WSR 21-02-022
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Dockets UE-191023 and UE-190698, General Order 601—Filed December 28, 2020, 12:41 p.m., effective December 31, 2020]

In the matter of adopting rules relating to clean energy implementation plans (CEIPs) and compliance with the Clean Energy Transformation Act (CETA); and WAC 480-100-238, relating to integrated resource planning.

SYNOPSIS

The Washington utilities and transportation commission (commission) adopts rules implementing chapter 19.405 RCW, CETA, and revisions to chapters 19.280 and 80.28 RCW. The commission's goals in this rule making are to implement sections of this new legislation, incorporate changes to existing rules, identify commission decisions and preferred practices implementing CETA, and engage with stakeholders to address and resolve ambiguity where appropriate. The rules adopted here today include two primary sections addressing CETA's CEIPs and integrated resource plans (IRPs).

I. INTRODUCTION

1 **STATUTORY OR OTHER AUTHORITY:** The commission takes this action under Notice No. WSR 20-21-053, filed with the code reviser on October 14, 2020. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, and chapters 80.28, 19.280, and 19.405 RCW.

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

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

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

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

6 **REFERENCE TO AFFECTED RULES:** This order adopts the following sections of the Washington Administrative Code: Adopting WAC 480-100-600 Purpose, 480-100-605 Definitions, 480-100-610 Clean energy transformation standards, 480-100-620 Content of an IRP, 480-100-625 IRP development and timing, 480-100-630 IRP advisory groups, 480-100-640 CEIP, 480-100-645 Process for review of CEIP and updates, 480-100-650 Reporting and compliance, 480-100-655 Public participation in a CEIP, 480-100-660 Incremental cost of compliance, and 480-100-665 Enforcement.

II. PROCEDURAL HISTORY

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** On November 7, 2019, the commission filed in Docket UE-190698 a Preproposal statement of inquiry (CR-101) at WSR 19-23-005. The statement informed interested persons that the commission was initiating a rule making to incorporate statutory changes made to WAC 480-100-238, the commission's rule on IRP, since 2006, including CETA, and to consider policy and process changes to create more efficient rules that adapt to a changing energy landscape.[1] The commission served notice of the CR-101 and rule making on everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the commission's lists of electric companies and utility attorneys.

[1] An emergency and expedited rule making was initiated to repeal WAC 480-100-238 prior to this order. This emergency rule making was necessary to avoid contradiction with these adopted rules.

8 On January 15, 2020, the commission filed in Docket UE-191023 a CR-101 at WSR 20-03-107, initiating a rule making to develop rules implementing chapter 19.405 RCW, in particular, rules for CEIP, demonstrating compliance with CETA; statutory revisions to RCW 80.84.010, and additions to chapter 80.28 RCW, as enacted in CETA. The commission served notice of the CR-101 and rule making on everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and the commission's lists of electric companies and utility attorneys.

9 **WRITTEN COMMENTS:** Pursuant to the notices, the commission received comments on December 20, 2019, in Docket UE-190698 and on February 28, June 2, and June 29, 2020, in Docket UE-191023. After consolidating Dockets UE-191023 and UE-190698 on August 18, 2020, the commission received comments on September 11, November 12, and December 3, 2020.

10 **MEETINGS OR WORKSHOPS:** The commission held workshops in Docket UE-190698 on January 6 and 28, 2020, and workshops in both Dockets UE-190698 and UE-191023 on February 5, May 5, May 22, and June 8, 2020. The commission held further workshops in Docket UE-191023 on March 17, June 16, and July 27, 2020.

11 **CONSOLIDATION:** On August 18, 2020, the commission filed a CR-101 at WSR 20-17-120 consolidating Dockets UE-191023 and UE-190698 into one rule making. The commission also informed persons of this consolidation by providing notice and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), the commission's lists of electric companies and utility attorneys, and all persons who had expressed interest in Dockets UE-190698 and UE-191023.

12 **SMALL BUSINESS ECONOMIC IMPACT:** On August 31, 2020, the commission issued a small business economic impact statement (SBEIS) questionnaire to all interested persons in the consolidated dockets. The commission received one response to this questionnaire on October 1, 2020, from Puget Sound Energy (PSE), which asserted in its response that it is likely to incur increased costs from the proposed rules. PSE, however, does not qualify as a small business under chapter 19.85 RCW, and the approximate costs of compliance, $6 million, are minor in comparison to PSE's 2019 annual electric revenue of $2.1 billion. In addition, PSE may recover a significant portion of the increased costs from its customers through general rate proceedings.

13 The commission's internal 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 participa-

tion in a utility's IRP or CEIP public process, membership in a utility advisory group, providing public comment on a utility plan to the commission, or intervening in a commission adjudicatory proceeding. Additionally, a utility's small business customers are represented in commission proceedings by the public counsel unit of the Washington state attorney general's office (public counsel). Therefore, the commission finds that the best way to mitigate the cost impact on small businesses is to apply regulatory principles to ensure that rates are fair, just, reasonable, and sufficient.

14 The commission after full review and analysis finds that the proposed rules will only impose minor costs on electric utility companies and concludes that the proposed rules will not have a disproportionate impact on small businesses.

15 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of Proposed rule making (CR-102) on October 14, 2020, at WSR 20-21-053. The commission scheduled this matter for virtual oral comment and adoption under Notice No. WSR 20-21-053 at 9:30 a.m. on December 9, 2020. The notice provided interested persons the opportunity to submit written comments to the commission.

16 **WRITTEN COMMENTS:** The commission received written comments from twenty-four stakeholders. Commission staff's (staff) summary of and responses to those comments are contained in Appendix A, which is attached to, and made part of, this order. The commission adopts staff's responses as its own, subject to the modifications we make to the proposed rules and the rationale for those modifications explained in this order.[2] Additionally, we summarize and respond in greater detail to certain comments received during this rule-making proceeding in paragraphs 19-184, below.

2 In the event of any discrepancy between the discussion in the body of this order and the responses contained in Appendix A, the body of this order will control.

17 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on Wednesday, December 9, 2020, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard oral comments from Bradley Cebulko, representing staff; Avista Corporation, d/b/a Avista Utilities (Avista); PSE; PacifiCorp, d/b/a Pacific Power & Light Co. (PacifiCorp); public counsel; Sierra Club; Renewable Northwest; Climate Solutions; Alliance of Western Energy Consumers (AWEC); Court Olsen; Kevin Jones; Washington Environmental Council (WEC); NW Energy Coalition (NWEC); The Energy Project (TEP), and Elyette Weinstein. Those comments primarily emphasized or supplemented those commenters' written comments.

18 Court Olsen, who did not previously submit written comments, requested the commission explicitly include the social cost of greenhouse gases (SCGHG) in the lowest reasonable cost calculation and called for measures to hold utilities accountable when responding to customer comments and questions. Additionally, the commission accepted written comments in lieu of oral comments from Christine Grant due to a scheduling conflict during the public hearing. Grant expressed support for the proposed rules' implementation of public participation opportunities and community benefits.

III. DISCUSSION

19 CETA is a novel and complex statute that establishes many new requirements for utilities in pursuit of the legislature's overall objective of reducing and eventually eliminating carbon from the genera-

tion of electricity provided to Washington consumers. As many commenters expressed at the adoption hearing, the process of fully implementing CETA will be an iterative process, and the effort in this rule making is only the beginning. The rules we adopt here are the first step in implementing the statutory requirements applicable to investor-owned utilities. We expect to conduct additional rule makings to implement provisions of the law, and to modify and refine these rules as the commission, utilities, and stakeholders gain experience with the new law. In the meantime, we provide additional guidance in this order on our current interpretation of the statute and the rules we are adopting.

A. Streamlining: Interaction with current rules, orders, and practices.

20 RCW 19.405.100 directs the commission to find ways to streamline the implementation of CETA with the requirements of the Energy Independence Act (EIA). The commission worked closely with the Washington department of commerce (commerce) to find areas to coordinate implementation of CETA with the requirements of EIA, recognizing that each statute has distinct requirements and compliance intervals. In the following section we reduce, simplify, or combine existing and new reporting requirements and identify areas that can be streamlined in the future. Finally, we explain why we must adopt some duplicative requirements based on statutory differences that would require statutory changes.

1. Reducing administrative burden and aligning existing and new requirements: *WAC 480-100-620(3), 480-100-650(3), 480-100-640(1), 480-100-625, and 480-100-655.*

21 On May 20, 2016, in Docket UE-131883, the commission requested that electric utilities submit semi-annual reports disclosing the amount of distributed generation interconnected to investor-owned utilities in Washington. The reports contain datapoints such as distributed generation system adoption rates, distributed generation system counts, average system sizes, and total monthly and annual energy generated. Proposed WAC 480-100-620(3) and 480-100-650(3) require utilities to provide this type of information in the distributed energy resource (DER) assessment and reporting when preparing and submitting IRPs and CEIPs. The reporting we requested in Docket UE-131883 is therefore no longer necessary, and we withdraw our request for those semi-annual reports. We nevertheless encourage companies to include substantively similar datapoints within the DER assessments in their IRPs in consultation with interested stakeholders.

22 The commission proposes to establish an October 1 due date for the CEIP required by WAC 480-100-640(1) to align with the current requirement in chapter 480-109 WAC, rules implementing EIA, that utilities provide a draft biennial conservation plan (BCP) to their energy efficiency advisory group.[3] To facilitate that coordination, the proposed rules do not require that the EIA target be final before it is included in the specific energy efficiency target within the CEIP. Commission approval of a utility's CEIP requires a review of the details of the BCP. Including a draft BCP as part of the CEIP, as an appendix or attachment, best serves the public interest because it allows the utility to adjust the BCP based on feedback from the commission and the utility's advisory group.

[3] WAC 480-109-120 (1)(a) requires a November 1 filing date, and WAC 480-109-110(3) requires thirty days advance notice of filings to energy efficiency advisory groups. Additional conditions in each utility's current conservation dockets, Dockets UE-190905, UE-190908, and UE-190912, require each utility to "provide the following information to the Advisory Group: Draft ten-year conservation potential and two-year target by August 2, 2021; draft program details, including budgets, by September 1, 2021; and draft program tariffs by October 1, 2021."

23 Proposed WAC 480-100-625 states that utilities' IRPs must be filed with the commission by January 1, 2021, and on January 1 every four years thereafter, unless otherwise ordered by the commission. Given the changes in IRPs required by CETA, the commission ordered in Dockets UE-180259, UE-180738, UE-180607 that for each electric utility, the next draft IRP must be submitted by January 4, 2021, and its next final IRP must be submitted by April 1, 2021. To avoid last-minute changes to utility requirements as we adopt these rules, we waive the conflicting requirement in the proposed rule and retain the dates established in these three dockets for this upcoming set of IRPs.

24 Proposed WAC 480-100-650(3) requires utilities to file annual clean energy progress reports by July 1, beginning in 2023. Existing rules implementing EIA in chapter 480-109 WAC incorporate the June 1 reporting dates specified in RCW 19.285.070. EIA requires that the annual conservation report (included in WAC 480-109-120(3)) and the annual renewable portfolio standard report (included in WAC 480-109-210(1)) must be filed by June 1. A utility may satisfy these requirements in the annual informational filings under proposed WAC 480-100-650(3) by providing the references to the reports the utility filed in compliance with chapter 480-109 WAC. The utility need not duplicate the narrative from its June 1 filing when it provides its July 1 annual report filing.

25 Proposed WAC 480-100-655 does not require utilities to file a draft CEIP with the commission or the advisory group. This eliminates a potentially unnecessary regulatory burden over the long term. However, in the beginning the CEIP will involve a new and significant process and document, one that the utilities have never prepared, and that stakeholders, and this commission have never reviewed. And unlike the IRP, the CEIP will likely be subject to significant scrutiny in an adjudicative process. Therefore, the commission finds that it is appropriate to request that utilities file a draft of their first CEIP. Availability of a draft of a utility's initial CEIP will allow the utility, staff, and stakeholders to work through issues and concerns in a semi-formal process that provides transparency and record building with maximum flexibility. Utilities, therefore, should file a draft initial CEIP with the commission by August 15, 2021, which will be the initial filing in each utility's CEIP docket.[4]

[4] The pending draft IRPs, to be filed in January 2021, and the final IRPs to be filed in April 2021, will help inform the shape and style of a CEIP. At a minimum, the draft CEIP must contain the utility's final proposed specific actions, specific targets, and interim targets.

2. Other requirements that can be reduced or eliminated in the future: *WAC 480-109-120, 480-109-300*.

26 In its written comments, PacifiCorp raised concerns about the apparent duplication of reporting under the CETA and EIA rules. In creating rules that fully implement CETA's requirements, we recognize that some of the reporting appears duplicative. However, as it is necessary to incorporate some elements of chapter 480-109 WAC, which implements EIA, into the rules we adopt in this order, some overlap is inevitable. While this is a necessary step in the transition to the new reporting requirements that will begin in 2023, we identify in Table One, below, how we plan to reduce the duplication in reporting over time. Table One shows how we will smoothly transition regulation under EIA into regulation under both EIA and CETA, with the goal of reducing administrative burden wherever possible. Most of the elements in the table below should stay in effect until at least June 1, 2022, thus maintaining utility reporting under EIA until the reporting under

CETA begins in 2023. This transition plan will avoid a reporting gap until the first CETA reports are due in 2023.

27 In our review of EIA, we note that chapter 480-109 WAC includes some planning and reporting elements that are not explicitly required by statute. Two examples are the annual conservation plan in WAC 480-109-120(2) and the final renewable portfolio standard compliance report in WAC 480-109-210(6), which we will address by amending provisions in chapter 480-100 WAC, and then repealing these provisions in chapter 480-109 WAC. As we transition, we will likely find other requirements that the commission can reduce or repeal. We expect to address these issues in a later rule making after we have had sufficient experience with the rules we adopt today to consider appropriate changes.

Table One: Requirements that can be reduced or repealed in the future

Proposed Chapter 480-100 WAC	Chapter 480-109 WAC	Commission Action
WAC 480-100-640 (3)(a)(i) energy efficiency 2022-2025 specific target filed by October 1, 2021.	WAC 480-109-120 (1)(a) conservation 2022-2023 target filed by November 1, 2021.	Accept draft biennial conservation plan as part of CEIP specific conservation target.
	WAC 480-109-120(2) annual 2023 conservation plan by November 15, 2022.	Repeal WAC 480-109-120(2) after June 1, 2022.
WAC 480-100-650 (1)(b) utility met its 2022-2025 specific target for energy efficiency filed by July 1, 2026.	WAC 480-109-120(4) biennial conservation report by June 1, 2022.	Repeal WAC 480-109-120(4) after June 1, 2022.
WAC 480-100-650 (1)(b) utility met its 2022-2025 specific target for renewable energy filed by July 1, 2026.	WAC 480-109-210(6) final 2022 compliance report by June 1, 2024.	Repeal WAC 480-109-210(6) after June 1, 2022.
WAC 480-100-650 (3)(e) renewable energy credits and the program or obligation for which they were used in 2022 filed by July 1, 2023.	WAC 480-109-210(6) final 2022 compliance report by June 1, 2024.	Repeal WAC 480-109-210(6) after June 1, 2022.
WAC 480-100-650 (3)(f) documentation of the retirement of renewable energy credits used in 2022 filed by July 1, 2023.	WAC 480-109-210(6) final 2022 compliance report by June 1, 2024.	Repeal WAC 480-109-210(6) after June 1, 2022.
WAC 480-100-650 (3)(h) greenhouse gas content calculation for 2022 filed by July 1, 2023.	WAC 480-109-300(1) by June 1, 2021.	Repeal WAC 480-109-300 after June 1, 2022.
WAC 480-100-650 (3)(j) total greenhouse gas emissions in metric tons CO2e for 2022 filed by July 1, 2023.	WAC 480-109-300 (3)(d) by June 1, 2021.	Repeal WAC 480-109-300 after June 1, 2022.
Did not include reporting on unspecified energy in WAC 480-100-650(3).	WAC 480-109-300(4) unspecified electricity by June 1, 2021.	Repeal WAC 480-109-300 after June 1, 2022. Amend WAC 480-100-650(3) before that date.
Did not include comparison of annual million metric tons of CO2e emissions to 1990 emissions in WAC 480-100-650(3).	WAC 480-109-300 (3)(e) by June 1, 2021.	Repeal WAC 480-109-300 after June 1, 2022. Amend WAC 480-100-650(3) before that date.

3. Streamlining that would require statutory change: *WAC 480-100-645, 480-100-650.*

28 During the development of the proposed rules, and our effort to streamline the reporting and compliance requirements of EIA and CETA as directed under RCW 19.405.100, we identified certain inconsistencies between the statutes. Because each statute has different requirements, some filing requirements cannot be streamlined or merged

and result in overlapping rules. The discussion that follows addresses changes the legislature could make to align the statutes and facilitate our ability to further streamline utility reporting and compliance.

29 EIA requires a two-year conservation target, and CETA requires a four-year energy efficiency specific target.[5] The commission can implement these statutes in concert, but to do so requires us to maintain the formal filing requirements and additional approval processes for the two-year conservation target found in WAC 480-109-120(5), and to adopt review, approval, and enforcement processes for the four-year energy efficiency target under WAC 480-100-645(2). The commission could significantly streamline the rules if the different statutory reporting periods were aligned prior to November 1, 2023, which is when the utility's next EIA two-year conservation target is due.

5 *See* RCW 19.285.040(1) and 19.405.060(1).

30 In addition, the fifteen percent eligible renewable energy standard under EIA does not include the same resources as the specific target for renewable energy under CETA. Specifically, CETA allows all generation from hydropower, while EIA limits the use of hydropower to new or expanded resources. These differences require the commission to retain the incremental hydropower methodology calculation in WAC 480-109-200(7) for inclusion in EIA report, rather than develop a methodology under CETA.

31 EIA also uses the average annual load from the prior two years to set an annual renewable portfolio standard target in megawatt hours (MWh). CETA uses a four-year average of the implementation period to meet a percent of retail sales target. A utility could comply with one standard and not the other because the same years will not be included in all of the average compliance calculations.[6] Implementing both of these statutes requires the commission to adopt proposed WAC 480-100-650 (1) and (3) addressing CETA compliance, while retaining WAC 480-109-210, which covers annual formal reporting and approval for renewable portfolio standard compliance under EIA. The commission could significantly streamline reporting and compliance requirements if these two statutory requirements were aligned prior to January 1, 2023, which would assist with compliance requirements for 2022.

6 The 2022 renewable energy target in EIA is based on average of load from 2020 and 2021, while the 2022-2025 renewable energy target in CETA is the percent of retail sales met with renewable energy during that four-year period.

32 Further, EIA allows utilities to use renewable energy credits (RECs) to comply with statutory targets if those credits are generated in the year prior to the compliance year or the following two years.[7] For example, RECs generated between 2021 and 2023 can be used for compliance in 2022. CETA allows banking of RECs within the four-year implementation period, so any RECs generated between 2022 and 2025 can be used for compliance in any of those years. These overlapping compliance periods between EIA and CETA require the commission to adopt reporting requirements in proposed WAC 480-100-650(3) that duplicate some of the substance of the existing reporting requirements we must retain in WAC 480-109-210. Reconciling these statutory compliance periods would allow the commission to simplify and streamline the reporting on renewable energy, preferably before January 1, 2022.

7 RCW 19.285.040 (2)(b).

Table Two: Streamlining that would require statutory change

Proposed Chapter 480-100 WAC	Chapter 480-109 WAC	Commission Action
WAC 480-100-640 (3)(a)(iii) renewable energy: 2022-2025 specific target as percent of retail sales filed by October 1, 2021.	WAC 480-109-210(1) renewable portfolio standard: 2022 annual report by June 1, 2023, target based on previous two years of average annual load.	Adopt WAC 480-100-640 (3)(a)(iii) and maintain WAC 480-109-210(1).
WAC 480-100-645(2) review, approval, and enforcement of 2022-2025 energy efficiency target.	WAC 480-109-120(5) review, approval, and enforcement of 2022-2023 conservation target.	Adopt WAC 480-100-645(2) and maintain WAC 480-109-120(5).
WAC 480-100-650 (1)(b) utility must meet its 2022-2025 specific target for renewable energy filed by July 1, 2026.	WAC 480-109-210(1) renewable portfolio standard: 2022 annual report by June 1, 2023, per RCW 19.285.070.	Adopt WAC 480-100-650 (1)(b) and maintain WAC 480-109-210(1).
WAC 480-100-650 (3)(b) annual conservation achievement for 2022 filed by July 1, 2023.	WAC 480-109-120 (3)(a) annual conservation report for 2022 by June 1, 2023, per RCW 19.285.070.	Adopt WAC 480-100-650 (3)(b) and maintain WAC 480-109-120 (3)(a).
WAC 480-100-650 (3)(d) annual renewable energy usage in megawatt-hours and as a percentage of electricity supplied by renewable energy for 2022 filed by July 1, 2023.	WAC 480-109-210(1) renewable portfolio standard 2022 annual report by June 1, 2023, per RCW 19.285.070.	Adopt WAC 480-100-650 (3)(d) and maintain WAC 480-109-210(1).

B. Resource adequacy.

33 CETA requires an electric utility's IRP to determine "resource adequacy metrics for the resource plan" and to identify "an appropriate resource adequacy requirement and measurement metric consistent with prudent utility practice."[8] The rules we adopt reflect those requirements. Several commentors requested additional rule language to specify that certain elements be included in the resource adequacy (RA) modeling and assessment, including the evaluation of specific needs of load service and characteristics of resources such as energy, capacity, and flexibility, and modeling of specific resources such as demand-side, storage and wind resources, and batteries.[9] CETA and proposed WAC 480-100-620(8) require an RA assessment be made "for the resource plan."[10] The commenters' recommended additions to the rule are unnecessary, as an RA assessment is an assessment of the resource plan and the elements identified by the commenters are already required by the plan.[11] Further, the specific elements proposed for inclusion in the rule are already standard utility practice in an RA assessment.

8 *See* RCW 19.280.030 (1)(g) and (i).

9 NWEC Comments November 12, page 2 and NWEC Redlines UE-191023, page 16. Climate Solutions Comments November 12, page 4.

10 RCW 19.280.030 (1)(g) and (i).

11 Proposed WAC 480-100-620(2) requires "…a range of forecasts of projected customer demand…" Subsection 620(7) requires evaluation of "all identified resources and potential changes to exiting [existing] resources." Subsection 620(6) requires the resource plan to assess "availability of regional generation and transmission capacity" that may serve customer's electricity needs. Subsection 620(3) requires assessment of distributed energy resources. Subsection 620(5) requires assessment of renewable resource integration. Subsection 620(17) also requires the utility to consider stakeholder input as it develops its resource plan and its RA assessment.

34 The commission recognizes stakeholders' concerns with the RA methodologies that may be used in the analysis of the contribution to RA by storage and variable energy resources. As discussed above, CETA requires utilities to identify RA metrics and standards "consistent with prudent utility practice,"[12] which we deem to be best practice in providing electric service. In this regard, the commission's application of WAC 480-100-620 is no different. The broad and comprehensive language in the rule is intended to encompass all aspects of load service, all available resources, and measurement and consideration of a resource's performance characteristics, which will enable advancements in utility RA assessment methodology. In light of several regional efforts to develop RA metrics and assessments,[13] it is not nec-

essary at this time, and may be counter-productive to development of RA standards for the rule to be prescriptive at this time. Accordingly, in this period of transition to clean electricity, RA assessment is critical to assuring the "lights stay on" and rates remain stable. With the adoption of these rules, the commission expects utilities to act to fulfill their responsibility to identify appropriate RA metrics and methodologies in their IRPs in a timely and prudent manner.

12 RCW 19.280.030 (1)(i).

13 These efforts include the Northwest Power Pool's Resource Adequacy group, the Northwest Power and Conservation Council's Resource Adequacy Advisory Committee, and the Western Electricity Coordinating Council's Resource Adequacy Forum.

C. Social cost of greenhouse gases and upstream emissions: WAC 480-100-620.

35 Proposed WAC 480-100-620 (11)(j) and (12)(j) outline how a utility must perform IRP portfolio analysis, including requirements to incorporate SCGHG emissions and develop a ten-year clean energy action plan (CEAP). Under RCW 19.280.030 (3)(a), each utility must incorporate SCGHG emissions as a cost adder when evaluating and selecting conservation policies, programs, and targets; developing IRPs and CEAPs, and evaluating and selecting intermediate and long-term resource options.

36 During the CR-101 process, stakeholders submitted various approaches to incorporating SCGHG into planning. PSE proposed using a modeling approach as a planning, or fixed cost adder. Climate Solutions also proposed utilities incorporate SCGHG as a fixed cost when they evaluate the comparative costs of resources and select a preferred portfolio. Climate Solutions asserted that accounting for SCGHG alternatively in dispatch in utility IRP modeling is appropriate only if utilities plan to incorporate these costs in real time into operational decisions. Invenergy, Sierra Club, and Vashon Climate Action Group proposed incorporating SCGHG as a variable cost in dispatch for greenhouse gas emitting resources. NWEC proposed incorporating SCGHG as a variable cost that should be applied to all emitting resources, including market purchases, in modeling stages that determine utility resource selection.

37 The variety of proposals demonstrates the lack of statutory direction concerning the incorporation, or modeling, of SCGHG emissions in IRPs. Accordingly, the rules we adopt by this order do not require a specific modeling approach at this time. Rather, as we discuss further below in Section III.F.2, the proposed rules require that the utility include SCGHG emissions in the alternative lowest reasonable cost and reasonably available portfolio for calculating the incremental cost of compliance in the CEIP. How the utility chooses to model SCGHG emissions in its preferred portfolio in the IRP will inform its CEAP and ultimately its CEIP. The utility must provide a description in its CEIP of how SCGHG emissions are modelled and incorporated in its preferred portfolio.

38 Utilities should also consult with their advisory groups regarding how to model SCGHG in their IRP, CEAP, and CEIP. If a utility treats SCGHG as a planning or fixed cost adder in its determination of the optimal portfolio, including retirements and new plant builds, we expect the utility to model at least one other scenario or sensitivity in which SCGHG is reflected in dispatch. Similarly, if a utility incorporates SCGHG in modeling dispatch costs, we expect the utility to provide an alternative scenario or sensitivity analysis, such as the planning adder approach, to determine the optimal portfolio, including retirements and new builds. Such modelling will help to inform how

best to implement CETA's requirement to include SCGHG emissions as a cost adder.

39 Similar to our approach, commerce's draft rules do not adopt one method, but outline several methodologies utilities may use to incorporate SCGHG, which are useful examples of how a utility may describe its IRP modeling approach to incorporate SCGHG as a cost adder. The utility and advisory groups may find this list helpful. These methodologies include:

- Performing a resource analysis in which it increases the input cost of each fossil fuel by an amount equal to the SCGHG emissions into the value of that fuel;
- Conducting a resource analysis in which the alternative resource portfolios are compared across multiple scenarios on the basis of cost, risk, and other relevant factors, and the aggregate SCGHG emissions is added to the cost of each resource portfolio; or
- Using another analytical approach that includes a comprehensive accounting of the difference in greenhouse gas emissions and the SCGHG emissions between resource alternatives.[14]

14 Draft WAC 194-40-110 Methodologies to incorporate SCGHG emissions. We address in Section III.F.2., below, the inclusion of SCGHG in the alternative lowest reasonable cost and reasonably available portfolio.

40 Next, we turn to the consideration of the accounting of upstream emissions. During the CR-102 comment period, NWEC, Climate Solutions, and Robert Briggs all expressed general concerns that the proposed rules should require consideration of upstream emissions within the application of SCGHG. NWEC proposed including upstream emissions in the SCGHG cost adder in CETA, arguing that nothing in *Association of Washington Business v. Department of Ecology*, 195 Wn.2d 1 (2020), undermines this approach. Climate Solutions suggested the commission adopt requirements similar to the department of ecology's (ecology) greenhouse gas assessment for projects proceeding.[15] Finally, Briggs proposed clarifying that the requirement to account for SCGHG applies to costs associated with direct CO2 emissions and the social cost of upstream fugitive methane emissions. Briggs also proposed that the rules require reporting of the assumptions used in IRP analyses for upstream emissions.

15 Chapter 173-445 WAC. https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-445.

41 We recognize that modeling environmental cost and compliance scenarios will likely have a significant impact on portfolio development. In fact, since the passage of CETA, utilities have begun to apply upstream emissions in IRP modeling. However, requiring the inclusion of upstream emissions, by rule, may exceed our statutory authority. Recently, the Washington supreme court found that ecology exceeded its statutory authority when promulgating the clean air rule. Ecology's rule included the impacts of third-party emissions (e.g., upstream emissions) in its emissions standards regulating direct emitters. The court found this exceeded the statutory scheme and that regulations for *emission standards* were limited to those *directly* creating the emission. While we recognize that the commission's and ecology's statutory authority is different, we do not interpret the legislature's requirement to include SCGHG emissions as clearly requiring the commission to consider upstream emissions.

42 In enacting CETA, the legislature stated its intent to address climate change by moving to a clean energy economy through "transforming its energy supply, [and] modernizing its electricity system." RCW 19.405.010(1). CETA further measures compliance by looking at a utili-

ty's retail electric load RCW 19.405.040 (1)(a), implying that regulation is focused on emissions directly attributed to load and electric energy supply.

43 Thus, while we support the current utility practice of including upstream emissions in IRP modeling, it is not a current requirement of these rules. The public participation process created by these rules is the appropriate venue to address utility assumptions and various scenarios, including upstream emissions and SCGHG emissions, used in IRP modeling analyses. We anticipate that this issue may come before the commission when it reviews regulated utilities' initial CEIPs, but decline to be more prescriptive on this issue at this time.

D. Customer Benefit: WAC 480-100-610, 480-100-605, 480-100-620, 480-100-640.

44 RCW 19.405.040(8) provides:

In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency.

We interpret this requirement as an affirmative mandate, as indicated by (1) the phrase "in complying with this section, an electricity utility *must … ensure* that all customers are benefiting"[16] and (2) the location of this requirement within the greenhouse gas neutrality section. To reflect the affirmative nature of the customer benefit requirement, the three components of RCW 19.405.040(8) are included in the clean energy transformation standards section of the proposed rules in WAC 480-100-610 (4)(c)(i)-(iii).

16 RCW 19.405.040(8) (emphasis added).

45 Further, we received several comments regarding the term "indicator" and how it would be applied in evaluating customer benefit. To provide additional clarity regarding this term, the commission has modified the term "indicator" in the proposed rules to "customer benefit indicator." This change does not alter the function of the definition but highlights that the definition is specifically related to tracking and measuring compliance with RCW 19.405.040(8). This definition sets minimum requirements and does not limit the commission's authority to order (or the ability of stakeholders to request) the use of additional indicators or metrics.

46 Proposed WAC 480-100-610 (4)(c)(i) incorporates this statutory mandate by requiring that customers benefit from "the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities."

47 Proposed WAC 480-100-605 defines an equitable distribution as a "fair, just, but not necessarily equal allocation of benefits and burdens from a utility's transition to clean energy." The location of the customer benefit requirements within RCW 19.405.040 indicates that the benefits and burdens that must be equitably distributed are the specific actions a utility takes to comply with RCW 19.405.040. To inform the commission's decisions related to fair and just allocation, proposed WAC 480-100-620(9) requires, among other things, the assessment of certain current conditions to determine equitable distribution of benefits and burdens. The commission agrees with the observations of multiple stakeholders that current conditions should include con-

sideration of cumulative and legacy conditions. Similarly, we concur with Front and Centered's comments that the purpose of equitable distribution in the statute is to prioritize vulnerable populations and highly impacted communities that experience the greatest inequities and disproportionate impacts, and that have the greatest unmet needs. Finally, the commission agrees with Avista's interpretation that both the distribution of benefits and the reduction of burdens must be equitable.

48 The definition of "vulnerable populations" in proposed WAC 480-100-605 is the same as provided in RCW 19.405.020(40). The definition includes a non-exhaustive list of factors (*e.g.*, unemployment, linguistic isolation, low birth weight) associated with adverse socioeconomic conditions and sensitivity factors. Commenters proposed to include additional factors, but the commission declines to modify the statutory definition. Any additional factors used to designate vulnerable populations should reflect public input, as required by WAC 480-100-640 (4)(c).[17]

17 Sierra Club also recommended including higher climate impact zone as a sensitivity factor, which related to a community's exposure to climate change. We decline to adopt this recommendation, as the factors used to designate vulnerable communities must be associated with vulnerability rather than exposure. Exposure to climate change is a factor in the highly impacted community designation, not the vulnerable population designation.

49 Proposed WAC 480-100-610 (4)(c)(ii) requires that customers benefit from long-term and short-term public health and environmental benefits and reduction of costs and risks.

50 Proposed WAC 480-100-610 (4)(c)(iii) requires that customers benefit from energy security and resiliency. NWEC and Front and Centered recommended that "energy security" and "resiliency" be defined in rule. The commission declines to define these terms at this time, but will review and determine issues concerning specific customer benefit indicators associated with energy security and resiliency when considering utility CEIPs, as required in WAC 480-100-640 (4)(c), following significant work on these issues by the utilities and customers. As with all customer benefit indicators, the application of these terms must reflect customer input to ensure that all customers are benefiting from the transition to clean energy.

51 Front and Centered commented that proposed WAC 480-100-610 (4)(c)(ii) and (iii) should reference highly impacted communities and vulnerable populations to support the law's intent of centering the most impacted and vulnerable. The commission declines to alter WAC 480-100-610 (4)(c)(ii) and (iii), which currently reflect the separate and distinct customer benefit requirements identified in RCW 19.405.040(8). Additionally, WAC 480-100-610 (4)(c)(i) reflects additional distinct customer benefit requirements in the statute and requires the equitable distribution of energy and nonenergy benefits. However, we interpret the statute such that WAC 480-100-610 (4)(c)(ii) and (iii) would not supersede a utility's requirement to equitably distribute those benefits under WAC 480-100-610 (4)(c)(i).

52 In addition to broad applicability as part of the clean energy transformation standards, the rules include specific requirements for utilities to address the customer benefits requirements in their IRPs (including the CEAPs), CEIPs, and compliance reports. These plans and reports are discussed in turn below.

1. IRPs and CEAPs: *WAC 480-100-620, 480-100-605.*

53 Proposed WAC 480-100-620(9) requires utilities to include an assessment of economic, health, and environmental burdens and benefits in their IRPs. This assessment is a required input to IRPs pursuant to RCW 19.280.030 (1)(k).[18] The definition of "equitable distribution" in

WAC 480-100-605 provides that this assessment, among other information, will inform the "current conditions" within a utility's service territory. These current conditions are the basis for determining whether the allocation of benefits and burdens from the utility's transition to clean energy results in equitable distribution.

[18] RCW 19.280.030 (1)(k) provides: "An assessment, informed by the cumulative impact analysis conducted under RCW 19.405.140, 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 and risk."

54 Proposed WAC 480-100-620(9) requires that a utility's assessment be informed by the cumulative impact analysis (CIA) conducted by the department of health. RCW 19.405.140 requires the CIA to be completed by December 31, 2020, and include impacts from fossil fuel pollution and climate change. Because the CIA includes impacts associated with fossil fuels and climate change, the CIA may provide relevant information pertaining to nonenergy benefits and burdens as well as long-term and short-term public health and environmental benefits, costs, and risk. Utilities must consider the information in the CIA in developing their IRPs, but the requirement that the assessment be informed by the CIA neither waives the requirement for an assessment if the CIA is unavailable nor relieves the utility of its obligation to consider other sources of information relevant to the assessment.

55 Proposed WAC 480-100-620 (10)(c) requires utilities to include at least one sensitivity that reflects a maximum customer benefit scenario. In its written and verbal comments, Avista requested clarification on the purpose and characteristics of a maximum customer benefit scenario. A utility's resource portfolio reflects the lowest-reasonable cost portfolio that meets all operational and regulatory standards. While all scenarios should be consistent with the customer benefit requirements in RCW 19.405.040(8), this sensitivity should meet load with resources that result in the highest possible values for customer benefit indicators regardless of cost or other competing considerations. The specific resources that should be maximized within this scenario will depend on the customer benefit indicators and associated weighting factors developed pursuant to proposed WAC 480-100-640 (4)(c). As with all IRP sensitivities, the goal of this requirement is to provide information to inform highly discretionary decisions by understanding the tradeoff between different resource decisions. The commission's intent in requiring such a sensitivity in WAC 480-100-620 (10)(c) is to promote creative thinking and ensure broad consideration of customer benefit opportunities freely and without any competing considerations.

56 Proposed WAC 480-100-620 (11)(g) requires utilities to describe how their long-range IRPs expect to achieve the customer benefit requirements. This obligation is consistent with RCW 19.280.030 (1)(j), which requires the IRP to "imple[ment] RCW 19.405.030 through 19.405.050," which includes RCW 19.405.040(8). PacifiCorp commented that the IRP does not represent actual procurement decisions nor acquisitions and, as such, is not the appropriate place to comment on customer benefit requirements. As noted previously, however, RCW 19.280.030 (1)(j) requires IRPs to implement CETA requirements, including the customer benefit requirements. Additionally, the commission expects companies to consider different potential bundles of procurement that have different amounts and combinations of customer benefits to ensure least cost planning. While PacifiCorp also commented that IRP is not a rate-making plan nor does it contemplate impacts on specific customer rates, the customer benefit requirements in RCW 19.405.040(8) are more broad than the impact of rates, and concern the

benefits and burdens of a utility's specific actions to transition to clean energy, including resource selection.

57 This rule also specifically requires a utility to describe its long-term strategy, interim steps, and the estimated degree to which benefits will be equitably distributed and burdens reduced over the planning horizon. PSE recommended deleting these specific requirements, contending that they are too broad. The commission finds that the information required in WAC 480-100-620 (11)(g) provides necessary context for the commission's consideration of utility compliance with RCW 19.405.040(8). RCW 19.405.040(8) requires a contextual determination. First, as discussed above, a determination regarding equitable distribution requires a consideration of current conditions, which will change over time. Second, the quantity and type of benefits and burdens associated with a utility's transition to clean energy are not currently known and will change over time based on technological developments and new load forecasts, among other things. Including a long-term view of customer benefit requirements in the IRP provides a necessary estimate of the benefits of the transition to clean energy at a point in time, while ensuring that the information is not static but can adapt to changing conditions.

58 Proposed WAC 480-100-620 (12)(c) requires a utility to describe how its specific actions in the CEAP are expected to meet the customer benefit requirement. PSE recommended deleting this requirement, commenting that it does not believe CETA requires the CEAP to address equity considerations and that it is not reasonable to require the CEAP to describe specific actions. However, the requirements in WAC 480-100-620 (12)(c) are consistent with RCW 19.280.030 (1)(l), which requires the CEAP to "imple[ment] RCW 19.405.030 through 19.405.050," which, as we note above, includes RCW 19.405.040(8). Further, the statute requires the CEAP to "identify the specific actions to be taken by the utility consistent with the long-range integrated resource plan." PacifiCorp commented that the requirements for the CEAP in WAC 480-100-620 (12)(c) appear redundant with the requirements for IRPs in WAC 480-100-620 (11)(g). RCW 19.280.030 (1)(j) and 19.280.030 (1)(l), however, require both the IRP and CEAP to address the requirements in RCW 19.405.030 *through* 19.405.050, including 19.405.040(8). Therefore, the rules reflect the structure of the statute and ensure that utilities address the customer benefit requirements at a high-level in long-term plans, as well as providing more detail over the ten-year planning horizon of the CEAPs.

2. CEIPs: *WAC 480-100-640, 480-100-605, 480-100-610.*

59 Proposed WAC 480-100-640, which addresses CEIPs, includes multiple provisions related to the customer benefit requirements. Several stakeholders commented that they do not believe customer benefit requirements should be included in the CEIPs because RCW 19.405.040(8) is not referenced in RCW 19.405.060. Under RCW 19.405.060 (1)(ii)(b), a CEIP must be informed both by a utility's CEAP and the long-term IRP, which as described above, requires a demonstration of the implementation of RCW 19.405.040(8). Additionally, under RCW 19.405.060 (1)(c)(iii), the commission may adjust targets and timelines proposed in the CEIP if doing so can be achieved in a manner consistent with the equity requirement. To evaluate whether a utility can make these adjustments, the commission needs an understanding of how the initial targets and timelines in the proposed CEIP are consistent with the customer benefit requirements. Finally, because RCW 19.405.090(9) requires the commission to determine investor-owned utilities' compliance with chapter 19.405 RCW, the commission must make a regular de-

termination of a utility's compliance with RCW 19.405.040(8). It would be inefficient for the commission to approve a CEIP, only to determine later that a utility has not complied with RCW 19.405.040(8).

60 Proposed WAC 480-100-640(4) requires utilities to provide foundational information in the CEIP related to the customer benefit requirements. WAC 480-100-640 (4)(a) and (b) require utilities to identify highly impacted communities and vulnerable populations for which equitable distribution of benefits and reductions of burdens must be achieved pursuant to WAC 480-100-610 (4)(c)(i).

61 Proposed WAC 480-100-640 (4)(c) requires utilities to propose or update customer benefit indicators and associated weighting factors. As defined in WAC 480-100-605, a customer benefit indicator is an attribute of a resource or related distribution system investment (*i.e.,* a specific action) associated with RCW 19.405.040(8), and is included in the clean energy transformation standards in WAC 480-100-610 (4)(c). Specifically, WAC 480-100-640(c) requires that utilities propose at least one indicator for each element of customer benefits listed in the rule as outlined below:

- Proposed WAC 480-100-610 (4)(c)(i):
  - Energy benefits,
  - Non-energy benefits, and
  - Reduction of burdens.
- Proposed WAC 480-100-610 (4)(c)(ii):
  - Public health,
  - Environment,
  - Reduction in cost, and
  - Reduction in risk.
- Proposed WAC 480-100-610 (4)(c)(iii):
  - Energy security, and
  - Resilience.

62 We require utilities to develop customer benefit indicators and weighting factors consistent with the advisory group process and public participation in proposed WAC 480-100-655. Customer and stakeholder input is necessary in developing customer benefit indicators. First, customer and stakeholder input is necessary to determine whether an attribute is an indicator of customer benefit, and whether it reflects a reduction of a burden. Second, customer and stakeholder input regarding weighting factors is necessary to understand the degree to which benefits can be equitability [equitably] distributed when considered in light of appropriate factors, such as current conditions and the estimated amount of benefits over the whole transition.

63 PSE commented that the rules should not reference updated customer benefit indicators. However, as customer preferences and impacts may change over time, we find that the rules should allow for updated customer benefit indicators.

64 Proposed WAC 480-100-640(5) addresses specific actions a utility plans to take under its CEIP to meet the requirements of RCW 19.405.060 (1)(b)(iii), including operational and regulatory requirements, and requires utilities to provide, among other details, information related to customer benefits for each specific action. This information includes the general location of the specific action, if applicable, and a designation of whether the specific action is located within a highly impacted community or will be governed by, serve, or otherwise benefit highly impacted communities or vulnerable populations in part or in whole. We intend to review the customer benefits

on a portfolio-level. Therefore, it is important for the utility to identify which specific actions provide customer benefits.

65 Subsection (5)(c) also requires the utility to provide the customer benefit indicator values for each specific action, or designate the customer benefit indicator as nonapplicable, to establish the amount of customer benefit provided by each specific action. The rule provides flexibility for recognizing benefits in subsection (5)(b) because some benefits will be associated with the project location (*e.g.,* local job creation), while other benefits may be associated with the governance structure of the specific action or other non-colocational benefits (*e.g.,* community ownership of resources). For example, highly impacted communities and vulnerable populations may benefit from a specific action if it is governed by those communities. Such governance might include majority community ownership (*e.g.,* more than 50 percent equity interest), indirect ownership through a cooperative, nonprofit, or LLC, or majority control (*e.g.,* voting power or decision-making interest outlined in bylaws).

66 Proposed WAC 480-100-640(6), among other provisions, requires utilities to describe narratively how the portfolio of specific actions (*i.e.,* all the specific actions included in a utility's CEIP) are consistent with the customer benefit requirements. This narrative is necessary because a utility must provide context for the customer benefits included in WAC 480-100-640(5). Based on this information, the commission may determine whether the customer benefits are sufficient and will result in an equitable distribution, based on a consideration of current conditions and the estimated amount of benefits across the transition. The rule requires utilities to provide a narrative that assesses the current benefits and burdens on customers, including the benefits and burdens associated with specific actions the utility has taken since CETA's effective date, and after the utility has implemented a CEIP, the changes in benefits and burdens resulting from the utility's specific actions in the prior implementation period.

67 Additionally, proposed WAC 480-100-640(6) requires the utility to describe in the narrative how the specific actions are consistent with its most recent IRP and CEAP. These two elements of the narrative are necessary because the commission's compliance determination may require an evaluation of the timing and quantity of benefits throughout the transition to clean energy, both as the utility begins implementation and over the trajectory of implementation. As noted above, an equitable distribution of benefits will depend on the total benefits of the transition to clean energy, which will occur over time. An evaluation of the equitable distribution of benefits must consider when the benefits will begin accruing to customers and reflect whether the benefits will continue into future implementation periods. The narrative we require in subsection (6) provides an opportunity for utilities to describe how the CEIP, as a whole and through specific actions, will meet the customer benefit requirements.

68 Proposed WAC 480-100-640(11) allows utilities to update a CEIP based upon any changes included in an IRP progress report. Utilities should include in their updates any resulting changes to customer benefits.

3. Compliance Report: *WAC 480-100-650, 480-100-655.*

69 Proposed WAC 480-100-650 (1)(d) requires utilities to demonstrate that the specific actions they took in implementing the CEIP met the customer benefit requirements under RCW 19.405.040(8). The demonstration must include updated customer benefit indicator values,

as well as analysis that the benefits and reduction of burdens have or will reasonably accrue to intended customers. PSE recommends removing the requirement to analyze whether benefits and reduction of burdens have or will reasonably accrue to customers. We find that the requirements in subsection (1)(d)(ii) are necessary. The distribution of benefits may vary greatly during implementation, based on numerous factors such as the specifics of the resource acquired or otherwise implemented, including project ownership, outreach to customers, and customer-specific information (*e.g.*, benefits of a rooftop solar project must be carefully and intentionally shared or they will only reasonably accrue to customers who own their own home).

70 Proposed WAC 480-100-650 (1)(e) requires utilities to describe in the compliance report their equity advisory group process, as well as customer engagement and outcomes. Additionally, this subsection requires utilities to demonstrate that they complied with the requirements in proposed WAC 480-100-655 to engage customers in the development or update of customer benefit indicators. As noted previously, customers must be meaningfully engaged both to ensure that the specific actions taken by utilities reflect actual customer benefits and that the utility captures relevant changes in customer experiences and preferences. As required in subsection 655 (2)(a), input from designated highly-impacted communities or vulnerable populations should inform the customer benefit indicators associated with the equitable distribution of benefits and reduction of burdens to those populations, while input from all customers should inform the customer benefit indicators for public health, environmental health, cost reduction, risk reduction, energy security, and resilience.

E. Penalties.

71 The proposed rules include a section addressing the various options available to the commission for enforcing both the statutory provisions of CETA and commission orders implementing CETA. The potential penalties identified in the proposed rules include the specific penalty described in RCW 19.405.090, the administrative penalties the commission may assess for failure to comply with a commission order or rule under RCW 80.04.380 and 80.04.405, and the penalty that may be assessed under EIA in RCW 19.285.060.[19] In adopting these rules, the commission retains its discretion to determine, on a case-by-case basis, if it should issue a penalty for violating a commission order based on the specific circumstances. Commissioner Balasbas opposes adopting proposed WAC 480-100-665 because, in his view, "Although many of the enforcement tools listed in the rule are restatements of existing commission authority, by including explicit provisions in this package of rules, right out of the gate the commission is taking an aggressive and unnecessary adversarial stance on utility compliance with CETA." Dissent ¶ 19. We disagree that this provision is adversarial. The commission, however, received comments early in this rule making questioning the commission's authority to enforce CETA provisions beyond the administrative penalties authorized in RCW 19.405.090. Proposed WAC 480-100-665 clarifies the commission's statutory interpretation that all of its statutory enforcement authority is available, if necessary, to ensure compliance with CETA, just as such authority extends to ensuring compliance with every statute within the commission's jurisdiction.

19 RCW 19.405.020(39).

72 The proposed rules largely do not detail how the commission would apply the penalties the legislature adopted in RCW 19.405.090.

Rather, we provide guidance below on how the commission may apply those penalties in the different scenarios envisioned in the statute.

1. Application of the penalty under RCW 19.405.090: *WAC 480-100-650*.

73 RCW 19.405.090(1) provides that an electric utility that fails to meet the standards established under RCW 19.405.030(1) and 19.405.040(1) must pay an administrative penalty. The requirement in RCW 19.405.030(1) that a utility must eliminate coal-fired resources from its allocation of electricity begins no later than December 31, 2025. Utilities must demonstrate compliance with the obligation in RCW 19.405.040(1) that all retail sales of electricity be greenhouse gas neutral by January 1, 2030. The administrative penalty established in RCW 19.405.090 is $100 per megawatt-hour for each megawatt-hour of electric generation used to meet load that is not renewable or non-emitting and includes multipliers for coal- and gas-fired resources.[20]

20 RCW 19.405.090 (1)(a) provides, an electric utility or an affected market customer that fails to meet the standards established under RCW 19.405.030(1) and 19.405.040(1) must pay an administrative penalty to the state of Washington in the amount of one hundred dollars, times the following multipliers, for each megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or non-emitting electric generation:
(i) 1.5 for coal-fired resources;
(ii) 0.84 for gas-fired peaking power plants; and
(iii) 0.60 for gas-fired combined-cycle power plants.

74 Application of the penalty in RCW 19.405.090 to standard in RCW 19.405.030(1): RCW 19.405.090 establishes a $150 per megawatt-hour penalty for each megawatt-hour of electric generation from a coal-fired resource used to meet load.[21] However, the definition of coal-fired resource is limited to resources owned or under a contract longer than one month.[22] Therefore, if a utility fails to remove its allocation of electricity, i.e., all costs and benefits related to coal-fired resources owned or associated with contracts longer than one month to serve load from rates between January 1, 2026, and December 31, 2029, it is subject to the $150 penalty in RCW 19.405.090(1) for each megawatt-hour of coal-fired electric generation used to meet load during the implementation period.[23]

21 RCW 19.405.090 (1)(a)(i).
22 RCW 19.405.020 and WAC 480-100-605.
23 RCW 19.405.020(1).

75 Aspects of this compliance obligation and its measurement hinge on the question of how to define the "use" of electricity more generally because the penalty under RCW 19.405.090 (1)(a) is based upon "each megawatt-hour of electric generation *used to meet load* that is not electricity from a renewable resource or non-emitting electric generation" (emphasis added). As comments throughout this rule making reflect, this is a complicated issue which the commission, commerce, utilities and stakeholders will continue to discuss. Prior to the December 31, 2025, deadline in RCW 19.405.030(1), utilities and stakeholders will need to determine which megawatt-hours of generation are subject to the penalty, and how the utility will document compliance. Here, the commission clarifies only the more basic question of whether the penalty applies to "using" coal-fired resources to serve load, however that may be defined in the future, or if penalties apply only to the inclusion of the costs of coal-fired resources in customer rates.

76 PacifiCorp and AWEC have objected that the definition of "allocation of electricity" under RCW 19.405.020(1) indicates that utilities are not required to stop using coal-fired resources to meet retail customer load by 2026, but must only stop including these costs

in rates.[24] The crux of this argument is that RCW 19.405.030(1) requires the elimination of coal-fired resources from the utility's "allocation of electricity," which, for rate setting purposes, the statute defines as "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." While we agree that inclusion of coal-fired resources in rates is prohibited beyond 2025, we disagree that CETA only prohibits the inclusion of these resources in rates.

24 Note however that RCW 19.405.030 contains exceptions for certain costs, such as decommissioning and remediation costs. For the purpose of this section, discussion of coal-fired resource costs and benefits refers to those costs and benefits not exempted under RCW 19.405.030.

77 First, the "ratemaking only" interpretation contradicts the plain language of RCW 19.405.090 (1)(a), which sets penalties based on the use of coal-fired resources to serve load, not for the inclusion of those resources in rates. As we noted above, RCW 19.405.090 (1)(a) creates a penalty for failure "to meet the standards established under RCW 19.405.030(1) and 19.405.040(1)" based upon "each megawatt-hour of *electric generation used to meet load* that is not electricity from a renewable resource or nonemitting electric generation" (emphasis added). That description of the penalty applies to RCW 19.405.030(1) specifically. Subsection RCW 19.405.090 (1)(b) states that "[b]eginning in 2027" the penalty is adjusted for inflation, and the only applicable standard at that point in time is RCW 19.405.030(1). If the "ratemaking only" interpretation were correct, RCW 19.405.090 (1)(a) would not set a penalty for -.030 based on whether coal-fired resources were used to serve load because, under this interpretation, RCW 19.405.030(1) does not prohibit using coal to meet load, it only prohibits including those resources in rates.

78 Second, the early action coal credit option outlined in RCW 19.405.040(11) further undermines the "ratemaking only" interpretation. That subsection allows utilities that meet certain qualifications to receive credit for early compliance with RCW 19.405.030(1), but *only* if the utility demonstrates "that for every megawatt-hour of early action compliance credit there is a real, permanent reduction in greenhouse gas emissions in the western interconnection directly associated with that credit."[25] This indicates that RCW 19.405.030(1) requires actual elimination of the use [of] coal-fired resources,[26] since receiving early credit for compliance with RCW 19.405.030(1) also requires it.

25 RCW 19.405.040(11).

26 The statutory definition of coal-fired resources does not include use of all coal-fired resources. *See* RCW 19.405.020(7).

79 Third, it is important to recognize the overall legislative intent.[27] RCW 19.405.010(2) states: "It is the policy of the state to eliminate coal-fired electricity." Under the "ratemaking only" interpretation, however, eliminating coal-fired electricity would not be required by law until 2045 because RCW 19.405.040(1) allows an offset for up to twenty percent through alternative compliance options between 2030 and 2045. This outcome appears to be contrary to the legislative intent behind CETA as the larger statutory context demonstrates. Furthermore, under the "ratemaking only" interpretation, between 2026 and 2029 a utility would incur the penalty for coal-fired resources under RCW 19.405.090(1) only if the commission first authorized recovery of those resources in a ratemaking case, because that is all that RCW 19.405.030(1) prohibits. This reading would mean that the legislature intended a utility to be penalized if the commission (in violation of RCW 19.405.030(1)) authorized the inclusion of coal-fired

resources into rates. In other words, the commission would be authorized to penalize a utility for including the costs and benefits of these resources in rates, which only the commission pursuant to WAC 480-100-620(9) could have approved. These absurd results, as well as the statutory support for a different interpretation discussed above, lead us to reject the "ratemaking only" interpretation of RCW 19.405.030(1) and the proposed "allocation of electricity" definition.

27 *See State v. Reis,* 183 Wn.2d 197, 212, 351 P.3d 127 (2015) ("Declarations of intent are not controlling; instead, they serve only as an important guide in determining the intended effect of the operative sections.")

80 Finally, the definition of "allocation of electricity" does not signal that RCW 19.405.030(1) allows a utility to continue using coal-fired resources to serve load beyond 2025. The definition requires the elimination of costs *and benefits*, and the primary benefit of these resources is the supply and sale of electricity to consumers. The benefits of these resources cannot be eliminated from rates unless coal-fired resources are *in fact* no longer used to serve load, since the utility would still be receiving compensation from ratepayers for that coal-fired electricity through current rates. Again, the early action coal credit option in RCW 19.405.040(11) supports this reading of the definition. A utility receives credit for removing these resources from "the utility's allocation of electricity before December 31, 2025" but the subsection specifies that doing so requires more than simply demonstrating that customer rates no longer include the costs of those resources, it requires "a real, permanent reduction" in emissions.[28] Additionally, while the definition states that it is "for the purpose of setting electricity rates," as the legislature was well aware, the commission sets rates based (in part) on the resources that are used and useful to provide service to customers.[29] We adopt a reading of the "allocation of electricity" that does not conflict with requirements of RCW 80.40.250, as amended by CETA.

28 RCW 19.405.040(11).

29 *See* RCW 80.04.250(2).

81 All of these compliance obligations and determinations hinge on the question of how to define the "use" of electricity more generally. As we note above, prior to December 31, 2025, utilities, stakeholders, commerce and the commission will need to determine how a utility will document its compliance with the requirements regarding the "use" of electricity. We intend to initiate proceedings regarding the definition of "use" in 2021.

82 If a utility elects to rely on the alternative compliance option in its compliance report under RCW 19.405.090(2), it must calculate the alternative compliance payment based on the actual load of the full implementation period, based upon documentation of reliance on coal-fired, gas-fired, and unspecified electricity.

83 In calculating the alternative compliance payment after January 1, 2030, even if the utility successfully removes all costs and benefits related to coal-fired resources owned or associated with contracts longer than one month from rates, it is still subject to the $150 per megawatt-hour penalty for each megawatt-hour of coal-fired electric generation used to meet load after that date. Under RCW 19.405.040(7), a utility that fails to comply with RCW 19.405.040 must pay the penalty under RCW 19.405.090(1).

84 Application of the penalty in RCW 19.405.090 to nonrenewable and emitting resources: Multiple commenters expressed concerns about how to address serial contracts of less than one month that would seem to allow the utility to use coal-fired resources without incurring

penalties after 2030. Other commenters expressed concern about how to address electricity from unspecified sources, regardless of contract length.

85 RCW 19.405.090(1) states that the $100 penalty applies to "each megawatt-hour of electric generation used to meet load that is not electricity from a renewable resource or nonemitting electric generation." Thus, to avoid the application of the penalty, the electricity used to meet load must affirmatively be generated from renewable or nonemitting resources. There are two situations that require additional consideration in the application of the penalty: (1) Electricity from coal-fired resources under contracts of one month or less, and (2) unspecified electricity.

86 Under RCW 19.405.030, the utility is not required to remove the costs and benefits associated with coal-fired resources purchased under contracts of one month or less from its requests for rate recovery. However, electricity from coal-fired resources supplied under contracts of one month or less, while excluded from the definition of coal-fired resources, are not renewable or nonemitting. Thus, after 2030, instead of the $150 penalty for coal-fired resources, the utility will be subject to the $100 penalty for each megawatt-hour of coal-fired electric generation used to meet load that is provided under contracts of one month or less. The statute provides this remedy to prevent serial contracts of one month or less from sidestepping the requirement to achieve 100 percent renewable and nonemitting electricity by 2045.

87 "Unspecified electricity" is "an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers."[30] Under this definition, unspecified electricity is not affirmatively renewable or nonemitting.[31] We do not believe that the legislature intended to allow a utility to avoid compliance with applicable standards by purchasing unspecified electricity. Accordingly, we conclude that the $100 penalty applies to any unspecified electricity. This conclusion aligns the utility's incentive to identify the source of the electricity with the requirement to achieve one hundred percent renewable or nonemitting electricity by 2045.

30 RCW 19.405.020(39).

31 *Id,* "Unspecified electricity" means an electricity source for which the fuel attribute is unknown or has been separated from the energy delivered to retail electric customers.

2. Penalties on specific and interim targets: *WAC 480-100-640, 480-100-645.*

88 Proposed WAC 480-100-640 (1)-(3) require a utility to file, by October 1, 2021, and every four years thereafter, a CEIP with specific and interim targets for each implementation period as described in RCW 19.405.060(1). RCW 19.405.060 (1)(c), as reflected in proposed WAC 480-100-645(2), requires the commission to issue an order approving a utility's CEIP.

89 Utilities argue in their comments that the commission either may not or should not issue penalties associated with the specific and interim targets identified in the CEIP and approved by order prior to 2030. PacifiCorp asks the commission for flexibility in meeting the interim targets, and PSE requests the commission reconsider its interpretation of the application of the CETA penalty to the interim targets. We do not adopt either of these positions.

90 Specific targets: The statutory penalty in RCW 19.405.090 applies to electric generation from resources that are *not* renewable or

nonemitting. We thus conclude that the statutory penalty does not apply to the specific targets, which concern energy efficiency, demand response, and renewable energy. However, the commission must by order approve, reject, or approve with conditions the utility's CEIP, and the CEIP must contain specific targets.[32] As described in RCW 80.04.380 and 80.04.405, the commission has discretion to issue penalties for failure to comply with a commission order. The rules adopted by the commission in no way limit this discretion. Accordingly, the commission retains discretion to penalize a utility, as a violation of the commission's order, for failure to comply with specific targets the commission has approved in the utility's CEIP.[33]

32 RCW 19.405.060 (1)(c).

33 Any failure to meet EIA targets for renewable energy and conservation are subject to the $50 per megawatt-hour penalty in RCW 19.285.060. (Move fn. up to para. 70.)

91 Interim targets: Proposed WAC 480-100-640(2) requires a utility's CEIP to include a series of 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. RCW 19.405.060 (1)(c) requires that the commission approve these interim targets. Interim targets are a critical part of demonstrating progress toward meeting the standards in the law, and utilities must design a reasonable transition to achieve the standard. When the commission approves the interim targets by order, the commission retains the discretion to issue penalties for failure to comply with the commission's order, specifically if a utility fails to meet its interim target for any implementation period.[34]

34 In his dissent, Commissioner Balasbas contends, "The enforcement language (in proposed WAC 480-100-665) also implies the interim targets proposed in utility CEIPs are binding," which "is not consistent with the specific statutory enforcement provisions in CETA and limits utility flexibility to achieve the clean energy goals at the lowest reasonable cost to ratepayers." Dissent ¶ 19. Interim targets, however, would be largely meaningless if the utility does not in good faith establish and comply with those targets. We expect the commission to use discretion, as opposed to rote adherence, in enforcing the interim targets.

3. Attestation of no coal in rates: *WAC 480-100-650.*

92 Beginning in 2027, proposed WAC 480-100-650 (3)(a) requires utilities to provide an attestation for the previous calendar year specifying that the utility did not use any coal-fired resource owned or under contracts longer than one month to serve Washington retail electric customer load. This requirement begins in 2027 because each "utility must eliminate coal-fired resources from its allocation of electricity" by December 31, 2025.[35] For rate-making purposes, allocation of electricity is defined as the costs and benefits associated with the resources used to provide electricity to a utility's Washington retail electricity consumers.[36] These statutory requirements, taken together with the definition of coal-fired resource in RCW 19.405.020 and the administrative penalties in RCW 19.405.090 (1)(a), mean that if a utility owns a coal-fired resource or buys electricity under a contract longer than one month that is generated by coal-fired resources, the utility may not pass on the costs of that power to consumers, or use those resources to meet load.[37]

35 RCW 19.405.030 (1)(a). For a discussion of the definition of "allocation of electricity," see Section III.E.1., *supra.*

36 RCW 19.405.020(1).

37 RCW 19.405.090 (1)(a).

93 The coal attestation requirement begins in 2027. As discussed above, the commission expects to provide additional guidance on the specifics of this requirement before that time through the rule making required by RCW 19.405.130. That rule making will also provide guidance on the issue of the "use" of electricity under RCW 19.405.040(1).

94 PacifiCorp and AWEC both argue that the attestation described in the rule goes beyond the requirement in RCW 19.405.030. As we have discussed in Section III.E.1., we disagree with the view that RCW 19.405.030, or chapter 19.405 RCW generally, require *only* the exclusion of these resources from rates. Public counsel, NWEC, and Renewable Northwest all support attestation, either as is, or with small changes.

95 We further clarify that the attestation required in the proposed rule does not address electricity generated by coal-fired resources purchased under contracts of one month or less. The exclusion in the definition of coal-fired resource recognizes that the source of the power can be known *after* the time of purchase through the utility's fuel mix report.[38] The utility must exercise due diligence to discover after the fact whether coal-fired resources under contracts of any length generated the electricity used to meet load.[39] The attestation must affirm that the utility did not knowingly purchase any electricity from coal-fired resources.[40] The commission expects that enforcement of the removal of coal owned or under contract for longer than one month will also be addressed in general or power-cost-only rate cases. The detailed work needed to resolve this issue will also occur in the rule making required under RCW 19.405.130.

38 See RCW 19.405.020 (7)(b)(i) ("'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.")

39 Washington investor-owned utilities rely on bilateral contracts of less than one month for as much as twenty-five percent of their power. In addition, deliveries under most wholesale contracts, even those longer than one month, typically do not specify the source of the power. This is because the Western Electricity Coordinating Council allows utilities to buy and sell a system mix similar to the offering from Bonneville Power Administration. Under the status quo, utilities do not know ahead of time whether they are receiving coal-fired electricity on an hourly, daily, monthly, or even annual basis. Nevertheless, they can calculate a system mix, apply the resulting percentages to the power they purchase as system mix, and arrive at an answer after the year end.

40 The utility cannot knowingly purchase coal-fired resources in any circumstance and recover the costs from consumers. The exclusion in the definition of coal-fired resource is two-pronged. The purchase must be less than one month, *and* the source must be unknown at the time of entry into the transaction to procure the electricity.

96 Stakeholder comments on the elimination of coal from utility rates illustrate the complexity of this issue. The commission must continue to consider and revise as necessary the best way to implement the requirement in RCW 19.405.030 to eliminate coal from the allocation of electricity. The attestation in the proposed rule is an important step toward accomplishing that goal.

F. Relief from Statutory Penalties – Electric System Integrity and Incremental Cost.

97 In CETA's finding and intent section, the legislature stated that Washington can achieve the goals in the bill while "maintaining safe and reliable electricity to all customers at stable and affordable rates."[41] The legislature included provisions in CETA that ensure both the integrity of the electric grid and the affordability of customer rates. We will address each in turn.

41 RCW 19.405.010(4).

1. Electric system integrity.

98 RCW 19.405.090 (3) and (6) describe circumstances under which the commission may relieve an investor-owned utility of an administrative penalty. One basis for relief is if the utility's compliance with CETA would have compromised or resulted in conflicts with the integrity of the electric grid. The administrative process for making this determination is straightforward - subsection (3)(a) allows the commission, after a hearing, to relieve a utility of an administrative penalty. The commission may take this action on its own motion or a utility may request relief.

99 Specifically, a utility may seek relief under RCW 19.405.090 (3)(a)(i) and (ii), if, after taking all reasonable measures, compliance with the statute is likely to result in conflicts or compromises to its obligation to comply with mandatory reliability standards, violate prudent resource adequacy standards, compromise the integrity of the electric grid, or if the utility is unable to comply due to reasons beyond its control. Subsections (3)(b) and (c) describe the length of time the commission may relieve the utility of its compliance obligation and what type of guidance the commission may provide the utility. Subsection (6) describes some of the conditions that are outside the utility's control.

100 We conclude that the proposed rules do not need to expand on this procedure for seeking relief from CETA penalties as the meaning and application of statutory terms relating to system integrity will depend on the specific facts of each case. We find that the statutory language is sufficient given the wide range of circumstances in which relief from an administrative penalty could be justified. Thus, we do not prescribe specific standards on reliability relief in the proposed rules.

2. Incremental Cost: *WAC 480-100-660.*

101 The legislature's intent in CETA is that electric utilities should transition to one hundred percent clean electricity while maintaining affordable, stable rates.[42] To that end, RCW 19.405.060(3) provides that a utility should be considered compliant with RCW 19.405.040(1) and 10.405.050(1) [19.405.050(1)] if it meets a certain cost threshold or the annual incremental cost of compliance. The statute does not define "incremental cost" but provides guidance and requires the commission to establish by rule a methodology for determining the annual incremental cost of compliance. Proposed WAC 480-100-660 incorporates this statutory requirement. A utility's incremental cost of compliance is a calculation that determines which annual costs the utility incurred for the purpose of complying with RCW 19.405.040 and 19.405.050.

42 *See* RCW 19.405.010(4) ("The legislature finds that Washington can accomplish the goals of chapter 288, Laws of 2019, while … maintaining safe and reliable electricity to all customers at stable and affordable rates.")

102 CETA obligates utilities to meet the requirements of the law at the lowest reasonable cost.[43] A utility's reliance on the incremental cost of compliance to satisfy its obligations is an alternative pathway. Accordingly, we do not expect incremental cost to be the default for compliance through 2045 and beyond. The commission expects utilities to immediately begin making investments to achieve their future statutory obligations and discourages utilities from using the incremental cost compliance pathway to delay investment in the early years of implementation or from waiting until deadlines approach before making investments. The commission will review the utility's progress of compliance during the approval of each CEIP and clean energy compliance report.

43 *See* RCW 19.405.010, 19.405.040 (6)(a)(i), 19.405.050 (3)(a), 19.405.060 (1)(c)(ii).

103 In future proceedings, the commission will base its decisions regarding incremental cost on the specific facts in the record, as well as our wealth of experience enforcing similar statutory requirements. Through enforcement of similar statutory requirements, the commission has acquired expertise in determining the proper methods, rules, and enforcement of statutes that require us to measure different types of incremental changes.

104 The statutory context of the incremental cost alternative compliance pathway: The incremental cost alternative compliance pathway is an integral part of the entire statutory scheme.

105 Generally, commenters that objected to the calculation of the annual threshold amount in proposed WAC 480-100-660 and Commissioner Balasbas in his dissent, state this calculation will result in significant rate increases. This objection assumes that utilities will be unable to meet their interim targets (which the utilities themselves propose, and the commission reviews for either approval or modification),[44] or the statutory standards (which the legislature found achievable while maintaining affordable rates), without reliance on the alternative incremental cost pathway.[45] The implicit argument appears to be that: (a) Utilities will regularly fail to meet their proposed targets; (b) utilities accordingly will need to rely on the incremental cost alternative compliance pathway; and (c) the annual threshold amount calculation will therefore have a substantial impact on customer rates. The commission disagrees with these assumptions. The primary and expected method of compliance with CETA is that utilities will meet their interim targets and the statutory standards in RCW 19.405.040(1) and 19.405.050(1) under CETA's lowest reasonable cost standard. We expect utilities to propose reasonable interim targets and meet the statutory standards of RCW 19.405.040(1) and 19.405.050(1) in a cost-effective manner. Like the legislature,[46] we believe this is achievable without imposing unreasonable costs on customers. In most cases, the actual costs of achieving those targets, not the annual incremental cost threshold amount, will determine the real cost impact of CETA on customer rates. We believe those actual amounts will be less than the incremental cost threshold amount calculated under WAC 480-100-660.

44 RCW 19.405.060 (1)(c).
45 *See* RCW 19.405.010(4).
46 *See* RCW 19.405.010(4).

106 Avista, PacificCorp, and AWEC raised concerns that the incremental cost calculation creates uncertainty and saddles the utility with responsibility for events outside of its control. This objection ignores the statutory authority granted to the commission to determine whether it should relieve the utility of any administrative penalties. As noted above, the commission has that authority in such circumstances.

107 Compliance pathway: Contrary to arguments raised by our colleague in his dissent, the incremental cost of compliance option is not a strict cost cap nor is it a floor, but, as stated above, an alternative compliance pathway. The statute does not prohibit a utility from spending, on average over four years, more than the incremental cost threshold on compliance.[47] However, the legislature intended to restrain the amount of spending a utility must invest to meet the statutory requirements.[48] If a utility relies on the incremental cost of compliance pathway, the utility should restrain and target its spending to just over the compliance threshold. We understand that holding costs to "just over" the compliance threshold is challenging, and we will allow for flexibility when reviewing the utility's costs for recovery in rates. Rather than requiring utilities to precisely spend a certain amount of money to use this compliance pathway, our intent is to signal that the utility should not spend any amount seeking compliance with the statutory requirements if it has met or excee-

ded the incremental cost of compliance threshold, barring other considerations.[49]

47 We note that because the commission determines the directly attributable costs of compliance with RCW 19.405.040 and 19.405.050 using the "alternative lowest reasonable cost portfolio of investments that are reasonably available" as required under RCW 19.405.060(5), limiting directly attributable costs to a specific amount would be functionally impossible. The costs of the baseline portfolio will, by necessity, not be known until the end of the implementation period, and thus whether directly attributable costs have exceeded the compliance threshold will not be known until after the implementation period.

48 RCW 19.405.010(2).

49 For example, a utility may have a time-limited opportunity for an investment that may be large, such as a generation asset, that would cause the utility to greatly exceed the compliance threshold. The commission would likely look favorably on such an investment if the utility can demonstrate that the investment is beneficial to the company and its ratepayers over the long run.

108 Incremental cost methodology: RCW 19.405.060(5) requires the commission and commerce to establish the "methodology for calculating the incremental cost of compliance … as compared to the cost of an alternative lowest reasonable cost portfolio of investments that are reasonably available." We interpret this to mean that the incremental cost methodology is a comparison of two portfolios. The first portfolio contains the specific actions and resources that the utility is taking. The second portfolio contains the counterfactual, *i.e.*, what the utility would have done but for the requirements in RCW 19.405.040 and 19.405.050. This second portfolio is referred to as the alternative lowest reasonable cost and reasonably available portfolio in the statute and in these rules,[50] but we refer to it in this order as the baseline portfolio.

50 RCW 19.405.060(5).

109 Determining which actions a utility would have taken in the baseline portfolio is an inherently difficult task because it requires imagining what the utility would have done in a timeline that does not exist. Parties may reasonably disagree on what would have happened. Nevertheless, we expect to resolve these disagreements during our review of each utility's CEIP.

110 Incremental cost calculation: The commission and commerce are adopting the same incremental cost calculation, and an approach that was supported by parties including PSE, Climate Solutions, NWEC, and Renewable Northwest. RCW 19.405.060 (3)(a) states that:

"An investor-owned utility must be considered to be in compliance with the standards under RCW 19.405.040(1) and 19.405.050(1) if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the interim targets established under subsection (1) of this section *equals a two percent increase* of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations *above the previous year*, as reported by the investor-owned utility in its most recent commission basis report …"[51]

51 Emphasis added.

As we explain below, the statute unambiguously directs us to adopt a calculation in which the annual threshold increases two percent above the previous year's spending. The legislature also found that the state can achieve the goals of CETA while maintaining stable and affordable rates,[52] directing commission and commerce to balance the pursuit of CETA's goals while moderating the rate impact.[53] The incremental cost calculation appropriately strikes the balance between giving the utilities enough room to make the required changes while restraining unfettered spending, as directed by the statute. Indeed, to adopt a lower calculation would not only be inconsistent with statute, but could restrain investment to a level that would undermine the statute's very purpose - to eliminate carbon emissions in the electricity sector. The commission and commerce adopt an approach that was

advocated by parties including PSE, Climate Solutions, NWEC, and Renewable Northwest, and is consistent with the legislative direction.

52 RCW 19.405.010(4).

53 "In ascertaining intent, we must look to the whole statute, rather than the single phrase at issue." In re Sehome Park Care Ctr., Inc., 127 Wn.2d 774, 778, 903 P.2d 443 (1995).

111 Avista suggests that the law requires only a flat two percent rate increase over the implementation period. We disagree. RCW 19.405.060 (3)(a) requires that the average annual incremental cost of meeting the standards or interim targets equals a two percent increase of the investor-owned utility's weather-adjusted sales revenue (WASR) to customers for electric operations as reported in the commission basis report above the previous year. The statute describes a calculation that is used for determining compliance - it does not reference a customer rate impact. Moreover, as we have noted, the statute requires a 2 percent increase of the investor-owned utility's revenue above the *previous year*, not over the implementation period.

112 PacifiCorp argues that the commission is misinterpreting the term "the previous year," which the company believes means the single year immediately preceding the CEIP. We disagree. We interpret the term "the previous year" to mean the year prior to each year within the implementation period. In other words, for each year within the implementation period, the WASR from the previous year's commission basis report applies. PacifiCorp's argument that the meaning of "the previous year" should be the year prior to the filing of the CEIP ignores that the calculation solves for the "average *annual* incremental cost," and therefore an "increase … above the previous year" is a reference to the prior year *for each year within the implementation period*, not the year before the implementation period began.[54]

54 RCW 19.405.060 (3)(a).

113 Public counsel argues that the statute does not require CETA-related cost increases from one year to be carried over into the following years. Furthermore, public counsel argues that "[i]f the statute intended the incremental cost calculation to carry cost increases over to the next year, it could have unambiguously stated that requirement."[55] In fact, as we have discussed above, the legislature did unambiguously state that requirement in requiring the calculation to reflect the utility's revenue "above the previous year." However, even assuming there is ambiguity, the converse of public counsel's argument is equally true, i.e., that the legislature would have unambiguously stated that the cost of investments only be considered during the first year the investment is made.

55 Public counsel comments at 3 (Nov. 12, 2020).

114 Utilities do not typically pay for large investments in a lump sum up front. Rather, the standard practice is for large investments to be financed over the period in which the asset is in service. Public counsel appears to take the position that ongoing costs incurred during subsequent years of an implementation period should not be counted as a directly attributable cost. This would severely undercount the actual directly attributable costs of implementation due to the way utilities pay for large investments.

115 We find that the calculation and methodology in the proposed rule is consistent with the statutory language and legislative intent, more so than the proposed alternatives. RCW 19.405.060 (3)(a) states that "the average annual incremental cost … equals a two percent increase … above the previous year." We interpret each word to have

meaning; none are superfluous.[56] Here, the words "increase" and "above" do not make sense if the interpretation is that the average annual incremental cost equals two percent of the year prior to filing the CEIP. We agree with the comments of PSE, Climate Solutions, NWEC, and Renewable Northwest that the legislature intended for the amount that the utility spends *each* year toward compliance to increase.[57]

56 *See e.g., Spokane Cty. v. Dep't of Fish & Wildlife,* 192 Wn.2d 453, 458, 430 P.3d 655 (2018) ("Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.")

57 In his dissent, Commissioner Balasbas states that PSE's comments in the December 9, 2020, Adoption Hearing audio recording at approximately 28:10, support the alternative statutory interpretation of incremental cost. In fact, PSE's statement at the adoption hearing contains support for the proposed rule stating, "[W]hile PSE questions the viability of the incremental cost provision as a compliance rule, we believe the compounding assumptions in the incremental cost calculation rule language *is consistent with the legislative intent. At the very least it is consistent with PSE's recollection of the discussions that occurred during the development of CETA regarding how this two percent cost cap would work." at 22:34.* (emphasis added)

116 Our colleague's interpretation, and the respective alternative calculations proposed by public counsel, Avista, and PacifiCorp, not only misinterpret the statute, but focus on the least amount of spending feasible at the expense of pursuing the statutory requirements.[58] The inconsistency with the statute should not be understated. Public counsel's and Commissioner Balasbas's proposal results in a one-time two percent increase over the WASR for the year preceding the CEIP, followed by small annual increases that equal 0.04 percent of the WASR in each of the following years. Further, Avista's and PacifiCorp's proposals do not allow for these smaller annual increases – they argue for a one-time two percent increase over the four-year period. These calculations do not increase the incremental cost threshold by two percent per year, despite our colleague's claims to the contrary in his dissent.[59] We do not believe that these interpretations reflect the legislative requirement for annual two percent increases in the spending threshold above the previous year, which build year over year. Next, PacifiCorp contends that the commission's calculation is incorrect because the utility cannot know what that exact "cost cap" is until several months after the CEIP period. PacifiCorp argues this is inconsistent with the statute and erodes the value of the "cap" as a customer protective measure. PacifiCorp further asserts that the draft rules ignore CETA's requirement that the CEIP be "consistent" with the "cost cap" by relying on a projection of WASR.

58 To illustrate this point, we refer to our colleague's dissent. Using his proposed calculation and his hypothetical cost estimate for PSE, that utility would spend only half of what it annually spends on its conservation programs to transform its generation fleet to be one hundred percent clean. This hardly seems to be aligned with the statutory direction.

59 Dissent, paragraph 12.

117 We disagree with each of PacifiCorp's points. First, as previous[ly] stated, the incremental cost of compliance is a compliance pathway, not a strict cap.

118 Second, PacifiCorp's interpretation is tied to its argument that the commission should determine that a utility may use the compliance pathway when it files its CEIP. PacifiCorp's argument assumes, incorrectly, that the statute implies that the calculation is based upon "projected" revenues. As outlined above, the statutory language is based upon actual, directly attributable costs used to determine compliance, not projections. The calculation for determining the compliance pathway should use actual WASRs. We thus require utilities to use the WASR for each year of the CEIP when each utility files its compliance report, at which time the utility may seek to use the compliance pathway.

119 Relying on projections from the beginning of the implementation period to determine compliance would not be consistent with statute. RCW 19.405.060 (3)(a) states: "All costs included in the determi-

nation of cost impact must be directly attributable to actions necessary to comply with the requirements of RCW 19.405.040 and 19.405.050." Reliance on a projected cost that the utility may never actually incur would not be consistent with this requirement. The same is true for the baseline portfolio. The baseline portfolio is described as "an alternative lowest reasonable cost portfolio *of investments that are reasonably available*."[60] Again, relying on a projected cost of an investment that in fact may not be reasonably available during the implementation period would be inconsistent with the statutory description of the baseline portfolio.

60 RCW 19.405.060(5) (emphasis added).

120 Third, the proposed rules ensure the CEIP is consistent with the incremental cost of compliance pathway. The commission will not determine if the utility may use the incremental cost of compliance pathway until the company has filed its clean energy compliance report and demonstrated that its spending equaled or exceeded the threshold. Proposed WAC 480-100-660(4) requires utilities to file a projected incremental cost with their CEIPs. When a utility files its CEIP it will not have perfect foresight for the next four years, but the utility should rely on reasonable assumptions of key underlying inputs (revenue, load growth, capex spending, power costs) to make appropriate estimates. Planning for a future with some risk is a fundamental condition of any business, nonprofit, or government. The commission expects that a utility's incremental cost of compliance estimate would be consistent with its recommended specific actions, specific targets, and interim targets that it submits to the commission for approval. Accordingly, the specific actions, specific targets, and interim targets should not require the utility to spend an amount that approaches its incremental cost estimate; to the contrary, as we stated above, CETA requires utilities to meet the statutory requirements at the lowest reasonable cost. However, the commission will not determine if the utility equaled or exceeded the incremental cost of compliance based on "projected" costs, but rather on the actual costs filed in the utility's compliance report.

121 We share the concerns expressed by Avista, AWEC, PacifiCorp, and public counsel related to the potential rate impacts to customers should a utility rely on the incremental cost compliance pathway. However, as we note above, the incremental cost is an alternative, not the primary, pathway for compliance, and is not a strict cost cap. Utilities should be planning to meet the statutory requirements at the lowest reasonable cost, not relying on the incremental cost of compliance pathway as the default method of compliance. The legislature found that meeting those requirements would be feasible while maintaining stable and affordable rates.[61]

61 *See* RCW 19.405.010(4): "The legislature finds that Washington can accomplish the goals of chapter 288, Laws of 2019 while … maintaining safe and reliable electricity to all customers at stable and affordable rates."

122 Fourth, proposed WAC 480-100-660 (5)(c) requires each utility to update its verifiable and material inputs in the alternative reasonable cost and reasonably available portfolio when it files its clean energy compliance report. PSE contends that requiring utilities to update the baseline using the portfolio optimization model has numerous flaws, including requiring the commission to make periodic and successive determinations of what the utility would have implemented absent CETA. AWEC, Avista, and PacifiCorp argue that a retrospective review puts too much risk on the utilities. AWEC asks the commission to judge if "the utility's forecasts and assumptions were reasonable

at the time it made them in the CEIP, just as a utility's prudence is determined based on what it knew when it made the investment decision."[62]

62 AWEC Comments ¶ 8 (Nov. 12, 2020).

123 We disagree that requiring the utility to update its inputs is a flaw. Utilities regularly update inputs of previous analysis within a commission proceeding, such as when a utility refiles its power cost baseline during a general rate case.

124 Additionally, although an after-the-fact review creates uncertainty for the utilities, the commission cannot remove all uncertainty. Rather, the commission must strive to balance the needs of the utility and the public, and we believe this decision strikes an appropriate balance. The commission can only determine whether a utility actually met the spending requirements to use the incremental cost compliance pathway with a baseline portfolio that includes, to the extent possible, an accurate representation of what the utility's portfolio would have cost.

125 Although calculating the incremental cost of compliance is not a prudence finding, many of the same facts will be at issue when the commission reviews prudency. In both prudency review and the incremental cost calculation, sensible regulatory oversight demands that we evaluate the utility's actual actions – not its plan.

126 As stated above, CETA requires a cost to be actually incurred in order to be considered directly attributable. The reasonableness of the decision to make the investment is not evaluated when determining incremental cost. Because the utility will be reporting its actual costs based on observed inputs (such as the price of natural gas) to identify the actual incremental cost most closely, the utility should update the inputs and assumptions it made in the baseline when it filed its CEIP. The rules require the updates to be both verifiable and material. The commission, of course, retains its discretion to determine if an input is both verifiable and material during its review of the clean energy compliance report.

127 Directly attributable costs: The commission received comments on if and how SCGHG should be used for calculating the incremental cost of compliance. Avista, PacifiCorp, and PSE argued throughout the rule making that the inclusion of SCGHG in the baseline portfolio inflates the rate impact to customers. Climate Solutions, NWEC, and Renewable Northwest have countered that the inclusion of SCGHG in the law is in sections outside of RCW 19.405.040 and 19.405.050, and therefore should be included in the alternative portfolio used as the counterfactual in the incremental cost.

128 We require the utilities to include SCGHG in the baseline portfolio for calculating the incremental cost of compliance in RCW 19.405.060(3). CETA uses the phrase "lowest reasonable cost" throughout chapter 19.405 RCW but does not define it. That term is defined in the IRP statute, RCW 19.280.020(11), which requires utilities to include "the cost of risks associated with environmental effects including emissions of carbon dioxide."[63]

63 In the 2017 IRP acknowledgment letters to the three utilities, the commission wrote that the utilities should incorporate the cost of risk of future greenhouse gas regulation in addition to known regulations when they develop the preferred portfolio, and suggested the utilities use a SCGHG from the same source as used in the law.

129 We find that including SCGHG in the baseline portfolio is required by statute.[64] Under RCW 19.280.030 (a)(i) and (iii), a utility is required to include SCGHG as a cost adder when "selecting and evaluating" intermediate and long-term resource options, as well as con-

servation policies, programs, and targets. Because these subsections would still be statutory requirements but for RCW 19.405.040 and 19.405.050, SCGHG must be included in the baseline portfolio.

64 In his dissent, Commissioner Balasbas takes issue with the inclusion of SCGHG in the baseline portfolio, stating it, "artificially inflates the baseline portfolio and the costs of non-renewable resources," because SCGHG should be, "a 'directly attributable' cost of complying with CETA." Dissent at ¶ 5-6. We disagree and note that emissions are not artificial – they are real. SCGHG recognizes those costs by correctly internalizing externalities in the baseline portfolio.

130 We do note that the requirement for utilities to ensure all customers are benefiting from the transition to clean energy, as well as the other requirements set out in RCW 19.405.040(8), are explicitly part of the costs to implement RCW 19.405.040 and should be considered a directly attributable cost of compliance. Accordingly, these costs are not included in the baseline portfolio.

131 While the phrase "selecting and evaluating" in RCW 19.280.030 (a)(i) and (iii) could be read to mean selection only within IRP and not in actual investment decisions, RCW 19.280.030 (a)(ii), which states that SCGHG should be included when developing IRPs and CEIPs, contradicts that interpretation. Given that context, if RCW 19.280.030 (a)(i) and (iii) were in fact merely intended as planning requirements, not required for actual investing decisions, then RCW 19.280.030 (a)(ii) is redundant. We decline to so construe the statute. Consistent with our interpretation of the legislature's intent, we include SCGHG in the baseline portfolio's definition.

132 In enacting CETA, the legislature both amended chapter 19.280 RCW and created chapter 19.405 RCW. The IRP and CEIP processes are closely interrelated. The most reasonable statutory interpretation is that the term "lowest reasonable cost" has the same general meaning in both statutes.[65] Finally, although the phrase "social cost of greenhouse gas emissions" appears only in RCW 19.280.030, the calculation of cost for greenhouse gas emissions, including the effect of emissions, applies throughout CETA.[66] This is yet another indication that SCGHG was intended to have implications outside of IRP. The proposed rules, therefore, define the baseline portfolio's reference to "lowest reasonable cost" to include SCGHG in the same manner required under chapter 19.280 RCW.[67]

65 *See Am. Legion Post No. 149 v. Dep't of Health,* 164 Wn.2d 570, 588, 192 P.3d 306 (2008) ("This court assumes the legislature does not intend to create inconsistent statutes. Statutes are to be read together, whenever possible, to achieve a harmonious total statutory scheme which maintains the integrity of the respective statutes."); *see also Bainbridge Island Police Guild v. City of Puyallup,* 172 Wn.2d 398, 423, 259 P.3d 190 (2011) ("Statutes *in pari materia* should be harmonized so as to give force and effect to each and this rule applies with peculiar force to statutes passed at the same session of the Legislature") (emphasis added).

66 RCW 80.28.405.

67 *See Cornu-Labat v. Hosp. Dist. No. 2,* 177 Wn.2d 221, 232, 298 P.3d 741 (2013) ("If, after looking to the dictionary, the meaning of a term is still unclear, its meaning may be gleaned from related statutes which disclose legislative intent about the provision in question."); *see also Phillips v. City of Seattle,* 111 Wn.2d 903, 908, 766 P.2d 1099 (1989) ("An agency's definition of an undefined statutory term should be given great weight where that agency has the duty to administer the statutory provisions."); *Taylor v. Burlington N. R.R. Holdings, Inc.,* 193 Wn.2d 611, 627, 444 P.3d 606 (2019) ("A court must give great weight to the statute's interpretation by the agency which is charged with its administration, absent a compelling indication that such interpretation conflicts with the legislative intent") (quoting *Marquis v. City of Spokane,* 130 Wn.2d 97, 111, 922 P.2d 43 (1996)).

133

G. Public Participation.

134 A utility's consultations with staff and advisory groups, and opportunities for public participation, are essential to the development of effective IRPs, two-year progress reports, CEIPs, and biennial updates. As a matter of policy, the commission prefers that utilities engage the public in the resource planning processes currently reflected in WAC 480-100-238, adopted in 2006, and prior versions of IRP rules, which these rules replace.[68] Meeting the standards of RCW 19.405.040(8)[69] requires community engagement to determine how utilities will ensure that all customers are benefiting from the transition

to clean energy, with particular emphasis on the needs of highly impacted communities and vulnerable populations.

68 Docket UE-030311.

69 RCW 19.405.040(8) states: "In complying with this section, an electric utility must, consistent with the requirements of RCW 19.280.030 and 19.405.140, ensure that all customers are benefiting from the transition to clean energy: Through the equitable distribution of energy and nonenergy benefits and reduction of burdens to vulnerable populations and highly impacted communities; long-term and short-term public health and environmental benefits and reduction of costs and risks; and energy security and resiliency."

135 We recognize that utilities have different service territories, varied customer needs, and particular public involvement processes, and that the administrative aspects of utilities' public involvement efforts will be different from company to company. However, the rules we adopt in this order are intended to ensure that utilities administer their individual processes with a similar overarching ethos ―one of accessibility, transparency, responsiveness, and clarity. It is in the best interests of utilities, customers, and stakeholders to work collaboratively and proactively through the difficult challenges ahead in implementing CETA. The proposed rules provide a framework for utilities to apply those processes while offering flexibility to fit their particular needs and circumstances.

1. Advisory groups: *WAC 480-100-630, 480-100-655.*

136 Proposed WAC 480-100-630, 480-100-625 and 480-100-655 rely on the use of advisory group input in the development of, and reporting on, IRPs and CEIPs, as well as associated updates. As previously stated, this process is designed to meet the standards for customer benefit established in RCW 19.405.040(8) in addition to existing expectations for public participation in IRP planning. Throughout this rule making, the commission heard from utilities and stakeholders alike on the benefits and challenges associated with advisory group structures.

137 The benefits of advisory groups include opportunities for deeper conversations with a variety of interested stakeholders on important topics. This provides opportunities to address potential issues and concerns with a plan prior to the utility submitting it to the commission, potentially reducing the need for future adjudication. The challenges include, but are not limited to, the administration of groups; gatekeeping membership to advisory groups; the lack of sincere engagement some group members may see in utilities' efforts; the lack of sincere engagement some utilities may see in some group members' efforts; arguments about how much advisory group input should be reflected in final decisions presented in plans; and lack of trust and transparency in the advisory group process.

138 The comments reflect such challenges, which stakeholders and utilities have experienced in varying degrees. But these challenges do not discount the benefits that can be realized by meaningful and inclusive public engagement through an advisory group process.

139 Utilities and advisory group members alike will need to work on and through these challenges as we implement CETA.

2. International Association for Public Participation Framework: *WAC 480-100-630, 480-100-655, 480-100-610, 480-100-625.*

140 In efforts to address the challenges of advisory groups, some commenters, including Western Grid Group, Sierra Club, Vashon Climate Action Group, NWEC, and WEC, have advocated that the commission include in its rules all or parts of a public participation framework developed by the International Association for Public Participation (IAP2). For example, commenters have recommended adopting IAP2-specific definitions for the words "inform," "consult," "involve," and "collaborate." Some commenters have also suggested requiring utilities to

orient their planning practices to one of the IAP2-defined planning levels, such as "involve" or "collaborate."

141 We appreciate commenters' desire for clarity around minimum expectations for utility and public interaction, as well as clarification regarding how public input can or should influence a utility's decision. We nevertheless decline to adopt the IAP2 framework and definitions in the proposed rules. The commission views IAP2 guidance as one of a number of tools utilities can use to advance their efforts in public involvement.

142 IAP2 can provide helpful guidance to utilities in determining public involvement needs for individual decision points in their planning processes. However, IAP2 definitions should not be used as blanket promises of participation levels without considering the specific decisions that the responsible entity must make. Selecting an appropriate level of participation for a particular decision requires careful consideration by the decision-maker. Further, IAP2 guidance is not the only public participation framework available, and we decline to elevate one framework over others without a thorough evaluation of all options. Finally, direct adoption of IAP2's definitions of words such as "inform," "consult," "involve," and "collaborate" would unnecessarily affect the meaning of these otherwise common terms and restrict the commission's ability to use them in other parts of the rules.

143 Proposed WAC 480-100-630(1) and 480-100-655(1) provide the minimum expectations for a utility's public involvement with its advisory groups. Utilities must consider public input, for example, through modeling scenarios and sensitivities suggested by advisory group members. Additionally, utilities must document how they use public input, which means communicating how public input was considered and addressed both to the commission and to those who provided it. Utilities may use this specific advisory group guidance as a starting point for other types of public participation.

144 The decisions regarding how, where, and when to incorporate public input in plan development are largely the prerogative of the utility, with the exception of developing customer benefit indicators around, for example, energy and non-energy benefits as discussed in proposed WAC 480-100-610 (4)(c). Utilities are ultimately responsible for defending a plan's reasonableness before the commission. Given the commission's strong preference that utilities engage the public in the plan development process, we expect that plans will demonstrate that a utility took appropriate actions to sufficiently solicit, document, and consider public input. To a large extent, we view advisory groups as an appropriate venue for early resolution of issues that later come before the commission in adjudicated proceedings.

145 Utilities are required in proposed WAC 480-100-630(2) to provide advisory group members with completed presentation materials no less than three business days in advance of each advisory group meeting discussing an IRP. This requirement ensures advisory group members, some of whom may participate in a nonprofessional capacity, have sufficient time to digest meeting materials and can participate effectively in meetings. We recognize that advisory group members may have differing levels of experience with utility planning and may have different barriers to participating in the planning process. Utilities should strive to provide members of their advisory groups with informational materials as far in advance of meetings as necessary to allow for meaningful discussion of those materials.[70]

[70] TEP pointed out that provisions for providing meeting materials in advance to advisory groups were not included in proposed WAC 480-100-655 regarding CEIPs, even though this provision had been included in previous iterations of the draft rules. This was an oversight due to a clerical error made during a reorganization of the rule's public participation sections. The commission's intent in the proposed rules was to require utilities to provide completed presentation materials for each advisory group meeting, including those discussing a CEIP, at least three business days in advance. The commission modifies proposed WAC 480-100-655 (1)(g) to clarify and reflect this intent.

146 The commission offers the public involvement process in proposed WAC 480-100-625, 480-100-630, and 480-100-655 as a guiding flexible framework for utilities to use in outlining their own plans. With the exceptions noted in this order, the commission generally declines to adopt prescriptive requirements in the proposed rules for the administration of public involvement, methods of consensus building, or requirements for how public involvement impacts final decision-making. These decisions are for the utilities to make and to defend. However, in these rules, we require utilities to clearly document and communicate decision-making on these issues to both those participating in the advisory group process and the commission.

3. "Public" vs "advisory group member": *WAC 480-100-630, 480-100-655.*

147 Several participants in this rule making have responded to the proposed rules with concerns about a perceived reduction in public participation elements, particularly where those rules have substituted the term "advisory group member" for "public" in prior drafts. We clarify that these rules do not reduce the role of public participation in either the CEIP or IRP. Rather, the proposed rules clarify the roles of advisory group processes and other forms of public engagement. Additionally, the proposed rules set expectations regarding how utilities consider input from advisory groups and communicate utility consideration of that input.

148 We understand a utility's primary method of engaging the public and stakeholders in IRP development is through the utility's advisory groups. Proposed WAC 480-100-625 and 480-100-630 clarify our expectations of utility engagement with IRP advisory groups. Proposed WAC 480-100-655(1) extends those expectations to advisory groups required for the CEIP development process. These clarifications in no way prohibit utilities from engaging the public in different, additional ways, which the commission encourages.

149 Advisory group public input processes, such as those in proposed WAC 480-100-625, 480-100-630, and 480-100-655, are inherently limited to selected or self-selected representative members of the public. Loosely termed as "advisory group members," these representatives are differentiated from the wider public made up of all utility customers, community members, and others who may be interested in a utility's business. Advisory groups often include representation from stakeholders who regularly engage with the utility, such as public counsel and staff, but the distinction between the wider public and members of an advisory group is otherwise fluid. Participation in an advisory group is predicated largely on a group or individual's interest and willingness to commit time and effort to an advisory group process.

150 The proposed rules focus on advisory groups through the outline of an IRP's public process in proposed WAC 480-100-630; the creation of an equity group to advise utilities on equity issues in proposed WAC 480-100-655 (1)(b); and the inclusion of existing and new advisory groups in the CEIP process in proposed WAC 480-100-655 (1)(a). These provisions, however, do not discount the importance of involvement from the wider public. Nor do the proposed rules indicate a preference for gatekeeping the membership of an advisory group. Advisory group membership should be broadly available to the public-at-

large. The general public should always have the ability to watch and listen to conversations taking place in advisory groups, if not directly participate in them.[71]

[71] Under Docket UE-011571, *Agreed Modifications to Electric Settlement Terms for Conservation,* paragraph 8, filed September 3, 2010, which was first developed in 2002, *membership* in PSE's conservation advisory group is "by invitation." However, any interested party may attend PSE's conservation advisory group meetings. PSE's conservation advisory group is unique; other utilities do not limit membership.

151 Utilities will ultimately determine the membership, agenda, and workplan for an advisory group, but we direct utilities to ensure they are responsive to outside input. Membership of the advisory group must be broad and representative of the various individuals and formal and informal organizations interested in utilities' plans. We expect utilities and stakeholders to manage issues within the advisory group without commission intervention. This includes matters regarding access to information, the behavior of the utility or stakeholders, obstruction of conversation on the part of a utility or stakeholder, incivility or disruptiveness, and participation by unrepresented groups or individuals with an interest in plan development. The commission expects all participants to work together cordially and constructively.

4. Public participation plan: *WAC 480-100-655, 480-100-625.*

152 Utilities' efforts to encourage and facilitate broader public engagement must be outlined in their public participation plans required in proposed WAC 480-100-655(2) and may be included in the IRP workplan described in proposed WAC 480-100-625 if specific to the IRP process.

153 The commission anticipates that engagement in IRPs and CEIPs will likely begin to overlap as public involvement in planning continues. The CEIP public participation plan covers a two-year period for CEIP development and implementation, during which time utilities will also be engaged in IRP development. In time, the CEIP public participation plan may begin to include elements for integrated resource planning, particularly as they relate to equity needs. We view the public participation plan as inherently flexible—it will both document work conducted during the period before submission of the plan and outline forward-thinking efforts for public involvement through the period. We expect the utilities and stakeholders to work together in the coming years to further refine public participation plans.

5. Comment summaries: *WAC 480-100-625, 480-100-630, 480-100-655.*

154 Proposed WAC 480-100-625, 480-100-630, and 480-100-655(1) establish minimum expectations for utilities to work with the members of their advisory groups. This order and the proposed rules promote advisory group access to the public-at-large. A key element of engagement is communicating and responding to public inquiries or suggestions.

155 We expect utilities to respect advisory group members' investment of time and resources to IRP and CEIP development by fully responding to the merits of group member suggestions, but we also understand the need for efficiency. When responding to comments identified in form letters or emails on a particular topic, it is reasonable for utilities to respond with a single, complete response, identifying the number of such contacts. Similarly, it is reasonable for utilities to respond to similar, nonform suggestions with single, complete responses to each topical element as provided in proposed WAC 480-100-620(17), 480-100-625 (5)(d), and 480-100-655 (1)(i), but identifying the groups or individual providing comments.

156 Maintaining advisory group input and responses for integrated resource planning on a public website, as proposed WAC 480-100-625 (5)(d) requires and as some utilities already do, will provide stake-

holders and the public-at-large with a clear understanding of decisions the utility has made or topics the advisory group considered. We understand this is how PacifiCorp typically handles its communication of public input on integrated resource planning, and we find this model reasonable for all investor-owned electric utilities to track and respond to public input on integrated resource planning. In keeping these records in a condensed and organized space throughout the process, utilities will have done a large part of the administrative work needed to submit comment summaries with their IRPs, as required by proposed WAC 480-100-620(17). While final plans are utility documents and it is up to utilities to demonstrate their reasonableness, the effort of tracking and responding to public input will assist the commission in determining whether and how a utility's plans meet requirements of the rules and promote the public interest. We find that documentation demonstrating how a utility plans to meet or respond to customer needs, including numerical counts of form letters, will aid the commission in determining whether to acknowledge or approve final plans.

157 In total, the efficient management of documenting and considering public input is a reasonable expectation of any public involvement opportunity, especially one involving utility customers.

158 While proposed WAC 480-100-655 (1)(i) requires utilities to submit with their CEIPs and biennial updates a summary of advisory group comments and utility responses, that proposed rule does not require utilities to track and respond to CEIP public input on their websites. CEIP development may become more complicated, with multiple public input processes beyond just the advisory group structure. For example, WAC 480-100-655 (2)(a)(i) requires engagement specifically with vulnerable populations and highly impacted communities for the creation of and updates to customer benefit indicators and weighting factors for compliance with RCW 19.405.040(8). This type of engagement has a specific focus and will be targeted to specific communities with differing communication needs. While the commission does not require this input and engagement to be recorded on a utility's website, the utility may choose to use its website as the appropriate forum, and we expect utilities to clearly communicate to customers engaged in these efforts how their input was or was not used.

6. Equity advisory group: *WAC 480-100-655, 480-100-625.*

159 The commission has supported and continues to support public engagement in utility planning on topics ranging from low-income issues to conservation planning.[72] Equity concerns addressed by RCW 19.405.040(8) are cross-cutting, complicated issues that will require specific focus and attention by the commission, utilities, their customers, and stakeholders. Because compliance with RCW 19.405.040(8) is context-dependent, it requires engagement with communities, including highly-impacted communities and vulnerable populations, so that utilities are ensuring an equitable distribution of benefits. Therefore, the commission finds it reasonable that utilities create and engage with an advisory group on the equity components of implementing CETA in IRPs and CEIPs.

72 *In re Rejecting Tariff Sheets; Approving and Adopting Settlement Stipulation; Resolving Contested Issues; and Authorizing and Requiring Compliance Filing.* Dockets UE-170033 and UG-170034, Final Order 08, (Dec. 5, 2017); *In re Granting Joint Petition and Approving Modifications and Additions to Avista's Low-Income Rate Assistance Program Compliance Filing,* Docket UE-140188, Order 07, (June 25, 2015); *In re Authorizing Approval of Changes to the Company's Low-Income Rate Assistance Program,* Dockets UE-190646 and UG-190648, Order 01, (Aug. 29, 2019); *In re Approving and Adopting Settlement Stipulation; Requiring Subsequent Filing,* Docket UE-051090, Order 07, ¶ 25 (Feb. 22, 2006). *See also* WAC 480-109-110.

160 Creation of group: An early discussion in this rule making centered around whether the equity advisory group discussed in pro-

posed WAC 480-100-655 (1)(b) should exist at a state-wide level to discuss compliance with RCW 19.405.040(8), whether individual utilities should create their own groups, or whether equity should instead be represented across all existing, individual utility advisory groups without the creation of a new standalone group. The commission has determined that individual utility equity advisory groups would best address the varying issues and needs across utility service territories.

161 We understand that utilities are continuing to discuss whether they can comply with the requirements to create an equity group by merging the equity group with existing groups or otherwise incorporating equity across existing groups. A key consideration of the commission's approval of any proposal is representation: The requirements of developing an equity group or incorporating equity in existing groups would not be appropriately met if the representation of equity interests is diluted in such a proposed merged group. We encourage utilities and stakeholders to establish equity advisory groups to focus specifically on equity concerns, and to include equitable considerations in the work of utilities' other advisory groups. The work of the advisory groups should not be exclusive, but complementary, and utilities may find that holding meetings with all of a utility's advisory groups together to discuss interrelated or general issues is appropriate.

162 Some stakeholders, including Front and Centered and Climate Solutions, expressed concerns about placing the mandate for the creation of equity groups in the CEIP rules, saying that this placement might hamstring the usefulness of the group if, for example, it delayed its creation or engagement until the end of a planning cycle. To the contrary, we clarify that the creation of an advisory group is only a starting point for the group's work. Proposed WAC 480-100-625 (2)(b) pulls the new equity group into a role for IRP planning. Further, we encourage utilities to approach the role of equity groups broadly and to quickly begin forming and engaging with equity groups. We anticipate that the work of the newly established equity groups will be significant as utilities, customers, stakeholders, and the commission begin to implement CETA's equity mandates.

163 Invite versus encourage and include: In CR-101 comments, PSE recommended that the commission change the phrase "encourage and include" to "invite" related to the process of utility outreach in establishing equity advisory groups in draft WAC 480-100-655 (1)(b). The commission declines to make this change in the proposed rule. The decision to use the words "encourage and include" in the rule language was deliberate. Throughout the course of this rule making, we have heard from stakeholders regarding the important role community participation plays in the development of outcomes meant to address specific community needs, as well as certain social and economic barriers that, in the past, have limited the engagement of highly impacted communities and vulnerable populations. The word "invite" implies that only those organizations or individuals that a utility specifically requests may participate in the advisory group, implying that the utility may exclude others. Further, if a utility invites a group or individual to participate in an equity advisory group and the utility's invitation is declined or unanswered, the utility will need to reorient its efforts to develop community-specific guidance. By using the words "encourage and include" to describe the process of forming an equity advisory group, we intend that utilities will proactively reach out to a variety of community voices and reduce barriers to participation.

164 Equity group or intervenor funding: Public counsel and several other commentors have requested various funding mechanisms to ensure individuals or groups representing vulnerable populations and highly-impacted communities have the financial resources to engage in commission or utility processes. Most recently in its CR-102 comments, public counsel urged the inclusion of "basic requirement language in rule" as we adopt these rules with details of funding mechanisms and program design to be discussed with more deliberation among stakeholders and a commission policy statement. Public counsel's specific recommendation in its CR-101 comments suggested the commission require utilities to provide funding for both community-based organizations and individuals to participate in the equity advisory group process and that the commission administer this program. Other commenters including NWEC, Climate Solutions, Front and Centered, One America, Puget Sound Sage, Spark Northwest, Sierra Club, Audubon et. al., El Centro de la Raza, and Washington environmental council have recommended similar equity-focused funding or spending requirements such as requirements for intervenor funding, requirements for utilities to contract with community-based organizations, and requirements for funding mechanisms specifically focused on equity-related public participation, including advisory groups. At the outset, we have questions [about] whether the commission has authority to require such funding. We also have questions about how to determine levels of funding, which organizations would be eligible, which organizations would be excluded if funding is limited, and how any funding mechanism would be administered. We remain interested in additional conversations on these issues, but we decline to require any specific funding mechanism in these proposed rules.

165 Proposed WAC 480-100-655 (2)(b) requires utilities to reduce barriers to participation in utility processes, including those related to economic needs. In the future, as additional information comes forward during rule implementation and as conversations on these issues evolve, the commission may consider issuing additional guidance.

7. Draft IRP and progress report as part of public engagement: *WAC 480-100-610, 480-100-620, 480-100-625, 480-100-630, 480-100-655.*

166 Providing a draft IRP plan is a critical part of the public participation processes set forth in proposed WAC 480-100-625, 480-100-630, and 480-100-655. To ensure transparency, it is also important that the modeling and portfolio analysis leading to the draft IRP be as complete as practicable before filing to allow the public to comment on the company's presentation and provide meaningful public input on the draft IRP.[73] Advisory group participation during the IRP development process, where specific issues are often discussed individually, does not substitute for a thorough review of a substantially completed draft. Only once the plan is substantially complete can advisory group members understand the interactions between the different inputs to the IRP, and determine whether certain elements of the IRP are not sufficiently addressed. Thus, we expect the draft IRP will be substantially complete, containing to the extent practicable the preferred portfolio, CEAP and supporting analysis, and all scenarios, sensitivities, appendices, and attachments. We also find it reasonable to expect the draft plan and modeling to provide an accessible, clear, and transparent view of a utility's plans. A substantially complete draft will allow the public to effectively comment on the long-range IRP solution.

[73] Requiring a mostly complete draft to be filed prior to the issuance of a final document is common regulatory practice. For example, the Northwest Power and Conservation Council's power plan development process includes a two-stage process of issuing a draft plan, taking public comment, conducting the appropriate analysis to respond to public comment, and issuing a final plan. Further, 40 C.F.R. § 1502.9 governs the environmental impact statement (EIS), which occurs in a similar two stages. To the fullest extent practicable, a draft EIS must meet the requirements established for the final. Similarly, proposed WAC 480-100-625(3) outlines a two-stage process for the development of a utility's IRP, where the draft IRP should be substantially complete. The commission then hears comment at an open meeting, and the utility responds to comments in the final IRP.

167 As outlined in proposed WAC 480-100-620(17), the final IRP should address appropriate points and public input received after the utility files its draft IRP, including those received through the commission's open meeting public comment process.

168 In its comments related to the 2021 IRP cycle, PSE asserts the IRP is being developed on a schedule that does not allow for all IRP analyses to be completed in time for the draft submittal, with certain modeling components still in development. As outlined in proposed WAC 480-100-620 (11)(a), for the utility to determine its preferred portfolio, the utility must complete the modeling necessary to meet the clean energy transformation standards in WAC 480-100-610 (1)-(3) at the lowest reasonable cost. Lowest reasonable cost is defined in RCW 19.280.020(11), but in its essence, it addresses the utility's obligation to balance cost and risk. The utility must complete modeling and analysis to properly address 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. We understand the 2021 cycle is unique and the first under CETA directives, with accompanying modeling and timing challenges. We will provide flexibility in the first round of submissions. Looking ahead to future IRP cycles, the utility must consider the risks outlined in the statutory definition of lowest reasonable cost in its portfolio analysis and selection of the utility's preferred portfolio identified in its draft IRP. Further, after the 2021 cycle, the utility will have a few years to adjust its internal timelines to meet the new IRP schedule, including the draft IRP.

169 Two-year progress report. WAC 480-100-625(4). In response to the first discussion draft of the IRP rules released in November 2019, NWEC, Front and Centered, Climate Solutions, WEC, Vashon Climate Action Group, Sierra Club, Invenergy, and Northwest and Intermountain Power Producers Coalition (NIPPC), signaled opposition to the requirement of waiting four years in the utility planning process for the utility to file an updated IRP. Stakeholders voiced concerns that utility data may lag behind the best available technology and pricing.

170 In response to these concerns, proposed WAC 480-100-625 requires each electric utility to file an IRP every four years after the 2021 IRP, with a two-year progress report updating key inputs and outputs and accounting for significant changes to economic or market forces. However, the commission elects to retain the proposal to lengthen the time from two years to four years in between full IRPs. First, the IRP and CEAP inform the CEIP, necessitating alignment of the various plans. Second, the IRP will be a key input dictating the direction of the utility's CEIP, which is an action plan with greater significance than any such plan utilities have previously provided to the commission. Providing additional time between IRPs will allow utilities to continue to refine analyses and gain additional modeling expertise. We thus find it reasonable to reduce the regulatory burden on utilities by requiring less frequent filings. However, to address the parties' concern that resource cost data will become stale, pro-

posed WAC 480-100-625 (4)(a)(iii) requires the utility to update its resource costs during the two-year progress report.[74]

74 This commission addressed this concern with a change to the proposed rules in the second discussion draft rules filed on August 13, 2020.

171 Proposed WAC 480-100-625(2) outlines requirements for utilities to file workplans that include any expectations of work for a two-year progress report. Utilities are not required to file full workplans for two-year progress reports. Instead, utilities are directed to update their workplans, as discussed in WAC 480-100-625 (2)(g), if they anticipate significant changes. Utilities, staff, and stakeholders should work together to refine the two-year advisory group process as these proposed rules are implemented and as any issues arise with this process.

8. Data availability: *WAC 480-100-630, 480-100-655, 480-100-620, 480-100-640, 480-100-650.*

172 In plan and report filing: A utility is required to include appendices containing its data input files in native format when it files its IRP, two-year progress report, CEIP, and clean energy compliance report.[75] This requirement increases the transparency of the utility's plans and reports. RCW 19.280.030(10) supports increased transparency in the IRP process,[76] and these sections of proposed rules closely match the statute as well as the commission's current rules regarding confidential information.[77]

75 WAC 480-100-620(14), 480-100-640 (3)(b), 480-100-650 (1)(k).

76 RCW 19.280.030(a) provides, in part: "To maximize transparency, the commission, for investor-owned utilities, or the governing body, for consumer-owned utilities, may require an electric utility to make the utility's data input files available in a native format. Each electric utility shall publish its final plan either as part of an annual report or as a separate document available to the public. The report may be in an electronic form."

77 WAC 480-07-160; RCW 19.280.030(b) provides: "Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095."

173 A basic requirement of utility regulation is that the utility make available the inputs, data, and assumptions it uses when making its decisions or submitting proposals to the regulator. The commission, staff, public counsel, and other parties with a substantial interest must be able to understand why a utility took the actions it did, or proposed to take certain actions, and to determine independently whether those actions are in the public interest and represent the lowest reasonable cost option.

174 When a utility marks certain information as confidential under RCW 80.04.095, initially that information is only available to the commission and the attorney general's office. During an adjudicated case, other parties to which the commission has granted intervention also may gain access to that information through protective orders. RCW 19.280.030(9), however, authorizes the commission to acknowledge, but not approve, a utility's IRP, meaning the IRP is not subject to adjudication. Accordingly, the commission lacks the legal authority in the IRP process to compel a utility to share confidential information with interested persons other than staff and public counsel.

175 A utility may also designate as confidential certain information contained in its CEIP and clean energy compliance report. Again, only the commission and attorney general's office have immediate access to that information. Unlike an IRP, however, the commission may adjudicate a CEIP or clean energy compliance report. In any such adjudication, parties the commission allows to intervene may gain access to the confidential information under the terms of a commission protective order.

176 The commission strongly encourages utilities to minimize the amount of information designated as confidential in a IRP, CEIP, and

clean energy compliance report to allow interested persons access to as much information as possible related to those filings.

177 During plan development: Proposed WAC 480-100-630(3) and 480-100-655 (1)(h) lay out expectations for data availability to advisory groups during the development of IRPs, CEIPs, and their associated updates.

178 All nonconfidential information relevant to these plans and updates must be available to advisory groups, in an easily accessible format, on request and provided expeditiously throughout the advisory group process.

179 If a utility relies on confidential information during the plan development process, the utility must make this information, including data inputs and files, available to the commission in both native file format and in an easily accessible format.[78] Compliance with this element requires that the utility ensure that the commission can manipulate the data and the modeling files in analyzing the utility's actions. This may require the utility to provide cloud access to data and discuss access to modeling software, similar to prior arrangements.

78 Proposed WAC 480-100-630(3); proposed WAC 480-100-655 (1)(h).

180 During this rule making, stakeholders including Sierra Club and Vashon Climate Action Group asked the commission to require utilities to offer non-disclosure agreements (NDAs) with parties and advisory groups to share confidential information during the development of the IRP and after its submission to the commission.[79]

79 Coalition of Eastside Neighbors for Sensible Energy comments, page 5, September 11, 2020; Sierra Club comments, page 3, June 2, 2020; and Sierra Club comments, page 2, September 11, 2020.

181 While the commission does not compel utilities to sign NDAs, we recognize that this is an option for utilities to consider. The designation of confidential information is governed by statute.[80] Regardless, these provisions do not preclude utilities from volunteering NDAs to parties or advisory groups to facilitate discussions on sensitive issues in a timely manner, and the commission would support utilities in their choice to use such agreements as a tool to facilitate discussion with interested persons.

80 RCW 42.56.270, 80.04.095. These provisions are implemented in current commission rules WAC 480-07-160.

182 While plans are utility documents, it is in both the public interest and the utility's interest for the utility to be as transparent as possible. An IRP may not be adjudicated, but the inputs and assumptions used in the IRP will likely be key inputs and assumptions in a CEIP. A utility may elect not to share confidential information with advisory groups or parties in the IRP process that may have a substantial interest in the CEIP, update, and clean energy compliance report. However, utilities should recognize that withholding that information increases the likelihood that the subsequent filing will be adjudicated because parties to an adjudication have access to confidential information under the terms of a commission protective order.

183 We view the public involvement efforts contained in this rule as a minimum standard. Utilities can and, in certain circumstances should, make efforts to incorporate customer and stakeholder input that go beyond these requirements.

184 The commission anticipates the need for additional, flexible guidance as utilities navigate public involvement, the creation of new advisory groups on equity issues, and the iterative, cross-topical nature of resource planning under CETA. This guidance may be developed

in the coming months as specific issues are further discussed and addressed in upcoming workshops.

COMMISSION ACTION

185 **CHANGES FROM PROPOSAL:** The commission makes the following changes to the proposed rules in the text noticed at WSR 20-21-053:

WAC 480-100-605 "Indicator" definition and all uses of "indicator" in the rule: WAC 480-100-640 (4)(c) and (5)(c), 480-100-650 (1)(d)(i) and (1)(e), 480-100-655 (1)(b), 480-100-665 (2)(a)(i) and (2)(a)(ii), before indicator add "Customer benefit." Note that change in term requires moving the definition due to alphabetical order.

WAC 480-100-620 (11)(b), add "power" after "purchases, and" and delete "power" after "purchase."

WAC 480-100-620 (12)(h), insert citation "RCW 19.405.040 (1)(b)" after "under" and delete "RCW 19.405.090."

WAC 480-100-620(14), insert "and in an easily accessible format" after "RCW 19.280.030 (10)(a) and (b)" and before "as an appendix."

WAC 480-100-625 (2)(f), move (f)(i)-(iv) to a new subsection (5) titled "Publicly available information"; delete "a website managed by the utility" after "a link to" and before ", updated in a timely manner"; insert "the utility's website" after "a link to" and before ", updated in a timely manner"; delete "the following information:" after "makes publicly available"; insert "information related to the IRP, including information outlined in WAC 480-100-625(5)." after "makes publicly available."

WAC 480-100-630(1), insert citation "WAC 480-100-625(5)" after "and consistent with" and before ", the utility must communicate with advisory groups"; delete "WAC 480-100-625 (2)(f)" after "and consistent with" and before "the utility must communicate with advisory groups."

WAC 480-100-630(3), insert "used to develop its IRP" after "all of its data inputs and files" and before "available to the commission"; insert "nonconfidential" after "supporting documentation as well as" and before "data inputs and files"; insert "in an easily accessible format" after "advisory group member review" and before "upon request."

WAC 480-100-640, rename section as "Content of Clean Energy Implementation Plan."

WAC 480-100-640 (3)(b), insert "and in an easily accessible format" after "native format" and before "as an appendix"; delete ", as required in WAC 480-100-655 (1)(h)," after "native format" and before "as an appendix."

WAC 480-100-640 (4)(c), after "reduction of cost," add "reduction of risk."

WAC 480-100-640(5), after "must meet" add "and be consistent with."

WAC 480-100-650 (1)(k), insert "and in an easily accessible format" after "native format" and before "as an appendix"; delete "per WAC 480-100-655 (1)(h)" after "native format" and before "as an appendix."

WAC 480-100-650 (3)(e), insert "(e.g.," after "they were used" before "voluntary renewable programs"; delete "(i.e.," after "they were used" before "voluntary renewable programs"; delete "(, etc.)."

WAC 480-100-655 (1)(g), insert "(g) 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 up-

date materials as needed." after "CEIP filings before the commission," and before "The utility must make all of."

WAC 480-100-655 (1)(h), substitute "(g)" for "(h)"; insert "used to develop its CEIP" after "data inputs and files" and before "available to the commission"; insert "as well as non-confidential data inputs and files" after "supporting documentation" and before "must be available for advisory group review"; insert "in an easily accessible format" after "advisory group member review" and before "upon request."

WAC 480-100-655 (1)(i), substitute "(h)" for "(i)."

WAC 480-100-660 (6)(b), insert citation "RCW 19.405.040 (1)(b)" after "under" and delete "RCW 19.405.060 (3)(a)."

186 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR 20-21-053 with the nonsubstantive revisions listed above. We accept staff's explanations for changes as stated in Appendix A of this order. The following explains the remaining revisions.

187 The commission modifies proposed WAC 480-100-605 "Indicator" definition and all uses of indicator in the rule: WAC 480-100-640 (4)(c) and (5)(c), 480-100-650 (1)(d)(i) and (1)(e), 480-100-655 (1)(b), 480-100-665 (2)(a)(i) and (ii). General comments regarding confusion around the definition of "indicator" generated the change to further clarify the use of the term and allows for other types of indicators to be easily understood in the future.

188 The commission modifies proposed WAC 480-100-620 (11)(b) as a clarifying edit.

189 The commission modifies proposed WAC 480-100-620 (12)(h) to correct a statutory citation.

190 The commission modifies proposed WAC 480-100-620(14) to clarify the requirements and to make all data disclosure requirements consistent within the rule.

191 The commission modifies proposed WAC 480-100-640 to clarify the content of the section and to provide consistency with WAC 480-100-620 Content of an integrated resource plan.

192 The commission modifies proposed WAC 480-100-640 (4)(c) to correct an oversight of statutory requirements. The modifications require at least one customer benefit indicator for each element in RCW 19.405.040(8).

193 The commission modifies proposed WAC 480-100-640(5) to integrate "consistent with" CETA language found in multiple parts of the IRP and CEIP rules.

194 The commission modifies proposed WAC 480-100-650 (3)(e) to clarify examples.

195 The commission modifies proposed WAC 480-100-655 (1)(i) to accommodate rule reorganization of WAC 480-100-655 (1)(g).

196 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-100-600, 480-100-605, 480-100-610, 480-100-620, 480-100-625, 480-100-630, 480-100-640, 480-100-645, 480-100-650, 480-100-655, 480-100-660, and 480-100-665 should be adopted to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on December 31, 2020, as required in RCW 19.405.100(9).[81]

[81] These rules, in part, replace current WAC 480-100-238. Through administrative oversight, the CR-102 did not include repeal of that rule as part of this rule making. Accordingly, the commission is initiating an emergency rule making concurrent with adopting the final rules to provisionally repeal WAC 480-100-238, to be followed by an expedited rule making to finalize that repeal. The commission will undertake both of these rule makings in this docket.

IV. ORDER

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 12, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 12, amended 0, repealed 0.

THE COMMISSION ORDERS:

197 The commission adopts WAC 480-100-600, 480-100-605, 480-100-610, 480-100-620, 480-100-625, 480-100-630, 480-100-640, 480-100-645, 480-100-650, 480-100-655, 480-100-660, and 480-100-665 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on December 31, 2020.

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

DATED at Lacey, Washington, December 28, 2020.

Washington Utilities and Transportation Commission
David W. Danner, Chair
Ann E. Rendahl, Commissioner

SEPARATE STATEMENT OF COMMISSIONER BALASBAS CONCURRING IN PART AND DISSENTING IN PART

1 Today's order concludes a nearly eighteen-month process focused on implementation of CETA. I agree with my colleagues that the commission has fulfilled its statutory obligation under RCW 19.405.100 by adopting rules prior to January 1, 2021. I also support several provisions of the rules. However, I respectfully disagree with my colleagues and oppose adoption of one part of proposed WAC 480-100-605 Definitions, the entirety of proposed WAC 480-100-660 Incremental cost of compliance, and the entirety of proposed WAC 480-100-665 Enforcement. These sections of the rules run contrary to the legislature's intent and explicit direction to simplify utility compliance with CETA,[1] as well as accomplishing the goals of the law while maintaining safe and reliable electricity to all customers at stable and affordable rates.[2]

1 RCW 19.405.100(1).
2 RCW 19.405.010(4).

2 A new addition to the rules, proposed WAC 480-100-605 defines the "Alternative lowest reasonable cost and reasonably available portfolio."[3] Further defining this term beyond the statute is a necessary part of developing a methodology for calculating the incremental cost of compliance.[4] The term enables utilities to show a comparison of a CETA compliant resource portfolio and a non-CETA compliant resource portfolio (baseline portfolio). However, the definition in the rules (and therefore the portfolio comparison) becomes meaningless by including the social cost of greenhouse gases (SCGHG) in the baseline portfolio.

3 Proposed WAC 480-100-605 "'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 gasses in the resource acquisition decision in accordance with RCW 19.280.030 (3)(a)."

4 RCW 19.405.060 (3)(a).

3 Statute now requires utilities to use SCGHG as a cost adder for evaluating conservation strategies, developing the IRP and CEAP as well as evaluating and selecting intermediate and long-term resource options.[5] What is not clear, is whether the legislature intended to include SCGHG in the baseline portfolio. All three utilities and AWEC persuasively argued in their comments throughout this rule making that including SCGHG in the baseline portfolio lacks statutory support and will needlessly lead to higher costs for ratepayers.[6]

5 RCW 19.280.030 (3)(a).

6 Avista and PacifiCorp comments November 12, 2020, PSE and AWEC comments June 2, 2020.

4 The term "lowest reasonable cost" is not defined anywhere in chapter 19.405 RCW and is only defined in RCW 19.280.020(11) and again in proposed WAC 480-100-605. The language in both places requires a utility IRP analysis to consider in part "the cost of risks associated with environmental effects including emissions of carbon dioxide." While my colleagues used this language to justify a requirement for utilities to model SCGHG in their preferred portfolios in 2017 IRP acknowledgment letters, the plain words of the statute are not the same as SCGHG, which is a specific calculation outlined in RCW 80.28.405 enacted in 2019. Even the references to SCGHG in RCW 19.280.030 (3)(a) do not list the incremental cost calculation as an area where a utility must incorporate it as a cost adder.

5 Aside from the lack of statutory support, I believe the correct interpretation of statute shows that SCGHG is a "directly attributable" cost of complying with CETA. When using the incremental cost of compliance pathway, utilities must demonstrate that any costs be "directly attributable" to compliance with RCW 19.405.040 and 19.405.050.[7] SCGHG is a component of the 2045 planning standard in RCW 19.405.050 as demonstrated by AWEC's analysis of reading the requirements of RCW 19.280.030 (3)(a) and 19.405.050 together.[8] Including SCGHG in the baseline portfolio thus contradicts the intent and meaning of the statute and the first step toward weaking the incremental cost of compliance mechanism.

7 RCW 19.405.060(5).

8 AWEC comment on Draft Clean Energy Implementation Plan Rules, ¶ 11-15, June 2, 2020.

6 The current commission calculated SCGHG shows a cost of $68 per ton in 2020, increasing to $102 per ton in 2040.[9] This cost artificially inflates the baseline portfolio and the costs of non-renewable resources. Requiring inclusion of SCGHG in the baseline portfolio will ultimately lead to higher than necessary costs for ratepayers through the selection of more expensive resources. The inclusion of SCGHG in the baseline portfolio also makes a comparison to a CETA compliant portfolio meaningless, as the only real difference in the two portfolios is whether equitable distribution of benefits is included or not.

9 https://www.utc.wa.gov/regulatedIndustries/utilities/Pages/SocialCostofCarbon.aspx.

7 Turning to proposed WAC 480-100-660 Incremental cost of compliance, I am extremely disappointed and frustrated by the commission's action with this section of the rules. The sole purpose of the incremental cost provisions of CETA is to protect ratepayers from large cost increases to achieve CETA's goals of one hundred percent clean

energy by 2045. Specifically, the incremental cost of compliance statutory language says:

"An investor-owned utility must be considered to be in compliance with the standards under RCW 19.405.040(1) and 19.405.050(1) if, over the four-year compliance period, the average annual incremental cost of meeting the standards or the interim targets established under subsection (1) of this section *equals a two percent increase of the investor-owned utility's weather-adjusted sales revenue to customers for electric operations above the previous year, as reported by the investor-owned utility in its most recent commission basis report.*"[10]

10 RCW 19.405.060 (3)(a) (emphasis added).

8 The legislative sponsors of CETA referenced the incremental cost provision several times in floor speeches during legislative debate in 2019. The incremental cost provision was also described as a "cost cap" to protect customers from unreasonable rate increases to achieve the policy goals of the bill. A sampling of floor speeches from 2019 shows the importance of the incremental cost provision to the legislature and bill proponents:

"In doing so we want to be extremely cautious about the potential of any modest increase in rates."[11]

11 https://www.tvw.org/watch/?eventID=2019021584 February 28, 2019, Sen. Reuven Carlyle speaking in support of Amendment 89 lowering the incremental cost cap from 3% to 2% in the legislation beginning at 1:29:54.

"… the second challenge we took on is protecting our customers, our constituents, our ratepayers, to make sure that they were not bearing the brunt of transitioning off of coal, transitioning off of gas, and moving into a renewable clean energy grid and so we have protections in this policy to ensure that cost caps are in place that we are protecting ratepayers from shots to the system."[12]

12 https://www.tvw.org/watch/?eventID=2019041113 April 11, 2019, Rep. Gael Tarleton beginning at 53:36 .

"… we wanted to be sure that whatever law that we passed could be implemented without cost to ratepayers and that's why there's a strong cost cap in the bill …"[13]

13 https://www.tvw.org/watch/?eventID=2019041113 April 11, 2019, Rep. Joe Fitzgibbon beginning at 1:06:59.

9 Clearly, the legislature intended the incremental cost provision to protect ratepayers from unnecessarily large rate increases and provide rate stability due to enactment of CETA. When read in the full context of CETA's goals, the incremental cost of compliance pathway directly implicates customer rates. Further bolstering this conclusion is the highly unlikely circumstance that the commission would exclude from rates utility spending on CETA compliance.

10 The commission and commerce were charged with the task of adopting a methodology for calculating the incremental cost and thus implementing the legislature's intent to protect ratepayers.[14] I fail to understand how the methodology specified in proposed WAC 480-100-660 reflects legislative intent and therefore a correct interpretation of the statute.

14 RCW 19.405.060(5).

11 Sadly, the commission's methodology in these rules makes neither logical nor mathematical sense. The methodology in the rules incorrectly compounds the two percent WASR by adding an extraneous multiplier. I agree that the language implies some level of compounding, but the formula in the rules defies any method of compounding that I was taught in school. There is no mathematical way to justify this kind of compounding formula.

12 The math yields a spending threshold of over five percent per year instead of two percent per year. In other words, to claim compliance with the clean energy goals using the incremental cost pathway, a utility must increase CETA related spending (and therefore rates) by five percent per year to claim that it spent two percent per year. I struggle to understand how requiring utilities to spend more than double what the legislature specified makes any sense. Public counsel also correctly observed in their comments this methodology improperly inflates the incremental cost calculation.[15]

15 Public Counsel comments, ¶ 7, November 12, 2020.

13 On one hand this methodology may make sense to those who want to see as much utility spending as possible on clean energy. On the other hand, the typical utility ratepayer could now see rate increases of more than five percent per year on top of normal utility spending for safety and reliability of existing electric service infrastructure before the commission would entertain any kind of rate relief to achieve the clean energy goals in statute. This is not only irresponsible, but it renders the incremental cost of compliance pathway useless to the utilities and ratepayers. My colleagues believe utilities will end up spending less than the threshold amount for CETA.[16] I hope they are correct, but I am not optimistic that will be reality.

16 General Order 601, ¶ 105.

14 To illustrate the magnitude of the likely rate increases due to this methodology, Table 3 below shows a hypothetical calculation of PSE's incremental cost threshold under a straight two percent formula and the calculation in proposed WAC 480-100-660 using the company's 2019 commission basis report weather adjusted sales revenue (Year 0):

Table 3: PSE Comparison

	Weather-Adjusted Sales	2% of WASR	WAC 480-100-660
Year 0	$2,128,158,697	$42,563,174	$114,071,349
Year 1	$2,298,411,393	$42,563,174	$114,071,349
Year 2	$2,436,316,076	$42,563,174	$114,071,349
Year 3	$2,533,768,719	$42,563,174	$114,071,349
		$170,252,696	$456,285,397

Over four years, the two percent calculation adds up to an eight percent increase while the commission rule calculation is an increase of over twenty-one percent. Under either calculation, the amount of utility spending on clean energy will increase significantly. For additional context, PSE's 2019 electric conservation program budget was just under $84 million. These spending amounts are significant and will create burdens for ratepayers.

15 Ratepayer bill impacts of the commission's methodology are even more stark as shown in Table 4 below, which compares the bill increase for a residential ratepayer using 1000 kWh of electricity in a month if rates increased by two percent versus just over five percent:

Table 4: Bill Comparisons

	Current Monthly Bill	2%	WAC 480-100-660
Avista	$90.36	$92.17	$95.20
PacifiCorp	$86.97	$88.71	$91.63
PSE	$104.56	$106.65	$110.16

Using PSE as one example, bills could increase at minimum just over $2 per month or as high as $5.50 per month for compliance with CETA. These bills also do not include any additional rate increases just to maintain the current electric system. The incremental cost formula under proposed WAC 480-100-660 will lead to unnecessary and significant increases for ratepayers due to a flawed mathematical methodology and statutory interpretation. If the legislature wanted utilities to spend more than two percent annually or amounts higher than their annual conservation budget to be considered in compliance with CETA, they would have stated that in the statutory language.

16 A correct reading of the incremental cost statute yields a simpler and mathematically proper methodology that also respects legislative intent and validates the commission's role to protect ratepayers. The commission could have adopted the following methodology to calculate the incremental cost:

CEIP Incremental Cost Calculation = ($WASR_0$ × *2%*) + ($WASR_1$ × *2%*) + ($WASR_2$ × *2%*) + ($WASR_3$ × *2%*)

Where: $WASR_0$ = Commission Basis Report from most recent complete year prior to CEIP start date and $WASR_1$ = ($WASR_0$ × *2%*) which this same formula applies to $WASR_2$ and $WASR_3$

This formula appropriately adds two percent per year over the four-year compliance period (compounded) and gives utilities a better sense of what their minimum CETA spending amount would be to achieve compliance. It represents a consistent and reasonable reading of the incremental cost statute giving effect to the phrase "above the previous year." Further, it reflects PSE's recollection during legislative consideration of CETA of how the formula would work in practice.[17] Although this still has significant ratepayer impacts over time, it at least gives meaning to CETA's ratepayer protection provision.

17 December 9, 2020, adoption hearing audio recording at approximately 28:10.

To illustrate this alternative methodology, Table 5 shows a hypothetical PSE example using WASR from its 2019 Commission Basis Report:

Table 5: PSE Hypothetical

	Weather-Adjusted Sales	2% of WASR
Year 0	$2,128,158,697	$42,563,174
Year 1	$2,170,721,871	$43,414,437
Year 2	$2,214,136,308	$44,282,726
Year 3	$2,258,419,035	$45,168,381
		$175,428,718

17 I agree with my colleagues that utilities are expected to achieve the clean energy goals at the lowest reasonable cost without defaulting to reliance on the incremental cost pathway. However, the aggressive clean energy goals contained in statute will require significant amounts of new spending (and rate increases). It is not unreasonable to expect utilities to rely on the incremental cost pathway for compliance, especially if spending will lead to rate increases of more than two percent per year.

18 PacifiCorp correctly observes that implementation of CETA must contain *meaningful* cost containment.[18] Unfortunately, my colleagues' interpretation of the statute is not in the public interest. The incremental cost of compliance rule fails to achieve any meaningful cost

containment and will force ratepayers to absorb unnecessary rate increases. We could easily have avoided this outcome by taking the time to work with the parties and develop a simple, reasonable methodology that gives meaning to the two percent ratepayer protection provision in statute. There is ample evidence in the record to support this work. Several parties including Avista, PacifiCorp, public counsel and AWEC all noted at the December 9, 2020, adoption hearing they would support additional process to get this methodology right.[19]

18 PacifiCorp comments, page 2, November 12, 2020.

19 December 9, 2020, adoption hearing audio recording at approximately 17:40, 32:50, 42:30, and 56:40.

19 Finally, the enforcement provisions contained in proposed WAC 480-100-665 send the wrong signal to utilities about how the commission will view utility compliance with the various requirements of CETA. Although many of the enforcement tools listed in the rule are restatements of existing commission authority, by including explicit provisions in this package of rules, right out of the gate the commission is taking an aggressive and unnecessary adversarial stance on utility compliance with CETA. The enforcement language also implies the interim targets proposed in utility CEIPs are binding. This is not consistent with the specific statutory enforcement provisions in CETA and limits utility flexibility to achieve the clean energy goals at the lowest reasonable cost to ratepayers.[20] Utilities pointed this out numerous times in their comments and this provision is unnecessary.

20 *See* RCW 19.405.090.

20 The commission already has broad enforcement authority under its authorizing statutes and through its orders.[21] If the commission wants to condition its approval of a utility CEIP it can do so in the final order in that proceeding. The commission can also initiate penalty actions before or after a hearing.[22] Commission orders make the enforcement section in these rules redundant and superfluous.

21 *See* chapters 80.01 and 80.04 RCW.

22 *Enforcement Policy of the Washington Utilities and Transportation Commission,* Docket A-120061, ¶ 5 (January 7, 2013).

21 I recognize and appreciate the extraordinary amount of work that my colleagues, staff, the three electric utilities and all the stakeholders have put in to reach this point. In examining the record in this proceeding, legislative intent, and the statutory provisions of CETA, I cannot in good conscience support sections of these rules that eviscerate and render the ratepayer protections included as part of CETA useless and meaningless.

22 The definition of "alternative lowest reasonable cost and reasonably available portfolio" in proposed WAC 480-100-605, 480-100-660 Incremental cost of compliance, and 480-100-665 Enforcement, will harm ratepayers with larger than necessary rate increases to achieve the clean energy goals in CETA while also contravening legislative intent and misinterpreting statute. I find these sections of the rules are not in the public interest and therefore should not be adopted.

Jay M. Balasbas, Commissioner

Appendix A
Comment Summary Matrix
IRP and CEIP Rule-Making Dockets UE-191023 and UE-190698
(Consolidated)

CR-102 Comment Matrix
December 4, 2020

Summary of Comments

- Avista
- Pacific Power and Light (PP&L)
- Puget Sound Energy (PSE)
- Public Counsel (PC)
- Adcock, James
- Alliance of Western Energy Consumers (AWEC)
- Bonneville Power Administration (BPA)
- Briggs, Robert
- Climate Solutions (CS)
- Coalition of Eastside Neighbors for Sensible Energy (CENSE)
- Front and Centered (FC)
- Invenergy
- Lindley, Jane
- Lohr, Virginia
- Newcomb, Anne
- Northwest Energy Coalition (NWEC)
- Renewable Northwest (RN)
- Sierra Club (SC)
- The Energy Project (TEP)
- Vashon Climate Action Group (VCAG)
- Washington Environmental Council (WEC)
- Washington Environmental Council Members (WECM)
- Weinstein, Elyette
- Western Power Trading Forum (WPTF)

WAC 480-100-605 Definitions.

Party	Draft Definition	Summary of Comment	Staff Response
Avista	Alternative lowest reasonable cost and reasonably available portfolio	Proposes a redline edit to delete the requirement to include the social cost of greenhouse gases (SCGHG) as part of the portfolio. CETA states that all costs used to determine the cost of compliance must be directly attributable to actions necessary to comply with RCW 19.405.040 and 19.405.050, which do not include SCGHG.	Staff disagrees. "Lowest reasonable cost" is a defined phrase in chapter 19.280 RCW, and its use throughout chapter 19.405 RCW is intended to be consistent with the definition in RCW 19.280.020(11), which includes: "the cost of risks associated with environmental effects including emissions of carbon dioxide." In addition, although the phrase "social cost of greenhouse gas emissions" appears only in RCW 19.280.030, the calculation of cost for greenhouse gas emissions, including the effect of emissions, applies throughout CETA.
	Lowest reasonable cost	Proposes redline edits to clarify that the portfolio can include supply-side, demand-side, and energy storage resources in a portfolio.	Staff recommends rejecting the proposed edits. Although the resources Avista proposes to include are implied in the definition, the proposed definition is the statutory definition, which staff does not recommend modifying.
PP&L	Resource need	Appreciates staff's clarification that a "deficit" can also stem from "changes in system resources." It may be possible to improve this definition by moving away from the concept of "deficit" altogether.	Staff believes that the proposed definition is sufficiently flexible to meet the company's concerns.

Party	Draft Definition	Summary of Comment	Staff Response
CS	Indicator	Continue to be unclear about the definition of indicator included in rule. Indicators should not be characteristics of a resource unless indicators are associated with avoiding a given harm.	RCW 19.405.040(8) requires that all customers benefit from the transition to clean energy. The transition to clean energy is embodied in the specific actions of utilities, including resource selection and related distribution system investments. Therefore indicators, clarified as "customer benefit indicators" in the proposed rule, are appropriately defined as attributes of the resources and related distribution system investments. Customer benefit indicators may be directly related to the impacts established in the 480-100-620(9) assessment or may be based on other benefits and burdens depending on the customer input required in WAC 480-100-655 (2)(a).
		It is necessary to establish the status quo within the geographies served by utilities. The utility should then demonstrate with indicators how its selected investment portfolio will improve or impact these circumstances through indicators.	Staff believes that this is already covered by the assessment required under WAC 480-100-620(9), and therefore no edits here are necessary. Indicators are about the customer benefits and reduction of burdens associated with specific actions, not current conditions. However, customer benefit indicators must be viewed in context of the current conditions.
		Indicators for each resource should change based on location, ownership, and other relevant criteria and would be summed across the portfolio.	Staff agrees that the values for each customer benefit indicator will be specific to each resource, which is why WAC 480-100-640 (5)(c) requires utilities to provide the customer benefit indicator value for each specific action included in the CEIP.
Invenergy	General	The definitions of least cost and cost-effectiveness should be expanded to go beyond direct monetary costs to electricity customers to also include quantifiable externality costs, such as SCGHG.	The rules do not define least cost or cost-effectiveness. Staff believes that the commission does not need to, and should not, include definitions of these terms at this time, as the statute explicitly outlines how SCGHG should be considered.
Newcomb, Anne	Advisory group	Requests definition of advisory group.	Staff does not recommend a definition of advisory group at this time. Each utility administers advisory groups differently, and thus advisory groups have variable structures, and have been created in various other agreements and commission orders that are not within scope of this rule making. Staff recommends the commission offer additional guidance on the interaction between the general public, advisory groups, and utilities in this rule-making adoption order and in future policy statements as needed.
NWEC	Equitable distribution	Replaces "things" with "available information." Believes that "things" is somewhat imprecise.	Staff does not see a need to make this edit as "things" maintains flexibility to consider other principles or analysis as well as other sources of available information.
	Indicator	Add "or burdens" after "customer benefits."	Staff disagrees. RCW 19.405.040(8) requires that all customers benefit from the transition to clean energy. One of the specific customer benefits included in RCW 19.405.040(8) is a reduction of burdens. Therefore, burdens are sufficiently covered by the existing definition.
	IRP	Provides redline edits that clarify that generating resources refers to demand- and supply-side resources.	Staff recommends rejecting the edits. Although NWEC's edits are helpful, the proposed definition is the statutory definition. Staff does not recommend that the commission modify the statutory definition. Staff agrees that the IRP must describe the mix of demand- and supply-side resources and believes that the existing statutory definition is sufficient to address these resources.
	Resource need	Provides redline clarifying edit. Proposes to exchange the word "their" with "resource."	Staff appreciates NWEC's suggestion but declines to recommend its adoption. Staff believes the definition is clear.
	Related definition comment in 480-100-620(8)	Provide clarification in either a *definition* or in the adoption order regarding resource adequacy. Provides related redlines in WAC 480-100-620(8), "that (RA requirement and metrics) evaluates energy, capacity, and flexibility values of generation, demand-side and storage resources, both separately and in combinations, to meet system, not just peak, needs."	Staff agrees that these components are part of best utility practice for resource adequacy analysis. However, staff does not believe it is necessary to add every item that constitutes good utility practice to a commission rule.

Party	Draft Definition	Summary of Comment	Staff Response
TEP	Equitable distribution	Add "or burdens" after "customer benefits."	Staff disagrees. RCW 19.405.040(8) requires that all customers benefit from the transition to clean energy. One of the specific customer benefits included in RCW 19.405.040(8) is a reduction of burdens. Therefore, burdens are sufficiently covered by the existing definition.
	Resource need	Supports the definition as written.	No staff response necessary.

WAC 480-100-610 Clean Energy Transformation Standards.

Party	Draft WAC	Summary of Comment	Staff Response
PP&L	610 (2) and (3)	Suggests deletion of these two sections as duplicative with statute, and possibly confusing since they are not quoted word-for-word.	Staff disagrees. The purpose of WAC 480-100-610 is to identify and consolidate the statutory standards found in chapter 19.405 RCW, including the standards described in WAC 480-100-610 (2) and (3).
PSE	610 (4)(c)	Supports overarching provisions from RCW 19.405.040(8).	No staff response necessary.
Adcock	610(2)	Should explicitly include eighty percent nonemitting.	Staff disagrees. The twenty percent for alternative compliance options described in RCW 19.405.040 (1)(b) pertains to compliance with the standard and does not describe the standard itself. The WAC 480-100-040 standard is GHG neutral by 2030.
TEP	610 (4)(c)	Supports overarching provisions from RCW 19.405.040(8).	No staff response necessary.
WEC	610 (4)(c)	Supports overarching provisions from RCW 19.405.040(8).	No staff response necessary.

WAC 480-100-620 Content of an integrated resource plan.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	620 (3)(a)	Remove statement encouraging utilities to engage in distributed energy resource planning process as unnecessary.	Staff disagrees. This recommendation is in line with statute and is beneficial to all customers. Distributed energy resources are rapidly transforming the relationships between electric utilities and their retail electric customers.
	620 (3)(b)(iii)	Strike "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" Agrees that the required assessment may inform an IRP but argues that the assessment is better suited with the utility's energy assistance advisory group.	Staff disagrees. As acknowledged by Avista, the assessment will inform the IRP and therefore should be included in the IRP. The rules properly require that the IRP include the results of the energy assessment potential assessment.
	620(4)	Strike ", including ancillary service technologies."	Staff disagrees. Supply-side resource evaluations should consider all potential values, or benefits, of a resource including ancillary services. As renewable energy penetration increases, it will be more important for utilities to plan for the suite of ancillary services needed to balance supply and demand and maintain grid reliability, which includes consideration of, contribution toward, or consumption of ancillary services.

Party	Draft WAC	Summary of Comment	Staff Response
	620 (10)(c)	Strike "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." Argues that it is unclear and not required by statute.	Staff disagrees. A utility's resource portfolio reflects the lowest-reasonable cost portfolio that meets all operational and regulatory standards. Given the novel customer benefit requirements, the sensitivity in WAC 480-100-620 (10)(c) will promote creative thinking and ensure broad consideration of customer benefit opportunities.
	620 (11)	Suggests clarifying edits, "The utility must integrate the demand forecasts and resource 'valuations' into a long-range integrated resource 'planning' solution describing the mix of resources that meet current and projected resource needs."	Staff disagrees with these clarifying edits. Valuation is an estimation of worth, while evaluation is an assessment. Each IRP is comprised of a series of assessments based on resource valuations.
	620 (11)(b)	Recommends striking "net of any off-system sales," and adding "sales" to, "Serve utility load, based on hourly data, with the output of the utility's owned resources, market purchases and sales, and purchase power and sale agreements~~, net of any off-system sales of such resource~~;	Staff disagrees. The purpose of an IRP and CEAP is to identify projected *customer demand*, examine its load/resource balance, and identify the utility's action plan to implement CETA for the next ten years.
	620 (12)(c)(i)	Add "identified" before "benefits" and "burdens."	Staff does not see a need to make these changes. Avista did not provide an explanation in its submitted comments.
	620 (12)(c)(ii)	Strike "such" before "benefits" and add "equitably" before "reduced."	Staff does not see a need to make these changes in rule. The adoption order is anticipated to clarify that both the distribution of benefits and reduction of burdens must be equitable.
	620(13)	Strike "should" and "The utility may provide this content as an appendix." Also suggests two space strikeouts between non energy and the IRP.	Staff disagrees with deleting "should" as it does not provide additional clarity. Staff agrees with the two spacing strikeouts for grammatical clarity. Staff disagrees with deleting the final sentence in this subsection as this language provides options for when and where the avoided costs are included in the IRP.
	620(15)	Strike entire subpart (15) "Information relating to purchases of electricity from qualifying facilities."	Staff disagrees. Information regarding the methodology used to calculate avoided costs, including development of resource assumptions and market forecasts, is a necessary component of the IRP and will be used to inform filings under chapter 480-106 WAC.
	620(17)	Strike "The utility may include the summary as an appendix to the final IRP." States a "may" directive is unnecessary in rules. Offers redlines.	Staff disagrees. Staff believes the word "may" identifies options for when and where the comment summary is included in the IRP.

Party	Draft WAC	Summary of Comment	Staff Response
	620 (11)(b)	Requests clarification that using "hourly data," as is current practice by studying shorter periods of time on an hourly or sub-hourly basis, and then using those results as a component of its models in the IRP, will meet this requirement.	The IRP must show how the utility will serve utility load, based on hourly data or sub-hourly data. Staff recognizes there are many hundreds of thousands of hours in the IRP planning horizon, where hourly and sub-hourly data is a component of a utility's analysis. Utilities have the obligation to discern and model critical seasonal, monthly, hourly, and sub-hourly load and resource performance to complete the portfolio analysis and develop a preferred portfolio. A utility may need to alter its current use of hourly and sub-hourly modeling to meet the requirements in the CEIP and IRP, for example, to model resource needs under CETA involving the capacity and energy output of renewables and the effects of global warming on loads and resources in specific seasons and hours. The rules are designed to require the utility to consider these changes and to respond accordingly with appropriate consideration of load and resource performance based on an hourly and sub-hourly granularity as necessary.
PP&L	620 (2)-(8)	Requests clarification that its current practice meets requirements (2)-(8) Load Forecasting through Resource Adequacy. These topics are studied in the aggregate in the IRP, by adjusting the company's models to consider their costs, benefits, and availability as appropriate.	The company should obtain such clarification by working with its advisory group and staff to ensure that these elements of their IRP are meeting the rule requirements.
PSE	620(9)	Cumulative impact analysis from department of health is not yet available.	RCW 19.280.030 (1)(k) requires the utility's assessment be informed by the cumulative impact analysis once that analysis is available. The utility's assessment should include multiple data sources and the timeline of the cumulative impact analysis does not waive the required statutory assessment.
	620 (10)(c)	No time to develop a maximum customer benefit scenario for the 2021 IRP. Asks for workshops on this issue in early 2021.	Staff will provide recommendations as part of the advisory group process for PSE's 2021 IRP. Staff understands that PSE's current sensitivities include a "maximum equity" sensitivity based on stakeholder feedback.
	620 (11)(g)	Description of customer benefits in the IRP analysis will not be fully developed in the 2021 IRP cycle. Asks for more guidance on what will be required in 2021.	Staff will provide recommendations as part of the advisory group process for PSE's 2021 IRP. Staff understands that PSE's current sensitivities include a "maximum equity" sensitivity based on stakeholder feedback.
PC	620 (3)(a)	Require, rather than strongly encourage, utilities to engage in the distributed energy resource planning process described in RCW 19.280.100.	Staff agrees that utilities should use the distributed resource planning guidance in RCW 19.280.100 but does not recommend requiring it at this time because the statute is permissive rather than directive.

Party	Draft WAC	Summary of Comment	Staff Response
Briggs, Robert	620 (10)(b)	Recommends this scenario be changed to require the baseline be based on the best available science related to future climate change. Also, require at least one sensitivity representing more rapid than expected warming and attendant changes in precipitation patterns and one representing less rapid than expected climate changes.	Staff disagrees with including these additional requirements. The advisory group process created by these rules is the appropriate venue to address these kinds of specific suggestions.
	620 (11)(j) and (12)(i)	Regarding social cost of carbon, clarify these two sections through the addition of "variable cost adder," or by including an adequate definition of the term "cost adder."	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. The commission should request that the utilities model SCGHG both in and out of dispatch in the IRP for comparison.
	General	Regarding the treatment of upstream or life-cycle emissions, the rule should clarify that the requirement to account for the social cost of greenhouse gases applies to costs associated with direct CO2 emissions and the social cost of upstream fugitive CH4 emissions. The rule should require reporting of the assumptions used in IRP analyses for upstream emissions.	In terms of current practice, utilities are applying upstream emissions in IRP modeling. The rules focus on CETA directives; the public participation process created by these rules is the appropriate venue to address utility assumptions used in IRP analyses.
CS	General	Require consideration of upstream emissions for application of SCGHG to comply with CETA, which provides separate and distinct regulatory authority from the Clean Air Act, and provide clarity on the way to do so, including how to identify a methane leakage rate and other considerations. Suggests commission adopt requirements similar to the department of ecology's greenhouse gas assessment for projects (GAP) proceeding.	In terms of current practice, utilities are applying upstream emissions in IRP modeling. The rules focus on CETA directives; the public participation process created by these rules is the appropriate venue to address utility assumptions used in IRP analyses.
	General	Concerned with the lack of guidance concerning setting a resource adequacy standard and disagrees with staff's assessment that the proposed rules provide sufficient direction.	Staff disagrees. The commission's goal is to ensure flexibility, allowing for continued evolution and development related to RA. Staff believe[s] the rules provide adequate guideposts.

Party	Draft WAC	Summary of Comment	Staff Response
CENSE	General	Require utilities to model a range of climate change futures, with "no climate change" recognized as the least likely outcome.	Staff disagrees with this level of specificity in the rule at this time. Climate change projections and impacts should be modeled in each IRP. The advisory group process created by these rules is the appropriate venue to address these kinds of specific suggestions.
		Require "variable cost" modeling in all calculations that relate to SCGHG.	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. Staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison.
FC	620 (10)(c)	Supports maximum customer benefit scenario.	No staff response required.
Invenergy	620(17)	Recommends redlines changing "The utility may include the summary…" to "must include" and adds ", as long as all comments are archived and available to the public on the utility's website" to allow for consolidated summaries and responses.	Staff disagrees. Utilities may include the public comment summary if it makes sense for their filing. Staff also does not see the value of individually displaying multiple identical form letters on a utility website, for example, which could bury other comments and utility responses. Staff agrees utilities should archive all comments so they are available for commission or staff review as needed but does not believe the proposed rule needs to be revised to include this suggestion.
	General	IRP rules should recognize SCGHG as an incremental cost and how utilities should incorporate SCGHG as a cost adder.	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. Rather, staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison and include SCGHG in both portfolios of the incremental cost calculation.
Newcomb, Anne	General	If there are three climate weather scenarios in sensitivities, recommends all three reflect future climate impacts —not one.	Staff disagrees. Climate change projections and specific impacts should be modeled in each IRP. The advisory group process created by these rules is the appropriate venue to address these kinds of specific suggestions.
	General	Consider requiring variable cost modeling in all calculations and modeling that relate to SCGHG.	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. Staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison.
NWEC	620(1)	The appropriate planning horizon should be long enough to assess cost and market changes, and not be limited to the implementation period.	Staff agrees but believes the rule is clear that an appropriate planning horizon is not the same as the implementation or planning period.

Party	Draft WAC	Summary of Comment	Staff Response
	620(8)	Add in definition or explain in adoption order, that the resource adequacy requirement and measurement "evaluates energy, capacity, and flexibility values of generation, demand-side and storage resources, both separately and in combinations, to meet system, not just peak, needs."	Staff agrees that these components are part of best utility practice for resource adequacy analysis. However, staff does not believe it is necessary to add every item that constitutes good utility practice to a commission rule.
	620 (10)(b)	Requests that the rule require all scenarios be informed by the best available future climate change predictions.	Staff believes that the utilities need to appropriately plan for the future and that means appropriately planning for climate change impacts. The advisory group process outlined in these rules is the appropriate venue to address how the utility models climate change in its IRP.
	620 (11)(b)	Clarifies purchase power agreements should be power purchase agreements.	Staff agrees and proposes that the commission accept the edit.
	620 (11)(j) and (12)(i)	Clarify for the incorporation of social cost of greenhouse gas emissions as, "a variable cost adder including market purchases, …"	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. Staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison.
	620(13)	Recommends adding "each supply- and demand-side resource including but not limited to" energy, capacity, etc., "including the SCGHG," and offers redline edits.	Staff disagrees this level of detail is necessary in rule at this time.
	620(17)	Recommends public comment summaries include a count of responses consolidated into one comment/response, stating that the volume of comments on a similar topic or issue could be useful information in addition to the single content summary and response. Offers redlines for rule or guidance in adoption order: "…along with the total number of comments consolidated into one comment."	Staff agrees this would be a useful element of comment summaries but disagrees with including a requirement in the proposed rule. Rather, staff recommends the commission include this guidance in this rule making's adoption order.
	General	Rules should include upstream emissions in the social cost of greenhouse gas cost adder in CETA, nothing in *Association of Washington Business v. Department of Ecology*, 195 Wn.2d 1 (2020), undermines this.	In terms of current practice, utilities are applying upstream emissions in IRP modeling. The rules should focus on CETA directives; the public participation process created by these rules is the appropriate venue to address utility assumptions used in IRP analyses.
RN	620(5)	Supports proposed rule.	No staff response required.
	620	Proposes specific resource adequacy language agreed to by the Northwest Power Pool, also submitted to commerce.	The specified elements identified for resource adequacy analysis are already best practice and therefore do not need to be included in rule. Staff does not support the proposed deadline for utilities filing a resource adequacy method and analysis. Staff believes that resource adequacy work will need to be continuously improved as utilities move toward meeting eighty percent of load with clean or non-emitting resources.

Party	Draft WAC	Summary of Comment	Staff Response
SC	General	Supports the inclusion of nonenergy benefits.	No staff response required.
		Recommends social cost of greenhouse gases should be used in the IRP as a "variable cost" and not a "fixed cost" for all scenarios and modeling. If SCGHG is not included in the dispatch modeling, then [it] will undermine true value of additional energy efficiency measures and distort if not treated as variable cost.	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. Staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison.
		All scenarios should reflect climate change.	Staff believes that the utilities need to appropriately plan for the future and that means appropriately planning for climate change impacts. The advisory group process outlined in these rules is the appropriate venue to address how the utility models climate change in its IRP.
TEP	General and 620(3) 620(9)	Supports proposed rule. Proposes additional direct guidance or policy statement from the commission soon regarding nonenergy benefits and cost-effectiveness analyses.	Staff agrees that additional guidance is necessary and intends to explore revisions to its cost-effectiveness test to make it specific to Washington with stakeholders in 2021.
WEC	General	Supports proposed rule.	No staff response required.
VCAG	General	Recommends the rules should require SCGHG be applied as a variable cost adder.	Staff disagrees with specifying how the utilities model SCGHG in the IRP in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis. Staff recommends the commission request in the adoption order that utilities model SCGHG both in and out of dispatch in the IRP for comparison.
WECM	General	Supports proposed rule.	No staff response required.

WAC 480-100-625 Integrated resource plan development and timing.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	625(2)	Rules about contents on the utility website should be moved to its own subsection instead of a section describing a workplan, offers redlines.	Staff agrees and recommends the proposed changes in WAC 480-100-625 to create a subsection (5) for publicly available information.
	625 (2)(f)	Strike "managed by the utility and" because unnecessary. Strike "timely manner" because it's not clear about what event would trigger an update. Offers redlines.	Staff disagrees but will take these recommendations under advisement if and when final rules are opened for refinement. Staff believes the meaning of "timely manner" clearly requires utilities to actively manage their websites and public information needs and also maintains utility discretion for prioritizing updates.

Party	Draft WAC	Summary of Comment	Staff Response
PP&L	625(2)	Seeks clarification of the meaning of "advisory group" and seeks clarification that existing stakeholder group would qualify. What does it mean to get advisory group input on a work plan? The definition of advisory group was deleted from the rules.	Staff disagrees with including a definition of advisory group in the proposed rule but recommends that the adoption order provide additional guidance regarding the makeup of an advisory group.
PP&L	625(2)	Work plan filing date fifteen months ahead is too long and will require multiple update filings.	Staff disagrees that filing a workplan for an IRP fifteen months ahead of the IRP due date is unreasonable, given the extensive work that goes into these plans. IRPs will now include new evaluations and will lead to a CEIP, which means additional work on top of an already time-intensive planning process. At the same time, utilities will be filing full IRPs only every four years. Staff understands that planning efforts will solidify closer and further into the planning period and would accept these updates, as needed. Utilities and staff should work together to manage these updates.
	625(3)	Strongly opposes draft IRP. Agrees with intent of using public and regulator feedback to develop a better final product and believes existing process offers ample opportunity for feedback. Additionally, argues that company cannot identify or provide analysis supporting a preferred portfolio until the final step of the IRP and therefore a draft IRP would be the final IRP. Similarly CEAP cannot be provided until a preferred portfolio is chosen, which is under development until immediately before an IRP is filed.	Staff disagrees. Provision of a draft is a critical part of successful public engagement, allowing stakeholders to respond to an entire picture rather than bits and pieces. Utilities may be clear in their filings or presentations about where analysis is not yet finished. Utilities may have an additional two months to incorporate any feedback from stakeholders before their final submission is due. This feedback may inform new model runs if time permits, additional narrative, or new action items.
PSE	625(3)	Four months between the draft IRP and the final IRP is not enough time to make modeling changes.	Staff believes that it is important for the commission and stakeholders to have a meaningful opportunity to provide feedback in a formal setting on a utility's plan. If after the first cycle of IRPs the commission determines that the amount of time between the draft and final IRPs was not sufficient, the commission could reevaluate the appropriate length of time.
	625 (3)(a)	Concerned that stakeholders will not view the hearing on the draft IRP as a meaningful opportunity for public engagement, particularly if there is not enough time to make changes to the IRP based on the feedback.	Staff disagrees. Current practice of receiving formal stakeholder feedback only after the final IRP has been submitted is less meaningful than what is included in the proposed rules. To ensure stakeholders have meaningful opportunity to comment, it is incumbent upon the utility to foster meaningful engagement with its stakeholders in advance. Staff believes that the public comment hearing will contain few surprises in public opinion or stakeholder requests, particularly if utilities are engaging with their customers and stakeholders throughout plan development.
Lindley, Jane	625 (2)(f)(iv)	Recommends redline adding "and public."	Staff disagrees but recommends the commission offer additional guidance in the adoption order regarding how members of the public can participate in an advisory group, which are intended as spaces for the public to provide feedback on plan development.

Party	Draft WAC	Summary of Comment	Staff Response
Invenergy	625 (1) or (4)	Asks commission to require a new IRP on January 1, 2023. Concerned that the four-year window for IRP filing is too long, particularly given the amount of acquisitions the companies will need to pursue to meet the requirements of CETA.	Staff disagrees. The commission does not wish to increase administrative burden. If necessary, the commission may require such a filing by order at any time.
NWEC	625(3)	Draft IRP should include the alternative lowest reasonable cost and reasonably available portfolio.	Staff agrees but believes that this is currently a requirement of the rules and that no edits to the rules are necessary.
RN	625(2)	Prefers restoration of "public participation." Or, add "(x) A proposed list of parties and/or organizations constituting the utility's resource planning advisory group and equity advisory group, for commission review and approval;" States adding this rule language would give the commission an opportunity to review the entities that will make up advisory groups and minimize utility bias in creating those groups.	Staff recommends that the commission provide additional guidance on advisory groups in the adoption order or through policy statement as necessary. The commission also should not put itself in the position of reviewing or approving the makeup of advisory groups as they are intended for reasonable general public access. The commission can address issues of utility gatekeeping or bias if or as they occur.
VCAG	625	The rules do not include the process for acknowledgment of an IRP or two-year progress report. This should be restored.	Staff disagrees. The commission's rules currently in effect (WAC 480-100-238) do not include this level of detail. Instead, they appropriately retain the commission's authority to decide how and whether to respond to an IRP. An IRP cannot be litigated and does not require any specific process by statute. Further, the CEIP that is developed based on the IRP can be litigated, and that is where the approval process is most important.
WEC	625	Supports proposed rule.	No staff response needed.

WAC 480-100-630 Integrated resource planning advisory groups.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	630(1)	Strike reference to two-year progress report from WAC 480-100-630; states two-year progress report does not call for a process with advisory groups as the update items will simply be updated.	Staff disagrees with this suggested edit and the premise that two-year progress reports will never call for a process with advisory groups, although staff agrees that the need for advisory groups will be different and possibly less intensive for the two-year progress reports as compared with the full IRPs. Given the possibility that progress reports may capture changing conditions between the filing of IRPs, it is reasonable to expect utilities to update or consult with advisory groups on deviations in expectations. Staff agrees that meetings may be fewer and required modeling could be less. Staff believes it is reasonable to discuss updates in the two-year progress report in advisory groups, which also allows staff to provide guidance on the two-year progress report.
	630(3)	Offers redline changing "advisory group member" to "the public."	Staff disagrees. The subsection discussed in Avista's proposed change would result in changes to the commission intended clarification of the role of advisory groups in plan development. Staff recommends the commission provide additional guidance regarding this clarification and its relevance to data disclosure in the adoption order.

Party	Draft WAC	Summary of Comment	Staff Response
PSE	630/655 general	States concerns that current work to develop a more inclusive and participatory approach to utility planning is nascent and will mature through the equity advisory group process and other means, including commission workshops on equity issues. Requests more workshops in early 2021 specifically focused on how to implement equity provisions in the rule, such as the development of indicators.	Staff understands this work is nascent for utilities and stakeholders alike and that it will take time for maturation. Staff anticipates future workshops and will provide notice as they are scheduled.
	630 general	Supports public participation in the IRP process, and notes that PSE already conducts an extensive public process in developing its IRP.	No staff response necessary.
	630/655 general	Requests guidance regarding first cycle IRP/CEIPs given arguments related to time crunch and ability to meet all requirements in first cycle.	Staff recommends that the commission provide additional guidance in the adoption order.
PC	General	Supports draft rules for IRP and CEIP public participation processes.	No staff response necessary.
	General	States that establishing a clear process for active public participation requires accessibility and transparency.	Staff agrees and looks forward to being part of the conversation on how to achieve those goals.
	General	Supports maintaining requirements for communication and reporting.	No staff response necessary.
Adcock, James	General	Claims that PSE's current IRP process does not meet required public participation and that IRP advisory group[s] should be allowed to ask technical questions and have them answered.	Staff looks forward to working with the public and utilities in helping participation processes meet the commission's expectations for public involvement. Staff agrees that advisory groups should be a place where technical questions are asked and answered.
	General	Requests the commission fix the problems in the PSE IRP process.	Staff recommends that the commission provide additional guidance in the rule-making adoption order and believes that guidance, combined with the proposed rules, will go a long way in providing pathways for resolving advisory group challenges. However, staff also acknowledges that fixing challenges will take time and the best efforts of utilities, as well as stakeholders and other members of the public.
Climate Solutions	General	Looks forward to further dialogue on advisory groups and stakeholder participation.	No staff responses necessary.

Party	Draft WAC	Summary of Comment	Staff Response
CENSE	General	Concerned that IRP rules will limit organization's participation in IRPs in the future. Requests that final rules preserve the public's ability to understand and participate in significant discussions about energy future.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order addressing public participation.
	630(1)	Concerned that narrowing participation rules to advisory groups places limits on public participation in the sense that utilities' control group membership. Offers example of gate-keeping group membership in previous IRP cycle. Additionally concerned about how utility agendas can hamstring ability of advisors to comment and offer feedback.	While utilities are inherently responsible for administering their groups, staff recommends that the commission provide additional guidance in the adoption order clarifying the commission's expectations to utilities and to stakeholders on these issues.
	General	Questions the recourse the general public would have if an issue of great significance to broader audience is of limited concern to advisors.	
	630(3)	Concerned about data disclosure requirements that do not require information to be released in a comprehensible format and that "native" format requirements could flood advisory group members with too much data.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review." Staff anticipates additional guidance in the adoption order.
	General	Requests all parameters deemed relevant by advisory groups or the public be released in an "easily accessible format."	
	General	Notes companies could require non-disclosure agreements from advisory group[s] to provide sensitive information.	Staff agrees companies may use non-disclosure agreements to provide sensitive information. Staff disagrees with requiring non-disclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules.
FC	General	Supports upholding these public participation elements at minimum and requests further strengthening of opportunities and protection of public commenting outside of the advisory group process.	Staff recommends that the commission provide additional guidance in the adoption order or policy statements as needed.
	General	Offers "Tools for Measuring Equity in 100% Renewable Energy Deployment: Literature Review" that includes suggestions for actions utilities may take to involve the public in planning and decision making.	Staff appreciates this information and will take the content under advisement as staff, stakeholders, and utilities work to implement final rules.

Party	Draft WAC	Summary of Comment	Staff Response
Lindley, Jane	General	Requests reversions to previous draft language that is more inclusive for the wider public.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	630(1)	Recommends redlines changing "advisory group" to "public" and "advisory group members" to "stakeholders."	Staff disagrees with these redlines at this time but recommends that the commission provide additional guidance in the adoption order regarding how the wider public and stakeholders may be involved in advisory groups.
Lohr, Virginia	General	Believes language is unclear around makeup of an advisory group and potential gate-keeping to the group. Believes ability of general public to watch is clear, but it is not clear how members of the public may join an advisory group. Offers example of PSE IRP processes in 2017 and 2019: In 2017 group was open to anyone who wanted to join. In 2019 group was restricted to an application process that rejected some potential members. Believes current language allows this exclusionary practice to continue.	Staff believes the changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order regarding how the wider public and stakeholders may be involved in advisory groups.
	General	Requests that members of the public should be allowed to be on the advisory group and participate in meetings and that rule language make this clear.	
Newcomb, Anne	General	Requests guidance on how an advisory group would look and how it would be formed and if the divide between some utilities and public can be mended.	Staff recommends that the commission provide additional guidance in the adoption order regarding how the wider public and stakeholders may be involved in advisory groups. Staff notes that while the commission can offer guidance to mend relationships, utilities and stakeholders are responsible for working through that process.
	General	Recommends adding "in an easily accessible format" to all data disclosure locations.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review" in WAC 480-100-630(3) and 480-100-655 (1)(g) and to data requirements in 480-100-640 and 480-100-650. Staff additionally recommends removal of confusing cross references to 480-100-655 from 480-100-640 and 480-100-650. Staff anticipates additional guidance in the adoption order.
	General	Recommends requiring non-disclosure agreements for confidential data considerations.	Staff disagrees with requiring non-disclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules. Staff supports utilities in their voluntary use of non-disclosure agreements.

Party	Draft WAC	Summary of Comment	Staff Response
NWEC	General	Recommends revisiting data disclosures that reference "an easily accessible format" in 480-100-630(3), 480-100-650 (1)(k), and 480-100-650 (1)(g) and explaining difference in meaning, if language was intentional.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review" in 480-100-630(3) and 480-100-655 (1)(g) and to data requirements in 480-100-640 and 480-100-650. Staff additionally recommends removal of confusing cross references to 480-100-655 from 480-100-640 and 480-100-650. Staff anticipates additional guidance in the adoption order.
RN	General	Does not support changes between previous and current draft rules and expresses concern that targeted language around advisory groups could exclude valuable public comment from IRP development.	The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order addressing how the public may interact in advisory groups.
	General	Recommends setting guidelines in rule for the formation of an advisory group.	Staff disagrees with setting guidelines for forming advisory groups in rule at this time because this rule making has not considered such specific parameters. Staff recommends that the commission provide additional guidance in the adoption order regarding how the wider public and stakeholders may be involved in advisory groups.

Party	Draft WAC	Summary of Comment	Staff Response
SC	General	Recommends all sections on data disclosure reflect the words "in an easily accessible format" because native formats can be difficult to follow.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review" in 480-100-630(3) and 480-100-655 (1)(g) and to data requirements in 480-100-640 and 480-100-650. Staff additionally recommends removal of confusing cross references to 480-100-655 from 480-100-640 and 480-100-650. Staff anticipates additional guidance in the adoption order.
	General	Recommends full data disclosure should include all modeling software and programs.	Staff does not believe further changes to the rules are necessary. Proposed WAC 480-100-630(3) requires the utility to make all of its modeling software and programs available to the commission.
	General	Recommends utilities require non-disclosure agreements for confidential information.	Staff disagrees with requiring non-disclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules. However, staff supports utilities in their voluntary decision to use them.
	General	Recommends not limiting public participation to advisory groups and argues restricting public participation per the current rules enforces and maintains systemic policies that have led to disenfranchisement. Recommends restoring public participation language of previous rules and offering guidance relative to utility burden in subsequent policy statements.	Staff believes the changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	625 (2)(b), 630, and 655 (1)(a)	Notes that which advisory groups are included is not clear in draft rules. Recommends all advisory groups are included in the development of IRPs and CEIPs.	Staff disagrees. Staff does not believe the rules should require utilities to pull in all other groups, such as conservation and low-income groups, for IRP planning given overlapping representation in these groups with current IRP groups, because IRP groups are open to stakeholders not currently participating, and because staff believes stakeholders, utilities, and staff will have proposals for streamlining and smoothing out inter-group interactions as final rules are implemented and any issues become apparent. The proposed rules state at WAC 480-100-655 (1)(a) that all advisory groups must be included in CEIP development, including the equity group. In WAC 480-100-625 (2)(b), the proposed rules state that IRP development must include a proposed schedule for meeting with resource planning advisory groups, *i.e.*, current IRP groups, and the equity group. Utilities may pull in other groups to IRP planning if and as they feel they are necessary.

Party	Draft WAC	Summary of Comment	Staff Response
TEP	General	Supports inclusion of public involvement in IRP and CEIP planning processes, including right to comment, advisory group participation, creation of an equity advisory group, specific involvement in development of indicators and activities, filed public participation plans, reporting of public participation, and availability of supporting data.	No staff response required.
	General	Recommends restating in adoption order the existing IRP rule language of "Consultations with Commission Staff and public participation are essential to the development of an effective plan."	Staff agrees and recommends the commission include this type of direction in its adoption order.
	630(2)	Recommends harmonizing requirements of advanced distribution of materials to advisory groups. Appears to be removed from CEIP process.	Staff recommends that the commission address this issue in the adoption order.
	630(3)	Recommends harmonizing requirements of data input and files available to advisory groups.	Staff proposes rule changes to address this concern as well as comments from NWEC and others on confusion around data disclosure requirements.
VCAG	General	Concerned with limitation of public participation to advisory groups and argues restricting public participation per the current rules enforces and maintains systemic policies that have led to disenfranchisement. Asks how utility customers will have access to an advisory group or utility planning if they are not included in an advisory group and how disenfranchised customers will gain access to an advisory group.	Staff believes the changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	General	Recommends restoring public participation language of previous rules and offering guidance relative to utility burden in subsequent policy statements.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order. Staff anticipates additional policy statements will come as needed.
	General	Supports inclusion of requiring explanations of rejection of public input.	No staff response required.

Party	Draft WAC	Summary of Comment	Staff Response
WEC	General	Recommends restoring the public engagement provisions from previous drafts of the rule to undo barriers and create accessible public engagement opportunities needed to achieve an equitable transformation.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	General	Argues that utility advisory groups are topic-specific and less accessible than broader public engagement opportunities, and do not provide a way for a diversity of perspectives to be shared; notes utilities will require more than advisory groups to build and maintain community understanding and support.	Staff recommends that the commission provide additional guidance in the adoption order and notes that the proposed rules require utilities to provide additional methods of building and maintaining community interaction through their public participation plans.
WECM	General	Approximately 282 WEC member letters requesting creation of more accessible opportunities for robust public engagement in integrated resource planning and clean energy implementation planning that anticipate and break down barriers.	Staff recommends that the commission provide additional guidance in the adoption order as well as future conversations relative to barriers to participation.
Weinstein, Elyette	General	Recommends restoration of the public participation language of the previous draft of the rules and argues that limitation of participation to advisory groups bars input from individuals who utilities normally don't hear from. States concerns about transparency and gate-keeping public input to insider members of hand-picked advisory groups.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order or future policy statement as needed.

WAC 480-100-640 Clean energy implementation plan.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	640(1)	Proposes later due date of November 1 instead of October 1 for the CEIP. Notes that Commerce is using January 1.	Staff disagrees. A CEIP from a consumer-owned utility filed with the department of commerce will have already been approved by the utility's regulatory body – the city council or public utility district. For investor-owned utilities, the commission must have a reasonable amount of time to approve the CEIP so that it can become effective on January 1 as described in the statute. Based on commission experience with similar plans, October 1 will give the commission the bare minimum time required to approve such a complex set of documents by January 1. Staff also notes that if the plan is adjudicated, the commission would not be able to comply with a January 1 date.
	640(5)	Delete "the" before specific actions. Also proposes specific actions meet '*or be consistent with'* CETA. Concerned that it requires the utility to include all actions it will take, rather than just the actions the utility needs to take to make progress toward meeting the clean energy transformation standards.	Staff agrees with a clarifying edit and suggests adding "and be consistent with" CETA. Staff disagrees with deleting "the" as it is unnecessary. Utilities do not need to provide every single action it will take. Rather, utilities will need to identify material projects or programs and summarize their other actions.
	640 (6)(f)(ii)	Clarifying edit: "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 …"	Staff disagrees. The language in the proposed rules is clearer than the change the company suggests.
	640(11)	Clarifying edit: Change "… of how the update will modify targets" to "when the update modifies targets."	Staff disagrees. The biennial CEIP update will include, at a minimum, a new biennial conservation plan (BCP). WAC 480-100-640 (3)(a)(i) requires a specific energy efficiency target, which is included in the BCP. Therefore, by extension, staff expects the biennial CEIP update will include a modification to at least one target (the energy efficiency target).
FC	640 (4)(c)	Supports rule, but requests adding "reduction of risk" to the list of minimum required indicators. Each named element of the equity mandate requires at least one indicator. Notes that commerce's rule making includes risk reduction language.	Staff agrees.
		Requests that the commission commit to revisiting required indicators, frequently determine best practices, provide early guidance, review the rule's effectiveness, and revisiting the rule-making process, as needed, to codify best practices and facilitate more uniform reporting.	Staff anticipates ongoing engagement on customer benefit indicator development through participation in utility planning processes. The commission can provide additional guidance through policy statement, orders approving utility CEIPs, or changes to the rules as appropriate.
	650 (5)(c) and 640(8)	Supports proposed rule.	No staff response required.

Party	Draft WAC	Summary of Comment	Staff Response
Invenergy	640 (1) or (11)	Asks for a new CEIP by October 1, 2023.	Staff disagrees. The commission does not wish to increase administrative burden. If necessary, it may require such a filing by order at any time.
	General	CEIP rules should recognize SCGHG as an incremental cost adder.	Staff disagrees with specifying how the utilities model SCGHG in these rules. It is important to retain flexibility in modeling SCGHG so that utilities can best respond to changing conditions and new information. Too much specificity in the rule prevents the utility from developing new approaches to its analysis.
NWEC	640 (3)(b)	Not clear why some subsections require disclosure in "native format" and others require disclosure in "native format and in an easily accessible format." (Same comment as in WAC 480-100-620(14).)	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review" in WAC 480-100-630(3) and 480-100-655 (1)(g) and to data requirements in WAC 480-100-640 and 480-100-650. Staff additionally recommends removal of confusing cross references to WAC 480-100-655 from 480-100-640 and 480-100-650. Staff anticipates additional guidance in the adoption order.
	640(8)	Add "along with the total number of comments consolidated into one comment" to end. (Same comment as in WAC 480-100-620(17).)	Staff agrees this would be a useful element of comment summaries and recommends the commission include this guidance in this rule-making's adoption order.
RN	640 (4)(e) and (5)(b)	Resource adequacy requirements should refer back to the IRP.	Staff notes that there is no subsection (4)(e), however, staff believes RN is referencing subsection (5)(b) and (6)(e). Staff disagrees that the edits are necessary as the rules are clear that these are referencing the RA metrics as established in WAC 480-100-620(8).
	640(6)	Supports proposed rule.	No staff response required.
Sierra Club	640 (4)(c)	Add "reduction of risk" to the list of minimum required indicators. Each named element of the equity mandate requires at least one indicator. Notes that commerce's rule making includes risk reduction language.	Staff agrees.
		Requests that the commission commit to revisiting required indicators frequently, determine best practices, provide early guidance, review the rule's effectiveness, and revisiting the rule-making process, as needed, to codify best practices and facilitate more uniform reporting.	Staff anticipates ongoing engagement on customer benefit indicator development through participation in utility planning processes. The commission can provide additional guidance through policy statement, orders approving utility CEIPs, or changes to the rules as appropriate.

Party	Draft WAC	Summary of Comment	Staff Response
TEP	640 (4-6)	Supports required elements of CEIP, and inclusion of customer benefit indicators in 4(c).	No staff response required.
	640 (6)(b)(i)	Replace "by location and population" with "changes in benefits and burdens since the last CEIP, including results of specific actions taken (in) the prior CEIP implementation period consistent with the requirements in WAC 480-100-640 (4)(c)." Would alleviate concerns over timing of submission CEIP compliance report from previous period and next CEIP.	Staff does not agree with removing the "by location and population" language as the assessment should include geographic and demographic information to support the commission's review of equitable distribution requirements. Staff anticipates that the CEIP process will be iterative. The commission should carefully observe the first CEIP dockets and can modify the process as appropriate. Additional clarification will likely be provided in the adoption order.
	640 (6)(f)(iii)	Recommends retaining business case as an example of the type of justification for specific actions. The commission is fully authorized to require such information.	Staff declines to recommend restoring this language as utilities bear the burden of demonstrating a proposed CEIP meets the statutory requirements and fully supporting any projects proposed in the CEIP.
	640(11)	Revise third sentence to add "or plans to meet equitable distribution requirements" at the end. This would clarify how equity requirements are impacted by the biennial CEIP update.	Staff anticipates that the CEIP process will be iterative. The commission should carefully observe the first CEIP dockets and can modify the process as appropriate. Additional clarification will likely be provided in the adoption order.
WEC	640 (4)(c)	Add "reduction of risk" to the list of minimum required indicators.	Staff agrees.
	640(5)	Supports proposed rule.	No staff response required.

WAC 480-100-645 Process for review of CEIP and updates.

Party	Draft WAC	Summary of Comment	Staff Response
AWEC	645(2)	Reads the term "substantial interest" as having the same meaning as in WAC 480-07-355(3), and requests clarification in the adoption order on whether this reading is accurate. Also requests clarification regarding whether any information at all (more than demonstrating a "substantial interest") is required when requesting adjudicative proceeding.	Staff disagrees that the requested clarification is necessary. The term "substantial interest" has the same meaning and requirements as under WAC 480-07-355(3).
	645(2)	The Administrative Procedure Act (APA) does not allow a "brief adjudicative proceeding" to consider a CEIP, and reference to such should be deleted from the rules. The APA provides four conditions under which a brief adjudicative hearing can be held; a CEIP does not fit into any of them. A CEIP is too big and consequential, affects too many stakeholders, and therefore warrants a full adjudicative proceeding.	Staff disagrees with AWEC's interpretation. Staff generally envisions the commission choosing to set a CEIP adjudication for a BAP rather than a full adjudication when only one or two narrow issues within a CEIP are contested. These circumstances could easily meet the other requirements of RCW 34.05.482, and the inclusion of BAP in this subsection of the rules is sufficient to meet RCW 34.05.482 (1)(c).
TEP	645(2)	Supports proposed rule.	No staff response necessary.
WEC	645	Supports proposed rule.	No staff response necessary.

WAC 480-100-650 CEIP reporting and compliance.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	650	If the commission's rules are not the same as the rules adopted by commerce, investor-owned utilities will have to comply with both sets of rules. Provides no recommendations for changes.	Staff acknowledges that there will be some overlapping reporting with the department of commerce. Similar to EIA requirements, compliance information will be reported to both commerce and the commission. The reports required at four-year intervals by commerce (e.g., the interim performance report in 2026 and 2030, and the compliance report beginning in 2034) are appropriate to include within the clean energy compliance report outlined in WAC 480-100-650(1).
	650 (1)(j)	Proposes removal of description of public participation opportunities from four-year clean energy compliance report as redundant with subsection (e).	Staff disagrees that the requirements are redundant. Requirements in subsection (e) are limited to engagement on indicator development and use whereas (j) pulls in any other participatory elements.
	650 (3)(e)	Proposes example list of uses for renewable energy credits instead of explicit list. (Change i.e. to e.g.)	Staff agrees. The rule was intended to use a list of examples and the changes reflect grammatical corrections.
	650 (3)(j)	Proposes *estimated* greenhouse gas emissions.	Staff disagrees with the addition of this word. While it is true that greenhouse gas emissions are estimated calculations, the estimation is included in the definition of the term and may cause confusion if it is added here.
PP&L	650	Points out significant duplication of filings and regulatory burden when considering the new WAC 480-100-650 against the existing backdrop of filing requirements from WAC 480-100-238 and chapter 480-109 WAC.	Staff agrees. However, it is not apparent from the table provided by PP&L that the EIA filing requirements from chapter 480-109 WAC are in effect now, while the first filing requirement under WAC 480-100-650(3) does not begin until 2022. Staff intends to significantly streamline reporting before the end of 2022.
	650 (1)(b)	Asks for flexibility in meeting the interim targets, since large acquisitions can sometimes be delayed by a few months, which may result from conditions beyond the utility's control for which they should not be penalized.	Staff disagrees. Utilities can ask for penalty mitigation from the commission, and the situation envisioned here would be a perfect example for making such a request.
	650 (3)(a)	Asserts that the attestation goes beyond the CETA requirement to remove coal-fired resources from the allocation of electricity, which applies to ratemaking, not the use of power.	Staff disagrees with the substance and the suggested changes to the rule at this time. RCW 19.405.090(1) clearly penalizes the use of coal-fired resources to serve load, not only their inclusion in rates. Other sections of chapter 19.405 RCW support this position, and staff recommends further discussion of this issue in the adoption order. It will be helpful to wait for the completion of the rule making required in RCW 19.405.130. The attestation required by WAC 480-100-650 (3)(a) must describe how the utility has ensured that the required costs associated with coal-fired resources owned or under contract for longer than one month have been removed from existing and ongoing rates, and affirm that the utility did not knowingly purchase any electricity from coal-fired resources.

Party	Draft WAC	Summary of Comment	Staff Response
PSE	650(1)	Asks the commission to reconsider its treatment of interim targets as compliance obligations. Targets set by the utility can encourage gaming in setting targets low enough to ensure ease of compliance. The commission can already issue penalties to enforce its rules, without using the CETA penalty from statute. Commerce has treated interim targets as a demonstration of progress rather than compliance obligations. This may create an unfair advantage for consumer-owned utilities if the commission persists.	Staff disagrees. First, given that the commission reviews and approves these targets, and can modify them if they are insufficient under RCW 19.405.060 (1)(c), a utility will not be able to set insufficient interim targets to meet their statutory deadlines. Second, interim targets are included in the incremental cost alternative compliance pathway under RCW 19.405.060(3) but are not mentioned under RCW 19.405.090. This indicates that interim targets are intended as a compliance obligation enforced through commission order. Finally, if unforeseen circumstances affect a utility's ability to meet its interim targets, it can pursue compliance through the incremental cost pathway or request the commission mitigate any proposed penalty.
PC	650 (3)(a)	Supports attestation. Asks us to require verification, prefers a third-party audit. Recognizes there will be additional work on this issue.	Staff agrees with the substance but disagrees with the suggested changes to the rule. This issue will be addressed more fully during the rule making required in RCW 19.405.130, which will also address how to interpret a utility's "use" of electricity to serve customers.
AWEC	650 (3)(a)	Asserts that the attestation goes beyond the CETA requirement to remove coal-fired resources from the allocation of electricity. Broad ratemaking implications for multi-state utilities.	Staff disagrees. RCW 19.405.090(1) clearly penalizes the use of coal-fired resources to serve load, not only their inclusion in rates. Other sections of chapter 19.405 RCW support this position, and staff recommends further discussion of this issue in the adoption order. It will be more helpful to wait for the completion of the rule making required in RCW 19.405.130. The attestation required by WAC 480-100-650 (3)(a) must describe how the utility has ensured that the required costs associated with coal-fired resources owned or under contract for longer than one month have been removed from existing and ongoing rates, and affirm that the utility did not knowingly purchase any electricity from coal-fired resources.
BPA	650 (3)(f)	Asks to change the end date for when power from BPA must have associated RECs from January 1, 2029, to January 1, 2030, to be consistent with commerce.	Staff would prefer to keep the 2029 date, because if utilities are relying on BPA power, they must know ahead of time if they will be able to use it for CETA compliance after 2030. If BPA is still unable to provide RECs for its hydropower by 2029, utilities relying on such power should request a one-year rule waiver.
FC	650 (1)(d) and (e)	Supports requirements for developing a minimum suite of equity performance indicators and robust reporting.	No staff response necessary.
Lindley, Jane	650(3)	Recommends redlines adding description of public participation to annual clean energy progress report.	Staff disagrees. Staff supports streamlined reporting requirements and does not believe annual reporting in addition to the public participation plan and compliance reporting is necessary. Both current requirements would catch annual activities. The commission may require additional reporting as needed in the future.

Party	Draft WAC	Summary of Comment	Staff Response
NWEC	650 (1)(c)	We ask the commission to make clear that (c) refers to the individual specific actions as planned in WAC 480-100-640 (5) and (6) or (11) and addresses the success of each specific action.	Staff disagrees as WAC 480-100-650 (1)(c) requires a demonstration that the utility has executed a lowest reasonable cost plan for making progress toward compliance. Lowest reasonable cost refers to a portfolio-level, collective set of actions, not individual actions viewed in isolation.
	650 (1)(f)	The cost of compliance should address the cost of each action.	Staff disagrees. Although providing the costs of an individual action may be helpful, WAC 480-100-660(1) is clear that the incremental cost of compliance is analyzed at the portfolio level.
	650 (1)(d)(i)	Asks to restore language about the history of indicator changes because it will be more informative.	Staff disagrees as it adds administrative burdens. Companies will have to identify changes within the CEIPs when any changes are made.
	650 (3)(a)	Add that the attestation is provided by an appropriate utility executive. Concerned that there is no responsible party.	Staff disagrees with the suggested changes to the rule at this time. Staff suggests that the adoption order should address how the commission will treat this requirement moving forward. In general, additional specificity is not appropriate until more general issues are resolved. For example, it will be helpful to wait for the completion of the rule making required in RCW 19.405.130.
	650 (3)(e)	Use e.g. instead of i.e. in the list of examples.	Staff agrees.
	650 (3)(f)	Please explain in the rule-making order what it means to track the nonpower attributes of renewable energy through contract language. Who is responsible for this tracking? When does it occur, and to whom?	Staff expects that the utilities that choose to contract with BPA will ensure that their contracts with BPA address the tracking of nonpower attributes. In addition, the rule making required in RCW 19.405.130 may also address this issue.
	650(3) (new)	Asks to add description of progress on indicators to the annual report because if the progress is only included in the four-year report, it will not be available in time to inform the next round of IRPs.	Staff anticipates that the CEIP process will be iterative. The commission will carefully observe the first CEIP dockets and can modifying [modify] the process as appropriate. Additional clarification should be provided in the adoption order.

Party	Draft WAC	Summary of Comment	Staff Response
RN	650 (3)(a)	Asks that the attestation be made by an appropriate company executive, and subject to commission review. The proposed rules do not address a loophole which allows a utility to rely on consecutive short-term contracts for unspecified resources.	Staff disagrees with the suggested changes to the rule at this time. Renewable Northwest raises important issues that should be considered. However, additional specificity is not appropriate until more general issues are resolved. It will be helpful to wait for the completion of the rule making required in RCW 19.405.130.
	650 (3)(a) (new)	Concerned that one interpretation of the definition that coal-fired resource does not include wholesale power purchases of one month or less would allow utilities to rely on serial transactions for unspecified electricity to sidestep the requirement to remove coal from rates before 2030. Suggests this language be added: 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).	Staff disagrees with the addition of this language as inconsistent with the statute. Under the law, both before and after 2030, the utility may recover the costs associated with coal-fired resources under contracts of one month or less from customers. Further, they may also engage in contracts for unspecified electricity of any length and recover related costs from customers. However, if they do enter into such contracts, after 2030, they will be subject to the $100 penalty for electricity that is not renewable or nonemitting, which will include both the unspecified electricity and the coal-fired electricity that is procured under contracts of one month or less.
	650 (3)(f)	Add language prohibiting double-counting of nonpower attributes tracked through contract language prior to end date.	While staff declines to make the suggested change, staff points out that there is no allowance in CETA to use nonpower attributes more than once. Thus, we expect that when utilities negotiate contracts with BPA, they will address the necessary tracking to ensure compliance with the spirit of the law. This issue will likely be further addressed during the rule making under RCW 19.405.130.
TEP	650(3) (new)	Expresses concern about reporting on customer benefits in time to provide useful, informative information to support the next CEIP. Suggests changes to WAC 480-100-640 (6)(b)(i). Could also make changes here.	Staff anticipates that the CEIP process will be iterative. The commission should carefully observe the first CEIP dockets and can modify the process as appropriate. Additional clarification will likely be provided in the adoption order.
WPTF	650 (3)(a)	Do not spend additional effort to develop rules to ensure that Washington utilities can document that every single megawatt-hour of unspecified power has not been sourced from a coal resource.	Staff disagrees. Under RCW 19.405.130, the commission is required to adopt by June 30, 2022, rules concerning documentation of whether or not a utility has met the standards in RCW 19.405.030 through 19.405.050.
	650 (3)(a)	Focus on the narrow question of how to ensure that the investor-owned utilities that currently own coal fully divest of it, and/or don't continue to use these resources to serve Washington customers.	Staff agrees and believes that the attestation requirement is adequate at this time. Staff recommends that the adoption order address how the commission will treat this requirement moving forward. Note however, that the rules as currently written only address coal-fired resources as defined in the statute; those that are owned or under contracts of longer than one month.

WAC 480-100-655 Public participation in a CEIP.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	655 (1)(a)	Believes this section doesn't need to call out equity group because section is applicable to all groups. Offers redlines striking specific call-out.	Staff disagrees with this proposed edit. As the equity group is the only newly formed group, staff believes it is helpful to be clear about where that group interacts in the planning processes. Staff may recommend streamlining changes in the future as stakeholders and utilities become familiar with working with groups on equity issues.
	655 (1)(e)	Strike portion stating "utility may convene and engage public advisory groups on other topics" because it is unnecessary and creates uncertainty around expectations. Offers redlines striking (e).	Staff disagrees with this proposed edit and believes the current proposed language is clear that proposed rules do not limit utilities in developing stakeholder processes for other issues.
	655(g)	Offers redlines adding "used to develop its CEIP."	Staff agrees and believes this proposed edit clarifies the rule's intent. Staff additionally recommends the same clarification to WAC 480-100-630(3) for IRPs.
	655 (1)(h)	Believes subsection (h) is redundant to other requirements in section (1). Offers redlines striking all of (h).	Staff disagrees this section is redundant. It describes the comment summary mentioned but not detailed in WAC 480-100-640(8). Staff disagrees with making this suggested edit as it would remove the requirement for utilities to submit a summary.
	655 (2)(f)	Offers redlines rewording (f) to say "The date by which the utility must file …"	Staff disagrees. The date by which utilities must file could be different from the dates by which they do file. Staff recognizes these will likely be the same date, particularly for initial plans. But in the event they are not the same, staff prefers the planned date.
PSE	655(3)	Supports removal of required customer notice review in previous draft rules.	No staff response required.
	General	States concerns that current work to develop a more inclusive and participatory approach to utility planning is nascent and will mature through the equity advisory group process and other means, including commission workshops on equity issues. Requests more workshops in early 2021 specifically focused on how to implement equity provisions in the rule, such as the development of indicators.	Staff understands this work is nascent for utilities and stakeholders alike and that it will take time for maturation. Staff anticipates future workshops and will provide notice as they are scheduled.
PC	General	Appreciates continued inclusion of public participation in CEIP process.	No staff response required.
	General	Supports continued discussion of funding for equity advisory group among stakeholders and a Commission policy statement to provide subsequent guidance.	Staff recommends that the commission take this under advisement as any additional workshops and policy statements are planned. Staff agrees that this issue merits additional conversation and does not believe particular requirements around funding mechanisms are ripe for rule language.
	General	Urges basic rule language in this docket requiring equity group funding.	Staff disagrees in light of the existing questions related to commission authority to require this type of funding, remaining questions about funding administration and practicalities, the substantive nature of this rule change (and thus a required additional CR-102), and the statutory timeline for completing this rule making.

Party	Draft WAC	Summary of Comment	Staff Response
AWEC	General	Opposes stakeholder processes in the proposed rules, stating they will be costly and time-consuming to participate in, undermine adjudicative proceedings, and hinder utilities' abilities to quickly respond to changing technologies and markets.	Staff disagrees that the stakeholder processes in this proposed rule, which are largely predicated on and inclusive of existing stakeholder processes, are more costly and time-consuming than are required by the additional planning needs created by CETA, as stakeholder participation is voluntary. Staff does not believe that advanced resolution of issues or a common understanding of needs between stakeholders undermines adjudicative proceedings. Staff is also not clear how *not* taking the voices and needs of customers and stakeholders into account would enable better decision-making in response to changing technologies and markets.
Climate Solutions	General	Looks forward to further dialogue on advisory groups and stakeholder participation.	No staff response necessary.
CENSE	Data	Concerned about data disclosure requirements that do not require information to be released in a comprehensible format and that "native" format requirements could flood advisory group members with too much data.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review." Staff anticipates additional guidance in the adoption order. Staff agrees companies may require non-disclosure agreements to provide sensitive information but declines to recommend requiring non-disclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules.
	Data	Requests all parameters deemed relevant by advisory groups or the public be released in an "easily accessible format." Notes companies could require non-disclosure agreements from advisory group to provide sensitive information.	
FC	General	Supports creation of equity advisory group.	No staff response necessary.
	General	Supports provisions for meaningful public involvement and responses to public input.	
	General	Supports upholding these elements at minimum and requests further strengthening of opportunities and protection of public commenting outside of the advisory group process.	Staff recommends that the commission provide additional guidance in the adoption order or policy statements as needed.
	655 (2)(a)(i)-(ii)	Supports development of indicators using public involvement.	No staff response needed.

Party	Draft WAC	Summary of Comment	Staff Response
Lindley, Jane	General	Requests reversions to previous draft language that is more inclusive for the wider public.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	655 (2)(g)(iii)	Requests changing rule to state "Information on how the public may participate in CEIP development, including advisory group meetings; and."	Staff believes that how the public could participate in advisory group meetings is already included in this rule and would be an expected element of a public participation plan. Staff believes this language is unnecessary. Staff nevertheless recommends that the commission provide additional broad guidance about public access to advisory groups in the adoption order.
	655(1)	Recommends redlines moving section number from first paragraph and creating "Advisory groups" section starting at subsection (a). Renumbers subsequent lines. Adds "public" and "stakeholders" throughout newly created intro paragraph.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	655(2)	Recommends redlines adding "and stakeholders."	
Newcomb, Anne	General	Requests guidance on how an advisory group would look and how it would be formed and if the divide between some utilities and public can be mended.	Staff recommends that the commission provide additional guidance in the adoption order regarding how the wider public and stakeholders may be involved in advisory groups. Staff notes that while the commission can offer guidance to mend relationships, utilities and stakeholders are responsible for working through that process.
	General	Supports language about involving vulnerable communities.	No staff response necessary.
	General	Recommends adding "in an easily accessible format" to all data disclosure locations.	Staff recommends proposed changes to these areas of the rule to clarify the commission's intent.
	General	Recommends requiring non-disclosure agreements for confidential data considerations.	Staff disagrees with requiring nondisclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules.
RN	General	Reiterates similar concerns as discussed in IRP sections above and requests guidance on the formation of advisory group[s], which are necessary for CEIPs, and which parties or organizations should compose through groups. Recommends limiting utilities' ability to gate-keep group membership by requiring commission review and approval.	Staff recommends that the commission provide additional guidance on advisory groups in the adoption order or through policy statement as necessary. The commission also should not put itself in the position of reviewing or approving the makeup of advisory groups as they are intended for reasonable general public access. The commission can address issues of utility gatekeeping or bias if or as they occur.

Party	Draft WAC	Summary of Comment	Staff Response
SC	General	Recommends all sections on data disclosure reflect the words "in an easily accessible format" because native formats can be difficult to follow.	Staff agrees there is confusion around this piece and recommends adding "easily accessible format" after "advisory group review" in WAC 480-100-630(3) and 480-100-655 (1)(g) and to data requirements in WAC 480-100-640 and 480-100-650. Staff additionally recommends removal of confusing cross references to WAC 480-100-655 from 480-100-640 and 480-100-650. Staff anticipates additional guidance in the adoption order.
	General	Recommends full data disclosure should include all modeling software and programs.	Staff does not believe further changes to the rules are necessary. Proposed WAC 480-100-630(3) requires the utility to make information available to the commission in native formats. Staff recommends the commission provide additional guidance, if needed, in the commission's adoption order.
	General	Recommends utilities require nondisclosure agreements for confidential information.	Staff disagrees with requiring nondisclosure agreements in rule, as their inclusion as a requirement would contradict the confidentiality provisions of RCW 80.04.095 and current commission rules.
	General	Recommends not limiting public participation to advisory groups and argues restricting public participation per the current rules enforces and maintains systemic policies that have led to disenfranchisement. Recommends restoring public participation language of previous rules and offering guidance relative to utility burden in subsequent policy statements.	Staff believes the changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	General	Notes that which advisory groups are included is not clear in draft rules. Recommends all advisory groups are included in the development of IRPs and CEIPs.	Staff disagrees. Staff does not believe the rules should require utilities to pull in all other groups, such as conservation and low-income groups, for IRP planning given overlapping representation in these groups with current IRP groups, because IRP groups are open to stakeholders not currently participating, and because staff believes stakeholders, utilities, and staff will have proposals for streamlining and smoothing out inter-group interactions as final rules are implemented and any issues become apparent. The proposed rules state at WAC 480-100-655 (1)(a) that all advisory groups must be included in CEIP development, including the equity group. In WAC 480-100-625 (2)(b), the proposed rules state that IRP development must include a proposed schedule for meeting with resource planning advisory groups, *i.e.*, current IRP groups, and the equity group. Utilities may pull in other groups to IRP planning if and as they feel they are necessary.

Party	Draft WAC	Summary of Comment	Staff Response
TEP	General	Supports inclusion of public involvement in IRP and CEIP planning processes, including right to comment, advisory group participation, creation of an equity advisory group, specific involvement in development of indicators and activities, filed public participation plans, reporting of public participation, and availability of supporting data.	No staff response necessary.
	655 (2)/(3)	Recommends harmonizing requirements of advanced distribution of materials to advisory groups. Appears to be removed from CEIP process.	Staff recommends that the commission address this issue in the adoption order.
	655 (1)(g)	Recommends harmonizing requirements of data input and files available to advisory groups.	Staff proposes rule changes to address this concern as well as comments from NWEC and others on confusion around data disclosure requirements.
VCAG	General	Concerned with limitation of public participation to advisory groups and argues restricting public participation per the current rules enforces and maintains systemic policies that have led to disenfranchisement. Asks how utility customers will have access to an advisory group or utility planning if they are not included in an advisory group and how disenfranchised customers will gain access to an advisory group.	Staff believes the changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	General	Recommends restoring public participation language of previous rules and offering guidance relative to utility burden in subsequent policy statements.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order. Staff anticipates that the commission will issue additional policy statements as needed.
	General	Supports inclusion of requiring explanations of rejection of public input.	No staff response required.
	General	Supports requiring utilities to use the IAP2 "involve" level for all CEIP hearings.	Staff disagrees. "Hearings," and "open meetings" are official forums for the commission and have limited back and forth interaction between utilities and customers, serving instead as a mechanism for conducting official commission business in compliance with open meeting laws. These official meetings give an opportunity for customers and the public to be heard by the commission and for the commission to ask questions of those present. In addition, the approval process for final CEIPs outlined in these proposed rules allows for CEIPs to be adjudicated. In these hearings, parties have the right to advocate in favor of their own positions. It is unclear what the IAP2 "involve" level would mean in this context.

Party	Draft WAC	Summary of Comment	Staff Response
WEC	General	Recommends restoring the public engagement provisions from previous drafts of the rule to undo barriers and create accessible public engagement opportunities needed to achieve an equitable transformation.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.
	General	Argues that utility advisory groups are topic-specific and less accessible than broader public engagement opportunities, and do not provide a way for a diversity of perspectives to be shared; notes utilities will require more than advisory groups to build and maintain community understanding and support.	Staff recommends that the commission provide additional guidance in the adoption order and notes that the proposed rules require utilities to provide additional methods of building and maintaining community interaction through their public participation plans.
WECM	General	Approximately 282 WEC member letters requesting creation of more accessible opportunities for robust public engagement in integrated resource planning and clean energy implementation planning that anticipate and break down barriers.	Staff recommends that the commission provide additional guidance in the adoption order as well as future conversations relative to barriers to participation.
Weinstein, Elyette	General	Recommends restoration of the public participation language of the previous draft of the rules and argues that limitation of participation to advisory groups bars input from individuals that utilities don't normally hear from. States concerns about transparency and gate-keeping public input to insider members of hand-picked advisory groups.	Staff disagrees. The changes to these rules clarify the role of the advisory group; they do not broadly limit public participation. Staff recommends that the commission provide additional guidance in the adoption order.

WAC 480-100-660 Incremental cost of compliance.

Party	Draft WAC	Summary of Comment	Staff Response
Avista	660(6)	The commission should determine whether the incremental cost cap has been met using a one-time estimate when the utility files its CEIP. This provides the utility with greater certainty as it will know exactly how much it needs to spend.	Staff disagrees. A forecast of compliance is not a reasonable substitution for a demonstration of compliance.
	660(2)	The proposed calculation should be revised to result in a two percent annualized spending, rather than the five percent in the draft rule, for demonstrating compliance. This is more consistent with the legislature's intent. The proposed calculation assumes that an actual incremental two percent in directly attributable costs will be spent each year of a CEIP, but that is unlikely to ever happen due to the nature of utility investments.	Staff disagrees. Staff believes that the intent of the statute is for the two percent calculation to increase each year over the CEIP period and that intent is evident in the phrase "two-percent increase … above the previous year."
	660(2)	The determination of compliance should not be on the total dollars spent over a CEIP, but rather on the average rate increase per year during a CEIP period as specified in RCW 19.405.060 (3)(a).	Staff agrees that the statute does not require a specific amount of spending in any given year, rather it allows spending to be averaged over the CEIP compliance period.
	660(2)	Add the word "cumulative" before the mathematical formula.	Staff disagrees as the rules are sufficiently clear to capture the commission's intent.

Party	Draft WAC	Summary of Comment	Staff Response
PP&L	660(2)	The incremental cost methodology presented does not capture the cost containment intent from the legislature. Current methodology would allow rate increases of five percent on average over a four-year compliance period for investments only associated with CETA. Actual rate increases could be larger due to costs incurred in the alternative portfolio that would not be captured in the incremental cost calculation.	Staff disagrees. Staff believes that the intent of the statute is for the two percent calculation to increase each year over the CEIP period. That intent is evident in the phrase "two-percent increase … above the previous year."
	660(2)	Recommendation to change "each" to "the" in draft WAC 480-100-660(2), and removal of the annual threshold amount formula. The rule dilutes the intent and specificity of the statute by interpreting "previous year" as "each previous year" of the compliance period and not as "the single year immediately preceding the CEIP." The incremental cost cap would not be known at the beginning of the CEIP period because revenues are not known to the company until months after the beginning of CEIP, making CEIP cost cap and incremental cost cap inconsistent.	Staff disagrees with this interpretation of the meaning of the statute. Staff expects a utility will rely on projections of revenue to estimate the incremental cost of compliance when it files its CEIP, and use actual weather-adjusted sales revenue when it reports its actual cost of compliance in the clean energy compliance report.
	660(2)	The rule is flawed because it does not arrive at a result that captures the legislative intent of creating an "extremely strong" cost cap. The calculation does not derive the WASR from the CBR, but it establishes an inflated WASR baseline every year in the compliance period based on projections and inclusion of amounts related to CETA implementation costs from the previous years.	Staff disagrees. Although the utility will estimate its WASR for each year when it files the CEIP, the determination for when a utility may rely on the incremental cost of compliance pathway is made when the utility files its clean energy compliance report, after the completion of the CEIP. In that compliance report, the utility will use the actual WASR from each year of the CEIP and will not rely on projections of future revenue.
	660 (1), (2)	Parties have not had a meaningful opportunity or sufficient time to comment on the incremental cost methodology and formulas.	Staff disagrees. The commission conducted a workshop on March 17, 2020, focused on incremental cost. The commission also issued notices for written comments on two sets of draft rules prior to the publication of the CR-102. The notice for the second draft specifically asked stakeholders for their comments on the appropriate calculation, including a formula that used a compounding calculation that was similar to the calculation in the proposed rules, as noted by PP&L on page 3 of its comments.

Party	Draft WAC	Summary of Comment	Staff Response
PSE	660(1)	The process for comparing the costs of the actual portfolio to the alternative lowest reasonable cost and reasonably available portfolio is unclear. The requirement to update the baseline using the portfolio optimization model has numerous flaws, including requiring the commission to make periodic and successive determinations of what the utility "would have implemented" absent CETA. Furthermore, the term "material" is not defined and creates uncertainty.	Staff disagrees. It is not uncommon for utilities to update a filing including one that is based on assumptions. Staff also notes that the standard is not what the utility would have implemented absent CETA, rather, it is what the utility would have implemented absent RCW 19.405.040 and 19.405.050.
PC	660(2)	CETA does not require compounding growth or cost increases to the threshold amount. The phrase "equals a two percent increase …" only applies a two percent increase to revenue from the prior year. The statute does not say that cost increases from one year must be allowed to carry over into the following years.	Staff disagrees. Staff believes that the intent of the statute is for the two percent calculation to increase each year over the CEIP period and that intent is evident in the phrase "two-percent increase … above the previous year."
	660(2)	Compounding cost increases across the four-year period assumes that all CETA-related cost increases in a given year remain unchanged in the subsequent years and that the new cost increases are simply added on top of the old in the calculation of the threshold amount. This may be true for large capital costs but not necessarily true of all costs.	Staff disagrees. The incremental cost is a calculation of the threshold for spending and is unrelated to specific costs, either large capital costs or small education expenses.
	660(2)	Compounding gives costs an inappropriate presumption of reasonableness.	Staff disagrees. The calculation is not tied to specific costs, rather it is a spending threshold unrelated to a utility's specific actions in its CEIP.
	660(2)	If the commission allows the utilities to carry over the CETA-related cost increases from year to year, the formula should be corrected so that the threshold amount only reflects CETA-related cost increases or decreases from year to year and does not repetitively account for the base revenue.	Staff disagrees. Staff believes that the intent of the statute is for the two percent calculation to increase over the CEIP period and that intent is evident in the phrase "two-percent increase … above the previous year."

Party	Draft WAC	Summary of Comment	Staff Response
AWEC	660(2)	The proposed calculation artificially increases the incremental cost and is inconsistent with CETA's requirements that the cost be identified in some way as two percent of weather-adjusted sales. The proposed calculation would result in annual five percent increases, which does not faithfully implement the statute.	Staff disagrees. Staff believes that the intent of the statute is for the two percent calculation to increase over the CEIP period and that intent is evident in the phrase "two-percent increase … above the previous year."
	660(6)	Utilities should be allowed to rely on a projection of incremental costs, which is consistent with existing commission ratemaking structures used today. If the commission continues to rely on a retrospective review, utilities should not be required to update their CEIP assumptions. A retrospective review of the mechanism guts the protections of the mechanism by increasing the utility's risks that its assumptions do not materialize.	Staff disagrees that a retrospective review guts the protections of the statute. On the contrary, a retrospective review is aligned with common regulatory practices. Moreover, a retrospective review of utility actions is a much more common ratemaking principle than relying on projected forecasts of costs.
CS	660 (1)(c)	Does not support allowing an alternative methodology as it would allow utilities to select variable and inconsistent approaches. If the commission retains this option, the alternative approach must be compared to the method established in rule for comparison.	Staff disagrees. Although it may be preferable to have a consistent approach across all three utilities, it is reasonable for the commission to allow alternatives that satisfy the statutory requirements. Due to the complexity of calculating the incremental cost, it is also appropriate for the commission to offer some flexibility.
	660(2)	Supports the incremental cost calculation as consistent with the statute. Notes that the proposed calculation is "more generous" than the calculation advocated for by CS. However, CS's earlier proposal provides more rate impact certainty.	No staff response necessary.
NWEC	660 (1)(c)	Does not support allowing an alternative incremental cost methodology until possible alternatives are better understood. It is preferable to have a consistent approach across all three utilities for comparison.	Staff disagrees. Although it may be preferable to have a consistent approach across all three utilities, it is reasonable for the commission to allow alternatives that satisfy the statutory requirements. Due to the complexity of calculating the incremental cost, it is also appropriate for the commission to offer some flexibility.

Party	Draft WAC	Summary of Comment	Staff Response
RN	660 (1)(c)	Strike the option for an alternative methodology. The benefit of including this option is unclear. The method should be uniform across the utilities. However, if the commission maintains this option, the utility should be required to calculate its incremental cost via its method and the method established in rule for comparison.	Staff disagrees. Although it may be preferable to have a consistent approach across all three utilities, it is reasonable for the commission to allow alternatives that satisfy the statutory requirements. Due to the complexity of calculating the incremental cost, it is also appropriate for the commission to offer some flexibility.
	660(2)	RN supports the calculation in its current form; however, its prior calculation proposal would be better. RN's proposal allows long-term investments to be incorporated into the calculation at once so that once a utility determines the two percent threshold for the compliance period, a long-term investment will not count against a future year's incremental cost. RN's formula creates a slightly lower cost threshold than the draft rules proposal.	Staff disagrees. Staff believes that the calculation included in the rule satisfies the statutory requirements and is aligned with the intent. Staff also believes that the calculation in rule is flexible and reasonably accounts for long-term investments.
WEC	660(1)	The final rules should not allow companies to propose their own methodology but rather require consistent application of the incremental cost of compliance methodology across all utilities. The methodology should be adaptively managed and updated over time.	Staff disagrees. Although it may be preferable to have a consistent approach across all three utilities, it is reasonable for the commission to allow alternatives that satisfy the statutory requirements. Due to the complexity of calculating the incremental cost, it is also appropriate for the commission to offer some flexibility.

WAC 480-100-665 Enforcement.

Party	Draft WAC	Summary of Comment	Staff Response
FC	665	Support express restatement of the commission's enforcement powers, including compliance with the equity mandate.	No staff response required.
WEC	665	Restore the full description of the commission's authority to limit the extent to which utilities may recover return on investment, determine the prudence of a utility's activities, and take action in response to violations not directly related to emissions.	Staff disagrees. The commission does not need to restate its statutory authority to regulate utility rates in this rule, and the prior language is needlessly provocative.

Miscellaneous.

Party	Draft WAC	Summary of Comment	Staff Response
CS	Resource adequacy	Concerned with the lack of guidance for a resource adequacy standard. Resource adequacy (RA) is an off-ramp for CETA compliance, and the commission's current draft provides little guidance to ensure consistency or oversight of this provision.	Staff disagrees. Staff does not read WAC 480-100-090(3) as an off-ramp based on the performance of an RA analysis but rather as an off-ramp in the face of imminent failure of the NERC operating standards. NERC operating standards are operational performance standards. In contrast, RA is a measurement and standard for use in long-term planning. In this rule making, multiple utilities have asked that the commission not impose uniform RA standards in rule. Staff agrees the responsibility for an RA methodology should remain with a utility and it bears the risk to perform the RA analysis necessary to meet its load service obligations.
FC	610 (4)(c)(i)	Provides two attachments on metrics for equitable distribution and tools for measurement.	Staff appreciates the additional information and anticipates further engagement with utilities and stakeholders to refine how the information included in the attachments relates to the various elements of RCW 19.405.040(8) compliance.
Invenergy	Repowering	IRP and CEIP rules should require including repowering decisions in utility resource planning processes. Utilities should evaluate major repowering of any existing generating resource on a consistent basis with new resource opportunities, including application of the same requirements under CETA. Further, the rules should not allow utilities to bias their IRP and CEIP evaluations to justify constructing or repowering GHG-emitting generating resources.	Staff disagrees this edit is necessary because repowering is addressed in WAC 480-100-620(7), resource evaluation, where each utility's IRP must include a comparative evaluation of all … potential changes to existing resources.
	Construction of new GHG-emitting resources	Provide more guidance in the rules to ensure that any construction of new GHG-emitting resources is based on a complete justification including the risks that such new resources will be cost-effective over a reduced lifespan.	Staff believes that the statute is clear: Utilities must be greenhouse gas neutral by 2030 and 100 percent clean by 2045. All new builds should first be previewed in the CEAP before being included in the CEIP, where stakeholders and the commission may delve into the benefits and risks of a project. Staff believes that the rules and existing commission practices ensure that there is an opportunity to review the benefits and risks of all projects.
Adcock, James	RECs	Concerned that there is an opportunity for potential REC double-counting.	Staff points out that there is no allowance in CETA to use nonpower attributes or renewable energy credits more than once. This issue will likely be further addressed during the rule making under RCW 19.405.130.

Appendix B

[WAC 480-XX - RULES]

OTS-2679.2

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.

"Customer benefit 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).

"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.

"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.

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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.

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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 in-

stalled 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 overgeneration 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 power purchase 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 overgeneration 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 19.405.040 (1)(b), 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) and in an easily accessible format 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.

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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 the utility's website, updated in a timely manner, to which the utility posts and makes publicly available information related to the IRP, including information outlined in subsection (5) of this section;

(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.

(5) **Publicly available information.** The utility must make the following information publicly available on its website:

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

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

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

(d) 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.

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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(5), 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 used to develop its IRP 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 nonconfidential data inputs and files must be available for advisory group member review in an easily accessible format upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095.

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NEW SECTION

WAC 480-100-640 Content of a 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 and in an easily accessible format 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 customer benefit indicators and associated weighting factors related to WAC 480-100-610 (4)(c) including, at a minimum, one or more customer benefit indicators associated with energy benefits, nonenergy benefits, reduction of burdens, public health, environment, reduction in cost, energy security, and resiliency. Customer benefit 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 customer benefit 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 and be consistent with 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) Customer benefit indicator values, or a designation as nonapplicable, for every customer benefit 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)(i).

(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.

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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 demon-

strating 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).

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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 customer benefit 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 customer benefit 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 and in an easily accessible format 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 (e.g., voluntary renewable programs, renewable portfolio standard, clean energy transformation standards);

(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 (i) 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 customer benefit 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 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;

(h) The utility must make all of its data inputs and files used to develop its CEIP 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 as well as nonconfidential data inputs and files must be available for advisory group review in an easily accessible format upon request. Nothing in this subsection limits the protection of records containing commercial information under RCW 80.04.095;

(i) 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 up-

date 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 customer benefit 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, customer benefit 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).

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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 19.405.040 (1)(b) during the applicable period, the utility has maximized investments in renewable resources and nonemitting electric generation before relying on these alternative compliance options.

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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.

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WSR 21-04-003
PERMANENT RULES
BUILDING CODE COUNCIL
[Filed January 20, 2021, 2:01 p.m., effective February 20, 2021]

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

Purpose: The purpose of the permanent rule making is to adopt changes noted in CR-105 Expedited rule making (WSR 20-15-073).

Citation of Rules Affected by this Order: New 1; and amending 15.

Statutory Authority for Adoption: RCW 19.27.031.

Other Authority: RCW 19.27.074.

Adopted under notice filed as WSR 20-15-073 on July 14, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

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

Date Adopted: September 23, 2020.

Diane Glenn
Chair

OTS-2402.1

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0105 Permits.

SECTION 105 SCOPE AND GENERAL REQUIREMENTS

((~~**105.6.4 Carbon dioxide systems.** An operational permit is required for carbon dioxide systems having more than 100 pounds of carbon dioxide.~~

~~**105.6.4.9 Marijuana extraction systems.** An operational permit is required to use a marijuana/cannabis extraction system regulated under WAC 314-55-104.~~))

105.6.30 Mobile food preparation vehicles. A permit is required for mobile preparation vehicles equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems.

((~~**105.7.19 Marijuana extraction systems.** A construction permit is required to install a marijuana/cannabis extraction system regulated under WAC 314-55-104.~~

~~**105.7.20**~~)) 105.7.26 **Underground supply piping for automatic sprinkler system.** A construction permit is required for the installation of the

portion of the underground water supply piping, public or private, supplying a water-based fire protection system. The permit shall apply to all underground piping and appurtenances downstream of the first control valve on the lateral piping or service line from the distribution main to one foot above finished floor of the facility with the fire protection system. Maintenance performed in accordance with this code is not considered to be a modification and does not require a permit.

EXCEPTIONS: 1. When the underground piping is installed by the aboveground piping contractor.
2. Underground piping serves a fire protection system installed in accordance with NFPA 13D.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0105, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0105, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0105, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0105, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0202 General definitions.

SECTION 202 GENERAL DEFINITIONS

ADULT FAMILY HOME. A dwelling, licensed by Washington state, in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

ALERT SIGNAL. A distinctive signal indicating the need for trained personnel and occupants to initiate a specific action, such as shelter-in-place.

ALERT SYSTEM. Approved devices, equipment and systems or combinations of systems used to transmit or broadcast an alert signal.

ASSISTED LIVING FACILITY. A home or other institution, licensed by the state of Washington, providing housing, basic services and assuming general responsibility for the safety and well-being of residents under chapters 18.20 RCW and 388-78A WAC. These facilities may provide care to residents with symptoms consistent with dementia requiring additional security measures.

CHILD CARE. For the purposes of these regulations, child care is the care of children during any period of a 24-hour day.

CHILD CARE, FAMILY HOME. A child care facility, licensed by Washington state, located in the dwelling of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including children who reside at the home.

CLUSTER. Clusters are multiple *portable school classrooms* separated by less than the requirements of the building code for separate buildings.

COVERED BOAT MOORAGE. A pier or system of floating or fixed access ways to which vessels on water may be secured and any portion of which are covered by a roof.

ELECTRICAL CODE. The National Electrical Code, promulgated by the National Fire Protection Association, as adopted by rule or local ordinance under the authority of chapter 19.28 RCW.

((~~**EXISTING.** Buildings, facilities or conditions that are already in existence, constructed or officially authorized prior to the adoption of this code.~~))

GRAVITY-OPERATED DROP OUT VENTS. Automatic smoke and heat vents containing heat-sensitive glazing designed to shrink and drop out of the vent openings when exposed to fire.

HOSPICE CARE CENTER. A building or portion thereof used on a 24-hour basis for the provision of hospice services to terminally ill inpatients.

MOBILE FOOD PREPERATION [PREPARATION] VEHICLE. Mobile food preparation vehicles that are equipped with appliances that produce smoke or grease-laden vapors or utilize LP-gas systems or CNG systems for the purpose of preparing and serving food to the public. Vehicles intended for private recreation shall not be considered mobile food preparation vehicles.

MOTOR VEHICLE. Includes, but not limited to, a vehicle, machine, tractor, trailer or semitrailer, or any combination thereof, propelled or drawn by mechanical power and designed for use upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. The term "motor vehicle" also includes freight containers or cargo tanks used, or intended for use, in connection with motor vehicles.

NIGHTCLUB. An A-2 Occupancy use under the 2006 International Building Code in which the aggregate area of concentrated use of unfixed chairs and standing space that is specifically designated and primarily used for dancing or viewing performers exceeds three hundred fifty square feet, excluding adjacent lobby areas. "Nightclub" does not include theaters with fixed seating, banquet halls, or lodge halls.

OCCUPANCY CLASSIFICATION. For the purposes of this code, certain occupancies are defined as follows:

Institutional Group I-1. Institutional Group I-1 occupancy shall include buildings, structures or portions thereof for more than 16 persons excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1 shall be classified as one of the occupancy conditions indicated below. This group shall include, but not be limited to, the following: Assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC shall be classified as Group I-1, Condition 2.

Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, but not be limited to, the following:

Foster care facilities

Detoxification facilities
Hospice care centers
Hospitals
Nursing homes
Psychiatric hospitals

Five or fewer persons receiving care. A facility such as the above with five or fewer persons receiving such care shall be classified as Group R-3 or shall comply with the *International Residential Code* provided an *automatic sprinkler system* is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

Family home child care. Family home child care licensed by Washington state for the care of twelve or fewer children shall be classified as Group R-3 or shall comply with the *International Residential Code*.

Adult care facility. A facility that provides accommodations for less than 24 hours for more than five unrelated adults and provides supervision and personal care services shall be classified as Group I-4.

EXCEPTION: Where the occupants are capable of responding to an emergency situation without physical assistance from the staff, the facility shall be classified as Group R-3.

Child care facility. Child care facilities that provide supervision and personal care on a less than 24-hour basis for more than five children 2 1/2 years of age or less shall be classified as Group I-4.

EXCEPTIONS: 1. A child day care facility that provides care for more than five but no more than 100 children 2 1/2 years or less of age, where the rooms in which the children are cared for are located on a level of exit discharge serving such rooms and each of these child care rooms has an exit door directly to the exterior, shall be classified as Group E.
2. Family child care homes licensed by Washington state for the care of 12 or fewer children shall be classified as Group R-3.

Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the *International Residential Code*. This group shall include:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:
Boarding houses (transient) with more than 10 occupants
Congregate living facilities (transient) with more than 10 occupants
Hotels (transient)
Motels (transient)

R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:
Apartment houses
Boarding houses (nontransient) with more than 16 occupants
Congregate living facilities (nontransient) with more than 16 occupants
Convents
Dormitories
Fraternities and sororities
Hotels (nontransient)
Live/work units
Monasteries
Motels (nontransient)
Vacation timeshare properties

R-3 Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, or I, including:

Buildings that do not contain more than two dwelling units.

Boarding houses (nontransient) with 16 or fewer occupants.

Boarding houses (transient) with 10 or fewer occupants.

Care facilities that provide accommodations for five or fewer persons receiving care.

Congregate living facilities (nontransient) with 16 or fewer occupants.

Congregate living facilities (transient) with 10 or fewer occupants.

Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance with Section 903.3.1.3 or with Section P2904 of the *International Residential Code*.

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

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

R-4 Classification is not adopted. Any reference in this code to R-4 does not apply.

PORTABLE SCHOOL CLASSROOM. A prefabricated structure consisting of one or more rooms with direct exterior egress from the classroom(s). The structure is transportable in one or more sections, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be capable of being demounted and relocated to other locations as needs arise.

RECALL SIGNAL. An electrically or mechanically operated signal used to recall occupants after an emergency drill or to terminate a shelter-in-place event that shall be distinct from any alarm or alert signal used to initiate an emergency plan, or other signals.

SHELTER-IN-PLACE. An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0202, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0202, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-090, § 51-54A-0202, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0202, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 16-03-055, filed 1/16/16, effective 7/1/16)

WAC 51-54A-0308 Open flames.

308.1.4 Open-flame cooking devices. This section is not adopted.

308.1.7 Religious ceremonies. Participants in religious ceremonies shall not be precluded from carrying hand-held candles. See RCW 19.27.031(3).

((~~308.1.9~~)) 308.1.7.1 Aisles and exits. Candles shall be prohibited in areas where occupants stand, or in an aisle or exit.

EXCEPTION: Candles used in religious ceremonies.

((~~308.1.10~~)) 308.1.9 Decorative open flame tables. Gas-fired portable or fixed open flame fire tables and fireplaces are required to be provided with fire *code official* approved design or protection devices to prevent occupants from using flame, and from flame being exposed to combustible material. A fire extinguisher shall be located within 75 feet of travel distance or a distance as approved by the fire *code official*. Where located indoors, the supply gas valve will be interlocked with building fire alarm and/or fire sprinklers, where provided.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0308, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0308, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0314 Indoor displays.

314.1 General. Indoor displays constructed within any occupancy shall comply with Sections 314.2 through 314.4.

314.2 Fixtures and displays. Fixtures and displays of goods for sale to the public shall be arranged so as to maintain free, immediate and unobstructed access to exits as required by Chapter 10.

314.3 Highly combustible goods. The display of highly combustible goods including, but not limited to, fireworks, flammable or combustible liquids, liquefied flammable gases, oxidizing materials, pyroxylin plastics and agricultural goods, in main exit access aisles, corridors, covered and open malls, or within 5 feet (1524 mm) of entrances to exits and exterior exit doors is prohibited where a fire involving such goods would rapidly prevent or obstruct egress.

314.4 Vehicles. Liquid- or gas-fueled vehicles, boats, aircraft or other motorcraft shall not be located indoors except as follows:

1. The engine starting system is made inoperable, batteries are disconnected except where the fire code official requires that the batteries remain connected to maintain safety features.
2. Fuel in fuel tanks does not exceed one-quarter tank or 5 gallons (19 L) (whichever is least).
3. Fuel tanks and fill openings are closed and sealed to prevent tampering.

4. Vehicles, aircraft, boats or other motorcraft equipment are not fueled or defueled within the building.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0314, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0406 Employee training and response procedures.

406.1 General. Employees in the occupancies listed in Section 403 shall be trained in the emergency procedures described in their emergency plans. Training shall be based on these plans and as described in Section 406.2 and 406.3.

406.2 Frequency. Employees shall receive training in the contents of the emergency plans and their duties as part of new employee orientation and at least annually thereafter. Records shall be kept and made available to the fire code official upon request.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, sheltering-in-place, and fire safety in accordance with Sections 406.3.1 through 406.3.3.

((~~406.3.5~~)) 406.3.4 Emergency shelter-in-place training. Where a facility has a shelter-in-place plan, employees shall be trained on the alert and recall signals, communication system, location of emergency supplies, the use of the incident notification and alarm system, and their assigned duties and procedures in the event of an alarm or emergency.

406.4 Emergency lockdown training. This section is not adopted.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0406, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0406, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0406, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0510 Emergency responder radio coverage.

510.4.1.1 Minimum signal strength into building. The minimum inbound signal strength shall be sufficient to provide usable voice communications throughout the coverage area as specified by the *fire code official*. The inbound signal level shall be a minimum of -95 dBm throughout the coverage area and sufficient to provide not less than a delivered audio quality (DAQ) of 3.0 or an equivalent signal-to-interference-plus-noise ratio (SINR) applicable to the technology for either analog or digital signals.

510.4.2.4 Signal booster requirements. If used, signal boosters shall meet the following requirements:

1. All signal booster components shall be a National Electrical Manufacturer's Association (NEMA) 4, ((~~IP656~~)) IP65-type waterproof cabinet or equivalent.

2. Battery systems used for the emergency power source shall be contained in a NEMA 3R or higher-rated cabinet, ((~~IP656~~)) IP65-type waterproof cabinet or equivalent.

3. Equipment shall have FCC or other radio licensing authority certification and be suitable for public safety use prior to installation.

4. Where a donor antenna exists, isolation shall be maintained between the donor antenna and all inside antennas to not less than 20 dB greater than the system gain under all operating conditions.

5. Bi-directional amplifiers (BDAs) active RF emitting devices used in emergency responder radio coverage systems shall have oscillation prevention built-in oscillation detection and control circuitry.

6. The installation of amplification systems or systems that operate on or provide the means to cause interference on any emergency responder radio coverage networks shall be coordinated and approved by the fire code official.

510.5.3 Acceptance test procedure. Where an emergency responder radio coverage system is required, and upon completion of installation, the building *owner* shall have the radio system tested to verify that two-way coverage on each floor of the building is not less than 95 percent. The test procedure shall be conducted as follows:

1. Each floor of the building shall be divided into a grid of 20 approximately equal test areas.

2. The test shall be conducted using a calibrated portable radio of the latest brand and model used by the agency talking through the agency's radio communications system or equipment approved by the fire code official.

3. Failure of more than one test area shall result in failure of the test.

4. In the event that two of the test areas fail the test, in order to be more statistically accurate, the floor shall be permitted to be divided into 40 equal test areas. Failure of not more than two non-adjacent test areas shall not result in failure of the test. If the system fails the 40 area test, the system shall be altered to meet the 95 percent coverage requirement.

5. A test location approximately in the center of each test area shall be selected for the test, with the radio enabled to verify two-way communications to and from the outside of the building through the public agency's radio communications system. Once the test location has been selected, that location shall represent the entire test area. Failure in the selected test location shall be considered to be a failure of that test area. Additional test locations shall not be permitted.

6. The gain values of all amplifiers shall be measured and the test measurement results shall be kept on file with the building *owner* so that the measurements can be verified during annual tests. In the event that the measurement results become lost, the building *owner* shall be required to rerun the acceptance test to reestablish the gain values.

7. As part of the installation, a spectrum analyzer or other suitable test equipment shall be utilized to ensure spurious oscillations are not being generated by the subject signal booster. This test

shall be conducted at the time of installation and at subsequent annual inspections.

8. Systems incorporating Class B signal-booster devices or Class B broadband fiber remote devices shall be tested using two portable radios simultaneously conducting subjective voice quality checks. One portable radio shall be positioned not greater than 10 feet (3048 mm) from the indoor antenna. The second portable radio shall be positioned at a distance that represents the farthest distance from any indoor antenna. With both portable radios simultaneously keyed up on different frequencies within the same band, subjective audio testing shall be conducted and comply with DAQ levels as specified in Sections 510.4.1.1 and 510.4.1.2.

510.5 Installation requirements. The installation of the public safety radio coverage system shall be in accordance with NFPA 1221 and Sections 510.5.1 through 510.5.5.

510.5.5 Mounting of the donor antenna(s). To maintain proper alignment with the system designed donor site, donor antennas shall be permanently affixed on the highest possible position on the building or where approved by the fire code official. A clearly visible sign stating "movement or repositioning of this antenna is prohibited without approval from the fire code official." The antenna installation shall be in accordance with the applicable requirements in the International Building Code for weather protection of the building envelope.

510.6.1 Testing and proof of compliance. The owner of the building or owner's authorized agent shall have the emergency responder radio coverage system inspected and tested annually or where structural changes occur including additions or remodels that could materially change the original field performance tests. Testing shall consist of the following:

1. In-building coverage test as described in Section 510.5.3 or as required by the fire code official.

2. Signal boosters shall be tested to verify that the gain is the same as it was upon initial installation and acceptance or set to optimize the performance of the system.

3. Backup batteries and power supplies shall be tested under load of a period of 1 hour to verify that they will properly operate during an actual power outage. If within the 1-hour test period the battery exhibits symptoms of failure, the test shall be extended for additional 1-hour periods until the integrity of the battery can be determined.

4. Other active components shall be checked to verify operation within the manufacturers specification.

5. At the conclusion of the testing, a report, which shall verify compliance with Section 510.5.3, shall be submitted to the fire code official.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0510, filed 11/27/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0607 Section 607—Commercial kitchen hoods.

[M]607.2 Where required. A Type I hood shall be installed at or above all commercial cooking appliances and domestic cooking appliances used for commercial purposes that produce grease laden vapors.

EXCEPTIONS:
1. Factory-built commercial exhaust hoods that are listed and labeled in accordance with UL 710, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*.
2. Factory-built commercial cooking recirculating systems that are listed and labeled in accordance with UL 710B, and installed in accordance with Section 304.1 of the *International Mechanical Code*, shall not be required to comply with Sections 507.1.5, 507.2.3, 507.2.5, 507.2.8, 507.3.1, 507.3.3, 507.4 and 507.5 of the *International Mechanical Code*. Spaces in which such systems are located shall be considered to be kitchens and shall be ventilated in accordance with Table 403.3.1.1 of the *International Mechanical Code*. For the purpose of determining the floor area required to be ventilated, each individual appliance shall be considered as occupying not less than 100 square feet (9.3 m^2).
3. Where cooking appliances are equipped with integral down-draft exhaust systems and such appliances and exhaust systems are listed and labeled for the application in accordance with NFPA 96, a hood shall not be required at or above them.
4. A Type I hood shall not be required for an electric cooking appliance where an approved testing agency provides documentation that the appliance effluent contains 5 mg/m^3 or less of grease when tested at an exhaust flow rate of 500 cfm (0.236 m^3/s) in accordance with UL 710B.
5. A Type I hood shall not be required to be installed in an R-2 occupancy with not more than 16 residents.

607.2.1 Domestic cooking appliances used for commercial purposes. Domestic cooking appliances utilized for commercial purposes shall be provided with Type I, Type II, or residential hoods as required for the type of appliances and processes in accordance with Table 607.2.1 and Sections 507.2((~~, 507.2.1 and 507.2.2~~)) and 507.3 of the *International Mechanical Code*.

Table 607.2.1
Type of Hood Required for Domestic Cooking Appliances in the Following Spaces[a,b]

Type of Space	Type of Cooking	Type of Hood
Church	1. Boiling, steaming, and warming precooked food	Residential hood[c] or Type II hood(([c]))
	2. Roasting, pan frying, and deep frying	Type I hood
Community or party room in apartment and condominium	1. Boiling, steaming, and warming precooked food	Residential hood[c] or Type II hood[d((,e))]
	2. Roasting, pan frying, and deep frying	Type I hood
Day care	1. Boiling, steaming, and warming precooked food	Residential hood[c] or Type II hood[d((,e))]
	2. Roasting, pan frying, and deep frying	Type I hood
Dormitory, assisted living facility, nursing home	1. Boiling, steaming, and warming precooked food	Residential hood[c] or Type II hood((,e))
	2. Roasting, pan frying, and deep frying	Type I hood

Type of Space	Type of Cooking	Type of Hood
Office lunch room	1. Boiling, steaming, and warming precooked food	Residential hood[c] or Type II hood[d((,e))]
	2. Roasting, pan frying, and deep frying	Type I hood

[a] Commercial cooking appliances shall comply with Section 507.2 of the *International Mechanical Code*.
[b] Requirements in this table apply to electric or gas fuel appliances only. Solid fuel appliances or charbroilers require Type I hoods.
[c] Residential hood shall ventilate to the outside.
[d] Type II hood required when more than one appliance is used.
((~~[e] Hoods are not required where the HVAC design meets IMC 507.3.~~))

607.3 Operations, inspection, and maintenance. Commercial cooking systems shall be operated, inspected, and maintained in accordance with Sections 607.3.1 through 607.3.4 and Chapter 11 of NFPA 96.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0607, filed 12/18/19, effective 7/1/20.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-0903 Automatic sprinkler systems.

903.2.1.6 Assembly occupancies on roofs. Where an occupied roof has an assembly occupancy with an occupant load exceeding 100 for Group A-2, and 300 for other Group A occupancies, the building shall be equipped with an *automatic sprinkler system* in accordance with Section 903.3.1.1 or 903.3.1.2.

EXCEPTION: Open parking garages of Type I or Type II construction.

903.2.1.8 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code.

903.2.3 Group E. An automatic sprinkler system shall be provided for fire areas containing Group E occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS:
1. Portable school classrooms with an occupant load of 50 or less calculated in accordance with Table 1004.1.2, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m^2); and clusters of portable school classrooms shall be separated as required by the building code; or
2. Portable school classrooms with an occupant load from 51 through 98, calculated in accordance with Table 1004.1.2, and provided with two means of direct independent exterior egress from each classroom in accordance with Chapter 10, and one exit from each class room shall be accessible, provided that the aggregate area of any cluster of portable classrooms does not exceed 6,000 square feet (557 m^2); and clusters of portable school classrooms shall be separated as required by the building code; or
3. Fire areas containing day care and preschool facilities with a total occupant load of 100 or less located at the level of exit discharge where every room in which care is provided has not fewer than one exit discharge door.

903.2.6 Group I. An automatic sprinkler system shall be provided throughout buildings with a Group I *fire area*.

EXCEPTIONS:
1. An *automatic sprinkler system* installed in accordance with Section 903.3.1.2 shall be permitted in Group I-1 Condition 1 facilities.
2. Where new construction or additions house less than sixteen persons receiving care, an automatic sprinkler system installed in accordance with Section 903.2.8.3 shall be permitted for Group I-1, Condition 2, assisted living facilities licensed under chapter 388-78A WAC and residential treatment facilities licensed under chapter 246-337 WAC.

903.2.6.1 Group I-4. An automatic sprinkler system shall be provided in fire areas containing Group I-4 occupancies where the fire area has an occupant load of 51 or more, calculated in accordance with Table 1004.1.2.

EXCEPTIONS: 1. An automatic sprinkler system is not required where Group I-4 day care facilities with a total occupant load of 100 or less, and located at the level of exit discharge and where every room where care is provided has not fewer than one exterior exit door.
2. In buildings where Group I-4 day care is provided on levels other than the level of exit discharge, an automatic sprinkler system in accordance with Section 903.3.1.1 shall be installed on the entire floor where care is provided, all floors between the level of care and the level of exit discharge and all floors below the level of exit discharge other than areas classified as an open parking garage.

903.2.8 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

EXCEPTION: Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
2. The Group R fire area is on only one story.
3. The Group R fire area does not include a basement.
4. The Group R fire area is no closer than 30 feet from another structure.
5. Cooking is not allowed within the Group R fire area.
6. The Group R fire area has an occupant load of no more than 8.
7. A hand-held (portable) fire extinguisher is in every Group R fire area.

903.2.9 Group S-1. An *automatic sprinkler system* shall be provided throughout all buildings containing a Group S-1 occupancy where one of the following conditions exists:

1. A Group S-1 *fire area* exceeds 12,000 square feet (1115 m^2).
2. A Group S-1 *fire area* is located more than three stories above grade plane.
3. The combined area of all Group S-1 *fire areas* on all floors, including any mezzanines, exceeds 24,000 square feet (2230 m^2).
4. A Group S-1 *fire area* used for the storage of commercial motor vehicles where the *fire area* exceeds 5,000 square feet (464 m^2).

((~~5. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 m^2).~~

~~6. A Group S-1 occupancy used for self-storage where the *fire area* exceeds 2,500 square feet (232 m^2).~~))

903.2.9.3 Group S-1 Upholstered furniture and mattresses. An automatic sprinkler system shall be provided throughout a Group S-1 fire where the area used for the storage of upholstered furniture exceeds 2,500 square feet (232 m^2).

EXCEPTION: Self-service storage facilities no greater than one story above grade plane where all storage spaces can be accessed directly from the exterior.

903.2.11.1.3 Basements. Where any portion of a basement is located more than 75 feet (22,860 mm) from openings required by Section 903.2.11.1, or where new walls, partitions or other similar obstructions are installed that increase the exit access travel distance to more than 75 feet, the basement shall be equipped throughout with an approved automatic sprinkler system.

903.2.11.7 Relocatable buildings within buildings. Relocatable buildings or structures located within a building with an approved fire sprinkler system shall be provided with fire sprinkler protection within the occupiable space of the building and the space underneath the relocatable building.

EXCEPTIONS: 1. Sprinkler protection is not required underneath the building when the space is separated from the adjacent space by construction resisting the passage of smoke and heat and combustible storage will not be located there.
2. If the building or structure does not have a roof or ceiling obstructing the overhead sprinklers.
3. Construction trailers and temporary offices used during new building construction prior to occupancy.
4. Movable shopping mall kiosks with a roof or canopy dimension of less than 4 feet on the smallest side.

903.3.5.3 Underground portions of fire protection system water supply piping. The portion of the installation or modification of an under-

ground water main, public or private, dedicated to supplying a water-based fire protection system shall be in accordance with NFPA 24 and chapter 18.160 RCW. Piping and appurtenances downstream of the first control valve on the lateral or service line from the distribution main to one-foot above finished floor shall be approved by the fire *code official*. Such underground piping shall be installed by a fire sprinkler system contractor licensed in accordance with chapter 18.160 RCW and holding either a Level U or a Level 3 license. For underground piping supplying systems installed in accordance with Section 903.3.1.2, a Level 2, 3, or U licensed contractor is acceptable.

EXCEPTION: Portions of underground piping supplying automatic sprinkler systems installed in accordance with NFPA 13D.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-0903, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0903, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0903, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-090, § 51-54A-0903, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0903, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0907 Fire alarm and detection systems.

907.2.3 Group E. Group E occupancies shall be provided with a manual fire alarm system that initiates the occupant notification signal utilizing one of the following:

1. An emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6; or

2. A system developed as part of a safe school plan adopted in accordance with RCW 28A.320.125 or developed as part of an emergency response system consistent with the provisions of RCW 28A.320.126. The system must achieve all of the following performance standards:

2.1 The ability to broadcast voice messages or customized announcements;

2.2 Includes a feature for multiple sounds, including sounds to initiate a lock down;

2.3 The ability to deliver messages to the interior of a building, areas outside of a building as designated pursuant to the safe school plan, and to personnel;

2.4 The ability for two-way communications;

2.5 The ability for individual room calling;

2.6 The ability for a manual override;

2.7 Installation in accordance with NFPA 72;

2.8 Provide 15 minutes of battery backup for alarm and 24 hours of battery backup for standby; and

2.9 Includes a program for annual inspection and maintenance in accordance with NFPA 72.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group E occupancies with an occupant load of 50 or less.

2. Emergency voice/alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group E occupancies with occupant loads of 100 or less, such as individual portable school classroom buildings; provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.
3. Where an existing approved alarm system is in place, an emergency voice/alarm system is not required in any portion of an existing Group E building undergoing any one of the following repairs, alteration or addition:
3.1 Alteration or repair to an existing building including, without limitation, alterations to rooms and systems, and/or corridor configurations, not exceeding 35 percent of the fire area of the building (or the fire area undergoing the alteration or repair if the building is comprised of two or more fire areas); or
3.2 An addition to an existing building, not exceeding 35 percent of the fire area of the building (or the fire area to which the addition is made if the building is comprised of two or more fire areas).
4. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
4.1 Interior corridors are protected by smoke detectors.
4.2 Auditoriums, cafeterias, gymnasiums and similar areas are protected by heat detectors or other approved detection devices.
4.3 Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
5. Manual fire alarm boxes shall not be required in Group E occupancies where all of the following apply:
5.1 The building is equipped throughout with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.
5.2 The emergency voice/alarm communication system will activate on sprinkler waterflow.
5.3 Manual activation is provided from a normally occupied location.

907.2.3.1 Sprinkler systems or detection. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

907.2.6.1 Group I-1. An automatic smoke detection system shall be installed in *corridors*, waiting areas open to *corridors* and *habitable spaces* other than *sleeping units* and kitchens. The system shall be activated in accordance with Section 907.4.

EXCEPTIONS: 1. For Group I-1 Condition 1 occupancies, smoke detection in *habitable spaces* is not required where the facility is equipped throughout with an *automatic sprinkler system* installed in accordance with Section 903.3.1.1.
2. Smoke detection is not required for exterior balconies.

907.2.6.4 Group I-4 occupancies. A manual fire alarm system that initiates the occupant notification signal utilizing an emergency voice/alarm communication system meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall be installed in Group I-4 occupancies. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

EXCEPTIONS: 1. A manual fire alarm system is not required in Group I-4 occupancies with an occupant load of 50 or less.
2. Emergency voice alarm communication systems meeting the requirements of Section 907.5.2.2 and installed in accordance with Section 907.6 shall not be required in Group I-4 occupancies with occupant loads of 100 or less, provided that activation of the manual fire alarm system initiates an approved occupant notification signal in accordance with Section 907.5.

907.5.2.1.2 Maximum sound pressure. The maximum sound pressure level for audible alarm notification appliances shall be 110 dBA at the minimum hearing distance from the audible appliance. For systems operating in public mode, the maximum sound pressure level shall not exceed 30 dBA over the average ambient sound level. Where the average ambient noise is greater than 95 dBA, visible alarm notification appliances shall be provided in accordance with NFPA 72 and audible alarm notification appliances shall not be required.

((~~907.10.3~~)) 907.10.1 Testing/maintenance: All inspection, testing, maintenance and programing not defined as "*electrical construction trade*" by chapter 19.28 RCW shall be completed by a NICET II or ESA/NTS Certified Fire Alarm Technician (CFAT) Level II Fire in fire alarms (effective July 1, 2018).

907.11 NICET: National Institute for Certification in Engineering Technologies and ESA/NTS: Electronic Security Association/National Training School.

907.11.1 Scope. This section shall apply to new and existing fire alarm systems.

907.11.2 Design review: All construction documents shall be reviewed by a NICET III, an ESA/NTS Certified Fire Alarm Designer (CFAD) Level III Fire in fire alarms, or a licensed professional engineer (PE) in

Washington prior to being submitted for permitting. The reviewing professional shall submit a stamped, signed, and dated letter; or a verification method approved by the local authority having jurisdiction indicating the system has been reviewed and meets or exceeds the design requirements of the state of Washington and the local jurisdiction (effective July 1, 2018).

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0907, filed 12/18/19, effective 7/1/20. Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-0907, filed 1/2/19, effective 7/1/19. Statutory Authority: RCW 19.27.074 and 19.27.550. WSR 18-01-104, § 51-54A-0907, filed 12/19/17, effective 7/1/18. Statutory Authority: Chapter 19.27 RCW and RCW 19.27.031. WSR 17-10-028, § 51-54A-0907, filed 4/25/17, effective 5/26/17. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 16-03-055, § 51-54A-0907, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27.074, 19.27.020, and 19.27.031. WSR 14-24-091, § 51-54A-0907, filed 12/1/14, effective 5/1/15. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0907, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-0909 ((~~Smoke control systems.~~)) Reserved.

((~~**909.6.3 Pressurized stairways and elevator hoistways.** Where stairways or elevator hoistways are pressurized, such pressurization systems shall comply with the requirements of Section 909.20 of this code for stair pressurization and 909.21 of the *International Building Code and Fire Code* as necessary to determine that the stairway or elevator hoistways meet the pressurization requirements of the code. Stairway and elevator hoistway pressurization systems in high-rise buildings, underground buildings, and in airport traffic control towers shall comply with IBC and IFC Sections 909 as smoke control systems.~~

~~Stairway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following IBC 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Section 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Section 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18 with the exception of Sections 909.18.2 and 909.18.9, 909.19, 909.20.5, and 909.20.6. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Stairway pressurization systems shall be maintained in accordance with Section 909.20 of this code.~~

~~Elevator hoistway pressurization systems in other than high-rise buildings, underground buildings, or airport traffic control towers are smoke control systems but shall only be required to comply with the following IBC 909 Sections: 909.1, 909.2, 909.3, 909.6 with the exception of Section 909.6.1, 909.10 with the exception of Sections 909.10.2, 909.11 with the exception of Section 909.11.1, 909.12 with the exception of Sections 909.12.3.2, 909.13, 909.14, 909.17, 909.18~~

~~with the exception of Sections 909.18.2 and 909.18.9, 909.19, and 909.21 with the exception of Sections 909.21.2, 909.21.9, and 909.21.10. Design drawings shall include a description of system operation, the conditions for system testing and the criteria for system acceptance to achieve the code minimum performance of the smoke control system. Elevator hoistway pressurization systems shall be maintained in accordance with Section 909.20 of this code.~~

~~**909.21.12 Hoistway venting.** Hoistway venting required by Section 3009 of the state building code need not be provided for pressurized elevator shafts.~~

~~**909.21.13 Machine rooms.** Elevator machine rooms shall be pressurized in accordance with this section unless separated from the hoistway shaft by construction in accordance with Section 707 of the *International Building Code*.~~))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-0909, filed 12/18/19, effective 7/1/20; WSR 16-03-055, § 51-54A-0909, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-0909, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-1010 Doors, gates and turnstiles.

1010.1.9.4 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.

2. In buildings in occupancy Group A having an occupant load of 300 or less, Groups B, F, M, and S, and in places of religious worship, the main door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1. The locking device is readily distinguishable as locked;

2.2. A readily visible sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3. The use of the key-operated locking device is revocable by the building official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no doorknob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt, or security chain, provided such devices are openable from the inside without the use of a key or a tool.

5. Fire doors after the minimum elevated temperature has disabled the unlatching mechanism in accordance with listed fire door test procedures.

6. Approved, listed locks without delayed egress shall be permitted in Group I-1 condition 2 assisted living facilities licensed under chapter 388-78A WAC and Group I-1 Condition 2 residential treatment

facilities licensed under chapter 246-337 WAC by the state of Washington, provided that:

6.1. The clinical needs of one or more patients require specialized security measures for their safety.

6.2. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

6.3. The doors unlock upon loss of electrical power controlling the lock or lock mechanism.

6.4. The lock shall be capable of being deactivated by a signal from a switch located in an approved location.

6.5. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

6.6. Emergency lighting shall be provided at the door.

1010.1.9.7 Controlled egress doors in Groups I-1 and I-2. Electric locking systems, including electromechanical locking systems and electromagnetic locking systems, shall be permitted to be locked in the means of egress in Group I-1 or I-2 occupancies where the clinical needs of persons receiving care require their containment. Controlled egress doors shall be permitted in such occupancies where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or an approved automatic smoke or heat detection system installed in accordance with Section 907, provided that the doors are installed and operate in accordance with all of the following:

1. The doors unlock upon actuation of the automatic sprinkler system or automatic fire detection system.

2. The doors unlock upon loss of power controlling the lock or lock mechanism.

3. The door locking system shall be installed to have the capability of being unlocked by a switch located at the fire command center, a nursing station or other approved location. The switch shall directly break power to the lock.

4. A building occupant shall not be required to pass through more than one door equipped with a controlled egress locking system before entering an exit.

5. The procedures for unlocking the doors shall be described and approved as part of the emergency planning and preparedness required by Chapter 4 of the *International Fire Code*.

6. There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

7. All clinical staff shall have the keys, codes or other means necessary to operate the locking systems.

8. Emergency lighting shall be provided at the door.

9. The door locking system units shall be listed in accordance with UL 294.

EXCEPTIONS: 1. Items 1 through 4 and 6 shall not apply to doors to areas where persons, which because of clinical needs, require restraint or containment as part of the function of a psychiatric treatment area.
2. Items 1 through 4 and 6 shall not apply to doors to areas where a listed egress control system is utilized to reduce the risk of child abduction from nursery and obstetric areas of a Group I-2 hospital.

1010.1.10 Panic and fire exit hardware. Swinging doors serving a Group H occupancy and swinging doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware.

EXCEPTIONS: 1. A main exit of a Group A occupancy shall ((~~be permitted to be~~)) have locking devices in accordance with Section ((~~1010.1.9.3~~)) 1010.1.9.4, Item 2.
2. Doors provided with panic hardware serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section ((~~1010.1.9.9~~)) 1010.1.9.10.

1010.1.10.3 Electrical rooms and working clearances. Exit and exit access doors serving electrical rooms and working spaces shall swing in the direction of egress travel and shall be equipped with panic hardware or fire exit hardware where such rooms or working spaces contain one or more of the following:

1. Equipment operating at more than 600 volts, nominal.

2. Equipment operating at 600 volts or less, nominal and rated at 800 amperes or more, and where the equipment contains overcurrent devices, switching devices or control devices.

EXCEPTION: Panic and fire exit hardware is not required on exit and exit access doors serving electrical equipment rooms and working spaces where such doors are not less than twenty-five feet (7.6 m) from the nearest edge of the electrical equipment.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-1010, filed 11/27/19, effective 7/1/20; WSR 16-03-055, § 51-54A-1010, filed 1/16/16, effective 7/1/16. Statutory Authority: RCW 19.27A.031, 19.27.074 and chapters 19.27 and 34.05 RCW. WSR 13-04-063, § 51-54A-1010, filed 2/1/13, effective 7/1/13.]

AMENDATORY SECTION (Amending WSR 20-01-162, filed 12/18/19, effective 7/1/20)

WAC 51-54A-1204 Section 1204—Solar photovoltaic power systems.

1204.1 General. Installation, modification, or alteration of solar photovoltaic power systems shall comply with this section. Due to the emerging technologies in the solar photovoltaic industry, it is understood fire code officials may need to amend prescriptive requirements of this section to meet the requirements for firefighter access and product installations. Section 104.9 Alternative materials and methods of this code shall be considered when approving the installation of solar photovoltaic power systems. Solar photovoltaic power systems shall be installed in accordance with Sections 605.11.1 through 605.11.2, the *International Building Code* and chapter 19.28 RCW.

((~~1204.4.1~~)) 1204.2.1 Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code*. Solar photovoltaic systems for Group R-3 residential and buildings built under the *International Residential Code* shall comply with Sections 1204.2.1.1 through 1204.2.1.3.

EXCEPTIONS: 1. Residential dwellings with an approved automatic fire sprinkler system installed.
2. Residential dwellings with approved mechanical or passive ventilation systems.
3. Where the fire code official determines that the slope of the roof is too steep for emergency access.
4. Where the fire code official determines that vertical ventilation tactics will not be utilized.
5. These requirements shall not apply to roofs where the total combined area of the solar array does not exceed thirty-three percent as measured in plan view of the total roof area of the structure, where the solar array will measure 1,000 sq. ft. or less in area, and where a minimum eighteen inches unobstructed pathway shall be maintained along each side of any horizontal ridge.

1204.6 Size of solar photovoltaic array.

1. Each photovoltaic array shall be limited to 150 feet (45,720 mm) by 150 feet (45,720 mm). Multiple arrays shall be separated by a 3-foot wide (914 mm) clear access pathway.

2. Panels/modules shall be located up to the roof ridge where an alternative ventilation method approved by the fire *code official* has determined vertical ventilation techniques will not be employed.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 20-01-162, § 51-54A-1204, filed 12/18/19, effective 7/1/20.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-3800 ((~~Marijuana processing or extraction facilities.~~)) Reserved.

((~~SECTION 3801—ADMINISTRATION~~

~~**3801.1 Scope.** Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.~~

~~**3801.2 Application.** The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.~~

~~**3801.2.1** For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.~~

~~EXCEPTION: Provisions of WAC 314-55-104 do not apply to this chapter.~~

~~**3801.2.2** The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.~~

~~**3801.3 Multiple hazards.** Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.~~

~~**3801.4 Existing building or facilities.** Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.~~

~~**3801.5 Permits.** Permits shall be required as set forth in Section 105.6 and 105.7.~~

~~SECTION 3802—DEFINITIONS~~

~~**Desolventizing.** The act of removing a solvent from a material.~~

~~**Finding.** The results of an inspection, examination, analysis or review.~~

Marijuana processing. Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

Miscella. A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Observation. A practice or condition not technically noncompliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Transfilling. The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3803—PROCESSING OR EXTRACTION OF MARIJUANA

3803.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

3803.2 Systems, equipment and processes. Systems, equipment, and processes shall be in accordance with Sections 3803.2.1 through 3803.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

3803.2.1 Application. Systems, equipment and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3803.2.2 General requirements. In addition to the requirements in Section 3803, systems, equipment and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3803.2.7.

3803.2.3 Systems and equipment. Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.

3803.2.4 Change of extraction medium. Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.

3803.2.5 Required technical report. The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.

3803.2.5.1 Content of technical report and engineering analysis. All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.

2. Engineer of record information.

3. Date of review and report revision history.

4. Signature page shall include:

4.1 Author of the report;

4.2 Date of report;

4.3 Seal, date and signature of engineer of record performing the design; and

5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.

6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.

7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.

8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.

9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.

10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

3803.2.6 Building analysis. The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

3803.2.6.1 Site inspection. The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

3803.2.7 Post-process purification and winterization. Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3803.3 Construction requirements.

~~**3803.3.1 Location.** Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.~~

~~**3803.3.1.1 Extraction room.** The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.~~

~~**3803.3.2 Egress.** Doors installed on rooms or areas dedicated to extraction shall be equipped with panic hardware or fire exit hardware.~~

~~**3803.3.2.1 Facility egress.** Egress requirements shall be in compliance with Chapter 10 of the International Building Code.~~

~~**3803.3.3 Ventilation.** Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.~~

~~**3803.3.4 Control area.** Control areas shall comply with Section 5003.8.3.~~

~~**3803.3.5 Ignition source control.** Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25 percent of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.~~

~~**3803.3.6 Interlocks.** When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.~~

~~**3803.3.7 Emergency power.**~~

~~**3803.3.7.1 Emergency power for extraction process.** Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.~~

~~**3803.3.7.2 Emergency power for other than extraction process.** An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:~~

~~1. Extraction room lighting;~~
~~2. Extraction room ventilation system;~~
~~3. Solvent gas detection system;~~
~~4. Emergency alarm systems;~~
~~5. Automatic fire extinguishing systems.~~

~~**3803.3.8 Continuous gas detection system.** For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25 percent of the LEL/LFL limit of the materials.~~

~~**3803.4 Carbon dioxide enrichment or extraction.** Extraction processes using carbon dioxide shall comply with this section.~~

~~**3803.4.1 Scope.** Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3803.4 through 3803.4.3.~~

~~This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas systems, dry ice, or on-site carbon dioxide generation.~~

~~**3803.4.2 Permits.** Permits shall be required as set forth in Sections 105.6 and 105.7.~~

~~**3803.4.3 Signage.** At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.~~

~~**3803.5 Flammable or combustible liquid.** The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.~~

~~**3803.5.1 Scope.** The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.~~

~~**3803.5.2 Location.** The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.~~))

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-3800, filed 11/27/19, effective 7/1/20. Statutory Authority: Chapter 19.27 RCW. WSR 17-03-104, § 51-54A-3800, filed 1/17/17, effective 5/1/17.]

AMENDATORY SECTION (Amending WSR 19-02-086, filed 1/2/19, effective 7/1/19)

WAC 51-54A-3900 ((~~Fixed guideway transit and passenger rail systems.~~)) Marijuana processing or extraction facilities.

((~~**3901.1 Scope.** Fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130.~~)) **SECTION 3901—ADMINISTRATION**

3901.1 Scope. Facilities used for marijuana processing or extraction that utilize chemicals or equipment as regulated by the International Fire Code shall comply with this chapter and the International Building Code. The extraction process includes the act of extraction of the oils and fats by use of a solvent, desolventizing of the raw material and production of the miscella, distillation of the solvent from the miscella and solvent recovery. The use, storage, transfilling, and handling of hazardous materials in these facilities shall comply with this chapter and the International Building Code.

3901.2 Application. The requirements set forth in this chapter are requirements specific only to marijuana processing and extraction facilities and shall be applied as exceptions or additions to applicable requirements set forth elsewhere in this code.

3901.2.1 For the purposes of this chapter, marijuana processing and extraction shall be limited to those processes and extraction methods that utilize chemicals defined as hazardous by the International Fire Code and are regulated as such. Such processes and extraction methods shall meet the requirements of this chapter and other applicable requirements elsewhere in this code and its referenced standards.

EXCEPTION: Provisions of WAC 314-55-104 do not apply to this chapter.

3901.2.2 The use of equipment regulated by the International Fire Code for either marijuana processing or marijuana extraction shall meet the requirements of this chapter and other applicable requirements elsewhere in this code.

3901.3 Multiple hazards. Where a material, its use or the process it is associated with poses multiple hazards, all hazards shall be addressed in accordance with Section 5001.1 and other material specific chapters.

3901.4 Existing buildings or facilities. Existing buildings or facilities used for the processing of marijuana shall comply with this chapter.

3901.5 Permits. Permits shall be required as set forth in Section 105.6 and 105.7.

SECTION 3902—DEFINITIONS

Desolventizing. The act of removing a solvent from a material.

Finding. The results of an inspection, examination, analysis or review.

Marijuana processing. Processing that uses chemicals or equipment as regulated by the International Fire Code; this does not include the harvesting, trimming, or packaging of the plant.

Miscella. A mixture, in any proportion, of the extracted oil or fat and the extracting solvent.

Observation. A practice or condition not technically noncompliant with other regulations or requirements, but could lead to noncompliance if left unaddressed.

Transfilling. The process of taking a gas source, either compressed or in liquid form (usually in bulk containers), and transferring it into a different container (usually a smaller compressed cylinder).

SECTION 3903—PROCESSING OR EXTRACTION OF MARIJUANA

3903.1 Location. Marijuana processing shall be located in a building complying with the International Building Code and this code. Requirements applied to the building shall be based upon the specific needs for mitigation of the specific hazards identified.

3903.2 Systems, equipment, and processes. Systems, equipment, and processes shall be in accordance with Sections 3903.2.1 through 3903.2.7. In addition to the requirements of this chapter, electrical equipment shall be listed or evaluated for electrical fire and shock hazard in accordance with RCW 19.28.010(1).

3903.2.1 Application. Systems, equipment, and processes shall include, but are not limited to, vessels, chambers, containers, cylinders, tanks, piping, tubing, valves, fittings, and pumps.

3903.2.2 General requirements. In addition to the requirements in Section 3903, systems, equipment, and processes shall also comply with Section 5003.2, other applicable provisions of this code, the International Building Code, and the International Mechanical Code. The use of ovens in post-process purification or winterization shall comply with Section 3903.2.7.

3903.2.3 Systems and equipment. Systems or equipment used for the extraction of oils from plant material shall be listed and approved for the specific use. If the system used for extraction of oils and products from plant material is not listed, then a technical report prepared by a Washington licensed engineer shall be provided to the code official for review and approval.

3903.2.4 Change of extraction medium. Where the medium of extraction or solvent is changed from the material indicated in the technical report, or as required by the manufacturer, the technical report shall be revised at the cost of the facility owner, and submitted for review and approval by the fire code official prior to the use of the equipment with the new medium or solvent.

3903.2.5 Required technical report. The technical report documenting the equipment design shall be submitted for review and approval by the fire code official prior to the equipment being installed at the facility.

3903.2.5.1 Content of technical report and engineering analysis. All, but not limited to, the items listed below shall be included in the technical report.

1. Manufacturer information.
2. Engineer of record information.
3. Date of review and report revision history.
4. Signature page shall include:
4.1 Author of the report;
4.2 Date of report; and
4.3 Seal, date and signature of engineer of record performing the design.
5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection.
6. Methodology of the design review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate the reason why specific codes or standards are applicable or not.
7. Equipment description. A list of all components and subassemblies of the system or equipment, indicating the material, solvent compatibility, maximum temperature and pressure limits.
8. A general flow schematic or general process flow diagram (PFD) of the process, including maximum temperatures, pressures and solvent state of matter shall be identified in each step or component. It shall provide maximum operating temperature and pressure in the system.
9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components.
10. Structural analysis for the frame system supporting the equipment.

11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process.

12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. This portion of the review should include review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room.

13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer.

14. Report shall include findings and observations of the analysis.

15. List of references used in the analysis.

3903.2.6 Building analysis. The technical report, provided by the engineer of record, shall include a review of the construction documents for location, room, space or building and include recommendations to the fire code official.

3903.2.6.1 Site inspection. The engineer of record of the equipment shall inspect the installation of the extraction equipment for conformance with the technical report and provide documentation to the fire code official that the equipment was installed in conformance with the approved design.

3903.2.7 Post-process purification and winterization. Post-processing and winterization involving the heating or pressurizing of the miscella shall be approved and performed in an appliance listed for such use. Domestic or commercial cooking appliances shall not be used. The use of industrial ovens shall comply with Chapter 30.

EXCEPTION: An automatic fire extinguishing system shall not be required for batch-type Class A ovens having less than 3.0 cubic feet of work space.

3903.3 Construction requirements.

3903.3.1 Location. Marijuana extraction shall not be located in any building containing a Group A, E, I or R occupancy.

3903.3.1.1 Extraction room. The extraction equipment and processes utilizing hydrocarbon solvents shall be located in a room or area dedicated to extraction.

3903.3.2 Egress. Doors installed on rooms or areas dedicated to extraction shall be equipped with panic hardware or fire exit hardware.

3903.3.2.1 Facility egress. Egress requirements shall be in compliance with Chapter 10 of the International Building Code.

3903.3.3 Ventilation. Ventilation shall be provided in compliance with Chapter 4 of the International Mechanical Code.

3903.3.4 Control area. Control areas shall comply with Section 5003.8.3.

3903.3.5 Ignition source control. Extraction equipment and processes using flammable or combustible gas or liquid solvents shall be provided with ventilation rates for the room to maintain the concentration of flammable constituents in air below 25 percent of the lower flammability limit of the respective solvent. If not provided with the required ventilation rate, Class I Division II electrical requirements shall apply to the entire room.

3903.3.6 Interlocks. When a hazardous exhaust system is provided, all electrical components within the extraction room or area shall be interlocked with the hazardous exhaust system, and when provided, the

gas detection system. When the hazardous exhaust system is not operational, then light switches and electrical outlets shall be disabled. Activation of the gas detection system shall disable all light switches and electrical outlets.

3903.3.7 Emergency power.

3903.3.7.1 Emergency power for extraction process. Where power is required for the operation of the extraction process, an automatic emergency power source in accordance with Section 5004.7 and 604 shall be provided. The emergency power source shall have sufficient capacity to allow safe shutdown of the extraction process plus an additional 2 hours of capacity beyond the shutdown process.

3903.3.7.2 Emergency power for other than extraction process. An automatic emergency power system in accordance with Section 604 shall be provided when any of the following items are installed:

1. Extraction room lighting;
2. Extraction room ventilation system;
3. Solvent gas detection system;
4. Emergency alarm systems;
5. Automatic fire extinguishing systems.

3903.3.8 Continuous gas detection system. For extraction processes utilizing gaseous hydrocarbon-based solvents, a continuous gas detection system shall be provided. The gas detection threshold shall not exceed 25 percent of the LEL/LFL limit of the materials.

3903.4 Carbon dioxide enrichment or extraction. Extraction processes using carbon dioxide shall comply with this section.

3903.4.1 Scope. Carbon dioxide systems with more than 100 pounds of carbon dioxide shall comply with Sections 3903.4 through 3903.4.3. This section is applicable to carbon dioxide systems utilizing compressed gas systems, liquefied-gas systems, dry ice, or on-site carbon dioxide generation.

3903.4.2 Permits. Permits shall be required as set forth in Sections 105.6 and 105.7.

3903.4.3 Signage. At the entrance to each area using or storing carbon dioxide, signage shall be posted indicating the hazard. Signs shall be durable and permanent in nature and not less than 7 inches wide by 10 inches tall. Signs shall bear the warning "DANGER! POTENTIAL OXYGEN DEFICIENT ATMOSPHERE." NFPA 704 signage shall be provided at the building main entry and the rooms where the carbon dioxide is used and stored.

3903.5 Flammable or combustible liquid. The use of a flammable or combustible liquid for the extraction of oils and fats from marijuana shall comply with this section.

3903.5.1 Scope. The use of flammable and combustible liquids for liquid extraction processes where the liquid is boiled, distilled, or evaporated shall comply with this section and NFPA 30.

3903.5.2 Location. The process using a flammable or combustible liquid shall be located within a hazardous exhaust fume hood, rated for exhausting flammable vapors. Electrical equipment used within the hazardous exhaust fume hood shall be listed or approved for use in flammable atmospheres. Heating of flammable or combustible liquids over an open flame is prohibited.

[Statutory Authority: RCW 19.27.031, 19.27.074 and chapter 19.27 RCW. WSR 19-02-086, § 51-54A-3900, filed 1/2/19, effective 7/1/19.]

AMENDATORY SECTION (Amending WSR 19-24-058, filed 11/27/19, effective 7/1/20)

WAC 51-54A-3904 Systems and equipment.

((**~~3904.2 Systems and equipment.~~** ~~Systems or equipment used for the extraction of oils from plant material shall comply with either Section 3404.2.1 or 3404.2.2.~~

~~3904.2.1 Listings.~~ ~~Systems or equipment used for the extraction of oils from plant material shall be listed and labeled in accordance with UL 1389 and installed in accordance with the listing and the manufacturer's installation instructions.~~

~~3904.2.2 Approvals.~~ ~~Systems or equipment used for the extraction of oils from plant material shall be approved for the specific use. The system shall be reviewed by a registered design professional. The registered design professional shall review and consider any information provided by the system's designer or manufacturer. A technical report in accordance with Section 3904.2.2.1 shall be prepared and submitted to the fire code official for review and approval. The firm or individual preparing the technical report shall be approved by the fire code official prior to performing the analysis.~~

~~3904.2.2.1 Technical report.~~ ~~A technical report, reviewed and approved by the *fire code official* as required by Section 3904.2.2, is required prior to the equipment being located or installed at the facility. The report shall be prepared by a *registered design professional* or other professional approved by the *fire code official*.~~

~~3904.2.2.2 Report content.~~ ~~The technical report shall contain all of the following:~~

~~1. Manufacturer information;~~

~~2. Preparer of record of the technical report;~~

~~3. Date of review and report revision history;~~

~~4. Signature page, including all of the following:~~

~~4.1. Author of the report;~~

~~4.2. Date of report;~~

~~4.3. Date and signature of *registered design professional* of record performing the design or peer review.~~

~~5. Model number of the item evaluated. If the equipment is provided with a serial number, the serial number shall be included for verification at the time of site inspection;~~

~~6. Methodology of the design or peer review process used to determine minimum safety requirements. Methodology shall consider the basis of design, and shall include a code analysis and code path to demonstrate whether specific codes or standards are applicable;~~

~~7. Equipment description. A list of every component and subassembly, such as fittings, hose, quick disconnects, gauges, site glass, gaskets, valves, pumps, vessels, containers and switches, of the system or equipment, indicating the manufacturer, model number, material and solvent compatibility. Manufacturer's data sheets shall be provided;~~

~~8. A general flow schematic or general process flow diagram of the process. Postprocessing or winterization shall be included in this diagram. Primary components of the process equipment shall be identified and match the equipment list required in Item 7. Operating temperatures, pressures and solvent state of matter shall be identified in each primary step or component. A piping and instrumentation diagram (PID or P&ID) shall be provided;~~

~~9. Analysis of the vessel(s) if pressurized beyond standard atmospheric pressure. Analysis shall include purchased and fabricated components;~~

~~10. Structural analysis for the frame system supporting the equipment;~~

~~11. Process safety analysis of the extraction system, from the introduction of raw product to the end of the extraction process;~~

~~12. Comprehensive process hazard analysis considering failure modes and points of failure throughout the process. The process hazard analysis shall include a review of emergency procedure information provided by the manufacturer of the equipment or process and not that of the facility, building or room;~~

~~13. Review of the assembly instructions, operational and maintenance manuals provided by the manufacturer;~~

~~14. List of references used in the analysis.~~

~~**3904.2.2.3 Site inspection.** Prior to operation of the extraction equipment, where required by the *fire code official*, the engineer of record or *approved* professional, as *approved* in Section 3904.2.2, shall inspect the site of the extraction process once equipment has been installed for compliance with the technical report and the building analysis. The engineer of record or *approved* professional shall provide a report of findings and observations of the site inspection to the *fire code official* prior to the approval of the extraction process. The field inspection report authored by the engineer of record shall include the serial number of the equipment used in the process and shall confirm that the equipment installed is the same model and type of equipment identified in the technical report.~~)) Reserved.

[Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 19-24-058, § 51-54A-3904, filed 11/27/19, effective 7/1/20.]

NEW SECTION

WAC 51-54A-4000 Fixed guideway transit and passenger rail systems.

4001.1 Scope. Fixed guideway transit and passenger rail systems shall be in accordance with NFPA 130.

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WSR 21-04-016
PERMANENT RULES
DEPARTMENT OF HEALTH
(Nursing Care Quality Assurance Commission)
[Filed January 22, 2021, 8:29 a.m., effective February 22, 2021]

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

Purpose: WAC 246-840-025, 246-840-030, 246-840-045, 246-840-090, 246-840-539, 246-840-541, 246-840-860, 246-840-905, 246-841-490, 246-841-578, 246-841-585, and 246-841-610, AIDS education and training requirements removal for nursing professions as result of ESHB 1551 Modernizing the control of certain communicable diseases (chapter 76, Laws of 2020).

ESHB 1551 (chapter 76, Laws of 2020) repeals the authorizing statute that contains the requirements for all secretary professions, licensing boards, and commissions to require AIDS education and training. The nursing care quality assurance commission is repealing the requirements in WAC 246-840-025, 246-840-030, 246-840-045, 246-840-090, 246-840-539, 246-840-541, 246-840-860, 246-840-905, 246-841-490, 246-841-578, 246-841-585, and 246-841-610, which require AIDS education and training as a condition for licensure.

Citation of Rules Affected by this Order: Repealing WAC 246-841-610; and amending WAC 246-840-025, 246-840-030, 246-840-045, 246-840-090, 246-840-539, 246-840-541, 246-840-860, 246-840-905, 246-841-490, 246-841-578, and 246-841-585.

Statutory Authority for Adoption: RCW 18.79.110 and 18.88A.060.

Other Authority: ESHB 1551 (chapter 76, Laws of 2020).

Adopted under notice filed as WSR 20-18-045 on August 28, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 11, Repealed 1.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 1.

Date Adopted: January 20, 2021.

Paula R. Meyer, MSN, RN, FRE
Executive Director

OTS-2396.3

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-025 Initial licensure for registered nurses and practical nurses—Commission approved Washington state nursing education program. Registered nursing and practical nursing applicants'

educated in a commission approved Washington state nursing education program and applying for initial licensure must:

(1) Successfully complete a commission approved nursing education program. For applicants from a commission approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of commission approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the candidate's program.

(2) ((~~Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(3)~~)) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050. Testing may be allowed upon receipt of a certificate of completion from the administrator of the nursing education program.

((~~(4)~~)) (3) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. Transcripts must be received within ninety days of the applicant's first taking of the examination. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a commission approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the candidate's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

[Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-025, filed 5/12/08, effective 6/12/08.]

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-030 Initial licensure for registered nurses and practical nurses—Out-of-state traditional nursing education program approved by another United States nursing board. Registered nursing and practical nursing applicants educated in a traditional nursing education program approved by another United States nursing board and applying for initial licensure must:

(1) Successfully complete a board approved nursing education program. Applicants from a board approved registered nurse program who are applying for a practical nurse license:

(a) Complete all course work required of board approved practical nurse programs as listed in WAC 246-840-575(2). Required courses not included in the registered nurse program may be accepted if the courses were obtained through a commission approved program.

(b) Be deemed as capable to safely practice within the scope of practice of a practical nurse by the nurse administrator of the applicant's nursing education program.

(2) ((~~Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(3)~~)) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

((~~(4)~~)) (3) Submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission. The transcript must include course names and credits accepted from other programs. The transcript must show:

(i) The applicant has graduated from an approved nursing program or has successfully completed the prelicensure portion of an approved graduate-entry registered nursing program; or

(ii) That the applicant has completed all course work required in a commission approved practical nurse program as listed in WAC 246-840-575(2).

(c) Applicants from a board approved registered nurse program who are applying for a practical nurse license must also submit an attestation sent from the nurse administrator of the applicant's nursing education program indicating that the applicant is capable to safely practice within the scope of practice of a practical nurse.

[Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-030, filed 5/12/08, effective 6/12/08. Statutory Authority: Chapter 18.79 RCW. WSR 99-01-098, § 246-840-030, filed 12/17/98, effective 1/17/99. Statutory Authority: RCW 18.79.160. WSR 97-17-015, § 246-840-030, filed 8/8/97, effective 9/8/97.]

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-045 Initial licensure for registered nurses and practical nurses who graduate from an international school of nursing. (1) Registered nurse and practical nurse applicants educated in a jurisdiction which is not a member of the National Council of State Boards of Nursing and applying for initial licensure must:

(a) Successfully complete a basic nursing education program approved in that country.

(i) The nursing education program must be equivalent to the minimum standards prevailing for nursing education programs approved by the commission.

(ii) Any deficiencies in the nursing program (theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing) may be satisfactorily completed in a commission approved nursing program or program created for internationally educated nurses identified in WAC 246-840-549, 246-840-551 or 246-840-552.

(b) Obtain an evaluation or certificate from a commission approved credential evaluation service verifying that the educational program completed by the applicant is equivalent to nursing education in the state of Washington.

(c) Demonstrate English language proficiency by passing a commission approved English proficiency examination at a commission designated standard, or provide evidence directly from the school of earning a high school diploma or college degree from a United States institution prior to commission approval to take the national licensing examination.

Individuals from Canada (except for Quebec), United Kingdom, Ireland, Australia, New Zealand, American Samoa, Guam, Northern Mariana Island, and U.S. Virgin Islands will have this requirement waived.

(d) ((~~Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(e)~~)) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

(2) Registered nurse and practical nurse applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) Official transcript directly from the nursing education program or licensure agency in the country where the applicant was educated and previously licensed.

(i) Transcript must be in English or accompanied by an official English translation. If the applicant's original documents (education and licensing) are on file in another state or with an approved credential evaluation agency, the applicant may request that the state board or approved credential evaluating agency send copies directly to the commission in lieu of the originals.

(ii) The transcript must:

(A) Include the applicant's date of enrollment, date of graduation and credential conferred.

(B) Describe the course names and credit hours completed.

(C) Document equivalency to the minimum standards in Washington state. Course descriptions or syllabi may be requested to determine equivalency to Washington state standards.

(c) Documentation from a commission approved nursing program showing that any deficiency has been satisfactorily completed.

(d) Documents must show the applicant has passed a commission approved English proficiency examination or the requirement is waived as identified in subsection (1) of this section.

[Statutory Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-045, filed 8/17/16, effective 9/17/16. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-045, filed 5/12/08, effective 6/12/08.]

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-090 Licensure for nurses by interstate endorsement. Registered nurse and practical nurse applicants for interstate endorsement may be issued a license without examination provided the applicant meets the following requirements:

(1) The applicant graduated and holds a degree from:

(a) A commission or state board approved program preparing candidates for licensure as a nurse; or

(b) A nursing program that is equivalent to commission approved nursing education in Washington state at the time of graduation as determined by the commission.

(2) The applicant holds a current active nursing license in another state or territory, or holds an inactive or expired license in another state or territory and successfully completes a commission-approved refresher course.

(a) An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.

(b) The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.

(3) The applicant was originally licensed to practice as a nurse in another state or territory after passing the National Council Licensure Examination (NCLEX).

(4) Applicants graduating from nursing programs outside the U.S. must demonstrate English proficiency by passing a commission approved English proficiency test if the nursing education is not in one of the following countries: Canada (except for Quebec), United Kingdom, Ireland, Australia, New Zealand, American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands, or complete one thousand hours of employment as a licensed nurse in another state, or provide evidence directly from the school of earning a high school diploma or college degree from a United States institution.

The one thousand hours of employment must be in the same licensed role as the nurse is applying for licensure in Washington state. Proof of employment must be submitted to the commission.

(5) For RNs: If the applicant is a graduate of a nontraditional nursing education program and:

(a) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit evidence of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035, or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(b) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit evidence of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(6) ((~~Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(7)~~)) Applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission if the education cannot be verified from the original board of nursing, or commission-approved evaluation agency.

(i) The transcript must contain adequate documentation demonstrating that the applicant graduated from an approved nursing program or successfully completed the prelicensure portion of an approved graduate-entry registered nursing program.

(ii) The transcripts shall include course names and credits accepted from other programs.

(c) Verification of an original registered or practical nurse license from the state or territory of original licensure. The verification must identify that issuance of the original licensure included passing the NCLEX.

(d) For applicants educated outside the United States and in territories or countries not listed in subsection (4) of this section, successful results of a commission approved English proficiency exam, or, evidence of one thousand hours worked as a nurse.

(e) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(i) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(ii) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

[Statutory Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-090, filed 8/17/16, effective 9/17/16. Statutory Authority: RCW 18.79.110. WSR 08-11-019, § 246-840-090, filed 5/12/08, effective 6/12/08; WSR 99-13-086, § 246-840-090, filed 6/14/99, effective 7/15/99. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-840-090, filed 2/13/98, effective 3/16/98. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-090, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-539 Curriculum for practical nurse nursing education programs. The practical nurse nursing education program of study must include both didactic and clinical learning experiences and must be:

(1) Effective September 1, 2017, designed to include prerequisite classes in the physical, biological, social and behavior sciences that are transferable to colleges and universities in the state of Washington;

(2) Planned, implemented, and evaluated by the faculty;

(3) Based on the philosophy, mission, objectives, and outcomes of the program and consistent with chapters 18.79 RCW and this chapter;

(4) Organized by subject and content to meet program outcomes;

(5) Designed to teach students to use a systematic approach to clinical decision making and safe patient care;

(6) Designed to teach students:

(a) Professional relationships and communication;

(b) Nursing ethics;

(c) Nursing history and trends;

(d) Commission approved scope of practice decision tree;

(e) Standards of practice;

(f) Licensure and legal aspects of nursing including the disciplinary process, substance abuse and professional values;

(g) Concepts and clinical practice experiences in geriatric nursing, and medical, surgical, and mental health nursing for clients throughout the life span;

(h) Concepts of antepartum, intrapartum, postpartum and newborn nursing with only an assisting role in the care of clients during labor and delivery and those with complications; and

(i) Concepts and practice in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and from diverse cultural, ethnic, social, and economic backgrounds((~~; and~~

~~(j) AIDS education as required in chapter 246-12 WAC, Part 8~~)).

(7) Designed to prepare graduates for licensure and to practice practical nursing as identified in WAC 246-840-700 and 246-840-705; and

(8) Designed to prepare graduates to practice according to competencies recognized by professional nursing organizations.

(a) Practical nursing courses shall include:

(i) Components of: Client needs; safe, effective care environment; health promotion and maintenance; interdisciplinary communication and collaboration; discharge planning; basics of multicultural health; psychosocial integrity; and physiological integrity.

(ii) Skills laboratory and clinical practice in the functions of the practical nurse including, but not limited to, administration of medications, implementing and monitoring client care, and promoting psychosocial and physiological health.

(iii) Concepts of coordinated care, delegation and supervision.

(b) Practical nurse programs teaching intravenous infusion therapy shall prepare graduates for national certification by a nursing professional practical nurse certifying body.

[Statutory Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-539, filed 8/17/16, effective 9/17/16.]

AMENDATORY SECTION (Amending WSR 16-17-082, filed 8/17/16, effective 9/17/16)

WAC 246-840-541 Curriculum for prelicensure registered nursing education programs. (1) The program of study for a registered nursing education program must include both didactic and clinical learning experiences and must be:

(a) Effective September 1, 2017, designed so that all prerequisite nonnursing course credits and nursing credits are transferable to the bachelor's in nursing programs as identified in the statewide associate in nursing direct transfer agreement between community colleges, colleges, and universities, or the statewide associate of applied science transfer degree;

(b) Designed to include instruction in the physical, biological, social and behavioral sciences. Content is required from the areas of anatomy and physiology (equivalent to two quarter credit terms with laboratory), chemistry, microbiology, pharmacology, nutrition, communication, and computations;

(c) Designed to include theory and clinical experiences in the areas of medical surgical nursing and mental health nursing across the life span, teaching students to use a systematic approach to clinical decision making and preparing students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end of life care for individuals of all ages across the life span;

(d) Designed to include nursing history, health care trends, legal and ethical issues such as professional values, substance abuse and the disciplinary process, scope of practice and commission approved scope of practice decision tree, and licensure and professional responsibility pertaining to the registered nurse role. Content may be integrated, combined, or presented as separate courses;

(e) Designed to include opportunities for the student to learn assessment and analysis of client and family needs, planning, implementation, evaluation, and delegation of nursing care for diverse individuals and groups;

(f) Planned, implemented, and evaluated by faculty;

(g) Based on the philosophy, mission, objectives and outcomes of the program;

(h) Organized logically with scope and sequence of courses demonstrating student learning progression;

(i) Based on sound educational principles and standards of educational practice;

(j) Designed so articulation or dual enrollment agreements between associate and bachelor's degree nursing programs or associate and master's degree nursing programs exists to facilitate higher levels of nursing education in a timely manner;

(k) Designed to prepare graduates for licensure and to practice as registered nurses as identified in WAC 246-840-700 and 246-840-705; and

(l) Designed to prepare graduates to practice as associate degree or bachelor degree nurses as identified by professional nursing organizations((~~; and~~

~~(m) Designed to include AIDS education as required in chapter 246-12 WAC, Part 8~~)).

(2) Baccalaureate and entry-level master's degree programs shall also include:

(a) Theory and clinical experiences in community and public health nursing;

(b) The study of research principles and application of statistics to health care practice and intervention; and

(c) The study and practice of leadership, interdisciplinary team coordination, quality assurance and improvement, care coordination and case management.

(3) Registered nursing curricula shall include:

(a) Comprehensive content on: Client needs; safe practice; effective care environment; discharge planning; health promotion, prevention and maintenance; psychosocial integrity and physiological integrity.

(b) Clinical experiences in the care of persons at each stage of the human life cycle, with opportunities for the student to learn and have direct involvement in and responsibility and accountability for the provision of basic nursing care and comfort for clients with acute and chronic illnesses, pharmacological and parenteral therapies, and pain management.

(c) Opportunities for management of care, delegation, supervision, working within a health care team, and interdisciplinary care coordination.

[Statutory Authority: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240. WSR 16-17-082, § 246-840-541, filed 8/17/16, effective 9/17/16.]

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

WAC 246-840-860 Nursing technician criteria. To be eligible for employment as a nursing technician a student must meet the following criteria:

(1) Satisfactory completion of at least one academic term (quarter or semester) of a nursing program approved by the commission. The term must have included a clinical component.

(2) Currently enrolled in a nursing commission approved program will be considered to include:

(a) All periods of regularly planned educational programs and all school scheduled vacations and holidays;

(b) Thirty days after graduation from an approved program; or

(c) Sixty days after graduation if the student has received a determination from the secretary that there is good cause to continue the registration period.

(d) Current enrollment does not include:

(i) Leaves of absence or withdrawal, temporary or permanent, from the nursing educational program.

(ii) Students who are awaiting the opportunity to reenroll in nursing courses.

((~~(3) Applicants must complete seven clock hours of AIDS education as required by RCW 70.24.270 and chapter 246-12 WAC, Part 8.~~))

[Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-860, filed 6/11/04, effective 6/11/04. Statutory Authority: RCW 18.79.160. WSR 97-17-049, § 246-840-860, filed 8/15/97, effective 9/15/97.]

AMENDATORY SECTION (Amending WSR 04-13-053, filed 6/11/04, effective 6/11/04)

WAC 246-840-905 How to register as a nursing technician. (1) An individual shall complete an application for registration on an application form prepared and provided by the secretary of the department of health. This application shall be submitted to P.O. Box 47864, Olympia, Washington, 98504-7864.

(2) Every applicant shall provide:

(a) The application fee under WAC 246-840-990.

(b) ((~~Verification of seven clock hours of AIDS education as required by RCW 70.24.270 and chapter 246-12 WAC, Part 8.~~

~~(c)~~)) A signed statement from the applicant's nursing program verifying enrollment in, or graduation from, the nursing program. If

the applicant has not yet graduated, this statement will include the anticipated graduation date.

((~~(d)~~)) (c) A signed statement from the applicant's employer or prospective employer certifying that the employer understands the role of the nursing technician and agrees to meet the requirements of RCW 18.79.360(4).

[Statutory Authority: Chapter 18.79 RCW and 2003 c 258. WSR 04-13-053, § 246-840-905, filed 6/11/04, effective 6/11/04.]

OTS-2397.1

AMENDATORY SECTION (Amending WSR 08-06-100, filed 3/5/08, effective 4/5/08)

WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs. (1) The curriculum must be competency based. It must be composed of learning objectives and activities that will lead to knowledge and skills required for the graduate to demonstrate mastery of the core competencies as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives. The time designated may vary with characteristics of the learners and teaching or learning variables. There must be a minimum of eighty-five hours total, with a minimum of thirty-five hours of classroom training and a minimum of fifty hours of clinical training.

(a) ((~~Of the thirty-five hours of classroom training, a minimum of seven hours must be in AIDS education as required by chapter 246-12 WAC, Part 8.~~

~~(b)~~)) Of the fifty hours of clinical training, at least forty clinical hours must be in the practice setting.

((~~(c)~~)) (b) Training to orient the student to the health care facility and facility policies and procedures are not to be included in the minimum hours above.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities such as lecture, discussion, readings, film, or clinical practice designed to enable the student to achieve the stated objectives.

(4) Clinical teaching in a competency area is closely correlated with classroom teaching to integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, and families.

(b) An identified instructor(s) will supervise clinical teaching or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting.

(5) The curriculum must include evaluation processes to assess mastery of competencies. Students cannot perform any clinical skill on clients or residents until first demonstrating the skill satisfactorily to an instructor in the practice setting.

[Statutory Authority: RCW 18.88A.060(1) and 18.88A.030(5). WSR 08-06-100, § 246-841-490, filed 3/5/08, effective 4/5/08. Statutory Authority: RCW 18.88A.060. WSR 91-23-077 (Order 214B), § 246-841-490, filed 11/19/91, effective 12/20/91; WSR 91-07-049 (Order 116B), recodified as § 246-841-490, filed 3/18/91, effective 4/18/91. Statutory Authority: RCW 18.88.080. WSR 90-20-018 (Order 091), § 308-173-270, filed 9/21/90, effective 10/22/90.]

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-578 Application requirements. To be eligible to apply for nursing assistant-certified from an alternative program the applicant must:

(1) Be currently credentialed as a home care aide-certified; or

(2) Be a medical assistant-certified as defined in WAC 246-841-535;

(3) Have completed a cardiopulmonary resuscitation course; and

(4) ((~~Have completed seven hours of AIDS education and training as required in chapter 246-12 WAC, part 8; and~~

~~(5)~~)) Have successfully completed the competency evaluation.

[Statutory Authority: RCW 18.88A.087 and 18.88A.060. WSR 11-16-042, § 246-841-578, filed 7/27/11, effective 8/27/11.]

AMENDATORY SECTION (Amending WSR 11-16-042, filed 7/27/11, effective 8/27/11)

WAC 246-841-585 Application for nursing assistant-certified from an alternative program. (1) An applicant for nursing assistant-certified who has successfully completed an approved alternative program as a home care aide-certified must submit to the department:

(a) A completed application for nursing assistant-certified.

(b) A copy of certificate of completion from an approved alternative program for home care aides-certified.

(c) Documentation verifying current certification as a home care aide.

(d) Evidence of completion of a cardiopulmonary resuscitation course.

(e) ((~~Evidence of completion of seven hours of AIDS education and training.~~

~~(f)~~)) Applicable fees as required in WAC 246-841-990.

(2) An applicant for nursing assistant-certified who successfully completed an approved alternative program as a medical assistant-certified must submit to the department:

(a) A completed application for nursing assistant-certified;

(b) A copy of certificate of completion from approved alternative program for medical assistant-certified;

(c) An official transcript from the nationally accredited medical assistant program;

(d) Evidence of completion of an adult cardiopulmonary resuscitation course; and

(e) ((~~Evidence of completion of seven hours of AIDS education and training; and~~

~~(f)~~)) Applicable fees as required in WAC 246-841-990.

[Statutory Authority: RCW 18.88A.087 and 18.88A.060. WSR 11-16-042, § 246-841-585, filed 7/27/11, effective 8/27/11.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-841-610	AIDS prevention and information education requirements.

WSR 21-04-026
PERMANENT RULES
BUILDING CODE COUNCIL
[Filed January 25, 2021, 4:38 p.m., effective February 25, 2021]

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

Purpose: To correct typographical errors in the minimum efficiency tables in the 2018 Washington State Energy Code, Commercial, chapter 51-11C WAC.

Citation of Rules Affected by this Order: Amending 1.

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

Other Authority: Chapter 19.27 RCW.

Adopted under notice filed as WSR 20-23-094 on November 17, 2020.

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

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

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

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

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

Date Adopted: January 22, 2021.

Diane Glenn
Council Chair

OTS-2761.2

AMENDATORY SECTION (Amending WSR 19-24-040, filed 11/26/19, effective 7/1/20)

WAC 51-11C-403233 Table C403.3.2(3)—Minimum efficiency requirements—Electrically operated PTAC, PTHP, SPVAC, SPVHP, room air conditioners.

Table C403.3.2(3)

Minimum Efficiency Requirements—Electrically Operated Packaged Terminal Air Conditioners, Packaged Terminal Heat Pumps, Single-Package Vertical Air Conditioners, Single-Package Vertical Heat Pumps, Room Air Conditioners and Room Air-Conditioner Heat Pumps

Equipment Type	Size Category (Input)	Subcategory or Rating Condition	Minimum Efficiency		Test Procedure[a]
PTAC (cooling mode) new construction	All Capacities	95°F db outdoor air		14.0 - (0.300 × Cap/1000) EER	AHRI 310/380
PTAC (cooling mode) replacements[b]	All Capacities	95°F db outdoor air		10.9 - (0.213 × Cap/1000) EER	
PTHP (cooling mode) new construction	All Capacities	95°F db outdoor air		14.0 - (0.300 × Cap/1000) EER	

Equipment Type	Size Category (Input)	Subcategory or Rating Condition	Minimum Efficiency		Test Procedure[a]
PTHP (cooling mode) replacements[b]	All Capacities	95°F db outdoor air		10.8 - (0.213 × Cap/1000) EER	
PTHP (heating mode) new construction	All Capacities	—		3.7 - (0.052 × Cap/1000) COP	
PTHP (heating mode) replacements[b]	All Capacities	—		2.9 - (0.026 × Cap/1000) COP	
SPVAC (cooling mode)	< 65,000 Btu/h	95°F db/75°F wb outdoor air		11.0 EER	AHRI 390
	≥ 65,000 Btu/h and < 135,000 Btu/h	95°F db/75°F wb outdoor air		((~~11.0~~)) 10.0 EER	
	≥ 135,000 Btu/h and < 240,000 Btu/h	95°F db/75°F wb outdoor air		((~~11.0~~)) 10.0 EER	
SPVHP (cooling mode)	< 65,000 Btu/h	95°F db/75°F wb outdoor air		11.0 EER	
	≥ 65,000 Btu/h and < 135,000 Btu/h	95°F db/75°F wb outdoor air		((~~11.0~~)) 10.0 EER	
	≥ 135,000 Btu/h and < 240,000 Btu/h	95°F db/75°F wb outdoor air		((~~11.0~~)) 10.0 EER	
SPVHP (heating mode)	<65,000 Btu/h	47°F db/43°F wb outdoor air		3.3 COP	AHRI 390
	≥ 65,000 Btu/h and < 135,000 Btu/h	47°F db/43°F wb outdoor air		((~~3.3~~)) 3.0 COP	
	≥ 135,000 Btu/h and < 240,000 Btu/h	47°F db/43°F wb outdoor air		((~~3.3~~)) 3.0 COP	
Room air conditioners, with louvered sides	< 6,000 Btu/h	—		11.0 CEER	ANSI/AHA-MRAC-1
	≥ 6,000 Btu/h and < 8,000 Btu/h	—		11.0 CEER	
	≥ 8,000 Btu/h and < 14,000 Btu/h	—		10.9 CEER	
	≥ 14,000 Btu/h and < 20,000 Btu/h	—		10.7 CEER	
	≥ 20,000 Btu/h and < 25,000 Btu/h	—		9.4 CEER	
	≥ 25,000 Btu/h	—		9.0 CEER	
Room air conditioners, without louvered sides	< 6,000 Btu/h	—		10.0 CEER	
	≥ 6,000 Btu/h and < 8,000 Btu/h	—		10.0 CEER	
	≥ 8,000 Btu/h and < 11,000 Btu/h	—		9.6 CEER	
	≥ 11,000 Btu/h and < 14,000 Btu/h	—		9.5 CEER	
	≥ 14,000 Btu/h and < 20,000 Btu/h	—		9.3 CEER	
	≥ 20,000 Btu/h	—		9.4 CEER	
Room air-conditioner heat pumps with louvered sides	< 20,000 Btu/h	—		9.8 CEER	
	≥ 20,000 Btu/h	—		9.3 CEER	
Room air-conditioner heat pumps without louvered sides	< 14,000 Btu/h	—		9.3 CEER	
	≥ 14,000 Btu/h	—		8.7 CEER	
Room air conditioner casement only	All capacities	—		9.5 CEER	
Room air conditioner casement-slider	All capacities	—		10.4 CEER	

For SI: 1 British thermal unit per hour = 0.2931 W, °C = [(°F) - 32]/1.8.
"Cap" = The rated cooling capacity of the product in Btu/h. If the unit's capacity is less than 7000 Btu/h, use 7000 Btu/h in the calculation. If the unit's capacity is greater than 15,000 Btu/h, use 15,000 Btu/h in the calculations.

[a] Chapter 12 of the referenced standard contains a complete specification of the referenced test procedure, including the referenced year version of the test procedure.

[b] Replacement unit shall be factory labeled as follows: "MANUFACTURED FOR NONSTANDARD SIZE APPLICATIONS ONLY; NOT TO BE INSTALLED IN NEW STANDARD PROJECTS" or "MANUFACTURED FOR REPLACEMENT APPLICATIONS ONLY: NOT TO BE INSTALLED IN NEW CONSTRUCTION PROJECTS." Replacement efficiencies apply only to units with existing sleeves less than 16 inches (406 mm) in height and less than 42 inches (1067 mm) in width.

[Statutory Authority: RCW 19.27A.020, 19.27A.025, 19.27A.160 and chapter 19.27 RCW. WSR 19-24-040, § 51-11C-403233, filed 11/26/19, effective 7/1/20. Statutory Authority: RCW 19.27A.025, 19.27A.160, and 19.27.074. WSR 16-03-072, § 51-11C-403233, filed 1/19/16, effective 7/1/16. Statutory Authority: RCW 19.27A.020, 19.27A.025 and chapters 19.27 and 34.05 RCW. WSR 13-04-056, § 51-11C-403233, filed 2/1/13, effective 7/1/13.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

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

WSR 21-04-037
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed January 26, 2021, 3:47 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: The department is amending the rules listed below to eliminate shared benefit as a status and as a basis to reduce a client's monthly benefit for in-home personal care, and to require a written agreement for a family or household individual provider to be assessed as a source of informal support. These rule changes eliminate adjustments to base hours, add-on hours, or any other in-home personal care services benefit that a client would otherwise receive because the paid provider shares in the benefit of an instrumental activity of daily living (IADL) provided to the client by the provider, and on the basis that two or more clients in a multi-client household benefit from the same IADL task(s) being performed. Any current rule that uses the phrase "shared benefit" or a similar phrase is being amended to remove the phrase and the definition of "informal support" is being amended.

This rule change is being effectuated as part of a settlement agreement with SEIU 775. SEIU 775 challenged department of social and health services rules that adjusted client benefits for shared benefits and informal supports under the Administrative Procedure Act. The department believes that assessing for shared benefit and informal support on an individualized basis is lawful, but such litigation is costly, and subjects the department to ongoing risks should the rules be held invalid by a court.

Additionally, assessment for shared benefit is often confusing for assessors and may result in inconsistent implementation statewide. While adjudicative hearings are available to ensure that shared benefits are not assessed incorrectly to the detriment of clients, such hearings impose costs on the department and clients.

Citation of Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-0130, 388-106-0055, 388-71-0515, and 388-71-0516.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 20-23-069 on November 16, 2020.

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

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 26, 2021.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-05 issue of the Register.

WSR 21-04-039
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed January 26, 2021, 4:55 p.m., effective February 26, 2021]

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

Purpose: The purpose of these rule amendments is to make housekeeping and other technical changes to chapter 392-122 WAC, Finance—Categorical apportionment, and WAC 392-140-916 through 392-140-939. The amendments update the chapter to align with state and federal statutes, simplify the language for clarity and readability, and make other technical revisions.

Citation of Rules Affected by this Order: New WAC 392-122-015, 392-122-500 through 392-122-520; repealing WAC 392-122-100, 392-122-105, 392-122-107, 392-122-110, 392-122-120, 392-122-130, 392-122-131, 392-122-132, 392-122-135, 392-122-200, 392-122-201, 392-122-202, 392-122-206, 392-122-208, 392-122-210, 392-122-213, 392-122-230, 392-122-420, 392-122-421, 392-122-422, 392-122-423, 392-122-424, 392-122-425, 392-122-426, 392-122-600, 392-122-700, 392-122-800, 392-140-916, 392-140-923, 392-140-932, 392-140-934 and 392-140-939; and amending WAC 392-122-005, 392-122-010, 392-122-106, 392-122-140, 392-122-145, 392-122-150, 392-122-155, 392-122-160, 392-122-165, 392-122-166, 392-122-205, 392-122-211, 392-122-212, 392-122-220, 392-122-221, 392-122-225, 392-122-228, 392-122-270, 392-122-275, 392-122-605, 392-122-705, 392-122-710, 392-122-805, 392-122-810, and 392-122-900.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.040(5).

Adopted under notice filed as WSR 20-23-088 on November 17, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 25, Repealed 32.

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

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

Date Adopted: January 26, 2021.

Chris P.S. Reykdal
State Superintendent
of Public Instruction

OTS-1971.4

PURPOSE AND DEFINITIONS

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-005 Authority. The authority for this chapter is RCW 28A.150.290, which authorizes the superintendent of public instruction to adopt rules and regulations for the implementation of chapter 28A.150 RCW. This chapter is further authorized under RCW 28A.710.040(5), which provides that ((~~public~~)) charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-005, filed 8/28/15, effective 9/28/15. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-122-005, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.170. WSR 84-13-020 (Order 84-10), § 392-122-005, filed 6/13/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-010 Purpose. The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts and charter schools for ((~~programs authorized by RCW 28A.150.370 other than basic education apportionment, special allocations pursuant to chapter 392-140 WAC, and transportation allocations~~)) the state special education program, the institutional education program, K-3 class size, the learning assistance program, the transitional bilingual program, and the highly capable students education program.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-010, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-010, filed 1/23/91, effective 2/23/91. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-122-010, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.170. WSR 84-13-020 (Order 84-10), § 392-122-010, filed 6/13/84.]

NEW SECTION

WAC 392-122-015 Definitions. The following terms apply in this chapter:

(1) "Charter school" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school

board, and operated according to the terms of a charter contract executed under chapter 28A.710 RCW.

(2) "School day" means the same as defined in WAC 392-121-033.

(3) "School year" means the same as defined in WAC 392-121-031.

(4) "Student eligible for special education services" means the same as defined in WAC 392-172A-01035.

(5) "Tribal compact school" means a school operated according to the terms of a state-tribe education compact authorized under chapter 28A.710 RCW.

[]

STATE SPECIAL EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-106 ((~~Definition—Form P-223H.~~)) State special education program—Enrollment reporting. ((~~"Form P-223H" means the report of~~)) (1) School districts and charter schools must submit monthly special education headcount enrollment reports for ((~~eligible special education students as defined in WAC 392-122-135 submitted monthly by the school districts and charter schools~~)) students eligible for special education services to the superintendent of public instruction for the school year on Form P-223H for the purpose of calculating the special education program allocations.

((~~(1)~~)) (2) The count dates for ((~~special education student~~)) the enrollment((~~s~~)) of students eligible for special education services shall be the same as specified in WAC 392-121-122.

((~~(2)~~)) (3) This report shall indicate the ((~~special education~~)) enrollment of students eligible for special education services by resident school district and serving school district.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-106, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 96-03-002, § 392-122-106, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-106, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 86-01-021 (Order 85-16), § 392-122-106, filed 12/9/85.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-140 State special education program—Home and/or hospital care. State special education program moneys shall be allo-

cated to school districts and charter schools for students eligible for home/hospital instruction under WAC 392-172A-02100 ((~~temporarily requiring home and/or hospital care~~)) at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing home and/or hospital care allocations.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-140, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-140, filed 2/3/09, effective 3/6/09; WSR 96-03-002, § 392-122-140, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-140, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

WAC 392-122-145 State special education program—Home and/or hospital care—Extended absences. Students eligible under WAC 392-172A-02100 ((~~temporarily requiring home and/or hospital care~~)) for home/hospital instruction shall be counted as enrolled students pursuant to WAC 392-121-106 as follows:

(1) ((~~Students not deemed eligible special education students pursuant to WAC 392-122-135 whose absence from the regular attendance continues through two consecutive monthly enrollment report days shall be dropped from the rolls and shall not be counted as an enrolled student on the next monthly enrollment report day unless attendance has resumed. Such students shall only be eligible for home and/or hospital care allocations until attendance in the regular program is resumed.~~)) A student who began the school year participating in classroom instruction but who has been absent and receiving home/hospital instruction may be claimed for basic education funding on Form P-223 for up to two months pursuant to WAC 392-121-108 (1)(a), provided the student returns to school prior to the end of the school year.

(2) A student((~~s deemed~~)) eligible for special education ((~~students pursuant to WAC 392-122-135 shall be reported as enrolled students for the duration of the home and/or hospital care~~)) services who receives home/hospital instruction on or before the monthly count date may be reported as an enrolled student on Form P-223H. The student may be claimed for funding for the duration of the receipt of home/hospital instruction, provided the student remains eligible for special education services.

[Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-145, filed 2/3/09, effective 3/6/09; WSR 05-15-126, § 392-122-145, filed 7/18/05, effective 8/18/05; WSR 96-03-002, § 392-122-145, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-145, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-145, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-150 State special education program—Hospital educational program. (1) State special education program moneys shall be allocated by the superintendent of public instruction to school districts and charter schools operating a hospital educational program for the exclusive purpose of maintaining and operating the hospital educational program.

(2) School districts and charter schools shall be allocated funds for hospital educational programs at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing hospital educational program allocations.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-150, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 96-03-002, § 392-122-150, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-150, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-155 State special education program—Board and room cost. (1) State special education program moneys shall be allocated to school districts and charter schools for the cost of approved board and room for students eligible ((~~handicapped students served and requiring board and room,~~)) for special education services who are deemed in need of board and room by the superintendent of public instruction but not eligible under programs of the department of social and health services((~~, but deemed in need of the board and room by the superintendent of public instruction~~)).

(2) These moneys are in lieu of transportation costs.

(3) School districts and charter schools shall be allocated moneys for board and room of students eligible ((~~special education students~~)) for special education services at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing board and room allocations.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-155, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 96-03-002, § 392-122-155, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-155, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-160 State special education program—Reporting. (1) (a) At such times as are designated by the superintendent of public instruction, each school district and charter school shall report the number of students eligible ((~~special education students receiving~~

~~special education~~)) for special education services according to instructions provided by the superintendent of public instruction.

(b) The ((~~disability condition shall~~)) reported eligibility categories must be one of ((~~such conditions~~)) the categories identified in WAC ((~~392-122-135. The age for the purpose of determining the special education program allocation calculated in WAC 392-122-105 shall be the age of the student on the monthly enrollment count date as defined by WAC 392-121-119. The age reported by the school district or charter school shall be for apportionment purposes only and not for determination of a child's eligibility for access to a special education program~~)) 392-172A-01035.

(2) Each school district and charter school shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the school district's or charter school's allocation of state special education moneys.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-160, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 14-10-009, § 392-122-160, filed 4/24/14, effective 5/25/14; WSR 96-03-002, § 392-122-160, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-160, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-165 State special education program—Apportionment of state special education program moneys. (1) From moneys appropriated by the legislature, the superintendent of public instruction shall apportion state special education program moneys to each school district and charter school based on the criteria cited in the State Operating Appropriations Act for the respective school year for state special education program allocation and on the provisions of ((~~WAC 392-122-100 through 392-122-166~~)) this chapter.

(2) The superintendent of public instruction shall make payments of state special education program moneys in the same manner as provided in WAC 392-121-400.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-165, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 96-03-002, § 392-122-165, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-165, filed 1/23/91, effective 2/23/91.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-166 State special education program allocation. (1) The board of directors of a school district or charter school may request the superintendent of public instruction to pay a portion of the

district's or charter school's special education allocation to another school district, charter school, or an educational service district.

(2) The request must be submitted on Form 1295 and must state the dollar amount of the transfer. The board ((~~can~~)) may modify the dollar amount of the transfer by submitting another Form 1295 to the superintendent of public instruction.

(3) Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-166, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-166, filed 2/3/09, effective 3/6/09; WSR 96-03-002, § 392-122-166, filed 1/3/96, effective 2/3/96.]

STATE INSTITUTIONAL EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 10-20-055 and 10-20-127, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10)

WAC 392-122-205 State institutional education program—Eligible programs. Programs supported as state institutional education programs include those provided in the following facilities:

(1) **State operated ((~~group homes~~ i.e.,)) community facilities.** State operated community facilities are group home facilities maintained by the division of juvenile rehabilitation of the department of ((~~social and health services~~)) children, youth, and families to house adjudicated youth twenty-four hours a day((~~,~~)).

(2) **County juvenile detention centers**((~~—i.e., facilities meeting the definition of~~)). A county juvenile detention center is a "detention facility" as defined in RCW 13.40.020.

(3) ((**~~Institutions for juvenile delinquents~~** ~~i.e.,~~)) **State long-term juvenile institution.** State operated long-term juvenile institutions are facilities maintained by the division of juvenile rehabilitation of the department of ((~~social and health services~~)) children, youth, and families for the diagnosis, confinement, and rehabilitation of juveniles committed by the courts.

(4) **Residential habilitation centers**((~~—i.e.,~~)). Residential habilitation centers are facilities maintained by the ((~~division of~~)) developmental disabilities administration of the department of social and health services for care and treatment of persons with exceptional needs by reason of ((~~mental and/or physical deficiency~~)) intellectual and developmental disabilities.

Programs providing educational services to youth in a residential ((~~rehabilitation~~)) habilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) **Adult jails and correctional facilities housing juveniles**((—~~i.e.,~~)). Adult correctional facilities housing juveniles are facilities maintained by the state department of corrections for ((~~juvenile~~)) inmates under eighteen years of age. Adult jail facilities housing juveniles are any jail operated under the authority of chapter 70.48 RCW in which inmates under eighteen years of age are incarcerated.

[Statutory Authority: RCW 28A.150.290. WSR 10-20-055 and 10-20-127, § 392-122-205, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10; WSR 07-23-023, § 392-122-205, filed 11/9/07, effective 12/10/07; WSR 05-15-127, § 392-122-205, filed 7/18/05, effective 8/18/05; WSR 01-24-002, § 392-122-205, filed 11/21/01, effective 12/22/01. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-205, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 95-08-025, § 392-122-205, filed 3/29/95, effective 4/29/95; WSR 92-03-045 (Order 92-03), § 392-122-205, filed 1/10/92, effective 2/10/92. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-205, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 92-03-045, filed 1/10/92, effective 2/10/92)

WAC 392-122-211 ((~~Definition —~~))State institutional education program—Institution enrollment count dates. ((")) Institution enrollment count dates((~~" means~~)) are the fourth school day of September and the first school day of each of the ten subsequent months of the school year.

[Statutory Authority: RCW 28A.150.290. WSR 92-03-045 (Order 92-03), § 392-122-211, filed 1/10/92, effective 2/10/92.]

AMENDATORY SECTION (Amending WSR 07-23-022, filed 11/9/07, effective 12/10/07)

WAC 392-122-212 ((~~Definition —~~))State institutional education program—Educational activity. ((~~As used in WAC 392-122-200 through 392-122-275, "~~)) (1) State institutional education program educational activity((~~" means~~)) must consist of the following teaching/learning experiences provided by a school district or other education provider:

((~~(1)~~)) (a) Instruction, testing, counseling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

((~~(2)~~)) (b) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if the study is monitored by educational staff who are present during the study.

((~~(3)~~)) (c) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

((~~(a)~~)) (i) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

((~~(b)~~)) (ii) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

((~~(c)~~)) (iii) The student is making progress in the program;

((~~(d)~~)) (iv) The study is not counted as work training experience pursuant to ((~~subsection (4)~~)) (d) of this ((~~section~~)) subsection; and

((~~(e)~~)) (v) Combined individual study time and scheduled study time pursuant to ((~~subsection (2)~~)) (b) of this ((~~section~~)) subsection claimed in determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

((~~(4)~~)) (d) Work based learning meeting the requirements of WAC 392-410-315: Provided, That for work based learning provided pursuant to WAC 392-410-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

(2) Other education providers under this section must be:

(a) An educational service district, institution of higher education, private contractor (including charter school), or any combination thereof providing an institutional education program in an adult correctional facility operated by the department of corrections under contract with the superintendent of public instruction and the department of corrections; or

(b) An educational service district providing an institutional education program pursuant to a contract with a school district in a state operated community facility, state long-term juvenile institution, residential habilitation center, or county juvenile detention center.

[Statutory Authority: RCW 28A.150.290. WSR 07-23-022, § 392-122-212, filed 11/9/07, effective 12/10/07; WSR 05-19-139, § 392-122-212, filed 9/21/05, effective 10/22/05. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-212, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 92-03-045 (Order 92-03), § 392-122-212, filed 1/10/92, effective 2/10/92.]

AMENDATORY SECTION (Amending WSR 01-24-002, filed 11/21/01, effective 12/22/01)

WAC 392-122-220 ((~~Definition—~~))State institutional education program—Enrolled institutional education program student. ((~~"Enrolled institutional education program student" means a person who:~~)) A student may be counted as an enrolled institutional education program student under the following conditions:

(1)(a) The student is in a program in a department of corrections facility and is either:

(i) Under eighteen years of age; or ((~~is~~))

(ii) Eighteen years of age and is continuing in the institutional education program with the permission of the department of corrections and the education provider; or

(b) The student is under twenty-one years of age at the beginning of the school year and is either:

(i) In a residential school as defined in RCW 28A.190.020; or

(ii) Confined in a county juvenile detention center within the meaning of confinement provided in RCW 13.40.020;

(2) The student is scheduled to engage in educational activity in the institutional education program during the current week under WAC 392-122-212;

(3) During the current school year, the student has engaged in educational activity in the institutional education program provided or supervised by educational certificated staff under WAC 392-122-212; and

(4) The student does not qualify for any of the enrollment exclusions in WAC 392-122-221.

[Statutory Authority: RCW 28A.150.290. WSR 01-24-002, § 392-122-220, filed 11/21/01, effective 12/22/01. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-220, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 92-03-045 (Order 92-03), § 392-122-220, filed 1/10/92, effective 2/10/92.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-221 ((~~Definition—~~))State institutional education program—Enrollment exclusions. (1) The following may not be counted as an enrolled institutional education program student:

((~~(1)~~)) (a) A person whose educational activity under WAC 392-122-212 has terminated.

((~~(2)~~)) (b) A person who has transferred to another institution, school district, or charter school.

((~~(3) An institution student who:~~

~~(a)~~)) (c) A person residing in a state institution who:

(i) Has not engaged in educational activity under WAC 392-122-212 in the past five school days, excluding days of excused absence;

((~~(b)~~)) (ii) Has not engaged in educational activity in the past ten school days under WAC 392-122-212, including days of excused absence; or

((~~(c)~~)) (iii) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support pursuant to chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month.

(2) When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

(3) As used in this section, "excused absence" means an absence from scheduled educational activity which certificated staff determine to be due to one or more of the following:

(a) Illness;

(b) Attendance in court; or

(c) Meeting with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service provider.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-221, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 08-24-029, § 392-122-221, filed 11/24/08, effective 12/25/08; WSR 01-24-002, § 392-122-221, filed 11/21/01, effective 12/22/01. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-221, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 95-08-025, § 392-122-221, filed 3/29/95, effective 4/29/95; WSR 92-03-045 (Order 92-03), § 392-122-221, filed 1/10/92, effective 2/10/92.]

AMENDATORY SECTION (Amending WSR 17-16-162, filed 8/2/17, effective 9/2/17)

WAC 392-122-225 ((~~Definition—~~))State institutional education program—Institutional education full-time equivalent (FTE) students. ((~~"Institutional education full-time equivalent (FTE) students" means~~)) The sum of institutional education full-time equivalent (FTE) students on an enrollment count date shall be determined as follows:

(1) ((~~Prior to the 2018-19 school year, FTE shall be calculated as follows:~~

~~(a) An enrolled institutional education program student who is three to eight years of age and scheduled to engage in a minimum of twenty hours of educational activity per week shall be counted as one FTE.~~

~~(b) An enrolled institutional education program student who is nine years of age or older and scheduled to engage in a minimum of twenty-five hours of educational activity per week shall be counted as one FTE.~~

~~(2) Beginning with the 2018-19 school year,~~)) An enrolled institutional education program student scheduled to engage in a minimum of twenty-seven hours and forty-five minutes of educational activity per week shall be counted as one FTE.

((~~(3)~~)) (2) An enrolled institutional education program student who is scheduled to engage in less than the minimum hours for one FTE shall be counted as a partial FTE, determined by dividing the scheduled hours of educational activity by the minimum hours for one FTE.

((~~(4)~~)) (3) In determining a student's FTE, educational activity under WAC 392-122-212 may include up to ten minutes of class transition time between classes but shall not include time for meals.

((~~(5)~~)) (4) No student shall be counted as more than one FTE.

(5) The school district's annual average full-time equivalent for institutional education students shall be the average of institutional education FTE students on the eleven institution enrollment count dates of the school year.

[Statutory Authority: RCW 28A.150.290. WSR 17-16-162, § 392-122-225, filed 8/2/17, effective 9/2/17. Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-225, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 92-03-045 (Order 92-03), § 392-122-225, filed 1/10/92, effective 2/10/92.]

AMENDATORY SECTION (Amending WSR 10-20-055 and 10-20-127, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10)

WAC 392-122-228 Alternative learning experiences for juvenile students incarcerated in adult jail facilities. (1) ((~~A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or online curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may also include participation by students and parents in the design and implementation of a student's learning experience.~~)) **General.**

(a) This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

((~~(a)~~)) (i) Individual courses of study for ((~~juvenile~~)) students ((~~incarcerated~~)) in adult jail facilities((~~. "Adult jail facility" means any jail operated under the authority of chapter 70.48 RCW;~~

~~(b)~~)) housing juveniles;

(ii) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 181-82 WAC, or a contractor pursuant to WAC 392-121-188;

((~~(c)~~)) (iii) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

((~~(d)~~)) (iv) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

(b) This section sets forth the standards, procedures, and requirements for state funded alternative learning experiences for juvenile students incarcerated in adult jail facilities. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

(2) **Requirements.** An alternative learning experience for a juvenile student incarcerated in adult jail facilities may be counted as a course of study pursuant to WAC 392-121-107 if ((~~the following requirements are met:~~

~~(2)~~)) the alternative learning experience meets the requirements of this section.

(3) **School district board policies for alternative learning experiences**((~~:~~)). The board of directors of a school district claiming state funding for alternative learning experiences for juvenile students incarcerated in adult jail facilities shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience for juvenile students incarcerated in adult jail facilities that meets the minimum criteria pursuant to subsection ((~~(4)~~)) (5) of this section;

(b) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(c)(i) Require each juvenile student who is incarcerated in an adult jail facility and enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, un-

til the student completes the course objectives or the requirements of the learning plan.

(ii) Such direct personal contact must be for a period not less than thirty minutes per week.

(iii) Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities.

(iv) Direct personal contact ((~~means~~)) must be a face-to-face meeting with the student;

(d) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student;

(e)(i) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. ((~~This~~))

(ii) The annual report shall include at least the following:

((~~(i)~~)) (A) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

((~~(ii)~~)) (B) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

((~~(iii)~~)) (C) A description of how a written student learning plan pursuant to subsection ((~~(4)~~)) (5) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

((~~(iv)~~)) (D) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

((~~(v)~~)) (E) Results of any self-evaluations conducted pursuant to subsection ((~~(7)~~)) (8) of this section((~~,~~)).

(f) Satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies ((~~,~~)) under chapter 392-410 WAC((~~,~~)); and

(g) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements ((~~,~~)) under chapter 180-51 WAC((~~,~~)).

((~~(3)~~)) (4) **Alternative learning experience implementation standards**((~~:~~)).

(a) Alternative learning experiences shall be accessible to all juveniles incarcerated in adult jail facilities, including those with disabilities. Alternative learning experiences for ((~~special education~~)) students eligible for special education services shall be provided in accordance with chapter 392-172A WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that enrolled juvenile students incarcerated in adult jail facilities have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan.

(c) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(d)(i) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. ((~~"Proctored" means~~))

(ii) Proctored examinations or projects must be directly monitored by an adult authorized by the school district.

((~~(4)~~)) (e) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may make use of digital and/or online curricula, and may be delivered over the internet or using other electronic means.

(f) A school district alternative learning experience for juvenile students incarcerated in adult jail facilities may include participation by students and parents in the design and implementation of a student's learning experience.

(5) **Written student learning plan**((~~:~~)).

(a) Each juvenile student incarcerated in an adult jail facility who is enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress.

(b) The written student learning plan shall include, but not be limited to, the following elements:

((~~(a)~~)) (i) A beginning and ending date for the learning experience;

((~~(b)~~)) (ii) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection ((~~(5)~~)) (6) of this section and must be based upon the criteria in subsection ((~~(6)~~)) (7) of this section;

((~~(c)~~)) (iii) A description of how weekly contact requirements will be fulfilled;

((~~(d)~~)) (iv) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

((~~(e)~~)) (v) Identification of instructional materials essential to successful completion of the learning plan; and

((~~(f)~~)) (vi) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

(c)(i) The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements defined by the school district.

(ii) For a high school alternative learning experience, the plan shall also specify whether the experience meets state and district graduation requirements.

((~~(5)~~)) (6) **Enrollment reporting**((~~: Effective the 2009-10 school year,~~)). The full-time equivalency of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-122-225(1) and the estimated average weekly hours of learning activity described in the written student learning plan on the first enrollment count date on or after the start date specified in the written student learning plan; and

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for ten consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in his or her alternative learning experience or participated in another course of study as defined in WAC 392-121-107.

((~~(6)~~)) (7) **Accountability for student performance**((÷)).

(a) At minimum, juvenile students incarcerated in adult jails who are enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. The results of the review shall be communicated to the student.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff.

(b) The educational progress of juvenile students incarcerated in adult jail facilities who are enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district.

((~~(7)~~)) (8) **Program evaluation**((÷)). School districts offering alternative learning experiences to juvenile students incarcerated in adult jail facilities shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

((~~(8)~~)) (9) **Annual reporting**((÷)).

(a) Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section,

including student headcount and full-time equivalent enrollment claimed for basic education funding.

(b) The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs.

(c) The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

((~~(9)~~)) (10) **Documentation**((~~:~~)). In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection ((~~(2)~~)) (3)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection ((~~(8)~~)) (9) of this section;

(d) The written student learning plans required by subsection ((~~(4)~~)) (5) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection ((~~(6)~~)) (7) of this section; and

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress.

[Statutory Authority: RCW 28A.150.290. WSR 10-20-055 and 10-20-127, § 392-122-228, filed 9/27/10 and 10/5/10, effective 10/28/10 and 11/5/10.]

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

WAC 392-122-270 State institutional education program—Apportionment of state moneys. (1) From the state institutional education program moneys appropriated to the superintendent of public instruction, the superintendent shall make allocations to school districts and other education providers based on the institutional education program's annual average full-time equivalent institutional education students and as provided in the state Operating Appropriations Act and WAC 392-122-200 through 392-122-275.

((~~(1)~~)) (2) Institutional education program allocations shall be based on a two hundred twenty-day school year. Allocations to a school district or other education provider offering less than two hundred twenty school days shall be reduced pro rata as provided in WAC 392-122-910.

((~~(2)~~)) (3) The superintendent of public instruction shall make payments in the same manner as provided in WAC 392-121-400.

((~~(3)~~)) (4) The superintendent of public instruction may reduce or delay payment of institutional education program moneys pursuant to chapter 392-117 WAC((~~, Timely reporting~~)).

[Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-270, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 92-03-045 (Order 92-03), § 392-122-270, filed 1/10/92, effective 2/10/92. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-270, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-270, filed 10/2/84.]

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

WAC 392-122-275 State institutional education program—Reporting requirements. Each school district or other education provider operating an institutional education program shall report to the superintendent of public instruction as follows:

(1) (a) (i) The district or provider shall report on Form E-672 the number of individual enrolled institutional education program students and the number of institutional education full-time equivalent students on each institution enrollment count date.

(ii) Form E-672 is the form distributed by the superintendent of public instruction on which school districts, or other education providers operating institutional education programs report eligible institutional education students enrolled on the enrollment count dates specified in WAC 392-122-211.

(b) Report forms shall be signed by the school district superintendent or a designated official of the school district or other education provider.

(2) Each school district or other education provider operating an institutional education program shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the program's allocation of state institutional education program moneys.

(3) Institutional enrollment reporting shall be subject to chapter 392-117 WAC((~~, Timely reporting~~)).

(4) Each school district or other education provider shall report personnel data pursuant to instructions provided by the superintendent of public instruction.

(5) By August 15th of each year, each other education provider shall provide a budget showing the anticipated activities and objects of expenditures for the institutional education program for the ensuing school year.

(6) By December 15th following the end of the school year, each other education provider shall provide an annual financial summary of the actual activities and objects of expenditures for the institutional education program for the preceding school year.

(7) Information required by this section shall be reported pursuant to instructions provided by the superintendent of public instruction.

[Statutory Authority: 1998 c 244 § 9(2) and RCW 28A.150.290. WSR 98-21-065 (Order 98-09), § 392-122-275, filed 10/20/98, effective 11/20/98. Statutory Authority: RCW 28A.150.290. WSR 95-08-025, §

392-122-275, filed 3/29/95, effective 4/29/95; WSR 92-03-045 (Order 92-03), § 392-122-275, filed 1/10/92, effective 2/10/92. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-275, filed 10/2/84.]

K-3 CLASS SIZE

NEW SECTION

WAC 392-122-500 K-3 class size—Apportionment of state moneys. (1) State moneys for K-3 class size shall be allocated as provided in this chapter.

(2) Elementary teacher allocations based on the prototypical schools formula provided in RCW 28A.150.260 and the Omnibus Appropriations Act for grades K-3 will be based upon budgeted K-3 enrollment as stated in the F-203 revenue estimate from September through December for the year budgeted.

(3) School districts, charter schools, and tribal compact schools must input their estimated K-3 class size for purposes of funding from September through December.

(4) K-3 enrollment will not include student full-time equivalent (FTE) enrolled in alternative learning experience programs that meet the requirements of WAC 392-121-182.

(5) Funded class size starting with January apportionment will be based on the actual average annual FTE enrollment reported in the P-223.

(6) School districts, charter schools, and tribal compact schools must meet the legislative compliance requirements of K-3 class size funding in order to generate the full allotment.

[]

NEW SECTION

WAC 392-122-505 K-3 class size—Student enrollment. (1) Grade level K-3 enrollment reported on the P-223 will be considered in the compliance calculations for the months of January, March, and June.

(2) All students in alternative learning experience programs that meet the requirements of WAC 392-121-182 will be excluded from the compliance calculation.

[]

NEW SECTION

WAC 392-122-510 K-3 class size—Teachers. (1) The superintendent of public instruction will include in the calculation of K-3 class size compliance those teachers reported on the S-275 that are coded in programs 01 to grade group K, 1, 2, or 3, and are reported in one of the following duty roots:

- Duty root 31 - Elementary homeroom teacher;
- Duty root 33 - Other teacher;
- Duty root 34 - Elementary specialist teacher;
- Duty root 52 - Substitute teacher;
- Duty root 63 - Contractor teacher.

(2) S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

(3) Program 21 special education teachers coded to grade K, 1, 2, or 3 multiplied by the annual percentage of students receiving special education instruction used in determination of a district's, tribal compact school's, or charter school's 3121 revenue will be included.

(4) Teachers coded to program 02 alternative learning experience will be excluded.

[]

NEW SECTION

WAC 392-122-515 K-3 class size compliance—Supplemental FTE teachers. (1) Supplemental teacher full-time equivalent (FTE) teachers must be reported to the superintendent of public instruction prior to the published S-275 apportionment cutoff dates in January, March, and June to be considered. Supplemental teacher FTE must be reported by individual grade level K, 1, 2, and 3.

(2) Supplemental FTE teacher reporting shows the net change in full-time equivalent teachers after October 1st of the school year not reflected in report S-275 under WAC 392-122-510. Supplemental full-time equivalent teachers are determined as follows:

(a) Determine the teacher FTE that would be reported for each employee for the school year on report S-275 if the current data were submitted for the October 1st snapshot as required in the S-275 instructions and subtract the teacher FTE as of October 1st actually reported for the employee on the most current report S-275.

(b) Include decreases as well as increases in staff after October 1st and not reflected in report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

[]

NEW SECTION

WAC 392-122-520 K-3 class size—Calculation. Funded class size will be calculated by dividing the total teachers and supplemental teacher FTE across all grades K-3 collectively as provided in WAC

392-122-510 into the calculated combined total enrollment in grade levels of K, 1, 2, or 3.

[]

STATE LEARNING ASSISTANCE PROGRAM

AMENDATORY SECTION (Amending WSR 19-04-097, filed 2/5/19, effective 3/8/19)

WAC 392-122-605 Apportionment of state moneys for the state learning assistance program. (1)(a) State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due.

(b) The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, ((~~public~~)) charter school, or ((~~school operated pursuant to a state-tribe education~~)) tribal compact school if the school district, charter school, or tribal compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

(2) Learning assistance program moneys include ((~~two allocations:~~)) a district learning assistance program base allocation and a learning assistance program high-poverty based school allocation for eligible schools.

(a) A school district's funded students for the learning assistance program base allocation shall be the sum of the district's annual average full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced-price lunch in the prior school year. The prior school year's October headcount enrollment for free and reduced-price lunch shall be as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(b)(i) A school is eligible for the learning assistance program high-poverty based school allocation if it is funded through the prototypical model and has at least fifty percent of its students eligible for free and reduced-price meals in the prior school year. The percentage is determined by the school's percentage of October headcount enrollment in grades K-12 for free and reduced-price lunch as reported in the comprehensive education data and research system as of March 31st of the prior school year.

(ii) An eligible school's funded students for the learning assistance high-poverty based allocation shall be the sum of the school's annual average full-time enrollment in grades K-12 for the prior year.

[Statutory Authority: RCW 28A.150.290 and 28A.155.075. WSR 19-04-097, § 392-122-605, filed 2/5/19, effective 3/8/19. Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-122-605, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-122-605, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-605, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 87-09-018 (Order 87-2), § 392-122-605, filed 4/6/87; WSR 86-01-021 (Order 85-16), § 392-122-605, filed 12/9/85; WSR 84-20-078 (Order 84-36), § 392-122-605, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-605, filed 6/13/84.]

STATE TRANSITIONAL BILINGUAL PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-705 Formula for the distribution of state moneys for the state transitional bilingual program. ((~~(1) As used in this section the term "eligible student" shall mean those students defined under WAC 392-160-005(3) and 392-150-015.~~

~~(2)~~)) A school district's or charter school's entitlement for state moneys for the state transitional bilingual program shall be calculated as follows:

((~~(a)~~)) (1) Multiplying the number of eligible students under WAC 392-160-005(3) and 392-160-015 by the per pupil allocation established in the State Appropriation Act for the state transitional bilingual program.

((~~(b)~~)) (2) The result of the calculation provided in ((~~(a)~~)) subsection (1) of this ((~~subsection~~)) section is the district's or charter school's entitlement subject to WAC 392-122-710 and its provision for enrollment adjustment.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-705, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-705, filed 2/3/09, effective 3/6/09. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-705, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-705, filed 6/13/84.]

AMENDATORY SECTION (Amending WSR 16-10-116, filed 5/4/16, effective 6/4/16)

WAC 392-122-710 Distribution of state moneys for the state transitional bilingual program. (1) The superintendent of public instruction shall apportion to school districts or charter schools for the

state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250.

(2) Monthly payments to districts and charter schools shall be adjusted during the year to reflect changes in the district's or charter school's reported eligible students under WAC 392-160-005(3) and 392-160-015 as reported on the P223, monthly report of school district enrollment form.

(3) For the purpose of transitional bilingual allocations, the school district's or charter school's nine-month average annual headcount enrollment of eligible students ((~~as defined in~~)) under WAC 392-160-005(3) and 392-160-015 shall be the average of such enrollment for the first school day of October through June.

[Statutory Authority: RCW 28A.150.290. WSR 16-10-116, § 392-122-710, filed 5/4/16, effective 6/4/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-710, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-710, filed 2/3/09, effective 3/6/09; WSR 96-03-002, § 392-122-710, filed 1/3/96, effective 2/3/96. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-122-710, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.170. WSR 86-01-021 (Order 85-16), § 392-122-710, filed 12/9/85; WSR 84-20-078 (Order 84-36), § 392-122-710, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-710, filed 6/13/84.]

STATE HIGHLY CAPABLE STUDENTS EDUCATION PROGRAM

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. ((~~(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term defined in WAC 392-121-133.~~

~~(2)~~)) A school district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

((~~(a)~~)) (1) Multiplying the ((~~AAFTE of the reporting district or charter school~~)) reporting district's or charter school's average annual full-time equivalent students, as defined in WAC 392-121-133, by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

((~~(b)~~)) (2) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-805, filed 8/28/15, effective 9/28/15. Statutory Authority:

RCW 28A.150.290. WSR 09-04-082, § 392-122-805, filed 2/3/09, effective 3/6/09; WSR 96-03-002, § 392-122-805, filed 1/3/96, effective 2/3/96. Statutory Authority: RCW 28A.150.290, 1989 1st ex.s. c 19 and 1990 1st ex.s. c 16. WSR 91-03-118 (Order 2), § 392-122-805, filed 1/23/91, effective 2/23/91. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-805, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-805, filed 6/13/84.]

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-122-810 Distribution of state moneys for the state highly capable students education program. The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's ((~~AAFTE~~)) average annual full-time equivalent students as reported on the P223, monthly report of school district enrollment form.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-122-810, filed 8/28/15, effective 9/28/15. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-122-810, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.170. WSR 84-20-078 (Order 84-36), § 392-122-810, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-810, filed 6/13/84.]

GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 18-20-023, filed 9/24/18, effective 10/25/18)

WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries. (1) Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district or charter school fiscal year to another only as provided in this section.

((~~(1)~~)) (2) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district or charter school during the school year for allowable program costs.

((~~(2) For the 2000-01 school year and thereafter, "~~)) (3) Allowable program costs((~~" means~~)) are direct program expenditures plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts or charter schools.

(c) For special education, highly capable, and transitional bilingual, allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's or charter school's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 district-wide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 district-wide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

((~~(3) Commencing with the 1994-95 school year allocation,~~)) (4) A school district or charter school may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. ((~~For the 2017-18 school year only, a school district or charter school may carry over all unspent learning assistance program high poverty allocations to the 2018-19 school year.~~)) Carryover moneys shall be expended solely for allowable learning assistance program costs.

((~~(4) Commencing with the 1997-98 school year allocation,~~)) (5) A school district or charter school may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

((~~(5) Commencing with the 1998-99 school year allocation,~~)) (6) A school district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

((~~(6)~~)) (7) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's or charter school's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

((~~(7) For the 2017-18 school year only, learning assistance program high poverty allocations are not subject to the recovery provisions outlined in WAC 392-122-900 (6)(a) through (c).~~))

(8) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the school district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(9) This section applies to categorical program allocations to school districts, charter schools, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.

[Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 18-20-023, § 392-122-900, filed 9/24/18, effective 10/25/18; WSR 15-18-078, § 392-122-900, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.290. WSR 09-04-082, § 392-122-900, filed 2/3/09, effective 3/6/09. Statutory Authority: RCW 28A.150.290 and 1999 c 309 § 512. WSR 02-04-023, § 392-122-900, filed 1/24/02, effective 1/24/02. Statutory Authority: RCW 28A.150.290. WSR 96-03-002, § 392-122-900, filed 1/3/96, effective 2/3/96. Statutory Authority: 1995 2nd sp.s. c 18 § 519. WSR 95-18-074, § 392-122-900, filed 9/1/95, effective 10/2/95. Statutory Authority: RCW 28A.150.290. WSR 92-19-125 (Order 92-08), § 392-122-900, filed 9/21/92, effective 10/22/92. Statutory Authority: RCW 28A.41.170. WSR 86-01-021 (Order 85-16), § 392-122-900, filed 12/9/85; WSR 84-20-078 (Order 84-36), § 392-122-900, filed 10/2/84; WSR 84-13-020 (Order 84-10), § 392-122-900, filed 6/13/84.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-122-100	State special education program—Applicable code provisions.
WAC 392-122-105	Definition—LEAP document for state special education program allocation.
WAC 392-122-107	Definition—Report 1220.

WAC 392-122-110	Definition—State special education program—Special education program certificated instructional staff salary and mix factor variables for the allocation formula for the 1994-95 school year.
WAC 392-122-120	State special education program—Determination of district average state special education program certificated instructional staff salary for the purpose of apportionment.
WAC 392-122-130	State special education program—Nonemployee related cost.
WAC 392-122-131	State special education program—Basic education backout.
WAC 392-122-132	State special education program—Substitute teacher pay allocations.
WAC 392-122-135	State special education program—Eligible special education students.
WAC 392-122-200	State institutional education program—Applicable code provisions.
WAC 392-122-201	Definition—State institutional education program—School day.
WAC 392-122-202	Definition—State institutional education program—School year.
WAC 392-122-206	Definition—State institutional education program—Form E-672.
WAC 392-122-208	Definition—State institutional education program—Other education provider.
WAC 392-122-210	Definition—State institutional education program—Certificated instructional staff and mix factor variables for the purpose of apportionment.
WAC 392-122-213	Definition—State institutional education program—Excused absence.
WAC 392-122-230	Definition—State institutional education program—Annual average full-time equivalent (AAFTE) institutional education students.
WAC 392-122-420	Full-day kindergarten program—Authority.
WAC 392-122-421	Full-day kindergarten program—Definitions.
WAC 392-122-422	Full-day kindergarten program—Applicable provisions.
WAC 392-122-423	Full-day kindergarten program—Determination of eligibility.

WAC 392-122-424	Full-day kindergarten program—Letter of acceptance and approvals.
WAC 392-122-425	Full-day kindergarten program—Subsequent determination of eligible schools.
WAC 392-122-426	Full-day kindergarten program—Apportionment of state moneys.
WAC 392-122-600	State learning assistance program—Applicable code provisions.
WAC 392-122-700	State transitional bilingual program—Applicable code provisions.
WAC 392-122-800	State highly capable students education program—Applicable code provisions.

OTS-2062.1

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-140-916	K-3 class size funding.
WAC 392-140-923	K-3 class size compliance—Enrollment.
WAC 392-140-932	K-3 class size compliance—Teachers.
WAC 392-140-934	K-3 class size compliance—Supplemental FTE teachers.
WAC 392-140-939	K-3 funded class size.

WSR 21-04-056
PERMANENT RULES
SECRETARY OF STATE
[Filed January 27, 2021, 4:16 p.m., effective February 27, 2021]

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

Purpose: Permanent adoption of WAC changes providing update to filing information and procedures for corporate filing found in Title 434 WAC. Including but not limited to WAC 434-112-023, 434-112-040, 434-112-045, 434-112-050, 434-112-075, 434-112-080, 434-112-085, 434-112-090, 434-120-035, 434-120-042, and 434-120-107.

Citation of Rules Affected by this Order: Amending WAC 434-112-023, 434-112-040, 434-112-045, 434-112-050, 434-112-075, 434-112-080, 434-112-085, 434-112-090, 434-120-035, 434-120-042, and 434-120-107.

Statutory Authority for Adoption: RCW 29A.04.611.

Adopted under notice filed as WSR 21-01-016 on December 3, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 2, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 13, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 13, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 27, 2021.

Mark Neary
Assistant Secretary of State

OTS-2789.1

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-023 Preclearance. Records will only be precleared in person at the front counter. ((~~The filing fee is ten dollars plus the immediate service fee of fifty dollars. If immediate service is not required, the record may be left for processing with other records received that day and the precleared record will be returned by mail or electronically within five business days.~~)) If grounds for rejection are found, a notice of the grounds will be included with the returned record.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-023, filed 10/29/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-040 Standards for confirmation of filed records. All paper or electronic business related records are returned to the registered agent's ((~~mail or electronic~~)) email address on behalf of the entity when processing is completed unless the record indicates otherwise.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-040, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-040, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-040, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-040, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-045 Rejection of records. (1) The corporations program may reject paper or electronic records that:

(a) Are not legible; or

(b) Are not able to be recorded as an image with adequate resolution and clarity; or

(c) Are incomplete; or

(d) Are not permitted to be filed in the corporations office; or

(e) Paper records completed in pencil or faxed will not be accepted for filing.

(2) Additional information or payment may be requested by telephone, email or letter.

(3) The corporations program may hold records for up to thirty days to await additional information or funds needed to complete the filing process. After thirty days, new records and fees ((~~are~~)) may be required.

(4) Records that do not include a return address will not be accepted for filing.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-045, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450,

[24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-045, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-045, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-050 Filing procedure. (1) Persons submitting paper business records under chapters 18.100, 19.77 RCW, or Titles 23, 23B, 24, 25 RCW, and chapter 176, Laws of 2015, must submit one copy of the record for filing.

(2) The corporations program will retain a digital image of the paper or electronic record submitted for filing. The corporations program will, on completion of the filing, send a confirmation per WAC 434-112-040.

(3) The corporations program may return the completed filed record via email or other electronic means if the record indicates that an electronic response is acceptable.

(4) If a record submitted for filing contains more than one hundred governors as defined in RCW 23.95.105(12), that record must be submitted by using the online filing system.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-050, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-050, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-050, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-075 Online services. (1) Online filings:

(a) Will be subject to ((~~a~~)) an online processing fee of twenty dollars, with the exception of annual reports ((~~or~~)), statements of change ((~~for registered agent information processed online~~)), designation of registered agent, resignation of registered agent, articles of dissolution or statement of withdrawal, requested certificates or certified copies; and

(b) Be treated as received when the division's system records receipt of the completed transaction including payment authorization.

(2) When submitting an online filing, the person completing the filing shall sign the application by: Typing their full name in the space provided on the web form; stating their capacity with the entity addressed in the filing; and following the directions for signing the web form.

(3) Online processing fees ((~~are nonrefundable~~)) may not be refundable.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-075, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-075, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-075, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-075, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-080 Immediate and expedited service—Special fees. (1) Immediate service is available at the division's front counter for an immediate service fee of fifty dollars for single or multiple transactions on paper within each new or existing division program filing. In addition, the filing fee for each transaction applies.

(2) There is no immediate service fee for records dropped off in-person for processing with nonexpedited records received that day.

(3) ((~~There is no immediate service fee for photocopies requested in-person, however, photocopies ordered online are subject to a twenty dollar online processing fee. If a request is made for immediate service on a photocopy that was ordered online, an additional immediate service fee may be assessed.~~

~~(4)~~)) Expedited service requests for filing paper records received by mail, will be completed within two working days of submission for an expedited service fee of fifty dollars. If a request is made for immediate service on an expedited record, an immediate service fee may be assessed.

((~~(5)~~)) (4) Nonexpedited service requests for filing paper records received by mail are processed within fifteen business days ((~~with no service fee~~)). If a request is made for expedite or immediate service, the applicable fee may be assessed.

((~~(6) The processing fee for online service is twenty dollars and records are filed within two business days.~~))

(5) If an online record is subsequently requested to be filed immediately, an additional immediate service fee may be required.

((~~(7)~~)) (6) The filing party may indicate expedited service is requested on mailed records by placing the word "expedite" in bold letters on either the envelope, the face of the record to be filed, or on any cover letter submitted with the record.

((~~(8)~~)) (7) Customers who resubmit rejected records that were expedited the first time they were submitted, may be charged an additional expedite fee upon resubmission.

((~~(9)~~)) (8) Emergency services outside regular business hours requiring employee overtime are one hundred fifty dollars per hour plus transaction fees due on any filing. When the division receives a request for emergency services, staff will notify the customer of the service fee and any other reasonable conditions set by the director. The customer must agree to pay the fees or have received a fee waiver before emergency services are provided.

((~~(10)~~)) (9) A customer may make alternate arrangements with the director prior to bringing or sending in records, if a sudden, unexpected situation occurs during the business day.

((~~(11)~~)) (10) A customer may submit a written request to waive emergency, expedited, or penalty fees, which must include the special circumstances justifying the fee waiver. The director or deputy director will make the determination to waive fees or not.

((~~(12)~~)) (11) Immediate, online, or expedited service fees ((~~are~~)) may not be refundable.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-080, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-080, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-080, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-080, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-085 Fees and penalties. (1) For domestic and foreign business entities, formed under Title 23B RCW, chapters 23.78, 25.15, 25.10, and 25.05 RCW, fees and penalties are:

(a)	Public organic record including ((~~employee~~)) cooperatives	One hundred eighty dollars
(b)	Foreign registration statement	One hundred eighty dollars (may include back fees)

(c)	Articles of amendment or amendment of foreign registration statement	Thirty dollars
(d)	Articles of restatement	Thirty dollars
(e)	Statement of correction	Thirty dollars
(f)	Revocation of voluntary dissolution	Thirty dollars
(g)	Delinquent fee	Twenty-five dollars
(h)	Annual report including ((~~employee~~)) cooperatives	Sixty dollars plus business licensing services fee when applicable
(i)	Reinstatement from administrative dissolution	One hundred forty dollars plus all delinquent license or annual fees
(j)	Requalification from administrative termination	One hundred eighty dollars plus all delinquent fees or penalties
(k)	Articles of merger or exchange	Twenty dollars for each listed company
(l)	Resignation of registered agent	No fee
(m)	Initial report filed with public organic record	No fee
(n)	Initial report filed separate	Ten dollars
(o)	Amended annual report	Ten dollars
(p)	Change of registered agent	No fee
(q)	Registration, reservation, or transfer of name	Thirty dollars
(r)	Articles of dissolution or voluntary termination of statement	No fee
(s)	Agent's consent to act as agent	No fee
(t)	Agent's resignation if appointed without consent	No fee
(u)	Other statement or report	Ten dollars

(2) For domestic and foreign nonprofit entities under Title 24 RCW and chapter 23.86 RCW, fees and penalties are:

(a)	Public organic record	Thirty dollars
(b)	Foreign registration statement	Thirty dollars
(c)	Cooperative association	Twenty-five dollars

(d)	Articles of amendment	Twenty dollars
(e)	Restatement	Twenty dollars
(f)	Annual report	Ten dollars
(g)	Articles of voluntary dissolution, statement of withdrawal	No fee
(h)	Reinstatement from administrative dissolution	Thirty dollars plus all delinquent annual fees and five dollar penalty
(i)	Articles of merger or exchange	Twenty dollars for each listed corporation
(j)	Amended annual report	Ten dollars
(k)	Change of registered agent	No fee
(l)	Change of registered agent address	No fee
(m)	Resignation of registered agent	No fee
(n)	Registration, reservation, or transfer of reservation of name	Twenty dollars
(o)	Certificate of election adopting provisions of chapter 24.03 RCW	Thirty dollars
(p)	Other statement or report filed	Ten dollars

(3) For registering trademarks for use within the state, the fees are as follows:

(a)	Five year registration	Fifty-five dollars (includes five dollars heritage center fee) for each class registered
(b)	Five year renewal	Fifty dollars for each class registered
(c)	Assignment of trademark	Ten dollars
(d)	New certificate with name of assignee	Five dollars
(e)	Reservation of trademark	Thirty dollars for each class reserved, for one hundred eighty days
(f)	Amendment of trademark	Fifty dollars for each class
(g)	Cancellation of trademark	No fee
(h)	Other statement or report filed	Ten dollars

(4) For filings related to state registered domestic partnership, the fees are:

(a)	Registration	Fifty dollars
(b)	Name change	No fee

(c)	Address change	No fee
(d)	Notice of termination by reason of death	No fee

(5) Fees paid under WAC 434-112-085 ((~~are~~)) may not be refundable.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-085, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 23B.01.220, 25.15.805, and 25.10.916. WSR 11-12-020, § 434-112-085, filed 5/24/11, effective 7/1/11. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-085, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-085, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 43.07.400 and 9A.56.078. WSR 07-20-065, § 434-112-085, filed 9/28/07, effective 10/29/07. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-085, filed 1/23/04, effective 2/23/04.]

AMENDATORY SECTION (Amending WSR 15-22-047, filed 10/29/15, effective 1/1/16)

WAC 434-112-090 Miscellaneous fees. (1) ((~~Copy fees for corporate records are:~~

~~(a) Each annual report, five dollars;~~

~~(b) Initial articles of incorporation, initial certificate of formation, or other initial organizing records including a foreign entity registration or any single document except an annual report, ten dollars each;~~

~~(c) Initial organizational records as listed in (b) of this subsection plus all subsequent amendments, changes, and restatements, including mergers, conversions, etc., twenty dollars;~~

~~(d) Copy of any filing related to a state registered domestic partnership, five dollars;~~

~~(e) Surcharge for files exceeding one hundred pages of copy, thirteen dollars for each fifty-page increment.~~

~~(2) For certificates of existence, registration, or any fact on record, fees are as follows:~~

~~(a) With complete historical data, thirty dollars;~~

~~(b) Without complete historical data, twenty dollars;~~

~~(c) Duplicate certificate, twenty dollars.~~

~~(3) For additional certificates of registration of a state registered domestic partnership, five dollars. For an additional or replacement state registered domestic partnership wallet card, ten dollars.~~

~~(4) For verifying the signature of a notary or public official, for an apostille or certification authenticating a sworn document, the fee is fifteen dollars.~~

~~(5)~~)) For each certified copy of any record the fee is ((~~ten dollars plus the record copy fee~~)) twenty dollars.

((~~(6)~~)) (2) For any service of process the fee is fifty dollars.

((~~(7)~~)) (3) Dishonored checks. If a person, corporation, or other submitting entity has attempted to pay any fee due to the secretary of state by means of a check, and the check is dishonored by the financial institution when presented, the secretary of state will impose a twenty-five-dollar penalty, payable to the secretary of state.

In the event a valid replacement check and dishonor charge is not received in the office of the secretary of state within the time prescribed by its accounting division, the transaction covered by the dishonored check will be canceled and all other late filing fees and penalties will be instituted.

[Statutory Authority: 2015 c 176, and chapters 11.110, 18.100, 19.77, 23.86, 23.90, 23B.01, 24.03, 24.06, 25.10, 25.15, 43.07, and 46.64 RCW. WSR 15-22-047, § 434-112-090, filed 10/29/15, effective 1/1/16. Statutory Authority: RCW 11.110.070, 18.100.035, 19.77.015, [19.77.]030, [19.77.]050, [19.77.]060, 23.86.075, 23.90.050, 23B.01.200, [23B.01.]220, 24.03.007, [24.03.]302, [24.03.]405, [24.03.]410, 24.06.290, [24.06.]440, [24.06.]445, [24.06.]450, [24.06.]455, [24.06.]485, 25.10.006, [25.10.]171, [25.10.]605, [25.10.]610, [25.10.]916, [25.10.]921, 25.15.007, [25.15.]810, 43.07.120, [43.07.]128, [43.07.]130, 46.64.040. WSR 10-20-150, § 434-112-090, filed 10/6/10, effective 11/6/10. Statutory Authority: RCW 23.86.070, 23B.01.200, 23B.01.220, 24.03.405, 25.10.600, 43.07.120. WSR 09-06-036, § 434-112-090, filed 2/24/09, effective 3/27/09. Statutory Authority: RCW 43.07.400 and 9A.56.078. WSR 07-20-065, § 434-112-090, filed 9/28/07, effective 10/29/07. Statutory Authority: RCW 23B.01.200(2), 24.03.007, [24.03.]008, 25.15.007, 19.09.020(15), [19.09].315, 19.77.115, and 43.07.170. WSR 04-04-018, § 434-112-090, filed 1/23/04, effective 2/23/04.]

OTS-2790.1

AMENDATORY SECTION (Amending WSR 17-16-073, filed 7/26/17, effective 8/26/17)

WAC 434-120-035 Mandatory filing online. All charitable organizations and commercial fund-raisers filing registrations and renewals, and charitable trusts filing renewals, ((~~will be~~)) are required to file using the secretary of state's online filing application ((~~as of January 1, 2018. Except for initial trust registrations, paper documents will not be accepted after December 31, 2017~~)), unless an online filing option is not available.

[Statutory Authority: RCW 11.110.070, 19.09.020, 19.09.541, 19.09.560, and 43.07.120. WSR 17-16-073, § 434-120-035, filed 7/26/17, effective 8/26/17; WSR 15-22-046, § 434-120-035, filed 10/29/15, effective 1/1/16.]

AMENDATORY SECTION (Amending WSR 14-17-025, filed 8/12/14, effective 9/12/14)

WAC 434-120-042 Fees. (1) Charitable organizations, commercial fund-raisers, and charitable trusts registering under chapter 11.110 or 19.09 RCW are subject to the following fees:

(a) Amendment of current registration: No fee.

(b) ((~~Replacement of confirmation letter: $5.00.~~

~~(c) Service of process: $50.00.~~

~~(d)~~)) Late fee, failure to renew by due date: $50.00.

((~~(e)~~)) (c) Specialized reports ((~~(electronic or paper)~~)): $20.00.

((~~(f)~~)) (d) Expedited service fee (paper, per entity): $50.00.

((~~(g) Expedited service fee (online, per entity): $20.00.~~

~~(h)~~)) (e) Emergency services outside regular business hours: $150 per hour.

(2) Charitable organizations registering under chapter 19.09 RCW are subject to the following fees:

(a) Initial registration (RCW 19.09.062): $60.00.

(b) Annual renewal (RCW 19.09.062): $40.00.

(c) Reregistration: $60.00.

(d) Optional registration, initial or update: No fee.

(e) ((~~Electronic or paper copy of a charitable organization file: $5.00.~~

~~(f)~~)) Registration of a fund-raising service contract (RCW 19.09.062): $20.00.

((~~(g) Electronic or paper copy of a fund-raising service contract registration: $10.00.~~))

(3) Commercial fund-raisers registering under chapter 19.09 RCW are subject to the following fees:

(a) Initial registration (RCW 19.09.062): $300.00.

(b) Annual renewal (RCW 19.09.062): $225.00.

(4) Charitable trusts registering under chapter 11.110 RCW are subject to the following fees:

(a) Initial registration: $25.00.

(b) Annual renewal: $25.00.

((~~(c) Electronic or paper copy of a trust registration: $5.00.~~

~~(d) Electronic copy of IRS Form 990EZ (up to fifty pages): $5.00.~~

~~(e) Electronic or paper copy of IRS Form 990/990PF (up to one hundred pages): $10.00.~~

~~(f) Electronic or paper copy of IRS Form 990/990PF (more than one hundred pages): $13.00 for each additional fifty pages.~~

~~(g) Charitable trust directory: No fee.~~))

(5) ((~~Filing fees are nonrefundable.~~)) Fees paid under this section may not be refundable.

[Statutory Authority: Chapters 11.110, 19.09, and 43.07 RCW. WSR 14-17-025, § 434-120-042, filed 8/12/14, effective 9/12/14.]

AMENDATORY SECTION (Amending WSR 14-17-025, filed 8/12/14, effective 9/12/14)

WAC 434-120-107 Audited financial report—Tiered reporting requirements. (1) If a charitable organization has been in existence

for less than three years, the organization shall calculate its average gross revenue based on the number of years the organization has been in existence to determine which tier, per RCW 19.09.541, is applicable.

(2) For purposes of these regulations, the charities program may waive the requirement to obtain an audited financial statement prepared by an independent certified public accountant for organizations with more than three million dollars in gross revenue averaged over the last three accounting years that meet one of the following:

(a) Directly or indirectly receives five hundred thousand dollars or less in cash averaged over the last three accounting years. Organizations with five hundred thousand dollars or less in cash averaged over the last three accounting years must meet tier two reporting requirements in RCW 19.09.541(2). For purposes of meeting the financial requirements in this section, "cash" includes currency, checks, credit card payments, donor advised funds, and electronic fund transfers received from all sources including, but not limited to, solicitations, investment income and tuition. "Cash" does not include gifts of tangible, real, or personal property or in-kind services; ((~~or~~))

(b) Organizations that can demonstrate that they have reached a three-year average of more than three million dollars in gross revenue through unusual or nonrecurring revenue received in a single year without which they would not have met the three-year annual gross average threshold; or

(c) If the tier three audited financial statement has been waived by the charities program, then the tier two reporting requirements shall apply as replacement to the waived audited financial statement.

[Statutory Authority: Chapters 11.110, 19.09, and 43.07 RCW. WSR 14-17-025, § 434-120-107, filed 8/12/14, effective 9/12/14. Statutory Authority: RCW 19.09.075, [19.09.]079, [19.09.]097, and [19.09.]520. WSR 12-14-114, § 434-120-107, filed 7/5/12, effective 8/5/12. Statutory Authority: RCW 19.09.540 and 43.07.125. WSR 10-22-048, § 434-120-107, filed 10/28/10, effective 11/28/10. Statutory Authority: RCW 19.09.315, 19.09.540, and 43.07.125. WSR 09-22-056, § 434-120-107, filed 10/30/09, effective 11/30/09. Statutory Authority: RCW 19.09.097, [19.09.]315, [19.09.]540, 43.07.125. WSR 09-01-106, § 434-120-107, filed 12/17/08, effective 1/17/09.]

WSR 21-04-057
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed January 28, 2021, 8:26 a.m., effective February 28, 2021]

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

Purpose: The department is amending chapter 388-112A WAC, Residential long-term care services training, by adding a new definition for expanded specialty training to WAC 388-112A-0010. The department is also creating WAC 388-112A-1292, a new section added to set minimum qualifications for community instructors to teach expanded specialty trainings, and WAC 388-112A-1294, a new section added to set minimum qualifications for facility training program instructors to teach expanded specialty trainings.

These changes are necessary to clarify instructor qualifications and requirements for the additional specialty courses required by RCW 70.128.060(8).

Citation of Rules Affected by this Order: New WAC 388-112A-1292 and 388-112A-1294; and amending WAC 388-112A-0010.

Statutory Authority for Adoption: RCW 74.08.090, 70.128.060.

Adopted under notice filed as WSR 20-24-055 on November 24, 2020.

A final cost-benefit analysis is available by contacting David Chappell, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2516, email dave.chappell@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 2, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 1, Repealed 0.

Date Adopted: January 27, 2021.

Cheryl Strange
Secretary

SHS-4838.3

AMENDATORY SECTION (Amending WSR 20-14-088, filed 6/30/20, effective 7/31/20)

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of

daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Adult family home training network"** means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to provide training, workforce development, and other services to adult family homes.

(3) **"Applicant"** means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(4) **"Capable caregiving training"** means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements under RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed in both topics, may be completed for continuing education credits.

(5) **"Care team"** includes the resident and everyone involved in their care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(6) **"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.

(7) **"Competency"** means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(8) **"Competency testing"** including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(9) **"Core basic training"** is the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(10) **"Date of hire"** for determining timeframes related to training and certification, means the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115.

(11) **"DDA"** means the developmental disabilities administration.

(12) **"Designee"** means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(13) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

(14) **"Direct supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(15) **"DSHS"** or **"department"** means the department of social and health services.

(16) **"Enhancement"** means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(17) **"Entity representative"** means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(18) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(19) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

((~~(19)~~)) (20) **"Home"** means adult family homes, enhanced services facilities, and assisted living facilities.

((~~(20)~~)) (21) **"Home care aide certified"** or **"home care aide"** means a person who obtained and maintains a home care aide certification through the department of health.

((~~(21)~~)) (22) **"Indirect supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

((~~(22)~~)) (23) **"Learning objectives"** means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

((~~(23)~~)) (24) **"Long-term care worker"** means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

((~~(24)~~)) (25) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

((~~(25)~~)) (26) **"Provider"** means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

((~~(26)~~)) (27) **"Renewal period"** means the certification renewal period as defined in WAC 246.12.010.

((~~(27)~~)) (28) **"Resident"** means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

((~~(28)~~)) (29) **"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

((~~(29)~~)) (30) **"Routine interaction"** means regular contact with residents.

((~~(30)~~)) (31) **"Seventy-hour long-term care worker basic training"** means the seventy-hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

((~~(31)~~)) (32) **"Special needs"** means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490 for assisted living or WAC 388-76-10000 for adult family homes.

((~~(32)~~)) (33) **"Specialty training"** means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

((~~(33)~~)) (34) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

[Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035, 70.128.230, 71A.12.030, and 70.97.080. WSR 20-14-088, § 388-112A-0010, filed 6/30/20, effective 7/31/20. Statutory Authority: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.351, 74.39A.341, 18.20.270, 18.88B.021, 18.88B.035,

70.128.230, 71A.12.030. WSR 17-22-036, § 388-112A-0010, filed 10/24/17, effective 11/24/17.]

NEW SECTION

WAC 388-112A-1292 What are the minimum qualifications for community instructors to teach expanded specialty trainings? (1) The minimum qualifications for community instructors to teach an expanded specialty training, in addition to the general qualifications in WAC 388-112A-1420(1) and (2), include:

(a) The instructor must be experienced in caregiving practices related to the expanded specialty topic and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, paramedic, emergency medical technician (EMT), mental health specialist, or a specialist with nationally recognized credentials in the expanded specialty topic with at least eighty hours of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to expanded specialty topics; and

(ii) Successful completion of the expanded specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work or volunteer experience with people in the specialty topic population; and

(d) Teaching experience:

(i) Two hundred hours experience teaching;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people in the specialty topic population may substitute for either:

(a) The credential or degree described in subsection (1)(b)(i) of this section; or

(b) The eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(i).

[]

NEW SECTION

WAC 388-112A-1294 What are the minimum qualifications for facility training program instructors to teach expanded specialty trainings? (1) The minimum qualifications for facility instructors to teach an expanded specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application attesting to those qualifications and submit copies of certificates of

completion for each expanded specialty training curriculum they would like to teach and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this section may teach an expanded specialty training to long-term care workers employed at other home(s) licensed by the same licensee.

(2) If your status is an approved instructor for an expanded specialty training, you may instruct expanded specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

[]

WSR 21-04-067
PERMANENT RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed January 29, 2021, 9:55 a.m., effective March 1, 2021]

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

Purpose: The employment security department (ESD) paid family and medical leave division is amending sections of Title 192 WAC to remove references to subsections of RCW to ensure the accuracy of referenced sections of statute within the title.

Citation of Rules Affected by this Order: Amending WAC 192-500-190 Sibling, 192-510-010 Election, withdrawal, and cancellation of coverage, 192-510-031 What are reportable wages for self-employed persons electing coverage?, 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants?, 192-510-065 When can an employer deduct premiums from employees?, 192-510-080 What are the requirements to be eligible for a conditional premium waiver?, 192-530-060 How can approved voluntary plans end and what happens when they do?, 192-530-070 What is good cause for terminating an approved voluntary plan?, 192-560-020 What is the application process for a small business assistance grant?, 192-610-051 How is the weekly benefit calculated?, 192-700-005 When is an employee entitled to employment restoration after leave ends?, 192-700-010 Can an employer deny employment restoration?, 192-800-010 How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud?, 192-800-020 How will the department differentiate between employers?, 192-800-125 When is a petition for review considered delivered to the department?, and 192-810-030 How do individuals and entities request records from the department?

Statutory Authority for Adoption: RCW 50A.05.060.

Adopted under notice filed as WSR 20-22-018 on October 23, 2020.

A final cost-benefit analysis is available by contacting April Amundson, ESD, P.O. Box 9046, Olympia, WA 98507-9046, phone 360-486-2816, TTY 711 (contact Teresa Eckstein at 360-507-9890 for accommodations), email rules@esd.wa.gov, website https://paidleave.wa.gov/rulemaking/.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 16, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 0.

Date Adopted: January 29, 2021.

April Amundson
Paid Family and Medical Leave
Policy and Rules Manager

OTS-2675.1

AMENDATORY SECTION (Amending WSR 20-11-033, filed 5/14/20, effective 6/14/20)

WAC 192-500-190 Sibling. "Sibling" means an individual who shares at least one parent, as defined by RCW 50A.05.010((~~(15)~~)), with another individual.

[Statutory Authority: RCW 50A.05.060. WSR 20-11-033, § 192-500-190, filed 5/14/20, effective 6/14/20.]

OTS-2671.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-510-010 Election, withdrawal, and cancellation of coverage. (1) Self-employed persons as defined in RCW 50A.10.010((~~(1)~~)) and federally recognized tribes as defined in RCW 50A.10.020 may elect coverage under Title 50A RCW.

(2) Notice of election of coverage must be submitted to the department online or in another format approved by the department.

(3) Elective coverage begins on the first day of the quarter immediately following the notice of election.

(4) A period of coverage is defined as:

(a) Three years following the first day of elective coverage or any gap in coverage; and

(b) Each subsequent year.

(5) Any self-employed person or federally recognized tribe may file a notice of withdrawal within thirty calendar days after the end of each period of coverage.

(6) A notice of withdrawal from coverage must be submitted to the department online or in another format approved by the department.

(7) Any levy resulting from the department's cancellation of coverage is in addition to the due and unpaid premiums and interest for the remainder of the period of coverage.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-010, filed 3/22/19, effective 4/22/19; WSR 18-12-032, § 192-510-010, filed 5/29/18, effective 6/29/18.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-510-031 What are reportable wages for self-employed persons electing coverage? Each quarter, a self-employed individual who

has elected coverage under Title 50A RCW will report to the department wages equal to the combined total of:

(1) The self-employed individual's net income related to their self-employment; and

(2) The gross amount of wages, if any, as defined in RCW 50A.05.010((~~(24)~~)), paid to the self-employed individual from the self-employed individual's business entity.

Example 1: A sole-proprietor selling crafts online earns $3,000 in a quarter and incurred $2,000 in business-related expenses. The individual would report $1,000 to the department for that quarter.

Example 2: A member of a limited liability company pays herself a salary in the amount of $10,000 in a quarter. She also takes a draw from her company in the amount of $5,000. She would report $15,000 to the department for that quarter.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-031, filed 11/19/19, effective 12/20/19.]

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-510-040 How does an employer's size affect liability for premiums and eligibility for small business assistance grants? (1) To assess premiums and determine eligibility for small business assistance grants, the department must determine the size of each applicable employer. The department will only count the number of in-state employees as defined in RCW 50A.05.010((~~(4)~~)) when calculating employer size.

(2) If the department determines that the employer's status has changed as it relates to premium liability, the department will notify the employer. This notification will include the following information:

(a) If the employer was determined to have fifty or more employees for the preceding calendar year, and the employer is then determined to have fewer than fifty employees for the subsequent calendar year, the employer will not be required to pay the employer portion of the premium for the next calendar year; or

(b) If the employer was determined to have fewer than fifty employees for the preceding calendar year, and the employer is then determined to have fifty or more employees for the subsequent calendar year, the employer will be required to pay the employer portion of the premium for the next calendar year.

Example: On September 30, 2018, a business is determined to have had 53 employees on average during the previous four completed quarters, which covers July 1, 2017, through June 30, 2018. The employer is liable for the employer portion of premiums for 2019. On September 30, 2019, the business is determined to have had 48 employees on average during the previous four completed quarters, which covers July 1, 2018, through June 30, 2019. The employer is no longer liable for the employer share of premiums for 2020.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-040, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-12-032, § 192-510-040, filed 5/29/18, effective 6/29/18.]

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-510-065 When can an employer deduct premiums from employees? (1) An employer may not deduct more than the maximum allowable employee share of the premium from wages paid for a pay period.

(2) If an employer fails to deduct the maximum allowable employee share of the premium from wages paid for a pay period, the employer is considered to have elected to pay that portion of the employee share under RCW 50A.10.030 ((~~(3)(d)~~)) for that pay period. The employer cannot deduct this amount from a future paycheck of the employee for a different pay period.

(3) Subsections (1) and (2) of this section do not apply if an employer was unable to deduct the maximum allowable employee share of the premium for a pay period due to a lack of sufficient employee wages for that pay period.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-510-065, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-08-016, § 192-510-065, filed 3/22/19, effective 4/22/19; WSR 18-22-080, § 192-510-065, filed 11/2/18, effective 12/3/18.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-510-080 What are the requirements to be eligible for a conditional premium waiver? (1) An employer and employee may be eligible for a conditional waiver of premium payments by satisfying the requirements of RCW 50A.10.040.

Example: A storm hits Washington. An employer in Oregon hires a new employee who lives in Oregon to help with repair work. The employee only works in Washington for the employer for one week and is then laid off. The employer and the employee could submit a conditional premium waiver request for this employee.

(2) A conditional premium waiver is not required for work that is not subject to premiums under WAC 192-510-070 or fails to meet the definition of employment in RCW 50A.05.010 ((~~(7)(a)~~)).

(3) Any conditional premium waiver request must be submitted to the department online or in another format approved by the department.

(4) As a condition to granting the conditional premium waiver, the employer must file quarterly reports to verify that the employee for whom a conditional premium waiver has been granted is still eligible for the waiver.

(5) Once an employee works eight hundred twenty hours in a period of four consecutive complete calendar quarters localized in Washington for an employer, the conditional premium waiver expires.

(6) The department may require the employer to submit additional documentation as necessary.

(7) If the employee exceeds eight hundred twenty hours in a period of four consecutive complete calendar quarters, the conditional waiver expires and the employer and employee will be responsible for their shares of all premiums that would have been paid during the period of four consecutive complete calendar quarters in which the employee exceeded eight hundred twenty hours had the waiver not been

granted. The employer and employee will each receive a notice of premium assessment. Payment of the missed premiums is due on the date provided in the notice. Upon payment of the missed premiums, the employee will be credited for the hours worked and will be eligible for benefits under this chapter as if the premiums were originally paid.

(8) A request for a conditional premium waiver may be denied if the department finds that the employee does not satisfy the requirements of RCW 50A.10.040.

(9) A conditional premium waiver may be canceled if the department finds that the employee no longer satisfies the requirements of RCW 50A.10.040.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-510-080, filed 11/19/19, effective 12/20/19; WSR 18-12-032, § 192-510-080, filed 5/29/18, effective 6/29/18.]

OTS-2672.1

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-530-060 How can approved voluntary plans end and what happens when they do? (1) An approved voluntary plan ends when either the employer withdraws the plan or the agency terminates the plan for good cause. When a voluntary plan ends either through termination or withdrawal the following requirements must be satisfied:

(a) Benefits and benefit eligibility under a voluntary plan must be maintained for all employees covered by that plan until the effective date of termination or withdrawal.

(b) On the effective date of a voluntary plan termination or withdrawal, employees currently taking family or medical leave under this chapter are entitled to employment restoration under RCW 50A.30.010 ((~~(5)(h)~~)) until the leave ends.

(c) Employers must notify employees of any plan withdrawal or termination within five business days of notification by the department of the effective date of the termination or withdrawal.

(2) **Withdrawal.** Employers have the right to withdraw a voluntary plan under RCW 50A.30.010 ((~~(5)(e)~~)) and as provided herein:

(a) If an employer chooses to withdraw a voluntary plan due to a legally required increase in the benefit amounts or any change in the rate of employee premiums, the employer must provide notice to the department at least thirty days prior to the date the change goes into effect, stating the reason for the withdrawal. The plan will be considered withdrawn on the date of the change. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(b) If the employer chooses to withdraw a voluntary plan for any other reason, the employer must provide notice to the department at least thirty days prior to the end of a calendar quarter. The plan will be considered withdrawn on the first day of the calendar quarter following the properly provided notice. If notice is provided less

than thirty days prior to the end of a quarter, the plan will be considered withdrawn on the first day of the second calendar quarter following notice of the withdrawal. Within thirty days of the effective date of withdrawal, the employer must remit to the department any employee wages withheld for the purpose of paying paid family or medical leave benefits that were not used to pay paid family or medical leave benefits.

(c) On the effective date of a voluntary plan withdrawal, for employees currently receiving paid family or medical leave benefits under the voluntary plan, the employer will have the option to:

(i) Continue to pay benefits under the terms of the voluntary plan until the total amount of the benefit is paid or the duration of leave ends, whichever happens first; or

(ii) Immediately pay the employee the maximum remaining amount of benefits available to the employee under the terms of the voluntary plan, regardless of the duration of leave that is actually taken.

(d) Any benefit payments made by an employer to an employee on leave at the time of a voluntary plan withdrawal under (b) of this subsection will be deducted from any moneys owed to the department as described in (a) of this subsection.

(3) **Termination.** The department may terminate an employer's voluntary plan for good cause as defined under WAC 192-530-070 and as provided herein:

(a) If the department terminates an employer's voluntary plan, the department will notify the employer of the effective date of and reason for the termination. The department will calculate the amount owed by the employer and send an invoice for payment. The amount due will consist of all moneys in the plan, including any contributions held in trust as required by RCW 50A.30.050, moneys owed to the voluntary plan by the employer but not yet paid to the plan, and any interest accrued on all these moneys. The amount is due immediately. Any balance owed will begin accruing interest on the thirtieth calendar day after the date of the invoice.

(b) On the effective date of a voluntary plan termination, employees currently receiving paid family or medical leave benefits under the voluntary plan are, if otherwise eligible under the state plan, immediately entitled to benefits from the state plan.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-530-060, filed 11/19/19, effective 12/20/19; WSR 18-22-080, § 192-530-060, filed 11/2/18, effective 12/3/18; WSR 18-12-032, § 192-530-060, filed 5/29/18, effective 6/29/18.]

AMENDATORY SECTION (Amending WSR 18-22-080, filed 11/2/18, effective 12/3/18)

WAC 192-530-070 What is good cause for terminating an approved voluntary plan? The department may terminate a voluntary plan if there is a risk that benefits will not be paid or for other good cause shown. Good cause for terminating a voluntary plan includes, but is not limited to, an employer's failure to:

(1) Pay timely and accurate paid family or medical leave benefits;

(2) Provide leave for a qualified event;

(3) Protect the employment and employment benefits of an employee when required;

(4) Provide complete quarterly reports;

(5) Report to the department any amendments made to the voluntary plan;

(6) Adhere to the approved voluntary plan; or

(7) Adhere to the requirements of Title 50A RCW or chapter 192-500 WAC and thereafter (chapters 192-500 through ((~~192-999~~)) 192-899 WAC).

[Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-530-070, filed 11/2/18, effective 12/3/18.]

OTS-2676.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-560-020 What is the application process for a small business assistance grant? (1) Applications for small business assistance grants must be submitted online or in another format approved by the department. To be approved, an application must contain:

(a) The name and Social Security number or individual taxpayer identification number of the employee taking leave;

(b) The amount and type of grant being requested;

(c) An explanation summarizing any personnel or significant additional wage-related costs that were taken because of an employee taking leave; and

(d) Written documentation including, but not limited to, personnel records related to the hiring of a new temporary employee, wage reports, and signed statements, showing the temporary worker hired or significant additional wage-related costs incurred are due to an employee's use of leave.

(2) Incomplete applications will not be reviewed and will not count against an employer's limit of ten applications per year under RCW 50A.24.010((~~(4)~~)).

(3) The department will deny the application for reasons including, but not limited to, the employer's failure to demonstrate that:

(a) It hired a temporary worker or incurred any significant additional wage-related costs; or

(b) The temporary worker hired or significant additional wage-related cost incurred was not due to an employee's use of family or medical leave.

(4) If a grant application is denied, the application will count against an employer's limit of ten applications per year.

(5) The denial of a grant application is appealable.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-560-020, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 18-22-080, § 192-560-020, filed 11/2/18, effective 12/3/18.]

OTS-2677.1

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-610-051 How is the weekly benefit calculated? After a valid claim year is established, the department will calculate the weekly benefit amount using the following process:

(1) The department will establish the employee's average weekly wage by dividing the total reported wages in the employee's two highest-paid quarters in the qualifying period by twenty-six. If the result is not a multiple of one dollar, the result is rounded down to the next lower multiple of one dollar.

(2) If the employee's average weekly wage is equal to or less than one-half of the state's average weekly wage on the date the calculation is made, the benefit amount is ninety percent of the employee's average weekly wage.

Example 1: For this example, the state's average weekly wage is $1,400. An employee's average weekly wage is $600. Since this amount is less than half of the state's average weekly wage, the employee receives 90% of their weekly wage. The weekly benefit is $540.

(3) If the employee's average weekly wage is more than fifty percent of the state's average weekly wage on the date the calculation is made, the weekly benefit amount is the sum of:

(a) Ninety percent of one-half of the state average weekly wage; and

(b) Fifty percent of the difference between one-half of the state average weekly wage and the employee's average weekly wage.

Example 2: For this example, the state's average weekly wage is $1,400. An employee's average weekly wage is $950. Since this number is more than half of the state's average weekly wage, calculate the values for subsection (3)(a) and (b) of this section, then add them together. The first number is equal to 90% of half the state's average weekly wage. Half of $1,400 is $700, and 90% of this number makes the first number $630. The second number is equal to 50% of the amount of the employee's average weekly wage that is higher than half the state's average weekly wage. The amount of the employee's average weekly wage that is higher than half the state's average weekly wage is $250 ($950 - $700). 50% of this amount makes the second number $125. Add the two numbers together. The weekly benefit is $755.

(4) If the result of the weekly benefit calculation is not a multiple of one dollar, the result is rounded down to the next lower multiple of one dollar.

(5) All weekly benefit amount calculations are subject to the minimum and maximum weekly benefit amounts under RCW 50A.15.020 ((~~(5)(a) and (b)~~)).

(6) The weekly benefit amount determined in subsections (1) through (4) of this section is prorated by the number of hours claimed for paid family or medical leave compared to the number of typical workweek hours.

Example 3: An employee has a weekly benefit amount determined to be $1,000. The employee worked 20 hours each week in the qualifying period. The employee is now full-time and salaried, causing the department to consider that employee's typical workweek hours to be 40. The employee can claim 40 hours on each weekly claim. No proration would occur because the hours claimed compared to the typical workweek

hours are the same. As a result, the employee would receive 100% of their weekly benefit amount.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-610-051, filed 11/19/19, effective 12/20/19.]

OTS-2673.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-700-005 When is an employee entitled to employment restoration after leave ends? (1) Subject to RCW 50A.35.010((~~(3)~~)), an employee who meets the criteria listed in ((~~RCW 50A.35.010 (6)(a)~~)) that section who takes leave under Title 50A RCW is entitled, on return from the leave, to be restored by the employer to:

(a) The position of employment held by the employee when the leave commenced; or

(b) An equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(i) "Equivalent position" means a position that is nearly identical to the employee's former position as if the employee did not take extended leave. This includes pay, benefits and working conditions, privileges, perks, location, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

(ii) "Employment benefits" includes all benefits provided or made available to employees by an employer such as:

(A) Insurance;

(B) Paid time off;

(C) Educational benefits; or

(D) Retirement benefits.

(2) An employee is entitled to such reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence unless the employer can demonstrate the circumstances fall within WAC 192-700-010(1).

(3) The protections provided in RCW 50A.35.010 and this section apply to the employee beginning with the date the employee starts taking leave.

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-700-005, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-700-005, filed 7/31/19, effective 8/31/19.]

AMENDATORY SECTION (Amending WSR 20-11-035, filed 5/14/20, effective 6/14/20)

WAC 192-700-010 Can an employer deny employment restoration? (1) An employee is not entitled to rights under RCW 50A.35.010((~~(1)~~)) if:

(a) An employer exercises its right to deny restoration under RCW 50A.35.010 ((~~(6)(b)~~)) and the employee has elected not to return to employment after receiving notice under subsection (2) of this section; or

(b) The employer is able to show that an employee would not otherwise have been employed at the time the employee would return to work after the employee's family or medical leave under Title 50A RCW ends.

(2) An employer that chooses to deny restoration under subsection (1)(a) or (b) of this section to an employee on paid medical or family leave must notify the employee in writing as soon as the employer decides to deny restoration. The employer must serve this notice to the employee either in person or by certified mail. The notice must include:

(a) A statement that the employer intends to deny employment restoration when the leave has ended;

(b) The reasons behind the decision to deny restoration;

(c) An explanation that health benefits will still be paid for the duration of the leave; and

(d) The date on which eligibility for employer-provided health benefits ends.

(3) Employers that choose to deny restoration under this section must provide continuation of health benefits as required in RCW 50A.35.020 and WAC 192-700-020.

[Statutory Authority: RCW 50A.05.060, 50A.35.010, and 50A.35.020. WSR 20-11-035, § 192-700-010, filed 5/14/20, effective 6/14/20. Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-700-010, filed 12/12/19, effective 1/12/20. Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-700-010, filed 7/31/19, effective 8/31/19.]

OTS-2674.1

AMENDATORY SECTION (Amending WSR 19-13-001, filed 6/5/19, effective 7/6/19)

WAC 192-800-010 How will the disqualification periods and penalties be assessed for an employee who is determined to have committed fraud? (1) The department will assess disqualification periods and penalties for each fraud determination individually under RCW ((~~50A.04.045(3)~~)) 50A.15.060.

(2) All disqualifications and penalties in RCW ((~~50A.04.045(3)~~)) 50A.15.060 are in addition to the required repayment of any benefits paid as a result of fraud.

(3) The department will assess the fraud penalties established under RCW ((~~50A.04.045(3)~~)) 50A.15.060 based on the percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(4) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

[Statutory Authority: RCW 50A.04.215. WSR 19-13-001, § 192-800-010, filed 6/5/19, effective 7/6/19.]

AMENDATORY SECTION (Amending WSR 19-16-081, filed 7/31/19, effective 8/31/19)

WAC 192-800-020 How will the department differentiate between employers? (1) The department will determine each entity in possession of its own unified business identifier number as assigned by the state's business licensing service to be an individual employer.

(2) If the department finds an employer acted in such a way to avoid paying the full amount of premiums when due under RCW ((~~50A.04.080 (3)(b)~~)) 50A.20.030, the employer may be subject to penalties under RCW ((~~50A.04.090~~)) 50A.45.010.

(3) If the department finds under subsection (2) of this section that an employer acted in such a way to avoid paying the full amount of premiums when due, the department may require the employer to report under a single unified business identifier selected by the department. In such cases, the department will notify the employer of the determination. Notice will include the department's findings, the unified business identifier under which the employer must report, and the full amount of remaining premiums, if any, due by the responsible employer.

[Statutory Authority: RCW 50A.04.215. WSR 19-16-081, § 192-800-020, filed 7/31/19, effective 8/31/19.]

AMENDATORY SECTION (Amending WSR 19-23-090, filed 11/19/19, effective 12/20/19)

WAC 192-800-125 When is a petition for review considered delivered to the department? Delivery under RCW 34.05.542((~~(4)~~)) is made when a copy of the petition for judicial review is received by the Commissioner's Office at 212 Maple Park Avenue S.E., Olympia, WA or received by mail at the Commissioner's Review Office, Post Office Box 9555, Olympia, WA 98507-9555.

[Statutory Authority: RCW 50A.04.215. WSR 19-23-090, § 192-800-125, filed 11/19/19, effective 12/20/19.]

OTS-2678.1

AMENDATORY SECTION (Amending WSR 20-01-087, filed 12/12/19, effective 1/12/20)

WAC 192-810-030 How do individuals and entities request records from the department? (1) The department will manage all records requests consistent with the provisions of chapter 42.56 RCW.

(2) Requests for public records shall be submitted to the public records officer. Contact the public records officer at:

Public Records Officer
P.O. Box 9046
Olympia, WA 98507-9046
Phone: 1-844-766-8930
Email: Recordsdisclosure@esd.wa.gov

(3) If an individual requests records or information concerning that individual held by the department under RCW 50A.25.040((~~(1)~~)), those records must be released only to the requesting individual.

(4) If an individual submits a records request and asks that the requested records be sent to a third party directly, the individual must follow the provisions of RCW 50A.25.040((~~(3)~~)).

[Statutory Authority: RCW 50A.05.60 [50A.05.060] and 50A.25.030. WSR 20-01-087, § 192-810-030, filed 12/12/19, effective 1/12/20.]

WSR 21-04-073
PERMANENT RULES
PUBLIC DISCLOSURE COMMISSION
[Filed January 29, 2021, 1:30 p.m., effective March 1, 2021]

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

Purpose: To address recent statutory changes and implement the new reporting system regarding the filing deadlines and requirements of the F-1 report; to provide clarity in the process and standards for requesting a modification of reporting requirements.

Citation of Rules Affected by this Order: Repealing WAC 390-24-020; and amending WAC 390-24-025, 390-24-100, 390-24-110, 390-24-150, 390-24-201, 390-24-211, 390-28-020, 390-28-040, 390-28-080, and 390-28-100.

Statutory Authority for Adoption: RCW 42.17A.110, [42.17A.]120, and [42.17A.]710.

Adopted under notice filed as WSR 20-24-059 on November 24, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 10, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 1.

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

Date Adopted: January 29, 2021.

Sean Flynn
General Counsel

OTS-2654.1

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-24-025 Time for filing statement of financial affairs. (1) Any person holding elected public office, except as exempted by the terms of RCW 42.17A.700, and any appointed official and professional staff member listed or referenced in RCW 42.17A.700, and any appointed official required to comply with the reporting requirements of RCW 42.17A.700 by any other statute are required to file the F-1 for each partial or full calendar year that such person has served.

(a) For any elected official or officer continuing service from the prior year, the reporting period covers the entire preceding calendar year.

(b) For any officer or official who leaves public office prior to January 1st, the ((~~F-1 must~~)) reporting period covers only the portion of the previous year that such person was in office.

((~~(b)~~)) (c) For any officer or official appointed to office between January through November, or any person who becomes a candidate within the same time period, the ((~~F-1 filed at the time of appointment must~~)) reporting period covers the immediately preceding twelve-month period from the time of appointment or candidacy (or "from the time the F-1 was filed"). However, if the appointee or candidate files between January 1st and April 15th and also has a prior obligation to file as an officer or official under (a) of this subsection, then the reporting period covers the period from January 1st of the preceding year through the time of appointment or candidacy in the current year. For any officer or official appointed to office in December, the ((~~F-1 filed at the time of appointment must~~)) reporting period covers the preceding twelve-month period ending December 31st of the same year.

(2) Any person required to file an F-1 must electronically file the F-1 with the commission under the relevant periods as follows:

(a) For any officer or official continuing service from the prior year, between January 1st and April 15th of each year immediately following the year, or portion of the year served;

(b) ((~~As alternative to (a) of this subsection,~~)) For any officer or official who leaves office before January 1st of the following year, either:

(i) Within sixty days of leaving public office((~~, for any officer or official who leaves office before January 1st of the following year~~)); or

(ii) Between January 1st and April 15th of the year immediately following the portion of the year served; or

(c) For any person appointed to a vacancy in office, or becoming a candidate, as follows:

(i) Within two weeks of appointment ((~~for any person appointed to a vacancy in office~~)) for appointment of candidacy beginning during the months of January through November((~~,~~));; or

(ii) Between January 1st and January 15th for ((~~any person appointed to a vacancy~~)) appointment or candidacy beginning in December.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-24-025, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-24-025, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 86-19-039 (Order 86-06), § 390-24-025, filed 9/12/86; WSR 86-08-030 (Order 86-02), § 390-24-025, filed 3/26/86; WSR 84-01-017 (Order 83-03), § 390-24-025, filed 12/9/83; WSR 80-03-089 (Order 80-03), § 390-24-025, filed 3/4/80; Order 62, § 390-24-025, filed 8/26/75.]

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-100 Definition—Direct financial interest. (1) For the purpose of RCW 42.17A.710 (1)(b), the phrase "direct financial interest" means and includes any direct ownership interest in a bank or savings account, in the cash surrender value of an insurance policy, in stocks, bonds, other securities, evidences of indebtedness, judgments, accounts receivable, and other monetary claims in liquidated amounts.

The term "direct financial interest" as used in that subsection, shall not be deemed to include:

((~~(1)~~)) (a) Any direct financial interest which is required to be reported by such elected official or candidate under any other provision of chapter 42.17A RCW; and

((~~(2)~~)) (b) An account receivable by a business entity in the ordinary course of such entity's business.

(2) A direct financial interest in stocks, bonds, or other securities held in an account managed by a commercial broker, where a third party solely (or independently) has decision-making authority of the investment, may be reported under the name and value of the account, rather than the individual properties of the portfolio.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-24-100, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 86-08-030 (Order 86-02), § 390-24-100, filed 3/26/86; Order 62, § 390-24-100, filed 8/26/75.]

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-110 Definition—Debt. (1) For the purpose of RCW 42.17A.710 (1)(c), the term "debt" means and includes a personal obligation or liability to pay or return something of value.

(2) The term "debt" as used in RCW 42.17A.710 (1)(c) shall not be deemed to include:

(a) An account payable of a business entity in the ordinary course of such entity's business; or

(b) A contractual promise as guarantor of a debt.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-24-110, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 86-08-030 (Order 86-02), § 390-24-110, filed 3/26/86; Order 62, § 390-24-110, filed 8/26/75.]

AMENDATORY SECTION (Amending WSR 15-01-067, filed 12/11/14, effective 1/11/15)

WAC 390-24-150 Definition—Officer. (1) For the purposes of RCW 42.17A.710 (1)(g) ((~~and WAC 390-24-010~~)), the term "officer" or "office held" means and includes:

(a) President, vice president, secretary, treasurer, or some derivation thereof;

(b) One who holds a corporate office; or

(c) An individual who holds a position described as an officer in a corporation's bylaws or who is appointed by the board of directors in accordance with the bylaws, or an individual who acts in such capacity without the title or appointment.

(2) An individual who has been given the title of "officer" to denote a managerial job classification is not an officer for the purposes of RCW 42.17A.710 (1)(g) ((~~and WAC 390-24-010~~)).

[Statutory Authority: RCW 42.17A.110 and 42.17A.710 (1)(n). WSR 15-01-067, § 390-24-150, filed 12/11/14, effective 1/11/15.]

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-24-201 Report of compensation by limited partnerships, limited liability partnerships, limited liability companies, and similar entities. For the purposes of filing financial disclosures required by RCW 42.17A.710:

(1) The terms partnership, general partnership, limited partnership, limited liability partnership, and limited liability company as defined in Title 25 RCW will apply.

(2) ((~~Persons who have a partnership or membership in limited partnerships, limited liability partnerships, limited liability companies, and similar entities including but not limited to professional limited liability companies, shall file a personal financial affairs form (PDC F-1) as required in RCW 42.17A.710, and shall also provide the information described in subsection (3) of this section.~~

~~(3)~~)) A person filing a personal financial affairs statement shall report the name of any limited partnership, limited liability partnership, limited liability company, professional limited liability company, and similar entity in which ((~~a partnership or membership is held by~~)) the person or member of the person's immediate family((~~, and any~~)) holds:

(a) Any office, directorship, or any general partnership interest, including the title held; and

(b) Any ownership interest of ten percent or more.

(3) In addition to the requirements under subsection (2) of this section, the person shall also report the following:

(a) Regarding a governmental unit in which the filer seeks or holds any office or position, if the entity has received compensation during the reporting period from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; and

(b) The name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in the amount equal to or greater than the amount specified in WAC 390-24-010 and 390-24-020 (the F-1 reporting forms) during the reporting period and the consideration given or performed in exchange for the compensation.

[Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-24-201, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.241 (1)(n) and 42.17.370. WSR 06-21-010, § 390-24-201, filed 10/6/06, effective 11/6/06.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-24-211 Reporting on public or private office held for the statement of financial affairs (F-1). (1) An elected official or executive state officer is not required to report the office, directorship, or position held in a public or private office for service on a governmental board, commission, association, or functional equivalent, when such service is part of the elected official's or executive state officer's official duties.

(2) Such "official duties" may include service in an elected position of a board, commission, or association of which general membership in such organization is part of the official's or officer's official duties.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-24-211, filed 12/24/19, effective 1/24/20.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 390-24-020	Amending the statement of financial affairs.

OTS-2655.2

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-28-020 Definition—Applicant. The term applicant for the purposes of chapter 390-28 WAC means any ((~~individual required to file a statement of financial affairs~~)) person who seeks a modification of the filing requirements pursuant to RCW 42.17A.120 and these rules.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-020, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-020, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-14-117, § 390-28-020, filed 7/3/07, effective 8/3/07; WSR 91-22-083, § 390-28-020, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-020, filed 10/31/85; Order 62, § 390-28-020, filed 8/26/75; Order 24, § 390-28-020, filed 2/21/74.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-28-040 Hearing to modify reporting—Prehearing procedure and requirements. (1) An applicant must electronically submit with the commission a request for a hearing for suspension or modification of reporting requirements((~~. The request~~)), unless the executive director makes an exception for an applicant who lacks the technological ability to file reports electronically. An applicant requesting a modification regarding a report filed annually including, but not limited to, the statement of financial affairs, should ((~~be submitted by the tenth day of the month preceding the month in which~~)) submit the application at least forty-five days before the report is due so that action on the request can be completed before the filing deadline.

(2) The request must contain (a) the required report completed to the extent possible, (b) a statement of reasons why the reporting of required information would cause a manifestly unreasonable hardship, with as much detail as possible, and (c) any relevant evidence regarding the request. (A general statement, such as "violates right of privacy" will not be deemed as sufficient compliance with this requirement.) The applicant is encouraged to also include a proposed modification to the required reporting which, in the applicant's opinion, will relieve the perceived hardship.

(3) The submission of a request for modification does not suspend the reporting requirement of any portion of chapter 42.17A RCW. The reporting obligation remains in effect unless the commission grants the request pursuant to a hearing.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-040, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-040, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 91-22-083, § 390-28-040, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-24-020 (Order 85-05), § 390-28-040, filed 11/26/85; WSR 80-03-089 (Order 80-03), § 390-28-040, filed 3/4/80; Order 62, § 390-28-040, filed 8/26/75; Order 24, § 390-28-040, filed 2/21/74.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-28-080 Hearing to modify reporting—Evidence, record, adverse decisions. (1) All evidence presented at hearings held pursuant to chapter 390-28 WAC and RCW 42.17A.120 are considered to be a public record. However, if a modification of reporting requirements is requested by a filer because of a concern for personal safety that is caused by the potential disclosure of information required to be reported, upon request by the filer, the information submitted for that modification request regarding that safety concern will not be made public prior to, or at the hearing on the request for modification. In accordance with RCW 42.17A.120, any information provided or prepared by the applicant for the modification hearing will remain exempt from public disclosure under chapters 42.17A and 42.56 RCW to the extent it is determined at the hearing that disclosure of such information would

reasonably present a personal safety risk to the applicant or a member of their family. If no written order is entered based on findings pursuant to this section, then the exempted information will become available for public disclosure.

(2) Except as otherwise provided in subsection (1) of this section, there is a presumption that all hearings and evidence presented in hearing records are open to the public. Requests for closure of hearings or portions of hearings or hearing records generally will be denied. However, pursuant to RCW 34.05.449(5) and 42.17A.120, the commission or presiding officer may close the hearing or a portion of the hearing or hearing record for a limited purpose to protect compelling interests and where closure is specifically justified if it finds that it is necessary to allow the applicant to:

(a) Provide sufficient evidence to assure that proper findings are made regarding the name of an entity the disclosure of which would likely adversely affect the competitive position of the applicant as provided in RCW 42.17A.120; or

(b) Provide other information or relevant legal authorities for which it finds a compelling interest has otherwise been shown by the applicant to close the hearing.

(3)(a) Before concluding that closure of a hearing or portion of a hearing or hearing record is warranted, the commission or presiding officer must find by clear and convincing evidence that:

(i) The applicant has satisfied a basis for seeking closure under subsection (2)(a) or (b) of this section;

(ii) An open hearing or record to report the information would present a manifestly unreasonable hardship, or personal safety risk, to the applicant;

(iii) Anyone present when the closure request is made has been given an opportunity to object to the closure;

(iv) The proposed method for closing the hearing or hearing record is the least restrictive means available for protecting the threatened interests, after considering alternatives;

(v) The commission or presiding officer has had the opportunity to weigh the competing interests of the applicant seeking closure and the public's interests;

(vi) Closing the hearing or portion of the hearing or hearing record will not frustrate the purposes of chapter 42.17A RCW; and

(vii) The proposed protective order is not broader in its application or duration than necessary to serve its purpose.

(b) All evidence presented at any portion of a closed session identifying the matters for which the applicant requests modification under these rules will be considered confidential by the commission or presiding officer pursuant to a protective order which will be entered by the commission or presiding officer unless otherwise ordered by a court of competent jurisdiction. In the event that an administrative law judge, acting as the presiding officer, determines that testimony in private may be necessary, the judge will immediately adjourn the hearing and refer the matter to the commission.

(4) Any decision or order rendered by the commission or presiding officer must be in writing or stated in the record, however any dispositive order accompanied by findings of fact and conclusions of law must be in writing. The full commission may review any order rendered by a presiding officer, pursuant to WAC 390-37-144.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-080, filed 12/24/19, effective 1/24/20. Statu-

tory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-080, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370. WSR 07-14-117, § 390-28-080, filed 7/3/07, effective 8/3/07; WSR 91-22-083, § 390-28-080, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 42.17.370(1). WSR 85-22-029 (Order 85-04), § 390-28-080, filed 10/31/85; Order 62, § 390-28-080, filed 8/26/75; Order 24, § 390-28-080, filed 2/21/74. Formerly WAC 390-28-070.]

AMENDATORY SECTION (Amending WSR 20-02-062, filed 12/24/19, effective 1/24/20)

WAC 390-28-100 Reporting modifications—Possible qualifications—Standards—Statement of financial affairs. (1) Under RCW 42.17A.120, the commission or presiding officer may modify reporting requirements, including the statement of financial affairs, if literal application of the requirement would work a manifestly unreasonable hardship and the suspension or modification would not frustrate the purpose of the law. One or more of the following may be considered by the commission or presiding officer as possible qualifications for a reporting modification with respect to the statement of financial affairs, when such standard is met:

(a) **Banks, savings accounts, insurance policies - Financial interests.** An applicant may be exempted from reporting any financial interest, otherwise required to be reported by RCW 42.17A.710 (1)(b) if:

(i) The financial institution or other entity in which the applicant held an interest does not engage in business in the state of Washington, or is not regulated in whole or in part by the office sought or held by the applicant;

(ii) Such reporting would present a manifestly unreasonable hardship to the applicant; and

(iii) The interest would present no actual or potential conflict with the proper performance of the duties of the office sought or held.

(b) **Income and ownership interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 (1)(f) and (g), if:

(i) ((~~Public disclosure would violate any legally recognized confidential relationship that serves a legitimate business interest;~~ ~~(ii)~~)) The information does not relate to a business entity which would be subject to the regulatory authority of the office sought or held by the applicant in whole or in part;

((~~(iii)~~)) (ii) Such reporting would present a manifestly unreasonable hardship to the applicant including, but not limited to:

(A) Violating a legally recognized confidential relationship that serves a legitimate business interest, and otherwise was not formed to prevent required disclosure, although such relationship may be subject to administrative subpoena or court order to require disclosure; or

(B) Adversely affecting the competitive position of an entity in which the applicant had an interest of ten percent or more as described in RCW 42.17A.120; and

((~~(iv)~~)) (iii) The interest in question would present no actual or potential conflict with the performance of the duties of the office sought or held.

(c) **Immediate family members' interests.** An applicant may be exempted from reporting the information otherwise required by RCW 42.17A.710 for members of the applicant's immediate family, if:

(i) Such information relates to a financial interest held by such member under a bona fide separate property agreement, or other bona fide separate status; and, such financial interest is not a present or prospective source of income to the applicant or to any other person who is dependent upon the applicant for support in whole or in part; or

(ii) Reporting the name of an entity in which the immediate family holds an interest of ten percent or more would be likely to adversely affect the competitive position of the entity, under RCW 42.17A.120.

(d) **Personal residence - Real property.** Regarding reporting the information otherwise required by RCW 42.17A.710 (1)(h) through (k):

(i) ((~~Under WAC 390-24-200, the filer must list the street address of each parcel, the assessor's parcel number, the abbreviated legal description appearing on property tax statements, or the complete legal description. Each property description must be followed by the name of the county in which the property is located.~~

~~(ii)~~)) No modification will be necessary if the filer describes the real property using one of the alternatives in WAC 390-24-200, plus the name of the county. Judges, prosecutors, or sheriffs may describe a personal residence in the alternative manner provided under RCW 42.17A.710(2), and WAC 390-24-200 without a modification.

((~~(iii)~~)) (ii) A modification will be required if the filer seeks some other means to describe reportable real property including the personal residence of the filer. The commission may consider and grant such a modification to amend the description of a residential address to the extent necessary to protect the applicant or an immediate family member who has received a threat, has obtained a no contact order, or has presented a similar personal safety concern.

(e) **Other.** An applicant may be exempted from reporting information otherwise required under RCW 42.17A.710 which would constitute a manifestly unreasonable hardship in a particular case, when the circumstances presented would not indicate any actual or potential conflict with the proper performance of the duties of the office sought or held. Examples of other common requests will be considered as follows:

(i) **Lawyers and law firms (when applicant is an incumbent or candidate and acts alone or as part of a governing body, board, or commission).** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing reportable clients from whom compensation has been paid in excess of the reporting threshold as follows:

(A) The names of the business clients for whom the applicant has done legal work;

(B) Other clients of the law firm whose interests are significantly affected by the applicant's actions as an elected or appointed official or whose actions will be affected by the applicant's action should the applicant be elected whose identities become known to the applicant through any means;

(C) The names of the clients of the law firm who are listed in Martindale Hubbell, the firm's resume, website, or similar promotional materials; and

(D) Governmental clients that have done business with the law firm.

An applicant may also be required to disclose all business customers from whom compensation in excess of the reporting threshold has been received whose identities are publicized or referenced in documents open for public inspection at the courts, in administrative hearings, at proceedings conducted by public agencies, or are a matter of public knowledge in other similar public forums. Alternatively, the commission may require an applicant to report only those publicly identifiable customers of which the applicant is aware.

(ii) **Judges and former law firms.** An applicant may be allowed to satisfy the reporting requirements of RCW 42.17A.710 (1)(g)(ii) and WAC 390-24-020 by disclosing any required information of which the applicant is aware, ((~~when~~)) provided the applicant certifies that the applicant is no longer able to access or has been denied access to the former law firm's client information.

The commission may apply (e)(i) of this subsection when the applicant is a nonincumbent judicial candidate who practiced law during the reporting period and who seeks a modification regarding reportable business clients of the law firm.

(iii) **Motor vehicle dealers.** An applicant may satisfy the reporting requirements of RCW 42.17A.710 (1)(g) and WAC 390-24-020 by disclosing:

(A) All purchases and leases of vehicles, and purchases of parts and services from the dealership, by the agency or jurisdiction in which the applicant seeks or holds office;

(B) Other business and governmental entities that purchased or leased ten or more vehicles from the dealership;

(C) Business customers who paid in excess of twenty thousand dollars for the purchase of parts and/or service from the dealership; and

(D) Any other governmental entity that paid the dealership in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) for the purchase of parts and/or service.

(iv) **Applicants whose spouse or registered domestic partner creates a reporting obligation for the applicant.** When an applicant is required to report the activities of an entity solely because the applicant's spouse or registered domestic partner held an office, directorship, general partnership or ownership interest in the entity and the applicant does not have direct knowledge of the information that must be reported, the applicant may be allowed to satisfy the disclosure requirements of RCW 42.17A.710 (1)(g)(ii) ((~~and WAC 390-24-020~~)) by disclosing reportable customers from whom compensation in excess of the disclosure threshold established under RCW 42.17A.710 (1)(g)(ii) has been received as follows:

(A) All payments made by the agency or jurisdiction in which the applicant seeks or holds office to the entity;

(B) The business and other governmental customers or clients of the applicant's spouse/domestic partner ((~~and of the entity~~)) of which the applicant is aware; and

(C) Any other business and other governmental customers or clients of the entity whose identities are known to the applicant and whose interests are significantly affected by the agency or jurisdiction in which the applicant seeks or holds office. The commission may apply (e)(i) through (iii) of this subsection when the applicant's spouse/domestic partner is a lawyer, judge, or motor vehicle dealer.

(2) "Bona fide separate property agreement" means an agreement or court order describing separate property in a valid:

(a) Prenuptial agreement;

(b) Separate property contract under chapter 26.09 RCW;

(c) Separate property court decree under chapter 26.09 RCW;

(d) Domestic partnership agreement under chapter 26.60 RCW;

(e) Domestic partnership agreement as part of a notice of termination under chapter 26.60 RCW; or

(f) Postnuptial agreement.

(3) "Other bona fide separate status" means a valid written agreement or court decree recognizing the separate status of the parties under state law, including their individual property that is separate under state law.

[Statutory Authority: RCW 42.17A.110(1), 2019 c 428, and 2019 c 261. WSR 20-02-062, § 390-28-100, filed 12/24/19, effective 1/24/20. Statutory Authority: RCW 42.17A.110 and 42.17A.120. WSR 14-15-013, § 390-28-100, filed 7/3/14, effective 8/3/14. Statutory Authority: RCW 42.17A.110. WSR 12-03-002, § 390-28-100, filed 1/4/12, effective 2/4/12. Statutory Authority: RCW 42.17.370(1). WSR 09-20-081, § 390-28-100, filed 10/6/09, effective 11/6/09; WSR 85-22-029 (Order 85-04), § 390-28-100, filed 10/31/85; WSR 80-02-106 (Order 80-02), § 390-28-100, filed 1/24/80; Order 64, § 390-28-100, filed 11/25/75; Order 62, § 390-28-100, filed 8/26/75; Order 24, § 390-28-100, filed 2/21/74.]

WSR 21-04-076
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed January 29, 2021, 2:36 p.m., effective March 1, 2021]

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

Purpose: The agency is amending WAC 182-503-0090 to specify the department of social and health services administrations responsible for processing exceptions to rule related to long-term services and supports programs.

Citation of Rules Affected by this Order: Amending WAC 182-503-0090.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-01-044 on December 8, 2020.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 28, 2021.

Wendy Barcus
Rules Coordinator

OTS-2687.2

AMENDATORY SECTION (Amending WSR 13-14-019, filed 6/24/13, effective 7/25/13)

WAC 182-503-0090 Washington apple health—Exceptions to rule. (1) ((~~An individual~~)) A client or client's representative may request an exception to a Washington apple health financial eligibility rule in Title 182 WAC. ((~~An individual must request an exception to rule (ETR) within ninety calendar days of the agency action with which the individual disagrees. The individual or the individual's representative may~~)) The request for an exception to rule (ETR) may be submitted orally or in writing. The request must:

(a) Be received within ninety calendar days of the agency action with which the client disagrees or wants waived;

(b) Identify the rule for which an exception is being requested;

((~~(b)~~)) (c) State what the ((~~individual~~)) client is requesting; and

((~~(c)~~)) (d) Describe how the request meets subsection (2) of this section.

(2) The agency director or designee has the discretion to grant an ETR if ((~~he or she~~)) they determine((~~s~~)) that the ((~~individual's~~)) client's circumstances satisfy the conditions below:

(a) The exception would not contradict a specific provision of federal or state law; and

(b) The ((~~individual's~~)) client's situation differs from the majority; and

(c) It is in the interest of the overall economy and the ((~~individual's~~)) client's welfare, and:

(i) It increases opportunity for the ((~~individual~~)) client to function effectively; or

(ii) The ((~~individual~~)) client has an impairment or limitation that significantly interferes with the usual procedures required to determine eligibility and payment.

(3) ((~~Individuals cannot appeal~~)) A client does not have a right to an administrative hearing on ETR decisions under chapter 182-526 WAC.

(4) ((~~An individual~~)) A client is mailed a decision in writing within ten calendar days when agency staff:

(a) Approve or deny an ETR request; or

(b) Request more information.

(5) If the ETR is approved, the notice includes information on ((~~the approval period~~)) what is approved and for what time frame.

(6) The agency designates staff at the aging and ((~~disability services~~)) long-term support administration ((~~(ADSA)~~)) (ALTSA) and the developmental disabilities administration (DDA) to process all ETRs specifically relating to long-term ((~~care~~)) services and supports programs described in Title 182 WAC.

(7) This section does not apply to requests that the agency pay for noncovered medical or dental services or related equipment. WAC 182-501-0160 applies to such requests.

[Statutory Authority: RCW 41.05.021, Patient Protection and Affordable Care Act (Public Law 111-148), 42 C.F.R. §§ 431, 435, and 457, and 45 C.F.R. § 155. WSR 13-14-019, § 182-503-0090, filed 6/24/13, effective 7/25/13.]

WSR 21-04-104
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed February 1, 2021, 10:16 a.m., effective March 4, 2021]

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

Purpose: This rule change would allow educators with permits expiring through June 30, 2021, to be issued one additional one-year permit. Educators are issued permits when they come in from out of state, and have met all certificate requirements with the exception of assessments.

Permits allow educators to serve while they complete assessments.

Testing centers are open, but they are operating at reduced capacity to allow for social distancing. This makes it challenging for educators to get an appointment date.

This permit extension would provide additional flexibility for educators in completing their assessment requirements during COVID-19 closures.

Citation of Rules Affected by this Order: Amending WAC 181-79A-118.

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

Adopted under notice filed as WSR 20-23-074 on January 21, 2021 [November 16, 2020].

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

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

Date Adopted: January 29, 2021.

Maren Johnson
Rules Coordinator

OTS-2727.1

AMENDATORY SECTION (Amending WSR 20-16-032, filed 7/25/20, effective 8/25/20)

WAC 181-79A-118 Expiration and lapse dates of certificates. (1) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, excluding residency certificates that are subject to reissuance, are scheduled to expire or lapse June 30, 2021.

(2) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC

181-85-100, may have already been renewed. For these renewed certificates, the expiration or lapse date will be calculated as if the certificate expiring June 30, 2020, had an expiration or lapse date of June 30, 2021.

(3) Applications for renewal of certificates scheduled to expire June 30, 2021, may be submitted at any point prior to the June 30, 2021, expiration date.

(4) Limited certificates under WAC 181-79A-231, 181-77-014, and 181-77-081 expire as described in those sections.

(5) Permits under WAC 181-01-001, 181-02-001, 181-79A-128, and 181-79A-224 expire as described in those sections. Permits for candidates eligible under those sections which expired beginning July 1, 2019, and before ((~~December 31, 2020~~)) June 30, 2021, may be reissued once for one additional year.

[Statutory Authority: Chapter 28A.410 RCW. WSR 20-16-032, § 181-79A-118, filed 7/25/20, effective 8/25/20.]

WSR 21-04-126
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 19-09—Filed February 2, 2021, 9:51 a.m., effective March 5, 2021]

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

Purpose: Ecology is adopting an amendment to chapter 173-185 WAC, Oil movement by rail and pipeline notification. This chapter establishes reporting standards for facilities that receive crude oil by rail and pipelines that transport crude oil through the state. The rule also describes reporting standards for ecology to share information with tribes, emergency responders, local governments, and the public.

The rule amendment will implement sections of ESHB 1578 and ESSB 5579, both passed in 2019 and codified in RCW 90.56.565.

This rule amendment will:

- Expand advance notice reporting requirements for facilities that receive crude oil by rail to include type and vapor pressure of crude oil.
- Expand biannual notice requirements for pipelines that transport crude oil through the state to include gravity and type of crude oil.
- Describe how required information will be provided to the utilities and transportation commission.
- Make other changes to clarify language and make any corrections needed.

Citation of Rules Affected by this Order: Amending chapter 173-185 WAC.

Statutory Authority for Adoption: Chapter 90.56 RCW; RCW 90.56.005, 90.56.050, 90.56.565.

Adopted under notice filed as WSR 20-18-101 on September 2, 2020.

Changes Other than Editing from Proposed to Adopted Version: The following content describes the changes between the rule proposal language and the adopted language and provides ecology's reasons for making them.

WAC 173-185-050 Definitions:

- The definition of facility was updated in the rule to align with the definition in chapter 90.56 RCW. The statutory definition was recently amended to update a reference to a recodified statute.
- The definition of person was updated in the rule to align with the statutory definition in chapter 90.56 RCW.

WAC 173-185-070 Advance notice—Facility requirements:

- Clarified the description of type of crude oil reported to ecology by updating subsection (2)(f)(i) to refer to the "gravity as reported under (e) of this subsection" rather than "expected gravity as reported under (e) of this subsection." This is consistent with subsection (2)(e), which requires gravity to be reported but allows expected gravity to be reported if actual gravity is unknown. This clarification does not change any regulatory requirements.
- The version of the American Society for Testing and Materials (ASTM) Standard D6377 was updated to reflect the most recent update to the standard for vapor pressure testing, published in 2020. The previous version was published in 2016.

A final cost-benefit analysis is available by contacting Kim Morley, Department of Ecology, Spill Prevention, Preparedness, and Response Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 360-701-2398, people with speech disability may call TTY at 877-833-6341. People with impaired hearing may call Washington relay service at 711, email kim.morley@ecy.wa.gov, website https://apps.ecology.wa.gov/publications/summarypages/2108003.html.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 5, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 4, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

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

Date Adopted: February 2, 2021.

Laura Watson
Director

OTS-2519.2

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-020 Purpose. ((~~The purpose of this chapter is to enhance oil transportation safety in Washington and protect public safety and the environment by establishing notification requirements and procedures that inform emergency response agencies and the public of all crude oil shipments to facilities by rail and crude oil transport by transmission pipelines in the state.~~)) This chapter establishes:

(1) Advance notice requirements for facilities that receive crude oil by railroad car.

(2) Biannual notice requirements for transmission pipelines that transport crude oil.

(3) Disclosure procedures for ecology to:

(a) Provide nonaggregated information collected under this chapter to the state emergency management division, utilities and transportation commission, and any county, city, tribal, port, and local government emergency response agency to help these agencies effectively prepare for and respond to oil spills and other accidents.

(b) Provide aggregated information collected under this chapter to inform the public about the nature of crude oil movement through their communities.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-020, filed 8/24/16, effective 10/1/16.]

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-030 Compliance schedule. (1) Facilities.

(a) Owners and operators of facilities in operation at the time this chapter is adopted must meet the advance notice requirements in WAC 173-185-070 on the effective date of this chapter.

(b) Owners and operators of new facilities must meet the advance notice requirements in WAC 173-185-070 immediately upon beginning operations in the state.

(2) Transmission pipelines.

(a) Owners and operators of transmission pipelines in operation at the time this chapter is adopted must meet the biannual notice requirements in WAC 173-185-080 on the effective date of this chapter ((~~and submit their first biannual notice by January 31, 2017~~)).

(b) Owners and operators of new transmission pipelines must meet the biannual notice requirements in WAC 173-185-080 immediately upon beginning operations in the state.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-030, filed 8/24/16, effective 10/1/16.]

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-050 Definitions. (1) **"American Petroleum Institute (API) gravity"** is a measure of how heavy or light a petroleum liquid is compared to water.

(2) **"Bulk"** means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

((~~(2)~~)) (3) **"Crude oil"** means any naturally occurring hydrocarbons coming from the earth that are liquid at twenty-five degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

((~~(3)~~)) (4) **"Ecology"** means the state of Washington department of ecology.

((~~(4)~~)) (5)(a) **"Facility"** means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter ((~~90.76~~)) 70A.355 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

((~~(5) **"Navigable waters of the state"** means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.~~))

(6) **"Oil"** or **"oils"** means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302, adopted August 14, 1989, under Section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(7)(a) **"Owner"** or **"operator"** means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) **"Operator"** does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(8) **"Person"** means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, ((~~ship,~~)) or any other entity whatsoever.

(9) **"Ship"** means any boat, ship, vessel, barge, or other floating craft of any kind.

(10) **"Sour crude oil"** means crude oil that has a sulfur content greater than 0.5 percent by weight.

(11) **"Spill"** means an unauthorized discharge of oil which enters waters of the state.

((~~(11)~~)) (12) **"State"** means the state of Washington.

((~~(12)~~)) (13) **"Sweet crude oil"** means crude oil that has a sulfur content that does not exceed 0.5 percent by weight.

(14) **"Transmission pipeline"** means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

((~~(13) **"Waters of the state"** includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.~~))

(15) **"Vapor-liquid ratio"** means the ratio of the vapor volume to the liquid volume of the sample, in equilibrium, under specified conditions.

(16) **"Vapor pressure"** means the pressure exerted by the vapor of a liquid when in equilibrium with the liquid. Vapor pressure varies based on specified temperature and vapor-liquid ratio.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-050, filed 8/24/16, effective 10/1/16.]

PART B
((~~FACILITIES~~)) NOTIFICATION, DISCLOSURES, AND NONDISCLOSURES

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-070 Advance notice—Facility requirements. (1) Owners and operators of a facility that will receive crude oil from a railroad car must provide ecology with advance notice of all scheduled crude oil deliveries to be received by the facility as provided in this section. Notification may be made by the facility owner or operator's designee.

(2) The advance notice must contain the following information:

(a) Name, address, contact person, and telephone number of the facility;

(b) Region of origin of crude oil as stated, or as expected to be stated, on the bill of lading;

(c) Railroad route taken to the facility within the state, if known;

(d) Scheduled time, which means date, and volume of the scheduled delivery;

(e) Gravity, as measured by ((~~the most recently approved~~)) standards developed by the American Petroleum Institute or, if unavailable at the time of reporting, expected gravity of crude oil scheduled to be delivered;

(f) Type of crude oil scheduled to be delivered based on: (i) Gravity as reported under (e) of this subsection; and (ii) designation of the crude oil as sweet or sour;

(g) Vapor pressure or, if unavailable at the time of reporting, expected vapor pressure of crude oil scheduled to be delivered. Vapor pressure reported under this subsection must be the vapor pressure or expected vapor pressure of the crude oil as measured by American Society for Testing and Materials, or ASTM, Standard D6377-20 or another method approved by ecology, at the expected temperature of the crude oil and with a vapor-liquid ratio between 1.5:1 and 4:1.

A copy of ASTM Standard D6377-20 is available for inspection at 300 Desmond Drive S.E., Lacey, Washington 98503.

(3)(a) Advance notice must be provided to ecology each week for all arrivals of railroad cars carrying crude oil scheduled for the succeeding seven-day period.

(b) All newly scheduled arrivals of railroad cars carrying crude oil after the advance notice time frame under (a) of this subsection must be reported to ecology as soon as possible and before the shipment enters the state. If the shipment is already in the state, the scheduled arrival must be reported when the information is known to the facility.

(c) Advance notice information reported for scheduled crude oil deliveries may be updated after receipt of a scheduled crude oil delivery. If a facility chooses to update information, the information must be updated within fifteen days after the end of the quarter containing the scheduled crude oil delivery date.

(4) Notification must be submitted via ((~~internet~~)) website established by ecology.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-070, filed 8/24/16, effective 10/1/16.]

((~~PART C PIPELINES~~))

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-080 Biannual notice—Pipeline requirements. (1) Owners and operators of a transmission pipeline that transports crude oil in or through the state must provide ecology biannual notice of all crude oil transported by the transmission pipeline in or through the state. Notification may be made by the transmission pipeline owner or operator's designee.

(2) The notice must contain the following information:

(a) Company name, address, contact person, and telephone number of the pipeline;

(b) Volume of crude oil by:

(i) Each listed state or province of origin of the crude oil;

(ii) Gravity, as measured by standards developed by the American Petroleum Institute, by weighted average;

(iii) Type of crude oil transported based on gravity as reported under (b)(ii) of this subsection, and designation of the crude oil as sweet or sour.

(3)(a) Notification must be submitted to ecology each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(b) Notification ((~~must~~)) may be submitted by email to ecology or via website established by ecology. Form number ECY 070-562 must be used.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-080, filed 8/24/16, effective 10/1/16.]

((~~PART D~~
~~DISCLOSURES AND NONDISCLOSURES~~))

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-090 Disclosures—Emergency management division, utilities and transportation commission, and county, city, tribal, port, and local government emergency response agencies. (1) Ecology will share the advance notice information collected from facilities under ((~~this chapter~~)) WAC 173-185-070 with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request. Requests to access this information must be submitted to ecology by email.

(2) Ecology will share the advance notice information collected from facilities under WAC 173-185-070 with the utilities and transportation commission.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-090, filed 8/24/16, effective 10/1/16.]

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-100 Disclosures—The public. Ecology will disclose information collected under this chapter by publishing it on a quarterly basis on ecology's website.

(1) Ecology will publish the following crude oil movement information:

(a) Mode of transport (i.e., railroad car or pipeline);

(b) Place of origin by region for facilities and by state or province for transmission pipelines;

(c) Number and volume of reported spills during transport and delivery;

(d) Estimated number of railroad cars delivering crude oil; ((~~and~~))

(e) Type and reported volume of crude oil received by facilities and crude oil transported by transmission pipelines in or through the state; and

(f) Vapor pressure of crude oil received by facilities.

(2) With respect to information on crude oil movement to facilities provided by this section, ecology will aggregate information on a statewide basis by:

(a) Route;

(b) Week; and

(c) Type of crude oil.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-100, filed 8/24/16, effective 10/1/16.]

AMENDATORY SECTION (Amending WSR 16-17-144, filed 8/24/16, effective 10/1/16)

WAC 173-185-110 Nondisclosure. Pursuant to RCW 42.56.270(23) and 90.56.565((~~(5)~~)) (6), ecology and any state, local, tribal, or public agency that receives information provided under ((~~this chapter~~)) WAC 173-185-070 and 173-185-090 may not disclose any such information to the public or to nongovernmental entities that contains proprietary, commercial, or financial information unless that information is aggregated. The requirement for aggregating information does not apply when information is shared by ecology with emergency response agencies as provided in WAC ((~~178-185-090~~)) 173-185-090.

[Statutory Authority: RCW 90.56.565. WSR 16-17-144 (Order 15-13), § 173-185-110, filed 8/24/16, effective 10/1/16.]

WSR 21-04-128
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 2, 2021, 10:25 a.m., effective March 8, 2021]

Effective Date of Rule: March 8, 2021.

Purpose: **eRules Phase XII (12): Chapter 296-307 WAC, Safety standards for agriculture, Parts A, I and O.** This rule making is part of the division of occupational safety and health (DOSH) eRules project. This rule making does not add or change any requirements; the purpose is to provide consistency in formatting, design and accessibility to the rules via mobile electronic devices.

This rule making accomplishes the following:

- Consistent format for all DOSH rules.
- Easy to access rules for smartphone and tablet users.
- Easy navigation in PDF files provided through bookmarks in the rules.
- Easier referencing by replacing bullets and dashes with numbers and letters.
- Enhanced rule update efficiency for customers through electronic postings.

See following for a list of updates being adopted.

Amended Sections:

WAC 296-307-003 through 296-307-024 (Part A); WAC 296-307-10820 through 296-307-11420 (Part I); and WAC 296-307-25003 through 296-3907-27010 [296-307-27010](Part O).

- Changed "you" to "the employer" or "the operator" where applicable.
- Changed "you have" to "the employer has" where applicable.
- Changed bullets and other symbols to letters or numbers where applicable.
- Changed "shall" to "must" where applicable.
- Removed quotation marks from all defined words.
- Removed words/phrases such as "means," "as defined" or "is an" from all applicable definitions and replaced it with a period, making all definitions complete sentences.
- Updated titles of WAC sections to remove question format.
- Changed "we" and "us" to "the department" where applicable.

WAC 296-307-006 Scope.

- Updated to agree with chapter 49.17 RCW as currently written.
- Removed standard industrial classification (SIC) codes, leaving the SIC industry titles.

WAC 296-307-10905 (3)(c)(xv), training requirements for workers-40 C.F.R., Sec. 170.401.

- Reworded for clarity.

Citation of Rules Affected by this Order: Amending WAC 296-307-003, 296-307-006, 296-307-009, 296-307-012, 296-307-018, 296-307-021, 296-307-024, 296-307-10820, 296-307-10825, 296-307-10835, 296-307-10905, 296-307-10930, 296-307-11205, 296-307-11220, 296-307-11225, 296-307-11415, 296-307-11420, 296-307-25003, 296-307-25006, 296-307-25009, 296-307-25012, 296-307-25015, 296-307-25018, 296-307-25021, 296-307-25024, 296-307-25027,

296-307-25030, 296-307-25033, 296-307-25036, 296-307-25039, 296-307-25042, 296-307-26003, 296-307-26006, 296-307-26009, 296-307-26012, 296-307-26015, 296-307-26018, 296-307-26021, 296-307-26024, 296-307-26027, 296-307-26030, 296-307-26033, 296-307-26036, 296-307-27005, and 296-307-27010.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 20-22-080 on November 3, 2020.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 45, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 45, Repealed 0.

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

Date Adopted: February 2, 2021.

Joel Sacks
Director

OTS-2684.1

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-003 ((~~How is~~)) Navigating this chapter ((~~divided?~~)). The first three digits of the WAC (296) are the title. The second three digits are the chapter (307). The third number group is the section, which may have three or five digits. The fourth and fifth digits are treated as if there were a decimal point after the third digit.

For example: Section 330 of this chapter includes all five-digit sections whose number begins with 330.

Sections may be further divided as indicated below.

Title-Chapter-Section	296-307-330
	296-307-33003
Subsection	(1)
	(2)
Subdivision	(a)
	(b)
Item	(i)
	(ii)

Note: The chapter is also divided into "parts" according to subject, to make it easier ((~~for you~~)) to find the information ((~~you need~~)) needed.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-003, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-003, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-003, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 15-13-097, filed 6/16/15, effective 8/3/15)

WAC 296-307-006 ((~~What does this chapter cover?~~)) Scope. (1) Chapter 296-307 WAC applies to all agricultural operations with one or more employees covered by the Washington Industrial Safety and Health Act (WISHA), chapter 49.17 RCW.

((~~"Agricultural operations"~~)) The term "agriculture" means farming and ((~~ranching, including~~)) include, but is not limited to:

(a) ((~~Cultivating~~)) The cultivation and ((~~tilling~~)) tillage of the soil;

(b) ((~~Dairy farming~~)) Dairying;

(c) ((~~Producing, cultivating~~)) The production, cultivation, growing, and harvesting of any agricultural or horticultural commodity;

(d) The raising of livestock, bees, fur-bearing animals, or poultry; and

(e) Any practices performed by a farmer or on a farm, incident to or in connection with such farming operations((~~,~~)) including, but not limited to, preparation for market and delivery to:

(i) Storage;

(ii) Market; or

(iii) Carriers for transportation to market. Agricultural operations include, but are not limited to, all employers in one or more of the following ((~~standard industrial classification (SIC) codes~~)) industries:

((~~0111 Wheat~~
~~0115 Corn~~
~~0119 Cash grains not elsewhere classified, barley, peas, lentils, oats, etc.~~
~~0133 Sugar cane and sugar beets~~
~~0134 Irish potatoes—all potatoes except yams~~
~~0139 Field crops—hay, hops, mint, etc.~~
~~0161 Vegetables and melons, all inclusive~~
~~0171 All berry crops~~
~~0172 Grapes~~
~~0173 Tree nuts~~
~~0175 Deciduous tree fruits~~
~~0179 Tree fruits or tree nuts not elsewhere classified~~
~~0181 Ornamental floriculture and nursery products~~
~~0182 Food crops grown under cover~~
~~0191 General farms, primarily crops~~
~~0211 Beef cattle feedlots~~
~~0212 Beef cattle except feedlots—cattle ranches~~
~~0213 Hogs~~

~~0214 Sheep and goats~~
~~0219 General livestock except dairy and poultry~~
~~0241 Dairy farms~~
~~0251 Broiler, fryer, and roaster chickens~~
~~0252 Chicken eggs~~
~~0253 Turkeys and turkey eggs~~
~~0254 Poultry hatcheries~~
~~0259 Poultry and eggs not elsewhere classified~~
~~0271 Fur bearing animals and rabbits~~
~~0272 Horses~~
~~0273 Animal aquaculture~~
~~0279 Animal specialties not elsewhere classified~~
~~0291 General farms, primarily livestock and animal specialties~~
~~0711 Soil preparation services~~
~~0721 Crop planting, cultivating, and protecting~~
~~0722 Crop harvesting, primarily by machine~~
~~0751 Livestock services, except veterinary~~
~~0761 Farm labor contractors~~
~~0811 Timber tracts, Christmas tree growing, tree farms~~
~~0831 Forest nurseries~~
~~0851 Forestry services—reforestation~~

~~"Agricultural operations" do~~))
Wheat;
Corn;
Cash grains not elsewhere classified, barley, peas, lentils, oats, etc.;
Sugar cane and sugar beets;
Irish potatoes - All potatoes except yams;
Field crops - Hay, hops, mint, etc.;
Vegetables and melons, all inclusive;
All berry crops;
Grapes;
Tree nuts;
Deciduous tree fruits;
Tree fruits or tree nuts not elsewhere classified;
Ornamental floriculture and nursery products;
Food crops grown under cover;
General farms, primarily crops;
Beef cattle feedlots;
Beef cattle except feedlots - Cattle ranches;
Hogs;
Sheep and goats;
General livestock except dairy and poultry;
Dairy farms;
Broiler, fryer, and roaster chickens;
Chicken eggs;
Turkeys and turkey eggs;
Poultry hatcheries;
Poultry and eggs not elsewhere classified;
Fur bearing animals and rabbits;
Horses;
Animal aquaculture;

Animal specialties not elsewhere classified;
General farms, primarily livestock and animal specialties;
Soil preparation services;
Crop planting, cultivating, and protecting;
Crop harvesting, primarily by machine;
Livestock services, except veterinary;
Farm labor contractors;
Timber tracts, Christmas tree growing, tree farms;
Forest nurseries;
Forestry services - Reforestation.

The term "agriculture" does not ((~~include~~)) mean a farmer's processing for sale or handling for sale a commodity or product grown or produced by a person other than the farmer or the farmer's employees.

(2) Chapter 296-24 WAC does not apply to agricultural operations.

(3) All agricultural operations are also covered by the requirements of chapter 296-62 WAC, General occupational health standards, and chapter 296-901 WAC, Globally harmonized system for hazard communication.

(4) Occasionally, employees engaged in agricultural operations may also be covered by the safety standards of other industries. Following are excerpts from four industry standards that may help you determine if these other standards also apply:

Chapter 296-54 WAC Safety standards—Logging operations

WAC 296-54-501 Scope and application.

This standard establishes safety practices, means, methods and operations for all types of logging, regardless of the end use of the wood. These types of activities include, but are not limited to, pulpwood and timber harvesting and the logging of sawlogs, veneer bolts, poles, pilings and other forest products. The requirements herein contained do not apply to log handling at sawmills, plywood mills, pulp mills or other manufacturing operations governed by their own specific safety standards.

Chapter 296-99 WAC Safety standards for grain handling facilities

WAC 296-99-015 What grain-handling operations does this chapter cover?

(1) WAC 296-99-010 through 296-99-070 apply to:

- Dry grinding operations of soycake;
- Dry grinding operations of soycake;
- Dust pelletizing plants;
- Feed mills;
- Flour mills;
- Flat storage structures;
- Grain elevators;
- Rice mills; and
- Soybean flaking operations.

(2) WAC 296-99-075, 296-99-080, and 296-99-085 apply only to grain elevators.

(3) Chapter 296-99 WAC does not apply to alfalfa storage or processing operations if they do not use grain products.

Chapter 296-78 WAC Safety standards for sawmills and woodworking operations

WAC 296-78-500 Foreword.

The chapter 296-78 WAC shall apply to and include safety requirements for all installations where the primary manufacturing of wood building products takes place. The installations may be a permanent

fixed establishment or a portable operation. These operations shall include but are not limited to log and lumber handling, sawing, trimming and planing, plywood or veneer manufacturing, canting operations, waste or residual handling, operation of dry kilns, finishing, shipping, storage, yard and yard equipment, and for power tools and affiliated equipment used in connection with such operation. WAC 296-78-450 shall apply to shake and shingle manufacturing. The provisions of WAC 296-78-500 through 296-78-84011 are also applicable in shake and shingle manufacturing except in instances of conflict with the requirements of WAC 296-78-705.

Chapter 296-155 WAC Safety standards for construction work

WAC 296-155-005 Purpose and scope.

The standards included in this chapter apply throughout the state of Washington, to any and all work places subject to the Washington Industrial Safety and Health Act (chapter 49.17 RCW), where construction, alteration, demolition, related inspection, and/or maintenance and repair work, including painting and decorating, is performed. These standards are minimum safety requirements with which all industries must comply when engaged in the above listed types of work.

(5) If rules in this chapter conflict with rules in another chapter of Title 296 WAC, this chapter prevails.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 15-13-097, § 296-307-006, filed 6/16/15, effective 8/3/15. Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-006, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-006, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-006, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 03-10-068, filed 5/6/03, effective 8/1/03)

WAC 296-307-009 ((What)) Definitions that apply to this chapter((?)). ((**"Approved"** means)) **Approved.** Approved by the director of the department of labor and industries, or by another organization designated by the department. Also means listed or approved by a nationally recognized testing laboratory.

((**"Authorized person"** means)) **Authorized person.** Someone you have approved to perform specific duties or to be at a specific location on the job site.

((**"Biological agents"** means)) **Biological agents.** Organisms or their by-products.

((**"Chemical agents (airborne or contact)"** means)) **Chemical agents (airborne or contact).** A chemical agent is any of the following:

((•)) (a) Airborne chemical agent which is any of the following:

((–)) (i) Dust ((–)). Solid particles suspended in air, generated by handling, drilling, crushing, grinding, rapid impact, detonation, or decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, grain, etc.

((–)) (ii) Fume ((–)). Solid particles suspended in air, generated by condensation from the gaseous state, generally after volatilization from molten metals, etc., and often accompanied by a chemical reaction such as oxidation.

((~~-~~)) (iii) Gas ((~~-~~)). A normally formless fluid that can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

((~~-~~)) (iv) Mist ((~~-~~)). Liquid droplets suspended in air, generated by condensation from the gaseous to the liquid state or by breaking up a liquid into a dispersed state, such as by splashing, foaming or atomizing.

((~~-~~)) (v) Vapor ((~~-~~)). The gaseous form of a substance that is normally in the solid or liquid state.

((~~•~~)) (b) Contact chemical agent which is any of the following:

((~~-~~)) (i) Corrosives ((~~-~~)). Substances that in contact with living tissue cause destruction of the tissue by chemical action.

((~~-~~)) (ii) Irritants ((~~-~~)). Substances that on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

((~~-~~)) (iii) Toxicants ((~~-~~)). Substances that have the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

((~~**"Department"** means~~)) **Department.** The department of labor and industries. When this chapter refers to "we" or "us," it means labor and industries staff responsible for enforcing the Washington Industrial Safety and Health Act (WISHA).

((~~**"Director"** means~~)) **Director.** The director of the department of labor and industries, or a designated representative.

((~~**"Employee"** means~~)) **Employee.** Someone providing personal labor in the business of the employer, including anyone providing personal labor under an independent contract.

((~~**"Employer"** means~~)) **Employer.** A business entity having one or more employees. Also, any person, partnership, or business entity with no employees but having industrial insurance coverage is both an employer and an employee((~~. When this chapter refers to "you," it means the employer or a designated representative~~)).

((~~**"Hazard"** means~~)) **Hazard.** A condition that can cause injury, death, or occupational disease.

((~~**"Listed"** means~~)) **Listed.** Listed by a nationally recognized testing laboratory.

((~~**"Must"** means~~)) **Must.** Mandatory.

((~~"~~))Nationally recognized testing laboratory((~~"~~)). See 29 C.F.R. 1910.7 (federal OSHA requirements).

((~~"~~))Pesticide((~~"~~ means)):

((~~•~~)) (a) Any substance intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest or which the director may declare to be a pest;

((~~•~~)) (b) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; and

((~~•~~)) (c) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own, intended to be used with any pesticide as an aid to its application or effect, and sold in a package or container separate from that of the pesticide with which it is to be used.

((~~**"Safety factor"** means~~)) **Safety factor.** The ratio of the ultimate breaking strength of a piece of material or equipment to the actual working stress or safe load when in use.

((~~**"Should"** or **"may"** means~~)) **Should** or **may.** Recommended.

((~~"Standard safeguard" means~~)) **Standard safeguard.** A device designed and constructed to remove a hazard related to the machine, appliance, tool, building, or equipment to which it is attached.

((~~"Working day,"~~)) **Working day.** For appeals and accident reporting, means a calendar day, except Saturdays, Sundays, and legal holidays as defined by RCW 1.16.050. To compute the time within which an act is to be completed, exclude the first working day and include the last.

You. When this chapter refers to "you," it means the employer or a designated representative.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 03-10-068, § 296-307-009, filed 5/6/03, effective 8/1/03. Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-009, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-009, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-009, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-012 ((~~What does it mean when~~)) Equipment ((~~is~~)) approved by a nonstate organization((~~?~~)). Whenever the department requires ((~~that you~~)) the employer to have equipment or processes approved by an organization such as the Underwriters Laboratories (UL), the Bureau of Mines (MSHA), or the National Institute for Occupational Safety and Health (NIOSH), the approval of that organization is considered evidence of your compliance.

[WSR 97-09-013, recodified as § 296-307-012, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-012, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 15-11-066, filed 5/19/15, effective 7/1/15)

WAC 296-307-018 ((~~What are the employer's~~)) Employer responsibilities((~~?~~)).

((~~**You must:**~~))

(1) The employer must provide a safe and healthful working environment.

(2) The employer must ensure that employees do not use defective or unsafe tools and equipment, including tools and equipment that may be furnished by the employee.

(3) The employer must implement a written accident prevention program as required by these standards.

(4) The employer must implement a hazard communication program as required by WAC 296-307-550.

(5) The employer must establish a system for complying with chapter 296-27 WAC for recording work-related injuries and illnesses and reporting to the department any work-related fatality, inpatient hos-

pitalization, amputation, or loss of an eye. In addition, ((~~you~~)) the employer must also report to the department within eight hours after any work-related incident that results in injury or illness from acute pesticide exposure.

(6) The employer must follow the requirements for accident investigations in WAC 296-800-320.

(7) The employer must provide safety education and training programs.

(8) The employer must implement the requirements of WAC 296-62-074 through 296-62-07451 to ensure the safety of employees who are exposed to cadmium in the workplace.

(9) The employer must implement the requirements of WAC 296-307-642 through 296-307-656 to ensure the safety of employees who are exposed to confined spaces in the workplace.

(10) The employer must control chemical agents.

((~~**You must:**~~

~~•~~)) (a) The employer must control chemical agents in a manner that they will not present a hazard to ((~~your~~)) workers; or

((~~•~~)) (b) The employer must protect workers from the hazard of contact with, or exposure to, chemical agents.

Reference: Pesticides are chemical agents and are covered by chapter 296-307 WAC Part I, Pesticides (worker protection standard). Pesticides may also be covered by WAC 296-307-594, Respirators.

(11) Protect employees from biological agents. ((~~**You must:**~~

~~•~~)) The employer must protect employees from exposure to hazardous concentrations of biological agents that may result from processing, handling or using materials or waste.

Note: Examples of biological agents include:
((–)) 1. Animals or animal waste.
((–)) 2. Body fluids.
((–)) 3. Biological agents in a medical research lab.
((–)) 4. Mold or mildew.

[Statutory Authority: RCW 49.17.010, 49.17.040, and 49.17.050. WSR 15-11-066, § 296-307-018, filed 5/19/15, effective 7/1/15. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 05-01-166, § 296-307-018, filed 12/21/04, effective 4/2/05; WSR 03-10-068, § 296-307-018, filed 5/6/03, effective 8/1/03. Statutory Authority: RCW 49.17.010, [49.17].040, and [49.17].050. WSR 01-17-033, § 296-307-018, filed 8/8/01, effective 9/1/01. Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-018, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-018, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-018, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-021 ((~~What are the employee's~~)) Employee responsibilities((~~?~~)). (1) Employees must cooperate with ((~~you~~)) the employer and other employees in efforts to eliminate accidents.

(2) Employees must be informed of and observe all safe practices.

(3) Employees must notify ((~~you~~)) the employer of unsafe conditions of equipment or workplaces.

(4) Employees must use all required safety devices and protective equipment.

(5) Employees must not willfully damage personal protective equipment.

(6) Each employee must promptly report any job-related injury or illness to his or her immediate supervisor, regardless of the degree of severity.

(7) Employees must not engage in any activity unrelated to work that may cause injury to other employees during the course of performing work assignments.

(8) Employees must attend any required training and/or orientation programs designed to increase their competency in occupational safety and health.

(9) Employees must not report to work under the influence of alcohol or controlled substances. Alcohol or controlled substances must not be brought on the worksite.

[WSR 97-09-013, recodified as § 296-307-021, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-021, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-024 ((~~How does an employer apply~~)) Applying for a variance((?)). (1) If ((~~you find~~)) the employer finds that it is impractical ((~~for you~~)) to comply with specific requirements of this standard, ((~~we~~)) the department may permit a variation from the requirements. However, ((~~you~~)) the employer must still provide equal protection by substitute means and comply with the requirements of chapter 49.17 RCW and chapter 296-350 WAC, variances.

(2) On the variance application ((~~you~~)) the employer must certify that ((~~you have posted~~)) a copy of the written application was posted in a place reasonably accessible to ((~~your~~)) employees. ((~~You~~)) The employer must also mail a copy of the application to any authorized employee representative. The notice must advise employees of their right to request ((~~us~~)) the department to conduct a hearing on the variance application. ((~~You~~)) The employer must notify employees before you apply.

Note: To request a permanent or temporary variance, ((~~you may~~)) write to: Department of Labor and Industries, WISHA Services, P.O. Box 44648, Olympia, WA 98504-4648. ((~~We~~)) The department will mail ((~~you~~)) an application form and instruction sheet. ((~~We~~)) The department will also send a copy of chapter 296-350 WAC, Variances, if ((~~you request it~~)) requested.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-024, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-024, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-024, filed 10/31/96, effective 12/1/96.]

OTS-2685.1

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-10820 Definitions—40 C.F.R., Sec. 170.305. Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, ((~~shall~~)) have the following meanings:

((~~**"Agricultural emergency"**~~)) **Agricultural emergency.** For agricultural emergencies see WAC 296-307-11410 (3)(a).

((~~**"Agricultural employer"** means~~)) **Agricultural employer.** Any person who is an owner of, or is responsible for the management or condition of, an agricultural establishment, and who employs any worker or handler.

((~~**"Agricultural establishment"** means~~)) **Agricultural establishment.** Any farm, forest operation, or nursery engaged in the outdoor or enclosed space production of agricultural plants. An establishment that is not primarily agricultural is an agricultural establishment if it produces agricultural plants for transplant or use (in part or their entirety) in another location instead of purchasing the agricultural plants.

((~~**"Agricultural plant"** means~~)) **Agricultural plant.** Any plant, or part thereof, grown, maintained, or otherwise produced for commercial purposes, including growing, maintaining or otherwise producing plants for sale or trade, for research or experimental purposes, or for use in part or their entirety in another location. Agricultural plant includes, but is not limited to, grains; fruits and vegetables; wood fiber or timber products; flowering and foliage plants and trees; seedlings and transplants; and turf grass produced for sod. Agricultural plant does not include pasture or rangeland used for grazing.

((~~**"Application exclusion zone"** means~~)) **Application exclusion zone.** The area surrounding the application equipment that must be free of all persons other than appropriately trained and equipped handlers during pesticide applications.

((~~**"Chemigation"** means~~)) **Chemigation.** The application of pesticides through irrigation systems.

((~~**"Closed system"** means~~)) **Closed system.** An engineering control used while removing pesticide contents from its original container, preventing the pesticide from contacting handlers. It is used to protect handlers or other persons from pesticide exposure hazards when mixing and loading pesticides. When used properly and as intended, water-soluble packaging may qualify as a type of closed system.

((~~**"Commercial pesticide handler employer"** means~~)) **Commercial pesticide handler employer.** Any person, other than an agricultural employer, who employs any handler to perform handler activities on an agricultural establishment. A labor contractor who does not provide pesticide application services or supervise the performance of handler activities, but merely employs laborers who perform handler activities at the direction of an agricultural or handler employer, is not a commercial pesticide handler employer.

((~~**"Commercial pesticide handling establishment"** means~~)) **Commercial pesticide handling establishment.** Any enterprise, other than an agricultural establishment, that provides pesticide handler or crop advising services to agricultural establishments.

((~~**"Crop advisor"** means~~)) **Crop advisor.** Any person who is assessing pest numbers, damage, pesticide distribution, or the status or re-

quirements of agricultural plants and who holds a current Washington state department of agriculture commercial consultant license in the agricultural areas in which they are advising. The term does not include any person who is performing hand labor tasks.

((~~"Designated representative" means~~)) **Designated representative.** Any persons designated in writing by a worker or handler to exercise a right of access on behalf of the worker or handler to request and obtain a copy of the pesticide application and hazard information required by WAC 296-307-10825(8) in accordance with WAC 296-307-10830(2).

((~~"Early entry" means~~)) **Early entry.** Entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

((~~"Employ" means~~)) **Employ.** To obtain, directly or through a labor contractor, the services of a person in exchange for any type of compensation including a salary, wages, or piece-rate wages, without regard to who may pay or who may receive the salary or wages. It includes obtaining the services of a self-employed person, an independent contractor, or a person compensated by a third party, except that it does not include an agricultural employer obtaining the services of a handler through a commercial pesticide handler employer or a commercial pesticide handling establishment.

((~~"Enclosed cab" means~~)) **Enclosed cab.** A cab with a nonporous barrier that totally surrounds the occupant(s) of the cab and prevents contact with pesticides that are being applied outside of the cab. Refer to WAC 296-307-11420(5).

((~~"Enclosed space production" means~~)) **Enclosed space production.** Production of an agricultural plant indoors or in a structure or space that is covered in whole or in part by any nonporous covering or that is covered and enclosed in a way that would obstruct natural air flow, and that is large enough to permit a person to enter. Structures, with a covering that do not have any walls, such as shade houses made of fencing or fabric to provide shade on plants that do not obstruct airflow are not considered enclosed spaces.

((~~"Fumigant" means~~)) **Fumigant.** Any pesticide product that is a vapor or gas, or forms a vapor or gas upon application, and whose pesticidal action is achieved through the gaseous or vapor state.

((~~"Hand labor" means~~)) **Hand labor.** Any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) and other surfaces that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include performing crop advisor tasks or operating, moving, or repairing irrigation or watering equipment. For irrigation or watering equipment used during chemigation see handler activities.

((~~"Handler" means~~)) **Handler.** Any person, including a self-employed person, who is employed by an agricultural employer or commercial pesticide handler employer and performs any of the following activities:

((~~•~~)) (a) Mixing, loading, or applying pesticides.

((~~•~~)) (b) Disposing of pesticides.

((~~•~~)) (c) Handling opened containers of pesticides, emptying, triple-rinsing, or cleaning pesticide containers according to pesticide product labeling instructions, or disposing of pesticide contain-

ers that have not been cleaned. The term does not include any person who is only handling unopened pesticide containers or pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions.

((•)) (d) Acting as a flagger.

((•)) (e) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues, including irrigation equipment used for chemigation.

((•)) (f) Assisting with the application of pesticides.

((•)) (g) Entering an enclosed space after the application of a pesticide and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established in WAC 296-307-10915 (2)(c) or the labeling has been met to operate ventilation equipment, monitor air levels, or adjust or remove coverings used in fumigation.

((•)) (h) Entering a treated area outdoors after application of any soil fumigant during the labeling-specified entry-restricted period to adjust or remove coverings used in fumigation.

((•)) (i) Performing tasks as a crop advisor during any pesticide application or restricted-entry interval, or before the inhalation exposure level listed in the pesticide product labeling has been reached or one of the ventilation criteria established in WAC 296-307-10915 (2)(c) or the pesticide product labeling has been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

((**~~"Handler employer"~~** ~~means~~)) **Handler employer.** Any person who is self-employed as a handler or who employs any handler.

((**~~"Immediate family"~~**)) **Immediate family.** Includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

((**~~"Labor contractor"~~** ~~means~~)) **Labor contractor.** A person, other than a commercial pesticide handler employer, who employs workers or handlers to perform tasks on an agricultural establishment for an agricultural employer or a commercial pesticide handler employer.

((**~~"Outdoor production"~~** ~~means~~)) **Outdoor production.** Production of an agricultural plant in an outside area that is not enclosed or covered in any way by nonporous material. This includes shade houses without sides.

((**~~"Owner"~~** ~~means~~)) **Owner.** Any person who has a present possessory interest (e.g., fee, leasehold, rental, or other) in an agricultural establishment. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this chapter.

((**~~"Personal protective equipment"~~** ~~means~~)) **Personal protective equipment.** Devices, appliances or apparel that are worn or used to protect the body from exposure to safety and health hazards. PPE that protects against chemical hazards such as pesticides or pesticide residues including, but not limited to: Coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respirators, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

((**~~"Restricted-entry interval (REI)"~~** ~~means~~)) **Restricted-entry interval (REI).** The time after the end of a pesticide application during which entry into the treated area is restricted.

((~~"**Safety data sheet (SDS)**" means~~)) **Safety data sheet (SDS).** Written or printed material concerning a hazardous chemical that is prepared in accordance with WAC 296-901-14014.

((~~"**Treated area**" means~~)) **Treated area.** Any area to which a pesticide is being directed or has been directed.

((~~"**Use,**" as in "**to use a pesticide**" means~~)) **Use, to use a pesticide.** Any of the following:

((~~•~~)) (a) Preapplication activities including, but not limited to:

((~~–~~)) (i) Arranging for the application of the pesticide.

((~~–~~)) (ii) Mixing and loading the pesticide.

((~~–~~)) (iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of workers or handlers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

((~~•~~)) (b) Application of the pesticide.

((~~•~~)) (c) Postapplication activities intended to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during and after the restricted-entry interval, including responsibilities related to worker notification, training of workers or early entry workers, providing decontamination supplies, providing pesticide safety information and pesticide application and hazard information, use and care of personal protective equipment, providing emergency assistance, and heat stress management.

((~~•~~)) (d) Other pesticide-related activities including, but not limited to, transporting or storing pesticides that have been opened, cleaning equipment, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

((~~"**Worker**" means~~)) **Worker.** Any person, including a self-employed person, who is employed and performs activities directly relating to the production of agricultural plants on an agricultural establishment.

((~~"**Worker housing area**" means~~)) **Worker housing area.** Any place or area of land on or near an agricultural establishment where housing or space for housing is provided for workers or handlers by an agricultural employer, owner, labor contractor, or any other person responsible for the recruitment or employment of agricultural workers.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-10820, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-10825 Agricultural employer duties—40 C.F.R., Sec. 170.309. Agricultural employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on the agricultural establishment.

(2) Ensure that each worker and handler subject to this part receives the protections required by this part.

(3) Ensure that any handler and any early entry worker is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any workers or handlers, information and directions sufficient to ensure that each worker and handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(5) Require each person, including labor contractors, who supervises any workers or handlers, to provide sufficient information and directions to each worker and handler to ensure that they can comply with the provisions of this part.

(6) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a worker or handler has experienced a potential pesticide exposure during his or her employment on the agricultural establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment on the agricultural establishment, and needs emergency medical treatment, the agricultural employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the agricultural establishment, including any worker housing area on the establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to that person or to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s)(SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide on the agricultural establishment.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(7) Ensure that workers or other persons employed or supervised by the agricultural establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 296-307-11205. Before allowing any person not directly employed or supervised by the agricultural establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the agricultural employer ((~~shall~~)) must assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such person:

(a) Pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(8) Display, maintain, and provide access to pesticide safety information and pesticide application and hazard information that is legible and in accordance with WAC 296-307-10830. If workers or handlers are on the establishment and within the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect on the establishment.

(9) Ensure that before a handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(10) Ensure that before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or replaced.

(11) The agricultural employer must notify a commercial pesticide handler employer (CPHER) of any specific locations and descriptions of those treated areas and any restrictions on entering the treated areas with restricted-entry intervals (REIs) in effect whenever:

(a) A handler employed by a CPHER will be on the agricultural establishment; and

(b) The CPHER handler may be in or walk within a quarter mile of any pesticide treated area with restricted-entry interval (REI) in effect.

(12) Ensure that workers do not enter any area on the agricultural establishment where a pesticide has been applied until the applicable pesticide application and hazard information for each pesticide product applied to that area is displayed in accordance with WAC 296-307-10830(2) and until after the restricted-entry interval has expired and all treated area warning signs have been removed or covered, except for entry permitted by WAC 296-307-11410.

(13) Provide any records or other information required by this section for inspection and copying upon request by an employee of EPA, or any duly authorized representatives of the Washington state department of agriculture or department of labor and industries.

(14) Pesticide safety, application, and hazard information must remain legible at all times when the information is required to be displayed. This information must be in accordance with WAC 296-307-10830.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-10825, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-10835 Commercial pesticide handler employer duties—40 C.F.R., Sec. 170.313. Commercial pesticide handler employers must:

(1) Ensure that any pesticide is used in a manner consistent with the pesticide product labeling, including the requirements of this part, when applied on an agricultural establishment by a handler employed by the commercial pesticide handling establishment.

(2) Ensure each handler employed by the commercial pesticide handling establishment and subject to this part receives the protections required by this part.

(3) Ensure that any handler employed by the commercial pesticide handling establishment is at least eighteen years old.

(4) Provide to each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, information and directions sufficient to ensure that each handler receives the protections required by this part. Such information and directions must specify the tasks for which the supervisor is responsible in order to comply with the provisions of this part.

(5) Require each person, including labor contractors, who supervises any handlers employed by the commercial pesticide handling establishment, to provide sufficient information and directions to each handler to ensure that the handler can comply with the provisions of this part.

(6) Ensure that before any handler employed by the commercial pesticide handling establishment uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment.

(7) Ensure that, before each day of use, equipment used by their employees for mixing, loading, transferring, or applying pesticides is inspected for leaks, obstructions, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(8) Ensure that whenever a handler who is employed by a commercial pesticide handling establishment will be on an agricultural establishment, the handler is provided information about, or is aware of, the specific location and description of any treated areas where a restricted-entry interval is in effect, and the restrictions on entering those areas.

(9) Provide the agricultural employer all of the following information before the application of any pesticide on an agricultural establishment:

(a) Specific location(s) and description of the area(s) to be treated.

(b) The date(s) and start and estimated end times of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) The labeling-specified restricted-entry interval applicable for the application.

(e) Whether posting, oral notification or both are required under WAC 296-307-10925.

(f) Any restrictions or use directions on the pesticide product labeling that must be followed for protection of workers, handlers, or other persons during or after application.

(10) If there are any changes to the information provided in subsection (9)(a), (d), (e), and (f) of this section or if the start time for the application will be earlier than originally forecasted or scheduled, ensure that the agricultural employer is provided updated information prior to the application. If there are any changes to any other information provided pursuant to subsection (9) of this section, the commercial pesticide handler employer must provide updated information to the agricultural employer within two hours after completing the application. Changes to the estimated application end time of less than one hour need not be reported to the agricultural employer.

(11) Provide emergency assistance in accordance with this subsection. If there is reason to believe that a handler employed by the commercial pesticide handling establishment has experienced a potential pesticide exposure during his or her employment by the commercial

pesticide handling establishment or shows symptoms similar to those associated with acute exposure to pesticides during or within seventy-two hours after his or her employment by the commercial pesticide handling establishment, and needs emergency medical treatment, the commercial pesticide handler employer must do all of the following promptly after learning of the possible poisoning or injury:

(a) Make available to that person prompt transportation from the commercial pesticide handling establishment, or any agricultural establishment on which that handler may be working on behalf of the commercial pesticide handling establishment, to an operating medical care facility capable of providing emergency medical treatment to a person exposed to pesticides.

(b) Provide all of the following information to the treating medical personnel:

(i) Copies of the applicable safety data sheet(s)(SDS) and the product name(s), EPA registration number(s) and active ingredient(s) for each pesticide product to which the person may have been exposed.

(ii) The circumstances of application or use of the pesticide.

(iii) The circumstances that could have resulted in exposure to the pesticide.

(iv) Antidote, first aid and other medical information from the product labeling.

(12) Ensure that persons directly employed by the commercial pesticide handling establishment do not clean, repair, or adjust pesticide application equipment, unless trained as a handler under WAC 296-307-11205. Before allowing any person not directly employed by the commercial pesticide handling establishment to clean, repair, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the commercial pesticide handler employer ((~~shall~~)) must assure that pesticide residues have been removed from the equipment if feasible and must provide all of the following information to such persons:

(a) Notice that the pesticide application equipment may be contaminated with pesticides.

(b) The potentially harmful effects of exposure to pesticides.

(c) Procedures for handling pesticide application equipment and for limiting exposure to pesticide residues.

(d) Personal hygiene practices and decontamination procedures for preventing pesticide exposures and removing pesticide residues.

(13) Provide any records or other information required by this part for inspection and copying upon request by an employee of EPA or any duly authorized representative of the Washington state department of agriculture or the department of labor and industries.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-10835, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-10905 Training requirements for workers—40 C.F.R., Sec. 170.401. (1) General requirement. Before any worker performs any task in a treated area on an agricultural establishment where within

the last thirty days a pesticide product has been used or a restricted-entry interval for such pesticide has been in effect, the agricultural employer must ensure that each worker has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

Note: In addition to the training required by this section, the agricultural employer ((~~shall~~)) must assure without exception, that all employees are trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

(2) Exceptions. The following workers need not be trained under this section:

(a) A worker who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A worker who has satisfied the handler training requirements in WAC 296-307-11205.

(c) A worker who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided, that a requirement for such certification or licensing is pesticide safety training that includes all the topics in WAC 296-307-11205 (3)(b) or (c) as applicable depending on the date of training.

(3) Training programs.

(a) Pesticide safety training must be presented to workers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the workers can understand, such as through a translator. The training must be conducted by a person who meets the worker trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to workers' questions.

(b) The training must include, at a minimum, all of the following topics:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eye flushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this section designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty-one days after a notice of availability of such training materials appears in the *Federal Register*, training programs required under this section must include,

at a minimum, all of the topics listed in (c)(i) through (xxiii) of this subsection instead of the topics listed in (b)(i) through (xi) of this subsection.

(i) The responsibility of agricultural employers to provide workers and handlers with information and protections designed to reduce work-related pesticide exposures and illnesses. This includes ensuring workers and handlers have been trained on pesticide safety, providing pesticide safety and application and hazard information, decontamination supplies and emergency medical assistance, and notifying workers of restrictions during applications and on entering pesticide treated areas. A worker or handler may designate in writing a representative to request access to pesticide application and hazard information.

(ii) How to recognize and understand the meaning of the posted warning signs used for notifying workers of restrictions on entering pesticide treated areas on the establishment.

(iii) How to follow directions and/or signs about keeping out of pesticide treated areas subject to a restricted-entry interval and application exclusion zones.

(iv) Where and in what forms pesticides may be encountered during work activities, and potential sources of pesticide exposure on the agricultural establishment. This includes exposure to pesticide residues that may be on or in plants, soil, tractors, application and chemigation equipment, or used personal protective equipment, and that pesticides may drift through the air from nearby applications or be in irrigation water.

(v) Potential hazards from toxicity and exposure that pesticides present to workers and their families, including acute and chronic effects, delayed effects, and sensitization.

(vi) Routes through which pesticides can enter the body.

(vii) Signs and symptoms of common types of pesticide poisoning.

(viii) Emergency first aid for pesticide injuries or poisonings.

(ix) Routine and emergency decontamination procedures, including emergency eye flushing techniques, and if pesticides are spilled or sprayed on the body to use decontamination supplies to wash immediately or rinse off in the nearest clean water, including springs, streams, lakes or other sources if more readily available than decontamination supplies, and as soon as possible, wash or shower with soap and water, shampoo hair, and change into clean clothes.

(x) How and when to obtain emergency medical care.

(xi) When working in pesticide treated areas, wear work clothing that protects the body from pesticide residues and wash hands before eating, drinking, using chewing gum or tobacco, or using the toilet.

Note: Consider including other activities that could be a route of exposure such as using a phone or cell phone, or tablet, applying makeup, and getting into a personal vehicle.

(xii) Wash or shower with soap and water, shampoo hair, and change into clean clothes as soon as possible after working in pesticide treated areas.

(xiii) Potential hazards from pesticide residues on clothing.

(xiv) Wash work clothes before wearing them again and wash them separately from other clothes.

(xv) Do not take pesticides or pesticide containers used at work ((~~to your~~)) home.

(xvi) Safety data sheets (SDSs) provide hazard, emergency medical treatment and other information about the pesticides used on the establishment they may come in contact with. The responsibility of agricultural employers to do all of the following:

(A) Display safety data sheets (SDSs) for all pesticides used on the establishment.

(B) Provide workers and handlers information about the location of the safety data sheets (SDSs) on the establishment.

(C) Provide workers and handlers unimpeded access to safety data sheets (SDSs) during normal work hours.

(xvii) This section prohibits agricultural employers from allowing or directing any worker to mix, load or apply pesticides or assist in the application of pesticides unless the worker has been trained as a handler.

(xviii) The responsibility of agricultural employers to provide specific information to workers before directing them to perform early entry activities. Workers must be eighteen years old to perform early entry activities.

(xix) Potential hazards to children and pregnant women from pesticide exposure.

(xx) Keep children and nonworking family members away from pesticide treated areas.

(xxi) After working in pesticide treated areas, remove work boots or shoes before entering your home, and remove work clothes and wash or shower before physical contact with children or family members.

(xxii) How to report suspected pesticide use violations to the Washington state department of agriculture.

(xxiii) This section prohibits agricultural employers from intimidating, threatening, coercing, or discriminating against any worker or handler for complying with or attempting to comply with the requirements of this chapter part, or because the worker or handler provided, caused to be provided or is about to provide information to the employer, the EPA or its agents, or any duly authorized representative of the Washington state department of agriculture regarding conduct that the employee reasonably believes violates this chapter part, and/or made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing concerning compliance with this chapter part.

(d) The person who conducts the training must meet one of the following criteria:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by the Washington state department of agriculture in accordance with chapters 15.58 and 17.21 RCW; or

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) Recordkeeping.

(a) For each worker required to be trained under subsection (1) of this section, the agricultural employer must maintain on the agricultural establishment, for two years from the date of the training, a record documenting each worker's training including all of the following:

(i) The trained worker's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The agricultural employer's name.

(b) An agricultural employer who provides, directly or indirectly, training required under subsection (1) of this section must provide to the worker upon request a copy of the record of the training that contains the information required under (a) of this subsection.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-10905, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-10930 Decontamination supplies for workers—40 C.F.R., Sec. 170.411. (1) Requirement. The agricultural employer must provide decontamination supplies for routine washing and emergency decontamination in accordance with this section for any worker on an agricultural establishment who is performing an activity in an area where a pesticide was applied and who contacts anything that has been treated with the pesticide including, but not limited to, soil, water, and plants.

(2) Materials and quantities. The decontamination supplies required in subsection (1) of this section must provide adequate water at a minimum to include at least one gallon of water per worker at the beginning of each worker's work period for routine washing and emergency decontamination, soap, and single-use towels. The supplies must meet all of the following requirements:

(a) Water. At all times when this part requires agricultural employers to make water available to workers, the agricultural employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) Soap and single-use towels. The agricultural employer must provide soap and single-use towels for drying in quantities sufficient to meet the workers' reasonable needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(3) Timing.

(a) If any pesticide with a restricted-entry interval greater than four hours was applied, the decontamination supplies must be provided from the time workers first enter the treated area until at least thirty days after the restricted-entry interval expires.

(b) If the only pesticides applied in the treated area are products with restricted-entry intervals of four hours or less, the decontamination supplies must be provided from the time workers first enter the treated area until at least seven days after the restricted-entry interval expires.

(4) Location. The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to the workers. The decon-

tamination supplies must not be more than one-quarter mile from where workers are working, except that where workers are working more than one-quarter mile from the nearest place of vehicular access or more than one-quarter mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(5) Decontamination after early entry activities. At the end of any exposure period for workers engaged in early entry activities permitted by WAC 296-307-11415 and involving contact with anything that has been treated with the pesticide to which the restricted-entry interval applies including, but not limited to, soil, water, air, or surfaces of plants, the agricultural employer ((~~shall~~)) must provide, at the site where the workers remove personal protective equipment, soap, clean towels, and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees ((~~shall~~)) must be provided at early entry sites that do not have running water.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-10930, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-11205 Training requirements for handlers—40 C.F.R., Sec. 170.501. (1) General requirement. Before any handler performs any handler activity involving a pesticide product, the handler employer must ensure that the handler has been trained in accordance with this section within the last twelve months, except as provided in subsection (2) of this section.

Note: In addition to the training required by this section, the agricultural employer ((~~shall~~)) must assure without exception, that all employees are trained in accordance with chapter 296-901 WAC, Globally harmonized system for hazard communication.

(2) Exceptions. The following handlers need not be trained under this section:

(a) A handler who is currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(b) A handler who is certified or licensed as a crop advisor by the Washington state department of agriculture under RCW 15.58.230, provided that a requirement for such certification or licensing is pesticide safety training that includes all the topics set out in subsection (3)(b) or (c) of this section as applicable depending on the date of training.

(3) Training programs.

(a) Pesticide safety training must be presented to handlers either orally from written materials or audio-visually, at a location that is reasonably free from distraction and conducive to training. All training materials must be EPA-approved. The training must be presented in a manner that the handlers can understand, such as through a translator. The training must be conducted by a person who meets the handler trainer requirements of (d) of this subsection, and who must be present during the entire training program and must respond to handlers' questions.

(b) The pesticide safety training materials must include, at a minimum, all of the following topics:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first-aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill clean-up.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this section that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(c) EPA intends to make available to the public training materials that may be used to conduct training conforming to the requirements of this section. Within one hundred eighty days after a notice of availability of such training materials appears in the *Federal Register*, training programs required under this section must include, at a minimum, all of the topics listed in (c)(i) through (xiv) of this subsection instead of the points listed in (b)(i) through (xiii) of this subsection.

(i) All the topics required in WAC 296-307-10905 (3)(c).

(ii) Information on proper application and use of pesticides.

(iii) Handlers must follow the portions of the labeling applicable to the safe use of the pesticide.

(iv) Format and meaning of information contained on pesticide labels and in labeling applicable to the safe use of the pesticide.

(v) Need for and appropriate use and removal of all personal protective equipment.

(vi) How to recognize, prevent, and provide first-aid treatment for heat-related illness.

(vii) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(viii) Environmental concerns, such as drift, runoff, and wildlife hazards.

(ix) Handlers must not apply pesticides in a manner that results in contact with workers or other persons.

(x) The responsibility of handler employers to provide handlers with information and protections designed to reduce work-related pes-

ticide exposures and illnesses. This includes providing, cleaning, maintaining, storing, and ensuring proper use of all required personal protective equipment; providing decontamination supplies; and providing specific information about pesticide use and labeling information.

(xi) Handlers must suspend a pesticide application if workers or other persons are in the application exclusion zone.

(xii) Handlers must be at least eighteen years old.

(xiii) The responsibility of handler employers to ensure handlers have received respirator fit-testing, training and medical evaluation if they are required to wear a respirator by the product labeling.

(xiv) The responsibility of agricultural employers to post treated areas as required by this part.

(d) The person who conducts the training must have one of the following qualifications:

(i) Be currently designated as a trainer of certified applicators or pesticide handlers by the Washington state department of agriculture under chapter 15.58 or 17.21 RCW; or

(ii) Have completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal agency having jurisdiction.

(iii) Be currently certified as an applicator of restricted use pesticides under chapter 17.21 RCW.

(4) Recordkeeping.

(a) Handler employers must maintain records of training for handlers employed by their establishment for two years after the date of the training. The records must be maintained on the establishment and must include all of the following information:

(i) The trained handler's printed name and signature.

(ii) The date of the training.

(iii) Information identifying which EPA-approved training materials were used.

(iv) The trainer's name and documentation showing that the trainer met the requirements of subsection (3)(d) of this section at the time of training.

(v) The handler employer's name.

(b) The handler employer must, upon request by a handler trained on the establishment, provide to the handler a copy of the record of the training that contains the information required under (a) of this subsection.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-11205, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-11220 Personal protective equipment—40 C.F.R., Sec. 170.507. (1) Handler responsibilities. Any person who performs handler activities involving a pesticide product must use the clothing and personal protective equipment specified on the pesticide product labeling for use of the product, except as provided in WAC 296-307-11420.

(2) Employer responsibilities for providing personal protective equipment. The handler employer must provide to the handler the per-

sonal protective equipment required by the pesticide product labeling in accordance with this section. The handler employer must ensure that the personal protective equipment fits, is clean and in proper operating condition. When two or more pesticides are applied to a treated area at the same time, the employer must ensure employees, workers and handlers wear the applicable PPE that would protect against all of the pesticides as a mixture and combined product. For the purposes of this section, long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, and socks are not considered personal protective equipment, although such work clothing must be worn if required by the pesticide product labeling.

(a) If the pesticide product labeling requires that "chemical-resistant" personal protective equipment be worn, it must be made of material that allows no measurable movement of the pesticide being used through the material during use.

(b) If the pesticide product labeling requires that "waterproof" personal protective equipment be worn, it must be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(c) If the pesticide product labeling requires that a "chemical-resistant suit" be worn, it must be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(d) If the pesticide product labeling requires that "coveralls" be worn, they must be loose-fitting, one- or two-piece garments that cover, at a minimum, the entire body except head, hands, and feet.

(e) Gloves must be the type specified on the pesticide product labeling.

(i) Gloves made of leather, cotton, or other absorbent materials may not be worn while performing handler activities unless gloves made of these materials are listed as acceptable for such use on the pesticide product labeling.

(ii) Separable glove liners may be worn beneath chemical-resistant gloves, unless the pesticide product labeling specifically prohibits their use. Separable glove liners are defined as separate glove-like hand coverings, made of lightweight material, with or without fingers. Work gloves made from lightweight cotton or poly-type material are considered to be glove liners if worn beneath chemical-resistant gloves. Separable glove liners may not extend outside the chemical-resistant gloves under which they are worn. Chemical-resistant gloves with nonseparable absorbent lining materials are prohibited.

(iii) If used, separable glove liners must be discarded immediately after a total of no more than ten hours of use or within twenty-four hours of when first put on, whichever comes first. The liners must be replaced immediately if directly contacted by pesticide. Used glove liners must not be reused. Contaminated liners must be disposed of in accordance with any federal, state, or local regulations.

(f) If the pesticide product labeling requires that "chemical-resistant footwear" be worn, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(g) If the pesticide product labeling requires that "protective eyewear" be worn, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(h) If the pesticide product labeling requires that a "chemical-resistant apron" be worn, a chemical-resistant apron that covers the front of the body from mid-chest to the knees must be worn.

(i) If the pesticide product labeling requires that "chemical-resistant headgear" be worn, it must be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

Table 3
Chemical Resistance Category Selection Chart for Gloves

(For use when selecting glove types to be listed in the PPE section on pesticide label. Only select glove(s) that indicate a high level of chemical resistance.)

Note: This table below provides examples of categories of chemical resistant materials that can be used to protect against different kinds of pesticides.

Solvent Category (see Table 4)	Barrier Laminate	Butyl Rubber ≥ 14 mils	Nitrile Rubber ≥ 14 mils	Neoprene Rubber ≥ 14 mils	Natural Rubber* ≥ 14 mils	Poly-ethylene	Polyvinyl Chloride (PVC) ≥ 14 mils	Viton ≥ 14 mils
A (dry and water-based formulations)	high	high	high	high	high	high	high	high
B	high	high	slight	slight	none	slight	slight	slight
C	high	high	high	high	moderate	moderate	high	high
D	high	high	moderate	moderate	none	none	none	slight
E	high	slight	high	high	slight	none	moderate	high
F	high	high	high	moderate	slight	none	slight	high
G	high	slight	slight	slight	none	none	none	high
H	high	slight	slight	slight	none	none	none	high

* Includes natural rubber blends and laminates.

HIGH: Highly chemical-resistant. Clean or replace PPE at end of each day's work period. Rinse off pesticides at rest breaks.

MODERATE: Moderately chemical-resistant. Clean or replace within an hour or two of contact.

SLIGHT: Slightly chemical-resistant. Clean or replace within ten minutes of contact.

NONE: No chemical-resistance.

(j) The respirator specified by the pesticide product labeling must be used. If the label does not specify the type of respirator to be used, it ((~~shall~~)) must meet the requirements of Part Y-5 of this chapter. Whenever a respirator is required by the pesticide product labeling, the handler employer must ensure that the requirements of (j)(i) through (iii) of this subsection are met before the handler performs any handler activity where the respirator is required to be worn. The respiratory protection requirements of Part Y-5 of this chapter ((~~shall~~)) apply. The handler employer must maintain for two years, on the establishment, records documenting the completion of the requirements of (j)(i) through (iii) of this subsection.

(i) The handler employer ((~~shall~~)) must assure that the respirator fits correctly by using the procedures consistent with Part Y-5 of this chapter.

(ii) Handler employers must provide handlers with training in the use of the respirator specified on the pesticide product labeling in a manner that conforms to the provisions of Part Y-5 of this chapter.

(iii) Handler employers must provide handlers with a medical evaluation by a physician or other licensed health care professional that conforms to the provisions of WAC 296-307-604 to ensure the han-

dler's physical ability to safely wear the respirator specified on the pesticide product labeling.

(3) Use of personal protective equipment.

(a) The handler employer must ensure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(b) The handler employer must ensure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(4) Cleaning and maintenance.

(a) The handler employer must ensure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it must be washed thoroughly in detergent and hot water.

(b) If any personal protective equipment cannot or will not be cleaned properly, the handler employer must ensure the contaminated personal protective equipment is made unusable as apparel or is made unavailable for further use by employees or third parties. The contaminated personal protective equipment must be disposed of in accordance with any applicable laws or regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with a pesticide that has the signal word "DANGER" or "WARNING" on the label must not be reused and must be disposed of as specified in this subsection. Handler employers must ensure that any person who handles contaminated personal protective equipment described in this subsection wears the gloves specified on the pesticide product labeling for mixing and loading the product(s) comprising the contaminant(s) on the equipment. If two or more pesticides are included in the contaminants, the gloves worn must meet the requirements for mixing and loading all of the pesticide products.

(c) The handler employer must ensure that contaminated personal protective equipment is kept separate from noncontaminated personal protective equipment, other clothing or laundry and washed separately from any other clothing or laundry.

(d) The handler employer must ensure that all washed personal protective equipment is dried thoroughly before being stored or reused.

(e) The handler employer must ensure that all clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(f) The handler employer must ensure that when filtering facepiece respirators are used, they are replaced when one of the following conditions is met:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(g) The handler employer must ensure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges are replaced before further respirator use when one of the following conditions is met:

(i) At the first indication of odor, taste, or irritation.

(ii) When the maximum use time is reached as determined by a change schedule conforming to the provisions of Part Y-5 of this chapter.

(iii) When breathing resistance becomes excessive.

(iv) When required according to manufacturer's recommendations or pesticide product labeling instructions, whichever is more frequent.

(v) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(h) The handler employer must inform any person who cleans or launders personal protective equipment of all the following:

(i) That such equipment may be contaminated with pesticides and there are potentially harmful effects from exposure to pesticides.

(ii) The correct way(s) to clean personal protective equipment and how to protect themselves when handling such equipment.

(iii) Proper decontamination procedures that should be followed after handling contaminated personal protective equipment.

(i) The handler employer must ensure that handlers have a place(s) away from pesticide storage and pesticide use areas where they may do all of the following:

(i) Store personal clothing not worn during handling activities.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(j) The handler employer must not allow or direct any handler to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(5) Heat-related illness. Where a pesticide's labeling requires the use of personal protective equipment for a handler activity, the handler employer must ensure that no handler is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each handler is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-11220, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-11225 Decontamination and eye flushing supplies for handlers—40 C.F.R., Sec. 170.509. (1) Requirement. The handler employer must provide decontamination and eye flushing supplies in accordance with this section for any handler that is performing any handler activity or removing personal protective equipment at the place for changing required in WAC 296-307-11220 (4)(i).

(2) General conditions. The decontamination supplies required in subsection (1) of this section must include: At the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

At least ten gallons of water for one employee and twenty gallons of water for two or more employees ((~~shall~~)) must be provided at mixing and loading sites that do not have running water. The decontamination and eye flushing supplies required in subsection (1) of this section must meet all of the following requirements:

(a) Water. At all times when this section requires handler employers to make water available to handlers for routine washing, emergency decontamination or eye flushing, the handler employer must ensure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. If a water source is used for mixing pesticides, it must not be used for decontamination or eye flushing supplies, unless equipped with properly functioning valves or other mechanisms that prevent contamination of the water with pesticides, such as anti-backflow siphons, one-way or check valves, or an air gap sufficient to prevent contamination.

(b) Soap and single-use towels. The handler employer must provide soap and single-use towels for drying in quantities sufficient to meet the handlers' needs. Hand sanitizing gels and liquids or wet towelettes do not meet the requirement for soap. Wet towelettes do not meet the requirement for single-use towels.

(c) Clean change of clothing. The handler employer must provide one clean change of clothing, such as coveralls, for use in an emergency.

(3) Location. The decontamination supplies must be located together outside any treated area or area subject to a restricted-entry interval, and must be reasonably accessible to each handler during the handler activity. The decontamination supplies must not be more than one-quarter mile from the handler, except that where the handler activity is more than one-quarter mile from the nearest place of vehicular access or more than one-quarter mile from any nontreated area, the decontamination supplies may be at the nearest place of vehicular access outside any treated area or area subject to a restricted-entry interval.

(a) Mixing sites. Decontamination supplies must be provided at any mixing site.

(b) Exception for pilots. Decontamination supplies for a pilot who is applying pesticides aerially must be in the aircraft or at the aircraft loading site.

(c) Exception for treated areas. The decontamination supplies must be outside any treated area or area subject to a restricted-entry interval, unless the soap, single-use towels, water and clean change of clothing are protected from pesticide contamination in closed containers.

(4) Emergency eye-flushing.

(a) Whenever a handler is mixing or loading a pesticide product whose labeling requires protective eyewear for handlers, or is mixing or loading any pesticide using a closed system operating under pressure, the handler employer must provide at each mixing and loading station and handler decontamination sites, immediately available to the handler, at least one plumbed or portable eye wash system that is capable of delivering gently running water at a rate of at least 0.4 gallons (1.5 liters) per minute for at least fifteen minutes, at least six gallons of water. A plumbed or portable system meeting the above requirements ((~~shall~~)) must be provided at all permanent mixing and loading sites.

(b) Whenever a handler is applying a pesticide product whose labeling requires protective eyewear for handlers, the handler employer must provide at least one pint of water per handler in portable containers that are immediately available to each handler.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-11225, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-11415 Agricultural employer responsibilities to protect workers entering treated areas during a restricted-entry interval —40 C.F.R., Sec. 170.605. If an agricultural employer directs a worker to perform activities in a treated area where a restricted-entry interval is in effect, all of the following requirements must be met:

(1) The agricultural employer must ensure that the worker is at least eighteen years old.

(2) Prior to early entry, the agricultural employer must provide to each early entry worker the information described in (a) through (h) of this subsection. The information must be provided orally in a manner that the worker can understand.

(a) Location of early entry area where work activities are to be performed.

(b) Pesticide(s) applied.

(c) Dates and times that the restricted-entry interval begins and ends.

(d) Which exception in WAC 296-307-11410 is the basis for the early entry, and a description of tasks that may be performed under the exception.

(e) Whether contact with treated surfaces is permitted under the exception.

(f) Amount of time the worker is allowed to remain in the treated area.

(g) Personal protective equipment required by the pesticide product labeling for early entry.

(h) Location of the pesticide safety information required in WAC 296-307-10830(1) or 296-307-10835(1) and the location of the decontamination supplies required in subsection (8) of this section.

(3) Prior to early entry, the agricultural employer must ensure that each worker either has read the applicable pesticide product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements and statements related to human hazards or precautions, first aid, and user safety.

(4) The agricultural employer must ensure that each worker who enters a treated area during a restricted-entry interval is provided the personal protective equipment specified in the pesticide product labeling for early entry. The agricultural employer must ensure that the worker uses the personal protective equipment as intended according to manufacturer's instructions and follows any other applicable requirements on the pesticide product labeling. Personal protective

equipment must conform to the standards in WAC 296-307-11220 (2)(a) through (i).

(5) The agricultural employer must maintain the personal protective equipment in accordance with WAC 296-307-11220 (3) and (4).

(6) The agricultural employer must ensure that no worker is allowed or directed to wear personal protective equipment without implementing measures sufficient to prevent heat-related illness and that each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

(7)(a) The agricultural employer must instruct each worker on the proper use and removal of the personal protective equipment, and as appropriate, on its cleaning, maintenance and disposal. The agricultural employer must not allow or direct any worker to wear home or to take home employer-provided personal protective equipment contaminated with pesticides.

(b) Each worker is instructed in the prevention, recognition, and first-aid treatment of heat-related illness.

Note: Additional requirements in WAC 296-307-097 Outdoor heat exposure, may apply between May 1st and September 30th of each year. See Part G-1.

(8) During any early entry activity, the agricultural employer must provide decontamination supplies in accordance with WAC 296-307-11225, except the decontamination supplies must be outside any area being treated with pesticides or subject to a restricted-entry interval, unless the decontamination supplies would otherwise not be reasonably accessible to workers performing early entry tasks.

(9) If the pesticide product labeling of the product applied requires protective eyewear, the agricultural employer must provide at least one pint of water per worker in portable containers for eye flushing that is immediately available to each worker who is performing early entry activities.

(10) At the end of any early entry activities the agricultural employer must provide, at the site where the workers remove personal protective equipment, soap, single-use towels and an adequate amount of water so that the workers may wash thoroughly. At least ten gallons of water for one employee and twenty gallons of water for two or more employees ((~~shall~~)) must be provided at early entry sites that do not have running water.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-11415, filed 10/22/19, effective 2/3/20.]

AMENDATORY SECTION (Amending WSR 19-21-169, filed 10/22/19, effective 2/3/20)

WAC 296-307-11420 Exceptions to personal protective equipment requirements specified on pesticide product labeling—40 C.F.R., Sec. 170.607. (1) Body protection.

(a) A chemical-resistant suit may be substituted for coveralls. If a chemical-resistant suit is substituted for coveralls, any labeling requirement for an additional layer of clothing beneath the coveralls is waived.

(b) A chemical-resistant suit may be substituted for coveralls and a chemical-resistant apron.

(2) Boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) Gloves. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during activities with plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they must be worn only with chemical-resistant liners and they must not be worn for any other use.

(4) Closed systems.

(a) When pesticides are being mixed or loaded using a closed system that meets all of the requirements in (b) of this subsection, and the handler employer meets the requirements in (c) of this subsection, the following exceptions to labeling-specified personal protective equipment are permitted:

(i) Handlers using a closed system to mix or load pesticides with a signal word of "DANGER" or "WARNING" may substitute a long-sleeved shirt, long pants, shoes and socks, chemical-resistant apron, protective eyewear, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Handlers using a closed system to mix or load pesticides other than those specified in (a)(i) of this subsection may substitute protective eyewear, long-sleeved shirt, long pants, and shoes and socks for the labeling-specified personal protective equipment.

(b) The exceptions in (a) of this subsection apply only in the following situations:

(i) Where the closed system removes the pesticide from its original container and transfers the pesticide product through connecting hoses, pipes and couplings that are sufficiently tight to prevent exposure of handlers to the pesticide product, except for the negligible escape associated with normal operation of the system.

(ii) When loading intact, sealed, water soluble packaging into a mixing tank or system. If the integrity of a water soluble packaging is compromised (for example, if the packaging is dissolved, broken, punctured, torn, or in any way allows its contents to escape), it is no longer a closed system and the labeling-specified personal protective equipment must be worn.

(c) The exceptions in (a) of this subsection apply only where the handler employer has satisfied the requirements in WAC 296-307-10835 and all of the following conditions:

(i) Each closed system must have written operating instructions that are clearly legible and include: Operating procedures for use, including the safe removal of a probe; maintenance, cleaning and repair; known restrictions or limitations relating to the system, such as incompatible pesticides, sizes (or types) of containers or closures that cannot be handled by the system; any limits on the ability to measure a pesticide; and special procedures or limitations regarding partially filled containers.

(ii) The written operating instructions for the closed system must be available at the mixing or loading site and must be made available to any handlers who use the system.

(iii) Any handler operating the closed system must be trained in its use and operate the closed system in accordance with its written operating instructions.

(iv) The closed system must be cleaned and maintained as specified in the written operating instructions and as needed to make sure the system functions properly.

(v) All personal protective equipment specified in the pesticide product labeling is immediately available to the handler for use in an emergency.

(vi) Protective eyewear must be worn when using closed systems operating under pressure.

(5) Enclosed cabs.

(a) If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in (a) and (b) of this subsection.

(b) Persons occupying an enclosed cab ((~~shall~~)) must have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They ((~~shall~~)) must wear such personal protective equipment if it is necessary to exit the cab within a treated area during application or when a restricted-entry interval is in effect. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab to prevent contamination of the cab.

(c) Persons occupying such an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(d) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a particulate/dust/mist filtering respirator is specified on the pesticide product labeling, it must be worn.

(6) Aerial applications.

(a) Use of gloves. The wearing of chemical-resistant gloves when entering or leaving an aircraft used to apply pesticides is optional, unless such gloves are required on the pesticide product labeling. If gloves are brought into the cockpit of an aircraft that has been used to apply pesticides, the gloves ((~~shall~~)) must be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(b) Open cockpit. Handlers applying pesticides from an open cockpit aircraft must use the personal protective equipment specified in the pesticide product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A helmet with a face shield lowered to cover the face may be substituted for protective eyewear.

(c) Enclosed cockpit. Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) Crop advisors.

(a) Provided the conditions in (b) through (d) of this subsection are met, crop advisors and their employees entering treated areas to perform crop advising tasks while a restricted-entry interval is in effect may substitute either of the following sets of personal protective equipment for the personal protective equipment specified on the pesticide labeling for handler activities:

(i) The personal protective equipment specified on the pesticide product labeling for early entry.

(ii) Coveralls, shoes plus socks and chemical-resistant gloves made of any waterproof material, and eye protection if the pesticide product labeling applied requires protective eyewear for handlers.

(b) The application has been complete for at least four hours.

(c) No such entry is allowed until any inhalation exposure level listed in the pesticide product labeling has been reached or any ventilation criteria required in WAC 296-307-10915 (2)(c) or the pesticide product labeling have been met, and either inhalation exposure levels are below PELs in WAC 296-307-624, Part Y-6 Respiratory hazards, or respiratory protection is provided and worn according to requirements in WAC 296-307-594, Part Y-5.

(d) The crop advisor or crop advisor employee who enters a treated area during a restricted-entry interval only performs crop advising tasks while in the treated area.

[Statutory Authority: RCW 49.17.040, 49.17.050, 49.17.280 and chapter 49.17 RCW. WSR 19-21-169, § 296-307-11420, filed 10/22/19, effective 2/3/20.]

OTS-2686.1

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25003 ((What)) Definitions that apply to this section((?)). ((~~"Handrail" is a~~)) **Handrail.** A rail used to provide employees with a handhold for support.

((~~"Hole" means~~)) **Hole.** A gap or void two inches or more in its least dimension, in a floor, roof, or other surface.

((~~"Opening" means~~)) **Opening.** A gap or void thirty inches (76 cm) or more high and eighteen inches (48 cm) or more wide, in a wall or partition, through which employees can fall to a lower level.

((~~"Platform" means~~)) **Platform.** A work surface elevated above the surrounding floor or ground.

((~~"Runway" means~~)) **Runway.** A passageway for persons, elevated above the surrounding floor or ground level, such as a footwalk along shafting or a walkway between buildings.

((~~"Stair railing" means~~)) **Stair railing.** A vertical barrier along exposed sides of a stairway to prevent people from falling.

((~~"Standard railing" means~~)) **Standard railing.** A vertical barrier along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent people from falling.

((~~"Standard strength and construction" means~~)) **Standard strength and construction.** Any construction of railings, covers, or other guards that meets the requirements of this section.

((~~"Toeboard" means~~)) **Toeboard.** A vertical barrier at floor level along open sides or edges of a floor opening, platform, runway, ramp, or other walking/working surface to prevent materials, tools, or debris from falling onto persons passing through or working in the area below.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25003, filed 6/2/20, effective 10/1/20. WSR 97-09-013, recodified as § 296-307-25003, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25003, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25006 When ((~~may~~)) railings may be omitted((?)). Railings may be omitted from sections of open-sided floors, platforms, or walkways where guard rails impair operations, if railings are replaced when they no longer impair operations.

[WSR 97-09-013, recodified as § 296-307-25006, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25006, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25009 ((~~What~~)) Protection ((~~must~~)) an employer must provide for openings((?)). (1) Every stairway floor opening must be guarded by a standard railing constructed according to this section. The railing must guard all exposed sides (except the entrance to the stairway). Infrequently used stairways where traffic across the opening prevents using a fixed standard railing (as when located in aisle spaces, etc.), may use an alternate guarding method. In these cases, the guard must have a hinged floor opening cover of standard strength and construction and removable standard railings on all exposed sides (except at the entrance to the stairway). See chapter 296-880 WAC, Unified safety standards for fall protection.

(2) When employees must feed material into any hatchway or chute opening, you must provide protection to prevent people from falling through the opening. See chapter 296-880 WAC, Unified safety standards for fall protection.

(3) When practical, the area under floor openings must be fenced off. Otherwise, the area must be plainly marked with yellow lines and telltales hanging within 5-1/2 feet of the ground or floor level.

(4) Where floor openings are used to drop materials from one level to another, audible warning systems must be installed and used to indicate to employees on the lower level when material is dropped.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25009, filed 6/2/20, effective 10/1/20. WSR 97-09-013, recodified as § 296-307-25009, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25009, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25012 ((What)) Protection ((must)) an employer must provide for openings and holes((?)). See requirements in chapter 296-880 WAC, Unified safety standards for fall protection.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25012, filed 6/2/20, effective 10/1/20. Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-25012, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-25012, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25012, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25015 ((What)) Protection ((must)) an employer must provide for open-sided floors, platforms, and runways((?)). See requirements in chapter 296-880 WAC, Unified safety standards for fall protection.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25015, filed 6/2/20, effective 10/1/20. Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-25015, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-25015, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25015, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25018 ((What)) Requirements that apply to stairway railings and guards((?)). (1) Every flight of stairs having four or more risers must have standard stair railings or standard handrails as follows (stairway widths measured clear of all obstructions except handrails):

(a) Stairways less than 44 inches wide with both sides enclosed must have at least one handrail, preferably on the right side descending.

(b) Stairways less than 44 inches wide with one side open must have at least one stair railing on the open side.

(c) Stairways less than 44 inches wide with both sides open must have one stair railing on each side.

(d) Stairways more than 44 inches wide but less than 88 inches wide must have one handrail on each enclosed side and one stair railing on each open side.

(e) Stairways 88 or more inches wide must have one handrail on each enclosed side, one stair railing on each open side, and one intermediate stair railing at the approximate middle.

Exception: Vehicle service pit stairways are exempt from this requirement if hand or stair rails would prevent vehicle movement into position over the pit.

(2) Winding stairs must have a handrail that prevents walking on all portions of the treads that are less than 6 inches wide.

(3) Nonindustrial and "monumental" steps are exempt from the requirements of this section. However, public and private building steps at loading or receiving docks, in maintenance areas, etc., and stairs used exclusively by employees, must meet the requirements of this section.

[WSR 97-09-013, recodified as § 296-307-25018, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25018, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25021 ((~~How must a~~)) Standard railing ((~~be constructed?~~)) construction. A standard railing must meet the following requirements:

(1) The railing has a top rail, intermediate rail, and posts.

(2) The railing height is between thirty-six and forty-two inches nominal from the upper surface of the top rail to the floor, platform, runway, or ramp level.

(3) The top rail is smooth.

(4) The intermediate rail is approximately halfway between the top rail and the floor, platform, runway, or ramp.

(5) The ends of the rails do not overhang the terminal posts except where the overhang does not create a hazard.

(6) Guardrails taller than 42 inches are constructed so they do not create a hazard. Additional mid-rails are installed so that openings beneath the top rail prevent a spherical object with a 19-inch or larger diameter from falling through.

[WSR 97-09-013, recodified as § 296-307-25021, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25021, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25024 ((~~How must a~~)) Stair railing ((~~be constructed?~~)) construction. A stair railing must be constructed similar to a standard railing. The stair railing must be between 34 and 30 inches tall measured from the top of the top rail to the tread surface meeting the face of the riser at the forward edge of the tread.

[WSR 97-09-013, recodified as § 296-307-25024, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25024, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25027 ((~~What are the~~)) Requirements for railing dimensions((~~?~~)). Standard railings must meet the following requirements:

(1) For wood railings:

(a) The posts are of at least two inch by four inch nominal stock spaced six feet apart or less; and

(b) The top and intermediate rails are of at least two inch by four inch nominal stock.

(c) If the top rail is made of two right-angle pieces of 1-inch by 4-inch stock, posts are spaced on 8-foot centers, with 2-inch by 4-inch intermediate rail.

(2) For pipe railings:

(a) The posts and top and intermediate railings are at least 1-1/2 inches nominal diameter (outside diameter); and

(b) The posts are spaced on centers of eight feet or less.

(3) For structural steel railings:

(a) The posts and top and intermediate rails are of 2-inch by 2-inch by 3/8-inch angles or other metal shapes of equivalent bending strength; and

(b) The posts are spaced on centers of eight feet or less.

(4) Post anchors and framing parts for all railings are constructed so that the completed structure can withstand a load of at least two hundred pounds applied in any direction at any point on the top rail.

(5) Other types, sizes, and arrangements of railing construction that meet the following requirements are acceptable:

(a) The top rail is smooth;

(b) The top rail is between thirty-six and forty-two inches nominal above the floor, platform, runway, or ramp level;

(c) The railing is strong enough to withstand two hundred pounds of pressure on the top rail;

(d) The railing provides protection between the top rail and the floor, platform, runway, ramp, or stair treads, equivalent to that of a standard intermediate rail;

(e) There are no overhanging rail ends unless the overhang does not create a hazard; such as baluster railings, scrollwork railings, or paneled railings.

Note: The dimensions specified are based on the U.S. Department of Agriculture Wood Handbook, No. 72, 1955 (No. 1 (S4S) Southern Yellow Pine (Modulus of Rupture 7,400 psi)) for wood; ANSI G 41.5-1970, American National Standard Specifications for Structural Steel, for structural steel; and ANSI B 125.1-1970, American National Standard Specifications for Welded and Steamless Steel Pipe, for pipe.

[WSR 97-09-013, recodified as § 296-307-25027, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25027, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25030 ((~~What~~)) Requirements that apply to toeboards((~~?~~)). (1) Standard toeboard height is at least four inches nominal from its top edge to the level of the floor, platform, runway,

or ramp. The toeboard must be securely fastened in place and with a maximum of 1/4 inch clearance above floor level. It must be made of any substantial material that is either solid or with openings that are a maximum of one inch in diameter.

(2) Where material is piled high enough that a standard toeboard does not provide protection, paneling from the floor to the intermediate rail, or to the top rail, must be provided.

[WSR 97-09-013, recodified as § 296-307-25030, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25030, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25033 ((~~How must~~)) Handrails and railings ((~~be constructed?~~)) construction. (1) A handrail must have a horizontal part mounted directly on a wall or partition by brackets attached to the lower side of the handrail. The brackets must be attached to ensure that there is a smooth surface along the top and both sides of the handrail. The handrail must be rounded or otherwise provide an adequate handhold for anyone grasping it to avoid falling. The ends of the handrail should be turned in to the supporting wall or arranged to prevent a projection hazard.

(2) Handrails must be a maximum of thirty-four inches high and at least thirty inches from the upper surface of the handrail to the surface of the tread in line with the face of the riser or to the surface of the ramp.

(3) The size of handrails must be:

(a) For hardwood, at least two inches in diameter.

(b) For metal pipe, at least 1-1/2 inches in diameter.

(4) Brackets must be spaced a maximum of eight feet apart.

(5) Handrail mounting must be strong enough to withstand a load of at least two hundred pounds applied in any direction at any point on the rail.

(6) All handrails and railings ((~~shall~~)) must have a clearance of at least 1-1/2 inches between the handrail or railing and the wall or any other object.

[WSR 97-09-013, recodified as § 296-307-25033, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25033, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-25036 ((What)) Materials ((~~may be used~~)) for floor opening covers((?)). Floor opening covers must be made of any material that meets the following strength requirements:

(1) Trench or conduit covers and their supports, when located in plant roadways, must be designed to carry a truck rear-axle load of at least 20,000 pounds.

(2) Manhole covers and their supports, when located in plant roadways, must meet local standard highway requirements if any; otherwise, they must be designed to carry a truck rear-axle of at least 20,000 pounds.

(3) Other floor opening covers must be made of any material that can carry a truck rear-axle load of at least 20,000 pounds. Covers may project a maximum of one inch above the floor level if all edges are chamfered to a maximum angle with the horizontal of thirty degrees. All hinges, handles, bolts, or other parts must set flush with the floor or cover surface.

[WSR 97-09-013, recodified as § 296-307-25036, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25036, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25039 ((~~How must~~)) Constructing and mounting skylight screens ((~~be constructed and mounted?~~)). See requirements in chapter 296-880 WAC, Unified safety standards for fall protection.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25039, filed 6/2/20, effective 10/1/20. WSR 97-09-013, recodified as § 296-307-25039, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25039, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 20-12-091, filed 6/2/20, effective 10/1/20)

WAC 296-307-25042 ((~~What~~)) Protection ((~~must an~~)) the employer is required to provide for openings((?)). See requirements in chapter 296-880 WAC, Unified safety standards for fall protection.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and chapter 49.17 RCW. WSR 20-12-091, § 296-307-25042, filed 6/2/20, effective 10/1/20. WSR 97-09-013, recodified as § 296-307-25042, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-25042, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-26003 ((~~What does this section cover?~~)) Scope. WAC 296-307-260 covers the safe design and construction of fixed general industrial stairs. Fixed general industrial stairs includes interior and exterior stairs around machinery, tanks, and other equipment, and stairs leading to or from floors, platforms, or pits.

This section does not apply to stairs used for fire exits, to construction operations, to private buildings or residences, or to articulated stairs that are installed on floating roof tanks or on dock facilities, where the angle changes with the rise and fall of the base support.

Stairs of public and private buildings at loading or receiving docks, in maintenance areas, etc., or stairs that are used exclusively by employees, are considered "fixed industrial steps" and must meet these requirements.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-26003, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-26003, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26003, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26006 ((~~What~~)) Definitions that apply to this section((?)). ((~~"Nose or nosing" means~~)) **Nose or nosing.** The part of a tread projecting beyond the face of the riser immediately below.

((~~"Open riser" means~~)) **Open riser.** The air space between the treads of stairways without risers.

((~~"Platform" means~~)) **Platform.** An extended step or landing breaking a continuous run of stairs.

((~~"Railing" means~~)) **Railing.** A vertical barrier erected along exposed sides of stairways and platforms to prevent people from falling. The top part of the railing usually serves as a handrail.

((~~"Rise" means~~)) **Rise.** The vertical distance from the top of a tread to the top of the next higher tread.

((~~"Riser" means~~)) **Riser.** The upright part of a step at the back of a lower tread and near the leading edge of the next higher tread.

((~~"Stairs or stairway" means~~)) **Stairs or stairway.** A series of steps. A series of steps and landings having three or more risers constitutes stairs or a stairway.

((~~"Tread" means~~)) **Tread.** The horizontal part of a step.

((~~"Tread run" means~~)) **Tread run.** The horizontal distance from the leading edge of a tread to the leading edge of an adjacent tread.

((~~"Tread width" means~~)) **Tread width.** The horizontal distance from front to back of tread, including nosing.

[WSR 97-09-013, recodified as § 296-307-26006, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26006, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26009 ((~~Where are~~)) How to determine if fixed stairs are required((~~?~~)). Fixed stairs must be provided for:

(1) Employee access from one structure level to another where operations require regular travel between levels.

(2) Employee access to operating platforms on any equipment that requires regular attention during operations.

(3) Employees that need daily access to elevations, or access at each shift, for purposes such as gauging, inspection, regular maintenance, etc., where:

(a) The work may expose employees to acids, caustics, gases, or other harmful substances; or

(b) Employees must normally carry tools or equipment by hand.

Note: This section does not prohibit the use of fixed ladders for access to elevated tanks, towers, and similar structures, overhead traveling cranes, etc., where the use of fixed ladders is common practice.

[WSR 97-09-013, recodified as § 296-307-26009, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26009, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26012 ((~~Where are~~)) Spiral stairs ((~~prohibited?~~)). Spiral stairways are prohibited except for special limited use and secondary access when a conventional stairway is not practical. Winding stairways may be installed on tanks and similar round structures where the diameter of the structure is a minimum of five feet.

[WSR 97-09-013, recodified as § 296-307-26012, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26012, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26015 ((~~How strong must~~)) Strength requirements for fixed stairs ((~~be?~~)). Fixed stairways must be designed and constructed to carry a load of five times the normal live load anticipated, and must be at least strong enough to carry safely a moving concentrated load of 1,000 pounds.

[WSR 97-09-013, recodified as § 296-307-26015, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26015, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26018 ((~~How wide must~~)) Width requirements for fixed stairs ((~~be?~~)). Fixed stairways must be at least 22 inches wide.

[WSR 97-09-013, recodified as § 296-307-26018, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26018, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26021 ((~~What angles may~~)) Angle requirements for installing stairways ((~~be installed at?~~)). (1) Fixed stairs must be installed at angles to the horizontal of between thirty and fifty degrees. Any uniform combination of rise/tread dimensions may be used that will provide a stairway at an angle within the permissible range.

The following table lists examples of rise/tread dimensions that will produce a stairway within the permissible range. Rise/tread combinations are not limited to those in the table.

Angle to horizontal	Rise (in inches)	Tread run (in inches)
30°35'	6-1/2	11
32°08'	6-3/4	10-3/4
33°41'	7	10-1/2
35°16'	7-1/4	10-1/4
36°52'	7-1/2	10
38°29'	7-3/4	9-3/4
40°08'	8	9-1/2
41°44'	8-1/4	9-1/4
43°22'	8-1/2	9
45°00'	8-3/4	8-3/4
46°38'	9	8-1/2
48°16'	9-1/4	8-1/4
49°54'	9-1/2	8

(2) A permanent stairway may be installed at an angle above the fifty degree critical angle when space limitations require. Such installations (commonly called inclined ladders or ships ladders) must have handrails on both sides and open risers. They must be capable of sustaining a live load of one hundred pounds per square foot with a safety factor of four. The following preferred and critical angles from the horizontal are recommended for inclined ladders and ships ladders:

(a) 35 to 60 degrees——Preferred angle from horizontal.

(b) 60 to 70 degrees——Critical angle from horizontal.

[WSR 97-09-013, recodified as § 296-307-26021, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and

[49.17.]060. WSR 96-22-048, § 296-306A-26021, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26024 ((~~What~~)) Requirements that apply to stair treads((?)). (1) When risers are used, each tread and the top landing of a stairway should have a nose extending 1/2 to one inch beyond the face of the lower riser.

(2) Noses should have an even leading edge.

(3) All treads must be reasonably slip-resistant and the nosings must be of nonslip finish. Welded bar grating treads without nosings are acceptable if the leading edge can easily be identified by employees descending the stairway and the tread is serrated or is nonslip.

(4) Rise height and tread width must be uniform throughout any flight of stairs including any foundation structure used as one or more treads of the stairs.

[WSR 97-09-013, recodified as § 296-307-26024, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26024, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26027 ((~~What~~)) Requirements that apply to the length of stairways((?)). Long flights of stairs, unbroken by landings or intermediate platforms, should be avoided. You should consider providing intermediate platforms where practical and for frequently used stairways. Stairway platforms must be at least as wide as the stairway and at least 30 inches long, measured in the direction of travel.

[WSR 97-09-013, recodified as § 296-307-26027, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26027, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-26030 ((~~What~~)) Requirements that apply to railings and handrails on fixed stairs((?)). Standard railings must be provided on the open sides of all exposed stairways and stair platforms. Handrails must be provided on at least one side of closed stairways, preferably on the right side descending. Stair railings and handrails must be installed according to WAC 296-307-250.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-26030, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as §

296-307-26030, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26030, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-26033 ((What)) Requirements that apply to alternating tread-type stairs((?)). ((~~"Alternating tread-type stairs" means~~)) **Alternating tread type stairs.** Stairs with a series of steps between 50 and 70 degrees from horizontal, attached to a center support rail in an alternating manner so that a user of the stairs never has both feet at the same level at the same time.

(1) Alternating tread-type stairs must be designed, installed, used, and maintained according to the manufacturer's specifications, and must have the following:

(a) Stair rails on all open sides;

(b) Handrails on both sides of enclosed stairs;

(c) Stair rails and handrails that provide an adequate handhold for a user grasping it to avoid a fall;

(d) A minimum of 17 inches between handrails;

(e) A minimum width of 22 inches overall;

(f) A minimum tread depth of 8 inches;

(g) A minimum tread width of 7 inches; and

(h) A maximum rise of 9 1/2 inches to the tread surface of the next alternating tread.

(2) Alternating tread-type stairs must have a maximum 20-foot continuous rise. Where more than a 20-foot rise is necessary to reach the top of a required stair, one or more intermediate platforms must be provided according to WAC 296-307-26027.

(3) Stairs and platforms must be installed so the top landing of the alternating tread stair is flush with the top of the landing platform.

(4) Stair design and construction must sustain a load of at least five times the normal live load, and be at least strong enough to carry safely a moving concentrated load of 1,000 pounds.

(5) Treads must have slip-resistant surfaces.

(6) Where a platform or landing is used, the width must be at least as wide as the stair and at least 30-inches deep in the direction of travel. Stairs must be flush with the top of the landing platform.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-26033, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-26033, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26033, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-26036 ((What)) Other requirements that apply to fixed stairs((?)). (1) Vertical clearance above any stair tread to an

overhead obstruction must be at least 7 feet measured from the leading edge of the tread.

(2) Stairs with treads less than 9 inches wide should have open risers.

(3) Open grating type treads are desirable for outside stairs.

[WSR 97-09-013, recodified as § 296-307-26036, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-26036, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 97-09-013, filed 4/7/97, effective 4/7/97)

WAC 296-307-27005 ((~~What~~)) Requirements that apply to aerial manlift equipment((~~?~~)). (1) We will accept safety factor test data on working or structural components from one of the following as evidence that a manlift meets minimum safety requirements:

(a) The manufacturer;

(b) A competent testing laboratory;

(c) A registered engineering firm; or

(d) A registered engineer.

If, after use, it appears doubtful whether this equipment will meet the above requirements, we may require that tests be conducted, and we may order that you make corrections.

(2) All aerial manlifts must have working brake systems.

(3) Automatic apertures must be installed in the hydraulic systems of aerial manlifts to maintain the boom in position in case any part of the hydraulic pressure system fails.

(4) Controls must be guarded by partial enclosures to minimize accidental contact.

(5) The manufacturer's recommended maximum load limit must be posted conspicuously near the controls and must be kept in a legible condition.

(6) All critical hydraulic and pneumatic components must meet the provisions of ANSI A92.2-1969, Section 4.9 Bursting Safety Factor. Critical components are those which, in case of failure, would cause a free fall or free rotation of the boom. All noncritical components must have a bursting safety factor of at least two to one.

[WSR 97-09-013, recodified as § 296-307-27005, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-27005, filed 10/31/96, effective 12/1/96.]

AMENDATORY SECTION (Amending WSR 98-24-096, filed 12/1/98, effective 3/1/99)

WAC 296-307-27010 ((~~What~~)) Requirements that apply to using aerial manlift equipment((~~?~~)). (1) The manufacturer's instructional manual, if any, must be used to establish the proper operational sequences and maintenance procedures. If there is no manual, you must devel-

op instructions. The instructions must be available for reference by operators.

(2) The assigned operator must make a daily visual inspection and perform the tests recommended by the manufacturer.

(3) Only employees qualified by training or experience may operate aerial manlifts.

(4) Employees must report defective aerial manlift equipment to you as soon as identified. Using defective equipment is prohibited when the defect may cause an accident.

(5) When moving to and from the job site, the basket of the manlift must be in the low position.

(6) Unsafe practices are prohibited, such as, sitting or standing on the basket edge, standing on material placed across the basket, or working from a ladder set inside the basket.

(7) The basket must not be rested on a fixed object so that the weight of the boom is supported by the basket.

(8) The employee and the aerial manlift equipment must maintain distance from high voltage lines according to WAC 296-307-150.

[Statutory Authority: RCW 49.17.040. WSR 98-24-096, § 296-307-27010, filed 12/1/98, effective 3/1/99. WSR 97-09-013, recodified as § 296-307-27010, filed 4/7/97, effective 4/7/97. Statutory Authority: RCW 49.17.040, [49.17.]050 and [49.17.]060. WSR 96-22-048, § 296-306A-27010, filed 10/31/96, effective 12/1/96.]

WSR 21-04-129
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION
[Filed February 2, 2021, 10:30 a.m., effective April 26, 2021]

Effective Date of Rule: April 26, 2021.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: At the request of the transportation commission, the definition of the transportation commission has been edited in WAC 468-305-001 reflecting its statutory authority.

Purpose: The effective date for this rule making is changed to April 26, 2021. Rules are needed to define customer requirements to use toll facilities and Washington state department of transportation procedures for processing transactions and penalties. This rule making is required to update specific requirements and procedures that will change when a new toll back office system becomes operational.

Citation of Rules Affected by this Order: Amending WAC 468-305-001, 468-305-100, 468-305-105, 468-305-125, 468-305-131, 468-305-133, 468-305-150, 468-305-160, 468-305-210, 468-305-220, 468-305-300, 468-305-315, 468-305-316, 468-305-320, 468-305-330, 468-305-340, 468-305-400, 468-305-526, 468-305-527, 468-305-528, 468-305-529, 468-305-540, 468-305-570, and 468-305-580.

Statutory Authority for Adoption: RCW 46.63.160(5), 47.01.101(5), 47.56.030(1), and 47.56.795.

Adopted under notice filed as WSR 19-09-069 on April 16, 2019.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 24, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: February 1, 2021.

Shannon Gill, Interim Director
Risk Management and Legal Services

WSR 21-04-131
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 2, 2021, 11:12 a.m., effective March 5, 2021]

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

Purpose: The department is amending WAC 388-76-10695 and 388-76-10730 to update an adoption by reference in chapter 388-76 WAC. This is a technical correction after WAC 51-51-0325 was moved to WAC 51-51-0330 in July 2020. This is a numbering change only. There is no policy change associated with this update.

Citation of Rules Affected by this Order: Amending WAC 388-76-10695 and 388-76-10730.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 20-22-100 on November 3, 2020.

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

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

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

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

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

Date Adopted: February 2, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4837.2

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10695 Building codes—Structural requirements. (1) For single family dwellings used as an adult family home after July 1, 2007, the home must ensure the building meets the requirements of WAC ((~~51-51-0325 Section R325~~)) 51-51-0330 if the building is:

(a) New; or

(b) An existing building converted for use as an adult family home.

(2) For buildings licensed as a home before July 1, 2007, the requirement of subsection (1) of this section does not apply if:

(a) The building sells or transfers to a new owner; and

(b) The new owner takes possession of the building before the issuance of the license.

(3) The home must ensure that every area used by residents:

(a) Has direct access to at least one exit which does not pass through other areas such as a room or garage subject to being locked or blocked from the opposite side; and

(b) Is not accessible only by or with the use of a:

(i) Ladder;

(ii) Folding stairs; or

(iii) Trap door.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10695, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10730 Grab bars and hand rails. (1) Homes licensed before November 1, 2016, must have at a minimum securely installed:

(a) Grab bars in bathing facilities such as tubs and showers;

(b) Grab bars next to toilets, if needed by any resident;

(c) Handrails on a step or steps if needed by any resident; and

(d) Handrails on ramps if needed by any resident.

(2) Homes licensed and bathroom additions that occur after November 1, 2016, must install grab bars securely fastened in accordance with WAC ((~~51-51-0325~~)) 51-51-0330 at the following locations:

(a) Bathing facilities such as tubs and showers; and

(b) Each side of any toilet used by residents.

(3) Homes licensed after November 1, 2016, must install handrails on each side of the following:

(a) Step or steps; and

(b) Ramps used by residents.

[Statutory Authority: Chapter 70.128 RCW. WSR 16-20-095, § 388-76-10730, filed 10/4/16, effective 11/4/16. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10730, filed 10/16/07, effective 1/1/08.]

WSR 21-04-145
PERMANENT RULES
DEPARTMENT OF HEALTH
(Pharmacy Quality Assurance Commission)
[Filed February 3, 2021, 10:24 a.m., effective December 1, 2021]

Effective Date of Rule: December 1, 2021.

Purpose: WAC 246-945-178 Pharmacist continuing education and 246-945-220 Pharmacy technician—Continuing education. This filing delays the effective date of WAC 246-945-178 and 246-945-220 until December 1, 2021. Rules were adopted on June 1, 2020, as WSR 20-12-072 creating these sections and making them effective March 1, 2021. Due to delays in related rule making, the pharmacy quality assurance commission (commission) is extending the effective date for WAC 246-945-178 and 246-945-220 to December 1, 2021. The effective date of these new continuing education rules is delayed to align with the implementation of the two-year renewal cycle, which was delayed in order to ensure an even distribution of renewals throughout the fiscal biennium.

Citation of Rules Affected by this Order: [New WAC 246-945-178 and 246-945-220.]

Statutory Authority for Adoption: RCW 18.64.005, 18.64A.020.

Adopted under notice filed as WSR 20-03-126 on January 17, 2020.

Changes Other than Editing from Proposed to Adopted Version: See WSR 20-12-072. No changes are being made to the rule language in this package. The commission is only extending the effective date to align with rule making that will amend the fees and renewal cycle which is currently in progress.

A final cost-benefit analysis is available by contacting Lindsay Trant, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2932, fax 360-236-2321, TTY 711, email PharmacyRules@doh.wa.gov.

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

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

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

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

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

Date Adopted: February 3, 2021.

Tim Lynch, PharmD, MS, FABC, FASHP, Chair
Pharmacy Quality Assurance Commission