WSR 20-21-003
WITHDRAWAL OF PROPOSED RULES
BELLINGHAM TECHNICAL COLLEGE
[Filed October 8, 2020, 10:32 a.m.]

Due to ongoing changes and guidance from the assistant attorney general's (AAG) office, Bellingham Technical College wishes to withdraw Proposed rule making WSR 20-19-095, filed on September 17, 2020, at 12:39 p.m. This proposed rule relates to revisions to chapter 495B-121 WAC. Bellingham Technical College anticipates a new CR-102 to be submitted within the next sixty days, once the AAG's office has finalized its guidance related to the rule.

Please contact Ronda Laughlin at rlaughlin@btc.edu or 360-752-8334 if you require additional information or clarification.

Ronda Laughlin
Executive Assistant
Rules Coordinator

WSR 20-21-048
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS
[Filed October 13, 2020, 3:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-098.

Title of Rule and Other Identifying Information: Deferred compensation program, WAC 415-501-415 May I move funds into the plan from an eligible retirement plan?

Hearing Location(s): On November 30, 2020, at 10:30 a.m. The hearing will be conducted by telephone conference only: 360-407-3830 or 855-682-0796 (toll free). Conference ID: 101895.

Date of Intended Adoption: December 1, 2020.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by November 30, 2020, 9:00 a.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by November 19, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify eligibility to rollover funds from another source into a deferred compensation program account.

Reasons Supporting Proposal: This amendment will make it easier for an individual to determine if they are eligible to roll funds into a deferred compensation program account.

Statutory Authority for Adoption: RCW 41.50.780.

Statute Being Implemented: RCW 41.50.780.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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.

October 13, 2020
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-22-053, filed 10/29/04, effective 11/29/04)

WAC 415-501-415 May I move funds into the plan from an eligible retirement plan? (1) **Rollover.** If you established your deferred compensation account through your own employment with a participating employer, you may roll pretax contributions into the plan from an individual retirement account (IRA) or from another eligible retirement plan. If your account was established as a beneficiary following the original account owner's death, or as a result of a domestic relations order as described in WAC 415-501-495, you are not eligible to roll additional funds into the account.

(a) The plan will keep a separate accounting of all funds rolled into the plan.

(b) Distributions of money rolled into the plan may be subject to an additional ten percent tax on early distributions.

(2) **Plan-to-plan transfer.** You may transfer money into the plan from another eligible governmental Section 457(b) plan maintained by a political subdivision, subject to the following conditions:

(a) The political subdivision also participates in DCP;

(b) The transferor plan allows direct plan-to-plan transfers; and

(c) You are employed by the political subdivision at the time of the transfer.

(3) **Rollover/transfer application.** You must complete the appropriate form to transfer or roll money ((~~over~~)) into your deferred compensation account. Forms are available through the department or on its website.

WSR 20-21-049
PROPOSED RULES
DEPARTMENT OF RETIREMENT SYSTEMS
[Filed October 13, 2020, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-13-087.

Title of Rule and Other Identifying Information: WAC 415-104-360 How is basic salary for LEOFF Plan II determined?, 415-104-370 Overtime is LEOFF Plan 2 basic salary, and 415-104-401 Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan II basic salary.

Hearing Location(s): On November 30, 2020, at 10:00 a.m. The hearing will be conducted by telephone conference only: 360-407-3830 or 855-682-0796 (toll free). Conference ID: 82478351.

Date of Intended Adoption: December 1, 2020.

Submit Written Comments to: Jilene Siegel, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by November 30, 2020, 9:00 a.m.

Assistance for Persons with Disabilities: Contact Jilene Siegel, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by November 19, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To clarify whether certain payments to LEOFF Plan 2 members are considered basic salary for the purpose of calculating retirement benefits, in accordance with RCW 41.26.030 (4)(b).

Reasons Supporting Proposal: Clarifying which payments to LEOFF [Plan] 2 employees are basic salary, with additional examples, will allow members and employers to correctly interpret RCW 41.26.030 and avoid reporting errors.

Statutory Authority for Adoption: RCW 41.50.050.

Statute Being Implemented: RCW 41.26.030.

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

Name of Proponent: Department of retirement systems, governmental.

Name of Agency Personnel Responsible for Implementation: Seth Miller, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7304.

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)(a)(i) does not apply to this proposed rule and is not voluntarily made applicable by the agency.

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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

October 13, 2020
Jilene Siegel
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-360 How is basic salary for LEOFF Plan ((~~II~~)) 2 determined? (1) **What payments are included in LEOFF Plan ((~~II~~)) 2 basic salary?** Other than the specific exclusions listed in WAC 415-104-397 and 415-104-401, a payment that is a salary or wage earned during a calendar month for personal services rendered by a member to an employer qualifies as LEOFF Plan ((~~II~~)) 2 basic salary.

(a) Certain payments that are not for personal services rendered also qualify if there is a specific statutory provision identifying those payments as LEOFF Plan ((~~II~~)) 2 basic salary. See WAC 415-104-373.

(b) Specific types of payments that qualify as LEOFF Plan ((~~II~~)) 2 basic salary include, but are not limited to, the payments described in WAC 415-104-363(1) and 415-104-365 through 415-104-379.

(c) Other payments not specifically listed qualify as basic salary for LEOFF Plan ((~~II~~)) 2 only if those payments are a salary or wage for services rendered.

(2) **Basic salary is earned when the service is rendered, rather than when payment is made.**

Example: At the end of a month, a firefighter is paid regular compensation for June, plus overtime compensation for May. When the payment is reported to the department, the payment must be properly distributed between what was earned in May and what was earned in June.

(3) **Salary characterizations are based upon the nature of the payment.** Whether a payment is basic salary depends upon whether the payment is earned as a salary or wage for services rendered. The name given to the payment is not controlling. The department determines whether a payment is basic salary by considering:

(a) What the payment is for; and

(b) Whether the reason for the payment brings it within the statutory definition of basic salary.

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-370 Overtime is included in LEOFF Plan ((~~II~~)) 2 basic salary. Overtime, additional pay earned for working time in excess of regularly scheduled shift(s), is a salary or wage for services rendered. Overtime payments are considered part of basic salary for LEOFF Plan ((~~II~~)) 2. Overtime includes, but is not limited to:

(1) **Additional pay for working on a holiday.** If a member receives an extra payment ((~~because he or she worked~~)) for working on a scheduled holiday, the payment is overtime. The employer may make the additional payment when the holiday occurs or in a lump sum at some other time. In either case, the payment is considered to be basic salary for LEOFF Plan ((~~II~~)) 2;

Examples: A firefighter works on Christmas day. As compensation for working on a holiday, ((~~she~~)) the firefighter is given the option of taking some other day off with pay or ((~~of~~)) receiving an extra day's pay. If ((~~she~~)) the firefighter opts for the extra day of pay, this payment is overtime and is LEOFF Plan ((~~H~~)) 2 basic salary. If ((~~she~~)) the firefighter opts to take a day off instead, this is paid leave ((~~and~~)) that qualifies as LEOFF Plan ((~~H~~)) 2 basic salary.

Some employers create holiday leave banks for these employees, and it is considered a regular workday if an employee works on the holiday. Later, the employee may use hours from the holiday leave bank to take a day off and/or cash out all or some of the hours in the future. These cashed out days are reportable if the accrued leave was associated with state or federal holidays.

(2) **Callback pay,** which is a special rate of pay some employers provide members for being called back to work after the end of the member's regular shift;

(3) **Court pay,** which is an additional payment for appearing in court or performing other duties outside of a member's regularly scheduled shift.

(4) **Compensatory time (comp time),** is paid time off given to an employee instead of overtime pay in compensation for extra hours of work. However, if the employee later receives this leave as a paid cash out, that payment is for overtime previously worked and therefore is basic salary. Basic salary is earned when the service is rendered, rather than when the payment is made. If the comp time is used as leave, it is reported as leave when used.

Example: An employee works eight additional hours in March and receives twelve hours of comp time. The employer has a policy that all unused comp time must be paid out at the end of the fiscal year in June. When this cash out is paid to the employee, the compensation and eight hours were earned in March and should be reported as such. If the comp time is used as leave, it is reported as leave whenever it is used.

AMENDATORY SECTION (Amending WSR 97-01-016, filed 12/6/96, effective 1/6/97)

WAC 415-104-401 Cash outs of accrued leave or other forms of severance pay are not LEOFF Plan ((~~H~~)) 2 basic salary. (1) A cash out from an employer for unused accrued leave((~~,~~)) is a deferred salary or wage for services previously rendered. However, the payment is not basic salary because it is specifically excluded from the definition of basic salary for LEOFF Plan 2 in RCW 41.26.030 ((~~(13)(b)~~)).

Example 1: "Kelly" days reduce the number of hours an employee works and are commonly used to minimize the need to pay overtime. A firefighter may accrue eleven "Kelly" days based on the shift schedule of the employee. If used as leave and paid at the normal rate of pay, these are basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 2: A police officer may receive a personal or "floating" holiday each year. If used as leave and paid at the normal rate of pay, this holiday pay is basic salary. However, a cash out of this leave is excluded from the definition of basic salary.

Example 3: An administrator may receive a monthly accrual of "executive leave" in lieu of additional salary, in recognition of additional hours of public service such as community meetings, council meetings, and major events. However, a cash out of this leave is excluded from the definition of basic salary.

(2) **Other forms of severance pay are not basic salary.** Any form of severance payment received from an employer upon termination((~~,~~)) is not included as basic salary in LEOFF Plan ((~~H~~)) 2 because it is excluded from the statutory definition of basic salary.

WSR 20-21-053
PROPOSED RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Filed October 14, 2020, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-120.

Title of Rule and Other Identifying Information: Chapter 480-100 WAC Electric companies, revisions to sections of chapter 480-100 WAC to incorporate statutory changes including the Clean Energy Transformation Act (CETA) (chapter 19.405 RCW) and revisions to chapters 80.28 and 19.280 RCW, and to consider policy and process changes to create more efficient rules that adapt to a changing energy landscape. The commission is considering these changes under Commission Dockets UE-191023 and UE-190698.

Hearing Location(s): On December 9, 2020, at 9:30 a.m. Virtual meeting to attend by phone, call 253-372-2181 and enter the Conference ID: 918 823 796#. To participate via Microsoft Teams, use the following link: https://teams.microsoft.com/l/meetup-join/19%3ameeting_YzY0ODE1MDktNTA0NC00MWM2LWFmY2YtNTJkZTViODk2MTJk

%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: December 9, 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 November 12, 2020.

Assistance for Persons with Disabilities: Contact Susan Holman, phone 360-664-1243, TTY 360-586-8203, email susan.holman@utc.wa.gov, by November 17, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement legislative changes to the integrated resource plans in chapter 19.280 RCW and WAC 480-100-238 and streamline implementation of chapters 19.405 and 19.280 RCW. The proposed amendments modify or add definitions, establish a process for gaining approval of a Clean Energy Implementation Plan (CEIP), revise the process for gaining commission acknowledgment of an integrated resource plan (IRP), and create and enhance the public participation processes for the CEIP and IRP.

Reasons Supporting Proposal: The Washington legislature in 2019 passed CETA, which required the commission to promulgate new rules for investor-owned electric utilities to comply with CETA regarding requirements to prepare and submit IRPs and CEIPs.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160; chapters 80.28, 19.280, and 19.405 RCW.

Statute Being Implemented: Chapters 19.405, 80.28, and 19.280 RCW.

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: Bradley Cebulko, P.O. Box 47250, Olympia, WA 98504-7250, 360-259-5315; Implementation and Enforcement: Mark L. Johnson, P.O. Box 47250, Olympia, WA 98504-7250, 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 commission issued a small business economic impact statement questionnaire asking small and large businesses to comment on the potential costs of the rules. No small businesses responded. One large business, an investor-owned utility, responded with anticipated costs of implementation. The commission also conducted its own analysis of the potential impact to small businesses. In that analysis, the commission determined that the vast majority of the costs imposed by the rules are statutory requirements of large businesses (investor-owned utilities). The commission's analysis shows that any cost incurred by small businesses in this rule making is either the result of implementing a statutory requirement or based on voluntary participation in a utility's IRP or CEIP public process, membership in a utility's advisory group, providing public comment on a utility plan to the commission, or intervening in a commission adjudicative proceeding.

A copy of the detailed cost calculations may be obtained by contacting Bradley Cebulko, P.O. Box 47250, Olympia, WA 98504-7250, phone 360-259-5315, email bradley.cebulko@utc.wa.gov.

October 14, 2020
Mark L. Johnson
Executive Director and Secretary

PART VIII—PLANNING

NEW SECTION

WAC 480-100-600 Purpose. The purpose of these rules is to ensure that the utility meets the clean energy transformation standards outlined in WAC 480-100-610 in a timely manner and at the lowest reasonable cost.

NEW SECTION

WAC 480-100-605 Definitions. The definitions below apply to all of WAC 480-100-600 through 480-100-665.

"Allocation of electricity" means, for the purposes of setting electricity rates, the costs and benefits associated with the resources used to provide electricity to an electric utility's retail electricity consumers that are located in this state.

"Alternative lowest reasonable cost and reasonably available portfolio" means, for purposes of calculating the incremental cost of compliance in RCW 19.405.060(3), the portfolio of investments the utility would have made and the expenses the utility would have incurred if not for the requirement to comply with RCW 19.405.040 and 19.405.050. The alternative lowest reasonable cost and reasonably available portfolio must include the social cost of greenhouse gases in the resource acquisition decision in accordance with RCW 19.280.030 (3)(a).

"Biomass energy" includes: Organic by-products of pulping and the wood manufacturing process; animal manure; solid organic fuels from wood; forest or field residues; untreated wooden demolition or construction debris; food waste and food processing residuals; liquors derived from algae; dedicated energy crops; and yard waste.

Biomass energy does not include:

- Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic;
- Wood from old growth forests; or
- Municipal solid waste.

"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.

"CEAP" means the clean energy action plan.

"CEIP" means the clean energy implementation plan.

"Coal-fired resource" means a facility that uses coal-fired generating units, or that uses units fired in whole or in

part by coal as feedstock, to generate electricity. Coal-fired resource does not include:

• An electric generating facility that is included as part of a limited duration wholesale power purchase, not to exceed one month, made by an electric utility for delivery to retail electric customers that are located in this state for which the source of the power is not known at the time of entry into the transaction to procure the electricity; or

• An electric generating facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3)(c).

"Commission" means the Washington utilities and transportation commission.

"Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

"Cost-effective" means that a project or resource is forecast to be reliable and available within the time it is needed and 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.

"Demand response" means changes in electric usage by demand-side resources from their normal consumption patterns in response to changes in the price of electricity, or to incentive payments designed to induce lower electricity use, at times of high wholesale market prices or when system reliability is jeopardized. Demand response may include measures to increase or decrease electricity production on the customer's side of the meter in response to incentive payments.

"Distributed energy resource" means a nonemitting electric generation or renewable resource or program that reduces electric demand, manages the level or timing of electricity consumption, or provides storage, electric energy, capacity, or ancillary services to an electric utility and that is located on the distribution system, any subsystem of the distribution system, or behind the customer meter, including conservation and energy efficiency.

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

• 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.

• 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.

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

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

"Equitable distribution" means a fair and just, but not necessarily equal, allocation of benefits and burdens from the utility's transition to clean energy. Equitable distribution is based on disparities in current conditions. Current conditions are informed by, among other things, the assessment described in RCW 19.280.030 (1)(k) from the most recent integrated resource plan.

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

"Greenhouse gas" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and any other gas or gases designated by the department of ecology by rule under RCW 70A.45.010.

"Highly impacted community" means a community designated by the department of health based on the cumulative impact analysis required by RCW 19.405.140 or a community located in census tracts that are fully or partially on "Indian country," as defined in 18 U.S.C. Sec. 1151.

"Implementation period" means the four years after the filing of each clean energy implementation plan through 2045. The first implementation period will begin January 1, 2022, and will end December 31, 2025, and the second implementation period will begin on January 1, 2026, and will end on December 31, 2029.

"Indicator" means an attribute, either quantitative or qualitative, of resources or related distribution investments associated with customer benefits described in RCW 19.405.040(8).

"Integrated resource plan" or "IRP" means an analysis describing the mix of generating resources, conservation, methods, technologies, and resources to integrate renewable resources and, where applicable, address overgeneration events, and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

"Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its customers, public policies regarding resource preference adopted by Washington or the federal government, and the cost of risks associated with environmental effects, including emissions of carbon dioxide. The analysis of the lowest reasonable cost must describe the utility's combination of planned resources and related delivery system infrastructure and show consistency with chapters 19.280, 19.285, and 19.405 RCW.

"Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form, including methane clathrate. Natural gas does not include renewable natural gas or the portion of renewable natural gas when blended into other fuels.

"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. Nonemitting electric generation does not include renewable resources.

"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 including, but not limited to, the facility's fuel type, geographic location, vintage, qualification as a renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases. Nonpower attributes does not include any aspects, claims, characteristics, and benefits associated with the on-site 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.

"Renewable resource" means water; wind; solar energy; geothermal energy; renewable natural gas; renewable hydrogen; wave, ocean, or tidal power; biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or biomass energy.

"Resource" includes, but is not limited to, generation, conservation, distributed generation, demand response, efficiency, and storage.

"Resource need" means any current or projected deficit to reliably meet electricity demands created by changes in demand, changes to system resources, or their operation to comply with state or federal requirements. Such demands or requirements may include, but are not limited to, capacity and associated energy, capacity needed to meet peak demand in any season, fossil-fuel generation retirements, equitable distribution of benefits or reduction of burdens, cost-effective conservation and efficiency resources, demand response, renewable and nonemitting resources.

"Social cost of greenhouse gas emissions" or "SCGHG" is the inflation-adjusted costs of greenhouse gas emissions resulting from the generation of electricity, as required by RCW 80.28.405, the updated calculation of which is published on the commission's website.

"Vulnerable populations" means communities that experience a disproportionate cumulative risk from environmental burdens due to: Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and sensitivity factors, such as low birth weight and higher rates of hospitalization.

NEW SECTION

WAC 480-100-610 Clean energy transformation standards. (1) On or before December 31, 2025, each utility must eliminate coal-fired resources from its allocation of electricity to Washington retail electric customers;

(2) By January 1, 2030, each utility must ensure all retail sales of electricity to Washington electric customers are greenhouse gas neutral;

(3) By January 1, 2045, each utility must ensure that nonemitting electric generation and electricity from renewable resources supply one hundred percent of all retail sales of electricity to Washington electric customers;

(4) In making progress toward and meeting subsections (2) and (3) of this section, each utility must:

(a) Pursue all cost-effective, reliable, and feasible conservation and efficiency resources, and demand response;

(b) Maintain and protect the safety, reliable operation, and balancing of the electric system; and

(c) Ensure that all customers are benefiting from the transition to clean energy through:

(i) The equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities;

(ii) Long-term and short-term public health and environmental benefits and reduction of costs and risks; and

(iii) Energy security and resiliency.

(5) Each utility must demonstrate that it has made progress toward and has met the standards in this section at the lowest reasonable cost.

NEW SECTION

WAC 480-100-620 Content of an integrated resource plan. (1) **Purpose.** Consistent with chapters 80.28, 19.280, and 19.405 RCW, each electric utility has the responsibility to identify and meet its resource needs with the lowest reasonable cost mix of conservation and efficiency, generation, distributed energy resources, and delivery system investments to ensure the utility provides energy to its customers that is clean, affordable, reliable, and equitably distributed. At a minimum, integrated resource plans must include the components listed in this rule. Unless otherwise stated, the assessments, evaluations, and forecasts should be over an appropriate planning horizon.

(2) **Load forecast.** The IRP must include a range of forecasts of projected customer demand that reflect the effect of economic forces on the consumption of electricity and address changes in the number, type, and efficiency of end uses of electricity.

(3) **Distributed energy resources.**

(a) The IRP must include assessments of a variety of distributed energy resources. These assessments must incorporate nonenergy costs and benefits not fully valued elsewhere within any integrated resource plan model. Utilities must assess the effect of distributed energy resources on the utility's load and operations under RCW 19.280.030 (1)(h). The commission strongly encourages utilities to engage in a distributed energy resource planning process as described in RCW 19.280.100. If the utility elects to use a distributed energy resource planning process, the IRP should include a summary of the results.

(b) The required distributed energy resource assessments must include the following:

(i) Energy efficiency and conservation potential assessment - The IRP must assess currently employed and potential

policies and programs needed to obtain all cost-effective conservation, efficiency, and load management improvements, including the ten-year conservation potential used in calculating a biennial conservation target under chapter 480-109 WAC;

(ii) Demand response potential assessment - The IRP must assess currently employed and new policies and programs needed to obtain all cost-effective demand response;

(iii) Energy assistance potential assessment - The IRP must include distributed energy programs and mechanisms identified pursuant to RCW 19.405.120, which pertains to energy assistance and progress toward meeting energy assistance need; and

(iv) Other distributed energy resource potential assessments - The IRP must assess other distributed energy resources that may be installed by the utility or the utility's customers including, but not limited to, energy storage, electric vehicles, and photovoltaics. Any such assessment must include the effect of distributed energy resources on the utility's load and operations.

(4) **Supply-side resources.** The IRP must include an assessment of a wide range of commercially available generating and nonconventional resources, including ancillary service technologies.

(5) **Renewable resource integration.** An assessment of methods, commercially available technologies, or facilities for integrating renewable resources including, but not limited to, battery storage and pumped storage, and addressing over-generation events, if applicable to the utility's resource portfolio. The assessment may address ancillary services.

(6) **Regional generation and transmission.** The IRP must include an assessment of the availability of regional generation and transmission capacity on which the utility may rely to provide and deliver electricity to its customers.

(a) The assessment must include the utility's existing transmission capabilities, and future resource needs during the planning horizon, including identification of facilities necessary to meet future transmission needs.

(b) The assessment must also identify the general location and extent of transfer capability limitations on its transmission network that may affect the future siting of resources.

(7) **Resource evaluation.** The IRP must include a comparative evaluation of all identified resources and potential changes to existing resources for achieving the clean energy transformation standards in WAC 480-100-610 at the lowest reasonable cost.

(8) **Resource adequacy.** The IRP must include an assessment and determination of resource adequacy metrics. It must also identify an appropriate resource adequacy requirement and measurement metrics consistent with RCW 19.405.030 through 19.405.050.

(9) **Economic, health, and environmental burdens and benefits.** The IRP must include an assessment of energy and nonenergy benefits and reductions of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits, costs, and risks; and energy security risk. The assessment should be informed by the cumulative impact analysis conducted by the department of health.

(10) **Scenarios and sensitivities.** The IRP must include a range of possible future scenarios and input sensitivities for the purpose of testing the robustness of the utility's resource portfolio under various parameters. The IRP must also provide a narrative description of scenarios and sensitivities the utility used, including those informed by the advisory group process.

(a) At least one scenario must describe the alternative lowest reasonable cost and reasonably available portfolio that the utility would have implemented if not for the requirement to comply with RCW 19.405.040 and 19.405.050, as described in WAC 480-100-660(1). This scenario's conditions and inputs should be the same as the preferred portfolio except for those conditions and inputs that must change to account for the impact of RCW 19.405.040 and 19.405.050.

(b) At least one scenario must be a future climate change scenario. This scenario should incorporate the best science available to analyze impacts including, but not limited to, changes in snowpack, streamflow, rainfall, heating and cooling degree days, and load changes resulting from climate change.

(c) At least one sensitivity must be a maximum customer benefit scenario. This sensitivity should model the maximum amount of customer benefits described in RCW 19.405.040 (8) prior to balancing against other goals.

(11) **Portfolio analysis and preferred portfolio.** The utility must integrate the demand forecasts and resource evaluations into a long-range integrated resource plan solution describing the mix of resources that meet current and projected resource needs. Each utility must provide a narrative explanation of the decisions it has made, including how the utility's long-range integrated resource plan expects to:

(a) Achieve the clean energy transformation standards in WAC 480-100-610 (1) through (3) at the lowest reasonable cost;

(b) Serve utility load, based on hourly data, with the output of the utility's owned resources, market purchases, and purchase power agreements, net of any off-system sales of such resource;

(c) Include all cost-effective, reliable, and feasible conservation and efficiency resources, using the methodology established in RCW 19.285.040, and demand response;

(d) Consider acquisition of existing renewable resources;

(e) In the acquisition of new resources constructed after May 7, 2019, rely on renewable resources and energy storage, insofar as doing so is at the lowest reasonable cost;

(f) Maintain and protect the safety, reliable operation, and balancing of the utility's electric system, including mitigating over-generation events and achieving the identified resource adequacy requirement;

(g) Achieve the requirements in WAC 480-100-610 (4)(c); the description should include, but is not limited to:

(i) The long-term strategy and interim steps the utility will take to equitably distribute benefits and reduce burdens for highly impacted communities and vulnerable populations; and

(ii) The estimated degree to which benefits will be equitably distributed and burdens reduced over the planning horizon.

(h) Assess the environmental health impacts to highly impacted communities;

(i) Analyze and consider combinations of distributed energy resource costs, benefits, and operational characteristics including ancillary services, to meet system needs; and

(j) Incorporate the social cost of greenhouse gas emissions as a cost adder as specified in RCW 19.280.030(3).

(12) **Clean energy action plan (CEAP).** The utility must develop a ten-year clean energy action plan for implementing RCW 19.405.030 through 19.405.050. The CEAP must:

(a) Be at the lowest reasonable cost;

(b) Identify and be informed by the utility's ten-year cost-effective conservation potential assessment as determined under RCW 19.285.040;

(c) Identify how the utility will meet the requirements in WAC 480-100-610 (4)(c) including, but not limited to:

(i) Describing the specific actions the utility will take to equitably distribute benefits and reduce burdens for highly impacted communities and vulnerable populations;

(ii) Estimating the degree to which such benefits will be equitably distributed and burdens reduced over the CEAP's ten-year horizon; and

(iii) Describing how the specific actions are consistent with the long-term strategy described in WAC 480-100-620 (11)(g).

(d) Establish a resource adequacy requirement;

(e) Identify the potential cost-effective demand response and load management programs that may be acquired;

(f) Identify renewable resources, nonemitting electric generation, and distributed energy resources that may be acquired and evaluate how each identified resource may reasonably be expected to contribute to meeting the utility's resource adequacy requirement;

(g) Identify any need to develop new, or to expand or upgrade existing, bulk transmission and distribution facilities;

(h) Identify the nature and possible extent to which the utility may need to rely on an alternative compliance option identified under RCW 19.405.090, if appropriate; and

(i) Incorporate the social cost of greenhouse gas emissions as a cost adder as specified in RCW 19.280.030(3).

(13) **Avoided cost and nonenergy impacts.** The IRP must include an analysis and summary of the avoided cost estimate for energy, capacity, transmission, distribution, and greenhouse gas emissions costs. The utility must list nonenergy costs and benefits addressed in the IRP and should specify if they accrue to the utility, customers, participants, vulnerable populations, highly impacted communities, or the general public. The utility may provide this content as an appendix.

(14) **Data disclosure.** The utility must include the data input files made available to the commission in native format per RCW 19.280.030 (10)(a) and (b) as an appendix to the IRP. For filing confidential information, the utility may designate information within the data input files as confidential, provided that the information and designation meet the requirements of WAC 480-07-160.

(15) **Information relating to purchases of electricity from qualifying facilities.** Each utility must provide information and analysis that it will use to inform its annual filings required under chapter 480-106 WAC. The detailed analysis must include, but is not limited to, the following components:

(a) A description of the methodology used to calculate estimates of the avoided cost of energy, capacity, transmission, distribution and emissions averaged across the utility; and

(b) Resource assumptions and market forecasts used in the utility's schedule of estimated avoided cost required in WAC 480-106-040 including, but not limited to, cost assumptions, production estimates, peak capacity contribution estimates and annual capacity factor estimates.

(16) **Report of substantive changes.** The IRP must include a summary of substantive changes to modeling methodologies or inputs that result in changes to the utility's resource need, as compared to the utility's previous IRP.

(17) **Summary of public comments.** The utility must provide a summary of public comments received during the development of its IRP and the utility's responses, including whether issues raised in the comments were addressed and incorporated into the final IRP as well as documentation of the reasons for rejecting any public input. The utility may include the summary as an appendix to the final IRP. Comments with similar content or input may be consolidated with a single utility response.

NEW SECTION

WAC 480-100-625 Integrated resource plan development and timing. (1) **Timing.** Unless otherwise ordered by the commission, each electric utility must file an integrated resource plan (IRP) with the commission by January 1, 2021, and every four years thereafter.

(2) **IRP work plan.** No later than fifteen months prior to the due date of its IRP, the utility must file a work plan that includes advisory group input and outlines the content of the IRP and expectations for the subsequent two-year progress report. The utility must include the following in its work plan:

(a) The methods for assessing potential resources;

(b) A proposed schedule of meetings for the utility's resource planning advisory group and equity advisory group, as established in WAC 480-100-655 (1)(b), for the IRP;

(c) A list of significant topics, consistent with WAC 480-100-620, that will be discussed at each advisory group meeting for the IRP;

(d) The date the draft IRP will be filed with the commission;

(e) The date the final IRP will be filed;

(f) A link to a website, managed by the utility and updated in a timely manner, to which the utility posts and makes publicly available the following information:

(i) Meeting summaries and materials for advisory group meetings, including materials for future meetings;

(ii) A current schedule of advisory group meetings and significant topics to be covered, actively updated by the company and changes highlighted;

(iii) Information on how members of the public may participate in advisory group meetings; and

(iv) Advisory group comments about the IRP and its development received to date, including responses communicating how the subject of the input was considered or used. Comments with similar content or input may be consolidated with a single utility response.

(g) If the utility anticipates significant changes in the workplan, it must file an updated workplan.

(3) **Draft IRP.** No later than four months prior to the due date of the final IRP, the utility must file its draft IRP with the commission. At minimum, the draft IRP must include the preferred portfolio, CEAP, and supporting analysis, and to the extent practicable all scenarios, sensitivities, appendices, and attachments.

(a) The commission will hear public comment on the draft IRP at an open meeting scheduled after the utility files its draft IRP. The commission will accept public comments electronically and in any other available formats, as outlined in the commission's notice for the open public meeting and opportunity to comment.

(b) The utility must file with the commission completed presentation materials concerning the draft IRP at least five business days prior to the open meeting.

(4) **Two-year progress report.** At least every two years after the utility files its IRP, beginning January 1, 2023, the utility must file a two-year progress report.

(a) In this report, the utility must update its:

(i) Load forecast;

(ii) Demand-side resource assessment including a new conservation potential assessment;

(iii) Resource costs; and

(iv) The portfolio analysis and preferred portfolio.

(b) The progress report must include other updates that are necessary due to changing state or federal requirements, or significant changes to economic or market forces.

(c) The progress report must also update for any elements found in the utility's current clean energy implementation plan, as described in WAC 480-100-640.

NEW SECTION

WAC 480-100-630 Integrated resource planning advisory groups. (1) The utility must demonstrate and document how it considered input from advisory group members in the development of its IRP and two-year progress report. Examples of how the utility may incorporate advisory group input include using modeling scenarios, sensitivities, and assumptions advisory group members proposed and using data and information supplied by advisory group members as inputs to plan development. As part of this process and consistent with WAC 480-100-625 (2)(f), the utility must communicate to advisory group members about whether and how the utility used their input in its analysis and decision making, including explanations for why the utility did not use an advisory group member's input.

(2) The utility must make available completed presentation materials for each advisory group meeting at least three business days prior to the meeting. The utility may update materials as needed.

(3) The utility must make all of its data inputs and files available to the commission in native file format, per RCW 19.280.030 (10)(a) and (b), and in an easily accessible format. The utility may make confidential information available by providing it to the commission pursuant to WAC 480-07-160. The utility should minimize its designation of information in the IRP as confidential. Nonconfidential contents of the IRP, two-year progress report, and supporting documentation as well as data inputs and files must be available for advisory group member review upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095.

NEW SECTION

WAC 480-100-640 Clean energy implementation plan (CEIP). (1) **Filing requirements - General**. Unless otherwise ordered by the commission, each electric utility must file with the commission a CEIP by October 1, 2021, and every four years thereafter. The CEIP describes the utility's plan for making progress toward meeting the clean energy transformation standards, and is informed by the utility's clean energy action plan. The information and documents described in each subsection below must be included in each CEIP.

(2) **Interim targets.**

(a) Each utility must propose a series of interim targets that:

(i) Demonstrate how the utility will make reasonable progress toward meeting the standards identified in WAC 480-100-610 (2) and (3);

(ii) Are consistent with WAC 480-100-610(4); and

(iii) Each utility must propose interim targets in the form of the percent of forecasted retail sales of electricity supplied by nonemitting and renewable resources prior to 2030 and from 2030 through 2045.

(b) The utility must include the utility's percentage of retail sales of electricity supplied by nonemitting and renewable resources in 2020 in the first CEIP it files.

(c) Each interim target must be informed by the utility's historic performance under median water conditions.

(3) **Specific targets.**

(a) Each utility must propose specific targets for energy efficiency, demand response, and renewable energy.

(i) The energy efficiency target must encompass all other energy efficiency and conservation targets and goals the commission requires the utility to meet. The specific energy efficiency target must be described in the utility's biennial conservation plan required in chapter 480-109 WAC. The utility must provide forecasted distribution of energy and nonenergy costs and benefits.

(ii) The utility must provide proposed program details, program budgets, measurement and verification protocols, target calculations, and forecasted distribution of energy and nonenergy costs and benefits for the utility's demand response target.

(iii) The utility must propose the renewable energy target as the percent of retail sales of electricity supplied by renewable resources and must provide details of renewable energy projects or programs, program budgets as applicable, and forecasted distribution of energy and nonenergy costs and benefits.

(b) The utility must provide a description of the technologies, data collection, processes, procedures, and assumptions the utility used to develop the targets in this subsection. The utility must make data input files that are used to determine relevant targets available in native format, as required in WAC 480-100-655 (1)(g), as an appendix.

(4) **Customer benefit data.** Each CEIP must:

(a) Identify highly impacted communities using the cumulative impact analysis pursuant to RCW 19.405.140 combined with census tracts at least partially in Indian country;

(b) Identify vulnerable populations based on adverse socioeconomic factors and sensitivity factors developed through the advisory group process and public participation plan described in WAC 480-100-655, describing and explaining any changes from the utility's most recently approved CEIP; and

(c) Include proposed or updated indicators and associated weighting factors related to WAC 480-100-610 (4)(c) including, at a minimum, one or more indicators associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, energy security, and resiliency. Indicators and weighting factors must be developed consistent with the advisory group process and public participation plan described in WAC 480-100-655. The utility should describe and explain any changes in indicators or weighting factors from its most recently approved CEIP.

(5) **Specific actions.** Each CEIP must include the specific actions the utility will take over the implementation period. The specific actions must meet the clean energy transformation standards and be based on the utility's clean energy action plan and interim and specific targets. Each CEIP must present the specific actions in a tabular format that provides the following information for each specific action:

(a) The general location, if applicable, proposed timing, and estimated cost of each specific action or remaining resource need, including whether the resource will be located in highly impacted communities, will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole;

(b) Metrics related to resource adequacy including contributions to capacity or energy needs; and

(c) Indicator values, or a designation as nonapplicable, for every indicator described in subsection (4)(c) of this section.

(6) **Narrative description of specific actions.** The CEIP must describe how the specific actions:

(a) Demonstrate progress toward meeting the standards identified in WAC 480-100-610 (2) and (3);

(b) Demonstrate consistency with the standards identified in WAC 480-100-610(4) including, but not limited to:

(i) An assessment of current benefits and burdens on customers, by location and population, and the projected impact of specific actions on the distribution of customer benefits and burdens during the implementation period;

(ii) A description of how the specific actions in the CEIP mitigate risks to highly impacted communities and vulnerable populations and are consistent with the longer-term strategies and actions described in the utilities most recent IRP and CEAP as required by WAC 480-100-620 (11)(g) and (12)(c).

(c) Are consistent with the proposed interim and specific targets;

(d) Are consistent with the utility's integrated resource plan;

(e) Are consistent with the utility's resource adequacy requirements, including a narrative description of how the resources identified in the most recent resource adequacy assessment conducted or adopted by the utility demonstrates that the utility will meet its resource adequacy standard; and

(f) Demonstrate how the utility is planning to meet the clean energy transformation standards at the lowest reasonable cost including, but not limited to:

(i) A description of the utility's approach to identifying the lowest reasonable cost portfolio of specific actions that meet the requirements of (a) through (e) of this subsection, including a description of its methodology for weighing considerations in WAC 480-100-610(4);

(ii) A description of the utility's methodology for selecting the investments and expenses it plans to make over the next four years that are directly related to the utility's compliance with the clean energy transformation standards, consistent with RCW 19.405.050 (3)(a), and a demonstration that its planned investments represent a portfolio approach to investment plan optimization; and

(iii) Supporting documentation justifying each specific action identified in the CEIP.

(7) **Projected incremental cost.** Each CEIP must include a projected incremental cost as outlined in WAC 480-100-660(4).

(8) **Public participation.** Each CEIP must detail the extent of advisory group and other public participation in the development of the CEIP as described in WAC 480-100-655 including, but not limited to, the summary of advisory group member comments described in WAC 480-100-655 (1)(h).

(9) **Alternative compliance.** The utility must describe any plans it has to rely on alternative compliance mechanisms as described in RCW 19.405.040 (1)(b).

(10) **Early action coal credit.** If the utility proposes to take the early action compliance credit authorized in RCW 19.405.040(11), the utility must satisfy the requirements in that statutory provision and demonstrate that the proposed action constitutes early action by presenting the analysis in subsection (6) of this section both with and without the proposed early action. The utility must compare both the proposed early action and the alternative against the same proposed interim and specific targets.

(11) **Biennial CEIP update.** The utility must make a biennial CEIP update filing on or before November 1st of each odd-numbered year that the utility does not file a CEIP. The CEIP update may be limited to the biennial conservation plan requirements under chapter 480-109 WAC. The utility must file its biennial CEIP update in the same docket as its most recently filed CEIP and include an explanation of how the update will modify targets in its CEIP. In addition to its proposed biennial conservation plan, the utility may file in the update other proposed changes to the CEIP as a result of the integrated resource plan progress report.

NEW SECTION

WAC 480-100-645 Process for review of CEIP and updates. (1) **Public comment.** Interested persons may file written comments with the commission regarding a utility's CEIP and biennial CEIP update within sixty days of the utility's filing unless the commission states otherwise.

(2) **Approval process.** The utility's CEIP and biennial CEIP update filing will be set for an open public meeting. On the commission's own motion or at the request of any person who has a substantial interest in the subject matter of the filing, the commission will initiate an adjudication, or if appropriate a brief adjudicative proceeding, to consider the filing. The commission will enter an order approving, rejecting, or approving with conditions the utility's CEIP or CEIP update at the conclusion of its review. The commission may, in its order, recommend or require more stringent targets than those the utility proposes.

(a) The commission may adjust or expedite interim and specific target timelines when issuing a decision on a CEIP or biennial CEIP updates.

(b) Any party requesting the commission make existing targets more stringent or adjust existing timelines has the burden of demonstrating the utility can achieve the targets or timelines in a manner consistent with the requirements of RCW 19.405.060 (1)(c)(i) through (iv).

NEW SECTION

WAC 480-100-650 Reporting and compliance. (1) **Clean energy compliance report.** Unless otherwise ordered by the commission, each electric utility must file a clean energy compliance report with the commission by July 1, 2026, and at least every four years thereafter. The report must demonstrate whether and how:

(a) The utility met its interim targets;

(b) The utility met its specific targets;

(c) The specific actions the utility took made progress toward meeting the clean energy transformation standards at the lowest reasonable cost;

(d) The specific actions the utility took are consistent with the requirements in WAC 480-100-610 (4)(c) including, but not limited to:

(i) Providing updated indicator values;

(ii) An analysis that the distribution of benefits and reductions of burdens have accrued or will reasonably accrue to intended customers, including highly impacted communities and vulnerable populations.

(e) Provide a description of the utility's equity advisory group process, customer engagement and outcomes, and how the utility's efforts are consistent with the requirements in WAC 480-100-655 for the development or update of indicators related to WAC 480-100-610 (4)(c);

(f) Include the actual incremental cost of compliance as required in WAC 480-100-660(5);

(g) Include all of the information found in the annual progress report as described in subsection (3) of this section for the fourth year of the CEIP;

(h) Include a summary of the data in the annual progress reports described in subsection (3) of this section;

(i) Document the use of any alternative compliance options as described in RCW 19.405.040 (1)(b), or any request for a temporary exemption per RCW 19.405.090(3);

(j) A description of the public participation opportunities the utility provided and the feedback the utility received during the implementation period, including whether and how public participation influenced the utility's decisions and actions; and

(k) Include the data input files made available to the commission in native format per WAC 480-100-655 (1)(g) as an appendix.

(2) **Clean energy compliance report review process.**

(a) Interested persons may file written comments with the commission regarding the utility's clean energy compliance report within sixty days of the utility's filing unless the commission states otherwise.

(b) The commission may review clean energy compliance reports through the commission's open public meeting process, as described in chapter 480-07 WAC.

(c) After completing its review of the utility's clean energy compliance report, the commission will determine whether the utility met its specific and interim targets, and whether the utility made sufficient progress toward meeting the clean energy transformation standards.

(3) **Annual clean energy progress reports.** On or before July 1st of each year beginning in 2023, other than in a year in which the utility files a clean energy compliance report, the utility must file with the commission, in the same docket as its most recently filed CEIP, an informational annual clean energy progress report regarding its progress in meeting its targets during the preceding year. The annual clean energy progress report must include, but is not limited to:

(a) Beginning July 1, 2027, and each year thereafter, an attestation for the previous calendar year that the utility did not use any coal-fired resource as defined in this chapter to serve Washington retail electric customer load;

(b) Conservation achievement in megawatts, first-year megawatt-hour savings, and projected cumulative lifetime megawatt-hour savings;

(c) Demand response program achievement and demand response capability in megawatts and megawatt hours;

(d) Renewable resource capacity in megawatts, and renewable energy usage in megawatt hours and as a percentage of electricity supplied by renewable resources;

(e) All renewable energy credits and the program or obligation for which they were used (i.e., voluntary renewable programs, renewable portfolio standard, clean energy transformation standards, etc.);

(f) Verification and documentation of the retirement of renewable energy credits for all electricity from renewable resources used to comply with the requirements of RCW 19.405.040, 19.405.050, a specific target, or an interim target; except for electricity purchased from Bonneville Power Administration, which may be used to comply with these requirements without a renewable energy credit until January 1, 2029, as long as the nonpower attributes of the renewable energy are tracked through contract language;

(g) Nonemitting resource capacity in megawatts, and nonemitting energy usage in megawatt hours and as a percentage of total electricity supplied by nonemitting energy;

(h) The utility's greenhouse gas content calculation pursuant to RCW 19.405.070;

(i) An electronic link to the utility's most recently filed fuel mix disclosure report as required by RCW 19.29A.140;

(j) Total greenhouse gas emissions in metric tons of CO_2e;

(k) Demonstration of ownership of nonpower attributes for nonemitting generation using attestations of ownership and transfer by properly authorized representatives of the generating facility, all intermediate owners of the nonemitting electric generation, and an appropriate company executive of the utility; the utility may not transfer ownership of the nonpower attributes after claiming them in any compliance report; and

(l) Other information the company agreed to or was ordered to report in the most recently approved CEIP.

NEW SECTION

WAC 480-100-655 Public participation in a clean energy implementation plan (CEIP). (1) **Advisory groups.** The utility must demonstrate and document how it considered input from advisory group members in the development of its CEIP and biennial CEIP update. Examples of how the utility may incorporate advisory group input include: Using modeling scenarios, sensitivities, and assumptions advisory group members proposed and using data and information supplied by advisory group members as inputs to plan development. As part of this process and consistent with (h) of this subsection, the utility must communicate to advisory group members about whether and how the utility used their input in its analysis and decision-making, including explanations for why the utility did not use an advisory group member's input.

(a) The utility must involve all advisory groups in the development of its CEIP and its biennial CEIP update, including the equity advisory group identified in (b) of this subsection;

(b) The utility must maintain and regularly engage an external equity advisory group to advise the utility on equity issues including, but not limited to, vulnerable population designation, equity indicator development, data support and development, and recommended approaches for the utility's compliance with WAC 480-100-610 (4)(c)(i). The utility must encourage and include the participation of environmental justice and public health advocates, tribes, and representatives from highly impacted communities and vulnerable populations in addition to other relevant groups;

(c) The utility must convene advisory groups, with reasonable advance notice, at regular meetings open to the public during the planning process. A utility must notify advisory groups of company and commission public meetings scheduled to address its CEIP and biennial CEIP update;

(d) Engaging with advisory groups for the purposes of developing the CEIP does not relieve the utility of the obligation to continue to convene and engage these groups for their individual topical duties. This section does not supersede existing rules related to those groups;

(e) Nothing in this section limits the utility from convening and engaging public advisory groups on other topics;

(f) Participation in an advisory group does not restrict groups and individuals from commenting on CEIP filings before the commission;

(g) The utility must make all of its data inputs and files available to the commission in native file format and in an easily accessible format. The utility may make confidential information available by providing it to the commission pursuant to WAC 480-07-160. The utility should minimize its designation of information in the CEIP as confidential. Nonconfidential contents of the CEIP, biennial update, and supporting documentation must be available for advisory group review upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095;

(h) As part of the filing of its CEIP and biennial update with the commission, the utility must provide a summary of advisory group comments received during the development of its CEIP and biennial update and the utility's responses, including whether issues raised in the comments were addressed and incorporated into the final CEIP as well as documentation of the reasons for rejecting public input. The utility must include the summary as an appendix to the final CEIP. Comments with similar content or input may be consolidated with a single utility response.

(2) **Participation plan and education.** The utility must involve advisory groups in developing the timing and extent of meaningful and inclusive public participation throughout the development and duration of the CEIP, including outreach and education serving vulnerable populations and highly impacted communities. On or before May 1st of each odd-numbered year, the utility must file with the commission a plan that outlines its schedule, methods, and goals for public participation and education both during the development of its CEIP and throughout the implementation of the plan. The utility must include the following in its participation plan:

(a) Timing, methods, and language considerations for seeking and considering input from:

(i) Vulnerable populations and highly impacted communities for the creation of or updates to indicators and weighting factors for the utility's compliance with WAC 480-100-610 (4)(c)(i); and

(ii) All customers, including vulnerable populations and highly impacted communities, for the creation of, or updates to, indicators and weighting factors for the utility's compliance with WAC 480-100-610 (4)(c)(ii) and (iii).

(b) Identification of barriers to public participation including, but not limited to, language, cultural, economic, or other factors, and strategies for reducing barriers to public participation;

(c) Plans to provide information and data in broadly understood terms through meaningful participant education;

(d) A proposed schedule of public meetings or engagement, including advisory group meetings;

(e) A proposed list of significant topics that will be discussed;

(f) The date the utility will file the final CEIP with the commission; and

(g) A link to a website accessible to the public and managed by the utility, to which the utility posts and makes publicly available the following information:

(i) Meeting summaries and materials for all relevant meetings, including materials for future meetings;

(ii) A current schedule of advisory group meetings and significant topics to be covered;

(iii) Information on how the public may participate in CEIP development; and

(iv) Final plans and biennial CEIP updates posted within thirty days of final commission action.

(3) **Customer notices.** Within thirty days of filing the utility's CEIP, the utility must inform customers of the filing and requirements under chapter 19.405 RCW, briefly summarize the utility's CEIP, and inform customers of how they may comment on the utility's filing. The notice must include:

(a) The date the notice is issued;

(b) The utility's name and address;

(c) A website link that navigates to the full CEIP;

(d) A statement that the commission has the authority to approve the CEIP, with or without conditions, or reject the CEIP;

(e) A description of how customers may contact the utility if they have specific questions or need additional information about the CEIP; and

(f) Public involvement language pursuant to WAC 480-100-194 (4)(j).

NEW SECTION

WAC 480-100-660 Incremental cost of compliance. (1) **Incremental cost methodology.** To determine the incremental cost of the actions a utility takes to comply with RCW 19.405.040 and 19.405.050, the utility must compare its lowest reasonable cost portfolio to the alternative lowest reasonable cost and reasonably available portfolio. The utility should use a portfolio optimization model, such as the one used in its most recent integrated resource plan, as the basis for calculating the alternative lowest reasonable cost and reasonably available portfolio to show the difference in portfolio choices and investment needs between the two portfolios, and demonstrate which investments and expenses are directly attributable costs to meet the requirements of RCW 19.405.040 and 19.405.050.

(a) The utility may include in its documentation of both portfolios those investments and expenses that are not reflected in the portfolio optimization if the utility demonstrates that the investment or expense could not reasonably have been reflected in the portfolio optimization model.

(b) If the portfolios provided are the result of a model, the utility must provide a fully linked and electronically functional copy of that model as part of its workpapers.

(c) The utility may propose an alternative incremental cost methodology if it can demonstrate that it meets the requirements of a methodology as described in RCW 19.405.060 (3) and (5), and will comply with RCW 19.405.040 and 19.405.050 at the lowest reasonable cost.

(2) **Incremental cost calculation.** The utility must calculate the average annual threshold amount for determining eligibility for reliance on RCW 19.405.060(3) as a means of compliance. The average annual threshold amount is equal to a two percent increase over the utility's weather-adjusted sales revenue to customers from each previous year, divided by the number of years in the period. For a period consisting of four years, the mathematical formula for the annual threshold amount is:

$$\textit{Annual Threshold Amount} = \frac{(WASR_0 \times 2\% \times 4) + (WASR_1 \times 2\% \times 3) + (WASR_2 \times 2\% \times 2) + (WASR_3 \times 2\%)}{4}$$

(3) **Directly attributable costs.** An investment or expense is directly attributable only if all of the following conditions are satisfied:

(a) The utility made the investment or incurred the expense during the implementation period;

(b) The investment or expense is part of the lowest reasonable cost portfolio that results in compliance with RCW 19.405.040 and 19.405.050;

(c) The investment or expense is additional to the costs that the utility would incur for the alternative lowest reasonable cost and reasonably available portfolio; and

(d) The investment or expense is not required to meet any statutory, regulatory, or contractual requirement or any provision of chapter 19.405 RCW other than RCW 19.405.040 or 19.405.050.

(4) **Projected incremental cost.** The utility must file projected incremental cost estimates in each CEIP using the methodology described in subsection (1) of this section and using projected weather-adjusted sales revenue in the calculation in subsection (2) of this section to estimate the average annual threshold amount for the implementation period. The utility must support the projections with workpapers, models, and associated calculations, and must provide the following information:

(a) Identification of all investments and expenses that the utility plans to make during the period in order to comply with the requirements of RCW 19.405.040 and 19.405.050;

(b) Demonstration that the investments and expenses identified in (a) of this subsection are directly attributable to actions necessary to comply with, or make progress towards, the requirements of RCW 19.405.040 and 19.405.050; and

(c) The expected cost of the utility's planned activities and the expected cost of the alternative lowest reasonable cost and reasonably available portfolio.

(5) **Reported actual incremental costs.** In each CEIP compliance report as described in WAC 480-100-650, the utility must file the actual incremental costs using the methodology described in subsection (1) of this section and the calculation in subsection (2) of this section. The utility must support its filing by providing the following information:

(a) The actual costs the utility incurred during the implementation period; presentation of capital and expense

accounts should be reported by Federal Energy Regulatory Commission (FERC) account by year;

(b) A demonstration that the reported incremental cost is directly attributable to specific actions the utility has taken that were necessary to comply with RCW 19.405.040 and 19.405.050, per subsection (2) of this section;

(c) Documentation of the cost of the alternative lowest reasonable cost and reasonably available portfolio; the utility must update verifiable and material inputs of this portfolio with the most recent information available;

(d) If the utility uses the incremental cost compliance option as described in this subsection, a demonstration that during the implementation period the average annual incremental cost of meeting the standards or the interim targets equals or exceeds a two percent annual increase of the investor-owned utility's weather-adjusted electric retail sales revenue to customers for electric operations above the previous year;

(e) An explanation for the variance between the projected incremental cost in subsection (3) of this section and the actual incremental costs reported in subsection (4) of this section; and

(f) Workpapers and calculations supporting the incremental cost calculations.

(6) **Determination of incremental cost of compliance option.**

(a) For any implementation period in which the utility relies on RCW 19.405.060(3) as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050 (1), the utility must request a determination from the commission when filing its clean energy compliance report, per WAC 480-100-650.

(b) The utility must also provide evidence that, if the utility relied on alternative compliance options allowed under RCW 19.405.060 (3)(a) during the applicable period, the utility has maximized investments in renewable resources and nonemitting electric generation before relying on these alternative compliance options.

NEW SECTION

WAC 480-100-665 Enforcement. (1) General. The commission may take enforcement action in response to a utility's failure to comply with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements.

(2) Procedure. The commission may take enforcement action in the following types of proceedings:

(a) Complaint. The commission may bring a complaint against the utility pursuant to RCW 80.04.380 and WAC 480-07-300, et seq.

(b) Penalty assessment. The commission may assess penalties as provided in RCW 80.04.405 and WAC 480-07-915.

(c) Other. The commission may take enforcement action in any proceeding in which the utility's compliance with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements is at issue including, but not limited to, the utility's general rate case.

(3) Remedies. The commission may impose any one or a combination of the following remedies for a utility's failure to comply with the provisions of chapter 19.405 RCW, this chapter of the commission's rules, or a commission order implementing those requirements.

(a) RCW 19.405.090. For all violations subject to the compliance, enforcement and penalty provisions of RCW 19.405.090, the commission may require the utility to pay an administrative penalty of one hundred dollars multiplied by the applicable megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation.

(b) For violations of rule or order not subject to RCW 19.405.090, the commission may pursue the following remedies:

(i) RCW 80.04.380. The commission may assess penalties of up to one thousand dollars for each violation. Violation of the same requirement in statute, rule, or commission order are separate and distinct violations, and each day the utility is not in compliance with these requirements is a separate and distinct violation.

(ii) RCW 80.04.405. The commission may assess penalties of one hundred dollars for each violation. Violation of the same requirement in statute, rule, or commission order are separate and distinct violations, and each day the utility is not in compliance with these requirements is a separate and distinct violation.

(c) Specific performance. The commission may order a utility to take specific actions necessary to comply with chapter 19.405 RCW, this chapter of the commission's rules, and commission orders implementing those requirements.

(d) Customer notification. If the commission finds a utility in violation of chapter 19.405 RCW, this chapter of the commission's rules, or commission orders implementing those requirements, the commission may order the utility to notify its retail electric customers of the violation in a published form.

(4) Mitigation. A utility may request and the commission may mitigate any administrative penalty as described in RCW 19.405.090(3) or penalty assessment as provided in WAC 480-07-915. Any mitigation the commission grants does not relieve the utility of its obligation to comply with applicable legal requirements or to take specific actions the commission orders.

WSR 20-21-063
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF COMMERCE
(By the Code Reviser's Office)

[Filed October 15, 2020, 10:46 a.m.]

WAC 194-24-185, 194-24-190, and 194-24-195, proposed by the department of commerce in WSR 20-08-078, appearing in issue 20-08 of the Washington State Register, which was distributed on April 15, 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 20-21-065
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 15, 2020, 2:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-150.

Title of Rule and Other Identifying Information: Washington department of fish and wildlife (WDFW) managed nonlethal pursuit training program.

Hearing Location(s): On December 3 - 5, 2020, at 8 a.m. Webinar. This meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/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: December 18, 2020.

Submit Written Comments to: Becky Bennett, P.O. Box 43200, Olympia, WA 98504, email becky.bennett@dfw.wa.gov, fax 360-902-2155, by December 7, 2020, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Dolores Noyes, phone 360-902-2346, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by December 7, 2020, at 5:00 p.m

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to establish a nonlethal program within WDFW enforcement program for the purpose of training dogs. With the passage of Initiative 655 in 1996, voters approved a prohibition on the hunting of bear, cougar, bobcat, and lynx with dogs, with certain exceptions. The fish and wildlife commission is authorized to allow the use of dogs to hunt or pursue black bear, cougar, or bobcat if there is a public safety need; to protect livestock, domestic animals, and private property; for scientific purposes; or to protect endangered species.

As the primary authority on dangerous wildlife incidents, WDFW police frequently call upon dog handlers to assist in locating offending animals. In these cases, the handlers may be seen as acting as agents of the state and should be well trained and experienced. However, there does not exist a mechanism in Washington for handlers to keep dogs trained in between calls for service.

In order to effectively manage and train hound handlers and their dogs used for conflict response, the state legislature in 2019 established a nonlethal pursuit training pass program. The proposed commission rule emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goals of the nonlethal pursuit training pass program include improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife.

This rule outlines the requirements an applicant must meet in order to qualify to join this nonlethal training program, as well as procedures for participation. A limited number of individuals will be selected and approved through an extensive application process, which includes a background check of every applicant. This program will be monitored and administered through the enforcement program.

Reasons Supporting Proposal: Both WDFW police and the wildlife conflict specialists are often called upon to address dangerous wildlife conflict situations involving a variety of species. The issues span both the public safety and property protection spectrum. As Washington's human population continues to expand and interact with wildlife habitats, it is expected that calls for service will continue.

Officers work with the dog handlers during these dangerous wildlife incidents, but due to the earlier established laws surrounding hound hunting in Washington, handlers have had to train their dogs outside the state to keep their dogs in fit and prime condition. As the department relies on these handlers as necessary tools during public safety incidents, agency staff worked alongside NGOs, counties, livestock producers, and working dog handlers to draft and present RCW language during the 2019 legislative session as well as work collaboratively on the currently proposed commission rule-making language. This rule making will help to ensure that working dogs are trained for quick and skilled action when called upon by WDFW enforcement officers in response to public safety.

Statutory Authority for Adoption: RCW 77.15.245, 77.04.012, 77.04.013, 77.04.020, 77.04.055, 77.12.077, and 77.12.047.

Statute Being Implemented: RCW 77.15.245(2)(d), 77.12.077.

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: This collaborative process has been developed and reviewed through a robust multi-stakeholder group consisting of WDFW commission members, agriculture organizations, conservation groups, county officials, working dog members, WDFW enforcement officers and staff, and WDFW wildlife program staff. This proposed commission rule is the product of collective problem solving, partnership, and shared values.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Becky Bennett, Olympia, Washington, 360-701-7026; Enforcement: Jeff Wickersham, Ridgefield, Washington, 509-254-1829.

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 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. Not applicable, no cost for businesses.

October 15, 2020
Benjamin Power

Rules Coordinator

NEW SECTION

WAC 220-412-130 Nonlethal pursuit training pass program. (1) In order to effectively manage and train hound handlers and their dogs to be agents of the state used for cougar conflict response, the department establishes the nonlethal pursuit training pass program.

(2) The nonlethal pursuit training pass program emphasizes safe, ethical, responsible, and lawful hound handling practices as well as detection of specific wildlife species by dogs. The goal of the nonlethal pursuit training pass program includes improving dog handler/department relations, effective detection of target species when requested by the department, and the ethical treatment of working dogs and wildlife. The yearly application cost to be considered for placement on the list of screened nonlethal pursuit handlers shall be twenty-five dollars and will cover the cost of an application review and a background check. This cost will occur annually when renewing an application to be on the list of screened nonlethal pursuit handlers. The WDFW enforcement program shall determine the nonlethal pursuit program's requirements and curriculum in consultation with stakeholders including, but not limited to, working dog handlers and wildlife conservation organizations in Washington state.

(3) Working dog handlers are held to the highest ethical standards as these individuals may be asked to perform as agents of the state under RCW 77.12.077. As such, they may be ambassadors for the department and the working dog community. Criteria to be considered include the following:

(a) Currently own and train working dogs on scent detection and tracking;

(b) Maintain health records of working dogs;

(c) An active working knowledge of predator detection and pursuit training techniques;

(d) Hold a current driver's license;

(e) Up-to-date vehicle registration and vehicle insurance for any vehicle used to transport working dogs;

(f) Understanding of best practices in dog handling equipment and proper usage; and

(g) Working knowledge of terrain navigation and digital mapping equipment.

Initial approved applicants on the list of screened nonlethal pursuit handlers and individuals reapplying to be approved on the list of screened nonlethal pursuit handlers must annually submit to a criminal background check, and the department shall deny entry into the nonlethal pursuit training pass program to those applicants who have:

• Been convicted within the last ten years of any criminal offense under chapter 77.15 RCW (WDFW enforcement), 76.48 (specialized forest products), or 16.52 (animal cruelty) RCW;

• Been found to have committed, or to have paid, any infraction for a violation of chapter 77.15 RCW except recreational fishing under RCW 77.15.160, in the last ten years;

• Been convicted within the last ten years of any crime of dishonesty;

• Been convicted of any felony, or released from custody pursuant to any felony conviction, within the last ten years;

• Been convicted of, or been found to have committed, any criminal or civil violation where the department obtains a report from the citing authority that alleges the applicant was deceptive, untruthful, or obstructed a law enforcement officer in the course of the officer's duties, other than violations of RCW 46.61.050 and 46.61.400, within the last ten years;

• Been convicted of unlawful possession of a firearm under RCW 9.41.040, or has been convicted of any felony offense and the applicant has not successfully petitioned to have the applicant's firearm rights restored, or is otherwise ineligible to possess a firearm for any reason provided in RCW 9.41.040;

• A current hunting or fishing license revocation or a current suspension of hunting or fishing license privileges in Washington or in another state.

An applicant must disclose to WDFW at the time of application whether the applicant is aware of any pending criminal charges in any municipal, state, or federal court. The department may defer approval or denial on an application until such criminal charges have been adjudicated.

The department may, based on the results of a criminal background check or based on information it has received involving active investigations or pending charges, deny an application, at its discretion, if it believes the applicant does not meet the high ethical standards of the program, or would not be a suitable state agent or ambassador for the department and the working dog community.

(4) An individual who holds a current nonlethal pursuit training pass and is found to have any of the invalidating circumstances addressed in subsection (3) of this section, shall be removed from the program and the training pass revoked. If the department learns of a new pending criminal charge or incident involving a current training pass applicant which could lead to an invalidating circumstance addressed in subsection (3) of this section, the department may suspend the training pass applicant's participation in the program until resolution of the charge or incident.

(5) Nonlethal pursuit training pass applicants will be required to complete an agency affidavit which specifies that the applicant has read, understands, and will comply with the program rules and ethical standards required of the program. This affidavit must be signed, dated, and returned along with a copy of the applicant's driver's license, current proof of vehicle liability insurance, and a copy of a valid hunting license. Submission of false or fraudulent information is grounds for removal from the program.

(6) The enforcement program nonlethal pursuit training pass program coordinator will maintain open communications with landowners and the community. The department will investigate written accusations about nonlethal pursuit program participants and determine whether such complaints have merit and/or warrant enforcement or administrative action.

(7) Any person who has been denied initial admission into the nonlethal pursuit training pass program, or renewal of his or her application to be placed on the list of screened nonlethal pursuit handlers, has the right to an administrative hearing to contest the agency action pursuant to chapter 34.05 RCW. An applicant denied a training pass may request an informal review within thirty days of receipt of the applica-

tion denial. The request for an informal review shall be served on the chief of the enforcement program in writing. The chief may ask the applicant and department for additional information before ruling on the informal appeal, and shall respond to the informal appeal in writing. The applicant shall have initiated the formal appeal no later than thirty days from receipt of the notice of denial of the training pass, or thirty days from receipt of the decision on the informal review, whichever is later. Date of receipt shall be five days after any written notice or decision is mailed to the applicant. Initial nonlethal pursuit training pass applicants who fail to submit the application fee or who submit an incomplete application will have their application returned. Denial of admission on these grounds does not trigger the right to an administrative hearing.

(8) Training program enrollment - The department will authorize no more than fifty valid training pass holders to participate in the program annually on a statewide basis.

(9) Prior to engaging in any nonlethal pursuit training activity, a member of the nonlethal pursuit training pass program shall obtain from the department captain with oversight responsibility for the area proposed to be used for training a nonlethal pursuit training pass, which will be in via paper or electronic format. A nonlethal pursuit training pass, issued at the captain's discretion, will be issued for a period of up to thirty days, with an option for a thirty-day renewal at the request of the training pass holder. This training pass will detail the time frame and geographic scope of the training area that is acceptable to the captain and the training pass holder. Prior to engaging in a training exercise within the limitations of the training pass, the training pass holder will communicate with a department sergeant with oversight of the training area. The training pass holder shall keep the department sergeant appraised of regular training activities, and the sergeant shall keep the training pass holder appraised of any operational or logistical concerns or restrictions. A department captain may, at any time, change the geographic scope or time frame of the training pass to address management or emergent needs, and retains the discretion to terminate a training pass.

(10) Training pass holders will be allowed to have up to four immediate family members present while participating in a training exercise with a nonlethal pursuit training pass. "Immediate family member" shall be limited to spouses and domestic partners, children and step-children, siblings, parents, and step-parents. Additionally, the owner of real property who has granted permission to the training pass holder to use said lands for a training exercise with a nonlethal pursuit training pass may be present with the training pass holder or may designate a representative in writing. Corporate landowners may designate security personnel or contractors to accompany a training pass holder participating in a training exercise with a nonlethal pursuit training pass. A department sergeant with oversight of the training area may authorize, in advance, additional observers of a training pass holder participating in a training exercise with a nonlethal pursuit training pass.

(11) Training pass holders shall maintain a logbook of training activities under the nonlethal pursuit training program. Logbooks shall be made using a template made by the department to be uploaded online or downloaded and printed. Entries in the logbook shall include:

(a) Training pass holder's name, names of those accompanying or observing the training exercise, and number of dogs trained or participating;

(b) Date and location of the training, including the names of any roads traveled, trails traveled, or routes taken. The entry shall specify the owners of any land traversed;

(c) If any cougars were detected, the logbook must contain the corresponding GPS coordinates; and

(d) The discharge of any firearms, identification of the firearms, and the person responsible for the discharge.

Logbooks are required to be completed for each training trip before leaving the field. Logbook pages must be provided to the department through an online reporting system or postmarked within ten days following any calendar month in which the training pass activity took place.

WSR 20-21-076
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed October 19, 2020, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-052.

Title of Rule and Other Identifying Information: New chapter 495A-115 WAC, Title IX student conduct procedures, to be in compliance with federal laws regarding Title IX and to add to Bates Technical College's Title 495A WAC series.

Hearing Location(s): On November 25, 2020, at 11:30 a.m. - 12:30 p.m. Zoom, virtual public hearing: https://batestech.zoom.us/j/94020663575.

Date of Intended Adoption: December 22, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email jehernandez@batestech.edu due to COVID-19 working remotely, by November 18, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email jehernandez@batestech.edu, by November 18, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). The new regulations address Title IX student conduct procedure and formal complaints of sexual harassment. This requires the creation of chapter 495A-115 WAC, Title IX student conduct procedures to be in compliance with federal regulations.

Reasons Supporting Proposal: See purpose above.

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

Rule is necessary because of federal law, [none supplied by agency].

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, jehernandez@batestech.edu; Implementation and Enforcement: Office of the President, Bates Technical College, kbryson@batestech.edu.

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 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; 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

October 19, 2020
Dr. Jean Hernandez
Special Assistant
to the President

Chapter 495A-115 WAC

TITLE IX STUDENT CONDUCT PROCEDURES

NEW SECTION

WAC 495A-115-005 Authority. The board of trustees, acting pursuant to RCW 28B.50.140(13), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice president of student services or designee. Unless otherwise specified, the student conduct officer or designee shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

WAC 495A-115-010 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with Bates Technical College's standard disciplinary procedures, WAC 495A-121-010 through 495A-121-094, these supplemental procedures shall take precedence.

NEW SECTION

WAC 495A-115-020 Prohibited conduct under Title IX. Pursuant to RCW 28B.50.140(13) and Title IX of the Education Amendments Act of 1972, 20 U.S.C. Sec. 1681, Bates Technical College may impose disciplinary sanctions against a student who commits, attempts to commit, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of "sexual harassment."

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

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

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

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

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

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

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

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

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

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

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

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

(i) The length of the relationship;

(ii) The type of relationship; and

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

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

NEW SECTION

WAC 495A-115-030 Title IX jurisdiction. (1) This supplemental procedure applies only if the alleged misconduct:

(a) Occurred in the United States;

(b) Occurred during a Bates Technical College's educational program or activity; and

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

(2) For purposes of this supplemental procedure, an "educational program or activity" is defined as locations, events, or circumstances over which Bates Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. This definition includes any building owned or controlled by a student organization that is officially recognized by the college.

(3) Proceedings under this supplemental procedure must be dismissed if the decision maker determines that one or all of the requirements of subsection (1)(a) through (c) of this section have not been met. Dismissal under this Title IX supplemental procedure does not prohibit the college from pursuing other disciplinary action based on situations where the allegations against the respondent, if true, would constitute violations of other provisions of the college's student conduct code, chapter 495A-121 WAC.

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

NEW SECTION

WAC 495A-115-040 Initiation of discipline. (1) Upon receiving the Title IX investigation report from the Title IX coordinator, the student conduct officer will independently review the report to determine whether there are sufficient grounds to pursue a disciplinary action against the respondent for engaging in prohibited conduct under Title IX.

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

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

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

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

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

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

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

(ii) An advisor may be an attorney; and

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

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

NEW SECTION

WAC 495A-115-050 Prehearing procedure. (1) Upon receiving the disciplinary notice, the chair of the student/faculty disciplinary committee will send a hearing notice to all parties, in compliance with WAC 495A-121-065. In no event will the hearing date be set less than ten days after the Title IX coordinator provided the final investigation report to the parties.

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

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

NEW SECTION

WAC 495A-115-060 Rights of parties. (1) Bates Technical College's student conduct procedures, chapter 495A-121 WAC, and this supplemental procedure shall apply equally to all parties.

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

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

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

NEW SECTION

WAC 495A-115-070 Evidence. The introduction and consideration of evidence during the hearing is subject to the following procedures and restrictions:

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

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

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

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

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

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

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

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

(a) Spousal/domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495A-115-080 Initial order. (1) In addition to complying with chapter 495A-121 WAC, the student/faculty disciplinary committee will be responsible for conferring and drafting an initial order that:

(a) Identifies the allegations of sexual harassment;

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

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

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

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

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

(g) Describes to what extent, if any, complainant is entitled to remedies designed to restore or preserve complainant's equal access to Bates Technical College's educational programs or activities; and

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

(2) The chair of the student/faculty disciplinary committee will serve the initial order on the parties simultaneously.

NEW SECTION

WAC 495A-115-090 Appeals. (1) The parties shall have the right to appeal from the initial order's determination of responsibility and/or dismissal of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 495A-121-066.

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

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

WSR 20-21-077
PROPOSED RULES
BATES TECHNICAL COLLEGE
[Filed October 19, 2020, 9:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-053.

Title of Rule and Other Identifying Information: Amending chapter 495A-300 WAC, Title IX—Grievance procedures, to be in compliance with state and federal laws regarding Title IX violations.

Hearing Location(s): On November 25, 2020, at 1:30 - 2:30 p.m. Zoom, virtual public hearing: https://batestech.zoom.us/j/96933929683.

Date of Intended Adoption: December 22, 2020.

Submit Written Comments to: Dr. Jean Hernandez, 1101 South Yakima Avenue, Room A332, Tacoma, WA 98405-4895 AND to email jehernandez@batestech.edu due to COVID-19 working remotely, by November 18, 2020.

Assistance for Persons with Disabilities: Contact Dr. Jean Hernandez, email jehernandez@batestech.edu, by November 18, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On May 19, 2020, the Federal Register printed amendments to Title IX regulations (85 F.R. 30575). This proposal will allow the college to update its WAC to align with current state and federal laws.

Reasons Supporting Proposal: See purpose above.

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

Rule is necessary because of federal law, [none supplied by agency].

Name of Proponent: Bates Technical College, governmental.

Name of Agency Personnel Responsible for Drafting: Dr. Jean Hernandez, Bates Technical College, jehernandez@batestech.edu; Implementation and Enforcement: Office of the President, Bates Technical College, kbryson@batestech.edu.

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 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; 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

October 19, 2020
Dr. Jean Hernandez
Special Assistant
to the President

Chapter 495A-300 WAC

TITLE IX—GRIEVANCE ((~~RULES—TITLE IX~~)) PROCEDURES

AMENDATORY SECTION (Amending WSR 92-12-017, filed 5/26/92, effective 6/26/92)

WAC 495A-300-010 Preamble. Bates Technical College, District 28, is covered by Title IX of the Civil Rights Act of 1964 ((~~prohibiting sex~~)) and Education Amendments Act of 1972. Title IX is a federal law that prohibits gender-based discrimination in ((~~education~~)) educational institutions that receive federal funds.

Any ((~~applicant for admission, enrolled student, applicant for employment or~~)) employee, student, or visitor of Bates Technical College, District No. 28, who believes ((~~she/he has been discriminated against on the basis of sex may lodge an institutional grievance by following the procedures below~~)) they have been the subject of a Title IX violation should report the incident(s) to the college's Title IX coordinator or designee.

Bates Technical College
Title IX Coordinator
Human Resources Office
1101 South Yakima Avenue
Tacoma, WA 98405-4895
For students: 253-680-7102
For employees: 253-680-7180

NEW SECTION

WAC 495A-300-015 Purpose. Bates Technical College recognizes its responsibility to investigate, resolve, implement corrective measures, and monitor the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of sex, as required by Title IX of the Education Amendments Act of 1972, Title VII of the Civil Rights Act of 1964, the Violence Against Women Reauthorization Act, and Washington state's law against discrimination, and their implementing regulations. To this end, Bates Technical College has enacted the following college policies and the Washington Administrative Code (WAC): CP5920 - Employee disciplinary hearing, CP5920PR - Employee disciplinary hearing procedure, chapter 495A-115 WAC, Title IX student conduct procedures, and chapter 495A-121 WAC, Student rights and responsibilities and adopted this chapter, Title IX grievance procedures for receiving and investigating sexual harassment allegations arising during educational programs and activities. Any individual found responsible for violating Bates Technical College's Title IX rules and policies is subject to disciplinary action up to and including dismissal from Bates Technical College's educational programs and activities and/or termination of employment.

Application of this chapter, Title IX grievance procedures is restricted to allegations of sexual harassment as that term is defined in 34 C.F.R. Part 106.30. Nothing in this procedure limits or otherwise restricts Bates Technical College's ability to investigate and pursue discipline based on alleged violations of other federal, state, and local laws, their implementing regulations, and other college policies prohibiting gender discrimination through processes set forth in the college's code of student conduct, employment contracts, employee handbooks, and collective bargaining agreements.

NEW SECTION

WAC 495A-300-025 Definitions. For purposes of this chapter, Title IX grievance procedures, the following terms are defined as follows:

(1) "Consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is

physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(2) "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

(3) "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

(4) "Formal complaint" means a writing submitted by the complainant or signed by the Title IX coordinator alleging sexual harassment against a respondent and requesting that Bates Technical College conduct an investigation.

(5) "Education program or activity" includes locations, events, or circumstances over which Bates Technical College exercised substantial control over both the respondent and the context in which the alleged sexual harassment occurred. It also includes any building owned or controlled by a student organization officially recognized by Bates Technical College.

(6) "Grievance procedure" is the process Bates Technical College uses to initiate, informally resolve, and/or investigate allegations that an employee or student has violated Title IX provisions prohibiting sexual harassment.

(7) "Supportive measures" are nondisciplinary, nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent regardless of whether the complainant or the Title IX coordinator has filed a formal complaint. Supportive measures restore or preserve a party's access to Bates Technical College's educational programs and activities without unreasonably burdening the other party, as determined through an interactive process between the Title IX coordinator and the party. Supportive measures include measures designed to protect the safety of all parties and/or the college's educational environment and/or to deter sexual harassment or retaliation. Supportive measures may include, but are not limited to:

(a) Counseling and other medical assistance;

(b) Extensions of deadlines or other course-related adjustments;

(c) Modifications of work or class schedules;

(d) Leaves of absence;

(e) Increased security or monitoring of certain areas of campus; and

(f) Imposition of orders prohibiting the parties from contacting one another in housing or work situations.

Determinations about whether to impose a one-way no contact order must be made on a case-by-case basis. If supportive measures are not provided, the Title IX coordinator must document in writing why this was clearly reasonable under the circumstances.

(8) "Summary suspension" means an emergency suspension of a student respondent pending investigation and resolution of disciplinary proceedings pursuant to the procedure and standards set forth in WAC 495A-121-062.

(9) "Sexual harassment," for purposes of this chapter, Title IX grievance procedures, occurs when a respondent engages in the following discriminatory conduct on the basis of sex:

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

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

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

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

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

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

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

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

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

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

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

(I) The length of the relationship;

(II) The type of relationship; and

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

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

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

(B) Suffer substantial emotional distress.

(10) "Title IX administrators" are the Title IX coordinator, Title IX investigators, the student conduct officer, student/faculty disciplinary committee members, human resources disciplinary officer, hearing panel and/or neutral decision maker, and Bates Technical College-provided advisors assigned to the parties by the college during Title IX disciplinary proceedings.

(11) "Title IX coordinator" is responsible for processing Title IX complaints and conducting and/or overseeing formal investigations and informal resolution processes under this grievance procedure. Among other things, the Title IX coordinator is responsible for:

(a) Accepting and processing all Title IX reports, referrals, and formal complaints.

(b) Executing and submitting a formal complaint when appropriate and necessary.

(c) Handling requests for confidentiality.

(d) Determining during the grievance procedure:

(i) Whether a formal complaint should be dismissed either in whole or in part, and if so;

(ii) Providing notice to both parties about why dismissal was necessary or desirable; and

(iii) Referring the claim to the appropriate disciplinary authority for proceedings outside the jurisdiction of Title IX.

(e) Maintaining accurate records of all claims, reports, and referrals, and retaining investigation files, claims, reports, and referrals in compliance with the applicable records retention schedules or federal or state law, whichever is longer.

(f) Conducting investigations or assigning and overseeing investigations.

(g) Engaging in an interactive process with both parties to identify and provide supportive measures that ensure during the investigation and disciplinary processes that the parties have equitable access to educational programs and activities and are protected from further discrimination or retaliation.

(h) Upon completion of an investigation, issuing or overseeing the issuance of a final investigation report to the parties and the appropriate disciplinary authority in compliance with this grievance procedure.

(i) Recommending nondisciplinary corrective measures to stop, remediate, and/or prevent recurrence of discriminatory conduct to disciplinary authorities and other college administrators.

NEW SECTION

WAC 495A-300-035 Principles for Title IX grievance procedure. (1) Respondent shall be presumed not responsible for the alleged conduct unless or until a determination of responsibility is reached after completion of the grievance and disciplinary processes.

(2) Before imposing discipline, the college is responsible for gathering and presenting evidence to a neutral and unbiased decision maker establishing responsibility for a Title IX violation by a preponderance of the evidence.

(3) The college shall treat both the complainant and respondent equitably by providing complainant with remedies against respondent who has been found responsible for sexual harassment through application of the institution's Title IX grievance and applicable Title IX disciplinary procedures and by providing respondent with Title IX procedural safeguards contained in this chapter, Title IX grievance procedures and in the applicable CP5920 - Title IX employee disciplinary hearing, CP5920PR - Title IX employee disciplinary hearing procedure, and chapter 495A-121 WAC, Student rights and responsibilities.

(4) The investigator shall base investigation results on all relevant evidence, including both exculpatory and inculpatory evidence.

(5) Formal and informal resolutions will be pursued within reasonably prompt time frames with allowances for temporary delays and extensions for good cause shown. Grounds for temporary delay include, but are not limited to, quarter breaks or medical leave. Good cause supporting a request for an extension includes, but is not limited to, a party, a party's advisor, or a witness being unavailable, concurrent law enforcement activity, and the need for language assistance or accommodation of disabilities. Both parties will receive written notice of any temporary delay or extension for good cause with an explanation of why the action was necessary.

(6) A respondent found responsible for engaging in sexual harassment may receive discipline up to and including dismissal from the college. A description of other possible disciplinary sanctions and conditions that may be imposed against students can be found in WAC 495A-121-044.

An employee found responsible for sexual harassment may receive discipline up to and including dismissal from employment. A description of possible disciplinary sanctions and conditions that may be imposed against employees can be found in the respective collective bargaining agreements and for the exempt employees under CP5920PR - Title IX employee disciplinary hearing procedure.

(7) In proceedings against a student respondent, the parties may appeal the student/faculty disciplinary committee's ruling to the president pursuant to WAC 495A-121-063 and Title IX student conduct procedures, WAC 495A-115-090.

In proceedings against an employee respondent, the parties may appeal the employee disciplinary decision to the president or designee pursuant to CP5920 - Title IX employee disciplinary hearing and CP5920PR - Title IX employee disciplinary hearing procedures.

(8) Title IX administrators may not require, allow, rely upon, or otherwise use questions or evidence that seeks disclosure of privileged communications, unless the privilege has been effectively waived by the holder. This provision applies, but is not limited to, information subject to the following:

(a) Spousal or domestic partner privilege;

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

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

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

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

(f) Other legal privileges identified in RCW 5.60.060.

NEW SECTION

WAC 495A-300-045 Title IX administrators—Free from bias—Training requirements. (1) Title IX administrators shall perform their duties free from bias or conflicts.

(2) Title IX administrators shall undergo training on the following topics:

(a) The definition of sexual harassment under these procedures;

(b) The scope of the college's educational programs and activities;

(c) How to conduct an investigation;

(d) How to serve impartially without prejudgment of facts, conflicts of interest, or bias;

(e) Use of technology used during an investigation or hearing;

(f) The relevance of evidence and questions; and

(g) Effective report writing.

(3) All Title IX administrator training materials shall be available on the Bates Technical College's Title IX web page.

NEW SECTION

WAC 495A-300-050 Filing a complaint. Any employee, student, applicant, or visitor who believes that they have been the subject of sexual harassment should report the incident or incidents to the college's Title IX coordinator identified below. If the claim is against the Title IX coordinator, the complainant should report the matter to the president's office for referral to an alternate designee. For assistance contact the Title IX coordinator or designee via mail or telephone:

Title IX Coordinator
Human Resources Office
1101 South Yakima Avenue
Tacoma, WA 98405-4895
For students: 253-680-7102
For employees: 253-680-7180

NEW SECTION

WAC 495A-300-055 Confidentiality. (1) The college will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Bates Technical College's policies and procedures. Although the college will attempt to honor complainant's requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX coordinator.

(2) The Title IX coordinator will inform and attempt to obtain consent from the complainant before commencing an investigation of alleged sexual harassment. If a complainant asks that their name not be revealed to the respondent or that the college not investigate the allegation, the Title IX coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the Title IX coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

(a) The seriousness of the alleged sexual harassment;

(b) The age of the complainant;

(c) Whether the sexual harassment was perpetrated with a weapon;

(d) Whether the respondent has a history of committing acts of sexual harassment or violence or has been the subject of other sexual harassment or violence complaints or findings;

(e) Whether the respondent threatened to commit additional acts of sexual harassment or violence against the complainant or others; and

(f) Whether relevant evidence about the alleged incident can be obtained through other means such as security cameras, other witnesses, physical evidence.

(3) If the college is unable to honor a complainant's request for confidentiality, the Title IX coordinator will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation in compliance with this grievance procedure.

(4) If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX coordinator will evaluate whether other measures are available to address the circumstances giving rise to the complaint and prevent their recurrence and implement such measures if reasonably feasible.

NEW SECTION

WAC 495A-300-060 Complaint resolution. The Title IX resolution processes are initiated when the Title IX coordinator's office receives a written complaint alleging that a respondent(s) sexually harassed a complainant and requesting that the college initiate an investigation (a formal complaint). A formal complaint must be either submitted by the complainant or signed by the Title IX coordinator on behalf of the complainant. Formal complaints submitted to the Title IX coordinator may be resolved through either informal or formal resolution processes. The college will not proceed with either resolution process without a formal complaint.

For purposes of this Title IX grievance procedure, the complainant must be participating in or attempting to participate in a Bates Technical College educational program or activity at the time the formal complaint is filed.

(1) Informal resolution. Under appropriate circumstances and if the impacted and responding parties agree, they may voluntarily pursue informal resolution during the investigation of a concern. Informal resolution is not appropriate when the allegations involve a mandatory reporting situation; an immediate threat to the health, safety or welfare of a member of the college community; or in cases where an employee is alleged to have sexually harassed a student.

If an informal resolution is appropriate, the impacted party and the responding party may explore remedies or resolution through:

(a) Guided conversations or communications conducted by the Title IX coordinator, designee, or a mutually agreed upon third party;

(b) Structured resolution process conducted by a trained mediator; or

(c) Voluntarily agreed on alterations to either or both of the parties' work or class schedules.

If the parties agree to an informal resolution process, the college will commence the process within ten workdays after the parties agree to this option and conclude within thirty workdays of beginning that process; subject to reasonable delays and extensions for good cause shown. The informal process is voluntary. Either the impacted or responding party may withdraw from the informal resolution process at any time, at which point the formal investigation process will resume.

If the impacted and responding party voluntarily resolve a report, the college will record the terms of the resolution in a written agreement signed by both parties and provide written notice to both parties that the report has been closed.

(2) Formal resolution. Formal resolution means that the complainant's allegations of sexual harassment will be subjected to a formal investigation by an impartial and unbiased investigator. The investigator will issue a report of the investigation findings. Upon completion of the investigation, the investigator will submit the final investigation report to the appropriate disciplinary authority to determine whether disciplinary proceedings are warranted.

NEW SECTION

WAC 495A-300-065 Emergency removal. If a student respondent poses an immediate threat to the health and safety of the college community or an immediate threat of significant disruption to Bates Technical College's operations, the college's student conduct officer may summarily suspend a respondent pursuant to WAC 495A-121-062, pending final resolution of the allegations. Nothing in this grievance procedure prohibits the college from placing nonstudent employees on administrative leave pending final resolution of the allegations.

NEW SECTION

WAC 495A-300-070 Investigation notices. Upon receiving a formal complaint and determining that allegations comport with Title IX complaints, the college will provide the parties with the following notices containing the following information:

(1) Notice of formal and informal resolution processes. A description of the college's grievance resolution procedures, including the informal resolution procedure.

(2) The investigator will serve the respondent and the complainant with a notice of investigation in advance of the initial interview with the respondent to allow the respondent sufficient time to prepare a response to the allegations and to inform the complainant that the college has commenced an investigation. The investigation notice will:

(a) Include the identities of the parties if known, a description of the conduct alleged constituting Title IX sexual harassment, and the time and location of the incident if known.

(b) Confirm that the respondent is presumed not responsible for the alleged conduct and that the college will not make a final determination of responsibility until after the grievance and disciplinary processes have been completed.

(c) Inform parties that they are both entitled to have an advisor of their own choosing, who may be an attorney.

(d) Inform parties they have a right to review and inspect evidence.

(e) Inform parties about student conduct code provisions and employment policies that prohibit students and employees from knowingly submitting false information during the grievance and disciplinary processes.

(3) Amended investigation notice. If during the course of the investigation, the college decides to investigate Title IX sexual harassment allegations about the complainant or respondent that are not included in the investigation notice, the college will issue an amended notice of investigation to both parties that includes this additional information.

(4) Interview and meeting notices. Before any interviewing or meeting with a party about Title IX allegations, the college shall provide the party at least forty-eight hours in advance with a written notice identifying the date, time, location, participants, and purpose of the interview or meeting with sufficient time for the party to prepare for the interview or meeting.

NEW SECTION

WAC 495A-300-075 Investigation process—Dismissal. (1) Mandatory dismissal. The Title IX coordinator will dismiss the Title IX allegations, if during the course of a formal investigation under the Title IX grievance procedures, the investigator determines that the alleged misconduct in the formal complaint:

(a) Does not meet the definition of sexual harassment under Title IX, even if proved; or

(b) Did not occur in the context of a college education program or activity; or

(c) Occurred outside the United States.

(2) Discretionary dismissal. The college may dismiss a Title IX complaint in whole or in part, if:

(a) The complainant notifies the Title IX coordinator in writing that they would like to withdraw the formal complaint in whole or in part;

(b) The respondent is no longer enrolled with or employed by the college; or

(c) Specific circumstances prevent the college from gathering evidence sufficient to complete the investigation of the Title IX allegations in whole or in part.

(3) The Title IX coordinator will provide both parties written notice if Title IX allegations are dismissed with an explanation for the dismissal.

(4) Mandatory or discretionary dismissal of a Title IX complaint does not preclude the college from investigating and pursuing discipline based on allegations that a respondent violated other federal or state laws and regulations,

Bates Technical College's conduct policies, and/or other codes and contractual provisions governing student and employee conduct.

NEW SECTION

WAC 495A-300-080 Investigation process—Consolidation of formal complaints. When multiple sexual harassment allegations by or against different parties arise out of the same facts or circumstances, the college may consolidate the investigation of formal complaints, provided consolidation can be accomplished in compliance with confidentiality protections imposed by the Family Educational Rights and Privacy Act (FERPA). This includes instances in which complainant and respondent have lodged formal complaints against one another or when allegations of sexual assault are lodged by a single complainant against multiple respondents, or when multiple complainants lodge sexual assault complaints against single or multiple respondents.

NEW SECTION

WAC 495A-300-085 Investigation process—Required procedures. During the investigation, the investigator:

(1) Will provide the parties with equal opportunity to present relevant statements, and other evidence in the form of fact or expert witnesses and inculpatory or exculpatory evidence.

(2) Will not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant evidence, except when a no contact order has been imposed based on an individualized and fact specific determination that a party poses a threat to the health, safety, or welfare of another party and/or witness(es) or when contact with a party and/or witness(es) is prohibited by court order. A college-imposed no contact shall be no broader than is necessary to protect the threatened party or witness(es) and must provide the impacted party or their advisor with alternative means of gathering and presenting relevant evidence from the protected witness(es) and/or party.

(3) Will allow each party to be accompanied by an advisor of their choosing, who may be an attorney, to any grievance related meeting or interview. Advisors' roles during the investigation meetings or interviews will be limited to providing support and advice to the party. Advisors will not represent or otherwise advocate on behalf of the parties during the investigation process. An attorney representing a party must enter a notice of appearance with the Title IX coordinator and the investigator at least five workdays before the initial interview or meeting they plan to attend, so that the college can secure its own legal representation, if necessary.

(4) The investigator will provide both parties and their respective advisors with an equal opportunity to review the draft investigation report and to inspect and review any evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint, including inculpatory or exculpatory evidence, regardless of its source, as well as evidence upon which the investigator does not intend to rely in the final investigation report. After disclosure, each party will receive ten workdays in which to submit a written response, which the investigator will consider prior to completion of the investigation report. If a party fails to submit a written response within ten workdays, the party will be deemed to have waived their right to submit comments, and the investigator will finalize the report without this information.

(5) The investigator will forward the final report to the Title IX coordinator, who will distribute the report and evidence to the parties, as well as the disciplinary authority responsible for determining whether pursuing disciplinary action is warranted.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 495A-300-020	Informal procedure.
WAC 495A-300-030	Formal procedure.
WAC 495A-300-040	Other remedies.

WSR 20-21-079
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2016-23—Filed October 19, 2020, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-18-065.

Title of Rule and Other Identifying Information: Service contract providers and protection product guarantee providers.

Hearing Location(s): On November 30, 2020, at 10:00 a.m. Remote access information for public testimony will be available here: https://www.insurance.wa.gov/service-contract-providers-and-protection-product-guarantee-providers-solvency-and-filings. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 1, 2020.

Submit Written Comments to: Bode Makinde, P.O. Box 40258, Olympia, WA 98504, email rulescoordinator@oic.wa.gov, fax 360-725-7038, by November 30, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241 or 360-725-7087, email MelanieW@oic.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This supplemental filing will consider clarifying language to ensure consistency with statutory requirement[s]. The proposed rules will consider clarifying solvency and financial requirements of service contract providers and protection product guarantee providers, forms of a parental guarantee, the filings these entities submit to the commissioner, and the correction of outdated statutory citations.

Reasons Supporting Proposal: Since the original enactment of chapter 48.110 RCW there have been several amendments to that chapter, including the 2016 legislative session. In addition over the years there have been issues that have arisen regarding the requirements for solvency and filings required to be made by service contract providers and protection product guarantee providers to the office of the insurance commissioner (OIC).

Statutory Authority for Adoption: RCW 48.02.060 and 48.110.150.

Statute Being Implemented: Chapter 48.110 RCW.

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: Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7038; Implementation: Ron Pastuch, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7211; and Enforcement: Melanie Anderson, P.O. Box 40255, Olympia, WA 98504-0255, 360-725-7214.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7038, fax 360-586-3109, TTY 360-586-0241 or 360-725-7087, email rulescoordinator@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(3) as the rule content is explicitly and specifically dictated by statute; 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 34.05.310 (4)(e): Chapter 284-110 WAC.

Explanation of exemptions: The stakeholders that are affected by this rule are not small businesses as defined in RCW 19.85.020(3).

The domestic insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3). The OIC applied a default cost of compliance (**$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524126	Direct property and casualty insurance carriers	33951.09	6,393	$33,951.09 2018 Dataset pulled from USBLS	$2,571.20 2018 Dataset pulled from DOR
524128	Other direct insurance (except life; health; and medical) carriers	6357.56	118	$6,357.56 2018 Dataset pulled from ESD	$5,264.55 2018 Dataset pulled from DOR
524210	Insurance agencies and brokerages	4879.47	15,498	$4,879.47 2018 Dataset pulled from USBLS	$2,407.22 2018 Dataset pulled from DOR
524298	All other insurance related activities	10871.62	1,243	$10,871.62 2018 Dataset pulled from USBLS	$4,340.77 2018 Dataset pulled from DOR

October 19, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 13-12-038, filed 5/30/13, effective 7/1/13)

WAC 284-20C-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Complete filing" means a package of information containing motor vehicle service contracts, supporting information, documents and exhibits.

(2) "Contract" means a service contract covering motor vehicles, as described in chapter 48.110 RCW. Under this definition:

(a) "Motor vehicle" means the same as in RCW 48.110.020(7), and only includes vehicles that are self-propelled by a motor; and

(b) "Service contract" means the same as in RCW 48.110.020((~~(17)~~)) (18).

(3) "Date filed" means the date a complete motor vehicle service contract filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files motor vehicle service contracts with the commissioner.

(5) "Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a motor vehicle service contract under RCW 48.110.073.

(6) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary National Association of Insurance Commissioners (NAIC) computer-based application that allows filers to create and submit rate, rule and form filings electronically to the commissioner.

(7) "Service contract provider" or "provider" means the same as in RCW 48.110.020(((~~(19)~~))) (20).

(8) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

Chapter 284-110 WAC

SERVICE CONTRACTS ANDPROTECTION PRODUCT GUARANTEES

NEW SECTION

WAC 284-110-010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Most recent financial statements" means a partial fiscal year financial statement to include year-end totals, if available. For start-up applicants, formed less than one fiscal year, partial fiscal year financial statements shall include the months from formation to current.

(2) "Statutory accounting principles" means the current year accounting practices and procedures manual as adopted by the national association of insurance commissioners. Service contract providers and protection product guarantee providers must follow all statement of statutory accounting principles with a type of issue of "common area" and "property and casualty." Any permitted accounting practices from a domiciliary state regulator shall not be used in determining minimum net worth. Only service contract providers relying on RCW 48.110.050 (2)(a) or 48.110.075 (2)(a) may elect to use statutory accounting principles.

(3) "Material changes or additions" as referred to in RCW 48.110.030(6) and 48.110.055(7) means the following:

(a) Any financial condition where the registrant, or its parent company if applicable, fails to maintain the net worth requirements under RCW 48.110.030 (2)(c)(i) and (ii) and 48.110.055 (3)(e).

(b) The information referred to in RCW 48.110.030 (2) (a) and (b).

(c) Change of financial responsibility or faithful performance requirements under RCW 48.110.050 (2)(a) through (c).

(d) The information referred to in RCW 48.110.055 (2) (b) through (3)(d).

NEW SECTION

WAC 284-110-020 Certified financial statement. (1) RCW 48.110.030 and 48.110.055 permit service contract providers and protection product guarantee providers to submit financial statements certified as accurate by two or more officers of the service contract provider or protection product guarantee provider in lieu of audited financial statements in certain circumstances. Certified financial statements must include all the financial statements, notes, and information that accurately present the financial position of the provider at the report date. Management is responsible for the preparation and fair presentation of these financial statements in conformity with the accounting practices prescribed or permitted under chapter 48.110 RCW and this chapter.

(2) Only service contract providers and protection product guarantee providers filing certified financial statements must use the prescribed certification of financial statements form that is available on the commissioner's website.

NEW SECTION

WAC 284-110-030 Parental guarantee. Service contract providers relying on RCW 48.110.050 (2)(c) to demonstrate financial responsibility or assure faithful performance must use the prescribed parental guarantee form that is available on the commissioner's website.

WSR 20-21-082
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2020-09—Filed October 19, 2020, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-12-087.

Title of Rule and Other Identifying Information: Life insurance - behavioral change incentives (SHB 6052).

Hearing Location(s): On December 2, 2020, at 10:00 a.m. Via Zoom. Detailed information for attending the Zoom meeting posted on the office of the insurance commissioner (OIC) website here: https://www.insurance.wa.gov/life-insurance-behavioral-change-incentives-r-2020-09. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 1, 2020.

Submit Written Comments to: Scott Bird, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by December 1, 2020.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-701 [7013], fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by December 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner proposes creating new regulations to provide guidance and establish standards to ensure incentives intended to influence

consumer behavior are directed toward protecting policyholders' privacy rights and protecting consumers in the administration of life insurance products. The anticipated effect of the proposed rules is to provide guidance to insurers and implement the legislative amendments made to RCW 48.30.140, 48.30.150, 48.30.155, and 48.23.525 by passage of SSB 6052.

Reasons Supporting Proposal: The legislature passed SSB 6052 during the 2020 legislative session. The bill exempts life insurers offering products or services that are intended to incentivize behavioral changes from other insurance rebating and inducement statutes in Title 48 RCW. Based on the legislation, OIC needs to develop rules to establish standards for ensuring that incentives are directed to sharing the benefit of improving risk experience, minimum product or service standards to protect policyholder privacy rights and safeguard consumer protection in the administration of these products and services.

Statutory Authority for Adoption: RCW 48.02.060 and 48.30.010.

Statute Being Implemented: SSB 6052 (chapter 197, Laws of 2020, effective date July 1, 2020).

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: Scott Bird, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7036; Implementation: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Toni Hood, P.O. Box 40260, Olympia, WA 98504-0260, 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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241, email bodem@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(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: The domestic insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3).

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.

Section 1 - Rule groups and their status relative to RFA analysis.

Rule Group	WAC	Exemption Category
The purpose of these rules is to set standards for regulating non-insurance benefits permitted under RCW 48.23.525 (1)(d) related to any policy of individual life insurance that are intended to incent behavioral changes that improve the health and reduce the risk of death of the insured and establish the minimum practices required in the administration of such non-insurance benefits. These rules apply to the products or services permitted under RCW 48.23.525 (1)(d) related to individual life insurance policies governed by chapter 48.23 RCW. All other requirements applicable to life insurers pursuant to chapter 48.23 RCW and 284-23 WAC apply to life insurers providing such products or services, unless specifically stated otherwise in statute or rule.	284-23-850	RCW 34.05.310 (4)(e)(dictated by statute)
Any advertisement for an individual life insurance policy that provides non-insurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds, must clearly identify and explain the type of products or services offered, provide a description of the requirements for an insured to receive those products or services, and the cost associated with participation in using such products and services and the penalties , if any, for the insured who does not enroll or terminates participation in using such products and services.	284-23-860	RCW 34.05.310 (4)(e)(Dictated by statute)
No insurer offering non-insurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds in an individual life insurance policy shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any such product or service or the benefits or advantages promised, or use any name or title of any policy or class of policies misrepresenting the nature thereof.	284-23-870	RCW 34.05.310 (4)(e)(dictated by statute)
Any insurer including their appointed producer, contractor, managing general agent, or third party administrator who offers or administers non-insurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds is subject to the privacy requirements of chapter 284-04 WAC.	284-23-880	RCW 34.05.310 (4)(e)(dictated by statute)

Section 2 - Cost of compliance/minor cost threshold.

The domestic insurers that are affected by this rule are large, interstate insurers and are not small businesses as defined in RCW 19.85.020(3). OIC applied a default cost of compliance (**$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg annual payroll	0.3% of Avg Annual Gross Business Income
524113	Direct life insurance carriers	25599.65	2,787	$25,599.65 2018 Dataset pulled from USBLS	$3,520.62 2018 Dataset pulled from DOR
524114	Direct health and medical insurance carriers	228929.41	6,777	$88,030.57 2018 Dataset pulled from USBLS	$228,929.41 2018 Dataset pulled from DOR

A copy of the detailed cost calculations may be obtained by contacting Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, TTY 360-586-0241, email bodem@oic.wa.gov.

October 19, 2020
Mike Kreidler
Insurance Commissioner

INCENTIVIZED BENEFITS FOR INDIVIDUAL LIFE INSURANCE

NEW SECTION

WAC 284-23-850 Purpose and scope. The purpose of these rules is to set standards for regulating noninsurance benefits permitted under RCW 48.23.525 (1)(d) related to any policy of individual life insurance that are intended to incent behavioral changes that improve the health and reduce the risk of death of the insured and establish the minimum practices required in the administration of such noninsurance benefits. These rules apply to the products or services permitted under RCW 48.23.525 (1)(d) related to individual life insurance policies governed by chapter 48.23 RCW. All other requirements applicable to life insurers pursuant to chapters 48.23 RCW and 284-23 WAC apply to life insurers providing such products or services, unless specifically stated otherwise in statute or rule.

NEW SECTION

WAC 284-23-860 Advertising requirements. (1) Any advertisement for an individual life insurance policy that provides noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds, must contain the following disclaimer:

"Products or services offered under the (program/product name) program are not insurance and are subject to change. For more information, please contact the company at (website address) or via telephone at (number)."

(2) Any advertisement for an individual life insurance policy with noninsurance benefits that has additional costs or participation requirements for these products or services must also contain the following language in the disclaimer, as applicable:

(a) "There are additional costs associated with these products or services"; and/or

(b) "There are additional requirements associated with participation in the program."

(3) Any advertisement for an individual life insurance policy with noninsurance benefits that has penalties for terminating participation for these products or services must also contain the following language in the disclaimer, as applicable:

"There may be penalties for terminating participation in this program."

NEW SECTION

WAC 284-23-870 Misleading offers to incentivize behavior. No insurer offering noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds in an individual life insurance policy shall make, issue or circulate, or cause to be made, issued or circulated any misrepresentation of the terms of any such product or service or the benefits or advantages promised, or use any name or title of any policy or class of policies misrepresenting the nature thereof.

NEW SECTION

WAC 284-23-880 Privacy. Any insurer including their appointed producer, contractor, managing general agent, or third-party administrator who offers or administers noninsurance benefits permitted under RCW 48.23.525 (1)(d) that incent healthy behavioral changes that improve the health and reduce the risk of death of the insureds is subject to the privacy requirements of chapter 284-04 WAC.

WSR 20-21-090
PROPOSED RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed October 20, 2020, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-117.

Title of Rule and Other Identifying Information: Pension discount rate, amending WAC 296-14-8810 Pension tables, pension discount rate and mortality tables in chapter 296-14 WAC, Industrial insurance.

Hearing Location(s): On December 1, 2020, at 9:00 a.m. Zoom hearing. Join Zoom meeting electronically at https://zoom.us/j/6729810600, Meeting ID: 672 981 0600. Join by phone: +1 253-215-8782 US (Tacoma). Find your local number: https://zoom.us/u/abYgRUnFH.

Date of Intended Adoption: January 5, 2021.

Submit Written Comments to: Suzy Campbell, P.O. Box 44270, Olympia, WA 98504-4270, email Suzanne.Camp

bell@Lni.wa.gov, fax 360-902-5029, by December 1, 2020, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Misener, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email ashley.misener@Lni.wa.gov, by November 19, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The pension discount rate (PDR) is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. The purpose of this rule making is to lower the PDR for annual investment returns for the reserve funds for self-insured employers.

This rule making is proposing to reduce the self-insured pension discount rate from 5.9 percent to 5.8 percent.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), 51.44.080.

Statute Being Implemented: RCW 51.44.070.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Suzy Campbell, Tumwater, Washington, 360-902-5003; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Vickie Kennedy, Tumwater, Washington, 360-902-4997.

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. Labor and industries is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) since the purpose of this rule making is to set or adjust fees pursuant to legislative standards.

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 set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 20, 2020
Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 20-02-114, filed 1/2/20, effective 4/1/20)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;

(iii) A pension discount rate of 4.5 percent for state fund pensions;

(iv) A pension discount rate of ((~~5.9~~)) 5.8 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 20-21-099
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed October 20, 2020, 4:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-11-021.

Title of Rule and Other Identifying Information: Chapter 246-50 WAC, Coordinated quality improvement program (CQIP), the department of health (department) is proposing to amend these rules to provide clarification, streamlining of processes, modernization, and updates for compliance with state statutes.

Hearing Location(s): On December 3, 2020, at 10:30 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing. This promotes social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please register at https://attendee.gotowebinar.com/register/6440163270618173708. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 14, 2020.

Submit Written Comments to: Jovi S. Swanson, Department of Health, P.O. Box 47890, Olympia, WA 98501, email https://fortress.wa.gov/doh/policyreview, by December 3, 2020.

Assistance for Persons with Disabilities: Jovi S. Swanson, phone 360-545-7315, TTY 711, email jovi.swanson@doh.wa.gov, by November 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule is needed because a comprehensive chapter review has not been completed since 2006. The current rules do not address renewal of CQIP approval. Health care entities may have an outdated CQIP. The department currently has over four hundred approved plans. Some of these plans are original, others are modified, and some are alternative plans. The proposed rule includes revisions, clarification of definitions, a new

requirement for mandatory renewal of CQIP programs currently approved by the department, a new requirement for renewal of CQIP programs every five years, and a new fee for processing renewed CQIP. The proposal is meant to align the rules with the statute.

Reasons Supporting Proposal: The department administers the CQIP where health care entities under RCW 43.70.510 may choose to apply for a department approved plan. Unlike hospitals which are required to have a coordinated quality improvement program, the department's program is a voluntary program. The program for health care entities has a similar framework to hospitals. The statute authorizing CQIP, RCW 43.70.510, provides certain liability and confidentiality protections for department approved CQIPs. The statute lists specific types of health care entities and provider groups that are eligible to apply and maintain department approved CQIPs. The current rules have not been updated since 2006. A comprehensive review of the rules concluded that the rules needed to be updated to provide clarification, amendments to comply with changes in state laws, and to establish a renewal process to help ensure programs are up to date, and in compliance with the current standards. The proposed rules also include new fees for processing renewals.

Statutory Authority for Adoption: RCW 43.70.510, 43.70.250(2).

Statute Being Implemented: RCW 43.70.510, 43.70.250(2).

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jovi S. Swanson, 101 Israel Road S.E., Tumwater, WA 98501, 360-545-7315.

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 Jovi S. Swanson, P.O. Box 47890, Olympia, WA 98504, phone 360-545-7315, TTY 711, email jovi.swanson@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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

October 16, 2020
Jessica Todorovich
Chief of Staff
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-001 Purpose ((~~and scope~~)). ((~~(1)~~)) The purpose of ((~~the~~)) a coordinated quality improvement program is to improve the quality of health care services ((~~by identifying and preventing health care~~)) and identify and prevent medical malpractice under RCW 43.70.510. This chapter establishes the criteria and approval process for health care entities who choose to apply for a department of health-approved coordinated quality improvement program under RCW 43.70.510. A coordinated quality improvement program((~~s~~)) plan must be approved by the department ((~~are provided discovery limitations under RCW 43.70.510 (3) and (4). Information and documents specifically created for, collected, and maintained by an approved quality improvement committee are also exempt from disclosure under chapter 42.17 RCW.~~

~~(2) This chapter allows health care provider groups, professional societies or organizations, health care service contractors, health maintenance organizations, health carriers approved under chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the authority and rules of any state agency or any subdivision such as health care institutions and medical facilities other than hospitals, to maintain a department-approved coordinated quality improvement program for the purpose of improving the quality of health care and identifying and preventing health care malpractice.~~

~~(3) This chapter does not apply to hospital quality improvement programs required by RCW 70.41.200~~)) before the discovery limitations provided in RCW 43.70.510 (3) and (4) and the exemptions under RCW 42.56.360 (1)(c) and 43.70.510(5) shall apply.

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-005 Applicant eligibility. (1) The following health care entities may apply for the coordinated quality improvement program:

(a) ((~~Provider groups of five or more providers;~~)) Health care institutions and medical facilities other than hospitals, that are licensed by the department;

(b) ((~~Health care~~)) Professional societies or organizations((~~, including, but not limited to, state or local health care professional associations~~));

(c) Health care service contractors as defined in RCW 48.44.010;

(d) Health maintenance organizations as defined in RCW 48.46.020;

(e) Health carriers ((~~as defined in RCW 48.43.005;~~

~~(f) Health care institutions or medical facilities other than hospitals; and~~

~~(g)~~)) approved pursuant to chapter 48.43 RCW;

(f) Any other person or entity providing ((~~personal~~)) health care coverage under chapter 48.42 RCW((~~, and~~)) that is subject to the ((~~authority and rules of any state agency or subdivision~~)) jurisdiction and regulation of any state or any subdivision thereof; and

(g) Health care provider groups of five or more providers.

(2) This chapter does not apply to hospital coordinated quality improvement programs required by RCW 70.41.200.

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

WAC 246-50-010 Definitions. The ((~~words and phrases~~)) definitions in this ((~~chapter have the following meanings~~)) section apply throughout this chapter unless the context clearly ((~~indicates~~)) requires otherwise.

(1) "Alternative program" means a coordinated quality improvement program determined by the department to be substantially equivalent to RCW 70.41.200(1).

(2) "Department" means the Washington state department of health.

(3) "Governing body" means:

(a) The person, persons, or board responsible for the health care entity; or

(b) In the case of a provider group where no person, persons, or board is in charge of all providers((~~;~~)), the person, persons, or group identified by the provider group is responsible for the coordinated quality improvement program.

(4) ((~~"Health care entity" means a health care institution, medical facility, provider group, professional society or organization, health care service contractors, health maintenance organizations, health carriers approved under chapter 48.43 RCW, and any other person or entity providing health care coverage under chapter 48.42 RCW that is subject to the jurisdiction of any state agency or any subdivision thereof, authorized by RCW 43.70.510 to have a department approved coordinated quality improvement program.~~

~~(5) "Health care institution" or "medical facility" includes the following:~~

~~(a) Adult residential rehabilitation centers regulated under chapter 71.12 RCW;~~

~~(b) Alcohol and drug treatment facilities and hospitals regulated under chapter 70.96A RCW;~~

~~(c) Emergency medical care and transportation services regulated under chapter 18.73 RCW;~~

~~(d) Assisted living facilities regulated under chapter 18.20 RCW;~~

~~(e) Childbirth centers regulated under chapter 18.46 RCW;~~

~~(f) Community mental health centers regulated under chapter 71.05 or 71.24 RCW;~~

~~(g) Home health agencies, home care agencies, hospice care centers, and hospice agencies regulated under chapter 70.127 RCW;~~

~~(h) Medical test sites regulated under chapter 70.42 RCW;~~

~~(i) Nursing homes regulated under chapter 18.51 RCW;~~

~~(j) Pharmacies regulated under chapter 18.64 RCW;~~

~~(k) Private psychiatric hospitals and residential treatment facilities for psychiatrically impaired children and youth regulated under chapter 71.12 RCW;~~

~~(l) Rural health care facilities regulated under chapter 70.175 RCW;~~

~~(m) Organizations that provide designated trauma care services individually or jointly under chapter 70.168 RCW;~~

~~(n) Facilities owned and operated by a political subdivision or instrumentality of the state, including, but not limited to:~~

~~(i) Public health departments;~~

~~(ii) Fire districts and departments;~~

~~(iii) Soldiers' and veterans' homes;~~

~~(iv) State mental health institutions;~~

~~(v) Health clinics operated by educational institutions;~~

~~(vi) Department of corrections health care facilities;~~

~~(vii) County jail health clinics;~~

~~(viii) County drug and alcohol treatment facilities; and~~

~~(ix) Public hospital districts;~~

~~(o) Facilities required by federal law and implementing regulations, including, but not limited to:~~

~~(i) Native American health facilities; and~~

~~(ii) Veterans' affairs health services; and~~

~~(p) Other facilities that the department determines meet the definition of "health care facility" in RCW 48.43.005.~~

~~(6)~~)) "Health care provider" or "provider" means((~~:~~

~~(a) A person regulated under Title 18 RCW to practice health or health related services or otherwise practicing health care services in this state consistent with state law; or~~

~~(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of the employee's or agent's employment performing health care or auxiliary services.~~

~~(7)~~)) a health care professional licensed under the chapters specified in RCW 18.130.040.

(5) "Health care provider group" or "provider group" means an organized body or consortium of five or more providers in total.

(((~~(8)~~))) (6) "Negative health care outcome" means a patient death or impairment of bodily function other than those related to the natural course of illness, disease, or proper treatment in accordance with generally accepted health care standards.

(((~~(9)~~))) (7) "Professional society or organization" means a group of health care professionals((~~,~~)) including, but not limited to, state or local health care professional associations.

(((~~(10)~~))) (8) "Program" means coordinated quality improvement program under RCW 43.70.510.

AMENDATORY SECTION (Amending WSR 94-24-001, filed 11/23/94, effective 12/24/94)

WAC 246-50-020 Coordinated quality improvement program—Components. A program under the provisions of RCW 43.70.510 shall include, at a minimum:

(1) The following components, as modified and approved by the department to reflect the structural organization of the health care entity:

(a) A governing body;

(b) A committee, appointed by the governing body, with a broad representation of the services offered, responsible for:

(i) Reviewing services rendered, both retrospectively and prospectively, to improve the quality of health care by measuring key characteristics such as effectiveness, accuracy, timeliness, and cost;

(ii) Reviewing categories and methodologies of services rendered and to be rendered with the goal of improving health care outcomes;

(iii) Overseeing and coordinating the program;

(iv) Ensuring information gathered for the program is reviewed and used to revise health care policies and procedures; and

(v) Reporting to the governing body, at least semiannually, on program activities and actions taken as a result of those activities;

(c) Periodic evaluation of each provider under the purview of the program, including mental and physical capacity, competence in delivering health care, and verification of current credentials;

(d) A procedure for promptly resolving all complaints pertaining to accidents, injuries, treatment and other events that may result in claims of health care malpractice;

(e) A method for continually collecting and maintaining information concerning:

(i) Experience with negative health care outcomes and injurious incidents; and

(ii) Professional liability premiums, settlements, awards, costs for injury prevention and safety improvement activities;

(f) A method for maintaining information gathered under the purview of the program concerning a provider in that provider's personnel or credential file, assuring patient confidentiality;

(g) A process for reporting accidents, injuries, negative health outcomes, and other pertinent information to the quality improvement committee;

(h) A process assuring compliance with reporting requirements to appropriate local, state, and federal authorities;

(i) A method for identifying documents and records created specifically for and collected and maintained by the quality improvement committee;

(j) Educational activities for personnel engaged in health care activities((,)) including, but not limited to:

(i) Quality improvement;

(ii) Safety and injury prevention;

(iii) Responsibilities for reporting professional misconduct;

(iv) Legal aspects of providing health care;

(v) Improving communication with health care recipients; and

(vi) Causes of malpractice claims; or

(2) Components determined by the department to be substantially equivalent to those listed in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-030 Application ((~~and~~)) approval and renewal process. ((~~A~~)) (1) To obtain department approval of a program, an authorized representative of the health care entity ((~~seeking department approval of a program shall submit to the department:~~

~~(1) An application on forms provided by the department;~~

~~(2) The program plan, printed on 8 1/2 by 11 inch paper, including~~)) shall submit to the department a completed application on forms provided by the department. A completed application must include at least the following:

(a) A table of contents clearly denoting, at a minimum, where each component specified in WAC 246-50-020 is located within the program plan; ((~~and~~))

(b) A program plan with detailed description of every aspect of the program including every component of the program required under WAC 246-50-020;

(((~~3~~))) (c) The fee specified in WAC 246-50-990; and

(((~~4~~))) (d) Other information as may be required by the department.

(2) The department may grant or deny approval of an application. If an application is denied, the health care entity may modify and resubmit its application or request a brief adjudicative proceeding according to RCW 34.05.482.

(3) A health care entity that maintains a department-approved program must renew every five years after the date of initial approval. An application for renewal must meet the requirements of subsection (1) of this section. A program remains approved during the renewal process. A health care entity must apply for renewal on or before the original expired due date, unless it has received written confirmation from the department that the applicant may apply at a later date. Failure to apply for renewal will mean that the approval is expired and no longer valid. A health care entity that does not apply for renewal and the approval expires must reapply for the initial department approval by meeting the requirements of subsection (1) of this section.

(4) The department may grant or deny approval or application for renewal. If an application for renewal is denied, the health care entity may modify and resubmit its application or request a brief adjudicative proceeding according to RCW 34.05.482. A program remains approved while an application for renewal is under review, including the time that a health care entity may use to modify and resubmit its application for renewal, until the adjudicative process is exhausted, or the health care entity indicates it does not intend to seek renewal.

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-035 Modification of an approved plan. (1) To maintain department approval, a health care entity modifying the scope, components or operation of an approved program, shall submit to the department:

(a) An application package specified in WAC 246-50-030(1), modified as appropriate; and

(b) A detailed description of the modification and how it affects the program.

(2) A health care entity shall modify its approved program to comply with any changes in requirements for program approval adopted by the department or the legislature. Any such modification shall be made using the procedure outlined in subsection (1) of this section.

(3) A health care entity shall notify the department of a change in authorized representative within thirty days of a change. The procedure outlined in subsection (1) of this section does not apply to this subsection. A health care entity shall modify its approved program to comply with any changes in requirements for program approval adopted by the department or the legislature within six months of notice from the department that, unless it has received written confirmation from the department that it may apply at a later date. Any such modification shall be made using the procedure outlined in subsection (1) of this section.

(4) The department shall review each application package submitted under this section((,)) and either:

(a) Send written notification of approval to a health care entity submitting a program with the components specified in WAC 246-50-020; or

(b) Deny the application ((~~and provide the health care entity an opportunity for~~)). If denied, the health care entity may modify and resubmit its application package or request a brief adjudicative proceeding according to RCW 34.05.482 ((~~when the department declines to approve a program~~)).

(((~~(3)~~))) (5) A program remains approved while an application to modify is under review, including the time that a health care entity may use to modify and resubmit its application under this section or the adjudicative process identified in subsection (4) of this section is exhausted.

(6) The department shall retain a copy of the program plan.

NEW SECTION

WAC 246-50-050 One-time mandatory renewal process. All health care entities with currently approved programs must apply for renewal of their programs by December 31, 2021. An application for renewal must meet the requirements of WAC 246-50-030(1). A program remains approved while an application for renewal is under consideration by the department. Failure to apply for renewal by December 31, 2021, will mean the approval is expired and no longer valid.

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-060 Public record disclosure. A program plan and all supplemental material are public records and are subject to the Public Records ((~~disclosure law~~)) Act, chapter ((~~42.17~~)) 42.56 RCW, once the department receives them. Health care entities submitting material they believe is exempt from public record disclosure should clearly mark the portion or portions as "exempt" and state the specific statutory basis for exemption. The department will notify the health care entity of a public record disclosure request for material the entity marked "exempt" in accordance with this ((~~subsection~~)) section. The department will allow the health care entity ten work days from when it receives department notice to deliver to the department proof that the entity has initiated formal action to secure an injunction under RCW ((~~42.17.330~~)) 42.56.540. Upon receiving such proof, the department will notify the public record requester of the action the health care entity initiated under RCW ((~~42.17.330~~)) 42.56.540, and take no further action pending a decision by the court. The health care entity must notify the department if it withdraws or takes any other action to terminate the judicial process under RCW ((~~42.17.330~~)) 42.56.540. Absent proof from the health care entity that it has initiated action under RCW ((~~42.17.330~~)) 42.56.540, the department will disclose the records consistent with state and federal law.

AMENDATORY SECTION (Amending WSR 06-03-123, filed 1/18/06, effective 2/18/06)

WAC 246-50-990 Fees. A health care entity must submit a fee with each application as follows:

Title of Fee	Fee
Original application	$250.00
Alternative application	40.00
Modification application of a department-approved program	65.00
Renewal application	75.00

WSR 20-21-105
PROPOSED RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2019-05—Filed October 21, 2020, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-113.

Title of Rule and Other Identifying Information: Network access and notice requirements.

Hearing Location(s): On December 2, 2020, at 3:30 p.m. Zoom meeting: Detailed information for attending the Zoom meeting posted on the OIC website here: https://www.insurance.wa.gov/network-access-and-notice-requirements-r-2019-05. Due to the COVID-19 public health emergency, this hearing will be held via Zoom.

Date of Intended Adoption: December 3, 2020.

Submit Written Comments to: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by December 2, 2020.

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, by December 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner will consider adopting rules regarding network access and notices to ensure implementation as provided for chapter 11, Laws of 2019 (ESHB 1099), which has been codified in

RCW 48.43.765. In addition to adding new sections, the commissioner is considering amending existing WAC, including WAC 284-170-130, 284-170-200, and 284-170-260

Reasons Supporting Proposal: The legislature passed ESHB 1099 during the 2019 session. The bill requires additional network access standards, including specific standards related to access for mental health and substance use disorder treatment services. The bill also requires carriers to provide enrollees to new notices and information about networks, access, and mental health and substance use disorder treatment services. The office of the insurance commissioner (OIC) needs to develop rules to amend existing WAC and add new sections to align with ESHB 1099 (chapter 11, Laws of 2019).

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.765.

Statute Being Implemented: RCW 48.43.765.

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: Mandy Weeks-Green, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7041; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7117; and Enforcement: Melanie Anderson, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7214.

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 Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, email bodem@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(3) as the rule content is explicitly and specifically dictated by statute.

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.

Explanation of exemptions:

Section 1 - Cost of Compliance/Minor Cost Threshold: OIC applied a default cost of compliance (**$100**) when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). Below are calculations for minor cost thresholds across all impacted industries based on the best analogous NAICS types. For these reasons, the proposed rules do not impose more than minor costs on businesses as defined by RCW 19.85.020(2).

2017 Industry NAICS Code	NAICS Code Title	Minor Cost Estimate	Average Annual Employment	1% of Avg Annual Payroll	0.3% of Avg Annual Gross Business Income
524114	Direct health and medical insurance carriers	228929.41	6,777	$88,030.57 2018 Dataset pulled from USBLS	$228,929.41 2018 Dataset pulled from DOR
813910	Business associations	3878.9	2,289	$3,737.22 2018 Dataset pulled from USBLS	$3,878.90 2018 Dataset pulled from DOR

A copy of the detailed cost calculations may be obtained by contacting Bode Makinde, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, fax 360-586-3109, email bodem@oic.wa.gov.

October 21, 2020
Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 16-07-144, filed 3/23/16, effective 4/23/16)

WAC 284-170-130 Definitions. Except as defined in other subchapters and unless the context requires otherwise, the following definitions shall apply throughout this chapter.

(1) "Adverse determination" has the same meaning as the definition of adverse benefit determination in RCW 48.43.005, and includes:

(a) The determination includes any decision by a health carrier's designee utilization review organization that a request for a benefit under the health carrier's health benefit plan does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness or is determined to be experimental or investigational and the requested benefit is therefore denied, reduced, or terminated or payment is not provided or made, in whole or in part for the benefit;

(b) The denial, reduction, termination, or failure to provide or make payment, in whole or in part, for a benefit based on a determination by a health carrier or its designee utilization review organization of a covered person's eligibility to participate in the health carrier's health benefit plan;

(c) Any prospective review or retrospective review determination that denies, reduces, or terminates or fails to provide or make payment in whole or in part for a benefit;

(d) A rescission of coverage determination; or

(e) A carrier's denial of an application for coverage.

(2) "Authorization" or "certification" means a determination by the carrier that an admission, extension of stay, or other health care service has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness in relation to the applicable health plan.

(3) "Clinical review criteria" means the written screens, or screening procedures, decision rules, medical protocols, or clinical practice guidelines used by the carrier as an element in the evaluation of medical necessity and appropriateness of requested admissions, procedures, and services, including prescription drug benefits, under the auspices of the applica-

ble health plan. Clinical approval criteria has the same meaning as clinical review criteria.

(4) "Covered health condition" means any disease, illness, injury or condition of health risk covered according to the terms of any health plan.

(5) "Covered person" or "enrollee" means an individual covered by a health plan including a subscriber, policyholder, or beneficiary of a group plan.

(6) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain or emotional distress, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical, mental health, or substance use disorder treatment attention, if failure to provide medical, mental health, or substance use disorder treatment attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(7) "Emergency services" has the meaning set forth in RCW 48.43.005.

(8) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(9) "Facility" means an institution providing health care services including, but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing centers, residential treatment centers, diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic settings, and as defined in RCW 48.43.005.

(10) "Formulary" means a listing of drugs used within a health plan.

(11) "Grievance" has the meaning set forth in RCW 48.43.005.

(12) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 RCW or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(13) "Health care service" or "health service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(14) "Health carrier" or "carrier" means a disability insurance company regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, and a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in The Patient Protection and Affordable Care Act (P.L. 111-148, as amended (2010)).

(15) "Health plan" or "plan" means any individual or group policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care service except the following:

(a) Long-term care insurance governed by chapter 48.84 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Limited health care service offered by limited health care service contractors in accordance with RCW 48.44.035;

(d) Disability income;

(e) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(f) Workers' compensation coverage;

(g) Accident only coverage;

(h) Specified disease and hospital confinement indemnity when marketed solely as a supplement to a health plan;

(i) Employer-sponsored self-funded health plans;

(j) Dental only and vision only coverage; and

(k) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner.

(16) "Indian health care provider" means:

(a) The Indian Health Service, an agency operated by the U.S. Department of Health and Human Services established by the Indian Health Care Improvement Act, Section 601, 25 U.S.C. Sec. 1661;

(b) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. Sec. 450 et seq.;

(c) A tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603 (26), that operates a health program under a contract or compact to carry out programs of the Indian Health Service pursuant to the ISDEAA, 25 U.S.C. Sec. 450 et seq.;

(d) An Indian tribe, as defined in the Indian Health Care Improvement Act, Section 4(14), 25 U.S.C. Sec. 1603(14), or tribal organization, as defined in the Indian Health Care Improvement Act, Section 4(26), 25 U.S.C. Sec. 1603(26), that operates a health program with funding provided in whole or part pursuant to 25 U.S.C. Sec. 47 (commonly known as the Buy Indian Act); or

(e) An urban Indian organization that operates a health program with funds in whole or part provided by Indian Health Service under a grant or contract awarded pursuant to Title V of the Indian Health Care Improvement Act, Section 4(29), 25 U.S.C. Sec. 1603(29).

(17) "Managed care plan" means a health plan that coordinates the provision of covered health care services to a covered person through the use of a primary care provider and a network.

(18) "Medically necessary" or "medical necessity" in regard to mental health services and pharmacy services is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

(19) "Mental health provider" means a health care provider or a health care facility authorized by state law to provide mental health services.

(20) "Mental health services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization ((~~or~~)), residential treatment, out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a mental disorder listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) ((~~IV~~)) published by the American Psychiatric Association, ((~~excluding~~)) including diagnoses and treatment((~~s~~)) for substance ((~~abuse, 291.0 through 292.9 and 303.0 through 305.9~~)) use disorder.

(21) "Network" means the group of participating providers and facilities providing health care services to a particular health plan or line of business (individual, small, or large group). A health plan network for issuers offering more than one health plan may be smaller in number than the total number of participating providers and facilities for all plans offered by the carrier.

(22) "Out-patient therapeutic visit" or "out-patient visit" means a clinical treatment session with a mental health provider of a duration consistent with relevant professional standards used by the carrier to determine medical necessity for the particular service being rendered, as defined in Physicians Current Procedural Terminology, published by the American Medical Association.

(23) "Participating provider" and "participating facility" mean a facility or provider who, under a contract with the health carrier or with the carrier's contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, from the health carrier rather than from the covered person.

(24) "Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

(25) "Pharmacy services" means the practice of pharmacy as defined in chapter 18.64 RCW and includes any drugs or devices as defined in chapter 18.64 RCW.

(26) "Primary care provider" means a participating provider who supervises, coordinates, or provides initial care or continuing care to a covered person, and who may be required by the health carrier to initiate a referral for specialty care and maintain supervision of health care services rendered to the covered person.

(27) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(28) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(29) "Service area" means the geographic area or areas where a specific product is issued, accepts members or enrollees, and covers provided services. A service area must be defined by the county or counties included unless, for good cause, the commissioner permits limitation of a service area by zip code. Good cause includes geographic barriers within a service area, or other conditions that make offering coverage throughout an entire county unreasonable.

(30) "Small group plan" means a health plan issued to a small employer as defined under RCW 48.43.005((~~(33)~~)) (34) comprising from one to fifty eligible employees.

(31) "Substance use disorder services" means in-patient or out-patient treatment including, but not limited to, partial hospitalization, residential treatment, or out-patient facility-based treatment, intensive outpatient treatment, emergency services, or prescription drugs to manage, stabilize, or ameliorate the effects of a substance use disorder listed in the most current version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) published by the American Psychiatric Association, including diagnoses and treatment for substance use disorder.

(32) "Substitute drug" means a prescription medication, drug or therapy that a carrier covers based on an exception request. When the exception request is based on therapeutic equivalence, a substitute drug means a therapeutically equivalent substance as defined in chapter 69.41 RCW.

((~~(32)~~)) (33) "Supplementary pharmacy services" or "other pharmacy services" means pharmacy services involving the provision of drug therapy management and other services not required under state and federal law but that may be rendered in connection with dispensing, or that may be used in disease prevention or disease management.

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-170-200 Network access—General standards. (1) An issuer must maintain each provider network for each health plan in a manner that is sufficient in numbers and types of providers and facilities to assure that, to the extent feasible based on the number and type of providers and facilities in the service area, all health plan services provided to enrollees will be accessible in a timely manner appropriate for the enrollee's condition. An issuer must demonstrate that for each health plan's defined service area, a comprehensive range of primary, specialty, institutional, and ancillary services are readily available without unreasonable delay to all enrollees and that emergency services are accessible twenty-four hours per day, seven days per week without unreasonable delay.

(2) Each enrollee must have adequate choice among health care providers, including those providers which must be included in the network under WAC 284-170-270, and for qualified health plans and qualified stand-alone dental plans, under WAC 284-170-310.

(3) An issuer's service area must not be created in a manner designed to discriminate or that results in discrimination against persons because of age, gender, gender identity, sexual orientation, disability, national origin, sex, family struc-

ture, ethnicity, race, health condition, employment status, or socioeconomic status.

(4) An issuer must establish sufficiency and adequacy of choice of providers based on the number and type of providers and facilities necessary within the service area for the plan to meet the access requirements set forth in this subchapter. Where an issuer establishes medical necessity or other prior authorization procedures, the issuer must ensure sufficient qualified staff is available to provide timely prior authorization decisions on an appropriate basis, without delays detrimental to the health of enrollees.

(5) In any case where the issuer has an absence of or an insufficient number or type of participating providers or facilities to provide a particular covered health care service, the issuer must ensure through referral by the primary care provider or otherwise that the enrollee obtains the covered service from a provider or facility within reasonable proximity of the enrollee at no greater cost to the enrollee than if the service were obtained from network providers and facilities. An issuer must satisfy this obligation even if an alternate access delivery request has been submitted and is pending commissioner approval.

An issuer may use facilities in neighboring service areas to satisfy a network access standard if one of the following types of facilities is not in the service area, or if the issuer can provide substantial evidence of good faith efforts on its part to contract with the facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the facility. This applies to the following types of facilities:

(a) Tertiary hospitals;

(b) Pediatric community hospitals;

(c) Specialty or limited hospitals, such as burn units, rehabilitative hospitals, orthopedic hospitals, and cancer care hospitals;

(d) Neonatal intensive care units; and

(e) Facilities providing transplant services, including those that provide solid organ, bone marrow, and stem cell transplants.

(6) An issuer must establish and maintain adequate arrangements to ensure reasonable proximity of network providers and facilities to the business or personal residence of enrollees, and located so as to not result in unreasonable barriers to accessibility. Issuers must make reasonable efforts to include providers and facilities in networks in a manner that limits the amount of travel required to obtain covered benefits.

(7) A single case provider reimbursement agreement must be used only to address unique situations that typically occur out-of-network and out of service area, where an enrollee requires services that extend beyond stabilization or one time urgent care. Single case provider reimbursement agreements must not be used to fill holes or gaps in the network and do not support a determination of network access.

(8) An issuer must disclose to enrollees that limitations or restrictions on access to participating providers and facilities may arise from the health service referral and authorization practices of the issuer. A description of the health plan's referral and authorization practices, including information about how to contact customer service for guidance, must be set forth as an introduction or preamble to the provider directory for a health plan. In the alternative, the description of referral and authorization practices may be included in the summary of benefits and explanation of coverage for the health plan.

(9) To provide adequate choice to enrollees who are American Indians/Alaska Natives, each health issuer must maintain arrangements that ensure that American Indians/Alaska Natives who are enrollees have access to covered medical and behavioral health services provided by Indian health care providers.

Issuers must ensure that such enrollees may obtain covered medical and behavioral health services from ((~~the~~)) an Indian health care provider at no greater cost to the enrollee than if the service were obtained from network providers and facilities, even if the Indian health care provider is not a contracted provider. Issuers are not responsible for credentialing providers and facilities that are part of the Indian health system. Nothing in this subsection prohibits an issuer from limiting coverage to those health services that meet issuer standards for medical necessity, care management, and claims administration or from limiting payment to that amount payable if the health service were obtained from a network provider or facility.

(10) An issuer must have a demonstrable method and contracting strategy to ensure that contracting hospitals in a plan's service area have the capacity to serve the entire enrollee population based on normal utilization.

(11) At a minimum, an issuer's provider network must adequately provide for mental health and substance use disorder treatment, including behavioral health therapy. An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal enrollee utilization patterns.

(a) Adequate networks must include crisis intervention and stabilization, psychiatric inpatient hospital services, including voluntary psychiatric inpatient services, and services from mental health providers.

(b) There must be mental health providers of sufficient number and type to provide diagnosis and medically necessary treatment of conditions covered by the plan through providers acting within their scope of license and scope of competence established by education, training, and experience to diagnose and treat conditions found in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* or other recognized diagnostic manual or standard.

((~~(b)~~)) (c) An issuer must establish a reasonable standard for the number and geographic distribution of mental health providers who can treat serious mental illness of an adult and serious emotional disturbances of a child, taking into account the various types of mental health practitioners acting within the scope of their licensure.

The issuer must measure the adequacy of the mental health network against this standard at least twice a year, and submit an action plan with the commissioner if the standard is not met.

((~~(c)~~)) (d) Emergency mental health services and substance use disorder services, including crisis intervention and

crisis stabilization services, must be included in an issuer's provider network.

(((~~(d) An issuer must include a sufficient number and type of mental health and substance use disorder treatment providers and facilities within a service area based on normal utilization patterns.~~)))

(e) An issuer's monitoring of network access and adequacy must be based on its classification of mental health and substance use disorder services to either primary or specialty care, ensuring that a sufficient number of providers of the required type are in its network to provide the services as classified. An issuer may use the classifications established in WAC 284-43-7020 for this element of its network assessment and monitoring.

(f) An issuer must ensure that an enrollee can identify information about mental health services and substance use disorder treatment including benefits, providers, coverage, and other relevant information by calling a customer service representative during normal business hours, by using the issuer's transparency tool developed pursuant to RCW 48.43.007 and by referring to the network provider directory.

(12) The provider network must include preventive and wellness services, including chronic disease management and smoking cessation services as defined in RCW 48.43.005((~~(37)~~)) and WAC 284-43-5640(9) and 284-43-5642(9). If these services are provided through a quit-line or help-line, the issuer must ensure that when follow-up services are medically necessary, the enrollee will have access to sufficient information to access those services within the service area. Contracts with quit-line or help-line services are subject to the same conditions and terms as other provider contracts under this section.

(13) For the essential health benefits category of ambulatory patient services, as defined in WAC 284-43-5640(1) and 284-43-5642(1), an issuer's network is adequate if:

(a) The issuer establishes a network that affords enrollee access to urgent appointments without prior authorization within forty-eight hours, or with prior authorization, within ninety-six hours of the referring provider's referral.

(b) For primary care providers the following must be demonstrated:

(i) The ratio of primary care providers to enrollees within the issuer's service area as a whole meets or exceeds the average ratio for Washington state for the prior plan year;

(ii) The network includes such numbers and distribution that eighty percent of enrollees within the service area are within thirty miles of a sufficient number of primary care providers in an urban area and within sixty miles of a sufficient number of primary care providers in a rural area from either their residence or work; and

(iii) Enrollees have access to an appointment, for other than preventive services, with a primary care provider within ten business days of requesting one.

(c) For specialists:

(i) The issuer documents the distribution of specialists in the network for the service area in relation to the population distribution within the service area; and

(ii) The issuer establishes that when an enrollee is referred to a specialist, the enrollee has access to an appointment with such a specialist within fifteen business days for nonurgent services.

(d) For preventive care services, and periodic follow-up care including, but not limited to, standing referrals to specialists for chronic conditions, periodic office visits to monitor and treat pregnancy, cardiac or mental health conditions, and laboratory and radiological or imaging monitoring for recurrence of disease, the issuer permits scheduling such services in advance, consistent with professionally recognized standards of practice as determined by the treating licensed health care provider acting within the scope of his or her practice.

(14) The network access requirements in this subchapter apply to stand-alone dental plans offered through the exchange or where a stand-alone dental plan is offered outside of the exchange for the purpose of providing the essential health benefit category of pediatric oral benefits. All such stand-alone dental plans must ensure that all covered services to enrollees will be accessible in a timely manner appropriate for the enrollee's conditions.

(a) An issuer of such stand-alone dental plans must demonstrate that, for the dental plan's defined service area, all services required under WAC 284-43-5700(3) and 284-43-5702(4), as appropriate, are available to all enrollees without unreasonable delay.

(b) Dental networks for pediatric oral services must be sufficient for the enrollee population in the service area based on expected utilization.

(15) Issuers must meet all requirements of this subsection for all provider networks. An alternate access delivery request under WAC 284-170-210 may be proposed only if:

(a) There are sufficient numbers and types of providers or facilities in the service area to meet the standards under this subchapter but the issuer is unable to contract with sufficient providers or facilities to meet the network standards in this subchapter; or

(b) An issuer's provider network has been previously approved under this section, and a provider or facility type subsequently becomes unavailable within a health plan's service area; or

(c) A county has a population that is fifty thousand or fewer, and the county is the sole service area for the plan, and the issuer chooses to propose an alternative access delivery system for that county; or

(d) A qualified health plan issuer is unable to meet the standards for inclusion of essential community providers, as provided under WAC 284-170-310(3).

(((~~(16) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.~~)))

AMENDATORY SECTION (Amending WSR 16-14-106, filed 7/6/16, effective 8/6/16)

WAC 284-170-260 Provider directories. (1) ((~~Provider directories must be updated at least monthly, and must be offered to accommodate individuals with limited English proficiency or disabilities.~~

~~An issuer must post the current provider directory for each health plan online, and must make a printed copy of the~~

~~current directory available to an enrollee upon request as required under RCW 48.43.510 (1)(g).~~

~~(2) For each health plan, the associated provider directory must include the following information for each provider:~~

~~(a)~~)) For each carrier that uses a provider network, the carrier must make information about that network available to the general public, prospective enrollees and enrollees, in the form of an easily accessible and searchable online provider directory.

Easily accessible for the purposes of this section means:

(a) The general public is able to view all of the current providers for each plan in the provider directory on the carrier's public website through a clearly identifiable link or tab and without creating or accessing an account or entering a policy number; and

(b) If a carrier maintains multiple provider networks, the carrier must post the current provider directory for each plan so the general public is able to easily discern which providers participate in which plans and which provider networks.

(2) Carriers must make a printed copy of the current provider directory available to an enrollee upon request as required under RCW 48.43.510 (1)(g). The printed directory must contain the telephone number, including a TTY/TTD number, and any other contact information to enable the enrollee to obtain information about providers in the health plan network.

(3) Printed and online provider directories must be made available to the general public, prospective enrollee's and enrollee's in a manner that accommodates individuals with limited-English proficiency or disabilities.

(4) Printed and online provider directories must be updated for accuracy at least monthly. To ensure accuracy:

(a) Each provider directory must include clear instructions about how a consumer or an enrollee can report inaccurate information in the provider directory to the carrier.

(b) Carriers must have an easily available method for providers to report changes to their provider directory information, in addition to any reports associated with initial or renewed credentialing used by the carrier.

(c) Carriers must investigate reported inaccuracies from providers and consumers, and if verified, correct inaccuracies as part of the carrier's monthly updates.

(d) Carriers must establish processes and procedures to confirm the accuracy of provider directory information, including processes and procedures to ensure that changes are made when inaccuracies are verified. Carriers must provide the processes and procedures and any associated records, including the provider directories, to the commissioner upon request for review.

(5) Printed and online provider directories must include the following information for each provider:

(a) The provider's location and telephone number;

(b) The specialty area or areas for which the provider is licensed to practice and included in the network;

(((~~b~~))) (c) Any in-network institutional affiliation of the provider, such as hospitals where the provider has admitting privileges or provider groups with which a provider is a member;

(((~~c~~))) (d) Whether the provider may be accessed without referral;

(((~~d~~))) (e) Any languages, other than English, spoken by the provider;

(f) If a provider offers mental health or substance use disorder treatment services, identify in the directory that the provider is contracted to deliver mental health or substance use disorder treatment services.

(((~~(3) An issuer~~)) (6) A carrier must include in its ((~~electronic posting of a health plan's~~)) printed and online provider ((~~directory~~)) directories a notation of any primary care, chiropractor, women's health care provider, mental health provider or facility, substance use disorder provider or facility, or ((~~pediatrician~~)) pediatric provider whose practice is closed to new patients.

(((~~(4) If an issuer maintains more than one provider network, its posted provider directory or directories must make it reasonably clear to an enrollee which network applies to which health plan.~~

~~(5)~~)) (7) Printed and online provider directories must include information about any available telemedicine services ((~~must be included and specifically described.~~

~~(6)~~)) and specifically describe the services and how to access those services.

(8) Printed and online provider directories must include information about any available interpreter services, communication and language assistance services, and accessibility of the physical facility ((~~must be identified in the directory~~)), and the mechanism by which an enrollee may access such services.

(((~~(7) An issuer~~)) (9) Printed and online provider directories must include information about the network status of emergency providers as required by WAC 284-170-370.

(((~~(8) This section is effective for all plans, whether new or renewed, with effective dates on or after January 1, 2015.~~)))

NEW SECTION

WAC 284-170-285 Mental health and substance use disorder web page model format and required content. (1) Not later than July 1, 2021, carriers must establish and maintain a web page entitled "Important Mental Health and Substance Use Disorder Treatment Information" that complies with the requirements in this section. By July 1, 2021, carriers must prominently post the information in subsections (4), (5), (6), (7), and (8) of this section on their website so that a member may easily locate it.

(2) A member must be able to link to the web page from their portal landing page if the carrier provides members with a portal. If the carrier does not provide members with a personal electronic portal, the carrier must place a link to the web page that is visually prominent and easily located on the health plan's network information page.

(3) A carrier's transparency tool(s) must include the information required in this section to the extent that it is required by RCW 48.43.007(2).

(4) The web page must contain a section that explains what to do if an enrollee or their dependent is experiencing a mental health or substance use disorder emergency or crisis. This section must specifically include, but is not limited to,

links and information for the National Suicide Prevention hotline, and identify resources for emergency or crisis intervention within an enrollee's service area and within Washington state that provide support and services for mental health or substance use disorder emergencies or crises. The content for this portion of the web page must emphasize the ways an enrollee or their personal representative can receive emergency or crisis services either from public health resources, private health resources or through the services offered by the carrier in nontechnical and consumer friendly language. This section must be above the fold and visually prominent on the mental health and substance use disorder web page.

(5) The web page must contain accurate information explaining the following information, based on the health plan network's access and adequacy standards for mental health and substance use disorder treatment and services:

(a) How an enrollee can find in-network mental health and substance use disorder treatment and services in their service area;

(b) What an enrollee may do if covered services are not available in their service area or the enrollee cannot obtain access to scheduling an appointment from an in-network provider within ten business days for mental health and substance use disorder services covered as primary care and fifteen business days for those covered as specialty care; and

(c) A description of access to services based on the applicable time frames, such as the following: "If the enrollee seeks covered mental health and substance use disorder treatment services for which the enrollee needs a referral or is covered as specialty care, an appointment must be made available to the enrollee within fifteen days of requesting one. If the requested service does not require a referral or is not specialty care, the appointment must be made available within ten business days of making a request for an appointment. If an enrollee is unable to schedule an appointment within the applicable number of business days, the carrier must assist with scheduling an appointment."

(6) By June 30th of each year, the commissioner shall post a report identifying, by carrier, the number of consumer complaints, asserting an inability to access mental health or substance use disorder services within ten business days for primary care and fifteen business days for specialty care, that were submitted to the commissioner during the prior calendar year. A carrier's "Important Mental Health and Substance Use Disorder Treatment Information" web page must include a link to this report, and must update the link to the office of the insurance commissioner's web page on which the report is posted.

(7) If the commissioner has disciplined the carrier for violating the network standards set forth in this chapter or Title 48.43 RCW, with regard to mental health or substance use disorder treatment and services, the carrier must post a link to each order of enforcement or disciplinary action posted on the commissioner's website within thirty days of the commissioner posting the order on the office of the insurance commissioner's website. An order may be removed from the carrier's website three years after the issue date of the order or completion of the corrective action plan associated with the order, whichever is later.

Carriers may indicate when a corrective action plan associated with the order is completed and carriers may include an explanation of the actions it has taken to address the enforcement or disciplinary action.

(8) The web page must contain a section titled "How to File a Complaint with the Office of the Insurance Commissioner" and refer users to the OIC complaint form at https://www.insurance.wa.gov/file-complaint-or-check-your-complaint-status.com or the commissioner's toll-free insurance consumer hotline at 1-800-562-6900.

(9) The commissioner may review the web page for accuracy and conformance with the requirements of this section when an enrollee complaint is received about access to mental health or substance use disorder services, or at any time as the commissioner deems necessary to ensure the carrier is in compliance with the requirements of this chapter.

(10) Carriers may include its logo and identifying information on the web page.

WSR 20-21-108
PROPOSED RULES
DEPARTMENT OF COMMERCE
[Filed October 21, 2020, 11:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-14-050.

Title of Rule and Other Identifying Information: Chapter 194-40 WAC, Clean Energy Transformation Act (CETA).

Hearing Location(s): On December 2, at 9:00 a.m. Zoom meeting. This hearing will be virtual only. Please check the CETA web page for meeting information: https://www.commerce.wa.gov/growing-the-economy/energy/ceta/.

Date of Intended Adoption: December 21[, 2020].

Submit Written Comments to: Glenn Blackmon and Sarah Vorpahl, P.O. Box 42525, Olympia, WA 98504, email ceta@commerce.wa.gov, by December 2, 2020.

Assistance for Persons with Disabilities: Contact Austin Scharff, phone 360-764-9632, email ceta@commerce.wa.gov, by December 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules ensure proper implementation and enforcement of CETA, as provided for in RCW 19.405.100, and establish methodologies, reporting and planning requirements, and procedures for electric utilities subject to CETA. The proposed rules: Establish reporting requirements for electric utilities to demonstrate compliance with CETA, establish content and process requirements for clean energy implementation plans, establish requirements for utilities to evaluate and track the equity and distributional effects of their clean energy transformation actions, provide a methodology for use if a utility exercise[s] the cost limitation provision in RCW 19.405.060, provide a methodology for incorporating the cost of greenhouse gas emissions in resource evaluation and acquisition decisions, require that utilities adopt standards to ensure adequate and reliable electric service, establish verification approaches for various standards in CETA, provide standards for thermal renewable energy credits, and

establish other requirements to ensure proper implementation and enforcement of CETA. The proposed rules apply to consumer-owned utilities, such as municipal utilities, public utility districts, and rural cooperative or mutual utilities. In some cases, the proposed rules also apply to investor-owned utilities.

Reasons Supporting Proposal: The rules are proposed to ensure proper implementation of the state's landmark one hundred percent clean electricity standard. CETA puts Washington on a path to eliminate coal-fired electric generation after 2025, achieve a greenhouse gas-neutral electricity supply by 2030, and achieve one hundred percent renewable and nonemitting generation by 2045. It requires progress in reducing the energy burden of low-income customers, reducing disproportionate impacts on vulnerable populations and highly impacted communities, and preserving reliable and affordable electric service for business, industry, and households.

Statutory Authority for Adoption: RCW 19.405.100, 19.405.060.

Statute Being Implemented: Chapter 19.405 RCW.

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

Name of Proponent: Department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Glenn Blackmon and Sarah Vorpahl, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-339-5619 and 360-688-6000; Implementation: Department of Commerce, 1011 Plum Street S.E., P.O. Box 42525, Olympia, WA 98504-2525, 360-407-6000; and Enforcement: Attorney General, 1125 Washington Street S.E., P.O. Box 40100, Olympia, WA 98504-0100, 360-725-6200.

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 the department of commerce.

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 rule content is explicitly and specifically dictated by statute.

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.

SUMMARY OF COST CALCULATIONS:

SECTION 1: Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; 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.

1.1 CETA: CETA is a comprehensive one hundred percent clean electricity law with specific standards and requirements established by the legislature. The legislature authorized or required commerce to adopt rules to ensure the proper implementation of CETA as it applies to consumer-owned utilities (RCW 19.405.100). It directed commerce to establish reporting requirements for all utilities to demonstrate compliance with CETA. The legislature required commerce to make these requirements, to the extent practicable, consistent with the disclosure required under chapter 19.29A RCW.

The legislature also required that commerce establish a methodology for implementing the incremental cost of compliance under RCW 19.405.060, as compared to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available. It also mandated that commerce provide a methodology for the measurement and tracking of thermal renewable energy credits.

1.2 Regulatory Fairness Act (RFA): RFA, chapter 19.85 RCW, requires that an agency prepare a small business economic impact statement for a proposed rule if the proposed rule will impose more than minor costs on businesses in an industry. If the proposed rule does so, the agency must determine if the rule would have a disproportionate compliance cost burden on small business, and if legal and feasible, must reduce this disproportionate impact.

1.3 Likely Impact of the Proposed Rules: Commerce published a *Request for Cost Information* seeking information from electric utilities to assist in its estimation of costs for this purpose. No utility provided cost information. Commerce identified rule provisions that might result in costs, beyond those costs that would be incurred to comply with the statute itself. It estimated the cost impact of those rules to be $993. This is below the minor cost threshold of $356,687 per year for the electric power distribution industry, as calculated using the minor cost threshold calculated (updated July 2020) of the governor's office of regulatory innovation and assistance.

SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes. The proposed rules apply to electric utilities that provide service to retail customers in Washington. Commerce has determined that, for the purposes of this analysis, the industry is electric power distribution (NAICS 221122).

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. Commerce requested cost information from electric utilities and their representative associations during a stakeholder workshop on July 27, 2020, and with a written request posted on August 14, 2020. Commerce requested that utilities submit information by September 14, 2020. At its September 2, 2020, rule-making workshop, commerce provided an opportunity for utilities to ask questions about the request. Stakeholders requested additional time, and commerce extended the submission date to September 25, 2020. The request was featured in commerce's weekly CETA bulletins from the middle of August to the end of September. No utility provided cost information.

Commerce estimated the probable cost of compliance based on its knowledge of the statute and proposed rules and its experience with reporting and public involvement activities. CETA is a comprehensive clean energy standard with detailed requirements established in statute, and as a result of the detailed statutory provisions, most of the proposed rules

do not result in any cost to utilities beyond what the utilities will incur to comply with the statute itself. The possible exceptions to this conclusion are discussed below.

Commerce developed the cost estimates using wage estimates from Washington state employment security department's 2020 Occupational Employment and Wages Estimates.

3.1 Proposed WAC 194-40-050 Submission of the Clean Energy Implementation Plan (CEIP): Proposed WAC 194-40-050(1) provides procedural requirements for submission of CEIP (RCW 19.405.060). It does not impose any substantive requirements on utilities.

Proposed WAC 194-40-050(2) requires that each utility submit a summary of its public input process and how comments were reflected in CEIP, integrated resource plan (IRP), and other planning documents, as applicable. The cost of preparing the summary will vary with the volume of comments and other input and the degree to which that input suggests the utility take different approaches. It is likely that utilities with fewer ratepayers will have fewer comments, requiring less effort to summarize and respond to comments.

Public relations specialists could perform this work. The median hourly wage for a public relations specialist is $33.88. The estimated time required to prepare a summary and response is forty hours. The estimated total cost is $1,355. This cost will be incurred every four years. The annual cost is $339.

3.2 Proposed WAC 194-40-220 Public Input for Planning: Proposed WAC 194-40-220 specifies public involvement requirements for utilities in the development of CEIPs and the plans that are used to prepare the CEIP. There are statutory requirements concerning public input in the development and adoption of these plans. RCW 19.405.060 (2)(b) requires that a utility conduct a public hearing before adopting a CEIP. RCW 19.280.050 requires that a utility encourage participation of its customers in development of integrated resource plans, clean energy implementation plans, and ten-year action plans. In addition to these statutory requirements, community engagement is a common practice of consumer-owned utilities, who are overseen by popularly elected boards or by member boards. As a result, it would be reasonable to conclude that compliance with proposed WAC 194-40-220 will not result in costs above what the utilities would incur anyway.

However, to be conservative, commerce assumes that utilities will engage in additional outreach as a result of this rule. Commerce assumes that each utility will conduct three additional two hour workshops using four employees and that each workshop will require two hours of preparation (forty-eight employee hours total). Commerce also assumes that utilities will spend a total of eight hours considering barriers to participation and eight hours to ensure community engagement around the utility's planning documents. Commerce assumes utilities will use existing communications tools, such as bill inserts, websites, and electronic mail, to notify customers of planning activities. Commerce assumes utilities will use existing meeting space and virtual conferencing centers to convene community meetings.

This work would likely be performed by a planning specialist. The most representative occupation in the employment security department data is an urban and regional planner. The median hourly wage for this occupation is $40.87. The estimated cost of WAC 194-40-220 is $2,616. This cost will be incurred every four years. The annual cost is $654.

3.3 Proposed WAC 194-40-360 Notice of Temporary Exemption: This rule requires that a utility provide notice to commerce if it is considering action to grant itself a temporary exemption for reliability reasons. Commerce assumes a utility will notify the agency via electronic mail. A utility would only incur costs of preparing a notice if it chooses to consider a temporary exemption. Commerce estimates the costs of preparing and sending a notice to be negligible.

SECTION 4: Analyze and determine whether the proposed rule may impose more than minor costs on businesses: Commerce estimated the cost of compliance with the proposed rules to be $993 per year. This is below the minor cost threshold of $356,687 per year for the electric power distribution industry, as calculated using the minor cost threshold calculated [calculator] (updated July 2020) of the governor's office of regulatory innovation and assistance.

SECTION 5: Identify the steps taken to reduce the costs of the rule on small businesses: This section is not required given the conclusion in Section 4. Nonetheless, commerce would like to take the opportunity to identify efforts to reduce cost impacts of CETA, particularly for small businesses. The provisions identified below apply to utilities with less than twenty-five thousand customers and utilities that rely entirely on the Bonneville Power Administration (BPA) for wholesale electricity supply.

Resource planning requirements: The legislature strengthened resource planning requirements in RCW 19.280.030 without applying most of those requirements to small utilities.

Resource adequacy standard: Small utilities must establish a standard for resource adequacy but proposed WAC 194-40-210 exempts small utilities from more detailed elements.

Simplified CEIP: Proposed WAC 194-40-200 allows small utilities to adopt a CEIP using a simplified form provided by commerce.

Energy efficiency planning and targets: Proposed WAC 194-40-330 allows small utilities to use regional studies prepared by BPA rather than conducting individual utility studies.

Analysis incorporating the costs of greenhouse gas emissions: Proposed WAC 194-40-110 includes a simplified method for incorporating the cost of greenhouse gas emissions that is available to small utilities that are not required to prepare an integrated resource plan using a comprehensive resource portfolio evaluation and optimization approach.

October 21, 2020
Dave Pringle
Rules Coordinator

NEW SECTION

WAC 194-40-022 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.

NEW SECTION

WAC 194-40-030 Definitions. Unless specifically provided otherwise, the terms defined in RCW 19.405.020 have the same meaning in this chapter.

"100% Clean electricity standard" means the standard established in RCW 19.405.050(1) and any requirements necessary for compliance with that standard.

"BPA" means the Bonneville Power Administration.

"CEIP" means a clean energy compliance plan prepared in compliance with RCW 19.405.060.

"GHG neutral compliance period" means each of the periods identified in RCW 19.405.040 (1)(a).

"GHG neutral standard" means the standard established in RCW 19.405.040(1) and any requirements necessary for compliance with that standard.

"Indicator" means an attribute, either quantitative or qualitative, of a condition, resource, program or related distribution investment that is tracked for the purpose of evaluating change over time.

"Interim performance period" means either of the following periods:

(a) From January 1, 2022, until December 31, 2025; and

(b) From January 1, 2026, until December 31, 2029.

"Interim target" means a target established in compliance with RCW 19.405.060 (2)(a)(i). An interim target may cover an interim performance period or a GHG neutral compliance period.

"REC" means renewable energy credit.

"Retail revenue requirement" means that portion of a utility's annual budget approved by its governing body that is intended to be recovered through retail electricity sales in the state of Washington in the applicable year. It includes revenues from any retail rate or charge that is necessary to receive electric service from the utility and does not include the effect of taxes imposed directly on retail customers.

"Verification protocol" means a procedure or method used, consistent with industry standards, to establish with reasonable certainty that a conservation, energy efficiency, or demand response measure was installed and is in service. Industry standards include a range of appropriate protocols reflecting a balance of cost and accuracy, such as tracking installation of measures through incentive payments and the use of on-site inspection of measures installed as part of a customer-specific project.

"WREGIS" means the Western Renewable Energy Generation Information System.

NEW SECTION

WAC 194-40-040 Performance and compliance reporting for the GHG neutral standard and 100% clean electricity standard. (1) Each consumer-owned utility and each investor-owned utility must submit an interim performance report by July 1, 2026, and by July 1, 2030, documenting the utility's progress during the prior interim performance period in reaching compliance with the GHG neutral standard beginning in 2030.

(2) Each consumer-owned utility and each investor-owned utility must submit a compliance report by July 1, 2034, and within six months of the end of each subsequent GHG neutral compliance period, documenting the utility's compliance with the GHG neutral standard during the GHG neutral compliance period and its progress in reaching compliance with the 100% clean electricity standard beginning in 2045.

(3) Each consumer-owned utility and each investor-owned utility must submit a compliance report by July 1, 2046, and by July 1st of each year thereafter, documenting the utility's compliance with the 100% clean electricity standard.

(4) Each report required under subsections (1) and (2) of this section must be submitted using a form provided by commerce and must include the following information for the relevant interim performance period or GHG neutral compliance period:

(a) The amount of renewable resources and nonemitting electric generation used during the period, as a percentage of retail electric loads, compared to the target amount established and reported in the clean energy implementation plan (CEIP) of the utility for that period.

(b) The amount of conservation and energy efficiency resources acquired during the period, compared to the target amount established and reported in the CEIP of the utility for that period.

(c) The amount of demand response resources acquired during the period, compared to the target amount established and reported in the CEIP of the utility for that period.

(d) The amount of electricity used from renewable resources, in megawatt-hours, compared to the target amount established and reported in the CEIP of the utility for that period.

(e) The amount of electricity used from nonemitting resources, in megawatt-hours over the period.

(f) Identification of any resources other than a renewable resource or energy storage acquired during the period and demonstration that the acquisition was consistent with the requirements of WAC 194-40-340.

(g) A detailed report of any use of each of the following alternative compliance options:

(i) Alternative compliance payments;

(ii) Unbundled renewable energy credits;

(iii) Credits from energy transformation projects;

(iv) Electricity from the Spokane municipal solid waste to energy facility (if it is determined to provide a net reduction in GHG emissions).

(h) A report to demonstrate whether and how, consistent with RCW 19.405.040(8) and the utility's CEIP for the period, all customers are benefiting from the transition to clean energy. The report must provide:

(i) Results for each indicator established in the CEIP;

(ii) An explanation of how the specific actions taken by the utility are consistent with the requirements in RCW 19.405.040(8); and

(iii) An analysis of whether the forecasted distribution of benefits and reductions of burdens accrued or are reasonably expected to accrue to highly impacted communities, vulnerable populations, and all other customers.

(i) For each specific action identified in the CEIP for the period, pursuant to WAC 194-40-200(1), a summary of the actions taken and their results.

(j) For any measurement of achievement reported under (a) through (e) of this subsection that is less than the respective target established in the CEIP, an explanation of the variation from target and any intended actions to offset the variation in the next period.

(k) Any other information necessary to demonstrate compliance with the requirements of CETA that are applicable during the period.

NEW SECTION

WAC 194-40-050 Submission of clean energy implementation plan. (1) Each utility must submit by January 1, 2022, and every four years thereafter, a clean energy implementation plan (CEIP) for resources to be acquired and other actions to be undertaken during the next interim performance period or GHG neutral compliance period to comply with the GHG neutral standard and the 100% electricity clean standard. The CEIP must be submitted using a form provided by commerce.

(2) Each utility must submit with its CEIP a summary of the public input process conducted in compliance with WAC 194-40-220 and a description of how public comments were reflected in the specific actions under WAC 194-40-200(4), including the development of one or more indicators and other elements of the CEIP and the utility's supporting integrated resource plan or resource plans, as applicable.

NEW SECTION

WAC 194-40-060 Reporting fuel mix and greenhouse gas emission. (1) Each consumer-owned utility and each investor-owned utility must submit by July 1, 2021, and each year thereafter, a fuel mix source and disposition report for the previous calendar year, consistent with RCW 19.29A.-140, using a form provided by commerce.

(2) Each utility must submit by July 1, 2021, and each year thereafter, a greenhouse gas content calculation for the previous calendar year.

(a) The greenhouse gas content calculation must be based on the quantities and fuel sources, including unspecified sources, of electricity identified in the source and disposition report required under subsection (1) of this section and must include all generating resources providing service to retail customers of that utility in Washington state, regardless of the location of the generating resource.

(b) The greenhouse gas content calculation must comply with the calculation requirements established by the department of ecology in chapter 173-444 WAC.

NEW SECTION

WAC 194-40-110 Methodologies to incorporate social cost of greenhouse gas emissions. (1)(a) Each utility must incorporate the social cost of greenhouse gas emissions as a cost adder for all relevant inputs when evaluating and selecting conservation policies, programs, and targets; developing integrated resource plans and clean energy action plans; and evaluating and selecting intermediate term and long-term resource options.

(b) The greenhouse gas emissions cost adder may be adjusted to account for any explicit tax or fee on greenhouse gas emissions that is known or assumed in the resource analysis.

(2) A utility may comply with the requirements of subsection (1) of this section by using one of the following analytical approaches, as appropriate and consistent with the utility's overall analytical approach for resource planning, evaluation, and selection:

(a) Performing a resource analysis in which it increases the input cost of each fossil fuel by an amount equal to the social cost of greenhouse gas emissions value of that fuel;

(b) Conducting a resource analysis in which alternative resource portfolios are compared across multiple scenarios on the basis of cost, risk, and other relevant factors and the aggregate social cost of greenhouse gas emissions is added to the cost of each resource portfolio;

(c) If the utility does not use a comprehensive resource portfolio evaluation and optimization approach: Adding the social cost of greenhouse gas emissions to the expected market price of electricity, using an estimate of the emissions rate of marginal generating resources; or

(d) Using another analytical approach that includes a comprehensive accounting of the difference in greenhouse gas emissions and social cost of greenhouse gas emissions between resource alternatives.

(3) Any methodology used to comply with this rule may assume that the social cost of greenhouse gas emissions cost adder does not affect short-term operations or dispatch decisions after energy resources are acquired and placed into service.

(4) Any methodology used to comply with this rule must ensure that the social cost of greenhouse gas emissions cost adder is accounted for without unreasonable duplication or double counting.

(5) The social cost of greenhouse gas emissions values used to meet the requirements of this chapter are specified in WAC 194-40-100.

NEW SECTION

WAC 194-40-200 Clean energy implementation plan. (1) **Specific actions.** Each utility must identify in each CEIP the specific actions the utility will take during the next interim performance period or GHG neutral compliance period to demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1) and the interim targets proposed under subsections (2) and (3) of this section. Specific actions must be consistent with the requirements of RCW 19.405.060 (2)(a)(iv).

(2) **Interim target.** The CEIP must establish an interim target for the percentage of retail load to be served using renewable and nonemitting resources during the period covered by the CEIP. The interim target must demonstrate progress toward meeting the standards under RCW 19.405.040(1) and 19.405.050(1), if the utility is not already meeting the relevant standard.

(3) **Specific targets.** The CEIP must establish specific targets, for the interim performance period or GHG neutral compliance period covered by the CEIP, for each of the following categories of resources:

(a) **Energy efficiency.**

(i) The CEIP must establish a target for the amount, expressed in megawatt-hours of first-year savings, of energy efficiency resources expected to be acquired during the period. The energy efficiency target must comply with WAC 194-40-330(1).

(ii) A utility may update its CEIP to incorporate a revised energy efficiency target to match a biennial conservation target established by the utility under RCW 19.285.040 (1)(b) and WAC 194-37-070.

(b) **Demand response resources.** The CEIP must specify a target for the amount, expressed in megawatts, of demand response resources to be acquired during the period. The demand response target must comply with WAC 194-40-330(2).

(c) **Renewable energy.** The utility's target for renewable energy must identify the quantity in megawatt-hours of renewable electricity to be used in the period.

(4) **Specific actions to ensure equitable transition.** To meet the requirements of RCW 19.405.040(8), the CEIP must, at a minimum:

(a) Identify each highly impacted community, as defined in RCW 19.405.020(23), and its designation as either:

(i) A community designated by the department of health based on cumulative impact analyses; or

(ii) A community located in census tracts that are at least partially on Indian country.

(b) Identify vulnerable populations based on the adverse socioeconomic factors and sensitivity factors developed through a public process established by the utility and describe and explain any changes from the utility's previous CEIP, if any;

(c) Report the forecasted distribution of energy and nonenergy costs and benefits for the utility's portfolio of specific actions, including impacts resulting from achievement of the specific targets established under subsection (3) of this section. The report must:

(i) Include one or more indicators applicable to the utility's service area and associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, energy security, or resiliency developed through a public process as part of the utility's long-term planning, for the provisions in RCW 19.405.040(8);

(ii) Identify the expected effect of specific actions on highly impacted communities and vulnerable populations and the general location, if applicable, timing, and estimated cost of each specific action. If applicable, identify whether any resource will be located in highly impacted communities or will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole; and

(iii) Describe how the specific actions in the CEIP are consistent with, and informed by, the utility's longer-term strategies based on the analysis in RCW 19.280.030 (1)(k) and clean energy action plan in RCW 19.280.030 (1)(l) from its most recent integrated resource plan, if applicable.

(d) Describe how the utility intends to reduce risks to highly impacted communities and vulnerable populations associated with the transition to clean energy.

(5) **Use of alternative compliance options.** The CEIP must identify any planned use during the period of alternative compliance options, as provided for in RCW 19.405.040 (1)(b).

(6) The CEIP must be consistent with the most recent integrated resource plan or resource plan, as applicable, prepared by the utility under RCW 19.280.030.

(7) The CEIP must be consistent with the utility's clean energy action plan developed under RCW 19.280.030(1) or other ten-year plan developed under RCW 19.280.030(5).

(8) The CEIP must identify the resource adequacy standard and measurement metrics adopted by the utility under WAC 194-40-210 and used in establishing the targets in its CEIP.

(9) If the utility intends to comply using the two percent incremental cost approach specified in WAC 194-40-230, the CEIP must include the information required in WAC 194-40-230(3) and, if applicable, the demonstration required in WAC 194-40-350(2).

(10) Any utility that is not subject to RCW 19.280.030 (1) may meet the requirements of this section through a simplified reporting form provided by commerce.

NEW SECTION

WAC 194-40-210 Resource adequacy standard. (1) Each utility that is required to prepare an integrated resource plan under RCW 19.280.030(1) must establish by January 1, 2022, a standard for resource adequacy to be used in resource planning, including assessing the need for and contributions of generating resources, storage resources, demand response resources, and conservation resources. The resource adequacy standard must be consistent with prudent utility practices and relevant regulatory requirements and must include reasonable and nondiscriminatory:

(a) Measures of adequacy, such as peak load standards and loss of load probability or loss of load expectation;

(b) Methods of measurement, such as probabilistic assessments of resource adequacy; and

(c) Measures of resource contribution to resource adequacy, such as effective load carrying capability applicable to all resources available to the utility including, but not limited to, renewable, storage, hybrid, and demand response resources.

(2) Each utility not subject to subsection (1) of this section must identify by January 1, 2022, the resource adequacy standard relied on by the utility in preparing its resource plan and CEIP.

(3) In each CEIP submitted after 2022, each utility must identify and explain any changes to its resource adequacy standard.

NEW SECTION

WAC 194-40-220 Public input for planning. (1) Each utility must provide reasonable opportunities for its customers and interested stakeholders to provide input to the utility during the development of, and prior to the adoption of, plans

identifying actions to comply with RCW 19.405.040(8) and other requirements of RCW 19.405.040 and 19.405.050. A utility may use a single coordinated public input process in the development of its clean energy implementation plan, its integrated resource plan or resource plan, as applicable, and its clean energy action plan or 10-year action plan, as applicable.

(2) In assessing whether a public input opportunity is reasonable, the utility must consider barriers to public participation due to language, cultural, economic, technological, or other factors consistent with community needs.

NEW SECTION

WAC 194-40-230 Compliance using two percent incremental cost of compliance. (1) For any period in which a utility relies on RCW 19.405.060 (4)(a) to meet an interim target during an interim performance period or as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050(1), the utility must:

(a) Document, as provided in this section, incremental costs that are directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050; and

(b) Demonstrate that the average annual incremental costs identified under (a) of this subsection are at least equal to an annual threshold amount that would result from a two percent revenue increase at the beginning of each year of the period, divided by the number of years in the period. For a period consisting of four years, the mathematical formula for the annual threshold amount is:

$$\textit{Annual Threshold Amount} = \frac{(RR_0 \times 2\% \times 4) + (RR_1 \times 2\% \times 3) + (RR_2 \times 2\% \times 2) + (RR_3 \times 2\%)}{4}$$

Where *RR* indicates retail revenue requirement and the numerical subscript indicates the year of the period.

Example calculation of annual threshold amount:

Year	Retail Revenue Requirement	Annual Amount from Revenue Increase Equal to 2% of Prior Year Revenue Requirement	Number of Years in Effect	Threshold Amount over Four Years	Sum of Threshold Amounts	Annual Threshold Amount
0	$100					
1	$105	$2.00	4	$8.00	$21.00	$5.30
2	$110	$2.10	3	$6.30		
3	$115	$2.20	2	$4.40		
4	$120	$2.30	1	$2.30		
Annual Threshold Amount as a Percentage of Average Retail Revenue Requirement						4.7%

(2) For the purposes of compliance using RCW 19.405.060 (4)(a), a cost is directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050 only if all of the following conditions are met:

(a) The cost is incurred during the period;

(b) The cost is part of the lowest reasonable cost and reasonably available portfolio of resources that results in compliance with RCW 19.405.040 and 19.405.050;

(c) The cost is additional to the costs that would be incurred for the lowest reasonable cost and reasonably available resource portfolio that would have been selected in the absence of RCW 19.405.040 and 19.405.050; and

(d) The cost is not required to meet any statutory, regulatory, or contractual requirement or any provision of chapter 19.405 RCW other than sections RCW 19.405.040 or 19.405.050.

(3) A utility using the compliance method in this rule must include in its CEIP for the period the following information:

(a) Identification of all costs that it intends to incur during the period in order to comply with the requirements of RCW 19.405.040 and 19.405.050;

(b) Demonstration that the costs identified in (a) of this subsection are directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050; and

(c) Documentation of the expected cost of the utility's planned resource portfolio and the expected cost of the alternative lowest reasonable cost and reasonably available portfolio.

(4) The utility must include in the compliance report required by WAC 194-40-040 the following:

(a) Documentation by year of the actual and lowest reasonable costs incurred during the period for the costs identified in subsection (1)(a) of this section.

(b) Documentation by year of the costs that the utility would have incurred to acquire the alternative lowest reasonable cost and reasonably available portfolio of investments.

(c) A calculation of the average annual incremental costs by summing the differences between costs reported in (a) of this subsection and costs reported in (b) of this subsection and dividing by the number of years in the period.

(d) A comparison demonstrating that average annual incremental costs for the period, calculated as specified in (c) of this subsection, equal or exceed the annual threshold amount calculated as specified in subsection (1)(b) of this section.

(5) If a resource included in an actual or alternative portfolio has a useful life or contract duration of greater than one year, the cost of that resource must be allocated over the expected useful life or contract duration using a levelized cost or fixed charge factor.

(6) The CEIP must substantiate the information required in subsection (3) of this section using a comprehensive assessment of alternative resource portfolios, such as an integrated resource plan prepared in compliance with chapter 19.280 RCW.

(7) A utility must include in all cost calculations under this rule the effects on resource selection and acquisition of the social cost of greenhouse gas emissions cost adder requirement under RCW 194.40.110. A utility may not include in the cost calculations any greenhouse gas emissions costs, fees, or taxes unless customers will pay those amounts through their electricity purchases.

(8) As used in this rule, "period" means the years covered by each CEIP developed in compliance with RCW 19.405.060(2).

NEW SECTION

WAC 194-40-300 Documentation concerning coal-fired resources. (1) Each utility must publish by June 1, 2027, and each year thereafter, an attestation by a properly authorized representative of the utility certifying that the utility's allocation of electricity for Washington retail electric load in the prior calendar year did not include any electricity generated at a coal-fired resource. The utility must provide additional documentation as the auditor may require.

(2) A transaction to purchase of electricity, where the source is unknown at the time of purchase, for a term not to exceed thirty-one days, is not a coal-fired resource for the purposes of this rule.

(3) A utility must not engage in a series or combination of short-term transactions for unspecified electricity for the purpose of avoiding the restrictions on use of coal-fired resources under RCW 19.405.030(1).

NEW SECTION

WAC 194-40-310 Documentation of nonemitting electric generation. (1) Any utility using nonemitting electric generation to comply with a requirement under RCW 19.405.040 or 19.405.050 must demonstrate that it owns the nonpower attributes of that electricity and that it has committed to use the nonpower attributes exclusively for the stated compliance purpose.

(2) A utility may demonstrate ownership of nonpower attributes using contractual records or attestations of ownership and transfer by properly authorized representatives of the generating facility, all intermediate owners of the nonemitting electric generation, and a properly authorized representative of the utility.

(3) A utility may demonstrate ownership of the nonpower attributes of the nuclear portion of BPA's electricity product by relying on a representation of a properly authorized representative of BPA stating the nonemitting percentage of its electricity product and verifying that BPA did not separate the nonpower attributes associated with the nuclear generation.

NEW SECTION

WAC 194-40-330 Methodologies for energy efficiency and demand response resources. (1) **Energy efficiency resources.**

(a) **Assessment of potential:**

(i) Any utility that is a qualifying utility under chapter 19.285 RCW must assess the amount of energy efficiency and conservation that is available using the conservation methodology established in RCW 19.285.040(1) and the rules implementing that subsection. The analysis must include the social cost of greenhouse gas emissions as specified in WAC 194-40-110.

(ii) Any utility that is not a qualifying utility under chapter 19.285 RCW must establish the amount of energy efficiency and conservation that is available using either of the following methods:

(A) Use the conservation methodology established in RCW 19.285.040(1) and the rules implementing that subsection; or

(B) Establish the reasonable utility-level proportion of a conservation potential assessment prepared at a regional or multi-utility level using a methodology that:

(I) Evaluates resource alternatives on a total resource cost basis, in which all costs and all benefits of conservation measures are included regardless of who pays the costs or receives the benefits; and

(II) Includes the social cost of greenhouse gas emissions as specified in WAC 194-40-110.

(b) **Target.** The energy efficiency target for any interim performance period or GHG neutral compliance period must equal or exceed the target that would be calculated using the pro rata share approach specified in RCW 19.285.040 (1)(b) and must be sufficient to ensure that the utility meets its obligation under RCW 19.405.040(6) to pursue all cost-effective, reliable, and feasible conservation and energy efficiency resources.

(c) **Measurement and verification.** All energy efficiency and conservation resources used to meet an energy efficiency target must be measured and verified using the measurement and verification requirements of WAC 194-37-080 (3) and (4).

(2) **Demand response resources:**

(a) **Assessment of potential.** Each utility must assess the amount of demand response resource that is cost-effective, reliable, and feasible.

(b) **Target.** The demand response target for any compliance period must be sufficient to meet the utility's obligation under RCW 19.405.040(6) and must be consistent with the utility's integrated resource plan or resource plan and any distributed energy resource plan adopted under RCW 19.280.-100.

(c) **Measurement and verification.** Each utility must maintain and apply measurement and verification protocols to determine the amount of capacity resulting from demand response resources and to verify the acquisition or installation of the demand response resources being recorded or claimed. The utility must document the methodologies, assumptions, and factual inputs used in its measurement and verification of demand response resources.

NEW SECTION

WAC 194-40-340 Acquisition of new resources other than renewable resources and energy storage. A utility that acquires a new fossil fuel generating resource or new nonemitting electric generation must document through its integrated resource plan and any other analysis relied on in making its decision that the resource acquisition is consistent with meeting the utility's targets under RCW 19.405.040 or the standard in RCW 19.405.050 at the lowest reasonable cost, considering risk. For the purposes of this chapter, a resource that commenced operation on or before May 7, 2019, is not a new resource.

NEW SECTION

WAC 194-40-350 Use of alternative compliance options by utilities using two percent incremental cost threshold. (1) Except as provided in subsection (2) of this section, a utility may not use any alternative compliance option under RCW 19.405.040 (1)(b) in any GHG neutral compliance period if it relies on RCW 19.405.060 (4)(a) as the basis for compliance with the standard under RCW 19.405.040(1) or 19.405.050(1).

(2) A utility relying on RCW 19.405.060 (4)(a) may use an alternative compliance option if:

(a) The utility demonstrates that no renewable resources or nonemitting electric generation was reasonably available; or

(b) The utility uses renewable resources and nonemitting electric generation in an amount equal to at least eighty percent of its annual retail electric load during the period.

NEW SECTION

WAC 194-40-360 Temporary exemption, demonstration of plan to achieve full compliance. (1) A utility must notify commerce at least thirty days prior to consideration of action by the governing body to authorize a temporary exemption under RCW 19.405.090 (5)(a). The notice must provide all information that the governing body will rely on in making a decision whether to authorize a temporary exemption.

(2) If the governing body of a utility authorizes a temporary exemption under RCW 19.405.090 (5)(a), the governing body must notify commerce within thirty days of the action. The governing body's notice must include a plan to take specific actions to achieve full compliance with RCW 19.405.-040(1).

NEW SECTION

WAC 194-40-400 Documentation and retirement of renewable energy credits. (1) The Western Renewable Energy Generation Information System is the renewable energy credit tracking system for purposes of verification of RECs under chapter 19.405 RCW.

(2)(a) Except as provided in (b) of this subsection, each utility must verify and document by the retirement of RECs all electricity from renewable resources used to meet a target in an interim performance period or to comply with the requirements of RCW 19.405.040 or 19.405.050.

(b) A utility is not required to comply with (a) of this subsection for electricity from renewable resources used to meet a target in an interim performance period if:

(i) The energy source for the generating facility is water;

(ii) The generating facility is not registered in WREGIS or the WREGIS account holder for the generating facility verifies that no RECs have been created for the electricity used to meet CETA requirements; and

(iii) The utility owned the generating facility or purchased the electricity directly from the owner of the facility or, in the case of federal generating facilities, from BPA.

(3) Each utility using a REC under this chapter must document the following:

(a) The REC represents the output of a renewable resource;

(b) The vintage of the REC is a year within the applicable performance period or compliance period; and

(c) The utility has retired the REC to a retirement subaccount of the utility within WREGIS using the following values in the certificate transfer:

(i) Retirement type: Used by the account holder for a state-regulated renewable portfolio standard/provincial utility portfolio standard;

(ii) State/province: Washington; and

(iii) Compliance year: Within the applicable performance period or compliance period.

(4) A utility may use any REC retired to comply with RCW 19.285.040 for the purposes identified in subsection (2) of this section if the compliance year indicated in the retirement documentation of the REC is within the compliance period of the standard or target identified in subsection (2) of this section.

NEW SECTION

WAC 194-40-430 Thermal RECs—Applicability. (1) A thermal renewable energy credit may be used as an unbundled REC under RCW 19.405.040 (1)(b) if it is created in association with the generation of qualifying thermal energy for a secondary purpose at a facility that generates electricity from biomass energy. For multiple-fuel facilities, only the portion of thermal energy generated from eligible biomass sources is eligible for the generation of a thermal REC.

(2) Thermal energy may not be used to create a thermal REC if the thermal energy:

(a) Is used to operate the generating facility or process the facility's fuel;

(b) Is returned to the biomass conversion device that initially created the eligible thermal resource;

(c) Bypasses the electricity generation device; or

(d) Is produced while the electricity generation equipment is out of service.

NEW SECTION

WAC 194-40-440 Thermal RECs—Measuring. (1) Qualifying thermal energy must be measured and tracked using the following methods:

(a) **Large facilities:** Facilities with the capacity to generate one or more thermal RECs per hour of operation must install a thermal energy measurement system to continually measure qualifying thermal energy. The thermal energy delivered to the secondary purpose must be metered. All parameters needed to determine thermal energy delivered to the secondary purpose must be directly measured.

(b) **Small facilities:** Facilities with the capacity to generate less than one thermal REC per hour of operation must install a thermal energy measurement system to measure qualifying thermal energy delivered to the secondary purpose. Calculation parameters, such as heat capacity, and directly measured parameters, such as temperature and pressure, that do not vary more than two percent for the full range of expected operating conditions may be evaluated on an annual basis and used in the calculation methodology as a constant. These parameters may be based on such sources as manufacturers' published ratings or one-time measurements, but must be clearly defined and explained in the thermal energy measurement plan required under subsection (2) of this section. All other parameters used to determine the amount of qualifying thermal energy must be continually measured. The generating facility must assess the significance of any potential error that the methodology parameters have on the total annual quantity of qualifying thermal energy and include this analysis in the thermal energy measurement plan. The generating facility must also submit to the department for approval in the thermal energy measurement plan an appropriate discount factor to be applied to the qualifying thermal energy calculation methodology, and the department may revise this discount factor to account for variance due to parameters that are not continually measured.

(c) Any thermal energy measurement system used to comply with this rule must capture sufficient data, and make necessary calculations or provide all necessary data for calculations to be made using standard engineering calculation procedures, to determine the net thermal energy used by the secondary purpose over an interval specified in the thermal energy measurement plan.

(d) The components of a thermal energy measurement system must be installed in accordance with the manufacturer's specifications.

(2) The operator of a thermal energy generating facility must submit to the department for its approval a thermal energy measurement plan that:

(a) Describes the thermal energy generating equipment, secondary purposes, data measurements to be collected, all associated measurement devices, data formats and storage, data gathering techniques, measurement system calibration, calculation methodology, discount factors, and other relevant equipment and activities that will be used to determine the quantity of qualifying thermal energy.

(b) Includes documentation, including drawings, specifications, piping and instrumentation diagrams, and other information, sufficient to verify the compliance of the system with the requirements of this rule.

(c) Is prepared by or under the supervision of a licensed professional engineer, as indicated by the engineer's stamp.

(3) The operator of a thermal energy generating facility must submit an updated thermal energy measurement plan and documentation for review and approval to the department upon the following:

(a) Installation, removal or changes in the configuration of the thermal energy measurement system and its components;

(b) Installation of new thermal energy generation equipment or changes in thermal energy generation capacity;

(c) Installation or removal of secondary purpose equipment, changes to secondary purpose use, or changes in the secondary purpose maximum thermal energy demand; or

(d) Indications the thermal energy measurement system is not performing in accordance with the thermal energy measurement plan.

NEW SECTION

WAC 194-40-450 Thermal RECs—Tracking. (1) Where continual measurements are required to determine the quantity of qualifying thermal energy, the operator of the thermal energy generating facility must take data readings at least once per hour, or more frequently as necessary to capture irregular or frequently varying parameters. For all facilities, the qualifying thermal energy produced must be totaled for each twenty-four-hour period, each month, and each quarter.

(2) The operator of the generating facility must retain measured data and related thermal energy calculations on-site for five calendar years and make records available for audit.

(3) Prior to measuring qualifying thermal energy for the purpose of generating thermal RECs, the operator of the generating facility must perform, or have performed, an initial calibration of the thermal energy measurement system and all associated measurement devices, or demonstrate that a calibration has been performed as specified by system component manufacturers or within the last three hundred sixty-five days of the application date for certification as compliant with these rules. All measurement devices shall be recalibrated annually or as specified by system component manufacturers to maintain specified accuracy. Calibrations must be performed using the calibration procedures specified by the meter manufacturer, calibration methods published by a consensus-based standards organization, or other industry accepted practice.

(4) Individuals designing, installing, operating, and maintaining the thermal energy measurement system must have appropriate training and certification. The generating facility must maintain documentation of maintenance and calibration activities.

NEW SECTION

WAC 194-40-460 Thermal RECs—Reporting. All thermal RECs are subject to the requirements of WAC 194-40-400.

WSR 20-21-111
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE

[Filed October 21, 2020, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-07-093.

Title of Rule and Other Identifying Information: Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales.

Hearing Location(s): On December 4-5, 2020, at 8:00 a.m. Webinar and/or conference call. The meeting will take place by webinar. The public may participate in the meeting. Visit our website at http://wdfw.wa.gov/about/commission/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: December 18, 2020.

Submit Written Comments to: Julie Watson, P.O. Box 43200, Olympia, WA 98504-3200. Electronic submission instructions: To submit written comments electronically, go to https://www.surveymonkey.com/r/cwwrules. Comments received by November 13 will be summarized and presented to the commission during the December 4-5 hearing; however, the Washington department of fish and wildlife (WDFW) will continue to accept and consider written comments received through December 5, 2020. The period for State Environmental Policy Act (SEPA) public comment associated with this rule-making process closes on October 23, 2020, at 5 p.m. PDT, and SEPA comments can be submitted at https://www.surveymonkey.com/r/V736PTB, by December 5, 2020.

Assistance for Persons with Disabilities: Dolores Noyes, phone 360-902-2346, TTY 360-902-2207, email dolores.noyes@dfw.wa.gov, by December 5, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to reduce the daily and cumulative impacts of commercial whale watching on southern resident orca whales and consider the economic viability of license holders. This proposal would create and populate a new chapter 220-460 WAC that defines commercial whale watching licensing processes and rules for holders of commercial whale watching licenses.

Reasons Supporting Proposal: The proposal was developed over the course of a year with input from a commercial whale watching licensing program advisory committee, an independent science panel managed by the Washington state academy of sciences, an intergovernmental coordination group, economic viability and small business economic impacts analyses, and multiple staff work groups and public comment opportunities, including two public comment meetings on the preproposed draft proposal. The proposal defines important administrative aspects of the commercial whale watching licensing program created in RCW 77.65.615. In addition, per the mandate in RCW 77.65.620, the proposal is designed using best available science to reduce the daily and cumulative impacts of commercial whale watching on southern resident orca whales and also considers the economic viability of license holders.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, 77.15.160, 77.04.012, 77.04.[0]55.

Statute Being Implemented: RCW 77.65.615, 77.65.620.

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: WDFW is proposing two alternative proposed rules (Option A and Option B). WDFW is soliciting comment on both options.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Watson, 1111 Washington Street S.E., Olympia, WA 98501, 360-790-4528; and Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

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.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

The effected [affected] industry consists of small businesses, and our analysis concluded that the rule may impose more-than-minor costs. An economic impact statement has been completed and is available online at https://wdfw.wa.gov/species-habitats/at-risk/species-recovery/orca/rule-making.

A copy of the statement may be obtained by contacting Julie Watson, P.O. Box 43200, Olympia, WA 98504-3200, 360-790-4528, email killerwhales@dfw.wa.gov.

October 21, 2020
Benjamin Power
Interim Agency Rules Coordinator

OPTION A

Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales

Chapter 220-460 WAC

COMMERCIAL WHALE WATCHING

NEW SECTION

WAC 220-460-010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching designated primary operator.**

"Commercial whale watching designated primary operator" shall be defined as the person identified on the application to operate the commercial whale watching vessel on behalf of the whale watching business.

(3) **Commercial whale watching alternate operator.**

"Alternate operators" shall be defined as individuals besides the designated primary operator who are designated to operate the vessel on behalf of the whale watching business.

(4) **Commercial whale watching vessel operators.**

"Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.

(5) **Commercial whale watching vessel.**

"Commercial whale watching vessel" shall be defined as any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

"Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

"Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards.

(6) **Group of southern resident killer whales.**

"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

(7) **Vicinity.**

"Vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

(8) **Vicinity instance.** Each time any commercial whale watching vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

(9) **Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

NEW SECTION

WAC 220-460-020 Commercial whale watching licenses—Application process and deadline—Exception. (1) **(Note: This provision will go into effect February 1, 2021.)** A commercial whale watching license is required for commercial whale watching motorized vessel, sailboat, and kayak operators.

(2) Applicants must be at least sixteen years of age and possess a driver's license or other government-issued identification number and jurisdiction of issuance.

(3) Applicants must be authorized to conduct business within the state of Washington.

(4) The commercial whale watching license application must include the following information regarding the whale watching business:

(a) The applicant must identify the whale watching business: Business name, type of business (i.e., sole proprietor, partnership, corporation), all associated business owner(s), full name(s), physical address, mailing address, email address, telephone number, and Social Security numbers of all business owners.

(b) The applicant must identify and confirm the whale watching business is registered to conduct business within the state by providing the unified business identifier (UBI) number.

(5) The commercial whale watching license applicant must also designate an operator for each motorized or sailing vessel or kayak engaging in whale watching activity. The applicant must identify the operator's name of the associated business, full name, date of birth, Social Security number, gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number.

(6) On the commercial whale watching license application, the applicant must designate all commercial whale watching vessels to be used while engaging in commercial whale watching. The applicant must indicate either motorized or sailing vessels or kayaks on the application.

(a) If motorized or sailing vessels are selected, then the applicant must select the appropriate option for the passenger capacity on the designated vessel.

(b) If kayak is selected, then the applicant must select the appropriate option for the number of kayaks engaging in whale watching activities.

(7) The applicant may designate alternate operators to be listed on the whale watching license.

(8) An application submitted to the department shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(9) Applications must be completed and submitted online through the commercial licensing system, or by mailing the application to:

Washington Department of Fish and Wildlife
Attn: Commercial License Sales
P.O. Box 43154
Olympia, WA 98504-3154

(10) If the required fields are blank or omitted from the application, then the department will consider the application to be incomplete, and it will not be processed.

NEW SECTION

WAC 220-460-030 Commercial whale watching license cards—Replacements. (1) Upon lawful application, a commercial whale watching license in the form of a license card will be issued by the department.

(2) The fee to replace a license that has been lost or destroyed is twenty dollars.

NEW SECTION

WAC 220-460-040 Commercial whale watching licensing business organizations—Operator designation. (1) Any person that holds a commercial whale watching license and is a business organization may designate other persons associated with the business to act on behalf of the license holder to update the business information within the organization's account and/or operate a designated vessel.

(2) In addition to the designated operator, a license holder that is a business organization may designate an unlimited number of alternate operators.

(3) A license holder that is a business organization may substitute the designated operator by surrendering the whale watching license card, redesignating the operator under the criteria provided for in this section and paying the replacement license fee provided for in RCW 77.65.050.

NEW SECTION

WAC 220-460-050 Whale watching vessel designation requirements. (1) RCW 77.65.615 requires commercial whale watching operators to designate the vessel(s) to be used for whale watching tours. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching vessels to be used, regardless if using a motorized or sailing vessel, or kayak to guide tours;

(b) The department has issued a commercial license to the licensee showing the vessel so designated;

(c) The vessel operator has the commercial license for the current calendar year in physical possession.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the licensee must provide current Unites States Coast Guard certification inspection documentation which allows the designated vessel to carry more than six passengers.

NEW SECTION

WAC 220-460-060 Whale watching vessel substitutions—Fees. The holder of a commercial whale watching license may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(1) Surrenders the previously issued license to the department;

(2) Submits to the department a substitution application and application fee that identifies the currently assigned vessel, and the vessel proposed to be designated;

(3) Submits vessel substitution fees corresponding to the size of the vessel.

NEW SECTION

WAC 220-460-070 Whale watching alternate operator license requirements. (1) A person who is not the license holder may operate a motorized or sailing vessel designated on the commercial whale watching license only if:

(a) The person holds a commercial whale watching alternate operator license issued from the department; and

(b) The alternate operator is designated on the underlying license.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) Commercial whale watching license holders must maintain an accurate record with the department of designated alternate operators. The commercial whale watching license holder must confirm the utilization of a whale watching alternate operator and identify the alternate by entering the alternate's full name and date of birth in the business account through the commercial licensing system.

(4) An individual may hold only one alternate operator license. Holders of an alternate operator license may be designated on an unlimited number of commercial whale watching licenses.

NEW SECTION

WAC 220-460-080 Expiration and renewal of licenses. Commercial whale watching licenses expire at midnight on December 31st of the calendar year for which they are issued. Licenses may be renewed annually upon application and payment of the prescribed license fees.

NEW SECTION

WAC 220-460-090 Commercial whale watching general provisions. (1) It is unlawful for an operator of a commercial whale watching vessel to violate any of the restrictions in RCW 77.15.740.

(2) A commercial whale watch license is not an exemption under RCW 77.15.740 (2)(c).

NEW SECTION

WAC 220-460-100 Areas closed to commercial whale watching. (1) It is unlawful for operators of motorized commercial whale watching vessels to operate one-quarter mile from shore from Mitchell Point to Cattle Point on the west side of San Juan Island or within one-half mile of Lime Kiln Point State Park. Operators of nonmotorized commercial whale watch vessels must stay within one hundred yards of

shore within this zone except when safety conditions preclude it.

(2) Modifications or additions to closed areas may be issued by the department by rule. Violation of such rules shall be unlawful.

NEW SECTION

WAC 220-460-110 Limits on number of vessels in the vicinity of southern resident killer whales at once. (1) It is unlawful for more than three motorized commercial whale watching vessels at a time to be within the vicinity of any group of southern resident killer whales.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to enter the vicinity of a group of southern resident killer whales that contains a calf of under one year of age or a whale designated as sick or vulnerable by emergency rule from the department.

NEW SECTION

WAC 220-460-120 Time limitations on watching southern resident killer whales. (1) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between October 1st and June 30th.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale outside the hours of 10:00 a.m. to 12:00 p.m. and 3:00 p.m. to 5:00 p.m. on Fridays, Saturdays, Sundays, and Mondays from July 1st through September 30th.

(3) If any motorized commercial whale watching vessel designated under a commercial whale watching license enters within the vicinity of a southern resident killer whale between 10:00 a.m. and 12:00 p.m., no vessels operating under that license may enter the vicinity of a southern resident killer whale between 3:00 p.m. and 5:00 p.m. on the same day.

(4) If an operator enters within one-half mile of a group of killer whales outside of the provisions in this section, after taking reasonable measures to determine whether the killer whales were southern resident killer whales, and then identifies the whales as southern resident killer whales, the operator must:

(a) Immediately safely reposition the vessel to be one-half nautical mile or farther from the southern resident killer whales.

(b) Report the location of the southern resident killer whale(s) to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea.

(c) Accurately log the incident, including measures taken to determine whether the whales were southern resident killer whales, following the provisions of WAC 220-460-140 and submit the log to the department within twenty-four hours of the incident.

NEW SECTION

WAC 220-460-130 Nonmotorized commercial whale watching vessels. (1) Tours involving any nonmotorized watercraft used for the purposes of commercial whale watching, such as kayaks, are subject to these requirements. Such watercraft constitute commercial whale watching vessels and are referred to as "vessels" in this chapter.

(2) Operators must prevent all vessels in their tour group from disturbing southern resident killer whales. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident killer whales are within one-half nautical mile of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident killer whale. If a southern resident killer whale is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If a vessel or vessels inadvertently encounter a southern resident killer whale, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all killer whales have moved to at least four hundred yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping.

NEW SECTION

WAC 220-460-140 Commercial whale watching compliance and reporting. (1) **(Note: This provision will go into effect January 1, 2022.)** An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watch vessels. The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is on the water.

(2) **(Note: This provision will go into effect May 1, 2021.)** All motorized and nonmotorized commercial whale watching license holders and alternate operators must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident killer whale-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful for an operator to operate a commercial whale watch vessel without completing the training for the current calendar year.

(c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to attend.

(3) **(Note: This provision will go into effect May 1, 2021.)** All motorized and nonmotorized commercial whale watch license holders shall maintain accurate logs on each instance a vessel operating under a license enter within one-half nautical mile vicinity of southern resident killer whales and submit copies of the logs to the department.

(a) Logs must include license holder name; vessel operator and staff names and roles; vessel name; port(s) of departure; departure time(s); return time(s); number of passengers; location(s) (Lat/Long) of southern resident killer whales encountered; time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within four hundred yards of southern resident killer whales; and qualitative details of southern resident killer whale encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

(b) Information from the logs shall be submitted to the department on the following schedule:

(i) All vicinity instances in July must be reported by August 15th.

(ii) All vicinity instances in August must be reported by September 15th.

(iii) All vicinity instances in September must be reported by October 15th.

(iv) Vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 must be submitted within twenty-four hours.

(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.

(d) Logs must be provided for inspection on request of department law enforcement.

(4) All motorized commercial whale watch license holders must log accurate, complete sighting information to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea upon entering within one-half nautical mile of a southern resident killer whale.

NEW SECTION

WAC 220-460-150 Penalties. (1) Commercial operators in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Operators out of compliance with WAC 220-460-100, 220-460-110, 220-460-120, 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

NEW SECTION

WAC 220-460-160 Severability. If any provision of the chapter or its application to any covered party, person, or circumstance is held invalid, the remainder of the chapter or application of the provision to other covered parties, persons, or circumstances is not affected.

OPTION B

Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales

Chapter 220-460 WAC

COMMERCIAL WHALE WATCHING

NEW SECTION

WAC 220-460-010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching designated primary operator.**

"Commercial whale watching designated primary operator" shall be defined as the person identified on the application to operate the commercial whale watching vessel on behalf of the whale watching business.

(3) **Commercial whale watching alternate operator.**

"Alternate operators" shall be defined as individuals besides the designated primary operator who are designated to operate the vessel on behalf of the whale watching business.

(4) **Commercial whale watching vessel operators.**

"Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.

(5) **Commercial whale watching vessel.**

"Commercial whale watching vessel" shall be defined as any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

"Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.

"Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.

"Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards.

(6) **Group of southern resident killer whales.**

"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is

within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

(7) **Vicinity.** For the purposes of these rules, "vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

(8) **Vicinity instance.** Each time any commercial whale watching vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

(9) **Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

NEW SECTION

WAC 220-460-020 Commercial whale watching licenses—Application process and deadline—Exception. (1) **(Note: This provision will go into effect February 1, 2021.)** A commercial whale watching license is required for commercial whale watching motorized vessel, sailboat, and kayak operators.

(2) Applicants must be at least sixteen years of age and possess a driver's license or other government-issued identification number and jurisdiction of issuance.

(3) Applicants must be authorized to conduct business within the state of Washington.

(4) The commercial whale watching license application must include the following information regarding the whale watching business:

(a) The applicant must identify the whale watching business: Business name, type of business (i.e., sole proprietor, partnership, corporation), all associated business owner(s), full name(s), physical address, mailing address, email address, telephone number, and Social Security numbers of all business owners.

(b) The applicant must identify and confirm the whale watching business is registered to conduct business within the state by providing the unified business identifier (UBI) number.

(5) The commercial whale watching license applicant must also designate an operator for each motorized or sailing vessel or kayak engaging in whale watching activity. The applicant must identify the operator's name of the associated business, full name, date of birth, Social Security number, gender, hair, eyes, weight, height, physical address, mailing address, email address, and telephone number.

(6) On the commercial whale watching license application, the applicant must designate all commercial whale watching vessels to be used while engaging in commercial whale watching. The applicant must indicate either motorized or sailing vessels or kayaks on the application.

(a) If motorized or sailing vessels are selected, then the applicant must select the appropriate option for the passenger capacity on the designated vessel.

(b) If kayak is selected, then the applicant must select the appropriate option for the number of kayaks engaging in whale watching activities.

(7) The applicant may designate alternate operators to be listed on the whale watching license.

(8) An application submitted to the department shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(9) Applications must be completed and submitted online through the commercial licensing system, or by mailing the application to:

Washington Department of Fish and Wildlife
Attn: Commercial License Sales
P.O. Box 43154
Olympia, WA 98504-3154

(10) If the required fields are blank or omitted from the application, then the department will consider the application to be incomplete, and it will not be processed.

NEW SECTION

WAC 220-460-030 Commercial whale watching license cards—Replacements. (1) Upon lawful application, a commercial whale watching license in the form of a license card will be issued by the department.

(2) The fee to replace a license that has been lost or destroyed is twenty dollars.

NEW SECTION

WAC 220-460-040 Commercial whale watching licensing business organizations—Operator designation. (1) Any person that holds a commercial whale watching license and is a business organization may designate other persons associated with the business to act on behalf of the license holder to update the business information within the organization's account and/or operate a designated vessel.

(2) In addition to the designated operator, a license holder that is a business organization may designate an unlimited number of alternate operators.

(3) A license holder that is a business organization may substitute the designated operator by surrendering the whale watching license card, redesignating the operator under the criteria provided for in this section and paying the replacement license fee provided for in RCW 77.65.050.

NEW SECTION

WAC 220-460-050 Whale watching vessel designation requirements. (1) RCW 77.65.615 requires commercial whale watching operators to designate the vessel(s) to be used for whale watching tours. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching vessels to be used, regardless if using a motorized or sailing vessel, or kayak to guide tours;

(b) The department has issued a commercial license to the licensee showing the vessel so designated;

(c) The vessel operator has the commercial license for the current calendar year in physical possession.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the licensee must provide current Unites States Coast Guard certification inspection documentation which allows the designated vessel to carry more than six passengers.

NEW SECTION

WAC 220-460-060 Whale watching vessel substitutions—Fees. The holder of a commercial whale watching license may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(1) Surrenders the previously issued license to the department;

(2) Submits to the department a substitution application and application fee that identifies the currently assigned vessel, and the vessel proposed to be designated;

(3) Submits vessel substitution fees corresponding to the size of the vessel.

NEW SECTION

WAC 220-460-070 Whale watching alternate operator license requirements. (1) A person who is not the license holder may operate a motorized or sailing vessel designated on the commercial whale watching license only if:

(a) The person holds a commercial whale watching alternate operator license issued from the department; and

(b) The alternate operator is designated on the underlying license.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) Commercial whale watching license holders must maintain an accurate record with the department of designated alternate operators. The commercial whale watching license holder must confirm the utilization of a whale watching alternate operator and identify the alternate by entering the alternate's full name and date of birth in the business account through the commercial licensing system.

(4) An individual may hold only one alternate operator license. Holders of an alternate operator license may be designated on an unlimited number of commercial whale watching licenses.

NEW SECTION

WAC 220-460-080 Expiration and renewal of licenses. Commercial whale watching licenses expire at midnight on December 31st of the calendar year for which they are issued. Licenses may be renewed annually upon application and payment of the prescribed license fees.

NEW SECTION

WAC 220-460-090 Commercial whale watching general provisions. (1) It is unlawful for an operator of a commercial whale watching vessel to violate any of the restrictions in RCW 77.15.740.

(2) A commercial whale watch license is not an exemption under RCW 77.15.740 (2)(c).

NEW SECTION

WAC 220-460-100 Areas closed to commercial whale watching. (1) It is unlawful for operators of motorized commercial whale watching vessels to operate one-quarter mile from shore from Mitchell Point to Cattle Point on the west side of San Juan Island or within one-half mile of Lime Kiln Point State Park. Operators of nonmotorized commercial whale watch vessels must stay within one hundred yards of shore within this zone except when safety conditions preclude it.

(2) Modifications or additions to closed areas may be issued by the department by rule. Violation of such rules shall be unlawful.

NEW SECTION

WAC 220-460-110 Limits on number of vessels in the vicinity of southern resident killer whales at once. (1) It is unlawful for more than:

(a) Three motorized commercial whale watching vessels at a time to be within the vicinity of any group of southern resident killer whales from July 1st to September 30th.

(b) One motorized commercial whale watching vessel at a time to be within the vicinity of any group of southern resident killer whales from May 1st to June 30th and October 1st to November 30th.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to enter the vicinity of a group of southern resident killer whales that contains a calf of under one year of age or a whale designated as sick or vulnerable by emergency rule from the department.

NEW SECTION

WAC 220-460-120 Time limitations on watching southern resident killer whales. (1) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between December 1st and April 30th.

(2) It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale outside the hours of:

(a) 10:00 a.m. to 12:00 p.m. and 3:00 p.m. to 5:00 p.m. on Fridays, Saturdays, Sundays, and Mondays from July 1st through September 30th.

(b) 10:00 a.m. to 12:00 p.m. and 3:00 p.m. to 5:00 p.m. on Saturdays and Sundays from May 1st through June 30th.

(c) 10:00 a.m. to 12:00 p.m. and 2:00 p.m. to 4:00 p.m. on Saturdays and Sundays from October 1st through November 30th.

(3) If any motorized commercial whale watching vessel designated under a commercial whale watching license enters within the vicinity of a southern resident killer whale between 11:00 a.m. and 1:00 p.m., no vessels operating under that license may enter the vicinity of a southern resident killer whale between 3:00 p.m. to 5:00 p.m. on the same day.

(4) If an operator enters within one-half mile of a group of killer whales outside of the provisions in this section, after taking reasonable measures to determine whether the killer whales were southern resident killer whales, and then identifies the whales as southern resident killer whales, the operator must:

(a) Immediately safely reposition the vessel to be one-half nautical mile or farther from the southern resident killer whales.

(b) Report the location of the southern resident killer whale(s) to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea.

(c) Accurately log the incident, including measures taken to determine whether the whales were southern resident killer whales, following the provisions of WAC 220-460-140 and submit a copy of the log to the department within twenty-four hours of the incident.

NEW SECTION

WAC 220-460-130 Nonmotorized commercial whale watching vessels. (1) Tours involving any nonmotorized watercraft used for the purposes of commercial whale watching, such as kayaks, are subject to these requirements. Such watercraft constitute commercial whale watching vessels and are referred to as "vessels" in this chapter.

(2) Operators must prevent all vessels in their tour group from disturbing southern resident killer whales. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident killer whales are within one-half nautical mile of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident killer whale. If a southern resident killer whale is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If a vessel or vessels inadvertently encounter a southern resident killer whale, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all killer whales have moved to at least four hundred yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping.

NEW SECTION

WAC 220-460-140 Commercial whale watching compliance and reporting. (1) **(Note: This provision will go into effect January 1, 2022.)** An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watch vessels. The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is on the water.

(2) **(Note: This provision will go into effect May 1, 2021.)** All motorized and nonmotorized commercial whale watching license holders and alternate operators must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident killer whale-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful for an operator to operate a commercial whale watch vessel without completing the training for the current calendar year.

(c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to attend.

(3) **(Note: This provision will go into effect May 1, 2021.)** All motorized and nonmotorized commercial whale watch license holders shall maintain accurate logs on each instance a vessel operating under a license enter within one-half nautical mile vicinity of southern resident killer whales and submit copies of the logs to the department.

(a) Logs must include license holder name; vessel operator and staff names and roles; vessel name; port(s) of departure; departure time(s); return time(s); number of passengers; location(s) (Lat/Long) of southern resident killer whales encountered; time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within four hundred yards of southern resident killer whales; and qualitative details of southern resident killer whale encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

(b) Information from the logs shall be submitted to the department on the following schedule:

(i) All vicinity instances in May must be reported by June 15th.

(ii) All vicinity instances in June must be reported by July 15th.

(iii) All vicinity instances in July must be reported by August 15th.

(iv) All vicinity instances in August must be reported by September 15th.

(v) All vicinity instances in September must be reported by October 15th.

(vi) All vicinity instances in October must be reported by November 15th.

(vii) All vicinity instances in November must be reported by December 15th.

(viii) Vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 must be submitted within twenty-four hours.

(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.

(d) Logs must be provided for inspection on request of department law enforcement.

(4) All motorized commercial whale watch license holders must log accurate, complete sighting information to the whale report alert system (WRAS) or a successor transboundary notification system that is adopted by the international shipping community in the Salish Sea upon entering within one-half nautical mile of a southern resident killer whale.

NEW SECTION

WAC 220-460-150 Penalties. (1) Commercial operators in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Operators out of compliance with WAC 220-460-100, 220-460-110, 220-460-120, 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

NEW SECTION

WAC 220-460-160 Severability. If any provision of the chapter or its application to any covered party, person, or circumstance is held invalid, the remainder of the chapter or application of the provision to other covered parties, persons, or circumstances is not affected.