WSR 20-18-012
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed August 21, 2020, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-10-113.

Title of Rule and Other Identifying Information: WAC 246-80-021 Prohibition—Vitamin E acetate, the state board of health is proposing rules to permanently adopt existing emergency rules which ban the sale of vapor products containing vitamin E acetate. This applies to the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by means including by telephone or other method of voice transmission, the mail or any other delivery service or the internet or other online service.

Hearing Location(s): On October 13, 2020, at 2:30 p.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the state board of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may login using a computer or device, or call-in using a phone, to listen to the meeting through the GoToWebinar application. The public may submit verbal comments during the specified public comment and rules hearing segments.

1. To access the meeting online and register https://attendee.gotowebinar.com/register/4735583794817723406.

2. You can also dial-in and listen/observe only using your phone: Call in: +1 (562) 247-8422; Access Code: 521-354-641.

Date of Intended Adoption: October 13, 2020.

Submit Written Comments to: Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, email https://fortress.wa.gov/doh/policyreview, by October 1, 2020.

Assistance for Persons with Disabilities: Contact Samantha Pskowski, phone 360-789-2358, TTY 711, email samantha.pskowski@sboh.wa.gov, by October 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to create a new section of rule to prohibit the inclusion of vitamin E acetate in vapor products. This proposal would make permanent an existing emergency rule that prohibits the sale of vapor products containing vitamin E actetate [acetate]. This includes the sale, offer for sale, or possession with intent to sell or offer for sale vapor products containing vitamin E acetate at any location or by means including telephone or other method of voice transmission, the mail or other delivery service, or the internet or other online service.

Reasons Supporting Proposal: In July 2019, the United States Centers for Disease Control and Prevention (CDC), United States Food and Drug Administration (FDA), state and local health departments, and other clinical and public health partners began investigating outbreaks of e-cigarette or vaping associated lung injury (EVALI). In September 2019, the CDC activated its Emergency Operations Center to aid in the investigation of the multistate outbreak. As of its final update on February 18, 2020, the CDC has identified two thousand eight hundred seven confirmed cases reported across fifty states, the District of Columbia, Puerto Rico and the United States Virgin Islands, including sixty-eight deaths confirmed in twenty-nine states and the District of Columbia. Twenty-seven cases of EVALI, including two deaths, have been reported in Washington state.

As part of the investigation into the multistate outbreak of EVALI, the CDC conducted laboratory tests of forty-eight samples of fluid collected from the lungs of patients with vaping-associated lung disease from ten states. An article released on November 8, 2019, showed that all of the samples contained vitamin E acetate, providing direct evidence of vitamin E acetate at the primary site of injury in the lungs. Vitamin E acetate is a chemical that is used as an additive or thickening ingredient in vapor products. The CDC has not determined that vitamin E acetate is present in only THC vapor products or only non-THC vapor products. THC was identified in eighty-two percent of the samples, and nicotine was identified in sixty-two percent of the samples. A further study found ninety-four percent of EVALI patients tested had vitamin E acetate in the bronchoalveloar lavage but no samples from a health comparison group indicated evidence of vitamin E. Two samples showed presence of other toxicants (one each) in the EVALI group but did not provide sufficient evidence to identify another toxicant as the source of disease. The CDC has identified vitamin E acetate as a chemical strongly linked to EVALI and recommends that vitamin E acetate not be added to vapor products.

Based on these findings, the board is proposing to adopt rules that institute a permanent ban of vitamin E acetate in vapor products.

Statutory Authority for Adoption: RCW 43.20.050 (2)(f).

Statute Being Implemented: RCW 43.20.050 (2)(f).

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Samantha Pskowski, 101 Israel Road S.E., Tumwater, WA 98504-7990, 360-789-2358; Implementation and Enforcement: Justin Nordhorn, 1025 Union Avenue S.E., Olympia, WA 98504, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Samantha Pskowski, P.O. Box 47990, Olympia, WA 98504-7990, phone 360-789-2358, TTY 711, email samantha.pskowski@sboh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The cost threshold for the industry of beverage and tobacco product manufacturing and miscellaneous store retailers is $5,641.52 and $2,503.84 respectively.

The cost of removing vitamin E acetate from vapor products has been determined to be $0.27 per 5mL of product.

The thickening agent is used in some vapor products and is not considered to be an essential product.

Cost of thickening agent per product = Total cost of total thickening agent.

Total thickening agent/(Total volume of product * amount of thickening agent per product).

To estimate the total cost to industry, an estimate of the total product sold is needed. Given the lack of publicly available information on the vapor product industry, an estimate was calculated using other available information. The Washington state department of revenue estimated revenue of $19 million from the state's vapor product tax. The tax is structured as a $0.27/mL for pod devices under 5 mL and $0.09 for products over 5 mL. Assuming fifty percent of revenue comes from pod devices and fifty percent from products of 5 mL, it can be estimated that there will be 28,148,148 products of 5 mL sold annually. Therefore, the total cost of the rule would be $7,599,999. We do not have a way of knowing the distribution of this cost across individual retailers, so therefore the cost of the rule spread evenly among all licensed vapor product retailers would be an estimated $1,900 per establishment.

Therefore, the average cost of the rule per establishment does not exceed the average cost threshold for the industry and does not require a small business economic impact statement.

August 21, 2020
Michelle A. Davis
Executive Director

NEW SECTION

WAC 246-80-021 Prohibition—Vitamin E acetate. No person including, but not limited to, a person licensed under chapter 69.50 or 70.345 RCW, may sell, offer for sale, or possess with intent to sell, or offer for sale vapor products containing vitamin E acetate. The foregoing prohibition applies to the sale, offer for sale, or possession with intent to sell, or offer for sale vapor products containing vitamin E acetate at any location or by any means in this state including, but not limited to, by means of a telephonic or other method of voice transmission, the mail or any other delivery service, or the internet or other online service.

WSR 20-18-030
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed August 27, 2020, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-094.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-310-1000 WorkFirst—Vocational education, 388-310-1050 WorkFirst—Skills enhancement training, 388-310-1700 WorkFirst—Self-employment, and 388-310-1800 WorkFirst—Post employment services.

Hearing Location(s): On October 6, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2; Or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than October 7, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., October 6, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by September 22, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 388-310-1000, 388-310-1050, 388-310-1700, and 388-310-1800 will correct outdated cross references to working connections and seasonal child care subsidy program rules resulting from the department of early learning (DEL) reorganization into the department of children, youth, and families (DCYF). References to chapter 170-290 WAC will be replaced with references to chapter 110-15 WAC, consistent with recodification of these rules under WSR 18-14-078. These amendments do not change the effect of the existing rules.

Reasons Supporting Proposal: Amendments proposed under this filing correct outdated cross references and provide minor editorial edits that do not change the effect of the existing rules.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, 74.08A.250.

Statute Being Implemented: None.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Olga Walker, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4641.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "This section does not apply to … rules of the department of social and health services relating only to client medical or financial eligibility."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

August 26, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-24-009, filed 11/27/17, effective 12/28/17)

WAC 388-310-1000 WorkFirst—Vocational education. (1) **What is vocational education?**

Vocational education is training that leads to a degree or certificate in a specific occupation, not to result in a bachelor's or advanced degree unless otherwise indicated in subsection (4) of this section, offered by an accredited:

(a) Public and private technical college or school;

(b) Community college;

(c) Tribal college; or

(d) Community based organizations for customized job skills training programs only.

(2) Vocational education may include one or more of the following:

(a) Customized job skills training;

(b) High-wage/high-demand training;

(c) Approved homework and study activities associated with the educational activity;

(d) Remedial/developmental education, prerequisites, basic education or English as a second language training deemed a necessary part of the vocational education program.

(3) **What is customized job skills training?**

Customized job skills training helps you learn skills needed for an identified entry-level job that pays more than average entry-level wages, and is an acceptable WorkFirst activity when an employer or industry commits to hiring or giving hiring preference upon completion.

(4) **What is high-wage/high-demand training?**

(a) There are two types of high-wage/high-demand full-time training options for WorkFirst participants to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology, health care, or other professional-technical programs that allows recipients to start and finish a one-year or shorter state, community, or technical college training program in these fields or other professional-technical programs that meet high-wage/high-demand criteria.

(ii) Certificate/degree completion programs that allow recipients to finish the last year of any certificate or degree program, not to exceed a bachelor's degree, in a high-wage/high-demand field on an exception basis. Employment security department bases the high-wage/high-demand criteria on median income and high-demand occupations with the local labor market.

(b) The department may approve high-wage/high-demand training once in a lifetime without an approved exception to policy.

(c) To qualify for high-wage/high-demand training, you must also:

(i) Meet all of the prerequisites;

(ii) Be able to obtain the certificate or degree within twelve calendar months;

(iii) Participate full time in the training program and make satisfactory progress;

(iv) Work with the employment security department during the last quarter of training for job placement; and

(v) Return to job search once you complete the educational program if still unemployed.

(5) **When may vocational education be included in my individual responsibility plan?**

The department may include vocational education in your individual responsibility plan for up to twelve months if:

(a) Your comprehensive evaluation shows that you:

(i) Need this education to become employed or get a better job; and

(ii) Are able to participate full time in vocational education or combine vocational education with any approved WorkFirst work activity.

(b) You are in an internship or practicum for up to twelve months that is paid or unpaid and required to complete a course of vocational training or to obtain a license or certificate in a high demand program;

(c) You have limited-English proficiency and lack job skills that are in demand for entry-level jobs in your area, and the vocational education program is the only way that you can acquire these skills (because there is no available work experience, community service or on-the-job training that can teach you these skills); or

(d) You meet the requirements in WAC 388-310-1450 and your comprehensive evaluation shows vocational education would help you find and keep employment.

(6) **May I get help with paying the costs of vocational education?**

WorkFirst may pay for the costs of vocational education, such as tuition or books, up to twelve months, if vocational education is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program if you meet criteria in chapter ((~~388-290~~)) 110-15 WAC.

(7) **May the department include vocational education in my individual responsibility plan longer than twelve months?**

The department may increase the twelve-month limit for vocational education training to twenty-four months subject to funding appropriated specifically for this purpose.

AMENDATORY SECTION (Amending WSR 09-14-019, filed 6/22/09, effective 7/23/09)

WAC 388-310-1050 WorkFirst—Skills enhancement training. (1) **What is skills enhancement training?**

Skills enhancement training ((~~(~~)), formerly known as job skills training((~~)~~)), is training or education for job skills required by an employer to provide a person with the ability to obtain employment or to advance or adapt to the changing demands of the workplace. Skills enhancement training may include:

(a) Customized training programs to meet the needs of a specific employer;

(b) General education and training that prepares a person for employment to include vocational education and courses explicitly required for program entry;

(c) Basic education and English as a second language training when such instruction is focused on skills needed for employment, combined in a unified whole with job training or needed to enable the person to perform a specific job or engage in a specific job training program;

(d) Four-year bachelor degree programs at any state-certified college or university; and

(e) Approved homework and study activities.

(2) **Who may provide skills enhancement training?**

The ((~~training may be offered by the~~)) following types of organizations that meet the WorkFirst program's standards for service providers may offer training:

(a) Community based organizations;

(b) Businesses;

(c) Tribal governments; or

(d) Public and private community and technical colleges.

(3) **When can skills enhancement training be included in my individual responsibility plan?**

We may add skills enhancement training in your individual responsibility plan if you are participating the equivalent of twenty or more hours a week in job search, vocational education, issue resolution, paid work or unpaid work that meets the federal definition of core activities.

(4) **Can I get help with paying the costs of skills enhancement training?**

WorkFirst may pay your costs, such as tuition or books, if skills enhancement training is in your individual responsibility plan and there is no other way to pay them. You may also get help with paying your child care costs through the working connections child care program((~~. (See~~)) under chapter ((~~388-290~~)) 110-15 WAC ((~~for the working connections child care program rules.~~)).

AMENDATORY SECTION (Amending WSR 08-07-046, filed 3/14/08, effective 5/1/08)

WAC 388-310-1700 WorkFirst—Self-employment. (1) **What is self-employment?**

When you work for yourself and do not have an employer, you are self-employed.

(2) **When can I be deferred from job search to pursue self-employment?**

(a) To be deferred from job search for self-employment, you must meet all the conditions below:

(i) You must be working at least thirty-two hours a week at your business;

(ii) Your business must generate income for you that is equal to the federal minimum wage times thirty-two hours per week after your business expenses are subtracted.

(iii) Your case manager will refer you to a local business resource center, and they must approve your self-employment plan;

(b) If you do not meet all these conditions, you ((~~can~~)) may still be self-employed, but you will also need to participate in job search or other WorkFirst activities.

(3) **What self-employment services can I get?**

If you are a mandatory participant and have an approved self-employment plan in your individual responsibility plan, you may get the following self-employment services:

(a) A referral to community resources for technical assistance with your business plan.

(b) Small business training courses through local community organizations or technical and community colleges.

(c) Information on affordable credit, business training and ongoing technical support.

(4) **What support services may I receive?**

If you have an approved self-employment plan in your individual responsibility plan all support services are available.

(5) **Can I get childcare?**

Childcare is available if you have an approved self-employment plan in your individual responsibility plan. (See chapter ((~~388-290~~)) 110-15 WAC for working connections child care program rules.)

AMENDATORY SECTION (Amending WSR 13-18-004, filed 8/22/13, effective 10/1/13)

WAC 388-310-1800 WorkFirst—Post employment services. (1) **What is the purpose of post employment services?**

Post employment services help TANF or SFA parents who are working twenty hours or more a week keep and cope with their current jobs, look for better jobs, gain work skills for a career and become self sufficient.

(2) **How do I obtain post employment services?**

(((~~(a)~~))) You ((~~can~~)) may obtain post employment services by:

(((~~(i)~~))) (a) Asking for a referral from the local community service office;

(((~~(ii)~~))) (b) Contacting community or technical colleges; or

(((~~(iii)~~))) (c) Contacting the employment security department.

(3) **Who provides post employment services and what kind of services do they provide?**

(a) The employment security department ((~~can~~)) may help you increase your wages, increase your job skills or find a better job by providing you with:

(i) Employment and career counseling;

(ii) Labor market information;

(iii) Job leads for a better job (sometimes called job development);

(iv) On the job training;

(v) Help with finding a job that matches your interests, abilities and skills (sometimes called job matching); and

(vi) Help with finding a new job after job loss (sometimes called reemployment).

(b) Any Washington state technical and community college ((~~can~~)) may approve a skill-training program for you that will help you advance up the career ladder. Their staff will talk to you, help you decide what training would work best for you and then help you get enrolled in these programs. The college may approve the following types of training for you at any certified institution:

(i) High school/GED((~~,~~)):

(ii) Vocational education training((,));

(iii) Job skills training((,));

(iv) Adult basic education((,));

(v) English as a second language training((,)); or

(vi) Preemployment training.

(4) **What other services are available while you receive post employment services?**

While you receive post employment services, you may qualify for:

(a) Working connections childcare, if you meet the criteria for this program (((described in)) under chapter ((170-290)) 110-15 WAC(())).

(b) Other support services, such as help in paying for transportation or work expenses if you meet the criteria for this program (WAC 388-310-0800).

(c) Other types of assistance for low-income families such as food stamps or help with getting child support that is due to you and your children.

(5) **Who is eligible for post employment services?**

If you are a current TANF or SFA recipient, you may qualify for post employment services if you are working twenty hours or more a week, unless you are in sanction status.

(6) **What if I lose my job while I am receiving post employment services?**

If you now receive TANF or SFA, help is available to you so that you ((can)) may find another job and continue in your approved post employment services.

(a) The employment security department will provide you with reemployment services.

(b) At the same time, your case manager ((can)) may approve support services and childcare for you.

WSR 20-18-031
PROPOSED RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed August 27, 2020, 10:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-05-073.

Title of Rule and Other Identifying Information: WAC 246-817-601 through 246-817-660, dental infection control requirements, the dental quality assurance commission (commission) is proposing amending existing rules and establishing new rule sections in WAC 246-817-601 through 246-817-660 for dental infection control standards to ensure patient safety. The proposed rule amendments clarify dental infection control standards where dentistry is provided in the state of Washington.

Hearing Location(s): On October 23, 2020, at 8:35 a.m.

In response to the coronavirus disease 2019 (COVID-19) public health emergency, the dental quality assurance commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without physical meeting space, will be held instead.

To access the meeting: Please join meeting from your computer, tablet, or smartphone.

Please register for dental quality assurance commission on October 23, 2020, 8:30 a.m. PDT at https://attendee.gotowebinar.com/register/8090024445858444816.

Date of Intended Adoption: October 23, 2020.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, email https://fortress.wa.gov/doh/policyreview, fax 360-236-2901, jennifer.santiago@doh.wa.gov, by October 14, 2020.

Assistance for Persons with Disabilities: Contact Jennifer Santiago, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov, by October 14, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission evaluated the Centers for Disease Control and Prevention (CDC) guidelines as the basis for the proposed rule amendments. Case reports and public health events regarding the transmission of diseases from patient to patient, dental health care provider to patient, and patient to dental health care provider have been published that demonstrate risk that is either new or unrecognized in the past. The proposed rule amendments establish minimum dental infection control requirements that include written policies and procedures with annual staff training, sterilization of low-speed hand piece motors, identification of disinfectants, high volume evacuation, and water line testing.

Reasons Supporting Proposal: The commission evaluated a petition for rule making received on July 5, 2016, requesting specific changes to WAC 246-817-620 and determined the petition for rule-making recommendation would be considered during the collaborative rule-making process. The commission determined that the proposed rule amendments are needed to achieve the goals and objectives of chapter 18.32 RCW. The proposed amendments clearly describe infection control requirements whereever dentistry is provided. The proposed amendments represent the commission's commitment to achieve its statutorily defined goals and objectives by updating and clarifying infection control requirements.

These proposed rule amendments are necessary to ensure the safety of the citizens of Washington. Antibiotic-resistant bacteria persistent on surfaces or skin are becoming more common and more dangerous. The proposed rule amendments are based on science, research, and best industry practice. As of 2019, thirty state dental boards already require that dental health care providers follow the CDC guidelines; the commission determined that it is reasonable for Washington state licensed dentists and dental health care providers to follow these well-tested guidelines as requirements for infection control and prevention in the dental practice setting.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Statute Being Implemented: RCW 18.32.002.

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

Name of Proponent: Dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2893.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email jennifer.santiago@doh.wa.gov, dental@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: WAC 246-817-601 is exempt under RCW 34.05.310 (4)(c). The proposed rule amendment restates the need to prevent disease transmission and includes reference to the 2003 and 2016 CDC guideline documents.

WAC 246-817-610 is exempt under RCW 34.05.310 (4)(d). The proposed rule amendment updates terms and definitions used in the health care industry.

WAC 246-817-620 is exempt under RCW 34.05.310 (4)(d). Repeal is proposed for this section. Many of the requirements from this section have been incorporated into proposed new WAC 246-817-640 and 246-817-655.

WAC 246-817-625 is exempt under RCW 34.05.310 (4)(c). The proposed new section requires compliance with Washington Industrial Safety and Health Act under chapter 49.17 RCW.

WAC 246-817-630 is exempt under RCW 34.05.310 (4)(d). Repeal is proposed for this section. Many of the requirements from this section have been incorporated into new WAC 246-817-650 and 246-817-655.

WAC 246-814-640 is exempt under RCW 34.05.310 (4)(c) and (d). Incorporates portions of repealed WAC 246-817-620 and existing requirements in department of labor and industries rules.

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

The dental quality assurance commission (commission) evaluated CDC Guidelines for Infection Control in Dental Health-Care Settings 2003 and the 2016 Summary of Infection Prevention Practices in Dental Setting: Basic Expectation for Safe Care guidelines as the basis for the proposed rule amendments. Case reports and public health events regarding the transmission of diseases from patient to patient, dental health care provider to patient, and patient to dental health care provider have been published that demonstrate risk that was either unrecognized in the past or new. A CNN October 11, 2016, article titled "Bacteria in dentist's water sends 30 kids to hospital" reported a pediatric dental office in California in 2016 had a plumbing change that created a dead end. Thirty children became severely ill due to Mycobacterium abscessum, out of several hundred patients treated that had been exposed. It was traced to that office and a biofilm in a pipe. Two children were permanently and severely injured. The evidence that biofilms were a hazard had been present for many years but the direct causation is difficult because there is often long latency. A strong educational component is necessary to prevent disease transmission.

The proposed rule amendments incorporate many of the CDC recommendations including:

- Written policies and procedures with annual staff training;
- Sterilization of low-speed hand piece motors;
- Sterilization of single use items when appropriate;
- Storage and wrapped packages, container, or cassette requirements;
- Identification of appropriate disinfectants; and
- Water line testing.

The commission originally determined to proceed with rule amendments on June 3, 2016, after responding to correspondence related to sterilization requirements. A petition for rule making was received on July 5, 2016, requesting specific changes to WAC 246-817-620. The commission evaluated the request and determined the petition for rule-making recommendation would be considered during the collaborative rule-making process.

These rule amendments are necessary to ensure the safety of the citizens. Bacteria resistant to all antibiotics and persistent on surfaces or skin are becoming more common and more dangerous. The proposed rule amendments are based on science, research, and common sense. As of 2019, thirty state dental boards already require that dental health care providers follow the CDC guidelines, it is reasonable for Washington state licensed dentists and dental health care providers to follow these well-tested guidelines for infection control and prevention in the dental practice setting.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

NAICS Code (4, 5 or 6 digit) - 621210.

NAICS Business Description - Offices of dentists.

# of businesses in WA - 3551.

Minor Cost Threshold = 1% of Average Annual Payroll - [(1,212,689*1000)/3551]*(0.01) = $3,415.

SECTION 3: Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional

services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

There are costs for licensed dentists to comply with the proposed rules. Costs are associated with five sections of the proposed rules. Cost estimates are for the average dental office with four operatories. Some dental offices may have fewer or more operatories. There is no anticipation of loss of sales or revenue to comply with the proposed rules. Costs and time associated with complying with the proposed rules were gathered through various sources:

- Bureau of Labor Statistics;
- Dental health care providers direct comments;
- Dental supply vendors; and
- Dental education providers.

WAC 246-817-615 Administrative, education and training, and program evaluation.

Costs greatly differ depending on whether the dentist and staff establish their own written infection prevention policies and training or if the dentist determines to use an outside organization to develop policies and training.

Average staff in a dental office includes one dentist, two hygienists, two dental assistants, and one administrator. Salaries based on the Bureau of Labor Statistics are:

- Dentist - $76.81 to $99.84 hourly wage.
- Dental Hygienist - $35.31 to $45.09 hourly wage.
- Dental Assistant - $18.22 to $20.55 hourly wage.
- Office Administrator - $35.31 to $45.09 hourly wage.

It is assumed that either a staff person or the dentist will develop, maintain, and provide training for infection control. The time spent is estimated at twenty hours for initial development. It is estimated that two hours of initial training will be needed for all staff, and one hour annual training for all staff.

- The cost for developing policies and procedures for twenty hours ranges from $364.40 to $1,996.80 depending on whether the dentist or a dental assistant prepare or revise policies.
- The cost for initial two hours of training ranges from $438.36 to $552.42 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.
- The cost for one hour annual training ranges from $219.18 to $276.21 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.

Estimating a five year useful life for initial policy development and initial two hour training, this option creates an annual cost ranging from $160.55 to $509.84 each year for five years. Add annual training of $219.18 to $276.21 for total annual cost ranges from $379.73 to $786.05.

Estimates were gathered by general internet searches for education and training along with stakeholder feedback. For an outside organization to provide initial development, training, and annual training the cost is significantly lower than above mentioned. There is a one-time cost of $400 for initial development that includes two hours initial training and $225 for an annual one hour training for all staff.

- Staff salary costs for two hours initial training is a one-time cost that ranges from $438.36 to $552.42 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.
- Staff salary costs for one hour annual training ranges from $219.18 to $276.21 for assumed staff of one dentist, two dental hygienists, two dental assistants, and one administrator.

To comply with the proposed rule, this option creates a one-time initial cost ranging from $838.36 to $952.42 that includes organization development and initial two hour staff training. Estimating a five year useful life for organization development and initial two hour training, this option creates an annual cost ranging from $167.67 to $190.48 each year for five years. Add annual one hour training of $219.18 to $276.21 for total annual cost ranges from $386.85 to $466.69 that includes organization cost, initial two hour training and one hour staff annual training.

WAC 246-817-635 Hand hygiene. There are no new anticipated costs. Hand hygiene is not a new requirement as it is currently performed by dental health care providers and is considered standard of practice. The benefit outweighs the cost of the proposed rule as it supports the overarching goal of chapter 18.32 RCW by maintaining patient safety through ensuring dental health care providers follow infection control precautions and recognize risks associated with transmission of diseases from patient to patient, dental health care provider to patient, and patient to dental health care provider.

WAC 246-817-645 Respiratory hygiene and cough etiquette. There is an estimated one-time cost of $3.00 for printing signs available free online. There is an estimated cost of $120 annually for providing patient and visitor tissues and masks when needed.

WAC 246-817-655 Sterilization and disinfection, environmental infection prevention and control. There is a cost for additional low-speed hand piece motors. Additional low-speed hand piece motors are necessary to have a rotation of motors while used motors are sterilized. The average dental office has four operatories and is estimated to have one low-speed hand piece motor for each operatory currently. Each dental office will need an estimated three low-speed hand piece motors for each operatory for a total of twelve motors. The average dental office will need to purchase eight additional low-speed hand piece motors. The commission determined to delay implementation of sterilization of low-speed hand piece motors to August 31, 2022, to help reduce the first-year cost impact of the proposed rules.

Life span of motors vary based on quality of motor purchased.

- 3 year life - $60 each.
- 5-10 year life - $500 to $900 each.
- 10-15 year life - $900 to $1100 each.
- 20 year life - $1100 to $1500 each.

The estimated annual cost ranges depending on the quality of motor purchased and the life span of the motor.

- 3 year life - $160 annually for eight additional motors.
- 5-10 year life - $720 to $800 annually for eight additional motors.
- 10-15 year life - $586.64 to $720 annually for eight additional motors.
- 15-20 year life - $586.64 to $600 annually for eight additional motors.

3 year life span - cost per unit is $60, cost per unit per year based on estimated life span is $20, and cost for eight motors per year based on estimated life span is $160.

5-10 year life span - cost per unit is $500 (5 yr) - $900 (10 yr), cost per unit per year based on estimated life span is $100 (5 yr) - $90 (10 yr), and cost for eight motors per year based on estimated life span is $800 (5 yr) - $720 (10 yr).

10-15 year life span - cost per unit is $900 (10 yr) - $1100 (15 yr), cost per unit per year based on estimated life span is $90 (10 yr) - $73.33 (15 yr), and cost for eight motors per year based on estimated life span is $720 (10 yr) - $586.67 (15 yr).

15-20 year life span - cost per unit is $1100 (15 yr) - $1500 (20 yr), cost per unit per year based on estimated life span is $73.33 (15 yr) - $75 (20 yr), and cost for eight motors per year based on estimated life span is $568.67 (15 yr) - $600 (20 yr).

There is a potential minimal cost for storage of sterile instruments. All dental offices already store equipment and instruments but if they need to purchase new storage, the cost to comply would be negligible.

There is no new cost for the following requirements because they are all existing requirements in WAC 246-817-620 that are being moved to this new section of rule:

- Manufacturer instructions;
- Weekly spore testing;
- Rinsing impressions; and
- Use of barriers or disinfecting surfaces.

There is a cost for Environmental Protection Agency (EPA) registered disinfectant of approximately $4,608 annually for a dental office with four operatories. Most dentists already use EPA registered disinfectant.

The average high volume evacuation (HVE) cost ranges from $89 to $500. The average life span of a HVE is five years. The annual cost ranges from $17.80 to $100 if a dental health care provider purchases a HVE.

WAC 246-817-660 Dental unit water quality. There is a new cost for testing water lines. The average dental office has four operatories. The average test performed at a certified lab is $25 to $50. Additional time for a dental health care provider or other staff to collect samples, send to lab, and maintain a log is approximately fifteen minutes. The total estimated cost is $472.88 to $1199.36 annually. The commission determined to delay implementation of water line testing to December 1, 2021, to help reduce the first-year cost impact of the proposed rules. There is an indeterminate cost to correct any water line deficiencies because there are many variables, until the problem is identified there is no way to determine the cost to correct.

Cost for each test per operatory is $25 - $50 and staff wage to perform the test is $4.56 - $24.96.

Cost for each test for four operatories is $100 - $200 and staff wage to perform the test is $18.22 - $99.84.

Cost for four operatories for four tests (quarterly) is an annual test cost of $400 - $800 and staff wage to perform the test is $72.88 - $399.36.

WAC 246-817-615 has initial one-time costs of $160.55 - $509.84 and annual costs over the life span of $219.18 - $276.21.

WAC 246-817-645 has annual costs over the life span of $120.

WAC 246-817-655 for slow speed motors has annual costs over the life span of $160 - $800.

WAC 246-817-655 for EPA disinfectant has annual costs over the life span of $4,608.

WAC 246-817-655 for HVE has annual costs over the life span of $17.80 - $100.

WAC 246-817-660 has annual costs over the life span of $472.88 - $1,199.36.

Total costs for initial one-time costs are $160.55 - $509.84 and annual costs are $5,597.86 - $7,103.57.

SECTION 4: Analyze whether the proposed rule may impose more than minor costs on businesses in the industry.The commission has determined that costs of $5,758.41 to $7,613.41 annually for the proposed rules will exceed minor economic impact of $3,415 for dentist offices. Costs associated with treating infections range significantly because not all infections are treated the same. In 2009, National Center for Biotechnology Information published an article indicating annually approximately two million patients suffer with healthcare-associated infections (HAIs) in the United States, and nearly ninety thousand could be fatal. The overall direct cost of HAIs to hospitals ranges from US $28 billion to $45 billion. While the range is wide, HAIs are clearly expensive. Most HAIs are considered preventable; however, published guidelines are not congruent. Additionally, the Kaiser Family Foundation Health System Tracker reports the United States spent approximately $129 billion treating infectious diseases in 2017. The Kaiser Family Foundation, a nonprofit organization that provides independent information concerning national health issues, also reported treatment costs for infectious diseases have grown faster than any other category and this may be related to bacterial resistance, new expensive treatments for hepatitis C, and intensity of treatments.

SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule. The proposed rule may have a disproportionate impact on small businesses versus large businesses. Whether a licensed dentist is practicing in an independent practice setting or is part of a larger group or clinic, the infection control requirements applies to where dentistry is provided in the state of Washington.

Licensed dentists work in many settings: Independent practice, partnerships, group practices, community clinics, general dental clinics, and universities. There are 6,659 licensed dentists as of June 30, 2019. We are unable to determine how many licensed dentists work in each different practice setting. Dentists in independent practice or partnerships will incur all the costs to comply with the proposed rules.

Dentists that are part of larger group practices will be able to share in the costs to comply with the proposed rules. Dentists that work for community clinics, general dental clinics, or universities will most likely incur minimal, if any, costs to comply with the proposed rules. As business models differ so does the expectation of who will cover the costs to comply with the proposed rules. Ultimately, the licensed dentist needs to ensure all requirements have been met where dentistry is provided in the state of Washington.

SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why. Although the proposed rule may have disproportionate impact on small businesses versus large businesses, the commission determined to delay implementation of sterilization of low-speed hand piece motors in proposed WAC 246-817-655 and water line testing in proposed WAC 246-817-660 to December 1, 2021, to help reduce the first-year cost impact of the proposed rules.

SECTION 7: Describe how small businesses were involved in the development of the proposed rule.

The commission worked closely with stakeholders and other constituents to minimize the burden of this rule. The commission offered stakeholders many opportunities to participate in rule-making meetings and to provide suggested rule changes and comments. During open public rules meetings, several versions of the rules were discussed. After careful consideration, some of the suggested changes were accepted while others were rejected. Mutual interests were identified and considered through deliberations.

The commission's public participation process encouraged interested individuals to:

- Identify burdensome areas of the existing rule and proposed rule;
- Propose initial or draft rule changes; and
- Refine those changes.

The proposed rule amendments went through several stages of edits, review, and discussion and then further refinement before arriving at the final proposal. The end results of this process are proposed changes that will provide increased rule clarity, guidance and will ultimately be less burdensome than the original rule.

SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The commission does not anticipate any jobs created or lost as a result of compliance with the proposed rule.

September 27, 2020
Aaron Stevens, D.M.D., Chairperson
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-601 Purpose. The purpose of WAC 246-817-601 through ((~~246-817-630~~)) 246-817-660 is to establish requirements for infection control ((~~in dental offices~~)) where dentistry is provided in the state of Washington to protect the health and well-being of the people ((~~of the state of Washington. For purposes of infection control, all dental staff members and all patients shall be considered potential carriers of communicable diseases. Infection control procedures are required to prevent disease transmission from patient to doctor and staff, doctor and staff to patient, and from patient to patient. Every dentist is required to comply with the applicable standard of care in effect at the time of treatment. At a minimum, the dentist must comply with the requirements defined in WAC 246-817-620 and 246-817-630~~)). The Centers for Disease Control and Prevention *Guidelines for Infection Control in Dental Health-Care Settings* 2003, MMWR Vol. 52, No. RR-17, and the *Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care*, March 2016, are the basis for these rules. Case reports and public health events regarding the transmission of diseases from patient to patient, practitioner to patient, and patient to practitioner have been published that demonstrate risks that were either unrecognized in the past or new. This includes people accompanying patients and visitors. A strong educational component for practitioners is necessary to prevent disease transmission from patient to practitioner, practitioner to patient, and patient to patient.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-610 Definitions. The following definitions ((~~pertain to~~)) apply throughout WAC 246-817-601 through 246-817-660 ((~~which supersede WAC 246-816-701 through 246-816-740 which became effective May 15, 1992.~~

~~**"Communicable diseases"** means an illness caused by an infectious agent which can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water or air.~~

~~**"Decontamination"** means the use of physical or chemical means to remove, inactivate, or destroy bloodborne pathogens on a surface or item to the point where they are no longer capable of transmitting infectious particles and the surface or item is rendered safe for handling, use, or disposal.~~

~~**"Direct care staff"** are the dental staff who directly provide dental care to patients.~~

~~**"Sterilize"** means the use of a physical or chemical procedure to destroy all microbial life including highly resistant bacterial endospores~~)) unless the context clearly requires otherwise.

(1) "Hand hygiene" means the use of soap and water when hands are visibly soiled; or use of an alcohol-based hand rub.

(2) "Practitioner" means a licensed dentist under chapter 18.32 RCW, licensed dental hygienist under chapter 18.29 RCW, a licensed expanded function dental auxiliary under chapter 18.260 RCW, a certified dental anesthesia assistant, or a registered dental assistant under chapter 18.260 RCW.

(3) "The Centers for Disease Control and Prevention" or "CDC" means a federal agency that conducts and supports health promotion, prevention and preparedness activities in the United States.

NEW SECTION

WAC 246-817-615 Administrative, education, and training. (1) A licensed dentist shall develop and maintain written infection prevention policies and procedures appropriate for the dental services provided by the facility.

(2) A licensed dentist shall review with all practitioners the current office infection prevention policies and procedures annually. A licensed dentist shall maintain documentation of the annual review with all practitioners for five years.

(3) A practitioner shall complete one hour of current infection prevention standards education annually provided by a qualified individual or organization.

(4) Infection prevention standards education must include:

(a) Standard precautions and prevention of disease transmission;

(b) Prevention of cross-contamination;

(c) Practitioner safety and personal protection equipment;

(d) Hand hygiene;

(e) Respiratory hygiene and cough etiquette;

(f) Sharps safety and safe injection practices;

(g) Sterilization and disinfection of patient care items and devices;

(h) Environmental infection prevention and control;

(i) Dental unit water quality; and

(j) The requirements in WAC 246-817-601 through 246-817-660.

(5) A practitioner shall maintain their personal documentation of infection control prevention standards education for a period of five years.

(6) For the purposes of this section, a qualified individual or organization means a person or entity that has verifiable training, expertise, or experience in all aspects of infection control.

NEW SECTION

WAC 246-817-625 Personnel safety. A practitioner shall comply with the applicable requirements of the Washington Industrial Safety and Health Act under chapter 49.17 RCW.

NEW SECTION

WAC 246-817-635 Hand hygiene. A practitioner shall perform hand hygiene as defined in WAC 246-817-610 in any of these situations:

(1) When hands are visibly soiled;

(2) In the event of barehanded touching of instruments, equipment, materials, and other objects likely to be contaminated by blood, saliva, or respiratory secretions; or

(3) Before and after treating each patient.

NEW SECTION

WAC 246-817-640 Personal protective equipment. (1) A practitioner shall wear gloves whenever there is a potential for contact with blood, body fluids, mucous membranes, nonintact skin, or contaminated equipment.

(a) New gloves are required for each patient.

(b) Gloves must not be washed or reused.

(c) Gloves selection must be based on the performance characteristics of the glove in relation to the task to be performed as applicable in WAC 296-800-16065 and 296-823-15010.

(2) A practitioner shall wear mouth, nose, and eye protection during procedures that are likely to generate aerosols or splashes or splattering of blood or other body fluids.

(3) A practitioner shall comply with Washington state occupational exposure to bloodborne pathogens WAC 296-823-150.

NEW SECTION

WAC 246-817-645 Respiratory hygiene and cough etiquette. (1) A licensed dentist shall post signs in a place visible to individuals receiving services in the premises with instructions to patients with symptoms of respiratory infection to:

(a) Cover their mouth/nose when coughing or sneezing;

(b) Use and dispose of tissues;

(c) Perform hand hygiene after hands have been in contact with respiratory secretions.

(2) A licensed dentist shall provide tissues and no-touch receptacles for disposal of tissues in the dental office.

(3) A licensed dentist shall offer masks to coughing patients and accompanying individuals in the dental office.

NEW SECTION

WAC 246-817-650 Safe injection and sharps safety. (1) A practitioner shall follow the CDC *Summary of Infection Prevention Practices in Dental Settings: Basic Expectations for Safe Care*, March 2016, guidelines for safe injection practices in dental settings.

(2) A practitioner shall use either a one-handed scoop technique or mechanical device designed for holding the needle cap when recapping needles. A practitioner shall not recap used needles by using both hands or any other technique that involves directing the point of a needle toward any part of the body.

(3) A practitioner shall place used disposable syringes and needles, scalpel blades, and other sharp items in appropriate puncture-resistant containers in each operatory.

NEW SECTION

WAC 246-817-655 Sterilization and disinfection, environmental infection prevention and control. A practitioner shall:

(1) Follow the CDC *Guidelines for Infection Control in Dental Health-Care Settings* 2003, MMWR Vol. 52, No. RR-17, Appendix C for Methods for Sterilizing and Disinfecting Patient-Care Items and Environmental Surfaces, including:

(a) Clean and reprocess through disinfection or sterilization reusable critical, semicritical, and noncritical dental equipment and devices according to manufacturer instructions before use on another patient.

(i) Effective August 31, 2022, sterilization of low-speed hand piece motors after use on a patient is required.

(ii) Sterilization is not required for those sections of a battery operated hand piece system that cannot be sterilized according to manufacturer's instructions. However, battery operated hand piece systems that have specific engineering controls to isolate the sections that cannot be sterilized, render those sections "noncritical," must be used if commercially available; those sections that cannot be sterilized must be processed according to manufacturer's instructions between patient uses.

(b) Clean and reprocess through disinfection or sterilization reusable critical, semicritical, and noncritical dental equipment and devices according to manufacturer instructions.

(c) Clean and reprocess reusable dental equipment according to the manufacturer instructions.

(d) All disposable and single-use items, as labeled by the United State Food and Drug Administration, must be discarded after use on a single patient.

(i) Single-use items that need to be tested for size are not considered used unless cemented in the mouth. Single-use items can be cleaned or reprocessed (disinfected or sterilized) when following manufacturer's instructions.

(ii) If a single-use item is not used, but is contaminated or exposed to aerosols during the appointment by being placed on a surface ready to use, it may only be sterilized if the process of doing so does not compromise the efficacy of the item including, but not limited to, anesthetic carpules.

(2) Bag or wrap contaminated instruments in packages, containers, or cassettes in preparation for sterilization.

(a) Store sterile instruments and supplies in a covered or closed area.

(b) Wrapped packages, containers, or cassettes of sterilized instruments must be inspected before opening and use to ensure the packaging material has not been compromised.

(c) Wrapped packages, containers, or cassettes of sterilized instruments must be opened as close to the time of the procedure as possible. Opening in the presence of the patient is preferred.

(d) Instruments sterilized for immediate use do not mandate the use of a bag or a wrap. If the instrument is not used immediately, it must be bagged or wrapped.

(3) Use all mechanical, chemical, and biological monitors according to manufacturer instructions to ensure the effectiveness of the sterilization process.

(4) Test sterilizers by biological spore test method as recommended by the manufacturer on at least a weekly basis when scheduled patients are treated.

(a) In the event of a positive biological spore test, the licensed dentist shall take immediate remedial action as recommended by the manufacturer.

(b) A licensed dentist shall record biological spore tests and results either in the form of a log reflecting dates and person or persons conducting the testing or copies of reports from an independent testing entity. A licensed dentist shall maintain this documentation for a period of five years.

(5) Thoroughly rinse items such as impressions contaminated with blood or saliva. Place and transport items such as impressions to a dental laboratory off-site in a case containment device that is sealed and labeled.

(6) Disinfect all work surfaces after each patient.

(7) Disinfect using an intermediate-level disinfectant having, but not limited to, a tuberculocidal claim, when a surface is visibly contaminated with blood.

(8) Use only United States Environmental Protection Agency registered disinfectants or detergents/disinfectants with label claims for use in health care setting, following the manufacturer's instructions.

(9) Use high volume evacuation (HVE) whenever possible in all clinical situations expected to produce aerosol or spatter, such as, but not limited to, ultrasonics, high-speed hand pieces and air polishing devices. HVE equipment must be installed and maintained to manufacturer's specifications to ensure proper evacuation at the treatment site. HVE devices must be used as intended for HVE. A saliva ejector does not qualify as an HVE device.

(10) The following definitions apply to WAC 246-817-655.

(a) "Critical," "semicritical," and "noncritical" means categories given to patient care items including, but not limited to, dental instruments, devices, and equipment depending on the potential risk of infection associated with intended use.

(i) "Critical items" means those items used to penetrate soft tissue, contact bone, enter into or contact the bloodstream or other normally sterile tissue. Critical items must be sterilized by heat.

(ii) "Noncritical items" means those items used to contact intact skin. Noncritical items must be disinfected with United States Environmental Protection Agency registered hospital disinfectant or detergent.

(iii) "Semicritical items" means those items used to contact mucous membranes or nonintact skin. Semicritical items must be sterilized by heat if heat-tolerant, or by high-level disinfection if a semicritical item is heat-sensitive.

(b) "Disinfect" or "disinfection" means use of a chemical agent on inanimate objects, such as floors, walls, or sinks, to destroy virtually all recognized pathogenic microorganisms, but not necessarily all microbial forms such as bacterial endospores.

(c) "High-level disinfection" means disinfection that inactivates vegetative bacteria, mycobacteria, fungi, and viruses but not necessarily high numbers of bacterial spores.

(d) "High volume evacuation" or "HVE" means the equipment used to remove debris, aerosols, and liquids.

(e) "Remedial action" means manufacturer recommended action necessary to obtain a negative spore test result.

(f) "Sterilize" or "sterilization" means the use of heat, chemical, or other nonchemical procedure to destroy all microorganisms.

NEW SECTION

WAC 246-817-660 Dental unit water quality. (1) A licensed dentist shall use water for nonsurgical procedures that meets United States Environmental Protection Agency regulatory standards for drinking water of five hundred or less colony-forming units or CFUs/mL.

(2) A licensed dentist shall follow dental equipment manufacturer's instructions when testing the water delivery

system for acceptable water quality. If manufacturer's instructions are unavailable, a licensed dentist shall test the water delivery system for acceptable water quality quarterly. A licensed dentist shall test the water delivery system five to ten days after repair or changes in the plumbing system and again at twenty-one to twenty-eight days later.

(a) Effective December 1, 2021, all water lines must be tested.

(i) All water lines for each operatory or dental unit can be pooled as one single sample.

(A) A pooled sample must use an equal amount of water from each water line.

(B) A pooled sample can have up to ten water lines included.

(C) The number of water lines pooled into one sample must be documented.

(ii) All water lines for each operatory or dental unit can be tested individually.

(b) In the event of an unacceptable level of colony-forming units or CFUs, a licensed dentist shall take immediate remedial action. For the purposes of this section, remedial action means any action necessary to reduce the CFUs to five hundred or a lesser number currently recognized by the United States Environmental Protection Agency as acceptable for drinking water.

(c) A licensed dentist shall record the water delivery system testing and maintenance either in the form of a log reflecting dates and person or persons conducting the test or maintenance or copies of reports from an independent testing entity. A licensed dentist shall maintain this documentation for a period of five years.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-817-620	Use of barriers and sterilization techniques.
WAC 246-817-630	Management of single use items.

WSR 20-18-042
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed August 28, 2020, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-108.

Title of Rule and Other Identifying Information: WAC 468-38-100 Pilot escort vehicle operator requirements.

The purpose for this rule change is to allow for online training for pilot/escort operator certification. The current language limits the course to an eight-hour classroom training. The proposal also updates the highly visible safety garment requirements to current specifications for both daytime and nighttime operations.

Hearing Location(s): On October 12, 2020, at 2:40 p.m., at the Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: October 13, 2020.

Submit Written Comments to: Kevin Zeller, P.O. Box 47367, Olympia, WA 98504-7367, email ZellerK@wsdot.wa.gov, fax 360-704-6342, by October 9, 2020.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6342, TTY 711, email EngleK@wsdot.wa.gov, by October 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The original rule specifies an eight-hour classroom training environment. Advancements in technology have allowed online classes to take place successfully. The intent of the proposal is to remove the classroom requirement and to update outdated language on highly visible safety garment requirements.

Reasons Supporting Proposal: The current training provider requested that Washington state department of transportation (WSDOT) and stakeholders consider the online training environment. The pilot/escort oversight committee (PEOC) reviewed the curriculum and agreed that the training methodology and curriculum were conducive for the online training environment. The PEOC is made up of WSDOT, Washington state patrol, department of labor and industries, Washington Trucking Associations, and the Northwest Pilot Car Association. The PEOC supports the online training format and it allows for continuation of training during the current COVID-19 pandemic.

The highly visible garment requirements are outdated in the current rule and need updating to stay consistent with current state requirements.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; and Implementation: Kevin Zeller, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-704-6342.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule change allows for online training courses in addition to the current requirement of in-class training. The proposal reduces the need for travel. There are no costs associated to this rule change.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: The proposed rule changes do not have a cost or fiscal impact associated with them.

August 27, 2020

Shannon Gill, Interim Director
Risk Management and Legal Services Division

AMENDATORY SECTION (Amending WSR 18-13-029, filed 6/11/18, effective 7/12/18)

WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) A certified pilot/escort operator, acting as a warning necessary to provide safety to the traveling public, must accompany an extra-legal load when:

(a) The vehicle(s) or load exceeds eleven feet in width: Two pilot/escort vehicles are required on two lane highways, one in front and one at the rear.

(b) The vehicle(s) or load exceeds fourteen feet in width: One escort vehicle is required at the rear on multilane highways.

(c) The vehicle(s) or load exceeds twenty feet in width: Two pilot/escort vehicles are required on multilane undivided highways, one in front and one at the rear.

(d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet, or when the rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length including load of a tractor/trailer or truck/trailer combination: One pilot/escort vehicle is required at the rear on two-lane highways.

(e) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet: One pilot/escort vehicle is required at the rear on multilane highways.

(f) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet: One pilot/escort vehicle is required at the front on all two-lane highways.

(g) The rear overhang of a load on a single unit vehicle, measured from the center of the rear axle, exceeds twenty feet: One pilot/escort vehicle is required at the rear on two-lane highways.

(h) The height of the vehicle(s) or load exceeds fourteen feet six inches: One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all highways.

(i) The vehicle(s) or load exceeds twelve feet in width on a multilane highway and has a height that requires a front pilot/escort vehicle: One rear pilot/escort vehicle is required.

(j) The operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination when measured from either side of the edge of the load or last vehicle in the combination, whichever is larger: One pilot/escort vehicle is required at the rear on all highways.

(k) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) **Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move?** When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) **Can a certified flag person ever substitute for a pilot/escort vehicle?** In subsection (1)(d) and (e) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration. The flag person is not required to ride in the pilot/escort vehicle but may ride in the transport vehicle with transporter's authorization.

(4) **Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington?** Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator and must comply with the following:

(a) A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties.

(b) A pilot/escort vehicle operator with a driver's license from a jurisdiction other than the state of Washington may acquire a Washington state escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office.

(c) A pilot/escort vehicle operator certification does not exempt a pilot/escort operator from complying with all state laws and requirements of the state in which she/he is traveling.

(d) Every applicant for a state of Washington pilot/escort operator certificate shall attend an eight-hour ((~~classroom~~)) training course offered and presented by a business, organization, government entity, or individual approved by the department. At the conclusion of the course, the applicant will be eligible to receive the certification card after successfully completing a written test with at least an eighty percent passing score. State of Washington pilot/escort vehicle operator certification cards must be renewed every three years.

(5) **What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?**

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle. When the permit is a single trip extra-legal permit, displaying routing information, the pilot/escort operator(s) must have a copy of the permit, including all special conditions and attachments.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(f) Check two-way communication system to ensure clear communications between the pilot/escort vehicle(s) and the transport vehicle and predetermine the channel to be used.

(g) Acknowledge that nonemergency electronic communication is prohibited except communication between pilot/escort operator(s) and the transport vehicle during movement.

(h) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement?** The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to allow time for the extra-legal vehicle to stop or take corrective action as necessary when notified by the front pilot/escort operator. Be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed a distance between pilot/escort vehicle and extra-legal vehicle that would interfere with maintaining clear two-way radio communication; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) **What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement?** The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; and

(g) Pilot/escort operators shall not perform tillerman duties while performing escorting duties. For this section, tillerman refers to an individual that operates the steering of the trailer or trailing unit of the transport vehicle; and

(h) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) **What kind of vehicle can be used as a pilot/escort vehicle?** In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck, including a nonplacarded service truck;

(b) Not exceed a maximum gross vehicle weight or gross weight rating of sixteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW;

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle; and

(f) Not tow a trailer while escorting.

(9) **In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?**

(a) A minimum of one flashing or rotating amber (yellow) light or strobe, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle and visible a full three hundred sixty degrees around the pilot/escort vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle(s).

(d) Nonemergency electronic communications is prohibited except communication between the pilot/escort vehicle(s) and the transport vehicle during movement.

(10) **What additional or specialized equipment must be carried in a pilot/escort vehicle?**

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) For daytime and nighttime activities, a high visibility safety garment designed according to Class 2/3 specifications in ANSI/ISEA ((~~107-1999~~)) 107-2004, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. ((~~The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.~~)) The specifications at a minimum will meet the standard in the *Manual on Uniform Traffic Control Devices* (MUTCD).

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The upper portion of a height pole shall be constructed of flexible material to prevent damage to wires, lights, and other overhead objects or structures. The pole may be carried outside of the vehicle when not in use. See also subsection (14) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) **Can the pilot/escort vehicle carry passengers?** A pilot/escort vehicle may not contain passengers, human or animal, except that:

(a) A certified individual in training status or necessary flag person may be in the vehicle with the approval of the pilot/escort operator.

(b) A service animal may travel in the pilot/escort vehicle but must be located somewhere other than front seat of vehicle.

(12) **Can the pilot/escort vehicle carry any other items, equipment, or load?** Yes, as long as the items, equipment or load have been properly secured; provided that, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator or the pilot/escort vehicle of the duties required by these rules.

(13) **Can a pilot/escort vehicle escort more than one extra-legal load at the same time?** No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) **When and how must a pilot/escort vehicle use a height-measuring device?** The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. The height measuring device (pole) shall be mounted on the front of the lead pilot/escort vehicle. When not in the act of escorting an extra-legal height move, or prerunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) **Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function?** While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

(16) **Are certified pilot/escort vehicle operators required to have commercial auto insurance?** Yes, for hire certified pilot/escort vehicle operators are required to have insurance to conduct the duties associated to this rule:

(a) One hundred thousand dollars for bodily injury to or death of one person in any one accident;

(b) Three hundred thousand dollars for bodily injury to or death of two or more persons in any one accident; and

(c) Fifty thousand dollars for damage to or destruction of property of others in any one accident.

Satisfactory evidence of the insurance shall be carried at all times by the operator of the pilot vehicle, which evidence shall be displayed upon request by a law enforcement officer.

WSR 20-18-043
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed August 28, 2020, 10:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-130.

Title of Rule and Other Identifying Information: WAC 468-38-073 Measurement exclusive devices, Measurement exclusive devices at the rear of a vehicle for the purposes of loading and unloading grant an additional two feet beyond legal length. This rule needs clarification to not limit the exclusion to loading and unloading devices of two feet or less. This change clarifies the intent of the existing rule.

Hearing Location(s): On October 12, 2020, at 3:10 p.m., at the Transportation Building, Nisqually Room, 310 Maple Park Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: October 13, 2020.

Submit Written Comments to: Kevin Zeller, P.O. Box 47367, Olympia, WA 98504-7367, email ZellerK@wsdot.wa.gov, fax 360-704-6342, by October 9, 2020.

Assistance for Persons with Disabilities: Karen Engle, phone 360-704-6362, TTY 711, email EngleK@wsdot.wa.gov, by October 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The original rule did not include clarification that the loading or unloading device was not limited to two feet of length. The purpose is to allow a carrier to have a loading and unloading device that extends two feet beyond legal length not to limit the loading or unloading device itself to two feet of length.

Reasons Supporting Proposal: The interpretation of this rule as it exists allows carriers to extend two-feet beyond legal length with a loading or unloading device; however, enforcement and industry see the current language as vague and open to interpretation. The Washington state patrol suggests that we add the proposed language to clarify the intent of the rule.

Statutory Authority for Adoption: RCW 46.44.090, 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting: Justin Heryford, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-705-7987; and Implementation: Kevin Zeller, 7345 Linderson Way S.W., Tumwater, WA 98501, 360-704-6342.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The rule is being changed to add clarity to the existing language. The change will not add any cost incursion to industry.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: Adding clarification language to the existing rule does not create any type of fiscal impact or cost.

August 27, 2020
Shannon Gill, Interim Director
Risk Management and Legal Services Division

AMENDATORY SECTION (Amending WSR 18-21-168, filed 10/23/18, effective 11/23/18)

WAC 468-38-073 Measurement exclusive devices. (1) **What are the criteria for being a measurement exclusive device?** Generally, measurement exclusive devices are vehicle appurtenances designed and used for reasons of safety, aerodynamics, or efficient vehicle operation. A measurement exclusive device must not carry property, create a space that property could occupy outside of legal or permitted dimensions, or exceed the specific dimensional limitations stated in this section.

(2) **What devices at the front of a single unit vehicle, or power unit in a vehicle combination, are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the front of a single unit vehicle or power unit in a vehicle combination:

(a) Resilient bumpers that do not extend more than six inches from the vehicle;

(b) A fixed step up to three inches deep at the front of an existing automobile transporter until April 29, 2005. It will be the responsibility of the operator of the unit to prove that the step existed prior to April 29, 2002. Such proof can be in the form of a work order for equipment modification, a receipt for purchase and installation of the piece, or any similar type of documentation. After April 29, 2005, the step shall no longer be excluded from a vehicle's length.

(3) **What devices at the front of a semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the front of a semi-trailer or trailer:

(a) A device at the front of a trailer chassis to secure containers and prevent movement in transit;

(b) A front coupler device on a semi-trailer or trailer used in road and rail intermodal operations;

(c) Aerodynamic devices, air deflector;

(d) Air compressor;

(e) Certificate holder (manifest box);

(f) Door vent hardware;

(g) Electrical connector;

(h) Gladhand (air hose connectors joining tractor to trailer);

(i) Handhold;

(j) Hazardous materials placards and holders;

(k) Heater;

(l) Ladder;

(m) Nonload carrying tie-down devices on automobile transporters;

(n) Pickup plate lip (plate at front of trailer to guide fifth wheel under trailer);

(o) Pump offline on tank trailer;

(p) Refrigeration unit;

(q) Removable bulkhead;

(r) Removable stake;

(s) Stabilizing jack (antinosedive device);

(t) Stake pocket;

(u) Step;

(v) Tarp basket;

(w) Tire carrier; and

(x) Uppercoupler.

(4) **What devices at the rear of a single unit vehicle, semi-trailer or trailer are excluded from length determinations?** The following devices have been identified as measurement exclusive when determining length from the rear of a single unit vehicle, semi-trailer or trailer:

(a) Aerodynamic devices that extend up to a maximum of five feet beyond the rear of the vehicle, provided such devices have neither the strength, rigidity nor mass to damage a vehicle, or injure a passenger in a vehicle, that strikes a vehicle so equipped from the rear, and provided also that they do not obscure tail lamps, turn signals, marker lamps, identification lamps, or any other required safety devices, such as hazardous materials placards or conspicuity markings (i.e., reflective tape);

(b) Handhold;

(c) Hazardous materials placards and holder;

(d) Ladder;

(e) Loading and unloading device not to exceed two feet beyond legal length;

(f) Pintle hook;

(g) Removable stake;

(h) Splash and spray suppression device;

(i) Stake pocket; and

(j) Step.

(5) **What devices at the side of a vehicle are excluded from width determinations?** The following devices have been identified as measurement exclusive, not to exceed three inches from the side of the vehicle, when determining width of a vehicle:

(a) Corner cap;

(b) Handhold for cab entry/egress;

(c) Hazardous materials placards and holder;

(d) Lift pad for trailer on flatcar (piggyback) operation;

(e) Load induced tire bulge;

(f) Rain gutter;

(g) Rear and side door hinge and protective hardware;

(h) Rearview mirror;

(i) Side marker lamp;

(j) Splash and spray suppressant device, or component thereof;

(k) Structural reinforcement for side doors or intermodal operation (limited to one inch from the side within the three-inch maximum extension);

(l) Tarping system for open-top cargo area;

(m) Turn signal lamp;

(n) Movable device to enclose the cargo area of a flatbed semi-trailer or trailer, usually called "tarping system," where no component part of the system extends more than three inches from the sides or back of the vehicle when the vehicle is in operation. This exclusion applies to all component parts of a tarping system, including the transverse structure at the front of the vehicle to which the sliding walls and roof of the tarp mechanism are attached, provided the structure is not also intended or designed to comply with 49 C.F.R. 393.106, which requires a headerboard strong enough to prevent cargo from penetrating or crushing the cab; the transverse structure may be up to one hundred eight inches wide if properly centered so that neither side extends more than three inches beyond the structural edge of the vehicle. Also excluded from measurement are side rails running the length of the vehicle and rear doors, provided the only function of the latter, like that of the transverse structure at the front of the vehicle, is to seal the cargo area and anchor the sliding walls and roof. On the other hand, a headerboard designed to comply with 49 C.F.R. 393.106 is load bearing and thus limited to one hundred two inches in width. The "wings" designed to close the gap between such a headerboard and the movable walls and roof of a tarping system are width exclusive, provided they are add-on pieces designed to bear only the load of the tarping system itself and are not integral parts of the load-bearing headerboard structure;

(o) Tie-down assembly on platform trailer;

(p) Wall variation from true flat; and

(q) Weevil pins and sockets on a platform or low-bed trailer (pins and sockets located on both sides of a trailer used to guide winch cables when loading skid mounted equipment).

(6) **Are there weight measurement exclusive devices?** Yes. Any vehicle equipped with idle reduction technology, designed to promote reduced fuel usage and emissions from engine idling, may have up to four hundred pounds in total gross, axle, tandem or bridge formula weight exempt (excluded) from the weight measurement. To be eligible for the weight exemption, the vehicle operator must be able to prove:

(a) By written certification the weight of the idle reduction technology; and

(b) By demonstration or certification, that the idle reduction technology is fully functional at all times.

The weight exemption cannot exceed five hundred fifty pounds or the certified weight of the unit, whichever is less.

(7) **Can exclusion allowances be combined to create a larger allowance (i.e., adding a five-foot aerodynamic device to a two-foot loading/unloading device for a total exclusion of seven feet)?** No. Each exclusion allowance is specific to a device and may not be combined with the exclusion allowance for another device.

(8) **Can a device receive exclusion if it is not referenced in law or administrative rule?** If the device meets the criteria in subsection (1) of this section, a request for mea-

surement exclusion may be made to the administrator for commercial vehicle services. If approved for an exclusion allowance, the administrator will provide the requestor a written authorization.

WSR 20-18-059
PROPOSED RULES
HEALTH CARE AUTHORITY
[Filed August 31, 2020, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-055.

Title of Rule and Other Identifying Information: WAC 182-507-0130 Refugee medical assistance.

Hearing Location(s): On October 6, 2020, at 10:00 a.m.

In light of the current public health emergency and the Governor's Safe Start plan, it is unknown whether, by the date of this public hearing, restrictions on meeting in public places will be eased. Therefore, this hearing is being held virtually only. This will not be an in-person hearing and there is not a physical location available.

To attend, you must register **prior** to the public hearing (October 6, 2020, 10:00 a.m. Pacific Time) at https://attendee.gotowebinar.com/register/4998350967078505 07. Webinar ID 109-728-027.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than October 6, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by October 6, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email amber.lougheed@hca.wa.gov, by September 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending subsection (8) of WAC 182-507-0130 to specify circumstances under which an individual may receive additional months of refugee medical assistance benefits. The agency is also making nonsubstantive changes for consistency with other agency rules.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule related to client program eligibility does not impose any costs on businesses.

August 31, 2020
Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-19-001, filed 9/5/12, effective 10/6/12)

WAC 182-507-0130 Refugee medical assistance (RMA). (1) ((~~An individual is~~)) You are eligible for refugee medical assistance (RMA) if all the following conditions are met. ((~~The individual~~)) You:

(a) Meet((~~s~~)) immigration status requirements of WAC 182-507-0135;

(b) ((~~Has~~)) Have countable resources below one thousand dollars on the date of application;

(c) ((~~Has~~)) Have countable income equal to or below two hundred percent of the federal poverty level (FPL) on the date of application. The following income is not considered when determining eligibility for RMA:

(i) Resettlement cash payments made by the voluntary agency (VOLAG);

(ii) Income of a sponsor is not counted unless the sponsor is also part of ((~~the individual's~~)) your assistance unit; and

(iii) Income received after the date of application.

(d) Provide((~~s~~)) the name of the VOLAG which helped bring ((~~the individual~~)) you to the United States so that the department of social and health services (DSHS) can promptly notify the VOLAG (or sponsor) about the medical application.

(2) ((~~An individual who~~)) If you receive((~~s~~)) refugee cash assistance (RCA) ((~~is~~)) you are eligible for RMA as long as ((~~the individual is~~)) you are not otherwise eligible for medicaid or a children's health care program as described in WAC 182-505-0210. ((~~An individual does~~)) You do not have to apply for or receive RCA in order to qualify for RMA.

(3) ((~~An individual is~~)) You are not eligible to receive RMA if ((~~the individual is~~)) you are:

(a) Already eligible for medicaid or a children's health care program as described in WAC 182-505-0210;

(b) A full-time student in an institution of higher education unless the educational activity is part of a DSHS-approved individual responsibility plan (IRP); or

(c) A nonrefugee spouse of a refugee.

(4) If approved for RMA, the agency or its designee issues an approval letter in both English and ((~~the individual's~~)) your primary language. The agency or its designee also sends a notice every time there are any changes or actions taken which affect ((~~the individual's~~)) your eligibility for RMA.

(5) ((~~An individual~~)) You may be eligible for RMA coverage of medical expenses incurred during the three months

prior to the first day of the month of the application. Eligibility determination will be made according to medicaid rules.

(6) If you are a victim of human trafficking you must provide the following documentation and meet the eligibility requirements in subsections (1) and (2) of this section to be eligible for RMA:

(a) Adults, eighteen years of age or older, must provide the original certification letter from the United States Department of Health and Human Services (DHHS). No other documentation is needed. The eight-month eligibility period will be determined based on the entry date on ((~~the individual's~~)) your certification letter;

(b) A child victim under the age of eighteen does not need to be certified. DHHS issues a special letter for children. Children also have to meet income eligibility requirements;

(c) A family member of a certified victim of human trafficking must have a T-2, T-3, T-4, or T-5 visa (derivative T-Visas), and the family member must meet eligibility requirements in subsections (1) and (2) of this section.

(7) The entry date for an asylee is the date that ((~~the individual's~~)) asylum status is granted. For example, ((~~an individual~~)) you entered the United States on December 1, 1999, as a tourist, then applied for asylum on April 1, 2000, interviewed with the asylum office on July 1, 2000, and ((~~was~~)) were granted asylum on September 1, 2000. The date of entry is September 1, 2000, and that is the date used to establish eligibility for RMA.

(8) RMA ends on the last day of the eighth month from the month ((~~the individual~~)) you entered the United States. For example, ((~~an individual who~~)) if you entered the United States on May 28, 2011, ((~~is~~)) you are eligible through the end of December 2011. You may receive RMA benefits for more months if you are in a category of persons for whom the federal Office of Refugee Resettlement has extended the eligibility period.

(9) ((~~An individual~~)) If you are approved for RMA ((~~is~~)) you are continuously eligible through the end of the eighth month after ((~~the individual's~~)) your entry to the United States, regardless of an increase in income.

(10) The agency, or its designee, determines eligibility for medicaid and other medical programs for ((~~an individual's~~)) your spouse when the spouse arrives in the United States. If the spouse is not eligible for medicaid due to ((~~the~~)) your countable income ((~~of the individual~~)), the spouse is still eligible for RMA for eight months following the spouse's entry into the United States.

(11) ((~~An individual who~~)) If you disagree((~~s~~)) with a decision or action taken on the case by the agency, or its designee, ((~~has~~)) you have the right to request a review of the case action(s) or request an administrative hearing (see chapter 182-526 WAC). The request must be received by the agency, or its designee, within ninety days of the date of the decision or action.

WSR 20-18-060
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed August 31, 2020, 10:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-099 filed on March 30, 2020.

Title of Rule and Other Identifying Information: WAC 220-500-200 Livestock grazing on department lands.

Hearing Location(s): On October 23-24, 2020, at 8:00 a.m.

Webinar and/or conference call. This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commi sssion/meetings or contact the commission office at 360-902-2267 or commission@dfw.wa.gov for instructions on how to join the meeting.

Date of Intended Adoption: November 20, 2020.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email Rules.Coordinator@dfw.wa.gov, rule comment https://www.surveymonkey.com/r/DFWGRAZING20, SEPA comment https://wdfw.wa.gov/licenses/environmental/sepa/open-comments, by September 24, 2020.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2346, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by October 14, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to clarify how the Washington department of fish and wildlife (WDFW) manages and implements grazing on lands owned or managed by WDFW. Specifically, grazing must be consistent with WDFW's mission, management objectives, and strategic plan. This language would replace existing language that says that grazing must be consistent with desired ecological conditions.

The commission currently does not review grazing permits being renewed. This amendment clarifies that permits up for renewal include permits where grazing has occurred within the last ten years, and that grazing permit renewals are not issued where only temporary permits have previously occurred. Existing rule states that temporary permits are those permits that have been issued for a period of not more than one year.

The proposed rule also requires that the commission must approve, rather than just review, all nontemporary grazing activity on lands that have not been grazed within the past ten years.

The rule also adds that commission review is not required for permits for land acquired within the previous twelve months, but specifies that such permits are limited to a duration of three years after which time a grazing permit must be approved by the commission before it can be renewed.

The proposed rule clarifies that grazing plans are not required for permits where livestock grazing will last for fewer than fourteen days, whereas the current language refers to permits lasting less than two weeks. Through this change, the fourteen days need not necessarily be consecutive. The

amendment also allows WDFW to discontinue a grazing permit upon expiration of a permit.

Reasons Supporting Proposal: The proposed rule clarifies and strengthens WDFW's grazing rule, and promotes consistency with WDFW's mission, objectives, and strategic plan. It adds the requirement for commission approval of new grazing permits where grazing has not occurred within the previous ten years.

The commission approval exception for land acquired in the previous twelve months allows WDFW to acquire land and maintain grazing activity ongoing prior to and during the acquisitions process while the department measures ecological integrity and plans future management.

Clarifications and other proposed amendments will result in more comprehensive statewide implementation of WDFW's grazing program consistent with WDFW's mission, management objectives and strategic plan.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, and 77.12.240.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required for this rule making under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4). The proposed rule does not affect small businesses. The proposed rule describes how grazing activities are to occur on lands owned or managed by WDFW. The development and submission of a grazing plan is already in existing regulations and such plans are typically done by WDFW staff.

August 31, 2020
Michele K. Culver
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

WAC 220-500-200 Livestock grazing on department of fish and wildlife lands. All persons wishing to apply for a grazing permit for acreage managed by the Washington department of fish and wildlife should contact the ((~~Washington Department of Fish and Wildlife, 600 North Capitol Way~~)) department at P.O. Box 43200, Olympia, Washington ((~~98501-1091~~)) 98504-3200.

(1) The director is authorized to ((~~enter into~~)) issue grazing permits when the director determines that ((~~a~~)) the grazing permits will be consistent with the ((~~desired ecological condition for those lands or the~~)) department's mission, management objectives, and strategic plan. ((~~Except for temporary permits, or permits that are being renewed or renegotiated with existing permittees, grazing permits shall first be submitted to the commission, which may review the permit to ensure it conforms with commission policy. If, within thirty days, the commission has not disapproved the permit, the director shall be deemed authorized to enter into that permit.~~

~~(2) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. The director may advertise and sell a permit to use department lands for grazing at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so.~~

~~(3) The term of each grazing permit shall be no greater than five years. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee, negotiate a new permit with a new grazing operator, or sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. The director may grant a term longer than five years only with the prior approval of the commission.~~

~~(4) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need be charged.~~

~~(5) Except for temporary permits lasting less than two weeks, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological condition, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.~~

~~(6) The director may cancel a permit (a) for noncompliance with the terms and conditions of the permit, or (b) if the area described in the permit is included in a land use plan determined by the agency to be a higher and better use, or (c) if the property is sold or conveyed, or (d) if damage to wildlife or wildlife habitat occurs.~~

~~(7)~~)) (2) A temporary permit may be granted by the director to satisfy short-term needs where benefits to wildlife management programs and the public interest can be demonstrated. The term of a temporary permit shall not exceed one year and no fee need necessarily be charged.

(3) With the following three exceptions, the commission must approve grazing permits prior to issuance to ensure that they conform to commission policy:

(a) Temporary permits;

(b) Permits that are being renewed or renegotiated for acreage where the department has permitted nontemporary grazing during the previous ten years; and

(c) Permits that are being issued for acreage acquired by the department within the previous twelve months.

(4) A permit issued without commission review on acreage acquired by the department within the previous twelve months must not exceed an initial duration of three years, and may not be subsequently reissued before being submitted to the commission for review and approval.

(5) The director shall negotiate grazing permits with potential grazing operators to ensure the highest benefits to fish and wildlife. When an existing permit expires or is about to expire, the director may renew the permit for up to another five years, renegotiate the grazing permit with the existing permittee or with a new grazing operator, decline to reissue the permit and provide notice of and rationale for nonrenewal by the end of the calendar year of the most recent permitted grazing season, or advertise and sell the permit at public auction to the highest bidder. The director is authorized to reject any and all bids if it is determined to be in the best interest of the fish and wildlife to do so. No grazing permit shall have a term exceeding five years unless the commission grants prior approval for a longer term.

(6) Except for temporary permits where grazing on department managed lands is allowed for the equivalent of fewer than fourteen total days, each grazing permit proposal shall be accompanied by a domestic livestock grazing management plan that includes a description of ecological impacts, desired ecological conditions, fish and wildlife benefits, a monitoring plan, and an evaluation schedule for lands that will be grazed by livestock. Grazing management lands will address ecosystem standards referenced in RCW 77.12.204. The department shall inspect the site of a grazing permit no less than two times each year. The director shall retain the right to alter any provision of the plan as required to benefit fish or wildlife management, public hunting and fishing, or other recreational uses.

(7) The director may cancel a permit:

(a) For noncompliance with the terms and conditions of the permit;

(b) If the area described in the permit is included in a land use plan determined by the agency to be a higher and better use;

(c) If the property is sold or conveyed; or

(d) If damage to wildlife or wildlife habitat occurs.

Notice of and rationale for cancellation will be provided to the permittee as far in advance as possible.

(8) All lands covered by any grazing permit agreement shall at all times be open to public hunting, fishing and other wildlife recreational uses, consistent with applicable seasons and rules, unless such lands have been closed by action of the commission or emergency order ((~~of~~)) by the director.

WSR 20-18-061
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION
[Filed August 31, 2020, 11:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-05-054.

Title of Rule and Other Identifying Information: Chapter 468-58 WAC, Limited access highways, specifically WAC 468-58-080 guides for control of access on crossroads and interchange ramps.

Hearing Location(s): On October 12, 2020, at 3:30 p.m., at Washington State Department of Transportation (WSDOT) Headquarters Building, Nisqually Conference Room, 310 Maple Park Avenue S.E., Olympia, WA 98501.

Date of Intended Adoption: October 13, 2020.

Submit Written Comments to: Ahmer Nizam, P.O. Box 47329, Olympia, WA 98504-7329, email nizama@wsdot.wa.gov, by October 9, 2020.

Assistance for Persons with Disabilities: Contact Karen Engle, phone 360-704-6362, TTY 711, email Engleka@wsdot.wa.gov, by October 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 468-58-080 (1)(a) prohibits any access connections to fully controlled limited access highway ramps. The proposed revision establishes an exception to allow direct ramp access for transit buses at the discretion of WSDOT.

Reasons Supporting Proposal: Under certain scenarios, transit facilities situated nearby to limited access highway interchanges can create challenges to operational efficiency and maintaining optimal safety performance. Authorizing direct access to ramps for transit buses only can, in some cases, address these issues while also providing for more efficient transit operations.

Statutory Authority for Adoption: RCW 47.52.027, 47.01.101.

Statute Being Implemented: RCW 47.52.027.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Implementation will be on a case-by-case basis at the discretion of WSDOT and based on a thorough review of safety and operational considerations.

Name of Proponent: Ahmer Nizam, WSDOT, development division, governmental.

Name of Agency Personnel Responsible for Drafting: Ahmer Nizam, Technical Services, 360-705-7271; Implementation: LeRoy Patterson, Access Management, 360-273-5921; and Enforcement: State Design Engineer, Development Division, 360-705-7231.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Relate only to internal government operations; relate to the process of agency hearings or applying for a license or permit.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a fil-

ing or related process requirement for applying to an agency for a license or permit.

August 31, 2020
Shannon Gill, Interim Director
Risk Management and Legal Services

AMENDATORY SECTION (Amending WSR 03-11-076, filed 5/20/03, effective 6/20/03)

WAC 468-58-080 Guides for control of access on crossroads and interchange ramps. (1) Fully controlled highways, including interstate.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any "off" or "on" interchange ramp from a fully controlled limited access highway except as authorized under (e) of this subsection. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas "off" and "on" ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) There shall be no direct connections from the limited access facility in rural areas to local service or frontage roads except through interchanges.

(c) In both urban and rural areas access control on a fully controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(d) Full control of access should be provided along the crossroad from the centerline of a ramp or terminus of a transition taper for a minimum distance of three hundred feet. Upon determination by the department, full control of access may be provided for the first one hundred thirty feet from the centerline of the ramp or terminus of a transition taper and partial control or modified control of access may be provided for the remainder of the distance to the frontage road or local road for a total minimum distance for the two types of control of three hundred feet. Type A, B, C, D, E, and F road approaches, as defined hereafter under subsection (3) of this section, "general," may be permitted on that portion of the crossroad on which partial or modified control of access is established.

(e) Direct ramp access for transit buses may be allowed where solely determined by the department.

(2) Partially controlled highways.

(a) There shall be no connections to abutting property or local service or frontage roads within the full length of any "off" or "on" interchange ramp from a partially controlled limited access highway. Such ramp shall be considered to terminate at its intersection with the local road which undercrosses or overcrosses the limited access facility, provided that in urban areas "off" and "on" ramps may be terminated at local streets other than crossroads where necessary to service existing local traffic.

(b) In both urban and rural areas access control on a partially controlled highway shall be established along the crossroad at an interchange for a minimum distance of three hundred feet beyond the centerline of the ramp or terminus of transition taper. If a frontage road or local road is located in a generally parallel position within three hundred fifty feet of a ramp, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad.

(c) Access control limits at the crossroads on a partially controlled highway should be established along the crossroad at a grade intersection for a minimum distance of three hundred feet from the centerline of the nearest directional roadway. If a parallel road is located within three hundred fifty feet of said grade intersection, access control should be established along the crossroad and in addition for a minimum distance of one hundred thirty feet in all directions from the center of the intersection of the parallel road and crossroad. Type D, E, and F approaches may be permitted closer than one hundred thirty feet from the center of the intersection only when they already exist and cannot reasonably be relocated.

(d) Access control limits at intersections on modified control highways should be established along the cross road for a minimum distance of one hundred thirty feet from the centerline of a two-lane highway or for a minimum of one hundred thirty feet from centerline of the nearest directional roadway of a four-lane highway. Type D, E, and F approaches should be allowed within this area only when no other reasonable alternative is available.

(3) General.

(a) Access control may be increased or decreased beyond or under the minimum requirements to fit local conditions if so determined by the department.

(b) Type A, B, C, D, E, and F approaches are defined as follows:

(i) Type A approach. Type A approach is an off and on approach in legal manner, not to exceed thirty feet in width, for sole purpose of serving a single family residence. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(ii) Type B approach. Type B approach is an off and on approach in legal manner, not to exceed fifty feet in width, for use necessary to the normal operation of a farm, but not for retail marketing. It may be reserved by abutting owner for specified use at a point satisfactory to the state at or between designated highway stations.

(iii) Type C approach. Type C approach is an off and on approach in legal manner, for special purpose and width to be agreed upon. It may be specified at a point satisfactory to the state at or between designated highway stations.

(iv) Type D approach is an off and on approach in a legal manner not to exceed fifty feet in width for use necessary to the normal operation of a commercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(v) Type E approach is a separated off and on approach in a legal manner, with each opening not exceeding thirty feet in width, for use necessary to the normal operations of a com-

mercial establishment. It may be specified at a point satisfactory to the state at or between designated highway stations.

(vi) Type F approach is an off and on approach in a legal manner, not to exceed thirty feet in width, for the sole purpose of serving a wireless communication site. It may be specified at a point satisfactory to the state at or between designated highway stations.

The state shall only authorize such approach by the issuance of a nonassignable permit. The permit allows site access for the normal construction, operation and maintenance of the wireless communication site for the permit holder and its contractors but not its subtenants. If a sale or merger occurs that affects an existing wireless communication site, the new wireless communication provider will be authorized to utilize said approach upon the state's receipt of written notice of the sale or merger action. The wireless communication site access permit may be canceled upon written notice for reasons specified in the wireless communication site access permit general provisions. The permit will only be issued if it meets all state criteria, including, but not limited to, design and safety standards.

Only one wireless communication site access user per permit shall be allowed, but more than one permit may be issued for a single Type F approach.

Each permitted access user shall be required to pay to the state five hundred dollars annually in compensation for use of the state-owned access rights, at the time of the issuance of the permit and each year thereafter.

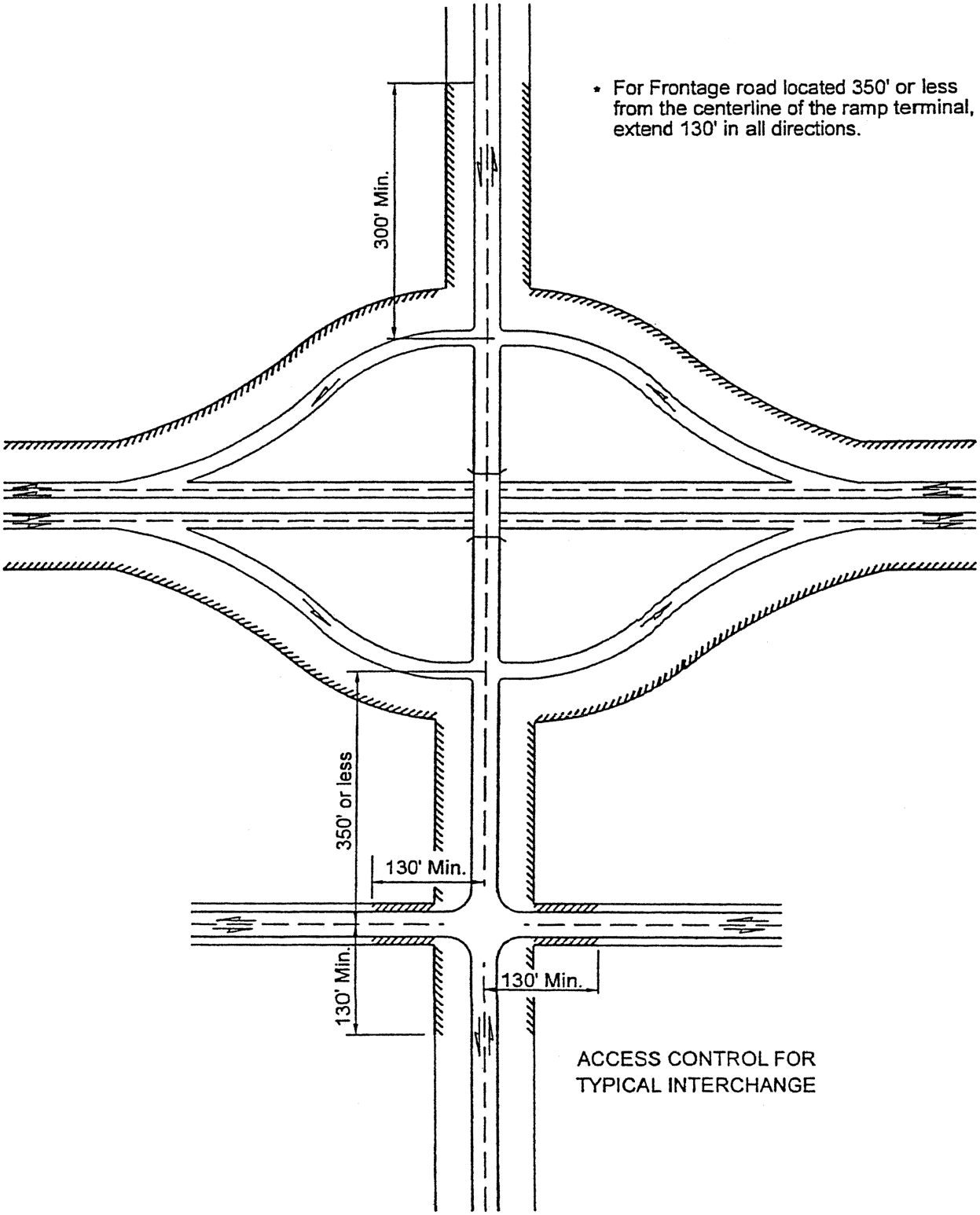
Since the state is the owner of the access, Type F approach permits shall not be issued pursuant to chapter 47.50 RCW and shall not confer a property right upon the permittee(s). An applicant for a Type F approach permit shall pay a nonrefundable access application fee when application is made in the amount of five hundred dollars for investigating, handling and granting the permit.

An application for wireless communication site access permit shall receive a response from the department of transportation within thirty working days from date of receipt of said application.

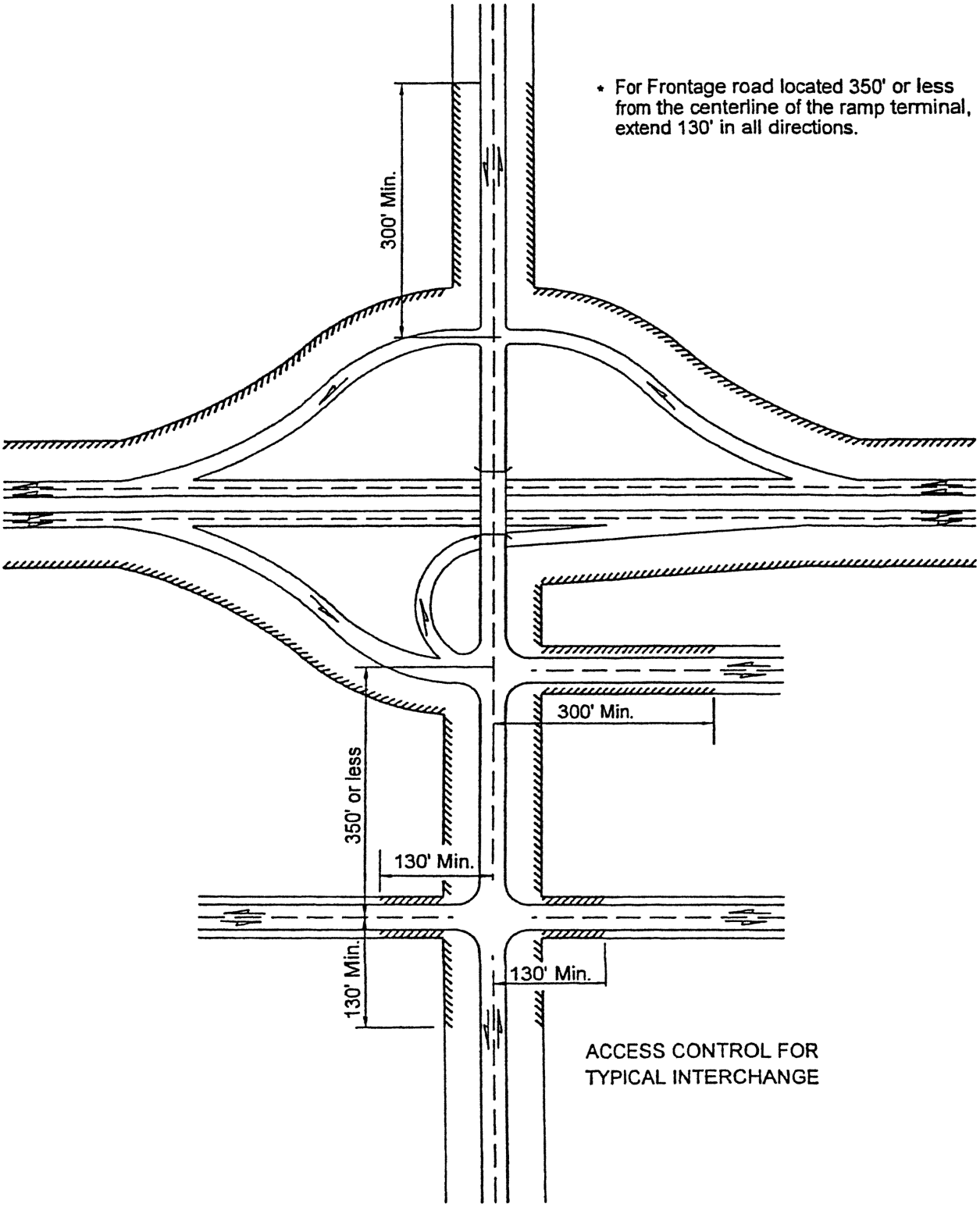
(c) Under no circumstances will a change in location or width of an approach be permitted unless approved by the secretary. Noncompliance or violation of these conditions will result in the immediate closure of the approach.

(d) Commercial approaches shall not be permitted within the limits of access control except where modified access control has been approved by the department.

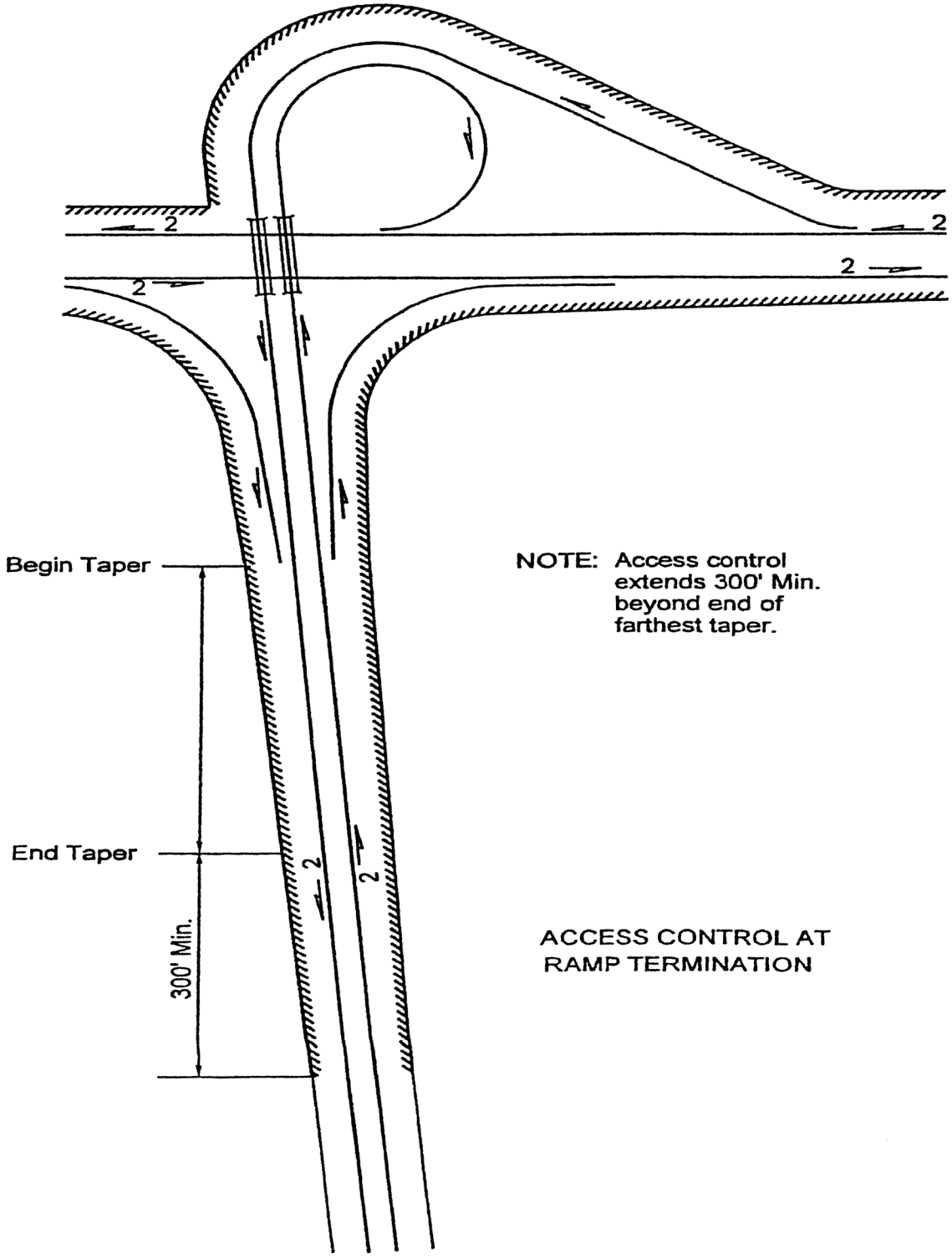
(e) All access control shall be measured from the centerline of the ramps, crossroads or parallel roads or from the terminus of transition tapers. On multiple lane facilities measurement shall be from the centerline of the nearest directional roadway.

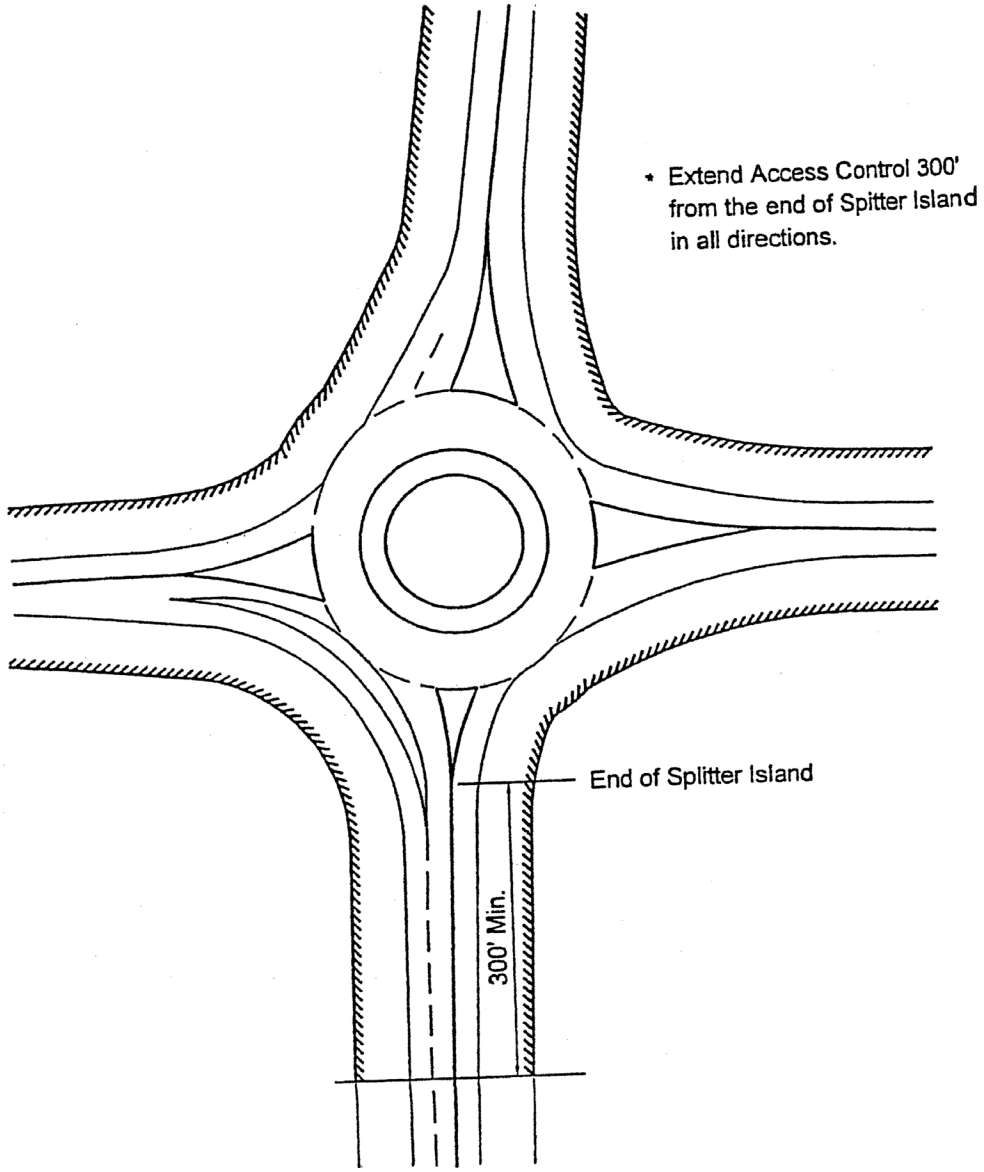


ACCESS CONTROL FOR TYPICAL INTERCHANGE

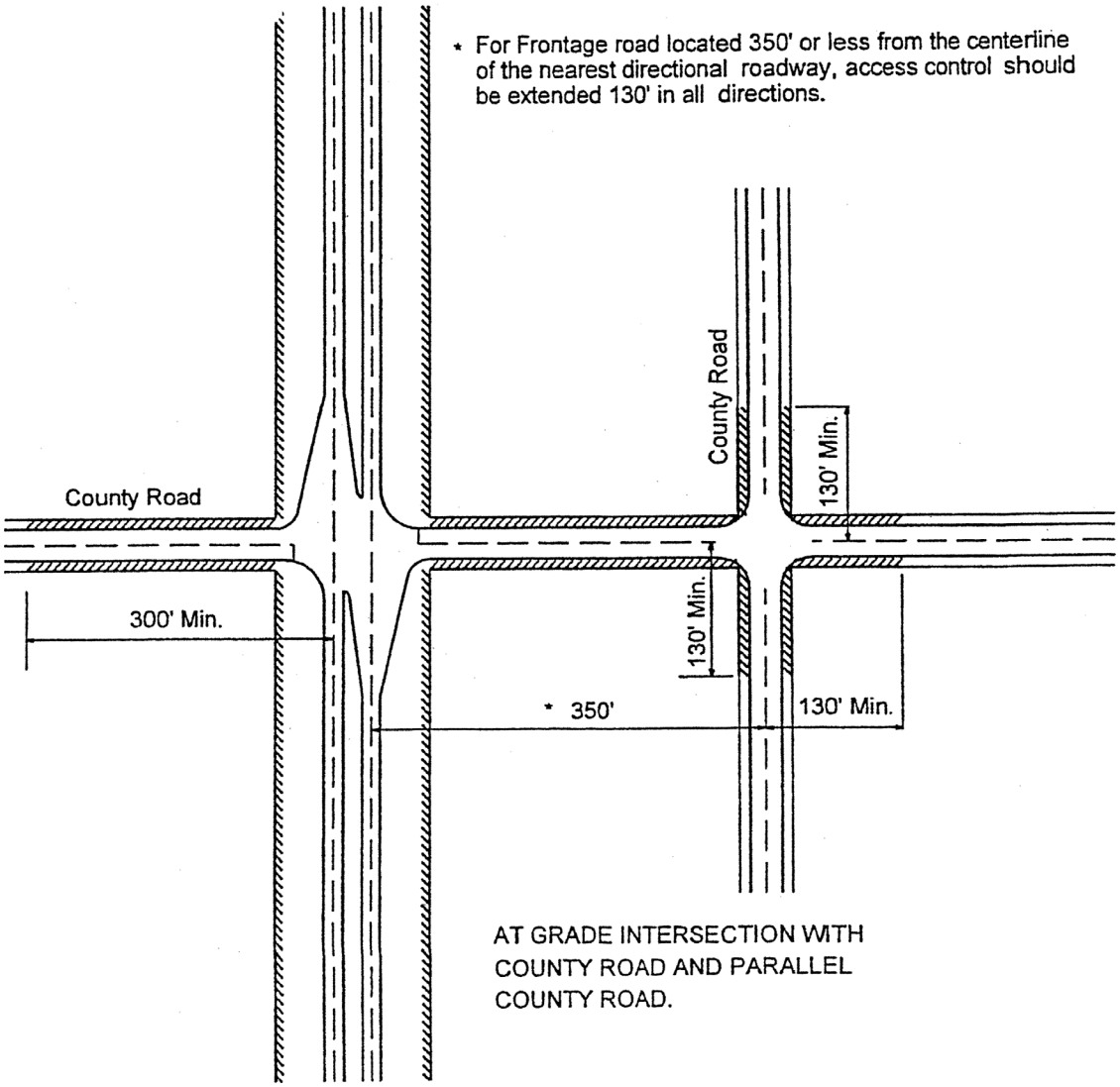


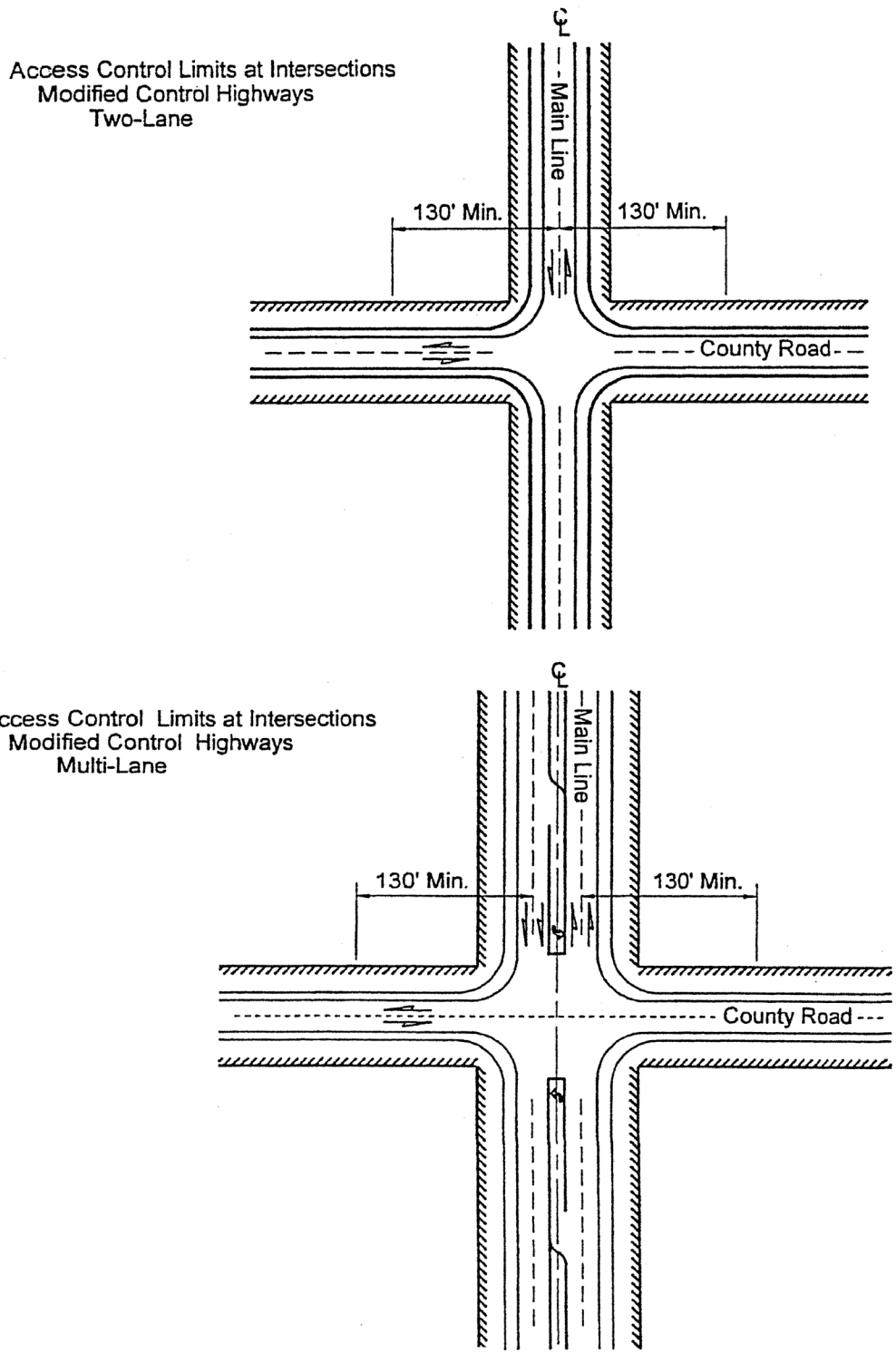
ACCESS CONTROL FOR
TYPICAL INTERCHANGE


2
2
2
2
Begin Taper
End Taper
300' Min.
2
2
NOTE: Access control extends 300' Min. beyond end of farthest taper.
ACCESS CONTROL AT RAMP TERMINATION



ACCESS CONTROL FOR TYPICAL ROUNDABOUT


* For Frontage road located 350' or less from the centerline of the nearest directional roadway, access control should be extended 130' in all directions.
County Road
130' Min.
County Road
300' Min.
130' Min.
* 350'
130' Min.
AT GRADE INTERSECTION WITH COUNTY ROAD AND PARALLEL COUNTY ROAD.



ACCESS CONTROL LIMITS AT INTERSECTIONS

WSR 20-18-068
WITHDRAWAL OF PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Filed August 31, 2020, 4:20 p.m.]

On June 5, 2020, the Washington utilities and transportation commission (commission) filed a Proposed rule making (CR-102) to consider additions and modifications to certain sections in chapter 480-109 WAC, Electric companies—Acquisition of minimum quantities of conservation and renewable energy as required by the Energy Independence Act at WSR 20-13-014. The commission intends to file a new CR-102 on this subject with revised proposed rules, and will provide stakeholders with an additional comment period prior to holding an adoption hearing. The commission, therefore, requests that the CR-102 published in WSR 20-13-014 be withdrawn.

The commission will notify stakeholders in this rule making docket of the withdrawal of this CR-102.

Mark L. Johnson
Executive Director

WSR 20-18-070
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-01—Filed September 1, 2020, 7:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-092.

Title of Rule and Other Identifying Information: Raise the allowable amount for risk reduction goods and services.

Hearing Location(s): On October 30, 2020, at 9:00 a.m., at Office of the Insurance Commissioner, 302 Syd Snyder Avenue S.W., Suite 200, Olympia, WA 98501.

Remote access information for public testimony will be made available at the webpage https://www.insurance.wa.gov/increasing-allowable-amount-risk-reduction-goods-and-services-r-2020-01.

Date of Intended Adoption: November 5, 2020.

Submit Written Comments to: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is considering amending WAC 284-33-030 to increase the allowable amount for risk reduction goods and services. For the noncommercial insurance companies that offer these types of goods and services, the twelve month aggregate limit would be raised to $7,500.

Reasons Supporting Proposal: Reducing property damage claims is to the benefit of the insured and the insurance company. For insureds, property damage claims can be very disruptive and lengthy to get their property back to pre-loss condition and may raise their premiums post loss. For insurance companies, claim cost can equal hundreds of millions of dollars (homeowner line of business for Washington state for 2018 had $941 million in incurred losses). Raising the allowable amount a noncommercial insurer can provide its insured over a twelve month aggregate period for risk mitigation goods and services further encourages insurance companies to assist their insureds in decreasing claim frequency and severity.

Statutory Authority for Adoption: RCW 48.02.060(3), 48.18.559.

Statute Being Implemented: RCW 48.18.558, 48.18.559, 48.19.530.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: David Forte, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7042; Implementation and Enforcement: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7000.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Forte, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7042, email DavidF@oic.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: To better understand the market and the number of companies that may be impacted by this proposed rule, prior to filing the Preproposal statement of inquiry the commissioner issued a survey to all insurance companies that write noncommercial property policies in Washington state. Of the one hundred twenty-nine companies that responded, seven distinct insurance groups informed the commissioner they offer, or plan to offer, risk reduction goods and services to their insured that may be impacted by the rule making. RCW 19.85.025(4) does not require the commissioner to provide a small business economic impact statement (SBEIS) if the rule does not affect small businesses. RCW 19.85.020(3) defines a small business in this context as a corporation that has fifty or fewer employees. The seven insurance companies have reported employees that number between two hundred and thirty-nine thousand. Therefore, none of these companies impacted by the proposed rule may be considered small business[es] under RCW 19.85.020(3) and therefore the commissioner is exempt from developing an SBEIS.

September 1, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 18-24-084, filed 12/3/18, effective 1/3/19)

WAC 284-33-030 Goods and services. (1) All goods or services, or both, that are approved by the commissioner to be included within a property insurer's risk reduction program, or pilot risk reduction program, or both, must be implemented by the insurer to reduce either the probability of damage or extent of damage, or both, by a peril covered under the property policy, and may include:

(a) Smoke alarms;

(b) Fire extinguishers;

(c) Natural gas detectors;

(d) Brush and other wildfire fuel source removal services;

(e) Water monitors;

(f) Water shut off systems;

(g) Earthquake strapping;

(h) Locking mechanisms to secure property;

(i) Lightning protection devices;

(j) Security lighting;

(k) Security camera systems;

(l) Home safety monitoring systems; and

(m) Other goods or services, or both, the commissioner may approve through a form filing.

(2) A voucher provided from the insurer to the insured for either goods or services, or both, is only permissible for those items as described in subsection (1) of this section and must fully redeem either the goods or services, or both, being used in the risk reduction program.

(3) Under RCW 48.18.559, the commissioner may increase the value of goods and services permitted under RCW 48.18.558. The limit to the value of goods and services to be provided is increased to seven thousand five hundred dollars in value in aggregate in any twelve-month period if the insurer:

(a) Submits a rate filing with the information required by RCW 48.19.530; and

(b) Includes an explanation and exhibit in the filing showing that the present value of the expected reduction in claims costs arising from the goods and services, over the service life of the goods and services, is greater than, or equal to, the total cost to the insurer of the goods and services.

WSR 20-18-072
WITHDRAWAL OF PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER
(By the Code Reviser's Office)
[Filed September 1, 2020, 10:36 a.m.]

WAC 284-20C-005, 284-110-010, 284-110-020, 284-110-030, and 284-110-040, proposed by the office of the insurance commissioner in WSR 20-05-027, appearing in issue 20-05 of the Washington State Register, which was distributed on March 4, 2020, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor
Washington State Register

WSR 20-18-075
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION
[Filed September 1, 2020, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-016.

Title of Rule and Other Identifying Information: Chapter 480-109 WAC, Electric companies—Acquisition of minimum quantities of conservation and renewable energy as required by the Energy Independence Act. This rule making, filed in Docket UE-190652, will address changes to chapter 480-109 WAC. These changes include amendments to clarify or streamline the rules, incorporate changes to the Energy Independence Act (EIA) found in the chapter 288, Laws of 2019, which were passed as E2SSB 5116 (portions of which are now codified in chapter 19.405 RCW), and changes from the chapter 315, Laws of 2017, which were found in ESB 5128.

Hearing Location(s): On November 6, 2020, at 9:30 a.m.

Via Microsoft Teams: 253-372-2181, Conference ID 174 926 009#; or Link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_NGFkOTUxNmYtNTIyNi00YTE4LThjZjctMmRiYjQ3ZTRjMjBk%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22e087eca4-4cd8-416f-8fc0-53ed60dbc833%22%7d. Public hearing to consider adoption of the proposed rules.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Mark L. Johnson, Executive Director and Secretary, P.O. Box 47250, Olympia, WA 98504-7250, email records@utc.wa.gov, by October 1, 2020.

Assistance for Persons with Disabilities: Contact Susan Holman, phone 360-664-1243, TTY 360-586-8203, email susan.holman@utc.wa.gov, by October 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement legislative changes made in 2017 and 2019 and streamline implementation of chapter 19.285 RCW. The proposed amendments modify or add definitions, incorporate language pertaining to energy assistance, change the manner in which utility low-income programs operate, amend the renewable portfolio standard compliance and reporting rules, and amend the energy and emission intensity reporting rules.

Reasons Supporting Proposal: The Washington legislature in 2019 passed the Clean Energy Transformation Act, which included among its provisions several amendments to EIA. The primary reason for this rule making is to codify these amendments in the current EIA rules in chapter 480-109 WAC. The rule making will also codify changes made in the 2017 legislative session through ESB 5128. Finally, the rule making will make a number of other amendments that help streamline the implementation of EIA.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, 19.285.080, and 19.405.100.

Statute Being Implemented: RCW 19.405.020, 19.405.-070, 19.405.120, 19.285.030, and 19.285.040.

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

Name of Proponent: Washington utilities and transportation commission (UTC), governmental.

Name of Agency Personnel Responsible for Drafting: Andrew Rector, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1315; Implementation and Enforcement: Mark L. Johnson, 621 Woodland Square Loop S.E., Lacey, WA 98503, 360-664-1115.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. UTC is not an agency to which RCW 34.05.328 applies.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule amendments apply to Washington's electric investor-owned utilities, and they are not considered small businesses under RCW 19.85(3) [19.85.030]. A small business economic impact statement questionnaire for this rule making was released on January 16, 2020. It received no responses.

September 1, 2020
Mark L. Johnson
Executive Director and Secretary

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

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) "Carbon dioxide equivalents" or "CO_2e" has the same meaning as in RCW 70.235.010.

(4) "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)~~))) (5) "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)~~))) (6) "Commission" means the Washington utilities and transportation commission.

(((~~(6)~~))) (7) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(((~~(7)~~))) (8) "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)~~))) (f)(i) Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (29)(c)(ii) of this section and that commenced operation before March 31, 1999;

(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of generation over a three-year period prior to the capital investment in order to calculate the amount of incremental electricity produced;

(iii) The facility must demonstrate that the incremental electricity resulted from the capital investment, which does not include expenditures on operation and maintenance in the normal course of business, through direct or calculated measurement.

(g) That portion of incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, attributable to a qualifying utility's share of the electricity output from hydroelectric generation projects whose energy output is marketed by the Bonneville Power Administration where the additional generation does not result in new water diversions or impoundments; or

(h) The environmental attributes, including renewable energy credits, from (g) of this subsection transferred to investor-owned utilities pursuant to the Bonneville Power Administration's residential exchange program.

(13) "Energy assistance" means a program undertaken by a utility to reduce the household energy burden of its customers.

(a) Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden.

(b) Energy assistance may include direct customer ownership in distributed energy resources or other strategies if such strategies achieve a reduction in energy burden for the customer above other available conservation and demand-side measures.

(14) "Energy assistance need" means the amount of assistance necessary to achieve an energy burden equal to six percent for utility customers.

(15) "Energy burden" means the share of annual household income used to pay annual home energy bills.

(16) "Greenhouse gas," "greenhouse gases," "GHG," and "GHGs" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology in WAC 173-441-040 or its successor, should that provision be amended or recodified.

(17) "Greenhouse gas content calculation" means a calculation expressed in carbon dioxide equivalents made by the department of ecology for the purposes of determining the emissions from the complete combustion or oxidation of fossil fuels and the greenhouse gas emissions in electricity for use in calculating the greenhouse gas emissions content in electricity.

(18) "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 megawatt 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:

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

(((~~(14)~~))) (19) "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)~~))) (20) "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)~~))) (21) "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)~~))) (22) "Low-income" means household incomes that do not exceed the higher of eighty percent of area median income or two hundred percent of federal poverty level, adjusted for household size.

(23)(a) "Nonemitting electric generation" means electricity from a generating facility or a resource that provides

electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation.

(b) "Nonemitting electric generation" does not include renewable resources.

(24)(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)~~))) (25) "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)~~))) (26) "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)~~))) (27) "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)~~))) (28) "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)~~))) (29) "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)~~))) (30) "Regional technical forum" means the advisory committee established by the Northwest Power and Conservation Council.

(((~~(24)~~))) (31) "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)~~))) (32) "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)~~))) (33) "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)~~))) (34) "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)~~))) (35) "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)~~))) (36) "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)~~))) (37) "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)~~))) (38) "Utility" means an "electrical company" as that term is defined in RCW 80.04.010 that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.

(((~~(32)~~))) (39) "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)~~))) (40) "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.

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

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. The portfolio must include all conservation programs and mechanisms identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need, including the low-income conservation programs and mechanisms in subsection (10)(b) of this section.

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 document 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 Northwest Power and Conservation 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~~)) must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with either the *Weatherization Manual* maintained by the department or when it is cost-effective to do so using utility-specific avoided costs. For purposes of this subsection, "fully fund" does not prohibit the agency leveraging other funding sources, in combination with utility funds, to fund low-income conservation projects. 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) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to RCW 19.405.120. To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden.

(c) A utility ((~~may~~)) must exclude low-income conservation from portfolio-level cost-effectiveness calculations. A utility must account for the costs and benefits, including non-energy impacts, which accrue over the life of each conservation measure.

(((~~c~~))) (d) 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*.

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

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.~~)) A qualifying utility may use renewable energy credits to meet the provisions of this section, provided the renewable energy credits meet the following requirements:

(a) A renewable energy credit from electricity generated by a resource other than freshwater may be used to meet a requirement applicable to the year in which the credit was created, the year before the year in which the credit was created, or the year after the year in which the credit was created;

(b) A renewable energy credit from electricity generated by freshwater:

(i) May only be used to meet a requirement applicable to the year in which the credit was created; and

(ii) Must be acquired by the qualifying utility through ownership of the generation facility or through a transaction that conveyed both the electricity and the nonpower attributes of the electricity.

(c) A renewable energy credit transferred to an investor-owned utility pursuant to the Bonneville Power Administration's residential exchange program may not be used by any utility other than the utility receiving the credit from the Bonneville Power Administration;

(d) Each renewable energy credit may only be used once to meet the requirements of this section and must be retired using procedures of the renewable energy credit tracking system; and

(e) For purposes of this subsection, the vintage month and vintage year of the renewable energy credit represent the date the associated unit of power was generated.

(3) **WREGIS registration.** All eligible ((~~hydropower generation and all~~)) renewable ((~~energy credits~~)) resources 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.

(9) **Use of energy output marketed by Bonneville Power Administration.** Beginning January 1, 2020, a qualifying utility may use eligible renewable resources as identified under RCW 19.285.030 (12)(g) and (h) to meet its compliance obligation under RCW 19.285.040(2). A qualifying utility may not transfer or sell eligible renewable resources obtained from the Bonneville Power Administration to another utility for compliance purposes under RCW 19.285.040.

(10) **Alternative compliance when renewable and nonemitting electric generation used to meet one hundred percent of annual retail electric load.** Pursuant to RCW 19.285.040 (2)(m), beginning January 1, 2030, a qualifying utility is considered to be in compliance with an annual renewable energy target in RCW 19.285.040 (2)(a) if the utility meets one hundred percent of the utility's average annual retail electric load using any combination of electricity from:

(a) Renewable resources and renewable energy credits as defined in RCW 19.285.030; and

(b) Nonemitting electric generation, as defined in WAC 480-109-060(23).

Nothing in subsection (10) of this section relieves the requirements of a qualifying utility to comply with the conservation targets established under RCW 19.285.040(1).

AMENDATORY SECTION (Amending WSR 15-07-043, filed 3/12/15, effective 4/12/15)

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 historic 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 website. Reports must be posted on the utility's website 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~~)).

(a) The report must list((~~s~~)):

(i) The certificates that it retired in WREGIS for the target year; and

(ii) The use of certificates, whether for annual target compliance, a voluntary renewable energy program as provided for in RCW 19.29A.090, or owned by the customer.

(b) 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.

AMENDATORY SECTION (Amending WSR 15-19-032, filed 9/9/15, effective 10/10/15)

WAC 480-109-300 Greenhouse gas content calculation and energy and emissions intensity metrics. (1) A utility must report its greenhouse gas content calculation and metrics of energy and emissions intensity to the commission on or before June 1st of each year. The report must include annual values for each metric for the preceding ten calendar years. Each value reported must be based on the annual energy or emissions from all generating resources providing service to customers of that utility in Washington state, regardless of the location of the generating resources. When the metrics are calculated from generators that serve out-of-state and in-state customers, the annual energy and emissions outputs must be prorated to represent the proportion of the resource used by Washington customers.

(2) ((~~The energy and emissions intensity report~~)) Each utility must perform its greenhouse gas content calculation in accordance with the rules enacted by the department of ecology, consistent with RCW 19.405.020(22).

(3) In addition to the greenhouse gas content calculation, the report shall include the following metrics:

(a) Average megawatt-hours per residential customer;

(b) Average megawatt-hours per commercial customer;

(c) Megawatt-hours per capita;

(d) Million ((~~short~~)) metric tons of CO_2e emissions; and

(e) Comparison of annual million ((~~short~~)) metric tons of CO_2e emissions to 1990 emissions.

((~~(3) **Unknown generation sources.**~~)) (4) **Unspecified electricity.** For resources where the utility purchases energy from unknown generation sources, ((~~often called "spot market" purchases,~~)) from which the emission rates are unknown, the utility ((~~shall report emission metrics using the average electric power CO_2 emissions rate described as the net system mix (spot market) in the Washington state electric utility fuel mix disclosure reports compiled by the department pursuant to RCW 19.29A.080~~)) must use an emissions rate

determined by the department of ecology. If the department of ecology has not adopted an emissions rate for unspecified electricity, a utility must apply an emissions rate of 0.437 metric tons of CO_2 per megawatt-hour of electricity. For the resources described in this subsection, a utility must show in the report required in subsection (1) of this section the following:

(a) ((~~Short~~)) Metric tons of CO_2e from unknown generation sources;

(b) Megawatt-hours delivered to its retail customers from unknown generation sources; and

(c) Percentage of total load represented by unknown generation sources.

(((~~(4)~~))) (5) The greenhouse gas content calculation and energy and emissions intensity report must include narrative text and graphics describing trends and an analysis of the likely causes of changes, or lack of changes, in the metrics.

WSR 20-18-087
PROPOSED RULES
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES

[Filed September 1, 2020, 5:47 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Foundational quality standards for early learning programs: WAC 110-300-0011 License transfers.

Hearing Location(s): On October 6, 2020, telephonic.

Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including October 6 will be considered.

Date of Intended Adoption: October 7, 2020.

Submit Written Comments to: Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online, by October 6, 2020.

Assistance for Persons with Disabilities: DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by October 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed new rule allows the department to transfer a full child care license to a new licensee in the event of a transfer of ownership of a child care operation; identify criteria the department will consider before transferring a license; and grant administrative hearing rights to appeal the denial of a license transfer.

Reasons Supporting Proposal: Section 5, chapter 343, Laws of 2020, authorizes transfers of child care licenses in the event of a transfer of ownership of a child care operation. Rules are necessary to clarify what conditions must be met for a transfer to occur and to clarify that license transfer decisions are subject to the Administrative Procedure Act, chapter 34.05 RCW.

Statutory Authority for Adoption: RCW 43.216.065.

Statute Being Implemented: RCW 43.216.305.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, Seattle, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[c](i). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

September 1, 2020
Brenda Villarreal
Rules Coordinator

NEW SECTION

WAC 110-300-0011 License transfers. (1) Pursuant to RCW 43.216.305(1) and subject to this chapter, a full license issued under chapter 43.216 RCW may be transferred to a new licensee in the event of a transfer of ownership of a child care operation. A current licensee or applicant must apply to transfer a license using forms and methods determined by the department.

(2) A full license will remain valid and may be transferred to a new licensee if:

(a) The new licensee meets the requirements in RCW 43.216.305(2); and

(b) The department determines before the license transfer the new licensee's child care operation is substantially similar to or an improvement of the originally licensed child care operation.

(3) To determine whether the new licensee's child care operation is substantially similar to or an improvement of the original child care operation, the department must assess the following factors of the new child care operation:

(a) The physical environment and all anticipated changes or updates;

(b) The qualifications and number of all retained and newly hired staff members;

(c) The program operations and all anticipated changes or updates;

(d) The relation or connection, if any, between the original and new licensee; and

(e) Whether the new child care operation is able to comply with the licensing requirements described in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC.

(4) The department will determine and disclose to the current licensee and new licensee whether the license is in good standing prior to transferring the license.

(5) At the request of the current licensee or the new licensee, the department will disclose the following license information from the last four years to one or both parties:

(a) A description of any valid complaints;

(b) A description of any instances that the department found noncompliance with the requirements contained in chapter 43.216 RCW, this chapter, and chapter 110-06 WAC;

(c) Safety plans (historical or in effect);

(d) Facility licensing compliance agreements (historical or in effect); and

(e) Enforcement actions levied or pending against this license.

(6) The current licensee or new licensee has the right to appeal the department's denial of a license transfer application by requesting an adjudicative proceeding (or "hearing") pursuant to the hearing rules detailed in chapter 110-03 WAC.

WSR 20-18-094
PROPOSED RULES
WASHINGTON STATE UNIVERSITY

[Filed September 2, 2020, 9:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-116.

Title of Rule and Other Identifying Information: WAC 504-24-030 Undergraduate housing requirement.

Hearing Location(s): On October 7, 2020, at 4:00 p.m.

Zoom meeting: Join from PC, Mac, Linux, iOS, or Android: https://wsu.zoom.us/j/96518846869?pwd=TjJ6RUNmS1BCUmYrek16VzlLOHB5UT09. Meeting ID: 965 1884 6869. Passcode: 926631; OR join by telephone (long distance): +1 669 900 9128 (Enter the meeting ID and passcode when prompted).

Due to the public health emergency resulting from COVID-19 and guidance/directives from the Washington department of health, no in-person hearing locations are being scheduled for this hearing.

Date of Intended Adoption: November 13, 2020.

Submit Written Comments to: Deborah Bartlett, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, email prf.forms@wsu.edu, fax 509-335-3969, by October 7, 2020.

Assistance for Persons with Disabilities: Joy Faerber, phone 509-335-2005, fax 509-335-3969, email prf.forms@wsu.edu, by October 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the rules regarding the undergraduate housing requirement.

Reasons Supporting Proposal: The rule change for WAC 504-24-030 is being implemented as a result of the public health emergency resulting from COVID-19 and guidance/directives from public health officials, and is requested in order to (a) update and clarify procedural guidelines; (b) better allow the institution to respond to emergent student needs and special circumstances; and (c) delegate authority at the appropriate institutional level.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Kimberly Holapa, Associate Vice President, External Engagement and Strategic Initiatives, Student Affairs, Lighty Student Services 360P, Pullman, WA 99164-1066, 509-335-2884; Implementation and Enforcement: Mary Jo Gonzales, Vice President, Student Affairs, Lighty Student Services 360G, Pullman, WA 99164-1066, 509-335-2355.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider these rules to be significant legislative rules.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW 19.85.025.

Explanation of exemptions: The amendment to Washington State University (WSU) undergraduate housing regulation only applies to students at WSU, and therefore does not effect [affect] business or commerce in any way.

September 2, 2020
Deborah L. Bartlett, Director
Procedures, Records, and Forms
and University Rules Coordinator

AMENDATORY SECTION (Amending WSR 95-07-044, filed 3/8/95, effective 4/8/95)

WAC 504-24-030 Undergraduate housing requirement. (1) University-recognized housing includes residence halls, and university-approved fraternities, sororities, and co-op houses.

(2) Housing requirements for single undergraduate students. To the extent that room is presently available, as determined by the university, in an official university-recognized living group, all single undergraduate freshmen under twenty years of age are required to live in organized living groups which are officially recognized by the university (residence halls, fraternities and sororities) for one academic year.

(a) Exemptions. Exemptions will be considered when a student demonstrates to the ((~~department of residence life~~)) vice president for student affairs or designee that either:

(i) The student has attended an institution of higher education as a regularly enrolled student for at least two regular semesters or three regular quarters (excluding summer sessions);

(ii) The student is living with immediate family in a family situation (mother and/or father; legal guardian; aunt or uncle; or grandparent(s));

(iii) The student has secured a statement from a physician or psychologist stating that residence in recognized student housing would detrimentally affect the student's physical health or emotional well-being; or

(iv) The student demonstrates that living in recognized University housing would cause undue financial hardship or other extraordinary hardship.

(b) Process. Applications for permission to reside off campus are available from ((~~the~~)) Washington State University ((~~Department of Residence Life, Streit-Perham Office Suite, Pullman, WA 99164-1726~~)). Applications are reviewed and a determination is made whether an exemption will be granted. Persons applying for such exemption will be informed of the decision in writing. Requests for reconsideration of the decision may be submitted to the vice ((~~provost~~)) president for student affairs or designee. The vice ((~~provost~~)) president or ((~~his/her~~)) designee will evaluate the appeal and approve or deny the appeal.

WSR 20-18-096
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 19-08—Filed September 2, 2020, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-21-123.

Title of Rule and Other Identifying Information: The Washington state department of ecology (ecology) is proposing a new Clean Energy Transformation Rule (chapter 173-444 WAC) that electric utilities will use to comply with parts of the Washington Clean Energy Transformation Act (CETA), chapter 19.405 RCW.

For more information on this rule making visit https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-444.

Hearing Location(s): On October 6, 2020, at 1:30 p.m., PDT, webinar only.

Presentation, question and answer session followed by the hearing.

We are also holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions https://watech.webex.com/watech/onstage/g.php?MTID=e7b95605d1c31802bacf295561aa6656d.

For audio call: US Toll number 1-415-655-0001 or Toll-free number 1-855-929-3239 and enter access code 133 433 8151. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: December 23, 2020.

Submit Written Comments to: Debebe Dererie, send U.S. mail at: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, or send parcel delivery services to: Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), online http://aq.ecology.commentinput.com/?id=DNfCV, by October 14, 2020.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email ecyADAcoordinator@ecy.wa.gov, visit https://ecology.wa.gov/accessibility for more information, by September 29, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule implements parts of CETA, which was passed into law in 2019. The rule:

- Establishes a process for determining what types of energy transformation projects (ETPs) may be eligible for compliance with CETA.
- Establishes a process and requirements for developing the standards, methodologies, and procedures for evaluating ETPs.
- Provides methods for assigning greenhouse gas (GHG) emissions to electricity.

Reasons Supporting Proposal: The CETA directs ecology to adopt rules, by January 1, 2021, that:

- Establish requirements for energy-related projects (referred to as ETPs), other than electricity generation, that reduce GHG emissions and fossil fuel consumption. CETA requires ecology to consult with the Washington state department of commerce and the Washington utilities and transportation commission in establishing these requirements. Electric utilities may use these ETPs as an alternative compliance option to meet the 2030 GHG neutral electricity standard required under CETA.
- Determine GHG emission factors for electricity, in consultation with the Washington state department of commerce.

The proposed rule provides the mechanism to identify, develop, and evaluate certain energy-related projects that are eligible for compliance under CETA. The implementation of the rule:

- Creates opportunities for electric utilities to invest in ETPs to support them to comply with the GHG-neutral electricity standard required under CETA.
- Provides market incentives. As electric utilities invest in ETPs to benefit from their GHG emission reduction potentials, the ETPs become economically more attractive, increasing their chance of being implemented.
- Assures energy agencies implementing CETA, interested stakeholders, and the general public that ETPs meet the requirements and standards of quality that CETA puts into place.

Additionally, the rule provides consistency across electric utilities on how they calculate the GHG emissions in electricity they supply in Washington as they prepare compliance documents for the state energy agencies.

Statutory Authority for Adoption: RCW 19.405.020(18), 19.405.040, and 19.405.100.

Statute Being Implemented: Chapter 19.405 RCW, Washington Clean Energy Transformation Act.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Debebe Dererie, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-7558; and Implementation: Bill Drumheller, 300 Desmond Drive S.E., Lacey, WA 98503, 360-407-7657.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Debebe Dererie, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-407-7558, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email debebe.dererie@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: We analyzed the costs of the proposed rule. Most of the utilities operating in Washington are publicly-owned. There are three investor-owned utilities, and all of them have more than fifty employees.

As the proposed rule does not impose compliance costs on any small businesses, this rule making is exempt from the requirements of the Regulatory Fairness Act (chapter 19.85 RCW) according to RCW 19.85.025(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

September 2, 2020
Heather Bartlett
Deputy Director

Chapter 173-444 WAC

CLEAN ENERGY TRANSFORMATION RULE

NEW SECTION

WAC 173-444-010 Purpose and scope. The purpose of this chapter is to establish rules that electric utilities shall use to comply with parts of the Washington Clean Energy Transformation Act (CETA), chapter 19.405 RCW.

(1) The purpose of the provisions in Part I of this chapter is to establish methods for calculation of the greenhouse gas emissions content in electricity an electric utility supplies to its retail electric customers in Washington state. The calculation methods in Part I of this chapter are developed under the requirements of RCW 19.405.070 and 19.405.020(22).

(2) Part II of this chapter implements the requirements under RCW 19.405.020(18), 19.405.040, and 19.405.100(7). The purpose of the provisions in Part II of this chapter is to establish:

(a) The processes for identifying project categories that are eligible for compliance with CETA as energy transformation projects.

(b) The process and requirements for developing the standards, methodologies, and procedures for evaluating energy transformation projects.

NEW SECTION

WAC 173-444-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise. If this section provides no definition, the definition found in chapter 173-441 WAC applies.

(1) **"Additionality"** means a condition where a project would not or did not come into being but for the investment action taken by the electric utility (or utilities) for the purposes of complying with chapter 19.405 RCW, in accordance with RCW 19.405.040 (2)(e) and (f) and this section.

(2) **"Aggregate source"** means:

(a) Electric power originating from the same source type from one or more power plants that cannot be traced back to a specific power plant with data published in Form EIA-923; or

(b) Electric power obtained from a single asset-controlling supplier, as designated by the California Air Resources Board, with an emissions rate approved by the regulatory agency. This can include multiple source types.

(3) **"Approving body"** means the governmental agency, board, commission, or other entity that is granted the authority to ensure compliance with RCW 19.405.060 or 19.405.090 and therefore provide approval to a project intended to serve as an energy transformation project.

(4) **"Baseline"** means a reference case, projection, or estimation of project performance against which actual project performance can be measured. The baseline condition for a project is a reasonable representation of conditions that would likely have occurred during the energy transformation project implementation period if the project had not been implemented.

(5) **"Biogenic CO_2"** is defined in 40 C.F.R. Part 98 as adopted in chapter 173-441 WAC.

(6) **"Biomass energy":**

(a) Includes:

(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) 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.

(7) **"Carbon dioxide equivalent"** or **"CO_2e"** means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential as established in Table A-1 in WAC 173-441-040.

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

(9) **"Energy Information Administration"** or **"EIA"** means the U.S. Department of Energy's Energy Information Administration.

(10) **"Energy transformation project"** has the same meaning as RCW 19.405.020(18).

(11) **"Environmental Protection Agency"** or **"EPA"** means the U.S. Environmental Protection Agency.

(12) **"Form EIA-923"** means the survey data published by the U.S. Energy Information Administration that describes detailed electric power data, monthly and annually, on electricity generation, fuel consumption, fossil fuel stocks, and receipts at the power plant and prime mover level. *Generation and Fuel Data*, page 1, is typically used for compliance with this chapter.

(13) **"Fossil fuel"** means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such a material.

(14) **"Greenhouse gas," "greenhouse gases," "GHG," and "GHGs"** includes carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6). "Greenhouse gas" also includes any other gas or gases designated by ecology by rule in Table A-1 in WAC 173-441-040.

(15) **"Megawatt-hour"** or **"MWh"** means one thousand kilowatt-hours or one million watt-hours.

(16) **"Nonemitting electric generation"** means:

(a) Electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation; and

(b) Does not include renewable resources.

(17) **"Permanent"** means an emission reduction that can be assured and demonstrated by application of basic scientific principles to:

(a) Be nonreversible; or

(b) Exist for a period of not less than one hundred years except in the case of any project subject to WAC 463-85-200 and related requirements; or

(c) Exist for the time period incorporated into the definition for permanent sequestration in case of any projects subject to WAC 463-85-200 and related requirements.

(18) **"Project"** means a scheme or plan for utilizing goods or services to accomplish a goal, including by implementing a program or by facilitating the placement or utilization of machinery or infrastructure.

(19) **"Protocol"** means a compendium of principles, procedures, criteria, processes, methodologies, rules, or other requirements that ensure uniform or consistent application of those elements across electric utilities in the implementation of energy transformation projects.

(20) **"Regulatory agency"** means the Washington utilities and transportation commission for investor-owned utilities or the department of commerce for consumer-owned utilities.

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

(22) **"Renewable natural gas"** means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(23) **"Renewable resource"** means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Renewable natural gas;

(f) Renewable hydrogen;

(g) Wave, ocean, or tidal power;

(h) Biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or

(i) Biomass energy.

(24) **"Source type"** or **"fuel type"** means the technology or fuel used to generate electricity. This typically follows the classification of fuel type codes from Form EIA-923.

(25) **"Unspecified electricity"** means an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers.

NEW SECTION

WAC 173-444-030 Applicability. The provisions of this chapter apply to:

(1) Consumer-owned utilities as defined in RCW 19.405.020(10).

(2) Investor-owned utilities as defined in RCW 19.405.020(24).

PART I - CALCULATION OF GREENHOUSE GAS EMISSIONS CONTENT IN ELECTRICITY

NEW SECTION

WAC 173-444-040 Greenhouse gas content calculation. Use the following methods to calculate the greenhouse gas emissions content in electricity.

(1) **Utility emissions.**

(a) Total annual utility greenhouse gas emissions are calculated using Equation 1 of this subsection.

Equation 1

Utility Emissions = EPA + EIA + unspecified

Where:

- Utility emissions = Total of all GHG emissions for the facility for the calendar year, metric tons CO_2e/year.
- EPA = Total of all GHG emissions calculated using the EPA methodology in subsection (2) of this section, metric tons CO_2e/year.
- EIA = Total of all GHG emissions calculated using the EIA methodology in subsection (3) of this section, metric tons CO_2e/year.
- Unspecified = Total of all GHG emissions calculated using the unspecified electricity methodology in subsection (4) of this section, metric tons CO_2e/year.

(b) Do not include nonemitting electric generation and renewable resources when calculating utility emissions using Equation 1 of this subsection.

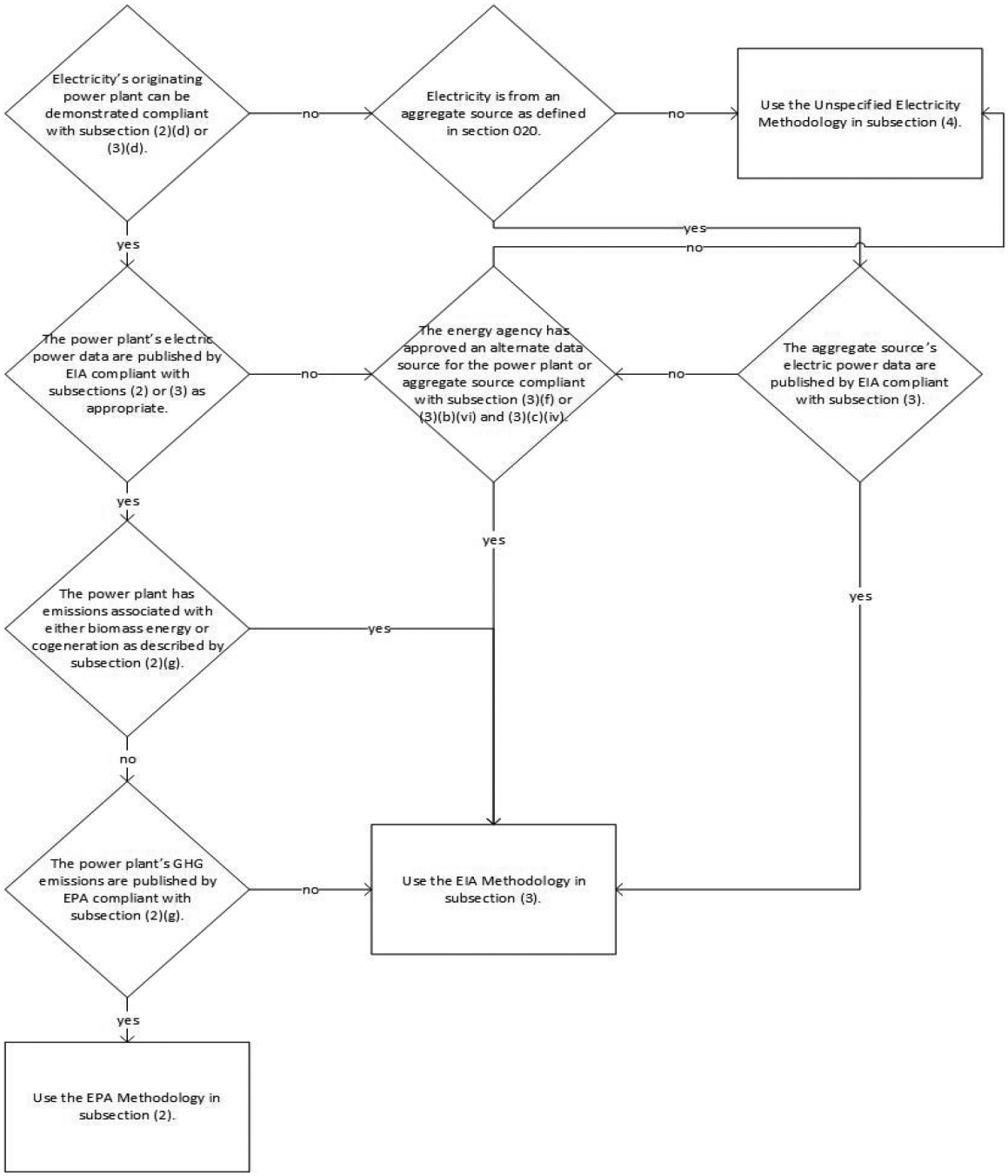
(c) Methodology selection:

(i) Use the conditions in subsections (2)(g), (3)(f), and (4) of this section to determine the appropriate method for a given quantity of electricity. Figure 1 of this subsection provides a simplified representation of the method selection process, but subsections (2)(g), (3)(f), and (4) of this section take precedence.

(ii) The methodologies in subsections (2) through (4) of this section are ordered from most to least preferred, with subsection (2) of this section being the most preferred.

(iii) The regulatory agency may instruct a utility to use a specific method from this section on a case-by-case basis if the regulatory agency determines another method is not appropriate in that case.

Figure 1: Simplified representation of the method selection process



(2) **EPA methodology.** This methodology calculates greenhouse gas emissions content in electricity using public data from the Environmental Protection Agency's (EPA) Greenhouse Gas Reporting Program established under 40 C.F.R. Part 98 as adopted by WAC 173-441-120 and public data from the Energy Information Administration's (EIA) Form EIA-923 program.

(a) GHG emissions from each power plant are calculated individually then summed to create a utility specific total for this method using Equation 2 of this subsection.

Equation 2

$$EPA = \sum_{i=1}^{n} \frac{\text{EPA plant GHG emissions} \times \text{cogeneration correction factor}}{\text{plant net electric generation}} \times (\text{utility claims} + \text{transmission losses})$$

Where:

- EPA = Total of all GHG emissions calculated using the EPA methodology, metric tons CO_2e/year.
- EPA plant GHG emissions = sum of all GHG emissions from the individual power plant as calculated by subsection (2)(b) of this section, metric tons CO_2e/year.
- Cogeneration correction factor = ratio of electric energy to total energy for the individual power plant as calculated by subsection (2)(f) of this section, unitless.
- Plant net electric generation = sum of all net generation from the individual power plant as calculated by subsection (2)(c) of this section, MWh/year.
- Utility claims = sum of all utility claims for the individual power plant as calculated by subsection (2)(d) of this section, MWh/year.
- Transmission losses = estimate of transmission losses between the individual power plant and utility customers as calculated by subsection (2)(e) of this section, MWh/year.
- n = number of power plants with utility claims using this method in the given calendar year.

(b) EPA plant GHG emissions. GHG emissions for this method are defined as the sum of all Subpart C and Subpart D emissions from the individual power plant as published by EPA based on 40 C.F.R. Part 98 reporting consistent with the methods adopted in WAC 173-441-120. Emissions are on a calendar year basis and in units of metric tons CO_2e. Use emissions values specific to the calendar year in the calculation. If EPA has not yet published emissions values for the calendar year in the calculation, use the most recent five year rolling average published emissions values. The total must include all reported GHGs, including biogenic CO_2, listed in Table A-1 of WAC 173-441-040 converted into CO_2e as specified in that section.

(c) Plant net electric generation. Sum of all annual net generation (megawatt-hours) from Form EIA-923 for the power plant for the calendar year for all reported fuel type codes.

(d) Utility claims. Claims of the reporting utility for the power plant measured at the busbar for the calendar year as established by:

(i) Information submitted to the department of commerce under RCW 19.29A.140 and rules implementing that section; or

(ii) Information reported to the utilities and transportation commission under WAC 480-109-300 or its successor, should that provision be amended or recodified.

(e) Transmission losses. Calculate transmission losses using subsection (5) of this section.

(f) Cogeneration correction factor. Account for nonelectric heat use at the power plant by dividing the sum of all annual Elec Fuel Consumption MMBtu by the sum of all annual Total Fuel Consumption MMBtu from Form EIA-923.

(g) Use this methodology only when all of the following conditions are met for the individual power plant and calendar year:

(i) The utility can demonstrate the originating power plant for the electricity with a claim that meets the standards of subsection (2)(d) of this section.

(ii) EPA has published GHG emissions totals for the power plant consistent with subsection (2)(b) of this section. The published report must not be flagged by EPA as having not met EPA's verification requirements.

(iii) Published EPA GHG emissions for the power plant must not include any biomass energy.

(iv) EIA has published electric power data for the power plant consistent with subsections (2)(c) and (f) of this section.

(v) The power plant is not classified as a combined heat and power plant in that year's Form EIA-923 report.

(vi) The cogeneration correction factor calculated in subsection (2)(f) of this section must be 0.9 or greater.

(3) **EIA methodology.** This methodology calculates greenhouse gas emissions content in electricity using public data from the EIA's Form EIA-923 program or an approved alternate data source.

(a) GHG emissions from each power plant or aggregate source are calculated individually then summed to create a utility specific total for this method using Equation 3 of this subsection.

Equation 3

$$EIA = \sum_{i=1}^{n} \frac{\text{EIA GHG emissions}}{\text{net electric generation}} \times (\text{utility claims} + \text{transmission losses})$$

Where:

- EIA = Total of all GHG emissions calculated using the EIA methodology, metric tons CO_2e/year.
- EIA GHG emissions = sum of all GHG emissions from the individual power plant or aggregate source as calculated by subsection (3)(b) of this section, metric tons CO_2e/year.
- Net electric generation = sum of all net generation from the individual power plant or aggregate source as calculated by subsection (3)(c) of this section, MWh/year.
- Utility claims = sum of all utility claims for the individual power plant or aggregate source as calculated by subsection (3)(d) of this section, MWh/year.

- Transmission losses = estimate of transmission losses between the individual power plant or aggregate source and utility customers as calculated by subsection (3)(e) of this section, MWh/year.
- n = number of power plants and aggregate sources with utility claims using this method in the given calendar year.

(b) EIA GHG emissions. GHG emissions for this method are defined as the sum of all GHG emissions from the individual power plant or aggregate source based on fuel quantities published by EIA or from an approved alternate source. Emissions are on a calendar year basis and in units of metric tons CO_2e.

(i) GHG emissions are calculated separately for either:

(A) Whenever possible: Each power plant, calendar year, and reported fuel type; or

(B) When power plant information is not available: Each aggregate source, calendar year, and source type.

(ii) GHG emissions for nonemitting electric generation and renewable resources must be calculated, but kept separate from other types of GHG emissions.

(iii) GHG emissions, including CO_2, CH_4, and N_2O, from combustion are calculated using the Tier 1 Calculation Methodology in Subpart C of 40 C.F.R. Part 98 as adopted by WAC 173-441-120.

(A) For fuel quantity use one of the following:

(I) For plant level emissions use annual electric fuel consumption quantity; or

(II) For aggregate source level emissions use the total fuel consumption quantity for the aggregate source.

(III) The regulatory agency may approve an alternate fuel quantity data source for the plant or aggregate source.

(B) Use WAC 174-441-080 to convert units as needed.

(C) The high heat value, CO_2 emissions factor, CH_4 emissions factor, and N_2O emissions factor for the following source types are assumed to be zero:

(I) Geothermal;

(II) Nuclear;

(III) Solar;

(IV) Water;

(V) Wind.

(D) Calculate emissions for carbon dioxide, methane, and nitrous oxide. Calculate total GHG emissions for each fuel type using Equation A-1 of WAC 173-441-030.

(iv) Fugitive CO_2 emissions from steam geothermal sources must be calculated by multiplying plant net electric generation from steam geothermal sources as described in subsection (3)(c) of this section by 0.04028 metric tons/MWh. Add this value to the combustion emissions calculated in subsection (3)(b)(iii) of this section.

(v) Sum total GHG emissions for all fuel types to get the total power plant or aggregate source GHG emissions for the year, including nonemitting electric generation and renewable resources. Provide a second total that excludes nonemitting electric generation and renewable resources.

(vi) GHG emissions from an asset-controlling supplier aggregate source may be a single value, including multiple source types, specific to that asset-controlling supplier provided that the value was originally calculated in accordance with this chapter and approved by the regulatory agency.

(c) Net electric generation. Calculate the net electric generation, using one of the following:

(i) For plant net electric generation sum all net generation (megawatt-hours) for the power plant for the calendar year for all reported fuel type codes;

(ii) For aggregate source net electric generation sum all net generation (megawatt-hours) for the aggregate source for the calendar year;

(iii) The regulatory agency may approve an alternate net electric generation data source for the plant or aggregate source; or

(iv) Net electric generation from an asset-controlling supplier aggregate source may be a single value, including multiple source types, specific to that asset-controlling supplier provided that the value was originally calculated in accordance with this chapter and approved by the regulatory agency.

(d) Utility claims. Claims of the reporting utility for the power plant or aggregate source measured at the busbar for the calendar year as established by:

(i) Information submitted to the department of commerce under RCW 19.29A.140 and rules implementing that section; or

(ii) Information reported to the utilities and transportation commission under WAC 480-109-300 or its successor, should that provision be amended or recodified.

(e) Transmission losses. Calculate transmission losses using subsection (5) of this section.

(f) Use this methodology only when the following conditions are met for the individual power plant or aggregate source and calendar year:

(i) The utility can demonstrate the originating power plant or aggregate source for the electricity with a claim that meets the standards of subsection (3)(d) of this section.

(ii) One of the following conditions is met:

(A) EIA has published electric power data for the power plant or aggregate source consistent with subsection (2)(b) and (c) of this section; or

(B) The regulatory agency has approved an alternate data source for the plant or aggregate source.

(4) **Unspecified electricity.** Use Equation 4 of this subsection when calculating greenhouse gas emissions content in electricity for unspecified electricity.

Equation 4

$$\text{unspecified} = \text{UE} \times \text{UCO}_2\text{e}$$

Where:

- Unspecified = Total of all GHG emissions calculated using the unspecified electricity methodology, metric tons CO_2e/year.
- UE = Total electricity subject to this method, MWh/calendar year.
- UCO_2e = 0.437 metric tons CO_2e/MWh of electricity.

(5) **Transmission losses.** Calculate transmission losses using the following method as directed by the regulatory agency.

(a) Calculate transmission losses at the following levels from most to least preferred depending on data availability:

(i) Specific to the individual power plant;

(ii) Specific to the aggregate source;

(iii) Generalized for the utility.

(b) Use one of the following to calculate transmission losses:

(i) If utility claims are reported on a sales basis, then multiply total sales in MWh by 1-(retail sales MWh/total claims MWh).

(ii) Transmission losses in this equation are zero MWh if:

(A) Utility claims are reported on a plant net output basis; or

(B) The emissions rate already includes transmission losses; or

(C) The emissions rate is from an asset-controlling supplier where that emissions rate was approved by the regulatory agency.

(iii) If unable to calculate transmission losses using subsection (5)(b)(i) or (ii) of this section, then multiply utility claims in MWh by:

(A) 5%; or

(B) A value specified by the regulatory agency.

PART II - ENERGY TRANSFORMATION PROJECTS

NEW SECTION

WAC 173-444-050 Requirements for energy transformation projects. (1) Electric utilities that invest in energy transformation projects as a means to assist in meeting the greenhouse gas neutral standard in RCW 19.405.040 must fulfill the requirements of this chapter.

(2) A project intended to serve as an energy transformation project must conform to a project category included in the list of eligible categories of energy transformation projects established through the process in WAC 173-444-060.

(3) Electric utilities that invest in energy transformation projects must use the criteria established through the requirements and processes in WAC 173-444-070.

(4) Electric utilities that invest in energy transformation projects must use the verification methods, reporting standards, and other procedures established in WAC 173-444-080.

(5) The commission, the governing boards of consumer-owned utilities, or the department of commerce may have rules or requirements related to energy transformation projects in addition to the requirements of this chapter. Fulfilling the requirements of this chapter is a necessary, but not final, step toward receiving approval for a candidate project intended as an energy transformation project under chapter 19.405 RCW. Fulfilling the requirements of this chapter does not provide a basis for guaranteeing a positive decision by an approving body for a candidate project intended as an energy transformation project.

(6) Approval or rejection of a particular energy transformation project occurs through the governing boards of consumer-owned utilities, the commission, or other applicable approving bodies with the necessary jurisdiction over the financial decisions of the electric utility or utilities proposing the candidate energy transformation project.

NEW SECTION

WAC 173-444-060 Eligible categories of energy transformation projects. (1) Ecology will identify eligible categories of energy transformation projects. A list of these eligible categories of energy transformation projects will be established, expanded, and maintained through the processes in this section.

(2) This list will identify categories of projects that have been subject to a preliminary but not definitive evaluation and screening relative to the conditions, requirements, and criteria established in RCW 19.405.040 and 19.405.020(18) for energy transformation projects.

(3) Inclusion on this list of a project category does not grant or imply preapproval or preauthorization for any particular project that may conform to a listed category relevant to that project.

(4) Inclusion of a category on this list does not indicate a final determination as to whether a particular project has or will meet the criteria established in WAC 173-444-070.

(5) In order for a project category to be included in this list, hypothetical projects that may fall under that category must have the potential of meeting all of the following conditions:

(a) Providing energy-related goods or services;

(b) Reducing fossil fuel consumption and GHG emissions attributable to that consumption;

(c) Providing benefits to the customers of an electric utility or electric utilities in a manner that can satisfy the equity considerations required for this chapter;

(d) Associated with the consumption of energy in Washington;

(e) Being enforceable by the state of Washington;

(f) Providing quantifiable benefits in units of energy or units of GHG emissions;

(g) Resulting in permanent reductions of greenhouse gas emissions; and

(h) Satisfying the additionality tests required by RCW 19.405.040 (2)(e) and (f).

(6) In addition to the conditions in subsection (4) of this section in order for a project category to be included in this list, potential projects that may fall under that category must not:

(a) Be intended to generate electricity for delivery, sale, or other provision of electricity to retail customers as a good or service as the primary purpose of the project. Indirect provision of stored electricity to retail customers as a secondary benefit (e.g., certain grid-connected vehicle energy storage technologies) is not in and of itself a disqualifying factor. Generation of electricity for another energy-related purpose (e.g., vehicle propulsion) is not disqualifying;

(b) Have the capacity to create a new use of fossil fuels resulting in a net increase of fossil fuel usage;

(c) Have the capacity to be credited as a resource that could meet the standard established in RCW 19.405.040 (1)(a) in addition to use as an alternative compliance mechanism consistent with this chapter.

(7) Ecology will begin preparation of an initial list of eligible program categories within thirty days after the effective date of this chapter.

(a) Ecology will include in its evaluation of project categories that should be considered eligible all of the project type descriptions and groupings listed for consideration in RCW 19.405.020 (18)(b).

(b) Ecology will provide a thirty day public comment period for interested parties to submit to ecology project categories, concepts, or groupings not described in RCW 19.405.020 (18)(b), and any justification or background materials for the submission, which they wish to have subject to the evaluation process for adding to this list.

(c) In the preparation of the initial list ecology will take into account comments received in the rulemaking process for this section, including recommendations for the evaluation of project categories, concepts, or groupings not described in RCW 19.405.020 (18)(b) and comments regarding the appropriateness of including those described in RCW 19.405.020 (18)(b).

(d) At a minimum, ecology will include project categories in the initial list that have the potential to facilitate electrification of the transportation sector, including at least one project category pertaining to the establishment of electric vehicle charging infrastructure and at least one category pertaining to either the use or supply of renewable hydrogen.

(8) After completing its evaluation, ecology will post on its website a draft list of eligible categories of energy transformation projects along with an evaluation report summarizing its analysis process for public comment. Ecology will send out notice to invite the public comment on the draft list. The public comment period for this stage will be not less than sixty days.

(9) Not less than ninety days after the close of the comment period ecology will post on its website a revised initial list of eligible categories of energy transformation projects. This will be the initial list of eligible project categories.

(10) Ecology can modify or add to this initial list of project categories after posting it on its website. Additions or modifications to this list must:

(a) Be capable of meeting the conditions established in subsections (5) and (6) of this section; and

(b) Go through a public review and comment process for at least forty-five days.

(11) Ecology will allow interested parties to submit requests for consideration of additional or modified categories of projects after posting this initial list, through a method approved by ecology. Prior to making a decision on the request, ecology will:

(a) Evaluate whether the requested additional or modified categories meet the conditions established in subsections (4) and (5) of this section; and

(b) Send notice and post on its website for public comment any proposed additions or modifications to the list of project categories for a period of not less than forty-five days before any final determination.

NEW SECTION

WAC 173-444-070 Criteria for energy transformation projects. (1) Criteria for use by electric utilities and the manner in which to use them for projects intended to serve as energy transformation projects will exist in a comprehensive protocol authored and maintained by ecology, as well as in supporting documents derived from a variety of sources.

(2) The goal of the comprehensive protocol is to ensure that the criteria, standards, elements, and requirements established in RCW 19.405.020(18), 19.405.040, and 19.405.100 (7) are clearly defined, relevant to, and actionable for projects that conform to eligible categories of energy transformation projects. The comprehensive protocol will be applicable to project proponents, electric utilities, verification entities, oversight authorities, and interested parties.

(3) At a minimum the comprehensive protocol will include context, instructions, quantitative factors, methodologies, procedures, data, and external references to address the following:

(a) Applicability (pursuant to RCW 19.405.020 (18)(a)): Description of the range of projects to which the protocol applies in a manner consistent with the list of eligible categories of energy transformation projects developed and maintained through WAC 173-444-060.

(b) Assessment parameters (pursuant to RCW 19.405.-020 (18)(a) and 19-405-040(3)):

(i) Identification of the primary effects of the project, including fossil fuel reductions and energy impacts; which will be necessary for analysis and included in the project plan; and

(ii) Key secondary effects, such as benefits to utility customers, and the geographic regions in which these effects occur which are, at a minimum, important inputs into other elements of the project plan.

(c) Temporal scope (pursuant to RCW 19.405.040 (2)(a), (b), and (d)):

(i) Identification of the time scale over which the project is expected to persist; and

(ii) The capability of the project to provide the projected or expected level of benefits over time, in addition to any procedures for ensuring those benefits over time.

(d) Quantification methods (pursuant to RCW 19.405.-040 (2)(a), (b), and(4)):

(i) Methodologies to be employed to measure or estimate energy benefits, emission reductions and other effects from the project categories address in the comprehensive protocol, potentially varying from project category to project category; and

(ii) Proration methods, as applicable to a particular project category, to distinguish and separate electricity use from fossil fuel effects; and

(iii) Conversion factors for greenhouse gas emissions from projects, to be used as directed in the relevant methodologies to ensure the project benefits can be expressed in units of energy for compliance purposes if the use of direct energy benefits are not appropriate.

(e) Baseline procedures (pursuant to RCW 19.405.040 (2)(a), (b), and (4)): Conditions and procedures by which to establish a baseline or benchmark against which to measure project performance over time.

(f) Equity effects (pursuant to RCW 19.405.020 (18)(a) and 19.405.040(8)):

(i) Narrative or analysis sufficient to contribute to the overall demonstration, consistent with the requirements of an approving body or regulatory agency to implement RCW 19.405.040(8), that the benefits to utility customers identified in (b) of this subsection are occurring through:

(A) An equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; and

(B) Long-term and short-term public health and environmental benefits and reduction of costs and risks; and

(C) Energy security and resiliency.

(ii) Any other information to ensure that the project plan provides the necessary information and inputs for any determinations, processes, or other steps required by the approving bodies or regulatory agencies for their assessment of the equity requirements in chapter 19.405 RCW.

(g) Fossil fuel effects (pursuant to RCW 19.405.040(3)): Analysis sufficient to demonstrate that the project does not create a new use of fossil fuels resulting in a net increase of fossil fuel usage.

(h) Additionality tests (pursuant to RCW 19.405.040 (2)(e) and (f)):

(i) Procedures or demonstrations that the project is not required by another statute, rule, or other legal requirement; and

(ii) Not reasonably assumed to occur absent the investment in the project, or, if an investment has already been made, not reasonably assumed to occur absent additional funding in the near future.

(i) Monitoring and reporting procedures (pursuant to RCW 19.405.100(7)): A description of the planned approaches or procedures that ensure that project outcomes are measurable, and reported over time through regulatory requirements or voluntary action, including any such procedures that an approving body may put in place.

(j) Verification procedures (pursuant to RCW 19.405.040 (2)(d) and 19.405.100(7)):

(i) Demonstration or attestation of commitment to third-party verification of the project, for the period of time for which the benefits of the project are proposed to be applied toward the requirements of chapter 19.405 RCW, in a manner consistent with the requirements of WAC 173-444-080; and

(ii) Meeting or ensuring compliance with any additional project verification requirements for the project category which may intersect with any of the criteria identified in this section, such as fuel inspections or infrastructure inspections.

(k) Enforcement regimes (pursuant to RCW 19.405.040 (2)(c)): Identification of relevant regulatory or compliance authorities that have jurisdiction over aspects of the project to establish which jurisdiction or jurisdictions have the authority to enforce, and whether the project is enforceable by the state of Washington.

(4) The comprehensive protocol may adopt or adapt other protocols, methodologies, guidance, or similar documents in whole or in part from other project-based programs or policy bodies, and apply those elements to some or all of the included elements of the comprehensive protocol.

(5) Additional information or analysis may be required for a given program category or categories by the comprehensive protocol.

(6) Ecology will post the initial comprehensive protocol for public comment for a period of not less than sixty days before finalizing the initial version of the protocol.

(7) Ecology will modify or expand the comprehensive protocol to reflect new information, improve the applicability of the embodied information to existing projects, and to ensure the ability of the comprehensive protocol to incorporate and account for new projects.

(a) Ecology will establish a web-based mechanism, as well as alternative comment pathways, for soliciting comment on the comprehensive protocol to ensure timely updates are possible.

(b) Ecology will evaluate the comprehensive protocol every six months and update it as necessary.

(8) Ecology will post any such modifications to the existing comprehensive protocol for public comment for a period of not less than thirty days before making any changes to the protocol.

(9) The publication process for the comprehensive protocol will use a versioning system, so that the version of the protocol in place at the time that it is used for the purposes outlined in this chapter will be easily discernible and memorialized for use in other processes.

(10) Ecology will post the most recent version of the comprehensive protocol and supporting documents on the agency website and will make them available in alternative forms upon request.

NEW SECTION

WAC 173-444-080 Procedures for energy transformation projects. (1) Electric utilities must follow the processes and procedures in this section in order for energy transformation projects to be eligible for use.

(2) To facilitate the processes in this section an electric utility must prepare a project plan describing the project intended to qualify as an energy transformation project, how the project should work, and how the project conforms to the criteria and requirements in the comprehensive protocol.

(3) Electric utilities must submit the project plan to the validating or verifying entities and to approving bodies consistent with the applicable requirements of the comprehensive protocol.

(4) The comprehensive protocol that ecology develops will provide the required criteria and address the manner in which electric utilities or their designated representatives should apply the criteria to prepare and submit the project plan.

(5) The comprehensive protocol will include reporting, formatting, and organizational requirements for the creation of the project plan to promote consistency in explanation and ease of interpretation for use in the project approval process for energy transformation projects.

(6) The approving body may require additional information or plan elements to be included in this project plan beyond those that are required by the comprehensive protocol.

(7) The project plan must be validated to verify that the proposed project conforms to the comprehensive protocol and any supporting documents referenced in that protocol. This verification step validates whether the project, as proposed in the project plan, meets the following conditions:

(a) The project plan is complete in that every issue required to be addressed by the comprehensive protocol has a sufficient response in the project plan.

(b) The narrative responses in the project plan provides a sufficient justification or evidentiary basis that, as proposed, the project is capable of meeting the requirements of the protocol and any supporting documents referenced in the protocol.

(8) The validation step in subsection (7) of this section can be accomplished in one of the following two ways, unless the approving body mandates the use of only one approach:

(a) Through third-party verifier or verifying team according to subsection (9) of this section; or

(b) Through a voluntary request by the electric utility to ecology according to subsection (10) of this section.

(9) If a third party is used for the validation process in subsection (7) of this section, that entity must meet the following requirements:

(a) The third-party verifier, or the firm employing the verifier or verifying team, must be accredited or approved by at least one of the following:

(i) The American National Standards Institute National Accreditation Board accreditation program for Greenhouse Gas Validation/Verification Bodies.

(ii) The California Air Resources Board under California's Regulation for the Mandatory Reporting of GHG emissions.

(iii) Through another accreditation program by prior approval of ecology if it is deemed by ecology that the accreditation program is of equal stringency to (a)(i) or (ii) of this subsection.

(b) The firm employing the verifier or verifying team, or an independent verifier if there is no team or firm involved, must be able to demonstrate that there is no conflict of interest in their evaluation. All verifiers must sign the conflict of interest declaration through a form and process designated by ecology.

(c) The processes and procedures for using a third-party verification service will be established by ecology through a guidance document. After completion by ecology this guidance document will be posted for public comment for a minimum of thirty days.

(10) The validation step in subsection (7) of this section can also be accomplished through a voluntary request by the electric utility to ecology for a validation opinion for the project. This validation opinion will be conducted as follows:

(a) Ecology will first conduct a completeness evaluation to ensure that all aspects of the project plan and supporting application are included, and that the documentation provides a level of detail and clarity sufficient for further evaluation.

(b) If ecology determines the project plan is insufficient or incomplete, ecology will notify the applicant. A period of time for remedying the problem will be provided by ecology. Extensions for good cause may be approved by ecology at its discretion.

(c) If the applicant is able to address all issues with the project plan or supporting materials within the time period provided by ecology, the evaluation process will continue to the next phase. If the applicant is unable to remedy the identified issues, the evaluation process may be put on hold by ecology.

(d) Once ecology judges that the project plan for a project is complete, ecology will post the relevant documents for public comment for a period of forty-five days.

(e) Ecology will conduct a review of the project plan to validate the project plan in relation to the requirements of the comprehensive protocol. Ecology will, to the best of its abilities, follow comparable procedures and analytical methods as those used by verifiers and verifying firms that have been certified through the processes identified in subsection (9)(a) of this section.

(f) Upon completion of its review of a project plan, ecology will provide one of the following appraisals:

(i) Projects plans that appear to meet all requirements set forth in the protocol will be given a provisional status of being "validated."

(ii) Projects plans that do not appear to meet the necessary requirements of the protocol are not provided with a status, and will not be validated. Ecology will provide an explanation of the factors that led to that determination.

(g) Ecology will review the public comments for project plans that are in the provisionally valid status and make a final appraisal decision.

(h) Those project plans that have met the necessary standards will receive a final determination of being "validated" by ecology.

(11) Applicants may submit for ecology reconsideration a revised project plan and supporting documents for a project plan proposal failing to achieve "validated" status upon initial evaluation.

(12) A project report failing to achieve "validated" status through ecology may also be reevaluated under the third-party validation procedures in subsection (9) of this section.

(13) The electric utility requesting the project validation through either means identified in subsection (8) of this section must be provided with a validation report summarizing the process and the rationale for the decisions made by the validating entity. This validation report will also serve as the proof of validation for the approving body responsible for approving or rejecting the project that is intended as an energy transformation project.

(14) After a project is approved by the applicable approving body, and after the project comes into existence and is functioning, the electric utility must ensure that:

(a) Proper monitoring of the benefits of the project occur over time. The manner and means by which this monitoring occurs may vary between project types, and will be detailed in the comprehensive protocol.

(b) The benefits of the project are being reported over time to one or more bodies. The manner and means by which this reporting occurs will be detailed in the comprehensive protocol.

(15) After a project is approved by the applicable approving body, and after the project comes into existence, the electric utility must conduct or facilitate a performance

verification process to verify the actual benefits of the project over time. The manner, timing, and means by which this performance verification occurs may vary from project type, and will be detailed in the comprehensive protocol but will, at a minimum, require that:

(a) The third-party verifier, or the firm employing the verifier or verifying team, must be accredited or approved by at least one of the following:

(i) The American National Standards Institute National Accreditation Board accreditation program for Greenhouse Gas Validation/Verification Bodies.

(ii) The California Air Resources Board under California's Regulation for the Mandatory Reporting of GHG emissions.

(iii) Through another accreditation program by prior approval of ecology if it is deemed by ecology that the accreditation program is of equal stringency to (a)(i) or (ii) of this subsection.

(b) The firm employing the verifier or verifying team, or an independent verifier if there is no team or firm involved, must be able to demonstrate that there is no conflict of interest in their evaluation. All verifiers must sign the conflict of interest declaration through a form and process designated by ecology.

NEW SECTION

WAC 173-444-090 Severability. 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.

WSR 20-18-100
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed September 2, 2020, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-14-128.

Title of Rule and Other Identifying Information: New section pertaining to driver training schools, WAC 308-108-190 Emergency clause.

Hearing Location(s): On October 6, 2020, at 10:00 a.m. 1 (360) 407-3815. **Conference ID: 2868139.**

Audio recording will be in progress for the remote hearing via phone.

Date of Intended Adoption: October 7, 2020.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by October 5, 2020.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by October 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing this proposed rule language to allow driver training schools to perform web based instruction during a state of emergency.

Reasons Supporting Proposal: Emergency rules were filed to authorize web based instruction during the statewide response to COVID-19, allowing for interactive web based instruction of driver training curriculum to continue while business locations may be closed and in-person classes may not be allowed. These emergency rules will expire on November 7, 2020. Due to the ongoing state of emergency and the need to continue to limit the spread of COVID-19, the department is proposing permanent rule making that will support driver training schools in [and] continue to operate during a time when in-person learning poses a risk to public health. The department sent driver training schools proposed rule language that would allow for web based instruction to continue during state of emergencies only. School owners submitted written feedback on the rules and the department collaborated with the industry on adjustments to the language based on the feedback given.

Statutory Authority for Adoption: RCW 46.82.290 Administration of chapter—Adoption of rules.

Statute Being Implemented: This rule is being adopted based on an identified need under the authority of RCW 46.82.290.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation: Loni Miller, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3901; and Enforcement: Lou Blanchard, 1125 Washington Street S.E., Olympia, WA 98504, 360-664-0213.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328(5) does not apply.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not impose additional requirements beyond what is already required in RCW and WAC. Additionally, schools are not required to participate in web based instruction. When surveyed, schools did not identify any costs imposed by these rules. A copy of the survey can be found at https://www.dol.wa.gov/business/drivertraining/dtlaws.html.

September 2, 2020
Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-108-190 Emergency clause. The following rule applies to when instructors or students are not able to convene in person due to a state of emergency issued by the governor under RCW 43.06.210 and 43.06.220. While a state of emergency remains in effect, the director of licensing may allow driver training schools to:

(1) Offer driver training education through web-based instruction. Any web-based instruction offered under this provision must:

(a) Comply with all requirements in chapter 46.82 RCW, including RCW 46.82.350;

(b) Offer classes remotely with interactive, web-based instruction;

(c) Meet instruction standards set forth in WAC 308-108-150, excluding the requirement to hold classes in person;

(d) Waive requirements to complete the one hour of student driver observation in WAC 308-108-160 (1)(b); and

(e) Allow students to communicate with the instructor in real-time.

(2) When the state of emergency has been rescinded, schools have thirty calendar days to conclude web-based instruction and return to in-person instruction.

WSR 20-18-101
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 19-09—Filed September 2, 2020, 10:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-022.

Title of Rule and Other Identifying Information: Ecology is proposing to amend chapter 173-185 WAC, Oil movement by rail and pipeline notification. This chapter establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. The rule also describes reporting standards for ecology to share information with tribes, emergency responders, local governments, and the public.

For more information on this rule making visit https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-185.

Hearing Location(s): On Wednesday, October 7, 2020, at 1:00 p.m., webinar hearing. Presentation, question and answer session followed by the hearing.

We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions https://watech.webex.com/watech/onstage/g.php?MTID=e9733cf508d11e3b6406ce4b0505662a6.

For audio call US Toll number 1-415-655-0001 and enter access code 288 324 996. Or to receive a free call back, provide your phone number when you join the event.

On Tuesday, October 13, 2020, at 10:00 a.m., webinar hearing. Presentation, question and answer session followed by the hearing.

We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions https://watech.webex.com/watech/onstage/g.php?MTID=eaac583e6d742f4b82d9c4235344e697d.

For audio call US Toll number 1-415-655-0001 and enter access code 280 854 750. Or to receive a free call back, provide your phone number when you join the event.

Or on Tuesday, October 20, 2020, at 6:00 p.m., webinar hearing. Presentation, question and answer session followed by the hearing.

We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access.

Join online and see instructions https://watech.webex.com/watech/onstage/g.php?MTID=e1df768c4dbfc1d0f11fe351529601b11.

For audio call US Toll number 1-415-655-0001 and enter access code 284 828 617. Or to receive a free call back, provide your phone number when you join the event.

Date of Intended Adoption: January 19, 2021.

Submit Written Comments to: Kim Morley, U.S. mail: Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600, Parcel delivery services, Department of Ecology, Spill Prevention, Preparedness, and Response Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing(s), online http://sppr.ecology.commentinput.com/?id=WcU9V, by November 1, 2020.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email ecyADAcoordinator@ecy.wa.gov, by October 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule making will implement sections of ESHB 1578 and ESSB 5579, both passed in 2019 and codified in RCW 90.56.565.

This rule making will:

- Expand advance notice reporting requirements for facilities that receive crude oil by rail to include type and vapor pressure of crude oil.
- Expand biannual notice requirements for pipelines that transport crude oil through the state to include gravity and type of crude oil.
- Describe how required information will be provided to the utilities and transportation commission (UTC).
- Make other changes to clarify language and make any corrections needed.

Reasons Supporting Proposal: In 2016, ecology adopted chapter 173-185 WAC to enhance crude oil spill preparedness and response in Washington state. The rule established reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. Additionally, the rule describes reporting standards for ecology to share information with tribes, emergency responders, local governments, and the public. The rule was adopted as a result of 2015 legislative direction to provide a better understanding of the changing risk picture for crude oil transported by rail and pipeline in Washington state. The rule supports our understanding of the risks associated with changes in both the volume and properties of crude oil moving through Washington.

Timely notice of crude oil movement information is necessary for emergency responders and planners to effectively prepare for and respond to oil spills and other incidents associated with transporting crude oil by rail and pipeline. Providing adequate information about the dates, routes, and properties of crude oil can help protect people living and working near railroads and pipelines, the economy, and the environment.

Rule amendments are needed to incorporate statutory changes made in the 2019 legislative session. Through ESHB 1578 and ESSB 5579, the legislature expanded reporting requirements for regulated facilities, pipelines, and ecology, and placed statutory limits on the vapor pressure of crude oil that can be loaded or unloaded into or from a rail tank car by facilities.

Initially our rule making was scoped to address these updates in alignment with legislative direction. However, the pipeline and hazardous materials safety administration (PHMSA) determined that the crude oil vapor pressure limit is preempted by the Hazardous Materials Transportation Act. Ecology is continuing rule making but is no longer pursuing updates to incorporate statutory limits on the vapor pressure of crude oil that can be loaded or unloaded into or from a rail tank car by facilities.

Expanded reporting requirements will help ecology and other emergency responders understand the crude oil movement picture statewide, and to better assess potential impacts of crude oil movement by rail and pipeline. The additional data can help ecology and emergency response agencies determine the need for additional prevention and preparedness measures.

Statutory Authority for Adoption: Chapter 90.56 RCW; RCW 90.56.005, 90.56.050, 90.56.565.

Statute Being Implemented: RCW 90.56.565.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Morley, Lacey, Washington, 360-701-2398; Implementation and Enforcement: Nhi Irwin, Lacey, Washington, 360-791-5514.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kim Morley, Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-701-2398, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email kim.morley@ecy.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: We analyzed the compliance costs of the proposed rule amendments in the Preliminary Regulatory Analyses for this rule making (Ecology publication no. 20-08-007). All but one of the parties covered by this rule are businesses with more than fifty employees, and the remaining party is government-owned:

- BP Cherry Point Refinery: BP has over ten thousand employees.
- Andeavor Anacortes Refinery: Andeavor has over ten thousand employees.
- Shell Puget Sound Refinery: Shell has over ten thousand employees.
- Phillips 66 Refinery: Phillips 66 has over ten thousand employees.
- U.S. Oil and Refining: U.S. Oil and Refining has between one hundred and two hundred forty-nine employees.
- TransMountain Pipeline (Puget Sound): TransMountain Pipeline is a wholly owned subsidiary of Canada Development Investment Corporation, which is owned by the Canadian government. As a public entity, it is not a business.
- BP Olympic Pipeline: BP has over ten thousand employees.
- SeaPort Sound Terminal: This terminal is owned by Targa Resources, which has one thousand to four thousand nine hundred ninety-nine employees.

Therefore, this rule making is exempt from the requirements of the Regulatory Fairness Act (chapter 19.85 RCW) according to RCW 19.85.025(4), which states, "This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses."

September 2, 2020
Heather Bartlett
Deputy Director

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-020 Purpose. ((~~The purpose of this chapter is to enhance oil transportation safety in Washington and protect public safety and the environment by establishing notification requirements and procedures that inform emergency response agencies and the public of all crude oil shipments to facilities by rail and crude oil transport by transmission pipelines in the state.~~)) This chapter establishes:

(1) Advance notice requirements for facilities that receive crude oil by railroad car.

(2) Biannual notice requirements for transmission pipelines that transport crude oil.

(3) Disclosure procedures for ecology to:

(a) Provide nonaggregated information collected under this chapter to the state emergency management division, utilities and transportation commission, and any county, city, tribal, port, and local government emergency response agency to help these agencies effectively prepare for and respond to oil spills and other accidents.

(b) Provide aggregated information collected under this chapter to inform the public about the nature of crude oil movement through their communities.

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-030 Compliance schedule. (1) Facilities.

(a) Owners and operators of facilities in operation at the time this chapter is adopted must meet the advance notice requirements in WAC 173-185-070 on the effective date of this chapter.

(b) Owners and operators of new facilities must meet the advance notice requirements in WAC 173-185-070 immediately upon beginning operations in the state.

(2) Transmission pipelines.

(a) Owners and operators of transmission pipelines in operation at the time this chapter is adopted must meet the biannual notice requirements in WAC 173-185-080 on the effective date of this chapter ((~~and submit their first biannual notice by January 31, 2017~~)).

(b) Owners and operators of new transmission pipelines must meet the biannual notice requirements in WAC 173-185-080 immediately upon beginning operations in the state.

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-050 Definitions. (1) **"American Petroleum Institute (API) gravity"** is a measure of how heavy or light a petroleum liquid is compared to water.

(2) **"Bulk"** means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

((~~(2)~~)) (3) **"Crude oil"** means any naturally occurring hydrocarbons coming from the earth that are liquid at twenty-five degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

((~~(3)~~)) (4) **"Ecology"** means the state of Washington department of ecology.

((~~(4)~~)) (5)(a) **"Facility"** means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

((~~(5) **"Navigable waters of the state"** means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.~~))

(6) **"Oil"** or **"oils"** means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302, adopted August 14, 1989, under Section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(7)(a) **"Owner"** or **"operator"** means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) **"Operator"** does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(8) **"Person"** means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, ship, or any other entity whatsoever.

(9) **"Ship"** means any boat, ship, vessel, barge, or other floating craft of any kind.

(10) **"Sour crude oil"** means crude oil that has a sulfur content greater than 0.5 percent by weight.

(11) **"Spill"** means an unauthorized discharge of oil which enters waters of the state.

((~~(11)~~)) (12) **"State"** means the state of Washington.

((~~(12)~~)) (13) **"Sweet crude oil"** means crude oil that has a sulfur content that does not exceed 0.5 percent by weight.

(14) **"Transmission pipeline"** means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

((~~(13) **"Waters of the state"** includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.~~))

(15) **"Vapor-liquid ratio"** means the ratio of the vapor volume to the liquid volume of the sample, in equilibrium, under specified conditions.

(16) **"Vapor pressure"** means the pressure exerted by the vapor of a liquid when in equilibrium with the liquid. Vapor pressure varies based on specified temperature and vapor-liquid ratio.

PART B

((~~FACILITIES~~)) NOTIFICATION, DISCLOSURES, AND NONDISCLOSURES

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-070 Advance notice—Facility requirements. (1) Owners and operators of a facility that will receive crude oil from a railroad car must provide ecology with advance notice of all scheduled crude oil deliveries to be received by the facility as provided in this section. Notification may be made by the facility owner or operator's designee.

(2) The advance notice must contain the following information:

(a) Name, address, contact person, and telephone number of the facility;

(b) Region of origin of crude oil as stated, or as expected to be stated, on the bill of lading;

(c) Railroad route taken to the facility within the state, if known;

(d) Scheduled time, which means date, and volume of the scheduled delivery;

(e) Gravity, as measured by ((~~the most recently approved~~)) standards developed by the American Petroleum Institute or, if unavailable at the time of reporting, expected gravity of crude oil scheduled to be delivered;

(f) Type of crude oil scheduled to be delivered based on: (i) Expected gravity as reported under (e) of this subsection; and (ii) designation of the crude oil as sweet or sour;

(g) Vapor pressure or, if unavailable at the time of reporting, expected vapor pressure of crude oil scheduled to be delivered. Vapor pressure reported under this subsection must be the vapor pressure or expected vapor pressure of the crude oil as measured by American Society for Testing and Materials, or ASTM, Standard D6377-16 or another method approved by ecology, at the expected temperature of the crude oil and with a vapor-liquid ratio between 1.5:1 and 4:1.

A copy of ASTM Standard D6377-16 is available for inspection at 300 Desmond Drive S.E., Lacey, Washington 98503.

(3)(a) Advance notice must be provided to ecology each week for all arrivals of railroad cars carrying crude oil scheduled for the succeeding seven-day period.

(b) All newly scheduled arrivals of railroad cars carrying crude oil after the advance notice time frame under (a) of this subsection must be reported to ecology as soon as possible and before the shipment enters the state. If the shipment is already in the state, the scheduled arrival must be reported when the information is known to the facility.

(c) Advance notice information reported for scheduled crude oil deliveries may be updated after receipt of a scheduled crude oil delivery. If a facility chooses to update information, the information must be updated within fifteen days after the end of the quarter containing the scheduled crude oil delivery date.

(4) Notification must be submitted via ((~~internet~~)) website established by ecology.

((~~PART C~~

~~PIPELINES~~))

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-080 Biannual notice—Pipeline requirements. (1) Owners and operators of a transmission pipeline that transports crude oil in or through the state must provide ecology biannual notice of all crude oil transported by the transmission pipeline in or through the state. Notification may be made by the transmission pipeline owner or operator's designee.

(2) The notice must contain the following information:

(a) Company name, address, contact person, and telephone number of the pipeline;

(b) Volume of crude oil by:

(i) Each listed state or province of origin of the crude oil;

(ii) Gravity, as measured by standards developed by the American Petroleum Institute, by weighted average;

(iii) Type of crude oil transported based on gravity as reported under (b)(ii) of this subsection, and designation of the crude oil as sweet or sour.

(3)(a) Notification must be submitted to ecology each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(b) Notification ((~~must~~)) may be submitted by email to ecology or via website established by ecology. Form number ECY 070-562 must be used.

((~~PART D~~

~~DISCLOSURES AND NONDISCLOSURES~~))

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-090 Disclosures—Emergency management division, utilities and transportation commission, and county, city, tribal, port, and local government emergency response agencies. (1) Ecology will share the advance notice information collected from facilities under ((~~this chapter~~)) WAC 173-185-070 with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request. Requests to access this information must be submitted to ecology by email.

(2) Ecology will share the advance notice information collected from facilities under WAC 173-185-070 with the utilities and transportation commission.

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-100 Disclosures—The public. Ecology will disclose information collected under this chapter by publishing it on a quarterly basis on ecology's website.

(1) Ecology will publish the following crude oil movement information:

(a) Mode of transport (i.e., railroad car or pipeline);

(b) Place of origin by region for facilities and by state or province for transmission pipelines;

(c) Number and volume of reported spills during transport and delivery;

(d) Estimated number of railroad cars delivering crude oil; ((~~and~~))

(e) Type and reported volume of crude oil received by facilities and crude oil transported by transmission pipelines in or through the state; and

(f) Vapor pressure of crude oil received by facilities.

(2) With respect to information on crude oil movement to facilities provided by this section, ecology will aggregate information on a statewide basis by:

(a) Route;

(b) Week; and

(c) Type of crude oil.

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-110 Nondisclosure. Pursuant to RCW 42.56.270(23) and 90.56.565((~~(5)~~)) (6), ecology and any state, local, tribal, or public agency that receives information provided under ((~~this chapter~~)) WAC 173-185-070 and 173-185-090 may not disclose any such information to the public or to nongovernmental entities that contains proprietary, commercial, or financial information unless that information is aggregated. The requirement for aggregating information does not apply when information is shared by ecology with emergency response agencies as provided in WAC ((~~178-185-090~~)) 173-185-090.