the billing company receives full payment.~~

~~(c)~~)) At the completion of the construction of the extension of service, the company must determine the difference between the estimated cost ((~~provided under subsection (2)(c)(ii) of this section~~)) and the actual cost of construction. The company must provide to the applicant detailed construction costs showing the difference. The company must refund any overpayment and may charge the applicant for reasonable additional costs up to ten percent of the estimate.

((~~(d) The company must retain records pertaining to the construction charges paid for a period of at least six years from payment of the charges by the original applicant(s).~~

~~(5)~~ ~~**Subsequent applicants to existing extensions of service for which construction charges were paid.**~~

~~(a) If within five years of the order date for an extension of service a subsequent applicant seeks service from that previous extension of service and the original applicant(s) paid construction charges under subsection (4) of this section, then the company tariff must require the subsequent applicant to pay a proportionate share of the original extension of service charges before extending service. The tariff must provide that the amount paid by subsequent applicants will be refunded proportionately to the original applicant(s) who paid the extension charges.~~

~~(b) The company must provide notice to the last known address of the original applicant(s) of the amount of the refund due the applicant(s). Any refund not requested within sixty days of the date notice was sent will be returned to the subsequent applicant.~~))

(6) **Requirements for supporting structures and trenches.**

(a) A company ((~~tariff~~)) may condition construction on completion of support structures, trenches, or both on the applicant's property.

(i) Applicants are responsible for installation of all supporting structures required for placement of company-provided drop wire from the applicant's property line to the applicant's premises. The company may offer to construct supporting structures and dig trenches and may charge for those services, but the ((~~tariff~~)) company must not require that applicants use only company services to construct supporting structures and dig trenches. The offer must clearly state that the applicant may choose to employ a different company for construction services.

(ii) The company ((~~tariff~~)) may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with reasonable company construction specifications. The ((~~tariff~~)) company must require that, once in place and in use, all supporting structures and drop wire will be maintained by the company as long as the company provides service, and any support structure and trenches constructed at company expense are owned by the company.

(b) ((~~The tariff must provide that~~)) Once supporting structures, trenches, or both, have been constructed, the company ((~~will~~)) must provide drop wire to applicants at no charge.

(7) **Temporary service.** ((~~Each company required to file tariffs under RCW 80.36.100 (Tariff schedules to be filed and open to public—Exceptions), and each company regulated under an alternative form of regulation, must have on file with the commission an extension of service tariff for temporary service consistent with this rule. Each company must extend service consistent with its tariff and this section. A company tariff for extension of temporary service~~)) A company may not provide allowances (e.g., one thousand feet without charge) or discounts on the cost of construction((~~.~~

~~(8) **Application of rule.**~~

~~(a) The prior WAC 480-120-071, as it was in effect on June 1, 2008, will continue to apply to applications for extension of service that a company has completed or accepted before October 4, 2008.~~

~~(b) This section, as amended effective October 4, 2008, applies to all other requests for service before and after the effective date~~)) for extension of temporary service.

AMENDATORY SECTION (Amending WSR 03-22-046, filed 10/29/03, effective 11/29/03)

WAC 480-120-083 Cessation of telecommunications services. (1) This rule applies to any telecommunications company that ceases the provision of any telecommunications service in all or any portion of the state (exiting telecommunications company). This rule does not apply to:

(a) Services offered by tariff that are subject to the statutory notice requirements of RCW 80.36.110 (Tariff changes—Statutory notice—Exception);

(b) Discontinuance of service to an individual customer in compliance with WAC 480-120-172 (Discontinuing service—Company initiated);

(c) Cessation of a service when the provider replaces the terminated service with comparable service without interruption. For example, the notice requirements of this rule do not apply when a local exchange carrier (LEC) providing Centrex-type service with one group of features replaces that service, without interruption, with a version of Centrex-type service that has a different group of features; and

(d) A service being discontinued that has no subscribers. Changes in customers' service providers for local exchange and intrastate toll services when there is a cessation of service are also subject to WAC 480-120-147 (Changes in local exchange and intrastate toll services).

(2) No telecommunications company may cease the provision of any telecommunications service in all or any portion of the state unless it first provides written notice to the following persons at least 30 days in advance of cessation of service:

(a) The commission;

(b) The state 911 program, in the instance of local exchange service, private branch exchange service (PBX), Centrex-type service, or private line service used in the provision of emergency services related to the state 911 program;

(c) Each of its customers, including customers that are telecommunications companies;

(d) Incumbent local exchange carriers (ILECs) providing the exiting telecommunications company with unbundled network elements (UNEs) pursuant to the Telecommunications Act of 1996, 47 U.S.C. Section 151 *et seq*., if UNEs or combinations of UNEs are part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(e) Each telecommunications company providing the exiting telecommunications company with resold telecommunications service, if resold service is part of a telecommunications service provided to some or all of the exiting telecommunications company's customers;

(f) The national number administrator authorizing the release of all assigned telephone numbers to other telecommunications companies and releasing all unassigned telephone numbers to the number administrator.

(3) The notice to the commission and the state 911 program required in subsections (2)(a) and (b) must include:

(a) The name of the exiting telecommunications company;

(b) For each category of service, the date each telecommunications service will cease; and

(c) The number of customers for each telecommunications service and their location, described by exchange or by city and county for each telecommunications service being ceased.

(4) The notice to customers required in subsection (2)(c) must include:

(a) The date telecommunications service will cease;

(b) Information on how to contact the exiting telecommunications company by telephone in order to obtain information needed to establish service with another provider;

(c) An explanation of how customers may receive a refund on any unused service. The exiting telecommunications company must provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for sixty days after the date of cessation of service.

(d) A second notice provided by one of the two options listed below:

(i) Between ten and thirty days before cessation of service, the exiting telecommunications company must complete one direct call advising every customer of the cessation of service, including the date of cessation of service and a number to call for more information, if necessary. A direct call means a call in which the company leaves a recorded voice message for or speaks directly to the responsible party or its agent on the billing account; or

(ii) At least ten days before cessation of service, the exiting telecommunications company must provide a second written notice of cessation of service including the date of cessation of service and a number to call for more information, if necessary;

(e) A company may seek the commission's assistance in drafting the customer notices.

(5) The notice to ILECs required in subsection (2)(d) must include:

(a) The date telecommunications service will cease;

(b) Identification of the UNE components in relationship to the service information provided to the customer when such information differs from the ILEC's identification information as billed to the exiting telecommunications company.

For example, if the ILEC identifies a UNE loop with a circuit identification number, the exiting telecommunications company must provide the ILEC with the customer telephone number assigned to the ILEC's UNE loop circuit identification number; and

(c) The telephone contact information to enable the ILEC or new provider to obtain UNE service and circuit identification information needed to establish service for a customer who will no longer receive service from the exiting telecommunications company.

(6) The notice to suppliers required in subsection (2)(e) must include:

(a) The date telecommunications service will cease;

(b) Identification of the resold service element components in relationship to the service information provided to the customer, when such information differs from the supplier's identification information as billed to the exiting telecommunications company; and

(c) Telephone contact information to enable the regulated supplier or new provider to obtain underlying service and circuit identification information needed to establish comparable replacement service for a customer who will no longer receive service from the exiting telecommunications company.

(7) The notice to the national number administrator required in subsection (2)(f) must include:

(a) Identification of all working telephone numbers assigned to customers;

(b) Identification of all unassigned or administrative numbers available for reassignment to other providers and the date such unassigned telephone numbers will be available for reassignment; and

(c) Authorization of the release of each individual assigned customer's telephone number(s) to subsequent providers selected by the customer.

(8) ILECs and telecommunications companies that are suppliers under subsection (6) must provide the information in the required notice(s) (if received) to the subsequent provider upon a request authorized by the customer.

(9) A telecommunications company ceasing a local exchange service, a PBX service, a Centrex-type service, or a private line service used in the provision of emergency services related to the state 911 program must inform the commission and the state 911 program within twenty-four hours of the cessation of telecommunications service of the number of customers and their location, listed by exchange or by city and county, that remained as customers for the telecommunications service when service ceased.

(10) Canceling registration. A company canceling its registration as a telecommunications company must notify the commission in writing and, as applicable, comply with the requirements of WAC 480-120-083, Cessation of telecommunications services. It remains subject to commission jurisdiction with respect to its provision of telecommunications service during the time it was registered, and it must file an annual report and pay regulatory fees for the period during which it was registered.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-104 Information to consumers. (1) Except for services provided under written contract pursuant to competitive classification, each company must provide an applicant for initial service with a confirming notice or welcome letter, either in writing or with permission of the customer, electronically. The confirming notice or welcome letter must be provided to the applicant or customer no later than fifteen days after installation of service and must provide, at a minimum:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, mailing address, repair number, electronic address if applicable, and business office hours, that the customer can contact if they have questions;

(b) Confirmation of the services being provided to the customer by the company, and the rate for each service. If the service is provided under a banded rate schedule, the current rate, including the minimum and maximum at which the customer's rate may be shifted; and

(c) If the application is for local exchange service, the LEC must either provide the following information ((~~required in WAC 480-120-251 (6)(a) through (f) or must~~)) or inform the customer that ((~~additional information pertaining to local exchange service~~)) it may be found ((~~in the consumer information guide of the local telephone directory as required in WAC 480-120-251~~)) on the company's web site:

(i) Process for establishing credit and determining the need and amount for deposits;

(ii) Procedure by which a bill becomes delinquent;

(iii) Steps that must be taken by the company to disconnect service;

(iv) Washington telephone assistance program (WTAP);

(v) Federal enhanced tribal lifeline program, if applicable; and

(vi) Right of the customer to pursue any dispute with the company, including the appropriate procedures within the company and then to the commission by informal or formal complaint.

(2) Except for services provided under written contract pursuant to competitive classification, each company must provide each customer a confirming notice, either in writing or, with permission of the customer, electronically, within fifteen days of initiating a material change in service which results in the addition of a service, a change from one rate schedule to another, or a change in terms or conditions of an existing service. The confirming notice must provide at a minimum, the following information in clear and conspicuous language:

(a) Contact information for the appropriate business office, including a toll-free telephone number, a TTY number, and business office hours, that customers can contact if they have questions; and

(b) The changes in the service(s), including, if applicable, the rate for each service.

(3) When a LEC is acting as an executing carrier under WAC 480-120-147, it must make the following information available upon request:

(a) The name of the intraLATA and interLATA interexchange company to which the customer's account is currently subscribed; and

(b) A minimum of six months' account history, when available, including the date of the changes and the name of the interexchange company.

(4) When an applicant or customer contacts the LEC to select or change an interexchange company, the LEC must notify the carrier of the customer's selection or recommend that the customer contact the chosen interexchange company to confirm that an account has been or is being established by the interexchange carrier for the applicant.

(5) Each company must provide business offices or customer service centers that are accessible by telephone or in person. A business office or customer service center that serves more than one exchange must provide toll-free calling from each exchange to the office. Each business office or customer service center must be staffed by qualified personnel who can provide information relating to all services and rates, accept and process applications for service, explain charges on customers' bills, adjust charges made in error, and generally act as representatives of the company.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-122 Establishing credit—Residential services. This section applies only to the provision of residential services.

(1) For a local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. The LEC may require an applicant or customer of residential basic service to pay a local service deposit only if:

(a) The applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) The applicant or customer has had basic service discontinued by any telecommunications company;

(c) The applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) The applicant's or customer's service is being restored following a discontinuation for nonpayment or acquiring service through deceptive means under WAC 480-120-172(1); or

(e) The applicant or customer has been disconnected for taking service under deceptive means as described in WAC 480-120-172(1).

(2) A LEC may, if provided for in its tariff or rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means, pay a deposit, or make advanced payments consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit or advanced payments for ancillary services.

(3) An interexchange company may, if provided for in its tariff or rates, terms and conditions of services provided pursuant to competitive classification, require an applicant or customer of interexchange services to demonstrate satisfactory credit by reasonable means or pay a deposit consistent with subsections (4) and (5) of this section.

The company must inform applicants that local service cannot be withheld pending payment of a deposit for interexchange services.

(4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the company must offer the applicant or customer the following options:

(a) Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or

(b) Where technology permits, the applicant or customer must have the option of accepting toll-restricted basic service in lieu of payment of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

A company must remove toll restriction unless the customer requests to retain it when the customer makes full payment of the requested interexchange company deposit or pays fifty percent of the requested deposit and enters into payment arrangements as provided for in (a) of this subsection.

(6) A company may require an applicant or customer to pay a deposit or make advanced payments equal to two months' charges for ancillary service before providing or continuing ancillary services.

(7) A company may require an applicant or customer to pay a deposit if it finds that service was provided initially without a deposit based on incorrect information and the customer otherwise would have been required to pay a deposit.

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice to the customer listing the reason(s) for the request, the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (8) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery, if the notice is delivered in person to the customer.

(8)(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay unbilled toll charges or pay a new or additional deposit amount when the customer's toll charges exceed thirty dollars, or exceed customary use over the previous six months

by twenty dollars or by twenty percent, whichever is greater. A company may toll-restrict a customer's services if the customer is unable pay the toll or deposit amount.

(b) When a customer has exceeded the toll levels in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The company must give the customer the option to pay one of the following:

(i) All outstanding toll charges specified in the notice; or

(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or

(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.

(c) When an applicant does not have a customary utilization amount from a previous service, the company may request that the applicant estimate the greatest monthly toll amount the applicant expects to use. If the company asks for an estimate, it must explain that if the customer's toll charges exceed the amounts in (a) of this subsection, the company may toll restrict or require a deposit as permitted in this subsection.

(9) When a residential applicant or customer cannot establish credit or cannot pay a deposit or deposit extended payments, the applicant or customer may furnish a guarantor who will secure payment of bills for service requested in a specified amount not to exceed the amount of required deposit. The company may require that the guarantor:

(a) Reside in the state of Washington;

(b) Currently have service with the company requesting the deposit; and

(c) Have an established satisfactory payment history for each class of service being guaranteed.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

WAC 480-120-123 Establishing credit—Business services. (1) As set forth in this section, a company may require a business applicant or customer to demonstrate satisfactory credit by reasonable means appropriate under the circumstances.

(2) **Amount of deposit.** When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.

(3) **Deposit payment.** Companies may withhold regulated services until the deposit amount associated with such services is paid in full.

(4) **Deposit requirement notice.**

(a) When a company requests a new deposit or a larger deposit amount after service has been established, the company must provide a written notice of the reasons for the request in writing to the customer, state the date the deposit must be paid, and the actions the company may take if the deposit is not paid.

(b) Except for circumstances described in subsection (5) of this section, the deposit or additional deposit amount may not be due and payable before 5:00 p.m. of the sixth business day after notice of the deposit requirement is mailed or 5:00 p.m. of the second business day following delivery if the notice is delivered in person to the customer.

((~~(5)~~ ~~**Deposit request for high toll.**~~

~~(a) A company authorized by the commission to collect deposits or advanced payments may require a customer to pay a new or additional deposit amount to advanced toll charges when the customer's toll charges exceed the amount currently held as an interexchange deposit, or exceed customary use over the previous six months by twenty dollars or by twenty percent, whichever is greater. A company may toll restrict a customer's services if the customer is unable pay the toll or deposit amount.~~

~~(b) When a customer has exceeded the toll levels outlined in (a) of this subsection, the company may require payment before the close of the next business day following delivery of either written or oral notice to the customer indicating that failure to pay one of the following may result in toll restriction of the customer's service. The customer must be given the option to pay one of the following:~~

~~(i) All outstanding toll charges specified in the notice;~~

~~(ii) All toll charges accrued to the time of payment providing the customer was notified the customer would be liable for all unbilled toll charges that accrued between the time of the notice and time of the payment; or~~

~~(iii) Payment of a new or additional deposit in light of the customer's actual use based upon two months' customary use.~~))

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

WAC 480-120-147 Changes in local exchange and intrastate toll services. For the purpose of this section "subscriber" is any one of the following: The party identified in the account records of a common carrier as responsible for payment of the telephone bill; any adult person authorized by such party to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such party.

(1) **Verification of orders.** A local exchange or intrastate toll company that requests on behalf of a subscriber that the subscriber's company be changed, and that seeks to provide retail services to the subscriber (submitting company), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:

(a) The company has obtained the subscriber's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in ((~~(a)~~))(i) through (vi)

of this subsection, having the sole purpose of authorizing a telecommunications company to initiate a preferred company change. The letter of agency, whether written or electronic, must be signed and dated by the subscriber of the telephone line(s) requesting the preferred company change. The letter of agency must not be combined on the same document or on the same screen or web page with inducements of any kind; however, it may be combined with checks that contain only the required letter of agency language as prescribed in ((~~(a)~~))(i) through (vi) of this subsection, and the necessary information to make the check a negotiable instrument. The check may not contain any promotional language or material. It must contain, in easily readable, boldface type on the front of the check, a notice that the subscriber is authorizing a preferred company change by signing the check. Letter-of-agency language must be placed near the signature line on the back of the check. Any company designated in a letter of agency as a preferred company must be the company directly setting the rates for the subscriber. If any portion of a letter of agency is translated into another language, then all portions must be translated into that language, as well as any promotional materials, oral descriptions or instructions provided with the letter of agency. The letter of agency must confirm the following information from the subscriber:

(i) The subscriber billing name, billing telephone number and billing address and each telephone number to be covered by the change order;

(ii) The decision to change;

(iii) The subscriber's understanding of the change fee;

(iv) That the subscriber designates (name of company) to act as the subscriber's agent for the preferred company change;

(v) That the subscriber understands that only one telecommunications company may be designated as the subscriber's intraLATA preferred company; that only one telecommunications company may be designated as the subscriber's interLATA preferred company; and that only one telecommunications company may be designated as the subscriber's local exchange provider, for any one telephone number. The letter of agency must contain a separate statement regarding the subscriber's choice for each preferred company, although a separate letter of agency for each choice is not necessary; and

(vi) Letters of agency may not suggest or require that a subscriber take some action in order to retain the current preferred company.

(b) The submitting company has obtained the subscriber's authorization, as described in (a) of this subsection, electronically, by use of an automated, electronic telephone menu system. This authorization must be placed from the telephone number(s) for which the preferred company is to be changed and must confirm the information required in (a)(i) through (vi) of this subsection.

Telecommunications companies electing to confirm the preferred company change electronically must establish one or more toll free telephone numbers exclusively for that purpose.

Calls to the number(s) must connect a subscriber to a voice response unit, or similar device, that records the required information regarding the change, including recording the originating automatic number identification (ANI).

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the subscriber's oral authorization to submit the change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth). A company or a company's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection with the third-party verifier has been established. The independent third party must not be owned, managed, controlled or directed by the company or the company's marketing agent; and must not have any financial incentive to confirm preferred company change orders for the company or the company's marketing agent. The content of the verification must include clear and unambiguous confirmation that the subscriber has authorized a preferred company change, and the date of the verification.

(2) Where a telecommunications company is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll) that company must obtain separate authorization, and separate verification, from the subscriber for each service sold, although the authorizations may be made within the same solicitation.

(3) The documentation regarding a subscriber's authorization for a preferred company change must be retained by the submitting company, at a minimum, for two years to serve as verification of the subscriber's authorization to change his or her telecommunications company. The documentation must be made available to the subscriber and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.

(4) **Implementing order changes.** An executing company may not verify directly with the subscriber the submission of a change in a subscriber's selection of a provider received from a submitting company. The executing company must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting company. An executing company is any telecommunications company that affects a request that a subscriber's company be changed. Except as provided by contract, a telecommunications company must submit a preferred company change order on behalf of a subscriber within no more than sixty days of obtaining authorization.

This section does not prohibit any company from investigating and responding to any subscriber-initiated inquiry or complaint.

(5) **Preferred carrier freezes.** A preferred carrier freeze prevents a change in a subscriber's preferred company selection unless the subscriber gives the company from whom the freeze was requested express consent. Express consent means direct, written, electronic, or oral direction by the subscriber. All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all subscribers. Offers or solicitations for such freezes must clearly distinguish among telecommunications services subject to a freeze (e.g., local exchange, intra-

LATA toll, and interLATA toll). The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested. Separate authorizations may be contained within a single document.

(a) All LECs must notify all subscribers of the availability of a preferred carrier freeze, no later than the subscriber's first telephone bill, and once per year must notify all local exchange service subscribers of such availability on an individual subscriber basis (e.g., bill insert, bill message, or direct mailing).

(b) All company-provided solicitation and other materials regarding freezes must include an explanation, in clear and neutral language, of what a preferred carrier freeze is, and what services may be subject to a freeze; a description of the specific procedures to lift a preferred carrier freeze; an explanation that the subscriber will be unable to make a change in company selection unless he or she lifts the freeze; and an explanation of any charges incurred for implementing or lifting a preferred carrier freeze.

(c) No local exchange company may implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with the procedures outlined for confirming a change in preferred company, as described in subsections (1) and (2) of this section.

(d) All LECs must offer subscribers, at a minimum, the following procedures for lifting a preferred carrier freeze:

(i) A subscriber's written or electronic authorization stating the subscriber's intent to lift the freeze;

(ii) A subscriber's oral authorization to lift the freeze. This option must include a mechanism that allows a submitting company to conduct a three-way conference call with the executing company and the subscriber in order to lift the freeze. When engaged in oral authorization to lift a freeze, the executing company must confirm appropriate verification data (e.g., the subscriber's date of birth), and the subscriber's intent to lift the freeze.

(iii) The LEC must lift the freeze within three business days of the subscriber request.

(e) A LEC may not change a subscriber's preferred company if the subscriber has a freeze in place, unless the subscriber has lifted the freeze in accordance with this subsection.

(6) **Remedies.** In addition to any other penalties provided by law, a submitting company that requests a change in a subscriber's company without proper verification as described in this rule must receive no payment for service provided as a result of the unauthorized change and must promptly refund any amounts collected as a result of the unauthorized change. The subscriber may be charged, after receipt of the refund, for such service at a rate no greater than what would have been charged by its authorized telecommunications company, and any such payment must be remitted to the subscriber's authorized telecommunications company.

(7) **Exceptions.** Companies transferring subscribers as a result of a merger, purchase of the company, or purchase of a specific subscriber base are exempt from subsections (1) through (6) of this section if the companies comply with the following conditions and procedures:

(a) The acquiring company must provide a notice to each affected subscriber at least thirty days before the date of transfer. Such notice must include the following information:

(i) The date on which the acquiring company will become the subscriber's new provider;

(ii) The rates, terms, and conditions of the service(s) to be provided upon transfer, and the means by which the acquiring company will notify the subscriber of any change(s) to those rates, terms, and conditions;

(iii) That the acquiring company will be responsible for any company change charges associated with the transfer;

(iv) The subscriber's right to select a different company to provide the service(s);

(v) That the subscriber will be transferred even if the subscriber has selected a "freeze" on his/her company choices, unless the subscriber chooses another company before the transfer date;

(vi) That, if the subscriber has a "freeze" on company choices, the freeze will be lifted at the time of transfer and the subscriber must "refreeze" company choices;

(vii) How the subscriber may make a complaint prior to or during the transfer; and

(viii) The toll-free customer service telephone number of the acquiring company.

(b) The acquiring company must provide a notice to the commission at least thirty days before the date of the transfer. Such notice must include the following information:

(i) The names of the parties to the transaction;

(ii) The types of services affected;

(iii) The date of the transfer; and

(iv) That the company has provided advance notice to affected subscribers, including a copy of such notice.

(c) If after filing notice with the commission any material changes develop, the acquiring company must file written notice of those changes with the commission no more than ten days after the transfer date announced in the prior notice. The commission may, at that time, require the company to provide additional notice to affected subscribers regarding such changes.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

WAC 480-120-165 Customer complaints. (1) Each company must have adequate personnel available during regular business days to address customer complaints.

(2) When a company receives an oral or written complaint from an applicant or customer regarding its service or regarding another company's service for which it provides billing, collection, or responses to inquiries, the company must acknowledge the complaint as follows:

(a) Provide the name of the company's contact to the complainant;

(b) Investigate the complaint promptly;

(c) Report the results of the investigation to the complainant;

(d) Take corrective action, if warranted, as soon as appropriate under the circumstances;

(e) Inform the complainant that the decision may be appealed to a supervisor at the company; and

(f) Inform the complainant, if still dissatisfied after speaking to a supervisor, of the right to file a complaint with the commission and provide the commission address and toll-free telephone number.

((~~(2)~~)) (3) When a company receives a complaint from an applicant or customer regarding another company's service for which it provides only billing service, the company must provide the complainant a toll-free number to reach the appropriate office for the other company that is authorized to investigate and take corrective action to resolve the dispute or complaint.

((~~(3)~~)) (4) The company must insure that records and information about complaints and disputes are used only for the purposes of resolving the complaint or dispute and improving service and practices.

AMENDATORY SECTION (Amending WSR 02-23-004, filed 11/7/02, effective 1/1/03)

WAC 480-120-217 Using privacy listings for telephone solicitation. (1) A local exchange company may not make telephone solicitation or telemarketing calls using its list of customers with nonpublished or unlisted numbers unless it has notified each such customer at least once in the past year that the company makes such calls to its customers with nonpublished or unlisted numbers and that the customer has a right to direct that the company make no such calls.

(2) When the company provides the notice required in subsection (1) of this section in writing, the notice must include a toll-free number and an electronic mail address the customer may use to state that solicitation should not be made.

(3) When the company provides the notice in subsection (1) of this section by phone call, the customer must be informed that inclusion in a solicitation list may be declined and if declined, the company must not make any additional solicitation.

(4) If a company uses or provides subscriber list information for purposes other than directory publishing or compliance with 47 U.S.C. Sec. 251 (b)(3), it must exclude from use or disclosure the subscriber list information of any customer who subscribes to a privacy listing, including a nonpublished or unlisted number, or who directs the company to exclude subscriber list information relating to his or her service.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-255 Information delivery services. (1) For purposes of this section:

"Information-delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix.

"Information provider" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information-delivery service.

"Interactive program" means a program that allows a caller, once connected to the information provider's announcement machine, to access additional information by using the caller's telephone.

(2) Local exchange companies (LECs) offering access to information-delivery services must provide each residential customer the opportunity to block access to all information delivery services offered by that company. ((~~Companies must fulfill an initial request for blocking free of charge. Companies may charge a rate set forth in the tariff or in the rates, terms and conditions of competitively classified services for subsequent blocking requests (i.e., if a customer has unblocked his or her access).~~))

(3) The LEC must inform residential customers of the blocking service through a ((~~single-topic~~)) bill insert and publication of a notice in a conspicuous location on the company's web site or in the consumer information pages of the local white pages telephone directory. The LEC must include in the notice and bill insert the residential customers' rights under the law((~~, the definition of "information delivery services" as defined in subsection (1) of this section, and~~)) to request blocking a statement that these services often are called "900" numbers, and the telephone number to call to request blocking. ((~~The LEC must include notice that customers have the right under Washington law to request free blocking of access to information-delivery services on their residential telephone lines, that blocking will prevent access to information-delivery services from their residential telephone line, that customers may request free blocking of access to information-delivery services on their residential telephone lines by calling the LEC at a specified telephone number, that the Washington utilities and transportation commission is authorized under RCW 80.36.500 to enforce this law, and that customers may contact the commission for further information. The LEC must include the commission's address, toll-free telephone number, and web site:~~

~~Washington Utilities and Transportation Commission~~
~~Consumer Affairs Section~~
~~1300 South Evergreen Park Drive, SW~~
~~P.O. Box 47250~~
~~Olympia, WA 98504-7250~~
~~1-800-562-6150~~
~~www.wutc.wa.gov~~))

(4) Any company that provides billing, customer service, or collection services for an information provider must require, as a part of its contract for that service, that the information provider include in any advertising or promotion a prominent statement of the cost to the customer of the information service.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

WAC 480-120-256 Caller identification service. ((~~(1)~~)) The company that provides caller identification service must provide its retail customers the capability of blocking the delivery of their numbers, names, or locations both on a per call basis and on a per line basis. The company must not charge a monthly fee or per call fee for caller identification blocking. The company must not charge a nonrecurring fee for caller identification blocking:

((~~(a)~~)) (1) When the service is requested at the time an access line is connected;

((~~(b)~~)) (2) The first time the service is added to an access line; or

((~~(c)~~)) (3) The first time the service is removed from an access line.

((~~(2) At least ninety days before offering caller identification services the company must send notice to its customers. The notice must explain caller identification per call blocking, caller identification line blocking, a customer's right to have the numbers blocked one-time free of charge, and an explanation that call blocking does not apply to the delivery of caller numbers, name, or locations to a 911 or enhanced 911 service, other emergency service, or a customer-originated trace. The notice must include an explanation that call blocking will not work on all services, including, but not limited to, 800 and 900 numbers, long distance, and primary rate interface service.~~

~~For purposes of this section, "primary rate interface services" means an ISDN service that uses a digital rate of one thousand five hundred forty-four Mbits per second, whether used like business trunks for digital PBXs with up to twenty-four circuits at a rate of sixty-four kbits per second per circuit, or used as a single circuit at the DS1 rate. A company may offer caller identification service if the company complies with this section.~~))

NEW SECTION

WAC 480-120-258 Collocation. (1) Definitions.

"CLEC" means a competing local exchange carrier that orders collocation from an ILEC.

"Collocation" means the ability of a CLEC to place equipment, including microwave equipment, within or upon an ILEC's premises.

"Deliver" or "delivery date" means the point when the ILEC turns the collocation space and related facilities over to the CLEC and the space and facilities are ready for service. Deliver or delivery includes, but is not necessarily limited to, providing the CLEC with access to the collocation space for collocation other than virtual collocation, as well as providing power, telephone service, and other services and facilities ordered by the CLEC for provisioning by the delivery date.

"ILEC" means an incumbent local exchange carrier that is required to provide collocation.

"ILEC premises" means an ILEC wire center, central office, or any other location owned and/or controlled by the ILEC at which interconnection with the ILEC's network or access to ILEC unbundled network elements is technically feasible.

"Points of interface (POI)" means the demarcation between the networks of an ILEC and a CLEC. The POI is the point where the ex-change of traffic takes place.

(2) ILEC response to CLEC order for collocation. Within ten calendar days of receipt of an order for collocation, an ILEC must notify the CLEC whether sufficient space exists in the ILEC premises to accommodate the CLEC's collocation requirements. As part of that notification, the ILEC must also notify the CLEC of any circumstance that may delay delivery of the ordered collocation space and related facilities.

(3) Provisioning collocation. If the ILEC notifies a CLEC that sufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) Within twenty-five calendar days of receipt of the order, the ILEC must provide the CLEC with a written quote detailing the nonrecurring and recurring charges applicable to provisioning the ordered collocation. After providing the written quote and upon reasonable notice of a request by the CLEC, the ILEC must permit the CLEC at least one accompanied site visit to the designated collocation space without charge to the CLEC, to enable the CLEC to verify and inspect the space the ILEC offers for collocation. The CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote must be within seven calendar days and does not preclude the CLEC from later disputing the accuracy or reasonableness of those charges.

(b) If the ordered collocation space was included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the ILEC must complete construction of, and deliver, the ordered collocation space and related facilities within forty-five calendar days after the CLEC's acceptance of the written quote and payment of one-half of the nonrecurring charges specified in the quote.

(c) If the ordered collocation space was not included in a periodic forecast submitted by the CLEC to the ILEC at least three months in advance of the order, the commission declines to apply the forty-five calendar day interval in (b) of this subsection and the national standards adopted by the FCC shall apply.

(d) Following any initial notification as required in subsection (2) of this section, the ILEC must notify the CLEC of any change in circumstances as soon as the ILEC is aware of those circumstances and must take all reasonable steps to avoid or minimize any delays caused by those circumstances including, but not limited to, joint provisioning of collocation elements by the ILEC and CLEC, or sole construction by the CLEC, through a mutually acceptable third-party contractor.

(e) If the ILEC fails to deliver the collocation space by the required delivery date, the ILEC must credit the CLEC in an amount equal to one-tenth of the total nonrecurring charge for the ordered collocation for each week beyond the required delivery date. Recurring charges will not begin to accrue for any element until the ILEC delivers that element to the CLEC. To the extent that a CLEC self-provisions any collocation element, the ILEC may not impose any charges for provisioning that element.

(f) The ILEC must provide periodic notices to the CLEC during construction of the CLEC's collocation space, including scheduled completion and delivery dates. At least thirty calendar days prior to the scheduled delivery date, the ILEC must provide the CLEC with sufficient information to enable the ILEC and the CLEC to establish firm common language location identifier (CLLI) codes and any other codes necessary to order interconnection and cross-connection circuits for the equipment the CLEC intends to collocate, and the

ILEC must accept and process CLEC orders for such circuits. The ILEC must provision points of interface (POIs) and other circuits concurrent with delivery of the collocation space and related facilities, unless the CLEC agrees to a later date.

(g) The ILEC must conduct an inspection with the CLEC of the collocation space at least five business days prior to completion of construction of the collocation space. The ILEC must correct any deviations to the CLEC's original or jointly amended requirements after the inspection, at the ILEC's sole expense.

(h) Upon order of the CLEC and concurrent with delivery of the collocation space and related facilities, the ILEC must provide basic telephone service to the collocation space under the rates, terms, and conditions of the ILEC's current tariff offering for the service ordered. The ILEC must also provide CLEC employees, contractors, and representatives with reasonable access to basic facilities, such as restroom facilities and parking, while at the ILEC premises.

(4) Denial of order for collocation. If the ILEC notifies a CLEC that insufficient space exists to accommodate the CLEC's order for collocation, the following procedures apply:

(a) As part of its notification of lack of space, the ILEC must notify the CLEC if any space is available for collocation and, if so, how much space is available. The ILEC must also verify that the ILEC cannot reclaim space for collocation by consolidating or removing inactive or underutilized equipment.

(b) The ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of the CLEC's written request.

(c) If the CLEC notifies the ILEC that it contests the denial of an order for collocation, the ILEC must, within twenty-five calendar days of the notification, file a petition asking the commission to determine that the space requested by the CLEC is not available. Upon request and execution of an appropriate confidentiality agreement, the ILEC must also provide a copy of the petition to the CLEC. The ILEC must prepare the petition at its sole expense, and the petition must include the following information:

(i) Central office CLLI, where applicable;

(ii) Ordering CLEC, including the amount of space sought by the CLEC;

(iii) Written inventory of active, inactive, and underutilized equipment, including the signatures of ILEC personnel certifying the accuracy of the information provided;

(iv) Color-coded floor plans that identify office space work areas, provide spatial dimensions to calculate the square footage for each area, and locate inactive and underutilized equipment;

(v) Narrative of the central office floor space use;

(vi) Total amount of space occupied by interconnecting collocators for the sole purpose of interconnection;

(vii) Total amount of space occupied by third parties for purposes other than interconnection, and a narrative of the space use;

(viii) The number of central office employees employed and job titles;

(ix) Description of central office renovation/expansion plans and time frames for completion;

(x) Description of conversion of administrative, maintenance, equipment, and storage space plans and time frames for completion; and

(xi) Description of any internal policies for conversion of administrative, maintenance, equipment, and storage space in central offices.

(d) The commission will decide any petition filed under (c) of this subsection through an expedited proceeding conducted in accordance with the relevant procedural requirements and time lines established in WAC 480-07-650. The ILEC bears the burden to prove to the commission that the ordered collocation is not practical for technical reasons or because of space limitations. The ILEC may be relieved of its obligation to provide collocation at a particular ILEC premises only to the extent expressly provided by commission order.

(e) Each ILEC must maintain a list of all of its central offices in Washington in which insufficient space exists to accommodate one or more types of collocation. The list must specify which types of collocation are unavailable in each office and whether the commission has approved the ILEC's denial of collocation in that office. The ILEC must post this list on its publicly accessible web site and provide a copy of the list to any CLEC upon request. The ILEC must update this list within ten business days of: (i) Denying a CLEC's order for collocation; (ii) the service date of any order from the commission approving or disapproving such a denial; (iii) providing notice to CLECs previously denied collocation that space has become available in a central office; or (iv) obtaining knowledge through any other means that space for one or more types of collocation is no longer available or has become available in a particular central office.

(f) Each ILEC must maintain for each central office a waiting list of all unfilled orders for collocation space and the date of each order. After an ILEC has announced that one or more types of collocation space are not available in an office, any CLEC may submit a letter of intent to order collocation space in lieu of a collocation order, and this letter of intent must be included on the waiting list. If space for collocation becomes available in any central office, the ILEC must inform all CLECs, that ordered collocation or submitted a letter of intent to order collocation, of the availability of that space and must provide each such CLEC with fifteen calendar days to renew its original collocation order. The ILEC must provision collocation to these CLECs on a first-come, first-served basis according to the dates on which each ordered collocation or submitted a letter of intent to collocate in that central office.

NEW SECTION

WAC 480-120-259 Washington telephone assistance program. (1) The commission will set by order the telephone assistance rate to be paid by program participants for local service. Every wireline eligible telecommunications company (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.-470.

(2) No change of service charge shall be charged to an eligible subscriber for the establishment of service under the telephone assistance program.

(3) Local exchange companies shall maintain their accounting records so that expenses associated with the telephone assistance program can be separately identified.

AMENDATORY SECTION (Amending WSR 07-18-009, filed 8/23/07, effective 9/23/07)

WAC 480-120-262 Operator service providers (OSPs). (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

> "If you have a complaint about service from this pay phone and are unable to resolve it by calling the repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones ((~~or "smart" phones~~)). When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

(i) Charges for a one-minute call exceeded one dollar;

(ii) Charges for a five-minute call exceeded three dollars; or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

(8) **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

(9) **Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

((~~Subpart A: General Rules~~))

((~~Subpart B: Accounting Requirements~~))

AMENDATORY SECTION (Amending WSR 05-06-051, filed 2/28/05, effective 3/31/05)

WAC 480-120-339 Streamlined filing requirements for Class B telecommunications company rate increases. (1) A Class B company, as defined in WAC 480-120-021 (Definitions), may use the streamlined treatment described in this section for seeking a general rate increase, as an alternative to the requirements in WAC 480-07-510 (General rate proceedings—Electric, natural gas, pipeline, and telecommunications companies).

(2) **General information required.** A Class B company seeking streamlined treatment for a proposed general rate increase must submit the following information at the time of filing or prior to its first notice to customers, whichever occurs first:

(a) A copy of its customer notice as specified in subsection (6) of this section.

(b) A results-of-operations statement, on a commission basis, demonstrating that the company is not presently exceeding a reasonable level of earnings. If the company is exceeding a reasonable level of earnings, the proposed increase must be reduced accordingly.

(c) All supporting documentation used to develop the results-of-operations statement, including supporting documentation for all adjustments.

(d) The results-of-operations statement filed under this subsection must include Washington intrastate results of operations and total Washington results of operations. If a company cannot provide Washington intrastate results of operations with reasonable accuracy, the commission may consider the total Washington results of operations including the interstate jurisdiction.

(3) **Adjustments provided for in the results of operations.**

(a) The results-of-operations statement must provide restating actual adjustments and pro forma adjustments in accordance with (b) of this subsection.

(b) Before the achieved return is calculated, a company must adjust the booked results of operations for restating actual and pro forma adjustments, including the following:

(i) Nonoperating items;

(ii) Extraordinary items;

(iii) Nonregulated operating items; and

(iv) All other items that materially distort the test period.

(4) ((~~**Rate of return.** The authorized overall rate of return (for purposes of this section only) is eleven and twenty-five one-hundredths percent.~~

~~(5)~~)) **Rate design.** A Class B company filing pursuant to this section must clearly describe the basis for allocating any revenue requirement change proposed by customer class (e.g., residential, business, and interexchange).

((~~(6)~~)) (5) **Customer notice.** The company must notify customers consistent with the manner outlined in WAC 480-120-194 (Publication of proposed tariff changes to increase charges or restrict access to services), and must include the following information:

(a) The proposed increase expressed in:

(i) Total dollars and average percentage terms; and

(ii) The average monthly increases the customers in each category or subcategory of service might reasonably expect;

(b) The name and mailing address of the commission and public counsel;

(c) A statement that customers may contact the commission or public counsel with respect to the proposed rate change; and

(d) The date, time, and place of the public meeting, if known.

((~~(7)~~ ~~**Public meeting(s).**~~ ~~The commission will ordinarily hold at least one public meeting in the area affected by the rate increase within forty-five days after the date of filing.~~

~~(8)~~)) (6) **Final action.** The commission will ordinarily take final action on a filing under this section within ninety days after the date of filing.

((~~(9)~~)) (7) The commission may decline to apply the procedures outlined in this section if it has reason to believe that:

(a) The quality of the company's service is not consistent with its public service obligations; or

(b) A more extensive review is required of the company's results of operations or proposed rate design.

((~~(10)~~)) (8) Nothing in this rule will be construed to prevent any company, the commission, any customer, or any other party from using any other procedures that are otherwise permitted by law.

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

WAC 480-120-349 Retaining and preserving records and reports. (1) Companies must keep all records and reports required by these rules or commission order for three years unless otherwise specified in subsection (2) of this section. No records may be destroyed before the expiration of three years or the time specified in subsection (2) of this section, whichever is applicable.

(2) Companies must adhere to the retention requirements ((~~of~~)) published by the Federal Communications Commission in Title 47, Code of Federal Regulations, Part 42, Preservation of Records of Communication Common Carriers ((~~published by the Federal Communications Commission~~)) and Part 54, Universal Service. The effective date is stated in WAC 480-120-999, Adoption by reference.

AMENDATORY SECTION (Amending WSR 07-08-027, filed 3/27/07, effective 4/27/07)

WAC 480-120-352 Washington Exchange Carrier Association (WECA). (1) The Washington Exchange Carrier Association (WECA) may:

(a) File petitions with the commission;

(b) Publish and file tariffs with the commission; and

(c) Represent before the commission those members that so authorize. WECA's rules of procedure are on file with the commission under Docket No. UT-920373, and may be obtained by contacting the commission's records center.

(2) Subject to all the procedural requirements and protections associated with company filings before the commission, WECA must submit to the commission:

(a) All initial WECA tariffs; and

(b) All changes to the tariffs.

(3) A member of WECA may file directly with the commission:

(a) Tariffs and contracts;

(b) Revenue requirement computations;

(c) Revenue objectives or petitions for distribution from the "state universal communications services program" filed in accordance with WAC 480-123-110;

(d) Universal service support cost calculations;

(e) Total service long run incremental cost studies;

(f) Competitive classification petition;

(g) Other reports; or

(h) Any other item it or the commission deems necessary.

(4) The commission has the authority to supervise the activities of WECA. However, such supervision will not compromise the independent evaluation by the commission of any filing or proposal that must be submitted to the commission for approval.

(5) ((~~To the extent that WECA is involved in the collection and redistribution of funds under commission orders authorizing certain revenue sharing arrangements under common tariff, it must maintain, provide, and report to the commission annual financial reports, by July 1 of each year, relating to the arrangements. Annual financial reports must include:~~

~~(a) Actual fund collections and distributions to each member company;~~

~~(b) The basis upon which the collection and distribution is made;~~

~~(c) Board membership;~~

~~(d) Special committee membership; and~~

~~(e) The status and description of any open WECA docket proceedings.~~

~~(6)~~)) Each local exchange company in the state of Washington has the option of using WECA as its filing agent, tariff bureau, or both. Companies using WECA collectively may file intrastate rates, tariffs, or service proposals.

((~~(7)~~)) (6) Nothing in this section will be construed as amending or modifying WECA's current methods of administration. ((~~WECA's access charge pooling administration plan is on file with the commission and may be obtained by contacting the commission's records center and requesting the "Ninth Supplemental Order in Docket No. UT-971140 with Attachment" dated June 28, 2000.~~))

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

WAC 480-120-359 Accounting for telecommunications companies not classified as competitive. (1)(a) For accounting purposes, each company not classified as competitive must use the *Uniform System of Accounts (USOA) for Class A and Class B Telephone Companies* published by the Federal Communications Commission (FCC) and designated as Title 47, Code of Federal Regulations, Part 32 (47 C.F.R. 32, or Part 32). The effective date for Part 32 is stated in WAC 480-120-999 (Adoption by reference). ((~~Each company not classified as competitive wishing to adopt changes to the USOA made by the FCC after the date specified in WAC 480-120-999, must petition for and receive commission approval. The petition must include the effect of each change for each account and subaccount on an annual basis for the most recent calendar year ending December 31. If the petition is complete and accurate the commission may choose to grant such approval through its consent agenda.~~))

(b) Class B companies may use Class A accounting, but Class A companies must not use Class B accounting.

(2) The commission modifies Part 32 as follows:

(a) Any reference in Part 32 to "Commission," "Federal Communications Commission," or "Common Carrier Bureau" means the Washington utilities and transportation commission.

(b) Each company not classified as competitive must keep subsidiary records to reflect Washington intrastate differences when the commission imposes accounting or ratemaking treatment different from the accounting methods required in subsection ((~~(2)~~)) (1) of this section. Each company not classified as competitive must maintain subsidiary accounting records for:

(i) Residential basic service revenues;

(ii) Business basic service revenues;

(iii) Access revenues for each universal service rate element;

(iv) Special access revenues; and

(v) Switched access revenues.

(c) ((~~Part 32 section 24, compensated absences, is supplemented as follows:~~

~~(i) Each company not classified as competitive must record a liability and charge the appropriate expense accounts for sick leave in the year in which the employees use the sick leave.~~

~~(ii) Each company not classified as competitive must keep records for:~~

~~(A) Compensated absences that are actually paid; and~~

~~(B) Compensated absences that are deductible for federal income tax purposes.~~

~~(d)~~)) Each company not classified as competitive that has multistate operations must keep accounting records that provide Washington results of operations. The methods used to determine Washington results of operations must be acceptable to the commission.

((~~(e)~~)) (d) Part 32 section 32.11(a) is replaced by WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

((~~(f)~~)) (e) Part 32 section 32.11 (d) and (e) are replaced by WAC 480-120-034.

((~~(g)~~)) (f) Any reference in Part 32 to "Class A" or "Class B" means the classification as set out in WAC 480-120-034.

(3) ((~~The commission does not require Part 32 section 32.2000 (b)(4). This rule does not supersede any accounting requirements specified in a commission order, nor will it be construed to limit the commission's ability to request additional information on a company specific basis.~~)) This rule does not dictate intrastate ratemaking.

((~~Subpart C: Financial Reporting Requirements~~))

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

WAC 480-120-382 Annual report for competitively classified telecommunications companies. The commission will distribute an annual report form including a regulatory fee form. A competitively classified company must:

(1) Complete both forms, file them with the commission, and pay its regulatory fee, no later than May 1 of each year;

(2) Provide total number of access lines as required on the annual report form;

(3) Provide income statement and balance sheet for total company;

(4) Provide revenues for Washington and Washington intrastate operations subject to commission jurisdiction; ((~~and~~))

(5) Keep accounts using generally accepted accounting principles (GAAP), or any other accounting method acceptable to the commission. In addition, the accounts must allow for the identification of revenues supporting subsection (4) of this section; and

(6) **Regulatory fees.** The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a company must pay is ((~~twenty~~)) one hundred fifty dollars.

(c) ((~~The twenty-dollar minimum regulatory fee is waived for any company with less than twenty thousand dollars in gross intrastate operating revenue.~~

~~(d)~~)) The commission does not grant extensions for payment of regulatory fees.

((~~(e)~~)) (d) If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

((~~(f)~~)) (e) The commission may take action to revoke a company's registration certificate if it fails to pay its regulatory fee.

AMENDATORY SECTION (Amending WSR 06-08-057, filed 3/31/06, effective 5/1/06)

WAC 480-120-385 Annual report ((~~and quarterly results of operations reports~~)) for telecommunications companies not classified as competitive. (1) Annual reports

for companies not classified as competitive. The commission will distribute an annual report form ((~~as specified in (c)(i), (ii), and (iii) of this subsection, and~~)), a regulatory fee form, and financial information templates. A telecommunications company not classified as competitive must:

(a) ((~~Complete both forms, file them with the commission,~~)) Return the annual report and regulatory fee forms and pay its regulatory fee, no later than May 1 of each year;

(b) Provide total number of access lines (as required on the annual report form referred to in (a) of this subsection); and

(c) ((~~Provide~~)) Complete the financial information templates. The financial information templates include income statement ((~~and~~)), balance sheet ((~~for~~)), and rate base items. The templates also include sections on total company and results of operations for Washington and Washington intrastate. The commission will provide the templates each year and the company must return the completed templates as follows:

(i) Class A companies ((~~that the FCC classified as Tier 1 telecommunications companies in Docket No. 86-182 must file annual report forms adopted by the FCC~~)) must file the required financial information templates no later than May 1st each year.

(ii) ((~~All other Class A companies must file annual reports on the form prescribed by the commission~~)) Class B companies must file the required financial information templates no later than July 1st of each year.

(iii) Class B companies ((~~must file annual reports as prescribed by RCW 80.04.530(2)~~)) are not exempt from these filing requirements.

(2) ((~~Quarterly reports for companies not classified as competitive:~~

~~(a) All Class A companies must file results of operations quarterly.~~

~~(b) Each report will show monthly and twelve-months-ended data for each month of the quarter reported.~~

~~(c) The reports are due ninety days after the close of the period being reported, except for the fourth-quarter report which is due no later than May 1 of the following year.~~

~~(3)~~)) Methods used to determine Washington intrastate results of operations must be acceptable to the commission.

(((~~4~~))) (3) This rule does not supersede any reporting requirements specified in a commission rule or order, or limit the commission's authority to request additional information.

(((~~5~~))) (4) **Regulatory fees.** The telecommunications annual regulatory fee is set by statute at one-tenth of one percent of the first fifty thousand dollars of gross intrastate operating revenue plus two-tenths of one percent of any gross intrastate operating revenue in excess of fifty thousand dollars.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum regulatory fee that a company must pay is ((~~twenty~~)) one hundred fifty dollars.

(c) ((~~The twenty-dollar minimum regulatory fee is waived for any company with less than twenty thousand dollars in gross intrastate operating revenue.~~

~~(d)~~)) The commission does not grant extensions for payment of regulatory fees.

(((~~e~~))) (d) If a company does not pay its regulatory fee by May 1, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

AMENDATORY SECTION (Amending WSR 03-01-065, filed 12/12/02, effective 7/1/03)

WAC 480-120-411 Network maintenance. (1) Each local exchange company (LEC) must:

(a) Provide adequate maintenance to ensure that all facilities are in safe and serviceable condition;

(b) Correct immediately hazardous conditions endangering persons, property, or the continuity of service when found, reported, or known to exist;

(c) Promptly repair or replace broken, damaged, or deteriorated equipment, when found to be no longer capable of providing adequate service; and

(d) Correct promptly transmission problems on any channel when located or identified, including noise induction, cross-talk, or other poor transmission characteristics.

(2) Each LEC must install and maintain test apparatus at appropriate locations to determine the operating characteristics of network systems and provide sufficient portable power systems to support up to the largest remote subscriber carrier site. For the safe and continuous operation of underground cables, each LEC must establish air pressurization policies and an air pressurization alarm-monitoring program where appropriate.

(3) Central offices equipped with automatic start generators must have three hours' reserve battery capacity. Central offices without automatic start generators must have a minimum of five hours' reserve battery capacity. Central offices without permanently installed emergency power facilities must have access to readily connectable mobile power units with enough power capacity to carry the load and that can be delivered within one half of the expected battery reserve time. The company must retain a reasonable inventory of portable generators to maintain peripheral electronic equipment that is not connected to standby generation, for example, digital loop carrier, servers, etc.

AMENDATORY SECTION (Amending WSR 05-03-031, filed 1/10/05, effective 2/10/05)

WAC 480-120-439 Service quality performance reports. (1) ((~~**Class A companies.** Each Class A company must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. Each company must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).~~

~~(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these~~)) All companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with

the service quality standards established by WAC ((~~480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services),~~)) 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

((~~(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.~~

~~(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.~~

~~(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).~~

~~(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new appointment.~~

~~(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.~~

~~(4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.~~

~~(a) The company must file a separate report each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.~~

~~(b) The company must file a separate report each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty-day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.~~

~~(c) A company may exclude from the total number of orders taken and the total number of uncompleted orders for the month:~~

~~(i) Orders for which customer-provided special equipment is necessary;~~

~~(ii) When a later installation or activation is permitted under WAC 480-120-071 (Extension of service);~~

~~(iii) When a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or~~

~~(iv) When the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order.~~

~~(d) For calculation of the report of orders installed or activated within five business days in a month, a company may exclude from the total number of orders taken and from the total number of uncompleted orders for the month, orders that could not be installed or activated within five days in that month due to force majeure if the company supplies documentation of the effect of force majeure upon the order.~~

~~(5)~~)) (2) **Major outages report.** Notwithstanding subsection((~~s~~)) (1) ((~~and (2)~~)) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

((~~(6) **Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438. The reports, including repeated reports, must be presented as a ratio per one hundred lines in service.~~

~~The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.~~

~~(7) **Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches - Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.~~

~~(8) **Interoffice, intercompany and interexchange trunk-blocking report.** Each company that experiences trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to interexchange companies) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.~~

~~(9) **Repair report.**~~

~~(a) For service-interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages), each company must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standard as provided for in WAC 480-120-440.~~

~~(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, each company must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.~~

~~(10) **Business office and repair answering system reports.** When requested, each company must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, each company must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.~~

~~(11)~~)) (3) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

((~~(12)~~)) (4) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

((~~(13)~~)) (5) Subsection ((~~(12)~~)) (4) of this section does not preclude application for an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC).

NEW SECTION

WAC 480-120-445 Damage reporting requirements. (1) Facility operators and excavators, as defined in RCW 19.122.020 (10) and (11), who observe or cause damage to an underground facility must report the damage event to the commission using either the commission's web-based damage reporting tool or its successor, or the damage reporting form located on the commission's web site.

(a) Each report must include the subject matter set forth in RCW 19.122.053 (3)(a) through (n).

(b) If the facility operator believes that the excavation was started before a facilities locate was completed, the facility operator must also report the name, address, and phone number of the person or entity that the facility operator has reason to believe may have caused the damage. The facility operator must include this information in the comment section of the web-based damage reporting tool form or send it to the commission separately. If the facility operator chooses to send the information separately, it must include sufficient information to allow the commission to link the name of the party believed to have caused the damage with the damage event reported through the damage reporting tool.

(c) Each facility operator must retain for a period of two years all damage claim records it creates related to damage events, including photographs and documentation supporting any conclusion under (b) of this subsection that a facilities locate was not timely completed, and it must make those records available to the commission upon request.

(2) Each facility operator must provide to an excavator who damages an operator's facility the following information set forth in chapter 19.122 RCW:

(a) Notification requirements for excavators under RCW 19.122.050(1);

(b) A copy of RCW 19.122.053; and

(c) Information concerning the safety committee referenced under RCW 19.122.130, including committee contact information, and the process for filing a complaint with the safety committee.

(3) In determining a facility operator's compliance with subsection (2) of this section, the commission will consider whether the facility operator made reasonable efforts to comply in light of the particular circumstances. Such circumstances may include, but are not limited to, concern for the

safety of an employee, whether an excavator accepts the information provided by the facility operator, and whether the facility operator knows, or reasonably should know, the identity of the excavator.

(4) A facility operator conducting an excavation, or a subcontractor conducting an excavation on the facility operator's behalf, that strikes the facility operator's own underground facility is not required to report that damage event to the commission, pursuant to RCW 19.122.053(2).

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-120-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **American National Standards for Telecommunications** - "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" (ATIS 0100510) is published by the American National Standards Institute (ANSI).

(a) The commission adopts the version in effect on December 29, 1999, and reaffirmed 2008.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) The American National Standards for Telecommunications "*Network Performance Parameters for Dedicated Digital Services for Rates Up To and Including DS3 - Specifications*" is a copyrighted document. Copies are available from ANSI in Washington, D.C. and from various third-party vendors.

(2) **The Institute of Electrical And Electronic Engineers (IEEE) Standard Telephone Loop Performance Characteristics** (ANSI/IEEE Std 820-2005) is published by the ANSI and the IEEE.

(a) The commission adopts the version in effect as published in 2005.

(b) This publication is referenced in WAC 480-120-401 (Network performance standards).

(c) *The IEEE Standard Telephone Loop Performance Characteristics* is a copyrighted document. Copies are available from ANSI and IEEE in Washington, D.C. and from various third-party vendors.

(3) **The National Electrical Safety Code** is published by the IEEE.

(a) The commission adopts the 2012 edition.

(b) This publication is referenced in WAC 480-120-402 (Safety).

(c) *The National Electrical Safety Code* is a copyrighted document. Copies are available from IEEE in Washington, D.C. and from various third-party vendors.

(4) **Title 47 Code of Federal Regulations,** cited as 47 C.F.R., is published by the United States Government Printing Office.

(a) For this publication as referenced in WAC 480-120-359 (Accounting requirements for companies not classified as competitive) and WAC 480-120-349 (Retaining and preserving records and reports), the commission adopts the version of the relevant sections in effect on October 1, ((~~1998~~)) 2012.

(b) For this publication as referenced in WAC 480-120-202 (Customer proprietary network information), WAC 480-120-146 (Changing service providers from one local exchange company to another), and any other reference in chapter 480-120 WAC except for WAC 480-120-359 and 480-120-349, the commission adopts the version of the relevant sections in effect on October 1, 2011.

(c) ((~~The 1998 version of C.F.R. Title 47 is available online in pdf format via GPO Access and the National Archives and Records Administration at www.gpoaccess.gov/cfr/index.html.~~

~~(d)~~)) The 2011 and 2012 versions of C.F.R. Title 47 ((~~is~~)) are available from the U.S. Government Online Bookstore, http://bookstore.gpo.gov/, and from various third-party vendors.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-120-105	Company performance standards for installation or activation of access lines.
WAC 480-120-112	Company performance for orders for nonbasic services.
WAC 480-120-124	Guarantee in lieu of deposit.
WAC 480-120-125	Deposit or security—Telecommunications companies.
WAC 480-120-127	Protecting customer prepayments.
WAC 480-120-132	Business offices.
WAC 480-120-148	Canceling registration.
WAC 480-120-218	Using subscriber list information for purposes other than directory publishing.
WAC 480-120-219	Severability.
WAC 480-120-252	Intercept services.
WAC 480-120-325	Definitions.
WAC 480-120-331	Filing information.
WAC 480-120-335	Additional reports.
WAC 480-120-344	Expenditures for political or legislative activities.
WAC 480-120-355	Competitively classified companies.
WAC 480-120-365	Issuing securities.
WAC 480-120-369	Transferring cash or assuming obligations.
WAC 480-120-375	Affiliated interests—Contracts or arrangements.
WAC 480-120-389	Securities report.

WAC 480-120-395	Affiliated interest and subsidiary transactions report.
WAC 480-120-399	Access charge and universal service reporting.
WAC 480-120-440	Repair standards for service interruptions and impairments, excluding major outages.
WAC 480-120-540	Terminating access charges.
WAC 480-120-560	Collocation.

AMENDATORY SECTION (Amending WSR 02-11-080, filed 5/14/02, effective 6/17/02)

WAC 480-121-040 Granting or denying ((~~petitions~~)) applications for registration. (1) The commission secretary may grant an application for registration without hearing when the application is on a form prescribed by the commission and contains the following:

(a) The name and address of the company;

(b) The name and address of its registered agent, if any;

(c) Name, address, and title of each officer or director;

(d) The most current balance sheet;

(e) The latest annual report, if any; and

(f) A description of the telecommunications services it offers or intends to offer.

(2) The commission may deny an application for registration if, after hearing, the commission finds that the application is not consistent with the public interest or that the applicant:

(a) Failed to provide the information required by RCW 80.36.350;

(b) Failed to provide the performance bond described in RCW 80.36.350 and WAC 480-120-127, if required;

(c) Does not possess adequate financial resources to provide the proposed service; or

(d) Does not possess adequate technical competency to provide the proposed service.

(3) The commission may deny an application for registration submitted by an alternate operator services company if, after hearing, the commission finds that the services or charges offered by the company are not consistent with the public convenience and advantage.

AMENDATORY SECTION (Amending WSR 02-11-081, filed 5/14/02, effective 6/17/02)

WAC 480-121-065 Customer notice requirements—Petition for competitive classification of a service or a company. (1) When a telecommunications company petitions for competitive classification of a telecommunications service(s), the company must provide notice to each affected customer at least thirty days before the requested effective date.

(2) Each customer notice must include, at a minimum:

(a) The date the notice is issued and the proposed effective date of the competitive classification;

(b) The company name and address;

(c) A clear explanation of the proposal to give customers the basis for understanding the proposal and the potential impact of the change. The company may satisfy this requirement with its own explanation or by using commission-developed language available from the commission's designated public affairs officer;

(d) A description of how customers may contact the company if they have specific questions or need additional information about the proposal; and

(e) Public involvement language. A company may choose from:

(i) Commission-suggested language that is available from the commission's designated public affairs officer; or

(ii) Company-developed language that must include the commission's mailing address, toll-free number, and docket number, if known, and a brief explanation of:

(A) How to participate in the commission's process by mailing or faxing a letter, or submitting an e-mail; and

(B) How to contact the commission for process questions or to be notified of the scheduled open meeting at which the proposal will be considered by the commission.

(3) Methods of notice permitted include a bill insert, bill message, printing on the billing envelope, a separate mailing to all affected customers or, if the company has the capability and the customer has authorized, by e-mail.

(4) Within ten days of making a filing requiring posting, publication, or customer notice, a company must file a declaration with the commission's records center that the required notice has been posted, published, and/or mailed. The declaration must include:

(a) The methods used to post, publish, and/or give notice to customers;

(b) When the notice was first posted, published, and/or issued to customers;

(c) How many customers are affected; and

(d) A copy of the notice.

(5) A company may request assistance from the commission's designated public affairs officer with efforts to comply with this section.

(6) The commission may require notice to customers other than those described in this rule when the commission determines that additional customer education is needed.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 480-121-011	Application of rules.
WAC 480-121-015	Exemptions from rules in chapter 480-121 WAC.
WAC 480-121-016	Additional requirements.
WAC 480-121-017	Severability.
WAC 480-121-018	Delivery of a filing.
WAC 480-121-026	Rejecting a filing.

AMENDATORY SECTION (Amending WSR 98-04-028, filed 1/28/98, effective 2/28/98)

WAC 480-123-010 Federal universal service contracts. For purposes of schools and libraries receiving federal universal service funding under 47 C.F.R., Part 54 of the Federal Communications Commission rules, the following intrastate discounts shall apply:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX HOW DISADVANTAGED?	DISCOUNT LEVEL	
% of students eligible for national school lunch program	urban discount (%)	rural discount (%)
<1	20	25
1-19	40	50
20-34	50	60
35-49	60	70
50-74	80	80
75-100	90	90

AMENDATORY SECTION (Amending WSR 14-12-008, filed 5/22/14, effective 6/22/14)

WAC 480-123-020 Definitions. As used in this chapter:

"Applicant" means any person applying to an ETC for new service or reconnection of discontinued service.

"Communications provider" or "provider" means a company providing communications service that assigns a working telephone number to a final consumer for intrastate wireline or wireless communications services or interconnected voice over internet protocol service, and includes local exchange carriers.

"Communications services" includes telecommunications services and information services and any combination of these services.

"Eligible telecommunications carrier" and "ETC" mean a carrier designated by the commission as eligible to receive support from federal universal service mechanisms in exchange for providing services supported by federal universal service mechanisms.

"Facilities" means for the purpose of WAC 480-123-030 (1)(b) any physical components of the telecommunications network that are used in the transmission or routing of the services that are supported by federal universal service mechanisms.

".shp format" means the format used for creating and storing digital maps composed of shape files capable of being opened by the computer application ArcGIS™.

"Program" means the state universal communications services program created in RCW 80.36.650.

"Service area" means all of the designated exchanges served by a company in the state.

"Service outage" means a significant degradation in the ability of an end user to establish and maintain a channel of voice communications as a result of failure or degradation in the performance of a communications provider's network.

"Substantive" means sufficiently detailed and technically specific to permit the commission to evaluate whether federal universal service support has had, or will have, benefits for customers. For example, information about investments and expenses that will provide, increase, or maintain service quality, signal coverage, or network capacity, and information about the number of customers that benefit, and how they will benefit is sufficient to enable evaluation.

"Telecommunications" has the same meaning as defined in 47 U.S.C. Sec. 153(43).

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

WAC 480-123-030 Contents of petition for eligible telecommunications carriers. (1) Petitions for designation as an ETC must contain:

(a) A description of the area or areas for which designation is sought;

(b) A statement that the carrier will offer the services supported by federal universal service support mechanisms throughout the area for which it seeks designation, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC);

(c) A description of how it will provide each supported service;

(d) A substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers;

(e) A statement that the carrier will advertise the availability of services supported by federal universal service mechanisms, including advertisement of applicable telephone assistance programs, such as Lifeline, that is reasonably calculated to reach low-income consumers not receiving discounts;

(f) For wireless petitioners, a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals;

(g) Information that demonstrates its ability to remain functional in emergency situations including a description of how it complies with WAC 480-120-411 or, for a wireless carrier, information that demonstrates ((~~it has at least four hours of back up battery power at each cell site, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch~~)) that, when commercial power is not available, it has a reasonable amount of backup power (fixed, portable or other backup power source) for its cell sites, and backup power for its switches is as prescribed in WAC 480-120-411(3) for LEC central offices; and cell sites do not include any small cell facility as defined in RCW 80.36.375 (2)(d) or any in building wireless installation; and

(h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC or, for a wireless carrier, a commitment to comply with the Cellular Telecommunica-

tions and Internet Association's (CTIA) Consumer Code for Wireless Service. Information regarding the version of the CTIA code adopted and where to obtain it is set forth in WAC 480-123-999.

(2) A company officer must submit the petition in the manner required by RCW 9A.72.085.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

WAC 480-123-060 Annual certification of eligible telecommunications carriers. (1) Each ETC seeking certification of the ETC's use of federal high-cost funds pursuant to 47 C.F.R. ((§§ 54.307, 54.313, or)) Sec. 54.314 must request certification by July ((31)) 1st each year. The ETC must certify that ((it will use federal high-cost universal service fund support)) all federal high-cost support provided to the ETC within Washington state was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of ((the)) facilities and services for which the support is intended. The certification must be submitted by a company officer in the manner required by RCW 9A.72.085.

(2) The commission will certify an ETC's use of federal high-cost universal service fund support, pursuant to 47 C.F.R. ((§§ 54.307, 54.313, or)) Sec. 54.314 only if the ETC complies with the requirements in WAC 480-123-070, and the ETC demonstrates that it will use federal high-cost funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended through the requirements of WAC 480-123-080.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

WAC 480-123-070 Annual certifications and reports. Not later than July ((31)) 1st of each year, every ETC that receives federal support from any category in the federal high-cost fund must certify or report as described in this section. The certifications and reports are for activity related to Washington state in the period January 1st through December 31st of the previous year. A company officer must submit the certifications in the manner required by RCW 9A.72.085.

(1) **Report on use of federal funds and benefits to customers.**

(a) ((For an ETC that receives support based only on factors other than the ETC's investment and expenses,)) The report must provide a substantive description of investments made and expenses paid with support from the federal high-cost fund.

((For ETCs that receive any support based on the ETC's investment and expenses, the report must provide a substantive description of investment and expenses, such as the NECA-1 report, the ETC will report as the basis for support from the federal high-cost fund.)) The report must include the company's gross capital expenditures and operating expenses made with federal high-cost support received by the ETC in the preceding calendar year along with a description of major projects and affected exchanges. A rate of return wireline ETC must also include a copy of its NECA-1 report for the preceding calendar year.

(b) Every ETC must provide a substantive description of the benefits to consumers that resulted from the investments and expenses reported pursuant to (a) of this subsection.

(2) **Local service outage report.** ((ETCs not subject to WAC 480-120-412 and 480-120-439(5) are required to report local service outages pursuant to this subsection.))

(a) The report must include detailed information on ((every local service outage thirty minutes or longer in duration experienced by the ETC. The report)) any outage in the service area (during the prior calendar year) of at least thirty minutes in duration in which the ETC owns, operates, leases, or otherwise utilizes facilities, that potentially affect:

(i) At least ten percent of the end users; or

(ii) A 911 special facility, as defined in 47 C.F.R. Sec. 4.5(e).

(b) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(((a))) (i) The date and time of onset and duration of the outage;

(((b))) (ii) A brief description of the outage and its resolution;

(((c))) (iii) The particular services affected((, including whether a public safety answering point (PSAP) was affected));

(((d))) (iv) The geographic areas affected by the outage;

(((e))) (v) Steps taken to prevent a similar situation in the future; and

(((f))) (vi) The ((estimated)) number of customers affected.

(3) **Report on failure to provide service.** ((ETCs not subject to WAC 480-120-439 are required to report failures to provide service pursuant to this subsection.)) The report must include ((detailed information on)) the number of requests for service from ((applicants)) potential customers within its designated service area((s)) that were unfulfilled ((for)) during the ((reporting period)) prior calendar year. The ETC must also ((describe in)) detail how it attempted to provide service to those ((applicants)) potential customers.

(4) **Report on complaints per one thousand ((handsets or lines)) connections (fixed or mobile).** The report must provide separate totals for the number of complaints that the ETC's customers made to the Federal Communications Commission((, or)) and the consumer protection division of the office of the attorney general of Washington. ((The report must also generally describe the nature of the complaints and outcome of the carrier's efforts to resolve the complaints.)) The ETC must also report the number of consumer complaints in each general category (for example, billing disputes, service quality).

(5) **Certification of compliance with applicable service quality standards and consumer protection rules.** Certify that it met substantially the applicable service quality standards and consumer protection rules found in WAC 480-123-030 (1)(h).

(6) **Certification of ability to function in emergency situations.** Certify that it had the ability to function in emergency situations based on continued adherence to the standards found in WAC 480-123-030 (1)(g).

(7) **Advertising certification, including advertisement on Indian reservations.** Certify it has publicized the availability of its applicable telephone assistance programs, such as Lifeline, in a manner reasonably designed to reach those likely to qualify for service, including residents of federally recognized Indian reservations within the ETC's designated service area. Such publicity should include advertisements likely to reach those who are not current customers of the ETC within its designated service area.

(8) **Report filing alternatives.** To the extent the company has filed a report with a federal agency that provides the data requested by the commission, the company can refer to that docket number and the date the information was filed with the commission.

AMENDATORY SECTION (Amending WSR 06-14-051, filed 6/28/06, effective 7/29/06)

WAC 480-123-080 Annual plan for universal service support expenditures. (1) Not later than July ((~~31~~)) 1st of each year, every ETC that receives federal support from any category in the federal high-cost fund must report ((~~on:~~

~~(a)~~)) the planned use of federal support related to Washington state that will be received during the ((~~period October 1 of the current year through the following September; or~~

~~(b) The planned investment and expenses related to Washington state which the ETC expects to use as the basis to request federal support from any category in the federal high-cost fund~~)) coming calendar year. The report must include the company's planned gross capital expenditures and operating expenses made with federal high-cost support received by the ETC for the coming calendar year along with a description of major projects and affected exchanges.

(2) The report must include a substantive plan of the investments and expenditures to be made with federal support and a substantive description of how those investments and expenditures will benefit customers.

(3) As part of the ((~~filing required by this section to be submitted in 2007~~)) initial ETC petition for federal high-cost support, and at least once every three years thereafter, a wireless ETC must submit a map in .shp format that shows the general location where it provides commercial mobile radio service signals.

AMENDATORY SECTION (Amending WSR 13-05-023, filed 2/11/13, effective 3/14/13)

WAC 480-123-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) The Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

(2) The commission adopts the version in effect on January 1, ((~~2012~~)) 2014.

(3) This publication is referenced in WAC 480-123-030 (contents of petition for eligible telecommunications carriers).

(4) Copies of the CTIA Consumer Code for Wireless Service are available at http://www.ctia.org.

AMENDATORY SECTION (Amending WSR 99-23-065, filed 11/15/99, effective 12/16/99)

WAC 480-140-010 Definitions. Commission means Washington utilities and transportation commission.

Net utility plant in service means plant in service less accumulated depreciation and amortization.

Public service company means every gas company, electrical company, ((~~telecommunications company,~~)) and water company subject to regulation under the provisions of Title 80 RCW as to rates and service by the commission.

AMENDATORY SECTION (Amending WSR 99-23-065, filed 11/15/99, effective 12/16/99)

WAC 480-140-040 What to file. Budgets, in a format selected by the reporting company, must show amounts needed for construction, operation and maintenance during the ensuing year. The reporting company must provide the information by industry (water, gas, and electrical((~~, and telecommunications~~))) to the extent such information has been prepared. All major construction projects must be identified in the budget. Major construction projects will be determined ((~~as described below:~~

~~(1)~~)) for water, gas, and electrical companies, ((~~major projects include~~)) as all projects where the Washington-allocated share of the total project is greater than five-tenths of one percent of the company's latest year-end Washington-allocated net utility plant in service, but does not include any project of less than three million dollars on a total project basis. This determination for companies providing combined industry services will be done on an industry-specific basis.

((~~(2) For telecommunications companies, major projects include all construction projects where the intrastate Washington jurisdictional share is greater than one million dollars.~~))

AMENDATORY SECTION (Amending WSR 99-08-055, filed 4/1/99, effective 5/2/99)

WAC 480-143-100 Application of rules. The rules in this chapter apply to any public service company that meets the requirements for commission regulation or jurisdiction under RCW 80.04.010. The rules do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. Other local exchange companies should also refer to commission orders specifying the appropriate treatment of transfers of property.

The commission may waive or modify the application of any rule to a public service company upon written request or upon the commission's own motion, except when such provisions are fixed by statute. The waiver or modification must be approved by the commission in writing. Violations of these rules will be subject to the penalty provisions of chapter 80.04 RCW.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 480-122-010	Definitions.
WAC 480-122-020	Washington telephone assistance program rate.
WAC 480-122-050	Other charges.
WAC 480-122-080	Accounting.

WSR 15-09-004
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 2, 2015, 9:44 a.m., effective May 3, 2015]

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

Purpose: These four new rules assist in determining whether a transaction or arrangement is designed to unfairly avoid taxes within the scope [in] RCW 82.32.655. WAC 458-20-280, 458-20-28001, 458-20-28002, and 458-20-28003 is a set of four rules: One general rule and three separate rules for each of the three types of tax avoidance identified in RCW 82.32.655(3). The rules are necessary to explain the implications of the legislation in RCW 82.32.655.

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

Adopted under notice filed as WSR 14-21-156 on October 21, 2014.

Changes Other than Editing from Proposed to Adopted Version: The following are the changes to the proposal for WAC 458-20-280 to 458-20-28003 for the tax avoidance rules. WAC 458-20-28003 (3)(E) has been revised to reflect changes in an aircraft lease arrangement that more accurately reflects personal use sublease transactions with timesharing fees in Washington. In addition, the definition of timesharing fee in WAC 458-20-28003 (2)(i)(v) has been changed to reflect a citation to the definition in the federal aviation regulations.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, 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: April 2, 2015.

Dylan Waits
Rules Coordinator

GENERAL RULE: TAX AVOIDANCE

NEW SECTION

WAC 458-20-280 Introduction. *This rule is organized into eight parts, as follows:*

- *Purpose and general scope*
- *Transactions or arrangements specifically identified as potential tax avoidance*
- *Relevant factors in transactions deemed unfair tax avoidance*
- *Economic positions of participants*
- *Substantial nontax reasons for entering into an arrangement*
- *Results of unfair tax avoidance transactions*
- *Tax periods affected*
- *Penalty provisions*

Other rules. There are three auxiliary rules that address the following three types of arrangements.

- *WAC 458-20-28001 Construction joint ventures and similar arrangements described in RCW 82.32.655 (3)(a);*
- *WAC 458-20-28002 Disguised income arrangements described in RCW 82.32.655 (3)(b); and*
- *WAC 458-20-28003 Sales and use tax avoidance arrangements described in RCW 82.32.655 (3)(c).*

(1) **Purpose and general scope.** Chapter 23, Laws of 2010 1st sp. sess., enacted as RCW 82.32.655 and 82.32.660, as well as amended RCW 82.32.090, to address unfair tax avoidance. Although taxpayers have the right to enter into arrangements or transactions that have lower tax consequences, the legislature recognized that certain arrangements and transactions are contrary to the intent of the taxation statutes. The legislation and this rule address certain identified arrangements and transactions that unfairly avoid taxes and prescribe specific remedial actions to be taken by the department in such cases. The legislation and this rule do not affect or apply to any other remedies available to the department by statute or common law, as these remedies are expressly preserved by the legislation.

(a) **Rule examples.** This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the taxpayer is entitled to any particular tax treatment or that the arrangement or transaction is approved by the department under other authority. It may still be disregarded or disapproved by the department under other statutory or common law authority.

In addition, each fact pattern in each example is self-contained (i.e., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(b) **Definitions.**

(i) "Potential tax avoidance" and "identified transaction" both refer to an arrangement or transaction that has the potential to be unfair tax avoidance because it meets the elements of an arrangement or transaction described in subsection (2) of this rule.

(ii) "Unfair tax avoidance" means an arrangement or transaction that meets the elements of an arrangement or transaction described in subsection (2) of this rule, and that is also determined under all the facts and circumstances to be unfair tax avoidance based on the factors identified in subsection (3) of this rule.

(iii) "Affiliated" means under common control.

(iv) "Common control" means two or more entities controlled by the same person or entity.

(v) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise. A person's power to cause the direction of management and policies includes power that is held by:

(A) Persons related to the taxpayer; and

(B) Persons with whom the taxpayer acts in concert to direct the management or policies of the entity.

(vi) "Related" includes:

(A) An entity's parent, owner, subsidiary, or affiliate under common control;

(B) An individual person's spouse, grandparent, parent, sibling, child, or grandchild; and

(C) In the case of a trust, the trust or a related person as defined in (A) or (B) of this subsection that:

(I) Has a beneficial interest in the trust;

(II) Has control over the trust or trust property; or

(III) Is the settlor and has retained significant control over the trust.

(vii) "Moving" or "moves" is any act or series of acts to ensure that income is received by a person who is not taxable in Washington on that income; and that the taxpayer or a related person receives substantially all the benefit of the income. Such acts may include without limitation: An assignment, transfer, lease, or license of income-producing assets; the sale of property or services at less than could be obtained in an arm's length transaction; and capital contributions and distributions from a capital account.

(viii) "Specific written instructions" means tax reporting instructions that specifically address an arrangement or transaction and specifically identify the taxpayer to whom the instructions apply. Specific written instructions may be provided as part of an audit, tax assessment, determination, closing agreement, or in response to a binding ruling request.

Specific written instructions will not be construed as revoked by operation of this rule or its statutory authority, but the department may revoke specific written instructions by written notice to the taxpayer.

(ix) "Person" or "company" has the same meaning as provided in RCW 82.04.030.

(2) **Transactions or arrangements specifically identified as potential tax avoidance:** Under RCW 82.32.655(3), the following arrangements or transactions are specifically identified as potential tax avoidance.

(a) **Certain construction ventures.** Arrangements that are, in form, a joint venture or similar arrangement between a construction contractor and the owner or developer of a construction project but that are, in substance, substantially guaranteed payments for the purchase of construction services and that are characterized by a failure of the parties' agreement to provide for the contractor to share substantial profits and bear significant risk of loss in the venture. See WAC 458-20-28001 for more information.

(b) **Redirecting income.** Arrangements through which a taxpayer attempts to avoid business and occupation tax by disguising income received, or otherwise avoiding tax on income from a person that is not affiliated with the taxpayer from business activities that would be taxable in Washington by moving that income to another entity that would not be taxable in Washington. See WAC 458-20-28002 for more information.

(c) **Property ownership by controlled entity.** Arrangements through which a taxpayer attempts to avoid retail sales or use tax by engaging in a transaction to disguise its purchase or use of tangible personal property by vesting legal title or other ownership interest in another entity over which the taxpayer exercises control in such a manner as to effectively retain control of the tangible personal property. See WAC 458-20-28003 for more information.

(3) **Factors in a specifically identified arrangement or transaction deemed unfair tax avoidance:** An arrangement or transaction identified in subsection (2) of this rule, is not "unfair tax avoidance" unless the arrangement or transaction is determined to be unfair tax avoidance under consideration of one or more of the factors in this subsection. These factors do not constitute a list of discrete elements that must be met for an arrangement or transaction to be unfair tax avoidance.

(a) Whether there has been a meaningful change in the economic positions of the participants in an arrangement or transaction, apart from its tax effects, when the arrangement is considered in its entirety;

(b) Whether substantial nontax reasons exist for entering into an arrangement or transaction;

(c) Whether an arrangement or transaction is a reasonable means of accomplishing a substantial nontax purpose;

(d) An entity's relative contributions to the work that generates income;

(e) The location where work is performed[1]; and

[1] For apportionable activities, see WAC 458-20-19401 through 458-20-19404.

(f) Other relevant factors.

(g) Application of factors:

(i) To the extent relevant, the department may consider any or all factors listed in this subsection as part of an analysis of whether an arrangement or transaction has sufficient substance to be respected for tax purposes. The department may consider evidence of a taxpayer's actual subjective intent, but the department is not required to prove that tax avoidance was the subjective intent of any particular arrangement or transaction.

(ii) Right of rebuttal. If the department determines that the arrangement or transaction meets the elements identified

in WAC 458-20-28001, 458-20-28002, or 458-20-28003 and that one or more of the factors identified in this subsection indicate unfair tax avoidance, the department presumes the arrangement or transaction is unfair tax avoidance. The taxpayer may rebut the presumption by proving that:

(A) The arrangement or transaction changes in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole; and

(B) One or more substantial nontax reasons were the taxpayer's primary reason for entering into the arrangement or transaction.

(4) **When does an arrangement or transaction change in a meaningful way, apart from its tax effects, the economic positions of the participants in the arrangement when considered as a whole?**

(a) **Whole transaction.** In evaluating any change to the economic positions of the participants, the department considers all facts and circumstances relevant to the individual economic position of each participant in the arrangement or transaction as a whole.

(b) **Meaningful change defined.** Meaningful change in economic position means, apart from its tax benefits, a bona fide and substantial increase in profit or profit potential or a bona fide and substantial reduction in costs or expenses between the form of the arrangement or transaction chosen by the taxpayer and the actual substance of the arrangement or transaction. The reasonably expected profit from the arrangement or transaction must be substantial when compared to the reasonably expected tax benefits that would be allowed if the arrangement or transaction is to be respected.

(c) **Shifting profits insufficient.** An arrangement or transaction that merely shifts income or value between related persons does not result in a meaningful change in economic position.

(5) **When do substantial nontax reasons or purposes exist for entering into an arrangement or transaction?**

(a) **Subjective purpose.** In evaluating whether a taxpayer had a substantial nontax reason or purpose for an arrangement or transaction, the department will consider all facts and circumstances that are relevant to determining the taxpayer's subjective intent. However, the department is not required to prove that tax avoidance was the subjective intent of any particular arrangement or transaction, but may presume such intent from the presence of other relevant factors.

(b) **Substantial nontax reason defined.** A substantial nontax reason is a bona fide nontax reason that is a substantial motivating factor to the taxpayer's decision to enter into the arrangement or transaction in this state. A bona fide nontax reason may include the purpose of obtaining tax benefits from another government, provided the benefits are not the same type, kind, or nature of any substantial Washington state tax benefit obtained under the arrangement or transaction.

(c) **Partial safe harbor.** For purposes of applying this rule, the department will treat a stated nontax purpose as a bona fide reason where all participants in an arrangement or transaction are substantive operating businesses, adequately capitalized, and carrying on substantial business activities using their own property or employees. For purposes of applying common law or statutory remedies other than under RCW 82.32.655, the department may treat stated nontax reasons as other than bona fide, if appropriate under all facts and circumstances.

(6) **Results of an unfair tax avoidance transaction:**

(a) **Determination of proper amount of tax.** For tax benefits received on or after January 1, 2006, the department must disregard the form of an unfair tax avoidance arrangement or transaction and determine the amount of tax based on the actual substance of the arrangement or transaction, except as provided in subsection (7) of this rule.

(b) **Amount of tax benefit defined.** The tax benefit of an unfair tax avoidance arrangement or transaction is the difference between the amount of tax due based on the actual substance of the arrangement or transaction and the amount of tax actually paid by the taxpayer based on the form of the arrangement or transaction. In determining the amount of the tax benefit, the department will credit the tax previously paid by the taxpayer against total tax assessed on the revised transaction in accordance with customary department practice.

(c) **Actual substance.** The actual substance of an unfair tax avoidance arrangement or transaction is:

(i) For transactions or arrangements described in subsection (2)(a) of this rule and WAC 458-20-28001, a sale of construction services from the construction contractor to the developer or owner.

(ii) For transactions or arrangements described in subsection (2)(b) of this rule and WAC 458-20-28002, a sale of property or services by a person subject to Washington taxes on the arrangement or transaction.

(iii) For transactions or arrangements described in subsection (2)(c) of this rule and WAC 458-20-28003, direct ownership of the tangible personal property by the user.

(7) **Tax periods affected:** The legislation addressed in this rule applies to tax benefits received on or after January 1, 2006. The legislation also contains exceptions to an application based on when an arrangement or transaction is initiated. The relationship between when the tax benefit is received and when the arrangement or transaction is initiated is explained as follows:

(a) **When is an arrangement or transaction initiated?** An arrangement or transaction is initiated when the first tax benefits are received.

(b) **When are tax benefits received?** For purposes of this rule, the timing of receipt of tax benefits is not dependent on the date on which the tax return is required to be filed, but instead:

(i) Business and occupation tax benefits are received on the date that, in the absence of tax avoidance, the taxpayer would have been subject to B&O tax under RCW 82.04.220.

(ii) Retail sales tax benefits are received on the date of the retail sale; and

(iii) Use tax benefits are received on the date of first use in Washington.

(c) **Tax benefits received January 1, 2006, through April 30, 2010.** The department will not deny tax benefits received by a taxpayer during this period if any of the following are true:

(i) The taxpayer reported its tax liability in conformance with unrevoked specific written instructions issued to that

taxpayer or a person affiliated with the taxpayer as defined under subsection (1)(b)(iii), and the taxpayer's arrangement or transaction does not differ materially from that addressed in the specific written instructions.

(ii) The taxpayer reported its tax liability in conformance with a determination or other document made available by the department to the general public that specifically identifies and clearly approves the arrangement or transaction, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the determination or document.

(iii) The department has completed a field audit of the taxpayer and the arrangement or transaction is covered by the audit. An arrangement or transaction is covered by an audit if the audit covered the same tax type (e.g., sales, use, business and occupation) as the tax benefit obtained by the taxpayer from the arrangement or transaction. An audit is complete when closed by the department.

(d) **Arrangement or transaction initiated *before* May 1, 2010, and tax benefits received after April 30, 2010.** The department will not deny tax benefits received by the taxpayer on or after May 1, 2010, if either of the following is true:

(i) The taxpayer has reported its tax liability in conformance with unrevoked specific written instructions issued to that taxpayer or a person affiliated with the taxpayer as defined under subsection (1)(b)(iii) of this rule, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the specific written instructions.

(ii) The taxpayer has reported its tax liability in conformance with a determination or other document made available by the department to the general public that specifically identifies and clearly approves the arrangement or transaction, and the taxpayer's arrangement or transaction does not differ materially from that addressed in the determination or document.

(e) **Arrangement or transaction initiated *on or after* May 1, 2010.** For arrangements and transactions initiated on or after May 1, 2010, the department will not deny tax benefits received by the taxpayer if the taxpayer reports its tax liability in conformance with unrevoked specific written instructions issued to that taxpayer, and the taxpayer's arrangement or transaction does not materially differ from that addressed in the specific written instructions. Specific written instructions for this purpose do not include instructions provided to any other person. Further, taxpayers may not rely on any determination or other document made available by the department to the general public prior to May 1, 2010, to the extent inconsistent with this rule.

(f) **When do transactions or arrangements materially differ from those addressed in written guidance?** An arrangement or transaction materially differs from that addressed in written guidance when there is a material change in the form or substance of the arrangement or transaction, including without limitation, when there is a change of any participant identified in specific written instructions.

Example 1. A taxpayer identifying itself obtains a letter ruling from the department that specifically identifies an arrangement that constitutes unfair tax avoidance under this rule. In its letter ruling, the department approves the arrangement as presented and does not rule that the arrangement must be disregarded or the tax benefits denied. The taxpayer's arrangement does not materially differ at any point in time from the arrangement addressed in the letter ruling, and the taxpayer reports its tax liability in accordance with the letter ruling. The department will not disregard the arrangement or deny the resulting tax benefits for that taxpayer for any tax period, unless and until the letter ruling is expressly revoked.

Example 2. Assume the same facts as Example 1, but the letter ruling was sought by and issued to a person affiliated with the taxpayer as defined under subsection (1)(b)(iii) of this rule. If the arrangement was initiated and started to generate tax benefits prior to May 1, 2010, the department will not disregard the arrangement or deny the resulting tax benefits for that taxpayer for any tax period, unless and until the letter ruling is expressly revoked.

Example 3. Assume the same facts as Example 1, but the letter ruling was not sought by or issued to either the taxpayer or an affiliate. Assume that the arrangement or transaction is not addressed in any published guidance made available to the public by the department. The department must disregard the arrangement and deny the tax benefits received on or after January 1, 2006.

Example 4. The department conducts a field audit of a taxpayer for the period January 1, 2004, through December 31, 2008. The taxpayer has engaged in an arrangement that constitutes unfair tax avoidance under this rule. The arrangement was initiated January 1, 2004. The audit is completed prior to May 1, 2010. In specific written instructions, the audit expressly approves the arrangement. The taxpayer's arrangement does not materially differ at any point in time from the arrangement addressed in the audit instructions, and the taxpayer reports its tax liability in accordance with the those instructions. The department will not disregard the form of the arrangement or deny the tax benefits received for any tax period, unless and until the audit instructions are expressly revoked.

Example 5. Assume the same facts as Example 4, but the audit does not expressly approve the arrangement. Although the audit covers the same tax type as the benefits received under the arrangement, the arrangement is not specifically addressed in the audit's written reporting instructions. The taxpayer's arrangement does not differ at any point in time from the arrangement engaged in during the audit. Also assume that the arrangement or transaction is not addressed in any other published guidance made available by the department to the public.

• The department will not disregard the form of the arrangement or deny the tax benefits received through December 31, 2008, because the period is included in a completed field audit and is wholly included in the period prior to May 1, 2010.

• The department must disregard the form of the arrangement and deny tax benefits received after December 31, 2008, and prior to May 1, 2010, because the period is not included in a completed field audit.

(8) **Unfair tax avoidance penalty.**

(a) **Penalty imposed.** Except as otherwise stated in this rule, the department must assess a penalty of thirty-five percent on the amount of the tax benefit denied because of the

disregard of an unfair tax avoidance arrangement or transaction.

(i) **When the unfair tax avoidance penalty applies.** The thirty-five percent assessment penalty applies to the tax benefits from engaging in unfair tax avoidance and received on or after May 1, 2010, and denied under this rule.

(ii) **Penalty safe harbor.** The department will not apply the tax avoidance penalty if the taxpayer discloses its participation in the tax avoidance arrangement or transaction to the department before the department provides notice of an investigation or audit of any kind or otherwise discovers the taxpayer's participation.

(iii) **Disclosure requirements.** The disclosure must be in writing, it must identify the taxpayer, and it must either request a ruling on the specific arrangement or transaction, or it must provide sufficient information to allow the department to reasonably determine whether the arrangement or transaction is unfair tax avoidance. Disclosure under this subsection applies only to the specific arrangement or transaction addressed in the disclosure. The disclosure no longer qualifies for the safe harbor upon any material change to the arrangement or transaction, including a change in participants.

(b) **Discovery.** The department discovers a taxpayer's participation in an unfair tax avoidance arrangement when the department obtains any evidence of the participation from any source.

(c) **Notice.** The department provides notice of an investigation or audit when it provides either oral or written notice to the taxpayer of the investigation or audit, regardless of whether the audit covers the same tax type (e.g., retail sales, use, business and occupation) as the tax benefit obtained from the unfair tax avoidance arrangement or transaction.

(d) **Audits.** Taxpayers subject to an investigation or audit that was open as of May 1, 2010, shall be deemed to have provided disclosure to the department that satisfies the requirements of (a)(ii) of this subsection with respect to any arrangement or transaction initiated prior to May 1, 2010, that results in a tax benefit of the same type (e.g., retail sales, use, business and occupation) as covered in the open investigation or audit. If the department fails to discover the taxpayer's participation in a tax avoidance arrangement or transaction during an investigation or audit closed after May 1, 2010, the taxpayer may still apply for the safe harbor for future periods by disclosure in accordance with the requirements of (a)(ii) of this subsection.

Example 6. On or after May 1, 2010, a taxpayer identifying itself requests a letter ruling on its participation in an arrangement that constitutes unfair tax avoidance under this rule. The taxpayer specifically requests that the department determine whether the arrangement is an identified transaction or unfair tax avoidance and provides all information requested by the department. As of the date the letter ruling request is received by the department, the department had not discovered the taxpayer's participation in the arrangement and had not notified the taxpayer of its intention to investigate or audit. If the department subsequently disregards the arrangement and denies the tax benefits, the department will not apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 7. Assume the same facts as in Example 6, but the taxpayer does not specifically request that the department determine whether the arrangement is an identified transaction or unfair tax avoidance. However, in the ruling request, the taxpayer provides sufficient information for the department to reasonably determine whether the arrangement is an identified transaction or unfair tax avoidance. If the department subsequently disregards the arrangement and denies the tax benefits, the department will not apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 8. Assume the same facts as Example 7, but the taxpayer only requests a ruling on specific elements related to the tax avoidance arrangement, not the arrangement as a whole. The ruling request therefore does not contain information sufficient for the department to reasonably determine whether the arrangement is an identified transaction or unfair tax avoidance. If the department subsequently disregards the arrangement and denies the tax benefits, the department must apply the thirty-five percent avoidance penalty to any denied tax benefit.

Example 9. A taxpayer engages in an arrangement or transaction from January 1, 2005, through December 31, 2010. Assume the arrangement constitutes an unfair tax avoidance arrangement under this rule. The taxpayer does not disclose the arrangement to the department in conformance with (a)(ii) of this subsection. If the department subsequently disregards the arrangement and denies the tax benefits, it must do so back to January 1, 2006, subject to the statute of limitations. The department must also apply the thirty-five percent avoidance penalty, but only to the portion of the assessment that results from tax benefits received on or after May 1, 2010, and denied under this rule.

Example 10. A construction contractor forms a joint venture with a developer. The venture was initiated, wound up its business, and was dissolved on April 1, 2010. Assume the joint venture constituted an unfair tax avoidance arrangement under this rule. Also assume that the venture has never been audited and did not report its tax liability in conformance with specific written instructions, or any other written authority that specifically identifies and clearly approves the arrangement. If the department subsequently disregards the arrangement and denies the tax benefits, it must do so back to January 1, 2006. The department will not assess the thirty-five percent avoidance penalty, however, because no tax benefits were received on or after May 1, 2010.

Example 11. Assume the same facts as Example 5, for tax benefits received on or after May 1, 2010, the department must disregard the form of the arrangement and deny the tax benefits received. In addition, the department must assess the thirty-five percent tax avoidance penalty unless the taxpayer discloses its participation in the arrangement in accordance with this rule.

For further information refer to WAC 458-20-28001, 458-20-28002, and 458-20-28003.

NEW SECTION

WAC 458-20-28001 Construction joint ventures and similar arrangements described in RCW 82.32.655 (3)(a). (1) **Preface.** This rule includes a number of examples that

identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Required elements.**

(a) A construction joint venture or similar arrangement is a potential tax avoidance arrangement or transaction when it:

(i) Provides substantially guaranteed payments to the construction contractor for construction services rendered;

(ii) Does not provide the construction contractor with the right to share substantial profits in the venture; and

(iii) Does not require the construction contractor to bear significant risks of loss in the venture.

The construction joint venture is considered a sale of construction services and potential tax avoidance if (a)(i) through (iii) of this subsection elements exist and the arrangement is also determined to be unfair tax avoidance under WAC 458-20-280(3). If none of these elements exist, then it is not potential tax avoidance and cannot be unfair tax avoidance.

(b) **Form of the arrangement.** A joint venture or similar arrangement includes a joint venture, partnership, limited liability company, or any similar arrangement between a construction contractor and an owner or developer. This rule applies even if the arrangement includes additional participants. The term "construction contractor" includes any person providing construction services or services in respect to construction. The term "owner or developer" includes, without limitation, a landowner, a lessee of land, a project manager, or a construction manager. An arrangement that fails to meet all elements of a joint venture at common law may still be an arrangement that is considered a joint venture or similar arrangement under this subsection.

(c) **Substantially guaranteed payments.** A "substantially guaranteed payment" is a payment that is guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur. The determination is based on all relevant facts and circumstances including, without limitation, the terms of any operating agreement or other applicable instrument, common trade practice, and the course of dealing of the parties. The fact that a payment reduces the value of the payee's capital account is not determinative. Whether or not a payment is a guaranteed payment for purposes of Sec. 707(c) of the I.R.C. is not relevant.

(d) **Substantial profits.** A construction contractor is entitled to substantial profits only when it has a vested and unconditional right to receive income earned by the venture in the ordinary course of the venture's business to which the construction contractor's contributed property and/or services relate, after costs of the venture are paid in full or otherwise provided. If the receipt of income is guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur, it is a substantially guaranteed payment, not a right to share in substantial profits. For purposes of determining substantial profits, a right is unconditional even though dependent on venture profitability. To be "substantial," the right to profits must be substantial when compared to the right to guaranteed payments under the arrangement.

(e) **Significant risks.** A construction contractor bears significant risks when its right to substantial profits is not guaranteed, secured, or otherwise protected so as to be substantially guaranteed to occur. A significant risk of loss to the contractor is deemed to occur when at least one-half of the fair market value of contributed services is at risk.

(3) **Examples.**

Example 1. A construction contractor and a developer create a joint venture under which the developer contributes land, and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the value of the parties' capital accounts. The construction contractor's capital account contributions are valued at out-of-pocket cost of labor and materials plus 12% designated as overhead. The venture agreement provides that the venture will obtain a bank construction loan and will use the construction draws to periodically pay down the construction contractor's capital account. The terms of the construction loan require that construction loan proceeds be used to pay the construction contractor and remove applicable liens. Under this arrangement, payments to the construction contractor are substantially guaranteed to occur because the terms of the construction loan require payments to the construction contractor. Because this arrangement provides for substantially guaranteed payments, no substantial right to profits and the loan terms assure no risk of loss to the contractor, it is a *potential* tax avoidance arrangement or transaction under WAC 458-20-280(2). However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 2. Assume the same facts as in Example 1, but the value of the construction contractor's contributions of labor and materials are credited to its capital account at out-of-pocket cost plus 3% for overhead. Assume that all of the items credited to capital account are substantive credits. Under this arrangement, payments to the construction contractor are substantially guaranteed to occur because the terms of the construction loan require payments to the construction contractor. If the arrangement contains other provisions that also provide the contractor with the right to share substantial profits and require the contractor to bear significant risk of loss in the venture, then the arrangement is not an unfair tax avoidance arrangement or transaction.

Example 3. Assume the same facts as in Example 2, except that nothing in the loan documents or any other agreement require that payments be made to the construction contractor. If the arrangement also provides the contractor with the right to share substantial profits and requires the contractor to bear significant risks of loss in the venture, then the arrangement is not a tax avoidance arrangement or transaction.

Example 4. A construction contractor and a developer create a joint venture under which the developer contributes land and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the parties' capital accounts. The value of the construction contractor's capital account contributions include out-of-pocket costs of labor and materials plus 12% designated as overhead. If at any point, the value of the construction contractor's capital account exceeds a specified percentage of the total capital account balances of all members combined, and that percentage is not reduced within 30 days, the construction contractor has the right to require a buy-out by the venture (a "put option"). The purchase price of the put option is equal to the value of the unpaid balance of the construction contractor's capital account. The agreement requires the developer to guarantee the venture's payment obligation under the option. The construction contractor is also entitled up to 5% of the profits of the venture once the improved land is sold. In this example, payments to the construction contractor are substantially guaranteed as a result of the put option and the developer guarantee. In addition, the construction contractor is not entitled to substantial profits of the venture. Therefore, the arrangement is a potential tax avoidance arrangement or transaction under WAC 458-20-280 (2)(a). However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 5. Assume the same facts as Example 4, but the construction contractor is entitled to 50% of the profits of the venture. However, the developer has the power under the joint venture agreement to issue a call option and buy all of the construction contractor's interest in the venture at any time prior to the sale of the improved property. Under this example, the construction contractor is also not entitled to a substantial share of the profits of the venture because the construction contractor's right can be terminated by unilateral act of the developer. It does not matter whether the developer's call right is discretionary or is limited to a termination "for cause." Because the arrangement provided for guaranteed payments and does not provide the construction contractor with a vested and unconditional right to profits of the venture, the arrangement is a potential tax avoidance transaction. However, it is not unfair tax avoidance unless it is determined to be tax avoidance in accordance with WAC 458-20-280(3).

Example 6. Assume the same facts as Example 4, but the value of the construction contractor's capital account contributions includes only allowable cost of labor and materials plus 3% overhead. However, the purchase price of the put option is equal to the unpaid balance of the construction contractor's capital account plus 8% of the profits of the venture, determined as of the date the put option is exercised. The arrangement is still a potential tax avoidance arrangement. In this example, the price under the put option right is a guaranteed payment because it is guaranteed by the developer.

Example 7. A construction contractor and a developer create a joint venture to build a house, under which the developer contributes land and the construction contractor contributes labor and materials. All contributions and distributions are reflected in adjustments to the parties' capital accounts. Upon sale of the house, the venture will wind up its business, pay or provide for all debts of the venture, and distribute all funds in the following order: (i) A distribution to the construction contractor in an amount equal to the value of its capital account; (ii) a distribution to the developer equal to the value of the amount of its capital account; (iii) substantial profits as defined in subsection (2)(d) of this rule to the construction contractor; and (iv) all remaining funds to the developer. Assume the construction contractor's rights to receive the value of its capital account and the final profits distribution are vested and unconditional, but that neither of the payments are guaranteed, secured, or otherwise protected. In this example, the construction contractor is not entitled to any guaranteed payments. In addition, the construction contractor has a right to substantial profits that are at significant risk of loss. Because none of the elements identified in subsection (2)(a) of this rule above are present, this is not a potential tax avoidance transaction.

Example 8. A construction contractor and a developer create a joint venture under which the developer contributes land and the construction contractor contributes labor and materials. Assume the construction contractor is not entitled to any guaranteed payments. Upon sale of the house, the venture will wind up its business, pay or provide for all debts of the venture, and distribute all funds X% to the developer and Y% to the construction contractor. Assume that the construction contractor's right to receive this Y% of venture profits is vested and unconditional and that the construction contractor is not entitled to any guaranteed payments. Under this example, the construction contractor is entitled to a substantial share of profits earned by the venture in the ordinary course of its business to which the construction contractor's contributions relate. This arrangement is not a potential tax avoidance arrangement or transaction because no payments, including payment of the Y% profit, are guaranteed. Therefore, the right to profits is substantial and the construction contractor also bears significant risk in the venture.

Example 9. Assume the same facts as Example 8, but the developer and an affiliate of the construction contractor enter into a separate contract for project management services. The affiliate will provide all project management and similar services through the contract, under which payment for the services is substantially guaranteed. The arrangement is not potential tax avoidance under this subsection. The project management contract will be subject to tax according to the substance of the arrangement, assuming the affiliate is responsible for construction.

(4) **Related guidance.** Nothing in this rule affects the application of WAC 458-20-170 or other department-published guidance on differentiating between speculative builders and prime contractors. Therefore, an arrangement or transaction may be considered the sale of construction services under WAC 458-20-170 or other guidance, irrespective of whether the arrangement or transaction is potential or unfair tax avoidance under this rule.

(5) **Reserved.**

NEW SECTION

WAC 458-20-28002 Disguised income arrangements described in RCW 82.32.655 (3)(b). (1) **Preface**. This rule includes a number of examples that identify a set of facts and

then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Redirecting income as a potential tax avoidance arrangement or transaction.**

(a) **Required elements.** An arrangement that moves income is a potential tax avoidance arrangement or transaction only when all of the following elements are met:

(i) The business activities of the taxpayer or a person related to the taxpayer are of the type taxable in Washington and are integral to providing the property or services; and

(ii) The arrangement or transaction functions to move income to a person that is not taxable in Washington on that income; and

(iii) Income is received by a participant in the arrangement as consideration for property or services and that income is from a person not affiliated with the taxpayer.

Administrative services will not be considered integral to providing property or other services for purposes of this subsection.

The arrangement or transaction is unfair tax avoidance only if it meets all three of these elements and is also determined to be unfair tax avoidance under WAC 458-20-280(3).

(b) **Definitions.**

(i) "Affiliated" means under common control.

(ii) "Control" means the possession, directly or indirectly, of more than fifty percent of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting shares, by contract or otherwise. A person who has the power to cause the direction of management and policies includes:

(A) Persons related to the taxpayer; and

(B) Persons with whom the taxpayer acts in concert to direct the management or policies of the entity.

(iii) "Common control" means two or more entities controlled by the same person.

(iv) "Moving" or "moves" is any act or combination of acts that result in receipt of income by a person who is not taxable in Washington on that income, when the taxpayer or a related person receives substantially all the benefit of that income. Such acts may include without limitation: An assignment, transfer, lease, or license of income-producing assets; the sale of property or services at less than market value; and capital contributions and distributions from a capital account.

(3) **Examples.**

Example 1. A Washington company ("Parent") forms a wholly owned limited liability company in Nevada ("Subsidiary"). Subsidiary has one part-time employee in Nevada, rents shared office space and has the same corporate officers as Parent. Parent causes Subsidiary to enter into sales and service contracts with customers both within and without Washington for the sale of intangible personal property and consulting services. Subsidiary hires Parent to provide all services necessary to create and support the intangible personal property, and to provide the consulting services to Subsidiary's customers. Subsidiary pays Parent a nominal amount for these services. Subsidiary transfers its remaining profits to Parent through ownership distributions. Assume the income is not taxable to Subsidiary but would be taxable if received by Parent. This arrangement is potential tax avoidance because the arrangement ensures that income received from customers for the services performed by Parent, which income would otherwise be taxable in Washington, is received by Subsidiary, not Parent. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 2. Assume the same facts as Example 1, but all customers of the Subsidiary (formerly customers of Parent) are affiliates of Parent. Assume the intangible personal property and consulting services that the customers purchase from Subsidiary are not integral to any property or services provided by the customers to nonaffiliated persons. This arrangement is not potential tax avoidance because the ultimate customers of the Subsidiary in this arrangement are affiliates, rather than persons not affiliated with the taxpayer.

Example 3. After May 31, 2010, a Washington company ("Parent") forms multiple separate wholly owned Nevada subsidiaries ("S-1," "S-2," "S-3," etc.). Parent, as agent of the Nevada subsidiaries, enters into contracts with customers for services to be provided both within and without Washington. Parent limits the number of agreements per subsidiary so that each subsidiary's annual gross income is less than $50,000. Each Subsidiary hires Parent to provide all services necessary for the Subsidiary to meet its contract obligations. Each Subsidiary pays Parent only a nominal amount for these services. Each subsidiary transfers its remaining profits to Parent through ownership distributions. This arrangement is a potential tax avoidance transaction because the arrangement ensures that income received from customers for the services performed by Parent (and otherwise taxable in Washington) is received by the subsidiaries. The arrangement further ensures that each subsidiary's gross income does not meet minimum nexus standards in Washington. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 4. A Washington parent company forms a Nevada subsidiary and contributes income-producing assets to it in exchange for ownership interests. The Nevada subsidiary is adequately capitalized and uses its own employees to complete the activities necessary to sell property or services to customers. However, the parent company provides administrative services to the subsidiary at a below market cost. After paying all other costs, the Nevada subsidiary distributes its net income to the parent company. This is not a potential tax avoidance arrangement because the parent company's business activities are not integral to the subsidiary's ability to provide the property or services to its customers.

Example 5. A Washington parent company forms a Delaware subsidiary that is adequately capitalized and carries on substantial business activities using its own property or employees. Sales representatives employed by the Washington parent company call on potential customers and enter into product sales contracts on behalf of the Washington parent. The Washington parent then transfers those contracts to the subsidiary, and the subsidiary fulfills the orders and receives the income. After paying its costs, the Delaware subsidiary distributes its net income to parent. This arrangement is a potential tax avoidance arrangement because the Parent's sales representatives' activities are integral to the subsidiary's ability to provide the property or services to its customers. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example 6. A Washington manufacturer wholesales its products both within and without Washington. The Washington manufacturer forms an Idaho subsidiary company and transfers all of its wholesale contracts to it. The manufacturer causes the subsidiary to purchase and hold all raw materials necessary to manufacture the products. The subsidiary then hires the Washington manufacturer to act as a processor for hire. The subsidiary, as owner of the manufactured products, sells them under the transferred wholesale contracts. Assume the subsidiary has nexus with Washington. This arrangement is not a potential tax avoidance arrangement because it does not function to move income from the sale of goods or services from an entity taxable in Washington to a related entity that is not taxable in Washington on that income. The subsidiary is taxable on all sales in Washington in the same manner as was the manufacturer.

Example 7. Assume the same facts as Example 6, except Parent is not a processor for hire. The Washington manufacturer forms a Washington subsidiary company and transfers all of its sales contracts to it. The subsidiary purchases all of the products made by the manufacturer at a reasonable discount. The subsidiary then sells the products under the transferred contracts. This arrangement is not a potential tax avoidance arrangement because the subsidiary is taxable on all sales in Washington in the same manner as was the manufacturer. The arrangement does not function to move income from the sale of goods or services from an entity taxable in Washington to a related entity that is not taxable in Washington on that income.

Example 8. Assume the same facts as Example 7, but the subsidiary is an Oregon company with no nexus with Washington. Assume that the products are not warehoused in Washington, but are immediately shipped upon production and that the Oregon subsidiary has no other activities that create nexus with Washington. This arrangement is a potential tax avoidance arrangement because it functions to move income from the sale of the product from the manufacturer to the Oregon subsidiary. However, it is only an unfair tax avoidance transaction if it is also determined to be tax avoidance under WAC 458-20-280(3).

NEW SECTION

WAC 458-20-28003 Sales and use tax avoidance arrangements described in RCW 82.32.655 (3)(c). (1) **Preface.** This rule includes a number of examples that identify a set of facts and then state a conclusion. The examples should be used only as a general guide. The department will evaluate each case on its particular facts and circumstances and apply both this rule and other statutory and common law authority. An example that concludes an arrangement or transaction is not unfair tax avoidance under this rule does not mean that the arrangement or transaction is approved by the department under other authority.

The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (e.g., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that sales tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Washington.

(2) **Property ownership by a controlled entity as a potential tax avoidance arrangement.**

(a) **Required elements.** All three of the following elements must be met for property ownership by a controlled entity to be considered a potential tax avoidance arrangement:

(i) The taxpayer engages in a transaction in which the taxpayer, or a person(s) acting in concert with the taxpayer, vests title or any other ownership interest of tangible personal property in an entity;

(ii) The taxpayer exercises control over the entity in such a manner that the taxpayer effectively controls the tangible personal property; and

(iii) The tangible personal property is used by the taxpayer in Washington without payment of Washington retail sales tax or use tax on its full value.

The arrangement or transaction is unfair tax avoidance only if it meets all three of the elements in (a)(i) through (iii) of this subsection and is also determined to be unfair tax avoidance under WAC 458-20-280(3). If the arrangement or transaction is determined to be unfair tax avoidance, the department will determine and assess tax according to the actual substance of the arrangement or transaction which is presumed to be direct acquisition, ownership and use of the tangible personal property by the taxpayer.

(b) **Definition of "entity."** For purposes of this subsection, an "entity" is any taxable entity including, a trust, estate, corporation, limited liability company, partnership, joint venture or other business or financial structure with a legal or identifiable separate existence.

(c) **Control of the entity.** A taxpayer controls an entity when either:

(i) The taxpayer possesses, directly or indirectly, more than fifty percent of the voting power of the entity, or more than fifty percent of the power to direct or cause the direction of the management and policies of the entity, whether through ownership, power of revocation, by contract, or otherwise; or

(ii) A taxpayer exercises control over an entity in such a manner as to effectively retain control over the tangible personal property when the taxpayer has the power to direct or

cause the direction of the use or disposition of the tangible personal property, including the power of direction and control held by a principal over an agent.

(d) **Attribution.** A taxpayer's total percentage of voting power or power to direct the management or policies of an entity, or of the tangible personal property also includes the voting or management authority held by, or for the benefit of:

(i) Persons related to the taxpayer as defined in WAC 458-20-280 (1)(b)(vi); and

(ii) Persons with whom the taxpayer acts in concert to obtain control over the tangible personal property or entity in excess of the share of control attaching to a person's ownership or beneficial interests in the entity.

(e) **Presumption of control.** Whether a person has effective control over tangible personal property is based on all facts and circumstances. A person is presumed to have effective control over the tangible personal property when the person has control over the entity that holds the property.

(f) **Full value.** "Full value" means the fair market value of the tangible personal property at the time it is first used in Washington.

(g) **Safe harbor - No tax benefit.** The department will not disregard title in or ownership by a controlled entity if the arrangement does not provide an exemption, deduction, or otherwise result in a reduction in taxes, under chapter 82.08 or 82.12 RCW that would not have been available if the taxpayer had been vested with title or ownership directly. Similarly, the department will not disregard title in or ownership by a controlled entity if deferred retail sales tax or use tax is paid on the full value of the tangible personal property when it is first used in Washington.

(h) **Safe harbor - Bona fide merger or sale of a business.**

The department will not disregard title in or ownership by a controlled entity when that arrangement arises out of or is related to the sale of stock or ownership interests in a substantive operating business, including as part of a statutory merger. For purposes of this subsection, "substantive operating business" means a business that is adequately capitalized and carries on substantial business activities using its own property or employees, other than the business of owning or leasing tangible personal property of the kind or nature as the tangible personal property at issue.

(i) **Safe harbor - Certain leasing arrangements.**

The department will not disregard the title in or ownership by a controlled entity when substantially all use of the property is under a lease, at a reasonable rental value or for a timesharing fee, by a substantive operating business for bona fide business purposes, or by a person who is not related to the taxpayer, or a combination of these, provided that retail sales tax is collected and remitted on the lease payments. Similarly, the department will not disregard bailment arrangements under which substantially all use of the property is by a substantive operating business for bona fide business purposes or by a person who is not related to the taxpayer. For purposes of this safe harbor:

(i) "Substantially all use" means at least ninety-five percent of the use of the property, determined by actual use, irrespective of location.

(ii) "Reasonable rental value" means the reasonable rental value for the use of the tangible personal property, determined as nearly as possible according to the value of such use at the places of use of similar property of a like quality and character.

(iii) "Substantive operating business" means a business that is adequately capitalized and carries on substantial business activities using its own property or employees.

(iv) "Bona fide business purpose." Use of tangible personal property serves a bona fide business purpose only when the use, in nature and quantity is ordinary and necessary for the business of the user. Use for entertainment purposes must be directly related or associated with substantial business activities of the user. A bona fide business purpose may include providing employee or director benefits when the business pays the lease, the employee or director is required to report the value of the benefit as compensation for state or federal tax purposes and the benefit is ordinary and reasonable in nature or quantity for the business. See RCW 82.04.360 for the taxability of director's compensation.

(v) For aircraft only: "Timesharing fee" for purposes of this safe harbor is the total sum of all expenses of a flight authorized or permitted under 14 C.F.R. Sec. 91.501 (d)(1) through (10).

(3) **Examples.**

Example A. A Washington resident taxpayer forms a wholly owned Montana limited liability company (MT, LLC). MT, LLC purchases a new motor home, takes delivery and registers the motor home in Montana. MT, LLC pays no retail sales tax or use tax on the purchase. The Washington resident uses the motor home in Washington under a bailment, paying use tax on the reasonable rental value of the motor home. This is a potential tax avoidance arrangement. The taxpayer has complete control over MT, LLC and effective control over the motor home. The taxpayer uses the motor home in Washington, but Washington retail sales or use tax has not been paid on its full value. No safe harbor applies. However, the arrangement is only unfair tax avoidance if it is also determined to be tax avoidance under WAC 458-20-280(3).

Example B. Assume the same facts as Example A, but MT, LLC is owned by a husband and wife, with each having a fifty percent ownership interest in the company. This is still a potential tax avoidance transaction because each spouse's ownership interest in MT, LLC is attributable to the other. Both spouses are deemed to have control over MT, LLC and effective control over the motor home.

Example C. Three Washington residents who are unrelated to each other form a Washington limited liability company. The company purchases an aircraft in Washington for the purpose of leasing to its members and does not pay retail sales tax on the purchase. Each member of the company has a one-third ownership interest and equal voting rights, equal rights to direct the management and policies of the company, and equal power to direct the use or disposition of the aircraft. All use of the aircraft by company members is in Washington, for recreational purposes, and at a fair market rate. The company collects retail sales tax on all lease payments. This is not necessarily a potential tax avoidance arrangement because none of the members of the company is in control of

the company or of the aircraft. However, if the members act in concert to control use of the aircraft in excess of their share of ownership interest, a potential tax avoidance arrangement exists unless a safe harbor applies and it is also determined to be tax avoidance under WAC 458-20-280(3).

Example D. Assume the same facts as Example C, but the members of the company enter into a use agreement with respect to the aircraft under which one of the members, A, is entitled to use the aircraft at any time on a priority basis, while the remaining members are entitled to use the aircraft only if A is not using it. This is a potential tax avoidance arrangement because A acts in concert with the other members regarding the direction and control of the aircraft to obtain rights of use disproportionate with A's ownership or beneficial interests in the entity. Because A is working in concert with the other members of the company, ownership and control held by the other members are attributed to A. Therefore, A is deemed to have 100% of the control of the entity and the aircraft. However, the arrangement is only unfair tax avoidance if no safe harbor applies and it is also determined to be tax avoidance under WAC 458-20-280(3).

Example E. Corporation Y is a substantive operating business located in Washington. Corporation Y forms a Nevada LLC to hold an aircraft that is purchased out of state, but hangared in Washington. Individual I is the president of Corporation Y. Corporation Y leases the aircraft from the LLC. The Nevada LLC collects and remits retail sales tax on the lease payments. Corporation Y hires a third-party management company to provide a pilot and crew to fly Individual I to destinations within and without Washington for bona fide business purposes. In addition, Individual I occasionally subleases the aircraft from Corporation Y for I's personal use and Corporation Y collects a timesharing fee from Individual I, but this totals less than 5% of the total use of the aircraft. Assume the uses by Corporation Y and Individual I are the only use of the aircraft. This is not a potential tax avoidance arrangement because it meets the requirements of the safe harbor in subsection (2)(i) of this rule.

Example F. Assume the same facts as Example E, but assume the aircraft was purchased and delivered out of state, and that it is hangared in Oregon. The Nevada LLC does not collect retail sales tax on the lease payments, because the leases are sourced to Oregon. This is a potential tax avoidance arrangement because tax on the lease payments is not paid to Washington.

Example G. A parent company forms a subsidiary, "Y," to purchase and hold a yacht for lease to the parent company for use in Washington. All leases of the yacht are as bareboat charters at a fair market lease rate. The parent company uses the yacht to provide benefits to its directors, to entertain business clients, and for company celebrations. Assume no other use of the yacht, and that the directors report the value of yacht benefit as compensation for B&O and federal income tax purposes. This arrangement meets the safe harbor under subsection (2)(i) of this rule, provided that the described uses by the parent company are quantitatively ordinary and necessary for the business of the parent.

Example H. Assume the same facts as in Example G, but the company only provides the yacht benefit to one of its officers/directors. Assume the benefit allows the officer/director to use the yacht on a priority basis, and that the addition of the yacht benefit makes the officer's/director's compensation materially higher than similarly situated officers/directors within the industry. In the absence of other relevant facts, this arrangement does not meet the safe harbor under subsection (2)(i) of this rule, because it is not ordinary or necessary for a business to provide a single officer with such disparate treatment. However, it is only unfair tax avoidance if the arrangement is determined to be tax avoidance under WAC 458-20-280(3).

Example I. Assume the same facts as in Example G, and that the parent's annual gross income is $50,000. Assume that the total annual payments by the parent for its use of the yacht is $25,000. This arrangement does not meet the safe harbor under subsection (2)(i) of this rule, because it is not ordinary or necessary for a business to spend the equivalent of half of its annual gross income on the use of a yacht. However, it is only unfair tax avoidance if the arrangement is determined to be tax avoidance under WAC 458-20-280(3).

Example J. Company S owns tangible personal property purchased in a retail sale under which all retail sales taxes were paid. Washington resident, Company B, wants to purchase that property from Company S. Company B is a substantive operating business. Company S forms an LLC and transfers the property to it in exchange for all 100% of the ownership interests. Company S then sells 100% of the ownership interests in the LLC to Company B. Company B is now the parent company of the LLC. Company B uses the property in its Washington business activities under a bailment arrangement with the LLC without paying use tax. This is a potential tax avoidance arrangement because Company B, in concert with Company S, vests title of the property in an entity over which Company B obtains control, and then uses the property in Washington without paying retail sales or use tax. It does not meet any of the safe harbors under subsection (2)(g), (h), or (i) of this rule. However, it is only tax avoidance if the arrangement is also determined to be tax avoidance under WAC 458-20-280(3).

Example K. Assume the same facts as Example J, but Company B obtains use of the property through a fair market rate lease arrangement with the LLC. Assume all use of the property by Company B is for bona fide business purposes. This is not a potential tax avoidance arrangement because the arrangement qualifies for the safe harbor under subsection (2)(i) of this rule.

Example L. Assume the same facts as Example K, except that only 90% of the use of the property is by Company B under a fair market lease arrangement for bona fide business purposes. Assume that the other 10% of the use of the property is personal use by Individual I, who is the sole owner of Company B. This is potential tax avoidance because Individual I controls the property through control of Company B and uses the property in Washington without paying retail sales or use tax on the full value of the property. The arrangement does not qualify for any of the safe harbors in subsection (2)(g), (h), or (i) of this rule. However, the arrangement is only tax avoidance if it is determined to be tax avoidance under WAC 458-20-280(3).

Example M. Company O, an Oregon company, is wholly owned by an Oregon resident. Company O purchases

an aircraft for lease to the Oregon resident. The Oregon resident uses the aircraft in Washington for personal purposes, for periods not in excess of 59 days. The aircraft lease is for less than fair market rate. This is a potential tax avoidance arrangement, but the department will not disregard the arrangement because no use tax is due on the Oregon resident's use of the tangible personal property in Washington pursuant to RCW 82.12.0251(1). This qualifies for the safe harbor under subsection (2)(g) of this rule.

Example N. A Washington Taxpayer owns a painting with a significant fair market value. Taxpayer is the sole beneficiary of a trust formed under the laws of the state of Oregon with an Oregon trustee. Under the terms of the trust, the trustee must obtain Taxpayer's authorization before disposing of any trust asset. Assume the trustee of the trust purchases a sculpture from an unrelated party and accepts delivery in Oregon. Taxpayer and the trust then enter into an agreement under which Taxpayer will purchase the trust's sculpture in exchange for cash and the painting held by Taxpayer. Taxpayer pays retail sales tax or use tax on the difference in value between the trade-in painting and the acquired sculpture. Taxpayer displays the sculpture in Washington. This arrangement is a potential tax avoidance arrangement. Taxpayer is the sole beneficiary of the trust and has control over the trust property. Taxpayer uses the trust to create a trade-in arrangement and obtain the use of property in Washington without paying sales or use tax on its full value. The arrangement does not meet any of the safe harbors under subsection (2)(g), (h) or (i) of this rule. However, it is only tax avoidance if the arrangement is also determined to be tax avoidance under WAC 458-20-280(3).

Example O. Company T owns tangible personal property and has paid sales or use tax on the full value of that property. Assume Company T is a substantive operating business as defined in subsection (2)(i)(iii) of this rule. Company A intends to acquire Company T through a merger transaction. Company A forms a wholly owned subsidiary, Newco and Company T is merged into Newco. The entity surviving the merger, Newco, now owns the tangible personal property formerly owned by A. After the merger is completed, Newco permits Company A to use the tangible personal property under a bailment arrangement. Company A does not pay sales or use tax on the value of the property it uses because Newco, as the successor to Company T, is a bailor that has paid sales or use tax on the property. This is not a tax avoidance arrangement because it qualifies for the safe harbor under subsection (2)(h) of this rule.

WSR 15-09-005
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 2, 2015, 9:46 a.m., effective May 3, 2015]

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

Purpose: WAC 458-20-257 (Rule 257) Tangible personal property warranties and service contracts, this rule, previously titled "Warranties and maintenance agreements," explains the tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-257 Tangible personal property warranties and service contracts.

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

Other Authority: Chapters 82.08 and 82.12 RCW.

Adopted under notice filed as WSR 14-20-098 on September 29, 2014.

Changes Other than Editing from Proposed to Adopted Version: Changes have been made to the rule version to be adopted including the removal of Part I that covered real property service contracts. This topic will be covered by the department of revenue in a separate document. The title of the rule is now WAC 458-20-257 Tangible personal property warranties and service contracts. The title as proposed was WAC 458-20-257 Real property warranties and service contracts—Tangible personal property warranties and service contracts.

With the removal of Part I: Real property service contracts, the rule is divided into subsections instead of parts with subsections. The rule has been renumbered appropriately.

In subsection (3) **Definitions**, a definition for "seller" has been added. Previously subsection (201).

In subsection (4)(a), previously subsection (202), language shown underlined has been added to explain who is responsible for collecting and remitting the retail sales tax and now reads:

"(a) **Retail sales.** Income from agreements sold with or without tangible personal property to consumers is subject to the retailing B&O tax and retail sales tax, unless a specific exemption applies. Income from the sales of insurance riders to consumers is also subject to retailing B&O tax and retail sales tax. See RCW 82.04.050. Sellers of agreements and insurance riders to consumers are responsible for collecting the retail sales tax from the consumers, and remitting it and retailing B&O tax to the department of revenue (department).

If a seller is acting as agent or broker for another party, such as the actual warrantor, the seller is still liable for collecting the retail sales tax from the buyer and remitting it to the department. In this case, the seller as an agent or broker of the warrantor normally receives a commission. Commission income is taxable under the service and other business activities B&O tax classification. See subsection (5) of this rule for Sales by third parties. The warrantor's gross in-come on the sale is taxable under the retailing B&O tax classification. There is no deduction allowed for the commission paid to the agent or broker."

In addition, Example 1 has been moved to subsection (4)(b) Wholesale sales.

In subsection (4)(b) both Examples 2 and 3 have had a sentence added to state who (the store) is responsible for collecting the retail sales tax and remitting it along with retailing B&O tax to the department of revenue.

One sentence, shown underlined, has been added to subsection (4)(c):

"(c) **Agreement purchases from a third party.** When an agreement is purchased by a manufacturer, wholesaler, or

retailer to be included in the sale of tangible personal property, the purchase of the agreement can be made at wholesale with the use of a reseller permit. In this instance, the manufacturer, wholesaler, or retailer is not the consumer of the warranty. When the retailer sells the tangible personal property including the agreement, it will collect the retail sales tax from the customer and remit it and the retailing B&O tax to the department."

One sentence, shown underlined, has been added to subsection (4)(d):

"(d) **Deferred sales or use tax due.** If a manufacturer, wholesaler, or retailer purchases an agreement, without knowing whether it will be sold or given as an incentive with the sale of tangible personal property, the agreement can be purchased at wholesale with the use of a reseller permit. If there is intervening use of the agreement by the manufacturer, wholesaler, or retailer, deferred sales or use tax will be due."

The last sentence in subsection (4)(f) Example 8 has been revised. It read:

"As there is no corresponding tax exemption for B&O tax, the total amount of $10,500 is subject to the retailing B&O tax."

The sentence now reads: "As there is no corresponding tax exemption for B&O tax, Company A will pay retailing B&O tax to the department on the total amount of $10,500 along with remitting the retail sales tax collected from Dealer BF."

The heading for subsection (5) has been changed from "**Commissions earned by third parties**" to "**Sales by third parties.**" In addition, the following underlined language has been added:

"Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is generally subject to B&O tax under the service and other activities B&O tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement.

(a) **Responsibility for payment of retailing B&O tax.** The warrantor is subject to retailing B&O tax on the gross sales price received from the sales of agreements by third parties. No deduction is allowed for commissions paid to third parties.

(b) **Responsibility for collection of retail sales tax.** The third party is responsible for collecting the retail sales tax from the buyer and remitting it, along with service and other activities B&O tax on its commission income, to the department." Previously subsection (203).

In subsection (8)(c) the reference to WAC 458-20-15503 has been removed as not applicable. Previously subsection (303).

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

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

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

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

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

Date Adopted: April 2, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Tangible personal property warranties and ((~~maintenance agreements~~)) service contracts. (((~~1) **Definitions.** For the purposes of this section, the following terms will apply:~~

~~(a) Warranties. Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.~~

~~(b) Warrantor. The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.~~

~~(c) Maintenance agreements. Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.~~

~~(2) **B&O tax.**~~

~~(a) Manufacturer's warranties included in the retail selling price of the article being sold.~~

~~(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.~~

~~(ii) When a repair is made by the manufacturer-warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

~~(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.~~

~~(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

~~(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.~~

(ii) When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.

(c) Maintenance agreements.

(i) Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.

(d) Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third-party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.

(e) In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.

(3) **Retail sales tax.**

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.

(ii) When a repair is made by the manufacturer-warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. No retail sales tax is collected from the manufacturer-warrantor.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.

(ii) When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.

(iii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.

(c) Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.

(i) Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

(4) USE TAX.

(a) Manufacturer's warranties included in the retail selling price of the article being sold.

(i) When a manufacturer-warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.

(ii) Where a third party makes repairs for a manufacturer-warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.

(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.

(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.

(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.

(c) Maintenance agreements.

(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.

(5) **Additional service—deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax. This includes so-called "deductible" amounts not covered by a warranty or maintenance agreement.

(6) **Mixed agreements.** If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.

(7) **Examples:**

(a) An automobile dealer sells a vehicle to a customer for selling price of $15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has $600 ($200 parts and $400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The tax liability of the dealer is as follows:

(i) Retail sales tax is collected on the $15,000 selling price.

(ii) The $15,000 selling price is reported under the retailing B&O tax classification. The $600 repair is reported under the wholesaling B&O tax classification.

(iii) The $200 of parts used in the repair are not subject to use tax.

(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for $200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition

~~to the repairs in example (a), the customer has the dealer complete $500 of repairs under the dealer's extended warranty. The customer paid the $100 deductible and the dealer received $400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of $150 and subcontracted part of the repair to an electrical shop which charged the dealer $200. The tax liability to the dealer and the subcontractor are as follows:~~

~~(i) The dealer reports the $200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.~~

~~(ii) The $100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.~~

~~(iii) The $400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.~~

~~(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The $150 dealer cost of the parts taken from inventory is subject to use tax.~~

~~(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.~~)) (1) **Introduction.** This rule explains the business and occupation (B&O) tax, retail sales tax, and use tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property. For additional information on computer software maintenance agreements see WAC 458-20-15502, Taxation of computer software.

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

(3) **Definitions.** For the purpose of this rule, the following terms will apply:

(a) **Agreement.** Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined.

(b) **Insurance rider.** An insurance rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from the coverage.

(c) **Mixed agreement.** A mixed agreement is an agreement that contains provisions of both warranty and service contracts.

(d) **Seller.** "Seller" means every person making sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.

(e) **Service contract.** A service contract, sometimes referred to as a maintenance agreement or even an extended warranty, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis. Even though a service contract may be referred to by some other name, it is the coverage that determines whether the contract is a service contract or extended warranty.

(f) **Warranty.** A warranty, sometimes referred to as a guarantee, is an agreement which provides for the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to compensate for the replacement or repair of tangible personal property, based upon the happening of some unforeseen occurrence, e.g., a component part fails and the property needs repair. Unless otherwise stated, the term warranty includes both a warranty and an extended warranty.

(4) **Sales of agreements for tangible personal property.**

(a) **Retail sales.** Income from agreements sold with or without tangible personal property to consumers is subject to the retailing B&O tax and retail sales tax, unless a specific exemption applies. Income from the sales of insurance riders to consumers is also subject to retailing B&O tax and retail sales tax. See RCW 82.04.050. Sellers of agreements and insurance riders to consumers are responsible for collecting the retail sales tax from the consumers, and remitting it and retailing B&O tax to the department of revenue (department).

If a seller is acting as agent or broker for another party, such as the actual warrantor, the seller is still liable for collecting the retail sales tax from the buyer and remitting it to the department. In this case, the seller as an agent or broker of the warrantor normally receives a commission. Commission income is taxable under the service and other business activities B&O tax classification. See subsection (5) of this rule for "Sales by third parties." The warrantor's gross income on the sale is taxable under the retailing B&O tax classification. There is no deduction allowed for the commission paid to the agent or broker.

(b) **Wholesale sales.** Sales of agreements can be made at wholesale when the buyer will be reselling the agreement without intervening use, or including the agreement in the sale of tangible personal property, and the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale as provided in WAC 458-20-102, Reseller permits. (Reseller permits replaced resale certificates effective January 1, 2010.)

Example 1. An automobile dealer sells a vehicle to a customer for a selling price of $20,000 that includes a manufacturer's limited five years or 50,000 miles warranty. The automobile dealer extends coverage for an additional two years, as a bonus to the customer. When the automobile dealer purchases the two-year agreement from a warranty provider, with the intent to sell the agreement along with the sale of the vehicle to the customer, the purchase of the extended warranty by the automobile dealer is for resale.

(i) **Example 2.** A home improvement store (store) sells a lawnmower to a customer. The store also makes available for purchase a manufacturer's agreement for extended coverage. The customer decides to purchase an agreement from the store for the lawnmower. As the store is reselling the agreement, the store may purchase it at wholesale from the manufacturer with the use of a reseller permit. Both the sales of the lawnmower and agreement to the customer are taxable retail sales. The store will collect the retail sales tax from the customer, and remit it along with retailing B&O tax to the department.

(ii) **Example 3.** For a special holiday sale, the home improvement store in Example 2 purchases the manufacturer's extended warranties to provide with the sales of lawnmowers. The store makes no intervening use of the extended

warranties, and does not charge customers for the warranties. The warranty purchases by the store are wholesale purchases as long as the store provides a copy of its reseller permit to the manufacturer. The store is not the consumer of the warranties as the warranties are provided to customers as a condition of purchase of the lawnmowers. The store will collect retail sales tax, from the customers on the sales of the lawnmowers, and remit it along with retailing B&O tax to the department.

(c) **Agreement purchases from a third party.** When an agreement is purchased by a manufacturer, wholesaler, or retailer to be included in the sale of tangible personal property, the purchase of the agreement can be made at wholesale with the use of a reseller permit. In this instance, the manufacturer, wholesaler, or retailer is not the consumer of the warranty. When the retailer sells the tangible personal property including the agreement, it will collect the retail sales tax from the customer and remit it and the retailing B&O tax to the department.

Example 4. If a vehicle wholesaler sells a vehicle to a retailer and includes an agreement with the sale, the sale of the vehicle with agreement is a wholesale sale. RCW 82.04.050. The retailer must provide the wholesaler with a reseller permit.

(d) **Deferred sales or use tax due.** If a manufacturer, wholesaler, or retailer purchases an agreement, without knowing whether it will be sold or given as an incentive with the sale of tangible personal property, the agreement can be purchased at wholesale with the use of a reseller permit. If there is intervening use of the agreement by the manufacturer, wholesaler, or retailer, deferred sales or use tax will be due.

(e) **Additional charges for parts or repair services covered under an agreement.** In some cases, a customer is required to pay an amount for services or parts not fully covered under an agreement. This additional amount is subject to both the retailing B&O tax and retail sales tax, unless an exemption applies.

Example 5. The automobile dealer in Example 1 sells a vehicle to a customer for a selling price of $20,000 that includes a manufacturer's limited five-year or 50,000 miles warranty. The dealer also sells its own extended warranty to the customer for $200. The dealer insures itself with an insurance carrier, and under the policy claims are paid on the retail value of the repairs. The customer has the dealer complete $500 of repairs under the warranty. The customer pays the dealer a reduced charge of $100 for the warranty services and the dealer receives $400 from its insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of $150 and subcontracted part of the repair to an electrical shop which charged the dealer $200. The tax liability to the dealer and subcontractor is as follows:

(i) In addition to retail sales tax collected from the customer on the $20,000 selling price, retail sales tax must be collected on the $200 selling price for the dealer's own extended warranty.

(ii) The $20,200 selling price for both the automobile and warranty is reported under the retailing B&O tax and retail sales tax classifications on the excise tax return. The $20,000 paid for the automobile (but not the cost of the warranty) is also subject to the motor vehicle sales excise tax.

(iii) The $100 charge paid by the customer for the warranty services performed is subject to the retailing B&O tax, and the dealer must collect retail sales tax from the customer.

(iv) The $400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(v) The $150 cost of the parts taken from inventory is not subject to use tax.

(vi) The subcontractor is making a $200 wholesale sale to the dealer, if the dealer provides the subcontractor with a copy of its reseller permit.

(f) **Exemptions.** The sale of an agreement by a retailer is not exempt simply because the sale of the tangible personal property to which it applies is exempt. Generally, for the sale of the agreement to be exempt, there must be a provision in statute exempting all services or products covered by the agreement. If all such obligations are not exempt, the sale of the agreement to the consumer is subject to retail sales tax. See RCW 82.08.190 and 82.08.195 for additional information regarding the taxation of bundled transactions.

(i) **Service contracts.** Since a service contract is a contract for the repairing, cleaning, altering, or improving of the tangible personal property covered by the contract, the sale of a service contract by the retailer may be exempt from retail sales tax if there is a statutory exemption for all activities covered by the contract.

(A) **Example 6.** RCW 82.08.955 provides a retail sales tax exemption for both the sales and repair of machinery and equipment used directly for retail sales of a biodiesel blend or E85 motor fuel. Company A sells machinery that qualifies for exemption under RCW 82.08.955 to Dealer BF. The purchase price of the machinery is $10,000 and includes a ninety-day warranty against defects in material and workmanship. Dealer BF also purchases a service contract for an additional $300 that covers the repairing and cleaning of qualified parts. If Dealer BF provides Company A with an exemption certificate, the $10,000 selling price and $300 service contract price are exempt from retail sales tax. Company A reports the total $10,300 under the retailing B&O tax and retail sales tax classifications, taking a deduction under retail sales tax for the exemption.

(B) **Example 7.** RCW 82.08.809 provides an exemption for the purchase of vehicles using clean alternative fuels provided the provisions of the exemption are followed. A dealer sells a new vehicle powered by natural gas for $30,000 and a $500 two-year service contract to a customer. The sale of the vehicle is exempt from retail sales tax, but the sale of the service contract is subject to retail sales tax as there is no statutory exemption for the repair activities covered by the service contract.

(ii) **Warranties.** The sale of a warranty by a retailer is exempt only if a specific statutory exemption is available. The place of sale for a warranty is the seller's business location if the buyer receives the warranty at that location. See RCW 82.32.730 and WAC 458-20-145, Local sales and use tax for additional sourcing information. See WAC 458-20-15502 for computer software warranties.

Warranties purchased and received outside of Washington are subject to use tax when put to use in Washington. See RCW 82.12.020.

Example 8. Assume that Dealer BF in Example 6 also purchases an extended warranty for an additional $200. If Dealer BF provides Company A with a valid exemption certificate, the $10,000 selling price and $300 service contract are exempt from retail sales tax, but the $200 for the extended warranty is subject to retail sales tax. RCW 82.08.955 does not provide for an exemption for a warranty for eligible equipment. As there is no corresponding tax exemption for B&O tax, Company A will pay retailing B&O tax to the department on the total amount of $10,500 along with remitting the retail sales tax collected from Dealer BF.

(iii) **Mixed agreements.** The sale to a consumer of a mixed agreement for tangible personal property, which by definition contains provisions of both a warranty and a service contract, is a "bundled transaction." Retail sales tax must generally be collected from the consumer on the selling price of a mixed agreement, unless both the warranty provisions and service contract provisions each separately qualify for a retail sales tax exemption. Refer to RCW 82.08.190 and 82.08.195 for additional guidance on how retail sales tax applies to bundled transactions.

(5) **Sales by third parties.** Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is generally subject to tax under the service and other activities tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement.

(a) **Responsibility for payment of retailing B&O tax.** The warrantor is subject to retailing B&O tax on the gross sales price received from the sales of agreements by third parties. No deduction is allowed for commissions paid to third parties.

(b) **Responsibility for collection of retail sales tax.** The third party is responsible for collecting the retail sales tax from the buyer and remitting it, along with service and other activities B&O tax on its commission income, to the department. If the seller of the agreement is licensed under chapter 48.17 RCW with respect to this selling activity, the seller owes tax on commissions under the insurance producers B&O tax classification.

(6) **Sales of repair services or parts to obligor.** A person obligated under an agreement, including any third-party obligor under an agreement sold to a retailer and provided at no additional charge to the end consumer, may purchase the following from a supplier or service provider at wholesale without incurring retail sales tax, provided the obligor provides the supplier or service provider with a reseller permit:

• Parts purchased to replace or become an ingredient or component of tangible personal property covered by the agreement, as long as there is no intervening use of the parts as a consumer; and

• Repair services purchased to satisfy the obligor's obligations under an agreement.

The supplier or service provider is taxable under the wholesaling B&O tax classification on the value of the parts and labor provided.

(7) **Warranties with insurance elements.** There are tangible personal property agreements that include elements of insurance (i.e., theft, loss) and elements of warranty (operational failure, damage). Income from sales to consumers of agreements defined as a warranty, service contract or maintenance agreement, that are not otherwise insurance contracts where tax has been paid under Title 48 RCW insurance premiums tax, is subject to retailing B&O tax and retail sales tax. See RCW 48.14.080. If a bundled transaction includes both taxable and nontaxable plans, retailing B&O and retail sales taxes are due on the income. For more information on bundled transactions see RCW 82.08.190 and 82.08.195.

(8) **Commonly asked questions.**

(a) **Is it a warranty or service contract when a credit card company replaces lost or damaged items purchased by one of their credit card holders?** The credit card company (company) covering the purchased items would be providing an insurance product, but the company may not be charging the card holders for the benefit of having lost or damaged items replaced at no charge and if not, the company would not owe premiums tax, but owe B&O tax on income. When the company replaces items, the company is responsible for paying sales tax on the items purchased and provided as replacements.

(b) **Is identity theft protection considered a warranty?** Identity theft protection is not tangible personal property. The protection plan may be a combination of products including monitoring a person's accounts. It depends on the coverage as to whether the protection plan is an insurance product that is subject to the premiums tax.

(c) **Are agreements that cover accidentally dropping a phone in water an insurance product?** Most agreements are service contracts and not insurance products, and are covered under chapter 48.110 RCW, Service contracts and protection product guarantees.

(d) **If a loaner piece of equipment is included in the cost of a warranty, does the customer using the loaner owe use tax on the loaned piece of equipment?** If the loan of the equipment is included in the warranty, the customer does not owe use tax on the use of the loaned equipment.

WSR 15-09-023
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed April 7, 2015, 11:21 a.m., effective May 8, 2015]

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

Purpose: WAC 458-17-101 Assessment and taxation of ships and vessels, explains the application of the personal property tax to ships and vessels. This rule is amended to incorporate legislation from the 2014 legislative session (2SSHB [2SHB] 2457) that imposes a new annual derelict vessel removal fee for commercial vessels subject to state property tax.

Citation of Existing Rules Affected by this Order: Amending WAC 458-17-101.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Other Authority: RCW 84.36.080, 84.40.065, and 84.56.-440.

Adopted under notice filed as WSR 15-04-052 on January 29, 2015.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 7, 2015.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-16-028, filed 7/29/03, effective 8/29/03)

WAC 458-17-101 Assessment and taxation of ships and vessels. (1) **Introduction.** This rule explains the application of the ((~~personal~~)) state property tax to ships and vessels. Ships and vessels that are not subject to the excise tax imposed by chapter 82.49 RCW are either subject to the state property tax ((~~levy~~)) or are ((~~completely~~)) exempt from both the property tax and the excise tax. This rule covers only those ships and vessels subject to the property tax. See chapter 308-93 WAC for information regarding ships and vessels subject to the excise tax, which is administered by the department of licensing. This rule also discusses the annual derelict vessel removal fee that is imposed upon all persons required by RCW 84.40.065 to list any ship or vessel with the department of revenue for state property tax purposes (see RCW 79.100.180).

(2) **Which ships and vessels are subject to property taxation?** ((~~Under RCW 84.36.080,~~)) A ship or vessel is subject to the state ((~~portion of the~~)) property tax if the ship or vessel is:

(a) Used exclusively for commercial fishing purposes; or

(b) Primarily engaged in commerce and has or is required to have a valid marine document as a vessel of the United States. (See RCW 84.36.080).

Accordingly, such a ship or vessel is subject to assessment by the department of revenue for that portion of the property tax levied by the state for state purposes.

(3) **Which ships and vessels are exempt from property taxation?** The following are exempt from all property ((~~taxation~~)) taxes, including the state levy:

(a) A ship or vessel listed in the state or federal register of historical places (see RCW 84.36.080);

(b) A ship or vessel with an assessed value of less than five hundred dollars (see RCW 84.36.015); and

(c) A ship or vessel that is not within the scope of subsection (2) of this rule (see RCW 84.36.090).

(4) **What is the annual derelict vessel removal fee?** Except as otherwise provided in (a) of this subsection, an annual derelict vessel removal fee is imposed upon all persons required by RCW 84.40.065 to list any ship or vessel with the department of revenue for state property tax purposes.

(a) The derelict vessel removal fee does not apply in any year that a person required to list a ship or vessel does not owe the state property tax levied for collection in that year with respect to that ship or vessel.

(b) The annual derelict vessel removal fee is equal to one dollar per vessel foot measured by extreme length of the vessel, rounded up to the nearest whole foot.

(c) Each year the amount of the derelict vessel removal fee due for that calendar year will be provided in the tax statement required in RCW 84.40.065.

(d) The person listing a ship or vessel and the owner of the ship or vessel, if not the same person, are jointly and severally liable for the fee.

(e) The department of revenue will collect the derelict vessel removal fee and all property taxes upon ships and vessels listed with the department in accordance with RCW 84.40.065, and all applicable interest and penalties on such taxes and fees. The taxes and derelict vessel removal fee are due and payable to the department on or before the thirtieth day of April and shall be delinquent after that date.

(5) **What happens if the property taxes and derelict vessel removal fees are delinquent or not paid?**

(a)(i) If payment of the tax, derelict vessel removal fee, or both, is not received by the department by the due date, a penalty of five percent of the amount of the unpaid tax and fee will be imposed;

(ii) If the tax and fee are not received within thirty days after the due date, a total penalty of ten percent of the amount of the unpaid tax and fee will be imposed;

(iii) If the tax and fee are not received within sixty days after the due date, a total penalty of twenty percent of the amount of the unpaid tax and fee will be imposed; and

(iv) No penalty listed in this subsection will be less than five dollars.

(b) Delinquent taxes under this section are subject to interest at the rate set forth in RCW 82.32.050 from the date of delinquency until paid. Delinquent derelict vessel removal fees are also subject to interest at the same rate and in the same manner as provided for delinquent taxes under RCW 82.32.050.

(c) If upon information obtained by the department it appears that any ship or vessel required to be listed according to the provisions of RCW 84.40.065 is not listed, the department will value the ship or vessel and assess against the owner of the vessel the taxes and derelict vessel removal fees found to be due and shall add thereto interest at the rate set forth in RCW 82.32.050 from the original due date of the tax and fee until the date of payment. The department will notify the vessel owner by mail of the amount, and it becomes due and payable by the vessel owner within thirty days of the date of the notice. If payment is not received by the department by the due date specified in the notice, the department will add a

penalty of ten percent of the tax and fee found due. A person who willfully gives a false listing or willfully fails to list a ship or vessel as required by RCW 84.40.065 will be subject to the penalty imposed by RCW 84.40.130(2), which will be assessed and collected by the department.

(6) **What are a ship or vessel owner's obligations?** Under RCW 84.40.065, every individual, corporation, partnership, trust, and estate must list with the department ((of revenue)) any ship or vessel subject to that person's ownership, possession, or control ((and)) that is subject to property taxation under RCW 84.36.080. ((This listing is subject to the same)) The requirements, penalties, and liens provided in chapters 84.40 and 84.60 RCW for all other personal property apply to ships and vessels listed with the department.

The listed owner of a ship or vessel as of January 1st of the assessment year is responsible for payment of the property tax for that vessel in the following year.

Delinquent taxes and fees, along with all penalties and interest, will be collected by the department according to the procedures set forth in chapter 82.32 RCW for the filing and execution of tax warrants, including the imposition of warrant interest. In the event a warrant is issued by the department for the collection of taxes, derelict vessel removal fees, or both, the department will add a penalty of five percent of the amount of the delinquent tax and fee, but not less than ten dollars.

The department will also withhold the decals required under RCW 88.02.570(10) for failure to pay the state property tax or derelict vessel removal fee.

A ship or vessel is subject to property taxation even if it is temporarily not within the limits of the state on January 1st of the year in which the vessel is to be assessed. If ownership of a taxable ship or vessel is transferred after January 1st, the listed owner as of January 1st remains liable for payment of the full amount of tax payable in the following year. The full year's property tax may be abated only if the ship or vessel is damaged or destroyed and qualifies for a reduction in value under RCW 84.70.010.

For example, Seller A sells a taxable charter boat to Buyer B on August 14, ((2002)) 2013. Because Seller A was the listed owner as of January 1, ((2002)) 2013, Seller A is responsible for the entire year's property tax for the ((2002)) 2013 assessment year. That tax is due by April 30, ((2003)) 2014. Buyer B will be the listed owner for ((2003)) 2014 and responsible for the property tax for assessment year ((2003)) 2014, which is due by April 30, ((2004)) 2015.

(((5))) (7) **What happens if my ship or vessel is out of the state or being repaired during part of the year?** A qualifying ship or vessel, referred to as an "apportionable vessel," may have its assessed value reduced ((to reflect)) in certain circumstances. A reduction in assessed value ((also)) will reduce((s)) the amount of tax due.

(a) **What is an "apportionable vessel"?** Under RCW 84.40.036, an "apportionable vessel" is a ship or vessel that is:

(i) Engaged in interstate commerce, meaning the transporting of persons or property from one state or territory of the United States to another;

(ii) Engaged in foreign commerce, meaning the transporting of persons or property between a state or territory of the United States and a foreign country; or

(iii) Engaged exclusively in fishing, tendering, harvesting and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(b) **How is value apportioned?** An apportionable vessel has its value apportioned as provided in this subsection.

(i) The value is apportioned based on the number of days or fractions of days that the vessel was within the limits of the state during the calendar year preceding the calendar year in which the vessel is assessed. No value is apportioned to this state unless the vessel is within the limits of the state for more than one hundred twenty days. Days during which a ship or vessel leaves the limits of the state only while navigating the high seas ((in order)) to travel between points in this state are considered as days within this state. A ship or vessel that does not qualify as an apportionable vessel under subsection (5)(a) of this rule may not have its value apportioned, regardless of the number of days the ship or vessel is within or outside the limits of the state.

(A) A "fraction of a day" means more than sixteen hours in a calendar day.

(B) The "limits of the state" means the boundaries of the state of Washington abutting Canada, Oregon, and Idaho and three miles to the west of Washington's coast line.

(ii) Time during which an apportionable vessel is in the state exclusively for one or more of the following purposes is not considered as time within the limits of the state, if the length of time is reasonable to such purpose:

(A) ((Undergo)) Undergoing maintenance, repair, or alteration;

(B) ((Take)) Taking on or discharge cargo, passengers, or supplies; or

(C) ((Serve)) Serving as a tug for a vessel under (b)(ii)(A) or (B) of this subsection (((5)(b)(ii))).

A "reasonable length of time" includes a reasonable length of travel time to enter and leave the limits of the state exclusively for one of the purposes listed in (b)(ii)(A) through (C) ((above)) of this subsection. A ship or vessel engaging in any activity or use not described in (b)(ii)(A) through (C) ((above)) of this subsection, or merely being moored, is not considered to be within the state exclusively for the purposes described in this subsection.

(c) **Examples.** The following examples illustrate the application of the apportionment rules. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(i) Barge A loads cargo in Washington Port Z in eastern Washington. Loaded, Barge A embarks down the Columbia River to Vancouver, Washington and discharges its cargo. This activity does not qualify Barge A as an apportionable vessel because Barge A did not engage in interstate or foreign commerce. The barge would qualify as an apportionable vessel for the following assessment year if it had discharged its cargo at Portland, Oregon.

(ii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. The charter begins in Anacortes and sails into Canadian waters for one month before returning to

Anacortes to complete the charter. This activity does not qualify Charter Boat as an apportionable vessel because Charter Boat did not engage in foreign or interstate commerce; no persons or property were transported from one country or state to another.

(iii) Charter Boat operates out of XYZ Charters, based in Anacortes, Washington. Charter Boat is delivered to persons who board the vessel in Vancouver, British Columbia. Charter Boat cruises in Canadian waters for one month before returning to Anacortes where the passengers disembark, completing the charter. This transaction involves foreign commerce because persons were transported between another country and the United States. As a result, the vessel qualifies as an apportionable vessel and its value will be apportioned based upon the number of days the vessel is within the limits of the state during that calendar year.

(iv) ((~~Charter Boat carries passengers from Seattle to Juneau, Alaska. Charter Boat then charters out of Alaska during the summer months. Charter Boat returns to Seattle in September for mooring and off-season repairs. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. However, the days in Washington while the vessel is being repaired are not counted as days within the state, if reasonable in amount of time. On the other hand, the vessel's travel time within Washington waters while traveling to and from the state is counted as time within the state because the trip to this state was not exclusively for the purpose of repairs.~~

~~(v)~~)) Fishing Boat goes to Alaska each year to fish and returns to Seattle each fall for repair and maintenance. The vessel qualifies as an apportionable vessel and its value will be apportioned to reflect the days the vessel is within the limits of the state during that calendar year. The days in Washington for repair and maintenance are not counted, if the amount of time is reasonable. Travel time to and from Washington is also not counted as time within the state because the trip was exclusively for the purpose of obtaining repair and maintenance services. As a result, none of the vessel's value will be apportioned to Washington in this instance.

((~~(vi)~~)) (v) Charter Boat Owner A purchases a vessel on November 1, ((~~2001~~)) 2011. The boat had previously been used as a pleasure craft. The boat is first used in interstate commerce as a charter boat in January ((~~2002~~)) 2012 and spends half of the year outside of state waters in calendar year ((~~2002~~)) 2012. The boat is first listed in Owner A's name for tax purposes as of January 1, ((~~2002~~)) 2012. The vessel's entire value is assessed in ((~~2002~~)) 2012 because the vessel did not qualify as an apportionable vessel during calendar year ((~~2001~~)) 2011 (the calendar year preceding the assessment year). Owner A will first pay property taxes in the ((~~2003~~)) 2013 tax year based upon the vessel's value in the ((~~2002~~)) 2012 assessment year. The full amount of tax is due by April 30, ((~~2003~~)) 2013. The value for the ((~~2003~~)) 2013 assessment year will be apportioned based upon the boat's use in calendar year ((~~2002~~)) 2012 (50% of time within state waters). The amount of tax due for tax year ((~~2004~~)) 2014 will be based upon the ((~~2003~~)) 2013 assessed value and is due by April 30, ((~~2004~~)) 2014.

WSR 15-09-025
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed April 7, 2015, 2:13 p.m., effective May 8, 2015]

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

Purpose: WAC 388-96-381 will increase the time a facility has to return resident funds from one week to thirty days and will align with a similar WAC in chapter 388-97 WAC.

WAC 388-96-738 and 388-96-739 will update references in the WAC to minimum data set 3.0 to reflect the currently used terminology and clarify the department's position on who will be counted as a medicaid resident.

WAC 388-96-718 will update the language to allow for notifications to be sent via email in addition to USPS mail.

WAC 388-96-585 will address unallowable expenses on the nursing facility cost reports used to determine the nursing facility medicaid rates. Currently, travel expenses outside of Idaho, Oregon, Washington, and British Columbia are generally not allowed. This would remove that restriction to allow travel expenses on the cost reports.

WAC 388-96-809 will allow a security held pursuant to this section to be released to the contractor if the new contractor assumes all liability. Previously, it was not clear what the proper and allowed course was in these situations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-96-381, 388-96-738, 388-96-739, 388-96-718, 388-96-585, and 388-96-809.

Statutory Authority for Adoption: RCW 74.46.431(9).

Adopted under notice filed as WSR 15-05-017 on February 6, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: April 6, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-20-075, filed 9/28/90, effective 10/1/90)

WAC 388-96-381 Procedure for refunding resident personal funds. (1) When a resident is discharged or transferred, the balance of the resident's personal funds shall be returned to the individual designated in WAC 388-96-375

within ((~~one week~~)) thirty days and a receipt obtained. In some cases it may be advisable to mail the refund to the resident's new residence.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-585 Unallowable costs. (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of nonTitle XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of nonTitle XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review

decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided for in WAC 388-96-580;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses ((~~outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care~~)) that are not necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(xx) Tax expenses that a nursing facility has never incurred;

(yy) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(zz) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department shall be unallowable; and

(aaa) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment).

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-718 Public process for determination of rates. (1) The purpose of this section is to describe the manner in which the department will comply with the federal Balanced Budget Act of 1997, Section 4711 (a)(1), codified at 42 U.S.C. 1396a (a)(13)(A).

(2) For all material changes to the methodology for determining nursing facility medicaid payment rates occurring after October 1, 1997, and requiring a Title XIX state plan amendment to be submitted to and approved by the Health Care Financing Administration under applicable federal laws, the department shall follow the following public process:

(a) The proposed estimated initial payment rates, the proposed new methodologies for determining the payment rates, and the underlying justifications shall be published. Publication shall be:

(i) In the Washington State Register; or

(ii) In the Seattle Times and Spokane Spokesman Review newspapers.

(b) The department shall maintain and update as needed a mailing list of all individuals and organizations wishing to receive notice of changes to the nursing facility medicaid payment rate methodology, and all materials submitted for publication shall be sent either postage prepaid by regular mail to such individuals and organizations or by e-mail. Individuals and organizations wishing to receive notice shall notify the department in writing.

(c) Nursing facility contractors, their associations, nursing facility medicaid beneficiaries, representatives of contractors or beneficiaries, and other concerned members of the public shall be given a reasonable opportunity to review and comment on the proposed estimated rates, methodologies and justifications. The period allowed for review and comment shall not be less than fourteen calendar days after the date of the Washington State Register containing the published

material or the date the published material has appeared in both the Seattle Times and the Spokane Spokesman Review.

(d) If, after receiving and considering all comments, the department decides to move ahead with any change to its nursing facility medicaid payment rate methodology, it shall adopt needed further changes in response to comments, if any, and shall publish the final estimated initial rates, final rate determination methodologies and justifications. Publication shall be:

(i) In the Washington State Register; or

(ii) In the Seattle Times and Spokane Spokesman Review newspapers.

(e) Unless an earlier effective date is required by state or federal law, implementation of final changes in methodologies and commencement of the new rates shall not occur until final publication has occurred in the Register or in both designated newspapers. The department shall not be authorized to delay implementation of, or to alter, ignore or violate requirements of, state or federal laws in response to public process comments.

(f) Publication of proposed estimated initial payment rates and final estimated initial payment rates shall be deemed complete once the department has published:

(i) The statewide average proposed estimated initial payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year, including the change from the existing statewide average payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year; and

(ii) The statewide average final estimated initial payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year, including the change from the existing statewide average payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year.

(3) Nothing in this section shall be construed to prevent the department from commencing or completing the public process authorized by this section even though the proposed changes to the methodology for determining nursing facility medicaid payment rates are awaiting federal approval, or are the subject of pending legislative, gubernatorial or rule-making action and are yet to be finalized in statute and/or regulation.

(4)(a) Neither a contractor nor any other interested person or organization shall challenge, in any administrative appeals or exception procedure established in rule by the department under the provisions of chapter 74.46 RCW, the adequacy or validity of the public process followed by the department in proposing or implementing a change to the payment rate methodology, regardless of whether the challenge is brought to obtain a ruling on the merits or simply to make a record for subsequent judicial or other review. Such challenges shall be pursued only in courts of proper jurisdiction as may be provided by law.

(b) Any challenge to the public process followed by the department that is brought in the course of an administrative appeals or exception procedure shall be dismissed by the department or presiding officer, with prejudice to further administrative review and record-making, but without prejudice to judicial or other review as may be provided by law.

(5) The public process required and authorized by this section shall not apply to any change in the payment rate methodology that does not require a Title XIX state plan amendment under applicable federal laws, including but not limited to:

(a) Prospective or retrospective changes to nursing facility payment rates or to methodologies for establishing such rates ordered by a court or administrative tribunal, after exhaustion of all appeals by either party as may be authorized by law, or the expiration of time to appeal; or

(b) Changes to nursing facility payment rates for one or more facilities resulting from the application of authorized payment rate methodologies, principles or adjustments, including but not limited to: Partial or phased-in termination or implementation of rate methodologies; scheduled cost rebasing; quarterly or other updates to reflect changes in case mix or other private or public source data used to establish rates; adjustments for inflation or economic trends and conditions; rate funding for capital improvements or new requirements imposed by the department; changes to resident-specific or exceptional care rates; and changes to correct errors or omissions by the contractor or the department.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-738 What default case mix group and weight must the department use for case mix grouping when there is no minimum data set resident assessment for a nursing facility resident? (1) When a resident:

(a) ((~~Dies~~)) Expires before the facility completes the resident's initial assessment, the department must assign the assessment to the special care case mix group - ((~~SSB~~)) HD2. The department must use the case mix weight assigned to the special care case mix group - ((~~SSB~~)) HD2. The department will count the case as a medicaid resident;

(b) Is discharged to an acute care facility before the nursing facility completes the resident's initial assessment, the department must assign the assessment to the special care case mix group - ((~~SSB~~)) HD2. The department must use the case mix weight assigned to the special care case mix group - ((~~SSB~~)) HD2. The department will count the case as a medicaid resident; or

(c) Is discharged for a reason other than those noted above before the facility completes the resident's initial assessment, the department must assign the assessment to the case mix group BC1 ((~~with a case mix weight of 1.000~~)). The department will count the case as a medicaid resident.

(2) If the resident assessment is untimely as defined in RCW 74.46.501 and as defined by federal regulations, then the department must assign the case to the default case mix group of BC1 ((~~which has a case mix weight of 1.000~~)). The department will count the case a medicaid resident.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-739 How will the department determine which resident assessments are medicaid resident

assessments? The department must identify a medicaid resident assessment through the review of the minimum data set (MDS) ((~~payer source code~~)) medicaid number field. If the nursing facility ((~~codes the payer source as "medicaid per diem," regardless of whether any other payer source codes are checked~~)) completes the MDS medicaid number field with a valid medicaid number or the appropriate code for medicaid pending, then the department will count the case as a medicaid resident assessment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-809 Change of ownership—Final reports—Settlement securities. (1) When there is a change of ownership for any reason, final reports shall be submitted as required by WAC 388-96-022.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

(a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;

(b) An assignment of funds to the department;

(c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;

(d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;

(e) A promissory note secured by a deed of trust; or

(f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

(a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and

(b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with WAC 388-96-022, which shall be examined by the department in accordance with WAC 388-96-205.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) Security held pursuant to this section shall be released to the contractor if the new contractor assumes all liability.

(10) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

((~~(10)~~)) (11) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

((~~(11)~~)) (12) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until

the department determines the facility is in substantial compliance for the purposes of certification.

((~~(12)~~)) (13) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

WSR 15-09-029
PERMANENT RULES
WASHINGTON STATE LOTTERY
[Filed April 8, 2015, 11:31 a.m., effective May 9, 2015]

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

Purpose: Proposed changes to WAC 315-10-025. The lottery commission wishes to change the allowable cost of its instant tickets to $30 in order to remain current with industry standards.

Citation of Existing Rules Affected by this Order: Amending WAC 315-10-025.

Statutory Authority for Adoption: RCW 67.70.040 (1)(3).

Adopted under notice filed as WSR 15-06-041 on February 27, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: April 8, 2015.

Jana L. Jones
Legal Counsel

AMENDATORY SECTION (Amending WSR 10-16-025, filed 7/23/10, effective 8/23/10)

WAC 315-10-025 Cost to purchase an instant game ticket. The price of an instant game ticket shall not be less than $1.00 and not more than $((~~20.00~~)) 30.00, except for those tickets used in media promotions authorized by the director and retailer incentive programs authorized by the commission.

WSR 15-09-032
PERMANENT RULES
DEPARTMENT OF LICENSING
[Filed April 9, 2015, 8:29 a.m., effective May 10, 2015]

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

Purpose: Amend WAC 308-104-019 to permit holders of enhanced driver's license or identicards (EDL/IDs) to renew by electronic commerce.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-019.

Statutory Authority for Adoption: RCW 46.01.110, 46.20.120.

Adopted under notice filed as WSR 15-06-031 on February 25, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: April 9, 2015.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-15-019, filed 7/9/10, effective 8/9/10)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if permitted under this section.

(1) A person whose valid driver's license is about to expire may be allowed to renew by electronic commerce if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than seventy years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, ((~~enhanced driver's license or identicard,~~)) instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that he or she has had no mental or physical condition or is not taking any medication which could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) A person whose valid identicard is about to expire may renew by electronic commerce if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 15-09-036
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 9, 2015, 2:16 p.m., effective May 10, 2015]

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

Purpose: The department is amending WAC 388-418-0005 How will I know what changes to report?, to correct the policy concerning when categorically eligible Basic Food and food assistance program (FAP) households must report changes in income during the certification period.

The department is removing outdated references to long-term care, SSI-related medical, children's medical, pregnancy medical, and other medical benefits under this rule.

Citation of Existing Rules Affected by this Order: Amending WAC 388-418-0005 How will I know what changes to report?

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 U.S.C. § 2015 and 7 C.F.R. § 273.12 (a)(5)(v), a household subject to simplified reporting must report when its monthly gross income exceeds the monthly gross income limit for its household size, as defined at § 273.9 (a)(1) which is one hundred thirty percent of federal poverty. The household shall use the monthly gross income limit for the household size that existed at the time of its most recent certification or recertification, regardless of any subsequent changes in its household size.

Adopted under notice filed as WSR 15-05-043 on February 12, 2015.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 6, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-418-0005 How will I know what changes to report? (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

((~~(1)~~)) (a) If you receive ((~~assistance from any of the programs listed in subsection (1), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the **first** program you receive benefits from.~~

~~(a) If you receive **long-term care** benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

~~(i) Residence;~~

~~(ii) Marital status;~~

~~(iii) Living arrangement;~~

~~(iv) Income;~~

~~(v) Resources;~~

~~(vi) Medical expenses; and~~

~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive **medical benefits based on age, blindness, disability (SSI-related medical), ((or ADATSA benefits,))** you need to tell us if:~~

~~(i) You move;~~

~~(ii) A family member moves into or out of your home;~~

~~(iii) Your resources change; or~~

~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(c) If you receive~~)) **cash** benefits, you need to tell us if:

(i) You move;

(ii) Someone moves out of your home;

(iii) Your total gross monthly income goes over the:

(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or

(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;

(iv) You have liquid resources more than four thousand dollars; or

(v) You have a change in employment. Tell us if you:

(A) Get a job or change employers;

(B) Change from part-time to full-time or full-time to part-time;

(C) Have a change in your hourly wage rate or salary;

(D) Stop working; or

((~~(E) See WAC 182-504-0100 for medical care services reporting requirements.~~))

((~~(d)~~)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:

(i) You move;

(ii) The child you are caring for moves out of the home;

(iii) Anyone related to you or to the child you are caring for moves into or out of the home;

(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).

(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);

(vi) The recipient child has liquid resources more than four thousand dollars;

(vii) A recipient child in the home becomes a foster child; or

(viii) You legally adopt the recipient child.

((~~(e) If you receive **family medical** benefits, you need to tell us if:~~

~~(i) You move;~~

~~(ii) A family member moves out of your home; or~~

~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.~~))

(2) If you do not receive cash assistance ((~~from any of the programs listed in subsection (1),~~)) but you do receive benefits from ((~~any of the programs listed in subsection (2)~~)) basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, ((~~based on all the benefits you receive.~~)) and tell us if:

(a) ((~~If you receive **Basic Food** benefits, you need to tell us if:~~

~~(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~(ii) For all other households tell us if your~~)) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or

((~~(iii)~~)) (b) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.

((~~(b) If you receive **children's medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the house.~~

~~(c) If you receive **pregnancy medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) You are no longer pregnant.~~

~~(d) If you receive **other medical** benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the home.~~))

WSR 15-09-037
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 9, 2015, 3:10 p.m., effective May 10, 2015]

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

Purpose: The department is amending by permanent adoption WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants and 388-310-1450 Pregnancy to employment.

These rule changes clarify WorkFirst participation requirements for clients utilizing WorkFirst infant exemption and the pregnancy to employment pathway.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1450 and 388-310-0300.

Statutory Authority for Adoption: RCW 74.08A.270, 74.04.050, 74.08.090, and 74.04.055.

Adopted under notice filed as WSR 15-02-042 on January 2, 2015.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: April 7, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-02-055, filed 12/28/07, effective 2/1/08)

WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants. (1) **When can I be exempted from participating in WorkFirst activities if I am a mandatory participant?**

Either you or the other parent (living in the household) can claim an infant exemption from participating in WorkFirst activities provided you:

(a) Have a child under one year of age;

(b) Choose to not fully participate in the WorkFirst program (see WAC 388-310-0400); and

(c) Have not used up your lifetime twelve-month infant exemption.

(2) **If I choose my infant exemption, can I still be required to participate in the WorkFirst program?**

You are required to participate up to twenty hours per week in parenting education or parent skills training, mental health and/or chemical dependency treatment if:

(a) The comprehensive evaluation or assessment indicates a need; and

(b) Services are available in your community.

(3) **Can I volunteer to participate in WorkFirst while I have a child under one?**

You may choose to fully participate in WorkFirst (see WAC 388-310-0400) while you have a child under one year of age. If you decide later to stop participating and you still qualify for an exemption, you will be put back into exempt status with no financial penalty provided you meet conditions (1) and (2) above.

(4) **Does an infant exemption from participation affect my sixty-month time limit for receiving TANF or SFA benefits?**

Even if you are exempt from participation, each month you receive a TANF/SFA grant counts toward your sixty-month limit (see WAC 388-484-0005).

AMENDATORY SECTION (Amending WSR 08-02-055, filed 12/28/07, effective 2/1/08)

WAC 388-310-1450 Pregnancy to employment. (1) **How do I know if I am eligible to participate in pregnancy to employment?**

If you are on TANF/SFA and are pregnant or have a child under the age of one year, you are a participant in the pregnancy to employment pathway.

(2) **What services are provided to the pregnancy to employment pathway?**

(a) The pregnancy to employment pathway provides you with services, when available in your community, to help you learn how to work, look for work, or prepare for work while still meeting your child's needs. You and your case manager or social worker will decide which variety of services you need such as:

(i) Parenting education or parenting skills training;

(ii) Safe and appropriate child care;

(iii) Mental health treatment;

(iv) Chemical dependency treatment;

(v) Domestic violence services; or

(vi) Employment services.

(b) The case manager or social worker will contact you every three months to offer you services if you are not required to participate and choose to claim the infant exemption.

(3) **What am I required to do while I am in the pregnancy to employment pathway?**

You must participate in an assessment with a DSHS social worker and based on the results you will:

(a) Work with your case manager/social worker to decide which required activities best meet your needs. These activities will depend on where you are in the pregnancy or the age of your child and will be added to your individual responsibility plan (IRP).

(b) Be required to participate in the activities identified in your IRP.

(4) **What am I required to do while I am pregnant?**

Based upon the results of your assessment, your participation:

(a) During your first and second trimester of pregnancy will be full-time work, looking for work, or preparing for work unless you have a good reason to participate fewer hours (see WAC 388-310-1600).

(b) During your third trimester of pregnancy will be up to twenty hours per week in parenting education or parenting skills training, mental health and/or chemical dependency treatment if:

(i) The comprehensive evaluation or assessment indicates a need; and

(ii) Services are available in your community.

(5) **What am I required to do after my child is born?**

After the birth of your child, you may choose to take the infant exemption (See WAC 388-310-0300) or volunteer to participate in WorkFirst activities to the fullest of your abilities (see WAC 388-310-0400).

(6) **What if I have used my twelve-month lifetime infant exemption?**

If you have another child after using all twelve months of the infant exemption, you will be:

(a) Eligible for a twelve-week postpartum deferral period to personally take care of an infant less than twelve weeks of age. During the twelve-week postpartum deferral period, you will be required to participate up to twenty hours per week in mental health and/or chemical dependency treatment if the comprehensive evaluation or assessment indicates a need and services are available in your community.

(b) Required (unless otherwise exempt or you have good reason to participate fewer hours) to participate full-time, once your child turns twelve-weeks old. Activities in which you are required to participate include one or more of the following:

(i) Work;

(ii) Looking for work; or

(iii) Preparing for work by participating in a combination of activities based upon the results of your assessment.

(7) **Will I be sanctioned if I refuse to participate?**

(a) You are required to participate in the WorkFirst program (see WAC 388-310-0200) subject to sanction (see WAC 388-310-1600) unless you have good reason and you:

(i) Are in your third trimester of pregnancy; or

(ii) Have not used up your twelve-month lifetime infant exemption and have a child under the age of one year; or

(iii) Have used up your twelve-month lifetime infant exemption and have a child under twelve weeks.

(b) You may be sanctioned if you stop participating in required <u>parenting education or parenting skills training,</u> mental health and/or chemical dependency treatment even if you are in your third trimester, claiming the infant exemption, or using a twelve-week postpartum deferral period.

WSR 15-09-046

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed April 10, 2015, 9:47 a.m., effective May 11, 2015]

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

Purpose: The purpose of this proposal is to change the state's recreational clam and oyster seasons on selected public beaches, based on abundance and usage surveys and agreements with comanagers and other state agencies.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing on March 20, 2015. The proposed changes were adopted by the commission at the April 3, 2015, commission conference call. The changes will allow recreational clam and oyster seasons to be opened or extended on some public beaches and closed on other beaches to achieve maximum recreational opportunity while conserving shellfish resources.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-350 and 220-56-380.

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

Adopted under notice filed as WSR 15-04-117 on February 3, 2015.

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

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

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

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

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

Date Adopted: April 3, 2015.

Bradley Smith, Chair
Fish and Wildlife Commission

<u>AMENDATORY SECTION</u> (Amending WSR 14-07-057, filed 3/14/14, effective 4/14/14)

WAC 220-56-350 Clams other than razor clams, mussels—Areas and seasons. It is permissible to take, dig for, and possess clams and mussels for personal use on Puget Sound year-round, except the following restrictions apply to the public tidelands at the beaches listed below:

(1) Ala Spit: Open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bay View State Park: Closed year-round.

(5) Belfair State Park: Open January 1 through ((~~August~~)) <u>May</u> 31 only.

(6) Brown's Point Lighthouse: Closed year-round.

(7) Cama Beach State Park: Closed year-round.

(8) Camano Island State Park: Closed year-round.

(9) Chuckanut Bay: <u>All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are c</u>losed year-round.

(10) Coupeville: Closed year-round.

(11) Dave Mackie County Park: Closed year-round.

(12) Des Moines City Park: Closed year-round.

(13) Discovery Park: Closed year-round.

(14) DNR-142: Closed year-round.

(15) DNR-144 (Sleeper): Closed year-round.

(16) Dockton County Park: Closed year-round.

(17) Dosewallips State Park: ((~~Closed, except open March 1 through July 15~~)) <u>Open year-round</u> only in the area defined by boundary markers and signs posted on the beach.

(18) <u>Drayton West: Closed, except open April 1 through October 31 only in the area defined by boundary markers and signs posted on the beach.</u>

<u>(19)</u> Dungeness Spit and Dungeness National Wildlife Refuge Tidelands: Open May 15 through September 30 only.

((~~(19)~~)) <u>(20)</u> Eagle Creek: Open July 1 through July 31 only.

((~~(20)~~)) <u>(21)</u> East San de Fuca: Closed year-round east of the Rolling Hills Glencairn Community dock.

((~~(21)~~)) <u>(22)</u> Fay Bainbridge Park: Closed year-round.

((~~(22)~~)) <u>(23)</u> Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open ((~~January 1 through April 15 and~~)) May 15 through December 31 only.

((~~(23)~~)) <u>(24)</u> Freeland County Park: ((~~Closed year-round~~)) <u>Open April 1 through May 15 only</u>.

((~~(24)~~)) <u>(25)</u> Frye Cove County Park: Open ((~~January~~)) <u>May</u> 1 through May ((~~15~~)) <u>31</u> only.

((~~(25)~~)) <u>(26)</u> Garrison Bay: The tidelands at Guss Island and those tidelands at British camp between the National Park Service dinghy dock at the north end and the park boundary at the south end are closed year-round.

((~~(26)~~)) <u>(27)</u> Gertrude Island: All tidelands at Gertrude Island are closed year-round.

((~~(27)~~)) <u>(28)</u> Golden Gardens: Closed year-round.

((~~(28)~~)) <u>(29)</u> Graveyard Spit: Closed year-round.

((~~(29)~~)) <u>(30)</u> Harrington Beach: Closed year-round.

((~~(30)~~)) <u>(31)</u> Hoodsport: Tidelands at Hoodsport Salmon Hatchery are closed year-round.

((~~(31)~~)) <u>(32)</u> Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

((~~(32)~~)) <u>(33)</u> Howarth Park: Closed year-round.

(((33))) (34) Illahee State Park: Open April 1 through July 31 only.

(((34))) (35) Indian Island County Park/Lagoon Beach/Isthmus Beach: Open July 1 through August 15 only.

(36) Kayak Point County Park: Closed year-round.

(((35))) (37) Kitsap Memorial State Park: Closed year-round.

(((36))) (38) Kopachuck State Park: Open June 1 through July 31 only.

(((37))) (39) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.

(((38))) (40) Lincoln Park: Closed year-round.

(((39))) (41) Lions Park (Bremerton): Closed year-round.

(((40))) (42) Little Clam Bay: Closed year-round.

(((41))) (43) Lower Roto Vista Park: Closed year-round.

(((42))) (44) Manchester State Park: Closed year-round.

(((43))) (45) McNeil Island: All tidelands on McNeil Island are closed year-round.

(((44))) (46) Meadowdale County Park: Closed year-round.

(((45))) (47) Mee-Kwa-Mooks Park: Closed year-round.

(((46))) (48) Monroe Landing: Closed year-round.

(((47))) (49) Mukilteo State Park: Closed year-round.

(((48))) (50) Mystery Bay State Park: Open October 1 through April 30 only.

(((49))) (51) Nisqually National Wildlife Refuge: Closed year-round.

(((50))) (52) North Beach County Park: Closed year-round.

(((51))) (53) North Fort Lewis: Closed year-round.

(((52))) (54) North Tabook Point ((Hudson)): Closed year-round.

(((53))) (55) Northeast Cultus Bay: Closed year-round.

(((54))) (56) Oak Bay County Park: Open April 1 through ((June 30)) May 31 only.

(((55))) (57) Oak Harbor City Park: Closed year-round.

(((56) Old Man House State Park: Closed year-round.

(57))) (58) Olympia Shoal: Closed year-round.

(((58))) (59) Oyster Reserves: Puget Sound and Willapa Bay state oyster reserves are closed year-round except as follows:

(a) North Bay: State-owned oyster reserves are open ((June 1 through July 31)) May 1 through May 31 and September 1 through September 30 only.

(b) Oakland Bay: State-owned oyster reserves open year-round except in areas defined by boundary markers and signs posted on the beach.

(c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.

(((59))) (60) Penrose Point State Park: Open March 1 through May 15 only.

(((60))) (61) Picnic Point County Park: Closed year-round.

(((61))) (62) Pitship Point: Closed year-round.

(((62))) (63) Pitt Island: All tidelands on Pitt Island are closed year-round.

(((63))) (64) Pleasant Harbor State Park: Closed year-round.

(((64))) (65) Point Defiance: Closed year-round.

(((65))) (66) Point Whitney (excluding Point Whitney Lagoon): Closed year-round.

(((66))) (67) Point Whitney Lagoon: Open January 1 through March ((15)) 31 only.

(((67))) (68) Port Angeles Coast Guard: Closed year-round.

(((68))) (69) Port Angeles Harbor: Closed year-round.

(((69))) (70) Port Gardner: Closed year-round.

(((70))) (71) Port Townsend Ship Canal/Portage ((Canal)) Beach: Open January 1 through July ((31)) 15 only.

(((71))) (72) Post Point: Closed year-round.

(((72))) (73) Potlatch DNR tidelands: Open ((July 1 through August 31)) June 1 through September 15 only.

(((73))) (74) Potlatch State Park: Open ((July 1 through August 31)) June 1 through September 15 only.

(((74))) (75) Priest Point County Park: Closed year-round.

(((75))) (76) 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 ((August 1 through August 31)) April 1 through April 30 only.

(((76))) (77) 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 April 1 through December 31, daily from official sunrise to official sunset only.

(((77))) (78) Reid Harbor - South Beach: Closed year-round.

(((78))) (79) Retsil: Closed year-round.

(((79))) (80) Richmond Beach Saltwater Park: Closed year-round.

(((80))) (81) Saltwater State Park: Closed year-round.

(((81))) (82) Samish Beach: Closed year-round.

(((82))) (83) Scenic Beach State Park: Closed year-round.

(((83))) (84) Seahurst County Park: Closed year-round.

(((84))) (85) Semiahmoo: Closed year-round.

(((85))) (86) Semiahmoo County Park: Closed year-round.

(((86))) (87) Sequim Bay State Park: Open ((April 1 through June 30)) May 1 through May 31 only.

(((87))) (88) Shine Tidelands State Park: Open January 1 through May 15 only.

(((88))) (89) Silverdale Waterfront Park: Closed year-round.

(((89))) (90) Sinclair Inlet: Closed year-round.

(((90))) (91) Skagit Wildlife Area: Closed year-round.

(((91))) (92) South Carkeek Park: Closed year-round.

(((92))) (93) South Gordon Point: Closed year-round.

(((93) South Indian Island County Park: Open July 1 through September 15 only.))

(94) South Mukilteo Park: Closed year-round.

(95) South Oro Bay: Closed year-round.

(96) ((South Point Wilson (Port Townsend): Closed year-round.

~~97)~~)) Southworth Ferry Dock: Closed year-round.

((~~(98)~~)) (97) Spencer Spit State Park: Open March 1 through July 31 only.

((~~(99)~~)) (98) Taylor Bay: Closed year-round.

((~~(100)~~)) (99) Triton Cove Tidelands: Open July 15 through August 31 only.

((~~(101)~~)) (100) Twanoh State Park: Open ((~~May 1 through May 15 and~~)) September 1 through September 30 only.

((~~(102)~~)) (101) Walker County Park: Closed year-round.

((~~(103)~~)) (102) West Dewatto: DNR Beach 44A open July 1 through September 30 only.

((~~(104)~~)) (103) West Pass Access: Closed year-round.

((~~(105)~~)) (104) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and Nahcotta Tidelands Interpretive Site are closed year-round.

((~~(106)~~)) (105) Wolfe Property State Park: Open January 1 through May 15 only.

((~~(107)~~)) (106) Woodard Bay: Closed year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, and mussels, not including razor clams, for personal use in Grays Harbor and Willapa Harbor year-round, except from state oyster reserves, which are closed to clam digging year-round.

It is permissible to take, dig for, and possess clams, cockles, borers, 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 14-07-057, filed 3/14/14, effective 4/14/14)

WAC 220-56-380 Oysters—Areas and seasons. It is permissible 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: Open May 1 through May 31 only.

(2) Alki Park: Closed year-round.

(3) Alki Point: Closed year-round.

(4) Bangor: Closed year-round.

(5) Bay View State Park: Closed year-round.

(6) Brown's Point Lighthouse: Closed year-round.

(7) Cama Beach State Park: Closed year-round.

(8) Camano Island State Park: Closed year-round.

(9) Chuckanut Bay: All tidelands of Chuckanut Bay north of the BNSF Railroad trestle are closed year-round.

(10) Coupeville: Closed year-round.

(11) Dave Mackie County Park: Closed year-round.

(12) Des Moines City Park: Closed year-round.

(13) Discovery Park: Closed year-round.

(14) DNR-142: Closed year-round.

(15) DNR-144 (Sleeper): Closed year-round.

(16) Dockton County Park: Closed year-round.

(17) Drayton West: Closed, except open April 1 through October 31 only in the area defined by boundary markers and signs posted on the beach.

(18) Dungeness Spit/National Wildlife Refuge: Open May 15 through September 30 only.

((~~(18)~~)) (19) East San de Fuca: Closed year-round east of the Rolling Hills Glencairn Community dock.

((~~(19)~~)) (20) Fay Bainbridge Park: Closed year-round.

((~~(20)~~)) (21) Fort Flagler State Park including that portion of the spit west of the park boundary (Rat Island): Open ((~~January 1 through April 15 and~~)) May 15 through December 31 only.

((~~(21)~~)) (22) Freeland County Park: ((~~Closed year-round~~)) Open April 1 through May 15 only.

((~~(22)~~)) (23) Frye Cove County Park: Open ((~~January 1 through May 15~~)) May 1 through May 31 only.

((~~(23)~~)) (24) Golden Gardens: Closed year-round.

((~~(24)~~)) (25) Graveyard Spit: Closed year-round.

((~~(25)~~)) (26) Harrington Beach: Closed year-round.

((~~(26)~~)) (27) Hoodsport: Tidelands at the Hoodsport Salmon Hatchery are closed year-round.

((~~(27)~~)) (28) Hope Island State Park (South Puget Sound): Open May 1 through May 31 only.

((~~(28)~~)) (29) Howarth Park: Closed year-round.

((~~(29)~~)) (30) Illahee State Park: Open April 1 through July 31 only.

((~~(30)~~)) (31) Indian Island County Park/Lagoon Beach/Isthmus Beach: Open July 1 through August 15 only.

(32) Kayak Point County Park: Closed year-round.

((~~(31)~~)) (33) Kitsap Memorial State Park: Closed year-round.

((~~(32)~~)) (34) Kopachuck State Park: Open March 1 through July 31 only.

((~~(33)~~)) (35) Liberty Bay: All state-owned tidelands in Liberty Bay north and west of the Keyport Naval Supply Center are closed year-round.

((~~(34)~~)) (36) Lincoln Park: Closed year-round.

((~~(35)~~)) (37) Lions Park (Bremerton): Closed year-round.

((~~(36)~~)) (38) Little Clam Bay: Closed year-round.

((~~(37)~~)) (39) Lower Roto Vista Park: Closed year-round.

((~~(38)~~)) (40) Manchester State Park: Closed year-round.

((~~(39)~~)) (41) Meadowdale County Park: Closed year-round.

((~~(40)~~)) (42) Mee-Kwa-Mooks Park: Closed year-round.

((~~(41)~~)) (43) Monroe Landing: Closed year-round.

((~~(42)~~)) (44) Mukilteo State Park: Closed year-round.

((~~(43)~~)) (45) Mystery Bay State Park: Open October 1 through April 30 only.

((~~(44)~~)) (46) Nisqually National Wildlife Refuge: Closed year-round.

((~~(45)~~)) (47) North Beach County Park: Closed year-round.

((~~(46)~~)) (48) North Fort Lewis: Closed year-round.

((~~(47)~~)) (49) North Tabook Point ((~~Hudson~~)): Closed year-round.

((~~(48)~~)) (50) Northeast Cultus Bay: Closed year-round.

((~~(49)~~)) (51) Oak Bay County Park: Open April 1 through ((~~June 30~~)) May 31 only.

((~~(50)~~)) (52) Oak Harbor Beach Park: Closed year-round.

((~~(51)~~)) (53) Oak Harbor City Park: Closed year-round.

((~~(52) Old Man House State Park: Closed year-round.~~
~~(53)~~)) (54) Olympia Shoal: Closed year-round.

((~~(54)~~)) (55) Oyster Reserves: Puget Sound and Willapa Bay oyster reserves are closed year-round except the following are open during the dates specified:

(a) Oakland Bay: State-owned oyster reserves are open year-round except in areas defined by boundary markers and signs posted on the beach.

(b) North Bay: State-owned reserves are open ((~~June 1 through July 31~~)) May 1 through May 31 and September 1 through September 30 only.

(c) Willapa Bay - Long Island oyster reserve: Northwest side of Long Island between reserve monuments 39 and 41 and southwest side of Long Island between reserve monuments 58 and 59 are open year-round.

((~~(55)~~)) (56) Penrose Point State Park: Open March 1 through May 15 only.

((~~(56)~~)) (57) Picnic Point: Closed year-round.

((~~(57)~~)) (58) Pitt Island: Closed year-round.

((~~(58)~~)) (59) Pleasant Harbor State Park: Closed year-round.

((~~(59)~~)) (60) Point Defiance: Closed year-round.

((~~(60)~~)) (61) Point Whitney tidelands (excluding Point Whitney Lagoon): Open January 1 through June 30 only.

((~~(61)~~)) (62) Port Angeles Coast Guard: Closed year-round.

((~~(62)~~)) (63) Port Angeles Harbor: Closed year-round.

((~~(63)~~)) (64) Port Gardner: Closed year-round.

((~~(64)~~)) (65) Port Townsend Ship Canal/Portage ((~~Canal~~)) Beach: Open January 1 through July ((~~31~~)) 15 only.

((~~(65)~~)) (66) Post Point: Closed year-round.

((~~(66)~~)) (67) Potlatch DNR Tidelands: Open ((~~July 1 through August 31~~)) June 1 through September 15 only.

((~~(67)~~)) (68) Potlatch State Park: Open ((~~July 1 through August 31~~)) June 1 through September 15 only.

((~~(68)~~)) (69) Priest Point County Park: Closed year-round.

((~~(69)~~)) (70) 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 ((~~August 1 through August 31~~)) April 1 through April 30 only.

((~~(70)~~)) (71) 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 April 1 through December 31, daily from official sunrise to official sunset, only.

((~~(71)~~)) (72) Reid Harbor - South Beach: Closed year-round.

((~~(72)~~)) (73) Retsil: Closed year-round.

((~~(73)~~)) (74) Richmond Beach Saltwater Park: Closed year-round.

((~~(74)~~)) (75) Saltwater State Park: Closed year-round.

((~~(75)~~)) (76) Samish Beach: Closed year-round.

((~~(76)~~)) (77) Scenic Beach State Park: Closed year-round.

(78) Seahurst County Park: Closed year-round.

((~~(77) Scenic Beach State Park: Closed year-round.~~

~~(78)~~)) (79) Semiahmoo: Closed year-round.

((~~(79)~~)) (80) Semiahmoo County Park: Closed year-round.

((~~(80)~~)) (81) Sequim Bay State Park: Open May 1 through May 31 only.

(82) Shine Tidelands State Park: Open January 1 through May 15 only.

((~~(81)~~)) (83) Silverdale Waterfront Park: Closed year-round.

((~~(82)~~)) (84) Sinclair Inlet: Closed year-round.

((~~(83)~~)) (85) Skagit Wildlife Area: Closed year-round.

((~~(84)~~)) (86) South Carkeek Park: Closed year-round.

((~~(85)~~)) (87) South Gordon Point: Closed year-round.

((~~(86) South Indian Island County Park: Open July 1 through September 15 only.~~

~~(87)~~)) (88) South Mukilteo Park: Closed year-round.

((~~(88)~~)) (89) South Oro Bay: Closed year-round.

((~~(89) South Point Wilson (Port Townsend): Closed year-round.~~))

(90) Southworth Ferry Dock: Closed year-round.

(91) Spencer Spit State Park: Open March 1 through July 31 only.

(92) Taylor Bay: Closed year-round.

(93) Walker County Park: Closed year-round.

(94) West Pass Access: Closed year-round.

(95) Willapa Bay: State-owned tidelands east of the department Willapa Bay Field Station and the Nahcotta Tidelands Interpretive Site are open only between boundary markers and posted signs.

(96) ((~~Woodard Bay: Closed year-round.~~

~~(97)~~)) Wolfe Property State Park: Open January 1 through May 15 only.

(97) Woodard Bay: Closed year-round.

WSR 15-09-068

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed April 15, 2015, 11:02 a.m., effective May 16, 2015]

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

Purpose: The purpose of this proposal is to better organize chapter 388-825 WAC, Division of developmental disabilities services rules, by recodifying the sections related to background checks to the 600 series. None of these changes will result in any changes to policy, eligibility, or processes.

Citation of Existing Rules Affected by this Order: Amending 23.

Statutory Authority for Adoption: RCW 71A.12.030 General authority of secretary—Rule adoption, 74.08.090 Rule-making authority and enforcement.

Adopted under notice filed as WSR 15-04-112 on February 3, 2015.

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 23, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 23, Repealed 0.

Date Adopted: April 9, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0600 What definitions apply to WAC ((~~388-825-0600~~)) 388-825-600 through ((~~388-825-0690~~)) 388-825-690 of this chapter? The following definitions apply to WAC ((~~388-825-0600~~)) 388-825-600 through ((~~388-825-0690~~)) 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.

"Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.

"Certification" means department approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Community residential service businesses" include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Disqualified" means that the results of an individual's background check disqualifies him or her from a position which will or may involve unsupervised access to individuals with developmental disabilities.

"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Permanent restraining order" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.

"Qualified" means an individual can be hired into a position that includes unsupervised access to individuals with developmental disabilities because the results of his or her background check are not disqualifying.

"Temporary restraining order" means restraining order/order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing."

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the individual with a developmental disability to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0615 What is the process for obtaining a background check? (1) Long-term care workers, including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in ((~~WAC 388-825-0615~~)) subsection (1)(a) and (b) in this section. Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:

(i) Individuals who have continuously resided in Washington state for the past three consecutive years will be

screened through a state name and date of birth background check.

(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.

(b) Beginning January 1, 2016, community residential service businesses as defined above will be screened as described in ((~~WAC 388-825-0615~~)) subsection (1) of this section.

(2) For adult family homes refer to chapter 388-76 WAC, Adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, Assisted living licensing rules.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC ((~~388-825-0615~~)) 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when his or her background check reveals a conviction, pending charge or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC ((~~388-825-0640~~)) 388-825-640? An individual with convictions, pending charges or negative actions that are not disqualifying per chapter 388-113 WAC or WAC ((~~388-825-0640~~)) 388-825-640 may work in an unsupervised capacity with individuals with developmental disabilities only after a character, competence and suitability review has been conducted as required by WAC 388-825-065.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
388-825-0600	388-825-600
388-825-0605	388-825-605
388-825-0610	388-825-610
388-825-0615	388-825-615
388-825-0620	388-825-620
388-825-0625	388-825-625
388-825-0630	388-825-630
388-825-0635	388-825-635
388-825-0640	388-825-640
388-825-0645	388-825-645
388-825-0650	388-825-650
388-825-0655	388-825-655
388-825-0660	388-825-660
388-825-0665	388-825-665
388-825-0670	388-825-670
388-825-0675	388-825-675
388-825-0680	388-825-680
388-825-0685	388-825-685
388-825-0690	388-825-690

WSR 15-09-069
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed April 15, 2015, 11:04 a.m., effective May 16, 2015]

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

Purpose: Changes to chapter 388-835 WAC, ICF/MR program and reimbursement system, were made to comply with goals stated in RCW 44.04.280, by replacing demeaning language with respectful language. This was done by using respectful language when referring to individuals with disabilities by replacing all instances of MR and mental retardation to ID and intellectual disability. Other housekeeping changes were also being made to reflect agency reorganization. None of the changes resulted in any changes to policy, eligibility or processes.

Citation of Existing Rules Affected by this Order: 66.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 44.04.280.

Adopted under notice filed as WSR 15-02-048 on January 5, 2015.

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 66, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 66, Repealed 0.

Date Adopted: April 9, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-11 issue of the Register.

WSR 15-09-070
PERMANENT RULES
STATE BOARD OF HEALTH

[Filed April 15, 2015, 11:57 a.m., effective July 1, 2017]

Effective Date of Rule: July 1, 2017.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The state board of health anticipates restrictions imposed by the 2009 legislature on the implementation of new or amended school facility rules will continue through June 2017.

Purpose: **This filing delays the effective date of new sections of chapter 246-366 WAC, Primary and secondary schools, and chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, two years because of anticipated state budget shortfalls in the 2015-2017 biennium, and previous legislative direction. These rules provide minimum environmental health and safety standards for schools.**

NOTE: New sections of chapter 246-366 WAC, Primary and secondary schools, and new chapter 246-366A WAC, Environmental health and safety standards for primary and secondary schools, were adopted by the state board of health on August 12, 2009. The board filed a rule-making order, WSR 10-01-174, on December 22, 2009, setting the effective date for the new rules as July 1, 2010. On March 10, 2010, the board voted to file an amended rule-making order (WSR 10-12-018) to change the effective date of these new rules to July 1, 2011. On April 13, 2011, the board again considered the need to match resources and capacity to be able to implement the rules as intended and voted another rule-making order (WSR 11-10-080) to delay the effective date of the new rules another two years to July 1, 2013. The 2013-2015 biennial budget still contained restrictions on implementing new school facility rules, the board again voted on March 13, 2013, to delay the effective date of the new rules another two years, until July 1, 2015 (WSR 13-09-040). The implementation restrictions are expected to continue in the 2015-2017 biennial budget; prompting the board to again vote to delay the effective date of the new rules until July 1, 2017.

Statutory Authority for Adoption: RCW 43.20.050.

Adopted under notice filed as WSR 09-14-136 on July 1, 2009.

Changes Other than Editing from Proposed to Adopted Version: See WSR 10-01-174.

A final cost-benefit analysis is available by contacting Vicki Bouvier, P.O. Box 47821, Olympia, WA 98504-7821, phone (360) 236-3011, fax (360) 236-2250, e-mail vicki.bouvier@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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: March 11, 2015.

Michelle A. Davis
Executive Director

WSR 15-09-080
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 14-01—Filed April 16, 2015, 11:27 a.m., effective May 17, 2015]

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

Purpose: Ecology is repealing two obsolete rules: Chapter 173-330 WAC, Used automotive oil recycling sign requirements for automotive oil sellers; and chapter 173-24 WAC, Tax exemptions and credits for pollution control facilities.

Citation of Existing Rules Affected by this Order: Repealing chapters 173-330 and 173-24 WAC.

Statutory Authority for Adoption: Chapter 173-330 WAC requires sellers of automotive oil to post signs informing the public about how to recycle used automotive oil. The statute enabling chapter 173-330 WAC, chapter 19.114 RCW, was repealed in 1991 and replaced by chapter 70.95I RCW. Chapter 173-330 WAC is no longer authorized or needed, and was replaced by requirements for signs found in chapter 70.95I RCW.

Chapter 173-24 WAC was originally adopted under the authority in RCW 82.34.040, which authorized ecology to "adopt such rules as it deems necessary for the administration of this chapter…." RCW 82.34.040 likewise authorizes repeal of the chapter.

Adopted under notice filed as WSR 15-03-018 on January 8, 2015.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 24.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 24.

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: April 16, 2015.

Maia D. Bellon
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-24-010	Introduction and purpose.
WAC 173-24-020	Authority.
WAC 173-24-030	Definitions.
WAC 173-24-040	Applications submitted to the department of revenue.
WAC 173-24-050	Applications reviewed by the department.
WAC 173-24-060	Action by the department within thirty days—Request for further information.
WAC 173-24-070	Identification and classification of facilities.
WAC 173-24-080	Approval of a facility.
WAC 173-24-090	Installation for the purpose of pollution control.
WAC 173-24-100	Operation for the purpose of pollution control.
WAC 173-24-110	Meeting the intent and purposes of chapters 70.94 and 90.48 RCW.
WAC 173-24-120	Treatment before connection to utilities.
WAC 173-24-125	Revision of prior findings.
WAC 173-24-130	Administrative appeal of department decision.
WAC 173-24-140	Delegation.
WAC 173-24-150	Delegation of state responsibilities under federal program.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-330-010	Purpose.
WAC 173-330-020	Applicability.
WAC 173-330-030	Definitions.
WAC 173-330-040	Responsibility to procure and post sign.
WAC 173-330-050	Sign criteria.
WAC 173-330-060	Posting and maintenance of signs.
WAC 173-330-070	Effective date and compliance.
WAC 173-330-900	Logo and sign.

WSR 15-09-108
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed April 20, 2015, 1:57 p.m., effective May 21, 2015]

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

Purpose: WAC 246-205-010, 246-320-010, 246-320-016, 246-322-210, 246-330-010, 246-335-015, 246-335-175 and 246-337-105, changing references from board of pharmacy and pharmacy board to the pharmacy quality assurance commission, and making three corrections; limited to rules under the secretary of health's authority that are not already open under other rule making.

Citation of Existing Rules Affected by this Order: Amending WAC 246-205-010, 246-320-010, 246-320-016, 246-322-210, 246-330-010, 246-335-015, 246-335-175, and 246-337-105.

Statutory Authority for Adoption: Title 246 WAC that have been amended per HB 1609 (chapter 19, Laws of 2013) and their corresponding statutory authorities[1]: For WAC 246-205-010 is RCW 64.44.070; for WAC 246-320-010 and 246-320-016 is RCW 43.70.040 and 70.41.030; for WAC 246-322-210 and 246-337-105 is RCW 71.12.670; for WAC 246-330-010 is RCW 43.20.050, 43.70.040, 70.230,020 and 71.12.670; and for WAC 246-335-010 [246-335-015] and 246-335-175 is RCW 70.127.120.

[1] Limited to rules under the secretary of health's authority that have not already been updated, or are not already planned to be updated, under other rule-making processes. The pharmacy quality assurance commission is amending rules under its authority separately.

Other Authority: Chapter 19, Laws of 2013.

Adopted under notice filed as WSR 14-23-010 on November 6, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 8, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: April 17, 2015.

Dennis E. Worsham
Deputy Secretary
for John Wiesman, PhD, MPH
Secretary

AMENDATORY SECTION (Amending WSR 03-02-022, filed 12/23/02, effective 1/23/03)

WAC 246-205-010 Definitions. For the purposes of this chapter, the following words and phrases shall have the following meanings unless the content clearly indicates otherwise.

(1) "Authorized contractor" means any person or persons:

• Registered under chapter 18.27 RCW; and

• Certified by the department to decontaminate, demolish, or dispose of contaminated property as required by chapter 64.44 RCW and this chapter.

(2) "Basic course" means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on illegal drug manufacturing or storage sites.

(3) "Certificate" means a department issued written approval under this chapter.

(4) "Certified" means a person who has department issued written approval under this chapter.

(5) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(6) "Decontamination" means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

(7) "Department" means the Washington state department of health.

(8) "Disposal of contaminated property" means the disposition of contaminated property under the provisions of chapter 70.105 RCW.

(9) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs:

• Hazardous substances as defined in RCW 70.105D.-020; and

• Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the ((~~state board of~~)) pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans.

(10) "Illegal drug manufacturing or storage site" means any property where a person illegally manufactures or stores a controlled substance or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.

(11) "Initial site assessment" means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

(12) "List of contaminated properties" means a list of properties contaminated by illegal drug manufacturing or the storage of hazardous chemicals.

(13) "Local department" means the jurisdictional local health department or district.

(14) "Local health officer" means a health officer or authorized representative as defined under chapters 70.05, 70.08, and 70.46 RCW.

(15) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

(16) "Posting" means attaching a written or printed announcement conspicuously on property which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

(17) "Property" means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to:

• Single-family residences;

• Units or multiplexes;

• Condominiums;

• Apartment buildings;

• Motels and hotels;

• Boats;

• Motor vehicles;

• Trailers;

• Manufactured housing;

• Any ship, booth, or garden; or

• Any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

(18) "Property owner" means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(19) "Refresher course" means a department sponsored or approved biennial training course for decontamination workers and supervisors. An approved refresher course:

• Reviews the subjects taught in the initial training course; and

• Includes updated information on emerging decontamination technology.

(20) "Storage site" means any property used for the storage of hazardous chemicals or illegally manufactured controlled substances.

(21) "Supervisor" means a person certified by the department and employed by an authorized contractor who is on site during the decontamination of an illegal drug manufacturing or storage site and who is responsible for the activities performed.

(22) "Warning" means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.

(23) "Worker" means a person certified by the department and employed by an authorized contractor who performs decontamination of an illegal drug manufacturing or storage site.

((~~"Warning" means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.~~))

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

WAC 246-320-010 Definitions. For the purposes of this chapter and chapter 70.41 RCW, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means verbal behavior, harassment, or other actions which may result in emotional or behavioral stress or injury.

(2) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(3) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(4) "Alteration" means any change, addition, or modification to an existing hospital or a portion of an existing hospital.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, which does not affect fire and life safety, and which does not add beds or facilities in addition to that for which the hospital is currently licensed.

(5) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into a health care setting or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(6) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(7) "Bed, bed space or bassinet" means the physical environment and equipment (both movable and stationary) designed and used for twenty-four hour or more care of a patient including level 2 and 3 bassinets. This does not include stretchers, exam tables, operating tables, well baby bassinets, labor bed, and labor-delivery-recovery beds.

(8) "Child" means an individual under the age of eighteen years.

(9) "Clinical evidence" means the same as original clinical evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; and

(e) Medical photographs.

(10) "Critical care unit or service" means the specialized medical and nursing care provided to patients facing an immediate life-threatening illness or injury. Care is provided by multidisciplinary teams of highly skilled physicians, nurses, pharmacists or other health professionals who interpret complex therapeutic and diagnostic information and have access to sophisticated equipment.

(11) "Department" means the Washington state department of health.

(12) "Dietitian" means an individual meeting the eligibility requirements for active membership in the American Dietetic Association described in *Directory of Dietetic Programs Accredited and Approved*, *American Dietetic Association*, edition 100, 1980.

(13) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(14) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official *U.S. Pharmacopoeia* or the official *Homeopathic Pharmacopoeia of the United States*;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(15) "Electrical receptacle outlet" means an outlet where one or more electrical receptacles are installed.

(16) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

(17) "Emergency contraception" means any health care treatment approved by the Food and Drug Administration that prevents pregnancy, including, but not limited to, administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

(18) "Emergency department" means the area of a hospital where unscheduled medical or surgical care is provided to patients who need care.

(19) "Emergency room" means a space where emergency services are delivered and set apart by floor-to-ceiling partitions on all sides with proper access to an exit access and with all openings provided with doors or windows.

(20) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(21) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(22) "Emergency triage" means the immediate patient assessment by a registered nurse, physician, or physician assistant to determine the nature and urgency of the person's medical need for treatment.

(23) "Family" means individuals designated by a patient who need not be relatives.

(24) "General hospital" means a hospital that provides general acute care services, including emergency services.

(25) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the hospital.

(26) "High-risk infant" means an infant, regardless of age, whose existence is compromised, prenatal, natal, or postnatal factors needing special medical or nursing care.

(27) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include:

(a) Hospice care centers which come within the scope of chapter 70.127 RCW;

(b) Hotels, or similar places, furnishing only food and lodging, or simply domiciliary care;

(c) Clinics or physicians' offices, where patients are not regularly kept as bed patients for twenty-four hours or more;

(d) Nursing homes, as defined in and which come within the scope of chapter 18.51 RCW;

(e) Birthing centers, which come within the scope of chapter 18.46 RCW;

(f) Psychiatric or alcoholism hospitals, which come within the scope of chapter 71.12 RCW; nor

(g) Any other hospital or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental conditions.

Furthermore, nothing in this chapter will be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denominations.

(28) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(29) "Infant" means an individual not more than twelve months old.

(30) "Invasive procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(31) "Licensed practical nurse" means an individual licensed under provisions of chapter 18.79 RCW.

(32) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(33) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(34) "Medical staff" means physicians and other practitioners appointed by the governing authority.

(35) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(36) "Multidisciplinary treatment team" means a group of individuals from various disciplines and clinical services who assess, plan, implement, and evaluate treatment for patients.

(37) "Neglect" means mistreatment or maltreatment; a disregard of consequences or magnitude constituting a clear

and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts which may result in emotional or behavioral problems, physical manifestations, and disorders.

(38) "Neonate" means a newly born infant under twenty-eight days of age.

(39) "Neonatologist" means a pediatrician who is board certified in neonatal-perinatal medicine or board eligible in neonatal-perinatal medicine, provided the period of eligibility does not exceed three years, as defined and described in *Directory of Residency Training Programs* by the Accreditation Council for Graduate Medical Education, American Medical Association, 1998 or the *American Osteopathic Association Yearbook and Directory*, 1998.

(40) "New construction" means any of the following:

(a) New facilities to be licensed as a hospital;

(b) Renovation; or

(c) Alteration.

(41) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(42) "Nursing personnel" means registered nurses, licensed practical nurses, and unlicensed assistive nursing personnel providing direct patient care.

(43) "Operating room (OR)" means a room intended for invasive and noninvasive surgical procedures.

(44) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(a) "Inpatient" means services that require admission to a hospital for twenty-four hours or more.

(b) "Outpatient" means services that do not require admission to a hospital for twenty-four hours or more.

(45) "Patient care areas" means all areas of the hospital where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(46) "Patient care unit or area" means a physical space of the hospital including rooms or areas containing beds or bed spaces, with available support ancillary, administrative, and services for patient.

(47) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(48) "Pharmacist" means an individual licensed by the ((~~state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW.

(49) "Pharmacy" means every place properly licensed by the ((~~board of~~)) pharmacy quality assurance commission where the practice of pharmacy is conducted.

(50) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(51) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(52) "Procedure" means a particular course of action to relieve pain, diagnose, cure, improve, or treat a patient's condition.

(53) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated hospital staff under defined circumstances under hospital policy and procedure.

(54) "Psychiatric service" means the treatment of patients pertinent to a psychiatric diagnosis.

(55) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, obstetrical delivery, surgery, or other diagnostic or treatment procedures.

(56) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(57) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(58) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(59) "Seclusion" means the involuntary confinement of a patient in a room or area where the patient is physically prevented from leaving.

(60) "Seclusion room" means a secure room designed and organized for temporary placement, care, and observation of one patient with minimal sensory stimuli, maximum security and protection, and visual and auditory observation by authorized personnel and staff. Doors of seclusion rooms have staff-controlled locks.

(61) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the items in (a) through (g) of this subsection.

(62) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10 point scale with 1 being the least and 10 being the most pain.

(63) "Specialty hospital" means a subclass of hospital that is primarily or exclusively engaged in the care and treatment of one of the following categories:

(a) Patients with a cardiac condition;

(b) Patients with an orthopedic condition;

(c) Patients receiving a surgical procedure; and

(d) Any other specialized category of services that the secretary of health and human services designates as a specialty hospital.

(64) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(65) "Surgical procedure" means any manual or operative procedure performed upon the body of a living human being for the purpose of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defect, prolonging life or relieving suffering, and involving any of the following:

(a) Incision, excision, or curettage of tissue;

(b) Suture or repair of tissue including a closed as well as an open reduction of a fracture;

(c) Extraction of tissue including the premature extraction of the products of conception from the uterus; or

(d) An endoscopic examination.

(66) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity as defined in RCW 7.70.065 or has given permission.

(67) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a general hospital providing emergency services and for continuity of care for that patient.

(68) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(69) "Unlicensed assistive personnel (UAP)" means individuals trained to function in an assistive role to nurses in the provision of patient care, as delegated by and under the supervision of the registered nurse. Typical activities performed by unlicensed assistive personnel include, but are not limited to: Taking vital signs; bathing, feeding, or dressing patients; assisting patient with transfer, ambulation, or toileting. Definition includes: Nursing assistants; orderlies; patient care technicians/assistants; and graduate nurses (not yet licensed) who have completed unit orientation. Definition excludes: Unit secretaries or clerks; monitor technicians; therapy assistants; student nurses fulfilling educational requirements; and sitters who are not providing typical UAP activities.

(70) "Victim of sexual assault" means a person is alleged to have been sexually assaulted and who presents as a patient.

(71) "Vulnerable adult" means, as defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself; an adult with a developmental disability under RCW 71A.10.020; an adult with a legal guardian under chapter 11.88 RCW; an adult living in a long-term care facility (an adult family home, assisted living facility or nursing home); an adult living in their own or a family's home receiving services from an agency or contracted individual provider; or an adult self-directing their care under RCW 74.39.050. For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves. For the purposes of this chapter, it shall also include hospitalized adults.

(72) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

WAC 246-320-016 Department responsibilities—On-site survey and complaint investigation. This section outlines the department's on-site survey and complaint investigation activities and roles.

(1) Surveys. The department will:

(a) Conduct on-site surveys of each hospital on average at least every eighteen months or more often using the health and safety standards in this chapter and chapter 70.41 RCW;

(b) Coordinate the on-site survey with other agencies, including local fire jurisdictions, state fire marshal, ((~~state~~)) and the pharmacy ((~~board~~)) quality assurance commission, and report the survey findings to those agencies;

(c) Notify the hospital in writing of the survey findings following each on-site survey;

(d) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the survey findings;

(e) Notify the hospital when the hospital submitted plan of correction adequately addresses the survey findings; and

(f) Accept on-site surveys conducted by the Joint Commission or American Osteopathic Association as meeting the eighteen-month survey requirement in accordance with RCW 70.41.122.

(2) Complaint investigations. The department will:

(a) Conduct an investigation of every complaint against a hospital that concerns patient well being;

(b) Notify the hospital in writing of state complaint investigation findings following each complaint investigation;

(c) Require each hospital to submit a corrective action plan addressing each deficient practice identified in the complaint investigation findings; and

(d) Notify the hospital when the hospital submitted plan of correction adequately addresses the complaint investigation findings.

(3) The department may:

(a) Direct a hospital on how to implement a corrective action plan based on the findings from an on-site survey or complaint investigation; or

(b) Contact a hospital to discuss the findings of the Joint Commission or American Osteopathic Association on-site accreditation survey.

AMENDATORY SECTION (Amending WSR 95-22-012, filed 10/20/95, effective 11/20/95)

WAC 246-322-210 Pharmacy and medication services. The licensee shall:

(1) Maintain the pharmacy in the hospital in a safe, clean, and sanitary condition;

(2) Provide evidence of current approval of pharmacy services by the ((~~Washington state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW;

(3) Develop and implement procedures for prescribing, storing, and administering medications according to state and federal laws and rules, including:

(a) Assuring professional staff who prescribe are authorized to prescribe under chapter 69.41 RCW;

(b) Assuring orders and prescriptions for medications administered and self-administered include:

(i) Date and time;

(ii) Type and amount of drug;

(iii) Route of administration;

(iv) Frequency of administration; and

(v) Authentication by professional staff;

(c) Administering drugs;

(d) Self-administering drugs;

(e) Receiving and recording or transcribing verbal or telephone drug orders by authorized staff;

(f) Authenticating verbal and telephone orders by prescriber in a timely manner, not to exceed forty-eight hours for inpatients;

(g) Use of medications and drugs owned by the patient but not dispensed by the hospital pharmacy, including:

(i) Specific written orders;

(ii) Identification and administration of drug;

(iii) Handling, storage and control;

(iv) Disposition; and

(v) Pharmacist and physician inspection and approval prior to patient use to ensure proper identification, lack of deterioration, and consistency with current medication profile;

(h) Maintaining drugs in patient care areas of the hospital including:

(i) Hospital pharmacist or consulting pharmacist responsibility;

(ii) Legible labeling with generic and/or trade name and strength as required by federal and state laws;

(iii) Access only by staff authorized access under hospital policy;

(iv) Storage under appropriate conditions specified by the hospital pharmacist or consulting pharmacist, including provisions for:

(A) Storing medicines, poisons, and other drugs in a specifically designated, well-illuminated, secure space;

(B) Separating internal and external stock drugs; and

(C) Storing Schedule II drugs in a separate locked drawer, compartment, cabinet, or safe;

(i) Preparing drugs in designated rooms with ample light, ventilation, sink or lavatory, and sufficient work area;

(j) Prohibiting the administration of outdated or deteriorated drugs, as indicated by label;

(k) Restricting access to pharmacy stock of drugs to:

(i) Legally authorized pharmacy staff; and

(ii) Except for Schedule II drugs, to a registered nurse designated by the hospital when all of the following conditions are met:

(A) The pharmacist is absent from the hospital;

(B) Drugs are needed in an emergency, and are not available in floor supplies; and

(C) The registered nurse, not the pharmacist, is accountable for the registered nurse's actions;

(4) The appropriate professional staff committee shall approve all policies and procedures on drugs, after documented consultation with:

(a) The pharmacist or pharmacist consultant directing hospital pharmacy services; and

(b) An advisory group comprised of representatives from the professional staff, hospital administration, and nursing services;

(5) When planning new construction of a pharmacy:

(a) Follow the general design requirements for architectural components, electrical service, lighting, call systems, hardware, interior finishes, heating, plumbing, sewerage, ventilation/air conditioning, and signage in WAC 246-318-540;

(b) Provide housekeeping facilities within or easily accessible to the pharmacy;

(c) Locate pharmacy in a clean, separate, secure room with:

(i) Storage, including locked storage for Schedule II controlled substances;

(ii) All entrances equipped with closers;

(iii) Automatic locking mechanisms on all entrance doors to preclude entrance without a key or combination;

(iv) Perimeter walls of the pharmacy and vault, if used, constructed full height from floor to ceiling;

(v) Security devices or alarm systems for perimeter windows and relites;

(vi) An emergency signal device to signal at a location where twenty-four-hour assistance is available;

(vii) Space for files and clerical functions;

(viii) Break-out area separate from clean areas; and

(ix) Electrical service including emergency power to critical pharmacy areas and equipment;

(d) Provide a general compounding and dispensing unit, room, or area with:

(i) A work counter with impermeable surface;

(ii) A corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter;

(iii) Storage space;

(iv) A refrigeration and freezing unit; and

(v) Space for mobile equipment;

(e) If planning a manufacturing and unit dose packaging area or room, provide with:

(i) Work counter with impermeable surface;

(ii) Corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter; and

(iii) Storage space;

(f) Locate admixture, radiopharmaceuticals, and other sterile compounding room, if planned, in a low traffic, clean area with:

(i) A preparation area;

(ii) A work counter with impermeable surface;

(iii) A corrosion-resistant sink, suitable for handwashing, mounted in counter or integral with counter;

(iv) Space for mobile equipment;

(v) Storage space;

(vi) A laminar flow hood in admixture area; and

(vii) Shielding and appropriate ventilation according to WAC 246-318-540 (3)(m) for storage and preparation of radiopharmaceuticals;

(g) If a satellite pharmacy is planned, comply with the provisions of:

(i) Subsection (5)(a), (5)(c)(i), (ii), (iii), (iv), (v), and (vi) of this section when drugs will be stored;

(ii) Subsection (5)(c)(vii), (viii), and (ix) of this section, if appropriate; and

(iii) Subsections (5)(d) and (f) of this section if planned;

(h) If a separate outpatient pharmacy is planned, comply with the requirements for a satellite pharmacy including:

(i) Easy access;

(ii) A conveniently located toilet meeting accessibility requirements in WAC 51-20-3100; and

(iii) A private counseling area.

AMENDATORY SECTION (Amending WSR 13-08-068, filed 4/1/13, effective 5/2/13)

WAC 246-330-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Abuse" means injury or sexual abuse of a patient indicating the health, welfare, and safety of the patient is harmed:

(a) "Physical abuse" means acts or incidents which may result in bodily injury or death.

(b) "Emotional abuse" means to impose willful or reckless mental or emotional anguish by threat, verbal behavior, harassment, or other verbal or nonverbal actions which may result in emotional or behavioral stress or injury.

(2) "Advanced registered nurse practitioner" means an individual licensed under chapter 18.79 RCW.

(3) "Agent," when referring to a medical order or procedure, means any power, principle, or substance, whether physical, chemical, or biological, capable of producing an effect upon the human body.

(4) "Alteration" means any change, addition, functional change, or modification to an existing ambulatory surgical facility or a portion of an existing ambulatory surgical facility.

"Minor alteration" means renovation that does not require an increase in capacity to structural, mechanical or electrical systems, does not affect fire and life safety, and does not add facilities in addition to that for which the ambulatory surgical facility is currently licensed. Minor alterations do not require prior review and approval by the department.

(5) "Ambulatory surgical facility" means any distinct entity that operates for the primary purpose of providing specialty or multispecialty outpatient surgical services in which patients are admitted to and discharged from the facility within twenty-four hours and do not require inpatient hospitalization, whether or not the facility is certified under Title XVIII of the federal Social Security Act. An ambulatory surgical facility includes one or more surgical suites that are adjacent to and within the same building as, but not in, the office of a practitioner in an individual or group practice, if the primary purpose of the one or more surgical suites is to provide specialty or multispecialty outpatient surgical services, irrespective of the types of anesthesia administered in the one or more surgical suites. An ambulatory surgical facility that is adjacent to and within the same building as the office of a practitioner in an individual or group practice may include a surgical suite that shares a reception area, restroom, waiting room, or wall with the office of the practitioner in an individual or group practice.

(6) "Assessment" means the:

(a) Systematic collection and review of patient-specific data;

(b) A process for obtaining appropriate and necessary information about individuals seeking entry into the ambulatory surgical facility or service; and

(c) Information used to match an individual with an appropriate setting or intervention. The assessment is based on the patient's diagnosis, care setting, desire for care, response to any previous treatment, consent to treatment, and education needs.

(7) "Authentication" means the process used to verify an entry is complete, accurate, and final.

(8) "Change of ownership" means:

(a) A sole proprietor who transfers all or part of the ambulatory surgical facility's ownership to another person or persons;

(b) The addition, removal, or substitution of a person as a general, managing, or controlling partner in an ambulatory surgical facility owned by a partnership where the tax identification number of that ownership changes; or

(c) A corporation that transfers all or part of the corporate stock which represents the ambulatory surgical facility's ownership to another person where the tax identification number of that ownership changes.

(9) "Clinical evidence" means evidence used in diagnosing a patient's condition or assessing a clinical course and includes, but is not limited to:

(a) X-ray films;

(b) Digital records;

(c) Laboratory slides;

(d) Tissue specimens; or

(e) Medical photographs.

(10) "Department" means the Washington state department of health.

(11) "Double-checking" means verifying patient identity, agent to be administered, route, quantity, rate, time, and interval of administration by two persons.

(12) "Drugs" as defined in RCW 18.64.011(3) means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection but not including devices or component parts or accessories.

(13) "Emergency medical condition" means a condition manifesting itself by acute symptoms of severity (including severe pain, symptoms of mental disorder, or symptoms of substance abuse) that absent of immediate medical attention could result in:

(a) Placing the health of an individual in serious jeopardy;

(b) Serious impairment to bodily functions;

(c) Serious dysfunction of a bodily organ or part; or

(d) With respect to a pregnant woman who is having contractions:

(i) That there is inadequate time to provide a safe transfer to a hospital before delivery; or

(ii) That the transfer may pose a threat to the health or safety of the woman or the unborn child.

(14) "Emergency services" means health care services medically necessary to evaluate and treat a medical condition that manifests itself by the acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, and that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily functions or serious dysfunction of an organ or part of the body, or would place the person's health, or in the case of a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

(15) "Family" means individuals designated by a patient who need not be relatives.

(16) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body, in which the patient is without protective reflexes and is unable to maintain an airway. Lower levels of sedation that unintentionally progress to the point at which the patient is without protective reflexes and is unable to maintain an airway is not considered general anesthesia.

(17) "Governing authority/body" means the person or persons responsible for establishing the purposes and policies of the ambulatory surgical facility.

(18) "Hospital" means any institution, place, building, or agency providing accommodations, facilities, and services as defined in chapter 70.41 RCW.

(19) "Individualized treatment plan" means a written and/or electronically recorded statement of care planned for a patient based upon assessment of the patient's developmental, biological, psychological, and social strengths and problems, and including:

(a) Treatment goals, with stipulated time frames;

(b) Specific services to be utilized;

(c) Designation of individuals responsible for specific service to be provided;

(d) Discharge criteria with estimated time frames; and

(e) Participation of the patient and the patient's designee as appropriate.

(20) "Invasive medical procedure" means a procedure involving puncture or incision of the skin or insertion of an instrument or foreign material into the body including, but not limited to, percutaneous aspirations, biopsies, cardiac and vascular catheterizations, endoscopies, angioplasties, and implantations. Excluded are venipuncture and intravenous therapy.

(21) "Maintenance" means the work of keeping something in safe, workable or suitable condition.

(22) "Medical equipment" means equipment used in a patient care environment to support patient treatment and diagnosis.

(23) "Medical staff" means practitioners and advanced registered nurse practitioners appointed by the governing authority.

(24) "Medication" means any substance, other than food or devices, intended for use in diagnosing, curing, mitigating, treating, or preventing disease.

(25) "Near miss" means an event which had the potential to cause serious injury, death, or harm but did not happen due to chance, corrective action or timely intervention.

(26) "Neglect" means mistreatment or maltreatment, a disregard of consequences constituting a clear and present danger to an individual patient's health, welfare, and safety.

(a) "Physical neglect" means physical or material deprivation, such as lack of medical care, lack of supervision, inadequate food, clothing, or cleanliness.

(b) "Emotional neglect" means acts such as rejection, lack of stimulation, or other acts that may result in emotional or behavioral problems, physical manifestations, and disorders.

(27) "New construction" means any renovation, alteration or new facility to be licensed as an ambulatory surgical facility.

(28) "Nonambulatory" means an individual physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another.

(29) "Operating room" means a room intended for invasive procedures.

(30) "Patient" means an individual receiving (or having received) preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative health services.

(31) "Patient care areas" means all areas of the ambulatory surgical facility where direct patient care is delivered and where patient diagnostic or treatment procedures are performed.

(32) "Person" means any individual, firm, partnership, corporation, company, association, joint stock association, and the legal successor thereof.

(33) "Pharmacist" means an individual licensed by the ((~~state board of~~)) pharmacy quality assurance commission under chapter 18.64 RCW.

(34) "Pharmacy" means every place properly licensed by the ((~~board of~~)) pharmacy quality assurance commission where the practice of pharmacy is conducted.

(35) "Physician" means an individual licensed under chapter 18.71 RCW, Physicians, chapter 18.22 RCW, Podiatric medicine and surgery, or chapter 18.57 RCW, Osteopathy—Osteopathic medicine and surgery.

(36) "Practitioner" means any physician or surgeon licensed under chapter 18.71 RCW, an osteopathic physician or surgeon licensed under chapter 18.57 RCW, or a podiatric physician or surgeon licensed under chapter 18.22 RCW.

(37) "Prescription" means an order for drugs or devices issued by a practitioner authorized by law or rule in the state of Washington for a legitimate medical purpose.

(38) "Protocols" and "standing order" mean written or electronically recorded descriptions of actions and interventions for implementation by designated ambulatory surgical

facility staff under defined circumstances recorded in policy and procedure.

(39) "Recovery unit" means a physical area for the segregation, concentration, and close or continuous nursing observation of patients for less than twenty-four hours immediately following anesthesia, surgery, or other diagnostic or treatment procedures.

(40) "Registered nurse" means an individual licensed under chapter 18.79 RCW.

(41) "Restraint" means any method used to prevent or limit free body movement including, but not limited to, involuntary confinement, a physical or mechanical device, or a drug given not required to treat a patient's symptoms.

(42) "Room" means a space set apart by floor-to-ceiling partitions on all sides with proper access to a corridor and with all openings provided with doors or windows.

(43) "Sedation" means the administration of drugs to obtund, dull, reduce the intensity of pain or awareness, allay patient anxiety and control pain during a diagnostic or therapeutic procedure where the administration of those drugs by any route carries the risk of loss of protective reflexes to include any of the following:

(a) "Minimal sedation or anxiolysis" is a state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected;

(b) "Moderate or conscious sedation" is a depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained; and

(c) "Deep sedation" is a depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(44) "Sexual assault" means, according to RCW 70.125.-030, one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the offenses in (a) through (h) of this subsection.

(45) "Severe pain" means a level of pain reported by a patient of 8 or higher based on a 10-point scale with 1 being the least and 10 being the most pain.

(46) "Staff" means paid employees, leased or contracted persons, students, and volunteers.

(47) "Surgical services" means invasive medical procedures that:

(a) Utilize a knife, laser, cautery, cytogenics, or chemicals; and

(b) Remove, correct, or facilitate the diagnosis or cure of disease, process or injury through that branch of medicine that treats diseases, injuries and deformities by manual or operative methods by a practitioner.

(48) "Surrogate decision-maker" means an individual appointed to act on behalf of another when an individual is without capacity or has given permission.

(49) "Transfer agreement" means a written agreement providing an effective process for the transfer of a patient requiring emergency services to a hospital providing emergency services and for continuity of care for that patient.

(50) "Treatment" means the care and management of a patient to combat, improve, or prevent a disease, disorder, or injury, and may be:

(a) Pharmacologic, surgical, or supportive;

(b) Specific for a disorder; or

(c) Symptomatic to relieve symptoms without effecting a cure.

(51) "Vulnerable adult" means:

(a) As defined in chapter 74.34 RCW, a person sixty years of age or older who lacks the functional, physical, or mental ability to care for him or herself;

(b) An adult with a developmental disability per RCW 71A.10.020;

(c) An adult with a legal guardian per chapter 11.88 RCW;

(d) An adult living in a long-term care facility (an adult family home, boarding home or nursing home);

(e) An adult living in their own or a family's home receiving services from an agency or contracted individual provider; or

(f) An adult self-directing their care per RCW 74.39.050;

(g) For the purposes of requesting background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

(52) "Well-being" means free from actual or potential harm, abuse, neglect, unintended injury, death, serious disability or illness.

AMENDATORY SECTION (Amending WSR 04-01-197, filed 12/24/03, effective 1/24/04)

WAC 246-335-015 Definitions. For the purposes of this chapter, the following words and phrases will have the following meanings unless the context clearly indicates otherwise:

(1) "AAA" means the area agency on aging designated by the aging and adult services administration to contract for home care services with the department of social and health services.

(2) "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 licensed nurse, therapist, dietician, or social worker to assess health status and progress.

(3) "Administrator" means an individual responsible for managing the operation of an in-home services agency.

(4) "Agency" means an in-home services agency licensed to provide home health, home care, hospice or hospice care center services.

(5) "Assessment" means:

(a) For home health and hospice agencies and hospice care centers, an evaluation of patient needs by an appropriate health care professional; or

(b) For home care agencies, an on-site visit by appropriate agency personnel to determine services requested or recommended to meet client needs.

(6) "Authenticated" means a written signature or unique identifier verifying accuracy of information.

(7) "Authorizing practitioner" means an individual authorized to approve a home health, hospice or hospice care center plan of care.

(a) For home health services:

(i) A physician licensed under chapter 18.57 or 18.71 RCW;

(ii) A podiatric physician and surgeon licensed under chapter 18.22 RCW; or

(iii) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW;

(b) For hospice and hospice care center services:

(i) A physician licensed under chapter 18.57 or 18.71 RCW; or

(ii) An advanced registered nurse practitioner (ARNP), as authorized under chapter 18.79 RCW;

(8) "Bereavement" means care provided to the patient's family with the goal of alleviating the emotional and spiritual discomfort associated with the patient's death.

(9) "Client" means an individual receiving home care services.

(10) "Construction" for the purposes of hospice care centers means:

(a) New building(s) to be used as a hospice care center;

(b) Addition(s) to or conversion(s), either in whole or in part, of an existing building or buildings to be used as a hospice care center or a portion thereof; or

(c) Alteration or modification to a hospice care center.

(11) "Contractor" means an individual, person, or licensee who has a written contract with a licensee to provide patient or client care services or equipment.

(12) "Deemed status" means a designation assigned by the department for an in-home services agency licensed to provide home health, home care, or hospice services meeting the provisions of WAC 246-335-050, certified or accredited by organizations recognized by RCW 70.127.085, or monitored under contract with the department of social and health services under RCW 70.127.085 to provide home care services.

(13) "Department" means the Washington state department of health.

(14) "Dietician" means a person certified under chapter 18.138 RCW or registered by the American Dietetic Association.

(15) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, or related services that support the plan of care provided by in-home services agencies licensed to provide home health, hospice or hospice care center services.

(16) "Document" means the process of recording information relating to patient or client care verified by signature or unique identifier, title, and date.

(17) "Family" means an individual or individuals who are important to, and designated in writing by, the patient or client and need not be relatives, or who are legally authorized to represent the patient or client.

(18) "Health care professional" means an individual who provides health or health-related services within the individual's authorized scope of practice and who is licensed, registered or certified under Title 18 RCW, Business and professions.

(19) "Home care agency" or "in-home services agency licensed to provide home care services" means a person administering or providing home care services directly or through a contract arrangement to clients in places of permanent or temporary residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260 (3)(e) and rules adopted thereunder is not considered a home health agency for purposes of this chapter.

(20) "Home care aide" means an individual providing home care services.

(21) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable clients that enables them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical tasks, as defined in this section or delegated tasks of nursing under RCW 18.79.260 (3)(e) and rules adopted thereunder.

(22) "Home health agency" or "in-home services agency licensed to provide home health services" means a person administering or providing two or more home health services directly or through a contract arrangement to patients in places of permanent or temporary residence. A person administering or providing only nursing services may elect to be an in-home services agency licensed to provide home health services.

(23) "Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88A RCW.

(24) "Home health aide services" means services provided by home health aides in an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

(25) "Home health services" means services provided to ill, disabled, or vulnerable patients. 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, home medical

supplies or equipment services, and professional medical equipment assessment services.

(26) "Home medical supplies or equipment services" means providing diagnostic, treatment, and monitoring equipment and supplies used in the direct care of patients or clients as stated in a plan of care.

(27) "Homelike" for the purposes of a hospice care center means an environment having the qualities of a home, including privacy, comfortable surroundings, opportunities for patient self-expression, and supporting interaction with the family, friends, and community.

(28) "Hospice agency" or "in-home services agency licensed to provide hospice services" means a person administering or providing hospice services directly or through a contract arrangement to patients in places of permanent or temporary residence under the direction of an interdisciplinary team.

(29) "Hospice care center" or "in-home services agency licensed to provide hospice care center services" means a homelike, noninstitutional facility where hospice services are provided, and that meet the requirements for operation under RCW 70.127.280 and applicable rules.

(30) "Hospice care center service category" means the different levels of care provided in a hospice care center, including continuous care, general inpatient care, inpatient respite care, and routine home care.

(a) "Continuous care" means care for patients requiring a minimum of eight hours of one-to-one services in a calendar day, with assessment and supervision by an RN. An RN, LPN or home health aide may provide the care or treatment, according to practice acts and the rules adopted thereunder, of acute or chronic symptoms, including a crisis in their caregiving.

(b) "General inpatient care" means care for patients requiring an RN on-site twenty-four hours a day, for assessment and supervision. An RN, LPN or home health aide may provide the care or treatment, according to practice acts and the rules adopted thereunder, of acute or chronic symptoms, including a crisis in their caregiving.

(c) "Inpatient respite care" means care for patients whose caregivers require short-term relief of their caregiving duties.

(d) "Routine home care" means the core level of service for patients not receiving continuous care, general inpatient care, or inpatient respite care.

(31) "Hospice care center services" means hospice services provided in a hospice care center and may include any of the levels of care defined as hospice care center service categories.

(32) "Hospice services" means symptom and pain management provided to a terminally ill patient, and emotional, spiritual and bereavement support for the patient and family in a place of temporary or permanent residence, including hospice care centers, and may include the provision of home health and home care services for the terminally ill patient through an in-home services agency licensed to provide hospice or hospice care center services.

(33) "In-home services agency" or "in-home services licensee" means a person licensed to administer or provide home health, home care, hospice or hospice care center services directly or through a contract arrangement to patients or clients in a place of temporary or permanent residence.

(34) "In-home services category" means home health, home care, hospice, or hospice care center services.

(35) "Interdisciplinary team" means the group of individuals involved in patient care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor and volunteer.

(36) "Licensed practical nurse" or "LPN" means an individual licensed as a practical nurse under chapter 18.79 RCW.

(37) "Licensed nurse" means a licensed practical nurse or registered nurse.

(38) "Licensee" means the person to whom the department issues the in-home services license.

(39) "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. These patients require periodic monitoring by a licensed nurse, therapist, dietician, or social worker to assess health status and progress.

(40) "Managed care plan" means a plan controlled by the terms of the reimbursement source.

(41) "Medical director" means a physician licensed under chapter 18.57 or 18.71 RCW responsible for the medical component of patient care provided in an in-home services agency licensed to provide hospice and hospice care center services according to WAC 246-335-055 (4)(a).

(42) "Medication assistance level 1" means home health aide assistance with medications, that includes the application, instillation or insertion of medications under a plan of care, for patients of an in-home services agency licensed to provide home health, hospice or hospice care center services and are under the direction of appropriate agency health care personnel. The assistance must be provided in accordance with the Nurse Practice Act as defined in chapter 18.79 RCW and rules adopted thereunder and the nursing assistant scope of practice as defined in chapter 18.88A RCW and the rules adopted thereunder.

(43) "Medication assistance level 2" means assistance with medications as defined by the ((~~board of~~)) pharmacy quality assurance commission in chapter 246-888 WAC.

(44) "Nonmedical tasks" means those tasks which do not require clinical judgment and which can be performed by unlicensed individuals. These tasks are ordinarily performed by the patient or client, which if not for the patient or client's cognitive or physical limitation(s), would be completed independently by the patient, client, or family. These tasks may be completed by home health aides or home care aides. These nonmedical tasks include, but are not limited to:

(a) "Ambulation" which means assisting the patient or client to move around. Ambulation includes supervising or guiding the patient or client when walking alone or with the help of a mechanical device such as a walker, assisting with difficult parts of walking such as climbing stairs, supervising or guiding the patient or client if the patient or client is able to propel a wheelchair, pushing of the wheelchair, and provid-

ing constant or standby physical assistance to the patient or client if totally unable to walk alone or with a mechanical device.

(b) "Bathing" which means assisting the patient or client to wash. Bathing includes supervising or guiding the patient or client to bathe, assisting the patient or client with difficult tasks such as getting in or out of the tub or washing the back, and completely bathing the patient or client if totally unable to wash self.

(c) "Body care" which means skin care including the application of over the counter ointments or lotions. "Body care" excludes foot care for patients or clients who are diabetic or have poor circulation.

(d) "Feeding" which means assistance with eating. Feeding includes supervising or guiding the patient or client when able to feed self, assisting with difficult tasks such as cutting food or buttering bread, and orally feeding the patient or client when unable to feed self.

(e) "Medication assistance level 2" which means assistance with medications as defined in the ((~~board of~~)) pharmacy quality assurance commission rules, chapter 246-888 WAC, and consistent with nursing assistant rules under chapter 18.88A RCW.

(f) "Positioning" which means assisting the patient or client to assume a desired position, and with turning and exercises to prevent complications, such as contractures and pressure sores. Range of motion ordered as part of a physical therapy treatment is not included, unless such activity is authorized in agency policies and procedures and is supervised by a licensed physical therapist in a home health or hospice agency or hospice care center.

(g) "Protective supervision" which means being available to provide safety guidance protection to the patient or client who cannot be left alone due to impaired judgment.

(h) "Toileting" which means helping the patient or client to and from the bathroom, assisting with bedpan routines, using incontinent briefs, cleaning the patient or client after elimination, and assisting the patient or client on and off the toilet.

(i) "Transfer" which means assistance with getting in and out of a bed or wheelchair or on and off the toilet or in and out of the bathtub. Transfer includes supervising or guiding the patient or client when able to transfer, providing steadying, and helping the patient or client when the patient or client assists in own transfer. This does not include transfers when the patient or client is unable to assist in their own transfer or needs assistive devices unless specific training or skills verification has occurred consistent with agency policies and procedures.

(45) "One-time visit" means a single visit by one individual to provide home health, hospice or home care services with no predictable need for continuing visits, not to exceed twenty-four hours.

(46) "On-site" means the location where services are provided.

(47) "Patient" means an individual receiving home health, hospice, or hospice care center services.

(48) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private organization, or the legal successor thereof that employs or contracts with two or more individuals.

(49) "Personnel" means individuals employed and compensated by the licensee.

(50) "Plan of care" means a written document based on assessment of patient or client needs that identifies services to meet these needs.

(51) "Pressure relationships" of air to adjacent areas means:

(a) Positive (P) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H2O pressure differential with the adjacent area, the room doors are closed, and air is flowing out of the room; or

(ii) Sum of the air flow at the supply air outlets (in CFM) exceeds the sum of the air flow at the exhaust/return air outlets by at least 70 CFM with the room doors and windows closed;

(b) Negative (N) pressure is present in a room when the:

(i) Room sustains a minimum of 0.001 inches of H2O pressure differential with the adjacent area, the room doors are closed, and air is flowing into the room; or

(ii) Sum of the air flow at the exhaust/return air outlets (in CFM) exceeds the sum of the air flow at the supply air outlets by at least 70 CFM with the room doors and windows closed;

(c) Equal (E) pressure is present in a room when the:

(i) Room sustains a pressure differential range of plus or minus 0.0002 inches of H2O with the adjacent area, and the room doors are closed; or

(ii) Sum of the air flow at the supply air outlets (in CFM) is within ten percent of the sum of the air flow at the exhaust/return air outlets with the room doors and windows closed.

(52) "Professional medical equipment assessment services" means periodic care provided by a licensed nurse, therapist or dietician, 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).

(53) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(54) "Registered nurse" or "RN" means an individual licensed under chapter 18.79 RCW.

(55) "Service area" means the geographic area in which the department has given approval to a licensee to provide in-home services based on criteria in WAC 246-335-055 (1)(a)(vi). Service areas do not apply to hospice care centers.

(56) "Sink" means one of the following:

(a) "Clinic service sink (siphon jet)" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inch diameter.

(b) "Service sink" means a plumbing fixture of adequate size and proper design for filling and emptying mop buckets.

(c) "Handwash sink" means a plumbing fixture of adequate size and proper design to minimize splash and splatter and permit handwashing without touching fixtures with

hands, with adjacent soap dispenser with foot control or equivalent and single service hand drying device.

(57) "Social worker" means an individual regulated under chapter 18.19 or 18.225 RCW.

(58) "Spiritual counseling" means services provided or coordinated by an individual with knowledge of theology, pastoral counseling or an allied field.

(59) "Statement of deficiencies" means a written notice of any violation of chapter 70.127 RCW or the rules adopted thereunder which describes the reasons for noncompliance.

(60) "Statement of charges" means a document which initiates enforcement action against a licensee or applicant and which creates the right to an adjudicative proceeding. The department shall prepare a statement of charges in accordance with WAC 246-10-201.

(61) "Supervisor of direct care services" means an individual responsible for services that support the plan of care provided by an in-home services agency licensed to provide home care services.

(62) "Survey" means an inspection or investigation, announced or unannounced, conducted by the department to evaluate and monitor a licensee's compliance with this chapter.

(63) "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; or

(d) A speech therapist licensed under chapter 18.35 RCW.

(64) "Therapy assistant" means a licensed occupational therapy assistant defined under chapter 18.59 RCW or physical therapist assistant defined under chapter 18.74 RCW.

(65) "Volunteer" means an individual who provides direct care to a patient or client and who:

(a) Is not compensated by the in-home services licensee; and

(b) May be reimbursed for personal mileage incurred to deliver services.

(66) "WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW.

AMENDATORY SECTION (Amending WSR 02-18-026, filed 8/23/02, effective 10/1/02)

WAC 246-335-175 Pharmaceutical services. The licensee must assure that all pharmaceutical services are provided consistent with chapter 246-865 WAC and the following requirements:

(1) Pharmaceutical services must be available twenty-four hours per day to provide medications and supplies through a licensed pharmacy;

(2) A pharmacist must provide sufficient on-site consultation to ensure that medications are ordered, prepared, disposed, secured, stored, accounted for and administered in accordance with the policies of the center and chapter 246-865 WAC;

(3) Medications must be administered only by individuals authorized to administer medications;

(4) Medications may be self-administered or administered by a designated family member in accordance with WAC 246-865-060 (7)(f);

(5) Drugs for external use must be stored apart from drugs for internal use;

(6) Poisonous or caustic medications and materials including housekeeping and personal grooming supplies must show proper warning or poison labels and must be stored safely and separately from other medications and food supplies;

(7) The hospice care center must maintain an emergency medication kit appropriate to the needs of the center;

(8) Medications brought into the hospice care center by patients to be administered by an appropriate health care professional while in the center must be specifically ordered by an authorizing practitioner and must be identified by a pharmacist or licensed nurse with pharmacist consultation prior to administration;

(9) Drugs requiring refrigeration must be kept in a separate refrigeration unit;

(10) Schedule II - IV controlled substances must be:

(a) Kept in a separate keyed storage unit; and

(b) When heat sensitive, be kept in a locked refrigeration unit;

(11) Schedule II - IV controlled substances no longer needed by the patient must be disposed in compliance with chapter 246-865 WAC;

(12) The hospice care center must provide for continuation of drug therapy for patients when temporarily leaving the center in accordance with WAC 246-865-070;

(13) If planning to use an automated drug distribution device, the hospice care center must first receive ((~~board of~~)) pharmacy quality assurance commission approval; and

(14) If planning to provide pharmacy services beyond the scope of services defined in this section, the hospice care center must comply with the requirements for a licensed pharmacy in chapter 246-869 WAC.

AMENDATORY SECTION (Amending WSR 05-15-157, filed 7/20/05, effective 8/20/05)

WAC 246-337-105 Medication management. The licensee is responsible for the control and use of all medications within the RTF, including:

(1) Ensuring policies and procedures and medication protocols are developed, approved, reviewed and implemented by licensed health care providers, administration and pharmacist (as needed). The policies and procedures must be consistent with the rules of the department and the ((~~department's board of~~)) pharmacy quality assurance commission and address all aspects of medication administration, including the following:

(a) Timely procurement;

(b) Medication administration;

(c) Prescribing;

(d) Proper storage conditions addressing security, safety, sanitation, temperature, light, moisture and ventilation;

(e) Use of nonprescription drugs:

(i) List of drugs available;
(ii) Parameters of use;
(f) Receipt;
(g) Proper labeling;
(h) Disposal;
(i) Medication brought into RTF by a resident;
(j) Accountability;
(k) Starter supply of psychotropic, detoxification and emergency drugs not for a specific resident;
(l) Emergency allergy response kit of prepackaged medications and supplies for the treatment of anaphylactic shock; and
(m) Medications for short term authorized absence (pass) from the RTF, where applicable.

(2) Establishing and maintaining of an organized system that ensures accuracy in receiving, transcribing and implementing policies and procedures for medication administration, including ensuring residents receive the correct medication, dosage, route, time, and reason.

(3) Documentation of all medications administered or self-administered, including the following data:
(a) Name and dosage of medication;
(b) Start/stop date;
(c) Time;
(d) Route;
(e) Staff or resident initials indicating medication was administered, self-administered or issued;
(f) Notation if medication was refused, held, wasted or not administered or self-administered;
(g) Allergies;
(h) Resident response to medication when given as necessary or as needed (PRN);
(i) Medical staff notification of errors, adverse effects, side effects; and
(j) Within established parameters for nonprescription drugs.

(4) Ensuring written orders are signed by an authorized health care provider with prescriptive authority for all legend drugs and vaccines. Verbal orders for legend drugs and vaccines must be signed by the prescriber as soon as possible, but no later than seven days after the verbal order.

(5) Ensuring use of nonprescription drugs that are self-administered are:
(a) Within parameters established for nonprescription drugs; and
(b) According to established list.

(6) Having a current established drug reference resource available for use by RTF staff.

WSR 15-09-120
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed April 21, 2015, 10:16 a.m., effective July 1, 2015]

Effective Date of Rule: July 1, 2015.

Purpose: This rule updates conversion factors provided in WAC 296-20-135 and maximum daily fees provided in WAC 296-23-220 and 296-23-230 for certain professional health care services for injured workers. Rule changes are necessary to maintain current overall fees for health care services, which are published annually in the medical aid rules and fee schedules.

Citation of Existing Rules Affected by this Order: Amending WAC 296-20-135, 296-23-220, and 296-23-230.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Adopted under notice filed as WSR 15-05-064 on February 17, 2015.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: April 21, 2014 [2015].

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 14-09-094, filed 4/22/14, effective 7/1/14)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of $((~~58.58~~)) 59.98. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of $((~~3.31~~)) 3.38 per minute, which is equivalent to $((~~49.65~~)) 50.70 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 14-23-064, filed 11/18/14, effective 1/1/15)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~122.00~~)) 124.44 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 14-09-094, filed 4/22/14, effective 7/1/14)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or $((~~122.00~~)) 124.44 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed

only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 15-09-123
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 21, 2015, 11:04 a.m., effective May 22, 2015]

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

Purpose: WAC 392-410-350 and 392-415-070, to provide guidelines for school districts to award the seal of biliteracy to their graduating students. The rule outlines the criteria that assessments should meet to qualify for the seal of biliteracy. The seal recognizes real skills and proficiency, not seat time and to standardize the way the seal of biliteracy is recorded on transcripts.

Citation of Existing Rules Affected by this Order: Amending WAC 392-415-070.

Statutory Authority for Adoption: RCW 28A.230.125, 28A.300.575.

Adopted under notice filed as WSR 15-06-055 on March 5 [3], 2015.

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 1, Repealed 0.

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

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

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

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

Date Adopted: April 20, 2015.

Randy Dorn
Superintendent of
Public Instruction

NEW SECTION

WAC 392-410-350 Seal of biliteracy. (1) The authority for this section is RCW 28A.300.575, which authorizes the office of the superintendent of public instruction to adopt rules establishing criteria for award of the Washington state seal of biliteracy.

(2) Graduating high school students must meet the following criteria to be awarded the Washington state seal of biliteracy:

(a) Students must demonstrate proficiency in English by (i) meeting the statewide minimum graduation requirements in English under WAC 180-51-066 through 180-51-068, as amended; and (ii) meeting the state standard on the reading and writing or English language arts assessments under RCW 28A.655.061; and

(b) Students must demonstrate proficiency in one or more world languages through any one of the following methods:

(i) Passing a foreign language advanced placement examination with a score of three or higher;

(ii) Passing an International Baccalaureate examination with a score of four or higher;

(iii) Demonstrating intermediate-mid level proficiency or higher in the world language based on the American Council on the Teaching of Foreign Languages (ACTFL) proficiency guidelines, using assessments approved by the office of superintendent of public instruction for competency-based credits;

(iv) Qualifying for four competency-based credits by demonstrating proficiency in the world language at intermediate-mid level or higher based on the ACTFL proficiency guidelines, according to the school district's policy and procedure for competency-based credits for world languages; or

(v) Demonstrating proficiency in speaking, writing, and reading the world language through other national or international assessments approved by the office of superintendent of public instruction at a level comparable to intermediate-mid level or higher based on the ACTFL proficiency guidelines.

(3) "Foreign language" and "world language" as used in this section means a language other than English, and includes, without limitation, American sign language, Latin, and Native American or other indigenous languages or dialects.

AMENDATORY SECTION (Amending WSR 06-23-041, filed 11/7/06, effective 12/8/06)

WAC 392-415-070 Mandatory high school transcript contents—Items—Timelines. (1)(a) The standardized high school transcript shall contain only the information listed in subsection (2) of this section in order to meet the statutory requirements under RCW 28A.230.125 for a statewide standardized transcript.

(b) Any other information the district or school may desire to include may be stapled to the transcript or otherwise provided with the transcript. Information that is not listed below shall not be included on the state standardized transcript:

(2)(a) Authorized and required transcript information ((~~effective now~~)) must include:

(i) The student's legal name (last name, first name, and middle name(s) or middle initial(s)), and other or former names used;

(ii) The name(s) of parent(s) or guardian(s);

(iii) The student's ((~~birthdate~~)) birth date (mm/dd/yyyy);

(iv) The student's school district identification number (if applicable);

(v) The school name, address, phone number, and name of the school district issuing the transcript;

(vi) A list of previous schools attended where credit was attempted (school name, city, state, and month and year of entrance and exit);

(vii) The student's academic history for all high school level courses attempted, including courses taken under RCW 28A.230.090(4) and including those courses where a student has withdrawn, and listed by report period for the grade level (month and year), course code and description, marks/grades earned as defined in WAC 392-415-050 (a mark/grade of "W" will be used to indicate a withdrawal from a course), credits attempted and earned as defined in WAC 392-415-040, grade point average as defined in WAC 392-415-055, and a report period and cumulative summary of the student's high school level academic history((~~.~~));

(viii) Credits attempted for courses taken more than once to improve a grade/mark may count only once toward the number of credits required for graduation, except that credits attempted for courses taken more than once to improve a grade may count toward the number of credits required for graduation on the condition that the letter grades earned for all attempts are included in the calculation of the student's grade point average. For the purpose of this subsection, districts and schools shall not convert letter grades to grades/marks not used in the grade point average calculation.

(b) Authorized and required additional transcript information in effect for students who first entered ninth grade in the 2002-03 school year. The following courses, for which college credit can be earned, shall be designated on the transcript with the designation coding indicated. Courses completed and credits earned through running start shall be noted with an "R" designation. Courses completed and credits earned through advanced placement shall be noted with an "A" designation. Courses completed and credits earned through college in the high school shall be noted with a "C" designation. Courses completed and credits earned through an international baccalaureate program shall be noted with an "I" designation. Courses completed which earn college credit through techprep and/or the corresponding credits or certification earned shall be noted with a "T" designation. Courses that meet or satisfy higher education coordinating board core course requirements shall be noted with a "B" designation. Courses completed and credits earned through an honors option shall be noted with an "H" designation.

(c) Authorized and required additional transcript information in effect beginning with students who first entered ninth grade in the 2004-05 school year:

(i) Notation that the high school and beyond plan graduation requirement was met or not met by the student;

(ii) Notation that the culminating project graduation requirement was met or not met by the student; and

(iii) If applicable, notation that the certificate of academic achievement graduation requirement was met or not met by the student; ((~~and~~))

(iv) If applicable, notation that the certificate of individual achievement graduation requirement was met or not met by the student((~~.~~)); and

(v) If applicable, notation of whether the student has earned the Washington state seal of biliteracy as provided under WAC 392-410-350.

(3) Each issuance of the transcript shall include a report date (mm/dd/yyyy), graduation date (noting month and year), end of transcript record (signifying no more authorized data), office of superintendent of public instruction (OSPI) transcript form version number, and page number ('x' of 'y').

(4) The signature of the authorized school official (name, title, and date) and seal of the district, if available. The signature of the authorized school official may be affixed electronically, subject to a written district policy that addresses signature security and assures that the authorized school official acknowledges, in writing, that affixing their signature electronically to the transcript is a legal and binding action.

WSR 15-09-135
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed April 22, 2015, 9:24 a.m., effective August 1, 2015]

Effective Date of Rule: August 1, 2015.

Purpose: This department is amending WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits?, to allow households with self-employment income and who receive cash and/or food assistance to take the greater of:

- A standard fifty percent deduction from the gross self-employment income; or
- A deduction consisting of actual verified and allowable cost of producing self-employment income.

This rule replaces the current $100 standard self-employment income deduction for cost of doing business.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0085.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. § 273.11 (b)(3)(iv).

Adopted under notice filed as WSR 15-03-074 on January 16, 2015.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: April 16, 2015.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0085 Does the department count all of my self-employment income to determine if I am eligible for benefits? This section applies to cash assistance and Basic Food programs.

(1) We decide how much of your self-employment income to count by:

(a) Adding together your gross self-employment income and any profit you make from selling your business property or equipment;

(b) Subtracting your business expenses as described in subsection (2) below; and

(c) Dividing the remaining amount of self-employment income by the number of months over which the income will be averaged.

(2) We subtract ((~~one hundred dollars~~)) the greater value of one of the following as a business expense:

(a) Fifty percent of the gross self-employment income total described in subsection (1)(a) in this section even if your costs are less than this; or

(b) The actual verified and allowable costs of producing your self-employment income. If you want us to subtract your actual costs ((~~of more than one hundred dollars~~)), you must list and give us proof of your expenses within the time limits under WAC 388-406-0030 for us to count them.

(c) We never allow the following expenses when calculating (2)(b):

((~~a~~)) (i) Federal, state, and local income taxes;

((~~b~~)) (ii) Money set aside for retirement purposes;

((~~c~~)) (iii) Personal work-related expenses (such as travel to and from work);

((~~d~~)) (iv) Net losses from previous periods;

((~~e~~)) (v) Depreciation; or

((~~f~~)) (vi) Any amount that is more than the payment you get from a boarder for lodging and meals.

(3) If you have worked at your business for less than a year, we figure your gross self-employment income by averaging:

(a) The income over the period of time the business has been in operation; and

(b) The monthly amount we estimate you will get for the coming year.

(4) For cash assistance, if your self-employment expenses are more than your self-employment income, we do not use this "loss" to reduce income from other self-employment businesses or other sources of income to your assistance unit.

(5) For Basic Food, we use a "loss" from self-employment farming or fishing income to reduce other sources of income **only** if you meet the following three conditions:

(a) Someone in your assistance unit is a self-employed farmer or fisher;

(b) Your gross yearly income from farming or fishing is or is expected to be at least one thousand dollars; and

(c) Your allowable costs for farming or fishing are more than your income from farming or fishing.