WSR 21-02-023
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-190837, General Order R-602—Filed December 28, 2020, 1:02 p.m., effective December 31, 2020]

In the matter of amending, adopting, and repealing sections of chapter 480-107 WAC, relating to purchases of electricity.

1 **STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 20-22-075, filed with the code reviser on November 2, 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 this rule on the date this order is entered.

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

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

6 **REFERENCE TO AFFECTED RULES**: This order amends, adopts, or repeals the following sections of the Washington Administrative Code: New WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs, 480-107-011 Applicability of rule sections, 480-107-017 RFP filing and approval, 480-107-021 Informational filing requirement, 480-107-023 Independent evaluator for repowering and from a utility or its subsidiary or affiliate and 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate; amending chapter 480-107 WAC, Purchases of electricity, WAC 480-107-001 Purpose and scope, 480-107-002 Exemptions from rules, 480-107-007 Definitions, 480-107-015 Solicitation process for any RFP, 480-107-025 Contents of the RFP solicitations, 480-107-035 Bid ranking procedure, 480-107-045 Pricing and contracting procedures, 480-107-065 Acquisition of conservation and efficiency resources, 480-107-075 Contract finalization, 480-107-115 System emergencies and 480-107-145 Filings—Investigations; and repealing WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a Preproposal statement of inquiry (CR-101) on February 5, 2020, at WSR 20-05-009. The statement advised interested persons that the commission was considering initiating a rule making to review rules in chapter 480-107 WAC to incorporate statutory changes made since 2006, and to consider changes contemplated in an earlier rule making, as well as to review requirements, policy improvements, and changes in the energy industry that may affect the rules governing purchases of electricity. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered utility companies and the commission's list of utility attorneys.

8 **WRITTEN COMMENTS:** Pursuant to the notices, the commission received comments on March 25, 2020, in Docket UE-190837 and on September 14 and December 3, 2020. Those rules were developed in the prior rule-making Docket, UE-161024, and provided for reference in this Docket UE-190837. The commission received comments from eleven stakeholders.

MEETINGS OR WORKSHOPS: The commission held workshops on February 5, February 25, May 22, and July 16, 2020.

9 **SMALL BUSINESS ECONOMIC IMPACT:** On August 31, 2020, the commission issued a small business economic impact statement questionnaire to all interested persons. 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 expressed general concerns with the administrative burden on utilities of bringing Washington's rules in line with those of other states, as well as the cost of complying with proposed rules regarding requests for proposals (RFPs) and independent evaluators (IEs). PSE, however, does not qualify as a small business under chapter 19.85 RCW.

10 The commission's internal analysis shows that the proposed rules cause a small increase in a utility's costs to conduct RFPs but have the potential to greatly lower the utility's overall costs of doing business through an RFP process that procures lower cost resources than under the existing rule. The proposed rules do not change the current rules related to bidder fees, thus retaining the utilities' potential to recover these RFP-related costs. The commission's rules and authority provide avenues to protect small businesses that may face potential bidder fees in a proposed RFP.

11 The proposed rules reduce the burden on small business participation in RFPs by increasing the transparency of the RFP process. The proposed rules require utilities to provide increased detail in RFPs regarding the utility's resource need, evaluation rubric, and ranking procedures, which will reduce the time and expense to both small and large businesses to participate as bidders. For example, the expanded level of required detail will help small businesses understand how their specialty can be successfully bid. The proposed rules require competitive procurement of energy efficiency

resources, which affords greater opportunities for small businesses to provide those services.

12 After full review and analysis, the commission finds that the proposed rules will impose *de minimis* costs on electric utility companies and their small business customers through changes in rates. Because the proposed rules will potentially save far greater amounts through lower costs, we conclude that the proposed rules will not have a disproportionate impact on small businesses.

13 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of Proposed rule making (CR-102) on November 2, 2020, at WSR 20-22-075. The commission scheduled this matter for virtual oral comment and adoption under Notice No. WSR 20-22-075 at 9:30 a.m., Monday, December 14, 2020. The CR-102 provided interested persons the opportunity to submit written comments to the commission.

14 **WRITTEN COMMENTS:** The commission received written comments from PacifiCorp, d/b/a Pacific Power & Light Co. (PacifiCorp), Avista Corporation, d/b/a Avista Utilities (Avista), Puget Sound Energy (PSE), the public counsel unit of the Washington attorney general's office (public counsel), Climate Solutions, Northwest & Intermountain Power Producers Coalition (NIPPC), NW Energy Coalition (NWEC), Renewable Northwest (RNW), Sierra Club, and Michael Laurie. 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.[1] Additionally, we summarize and respond in greater detail to certain comments received during this rule-making proceeding in Paragraphs 18-40, below.

1 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.

15 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a virtual rule-making hearing on Monday, December 14, 2020, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard oral comments from Steven Johnson, representing commission staff, and PacifiCorp, PSE, public counsel, NIPPC, Avista, and NWEC. Those comments emphasized or supplemented those commenters' written comments.

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

17 **DISCUSSION:** The commission provides the following guidance and clarity in addition to staff's responses to proposed changes in appendix A.

18 Proposed amendment to chapter 480-107 WAC. Climate Solutions recommended the commission change the chapter title from "Purchases of Electricity" to "Resource Procurement." This suggestion reflects stakeholder comments made at the February 25, 2020, workshop. We agree with stakeholders that the directives in the Clean Energy Transformation Act (CETA) will require the provision of electric service with a diversity of resources, some of which are not electricity, including energy efficiency and conservation, demand response, storage, and other distributed energy resources to obtain the statutory goals and benefits to customers. The commission finds that is appropriate and reasonable to rename chapter 480-107 WAC "Purchases of Resources," which more accurately describes the rules set forth in chapter 480-107 WAC without modifying their scope or applicability.[2] The rules continue to govern electric companies' procurement of resources for the provision of electric service under the requirements of CETA, as stated above.

2 *See* RCW 34.05.900 ("Section captions and subchapter headings used in this chapter do not constitute any part of the law."); WAC 480-07-010 Scope of this chapter. ("These rules are authorized by and supplement the Administrative Procedure Act, chapter 34.05 RCW, and the statutes that define the commission's authority and responsibilities found prncipally [principally] in Titles 80 and 81 RCW. The commission's procedural rules should be interpreted in conjunction with these statutes.").

19 Proposed amendments to WAC 480-107-001. The commission amends WAC 480-107-001 to set the requirements for "utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies." While PacifiCorp and PSE raised concerned [concerns] about the rule limiting their ability to acquire resources, these rules do not set the sole procedures for electric utility procurement.[3] Consistent with the existing rule language, the proposed rule provides that utilities may still seek alternative routes to obtain resources while meeting the increasing goals of CETA.

3 PacifiCorp comments at 3 & 4 (December 3, 2020); PSE comments at 3 (September 14, 2020).

20 Proposed amendments to WAC 480-107-007. In this order, we modify the proposed definition of "repowering," eliminating "federal or state regulatory requirements" to address concerns raised by commenters.[4] The definition of "repowering" expressly exempts routine major maintenance and work related to existing hydropower licensing obligations, among other things. If a utility conducts an RFP,[5] it is required to include in the RFP the repowering of an existing utility-owned generation facility if that generation facility is being considered to fill the resource need identified in the RFP. The utility is additionally required by WAC 480-107-023 and 480-107-024 to use an IE in this situation. This requirement ensures there is no bias in favor of selecting resources that create rate base for the utility.

4 Invenergy comments (September 14, 2020).

5 *See* proposed WAC 480-107-009.

21 Several stakeholders raised concerns that ongoing work to maintain the operation of a generation facility, specifically a hydroelectric generation facility, over its expected life might fall under the definition of repowering.[6] That is not our intent. The exemption clause is intended to prevent a utility from conflicts between obligations the utility has already incurred to receive a hydroelectric license (such as aquatic, terrestrial, recreation, and streamflow requirements), and a

commission requirement to forego those obligations as a prerequisite to considering replacement resources. The commission recognizes the binding nature of hydroelectric license obligations and will consider them as it evaluates the utility's resource choice to enter into such a licensing agreement in light of what was known or knowable at the time the utility entered into the license.

6 PSE comments at 1-4 (December 3, 2020). Avista comments at 1-2 (December 3, 2020). PacifiCorp comments at 2-3 (September 14, 2020).

22 PSE additionally seeks clarity regarding the "expected physical or economic life" of a hydroelectric facility.[7] PSE proposes clarifying language that allows major maintenance to be performed "within the terms of an existing federal hydropower license."[8] The commission considers the "expected physical or economic life" as that phrase is used in the rule to reference the terms of the existing hydroelectric license.[9] If a repair or replacement of the plant is required by "terms of an existing federal hydropower license," "existing hydroelectric licensing obligations," or another equivalent phrase, the commission will consider the work to be part of the expected good utility practice of maintaining a plant for its licensed life, or as a pre-existing requirement that the utility must meet to operate the plant for its licensed life.[10]

7 PSE comments at 1-4 (December 3, 2020).

8 *Id.* page 3.

9 WAC 480-107-007.

10 *Id.*

23 Second, we amend the definition of "indicator" to "customer benefit indicator" to be consistent with and to reflect the use of the term "customer benefit indicator" in the rules governing clean energy implementation plans, or CEIPs, that we adopt by separate order in Docket UE-191023.

24 Proposed WAC 480-107-009. NIPPC recommends that voluntary RFPs undergo the same robust process as required for targeted RFPs, and suggests looking to other states for guidance on more robust public involvement. We decline to make these suggested changes. The proposed rules require an all-source RFP, which may be accompanied by supplemental targeted RFPs, only after a utility files its IRP. All other RFPs are voluntary. This process appropriately balances the costs and benefits of issuing an RFP. Without the expectation of additional resource needs being routinely identified in the IRP progress report and the potential existence of an ongoing RFP issued due to the IRP, the costs and burdens of requiring an RFP may not outweigh the benefits. The utility will be responsible for the consequences if it decides not to issue an RFP when an RFP is warranted. The commission nevertheless recognizes that the application of this process will be iterative, and that we may revisit it in the future based on the collective experience with the amended rules of the commission, utilities, and stakeholders.

25 NIPPC expressed further concern with the different public participation protocols resulting from required and voluntary RFPs, suggesting that utilities will sidestep using the required RFP following an IRP and instead use the voluntary RFP to acquire a large portion of its resources. We do not believe utilities can or will sidestep acquisitions that must be pursued through a required RFP. The information from bidders in a required RFP will demonstrate the cost of available resources the utility did not select and will be available to consider in a prudence review of resources acquired by the utility in its voluntary RFP. In the event that this process results in unintended consequences, the commission will revisit this portion of the rules.

26 Proposed amendments to WAC 480-107-015. NWEC requests that the commission revise the amendments in proposed WAC 480-107-015(3) to require utilities to post any RFP and information about how to respond to an RFP in "appropriate languages."[11] NWEC argues that the equity requirements of CETA "suggest" the propriety of this recommended rule language.[12]

11 NWEC comments at 4 (September 14, 2020).

12 *Id.*

27 Although providing RFPs and information about how to respond in multiple languages would be useful, particularly depending on individual supplier and developer needs, the commission lacks a sufficient record to include such a requirement in the proposed rules at this time. Additional stakeholder discussion is needed to address issues of RFP language needs; CETA's implied authority to require RFP material translation versus general commission authority; how or where utilities are lacking in language considerations now, and any related effects on bidders' responses; how many languages a utility should use for materials concerning RFPs; or the methods to determine which languages are used. The commission supports utilities' efforts to boost or otherwise strengthen their own supplier diversity targets, and language considerations such as these may be means to achieve such targets. Utilities, staff, and stakeholders should work collaboratively to explore opportunities to increase supplier diversity as CETA's rules are implemented generally.

28 In addition, amendments in proposed WAC 480-107-015 (2) and (3) direct utilities to ensure information needed for responding to RFPs is available to diverse suppliers. These subsections require a utility to conduct RFP outreach and notification to diverse suppliers, specifically naming outreach for women-, minority-, disabled-, and veteran-owned businesses. The commission recognizes that information access is one of potentially many barriers that prevent diverse businesses from responding to RFPs. But we also recognize that information access is not a panacea for the lack of diversity in utility contracting, and that utilities cannot ensure or otherwise guarantee that any advertisement or outreach effort will reach every intended potential supplier. However, the commission expects that, as utilities strengthen their efforts in supplier diversity, they also will make best efforts in the areas of outreach and advertising to diverse businesses.

29 Avista provided suggested clarifying language to proposed WAC 480-107-015(5) that would allow bid contents to be available to utility employees and the independent evaluator, subject to WAC 480-107-024(3), at the end of the solicitation period specified in the RFP.[13] We decline to accept this change. In our view, the terms in the proposed rule and Avista's suggestion are synonymous, and Avista's proposed language fails to provide additional clarity.

13 Avista comments at 5 (December 3, 2020).

30 Proposed WAC 480-107-017. Consistent with its suggested revisions to proposed WAC 480-107-015(3), NWEC suggests revisions to proposed WAC 480-107-017(2), which requires utilities to publish information about how the commission approves an RFP, to require utilities to publish the information in "appropriate languages."[14] We decline to make this suggested revision for the same reasons we reject similar revisions to proposed WAC 480-107-015(3).

14 NWEC comments at 4 (September 14, 2020).

31 Proposed WAC 480-107-023. NWEC also requests that, if an IE is required, the utility be required to publish the process of IE selection and evaluation in "appropriate languages" in WAC 480-107-023(3).[15] We decline to make this suggested revision for the same reasons we do not accept NWEC's suggested changes to proposed WAC 480-107-015(3) and 480-107-017(2).

15 *Id.*

32 PacifiCorp raised concerns that proposed WAC 480-107-023(6) requires a utility to allow a bidder to use utility resources in its bid without compensation.[16] The proposed rules, however, clarify that the bidder is not using the utility resources; rather, the utility is identifying its assets so that a bidder can design a resource bid that optimizes the combined value of its bid and the utility assets. Optimizing the combined value of the utility's existing portfolio and new resources is an essential step in creating a lowest reasonable costs portfolio. For example, designing the use of batteries to support the needs of a utility's distribution system requires information about the distribution infrastructure and the operational demand on the distribution system. The proposed rules promote the development of a lowest reasonable cost portfolio through RFP information that enables bidders to design bids to work with the existing utility infrastructure.

16 PacifiCorp comments at 13-14 (June 29, 2020).

33 Commentors expressed a variety of concerns regarding when an IE is required. Proposed WAC 480-107-023(1) requires an IE in three circumstances: (a) If the utility, its subsidiary, or its affiliate participate in the RFP process; (b) if the utility wishes to procure resources that will result in the utility owning or having a purchase option for the resource; and (c) if the utility is considering repowering its existing resources to meet its resource need. We observe that the resource need referred to here, as defined in proposed WAC 480-107-007, is the resource need identified in the utility's IRP under WAC 480-100-605, which we adopt by separate order in Docket UE-191023.

34 Proposed WAC 480-107-023(2) requires the commission to approve the IE a utility selects. The commission expects that a utility will file a petition seeking such approval, and that the commission will consider the petition at an open meeting. The commission expects that its review and approval will take at least thirty days.

35 Under proposed WAC 480-107-023(4), the utility must provide the IE with all data and information necessary to perform a thorough examination of the bidding process and responsive bids. Additionally, proposed WAC 480-107-035(4) requires the IE to score and rank the qualifying bids. Accordingly, we expect that the evaluator will have access to the models that the utility uses to compare responsive bids, be able to adjust inputs and assumptions in those models and run the models if necessary, or have the utility adjust and run the model. This expectation is further supported by the requirements in proposed WAC 480-107-023 (5)(c) and (e) for the IE to evaluate individual bids and verify the utility's inputs and assumptions.

36 Public counsel requested clarity on whether any stakeholder could request an IE for procurements not otherwise required under proposed WAC 480-107-023.[17] While the proposed rules only require IEs under certain circumstances, the commission has the authority to condition its acceptance of an RFP on the use of an IE. Further, the rules do not prohibit parties from requesting the commission condition approval on use of an IE.[18]

17 Public counsel comments at 4 (December 3, 2020).

18 Proposed WAC 480-107-009(2) states that required RFPs are subject to commission approval. However, under subjection [subsection] 480-107-009(3), voluntary RFPs do not require commission approval and cannot be conditioned.

37 Proposed amendments to WAC 480-107-025. The amendments to WAC 480-107-025(2) that we adopt in this order clarify that utilities should solicit indicator-related information and clearly describe all indicators, including customer benefit indicators, contained within the utility's most recent clean energy implementation plan (CEIP). The changes are necessary to reflect the use of the term "customer benefit indicator" included in amendments to WAC 480-107-007, and due to the use of the term in the rules we adopt by separate order in Docket UE-191023. In that adoption order, we also adopt WAC 480-100-640 (4)(c), which outlines the minimum customer benefit indicators that utilities must include in their CEIPs. These minimum requirements do not limit the authority of the commission to order (or the ability of stakeholders to request) the use of additional indicators or metrics. If the commission orders additional indicators or metrics as part of its CEIP approval process, utilities should describe and solicit information related to these additional indicators and metrics in addition to the required customer benefit indicators. The changes in proposed WAC 480-107-025(2) are consistent with the CEIP rules.

38 Proposed amendments to WAC 480-107-035. Proposed amendments to WAC 480-107-035(3) require, when ranking bids, that utilities not discriminate based solely on bidder ownership structure. This requirement applies whether the utility will own, or have the option to own, the resource as part of the bid, as well as all other aspects of ownership structures, including structures associated with private businesses, utility customers, cooperatives, nonprofit organizations, and other individuals or organizations.

39 Commenters raised concerns regarding stakeholder access to confidential information in the bidding process, suggesting the use of non-disclosure agreements (NDAs) to ensure confidentiality, or to follow processes used in Oregon and Utah.[19] The commission declines to adopt these suggested changes. While the commission does not compel utilities to sign NDAs, we recognize that this is an option for utilities to consider. WAC 480-107-035(5) allows utilities to use a generic but complete description in a public notice when specifics in a bid are confidential. We do not consider the fil-

ing of bidder information necessary until the time at which a bid is awarded a contract (and then, only the information related to the awarded bid), or at the time the resource costs are requested in rates. The commission finds the requirements for a summary of bid information and the protection of confidential bid information sufficient in the proposed rules.

19 Sierra Club comments at 1 (December 3, 2020), and NIPPC's comments in the December 14, 2020, Adoption Hearing audio recording at approximately 19:38.

40 Proposed amendments to WAC 480-107-075(3). Public counsel and other commenters have advocated for more supplier diversity by requesting the rules require utility goals or targets for contracting with women-, minority-, disabled-, and veteran-owned businesses.[20] Understanding that the schedule in this rule making does not provide ample opportunity for public engagement on this topic, public counsel requested that the commission promptly hold workshops to address this issue.[21] The commission agrees and acknowledges that diversity and inclusivity is beneficial to contracting. We appreciate public counsel's and other stakeholders' comments regarding supplier diversity and intend to hold stakeholder workshops in 2021 to address these and other issues.[22]

20 Public counsel third comments ¶ 7 (September 14, 2020).

21 Public counsel comments at 5 (December 3, 2020); Front and Centered comments at 3-4 (September 14, 2020); Climate Solutions comments at 3 (September 14, 2020); Washington state labor council and Washington building trades comments at 1-2 (September 14, 2020); NWEC comments at 4 (June 29, 2020).

22 State commissions across the country have established supplier diversity targets differently. Models range from states and state commissions requiring targets through rules to those creating voluntary programs via MOUs signed by utilities. For example, Maryland PUC has a voluntary MOU signed by companies. Similarly, the types of contracting considered by these targets, the level of target setting, and considerations for diversity certification are different across states. While California and Illinois PUCs have rules resulting from legislative requirements to track and report on diverse suppliers. These are key questions for workshops to consider when setting any supplier diversity targets, and particularly targets required by rule.

41 The commission supports utilities' efforts to bolster their supplier diversity efforts and may consider future policy guidance as CETA implementation continues.

42 Two elements of the rules we adopt in this order will be useful components informing these conversations: Proposed WAC 480-107-075(3) states that final contracts resulting from an RFP process and signed by a utility to acquire resources must require the firm awarded the contract to report to the utility its use of diverse businesses. Additionally, proposed WAC 480-107-145(2) requires utilities to submit to the commission a summary of its RFP process including participation of women-, minority-, disabled-, and veteran-owned businesses. The information we gather from these reports will assist the commission, stakeholders, and utilities in better understanding the current state of supplier diversity in utility contracting.

43 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 20-22-075:

Chapter 480-107 WAC, Purchases of electricity, replace "Purchases of Electricity" with "Purchases of Resources."

WAC 480-107-007, "Indicator" definition, before "indicator" add "Customer benefit" and move the definition due to alphabetical order.

WAC 480-107-007, "Repowering" definition, replace "routing" with "routine"; add "the maintenance of or" after "hydroelectric licensing obligations, or" and before "replacement of equipment"; add "expected" after "materially affect the" and before "physical or economical"; substitute "longevity" with "life."

WAC 480-107-025(2), replace "include" with "contain"; add "including customer benefit indicators," after "most recent CEIP,"; replace "including" with "as well as"; and replace "the" with "all."

44 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the commission finds and concludes that it should amend, repeal, and adopt the rules as proposed in the CR-102 at WSR 20-22-075 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.

45 The commission modifies the title of the proposed amendment to chapter 480-107 WAC, Purchases of electricity, to clarify the substance of the rules within the chapter.

46 The commission modifies the definition of "indicator" in proposed amendment to WAC 480-107-007 to reflect changes to WAC 480-100-605, adopted by separate order in Docket UE-191023.

47 The commission modifies the proposed amendment to WAC 480-107-025(2) to clarify the requirements and incorporate changes to "indicators" for consistency with the rules adopted by separate order in Docket UE-191023.

48 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-107-001, 480-107-002, 480-107-007, 480-107-009, 480-107-011, 480-107-015, 480-107-017, 480-107-021, 480-107-023, 480-107-024, 480-107-025, 480-107-035, 480-107-045, 480-107-065, 480-107-075, 480-107-115, 480-107-135, and 480-107-145 should be amended, repealed, and 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).

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 5, Amended 12, 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 5, Amended 12, Repealed 1.

49 **THE COMMISSION ORDERS:**

50 The commission repeals, amends and adopts WAC 480-107-001, 480-107-002, 480-107-007, 480-107-009, 480-107-011, 480-107-015, 480-107-017, 480-107-021, 480-107-023, 480-107-024, 480-107-025, 480-107-035, 480-107-045, 480-107-065, 480-107-075, 480-107-115, 480-107-135, and 480-107-145 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on December 31, 2020.

51 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 chapter 1-21 WAC.

DATED at Olympia, Washington, December 28, 2020.

Washington utilities and transportation commission.

David W. Danner, Chair
Ann E. Rendahl, Commissioner
Jay M. Balasbas, Commissioner

Appendix A
Comment Summary Matrix

WAC 480-100-107 POE Rule Making UE-190837
Written Comments on CR-102 Draft Rules
Filed by December 3, 2020
Summary of Comments

Party	Summary of Comment	Staff Response
Pacific Power	Pacific Power expresses continuing concern with the practicality of the rules and potential harm the rules may do to customers. Pacific Power asks for clarification or modification of the rules to ensure a fair and efficient acquisition process.	Staff disagrees that the changes proposed are feasible in this phase of the rule making.
	Generally, Pacific Power is concerned that the acquisition process in the rules is overly burdensome and complicated, and likely to result in regulatory fatigue for all involved. The rules will likely hamper the rapid acquisition that is inherently needed under the CETA, resulting in additional cost increases to customers.	
	Pacific Power views its proposed changes as limited and feasible to make in the CR-102 phase of this rule making. The areas of suggested modifications in the draft rules are areas that Pacific Power believes it is likely to seek exemptions in the future if not modified.	
	Require RFP filing one hundred twenty days after IRP acknowledgement rather than the date of the IRP filing (WAC 480-107-017). In its practice of filing RFPs one hundred twenty days after the IRP is acknowledged, Pacific Power has not found that the IRP data is too stale a concern staff raises. Without changes to the draft CR-102 rules, Pacific Power expects waivers will be necessary.	Staff disagrees with the conclusion that requiring an RFP filing one hundred twenty days after the filing of the IRP will create significant inefficiencies or lead to requests for exemptions. With the adoption of the CEIP/IRP rules, staff intends to expedite its review of the IRP and the commission intends to speed the issuance of its acknowledgment letter.
	Qualifying Facilities (QF) with existing contracts should not be allowed to bid into an RFP (WAC 480-107-009). Pacific Power states that it does not enter contracts voluntarily with QFs but under terms that are commission approved and that it must use. Using as an example its Oregon standard QF contract terms, Pacific Power states that compensation for a QF breaking its contract is limited and that a QF under Washington's Schedule QF could bid into an RFP to get a higher price and then breach its existing contract. Pacific Power recognizes that this type of event is unlikely, but recommends the commission change the rules rather than rely on assumptions of future events.	Staff disagrees with the need and the propriety of changing the rules to limit QFs with contracts from bidding into RFPs. There are also questions as to whether the commission has the authority to make this change. However, staff is willing to work with the company to examine the tariffs and contracts the company has filed in Washington to prevent such possible gaming by QFs.

Party	Summary of Comment	Staff Response
	Do not require utilities to issue an RFP for purchases with terms of five years or less (WAC 480-107-009(2)). Pacific Power reiterates its previous request to exempt all purchases with terms less than five years from RFPs. Pacific Power expands its description of its previously provided example of purchasing five-year hydro slices that are commonly available in the NW bilateral market, asserting that the present rule would "prevent utilities form easily contracting for these carbon-free, low-cost resources." Pacific Power states that applying for waivers to participate in the bidding process for five-year hydro contracts could put it and its customers at a competitive disadvantage by signaling its participation in the bidding process. Pacific Power recognizes staff's intent to exempt hedging practices that contract three years in advance of need but notes that such an exemption is not in rule.	Staff continues to support issuing an all-source RFP for needs that are within four years. WAC 480-107-001 provides flexibility, i.e., providing that a utility may pursue resources in a manner necessary to serve its load. The RFP requirements do not change the responsibility or limit utility actions under WAC 480-107-001 to pursue resource acquisitions from providers who do not have a practice of bidding into utility RFPs.
		Staff reiterates its conclusion that a utility's decision between resources with long durations such as twenty-year durations and resources with five-year durations to manage its long-term needs is a long-term resource choice—either to have long-term resources or to take a short position in the market. Staff believes that such decisions must be made in light of the best available resource options that come with the issuance of an RFP. Staff also clarifies that hedging practices are not so much exempt from the PoE rules as they are part of the underlying practices of the utility that are considered in the long-term planning in its IRP as the utility examines its portfolio performance and determines its long-term resource needs.
	Adopt a MW threshold for when an RFP is required (WAC 480-107-009(2)). It is inefficient to require an RFP to be issued for a small resource need. Pacific Power recommends an 80 MW threshold.	Staff disagrees that a minimum threshold should be set for the need in an IRP that triggers the requirement for an all-source RFP. With the proposed change to a four-year IRP cycle, staff considers it very unlikely that some type of resource need under CETA, whether conservation, demand response, or renewable energy, will not be found in the next three IRPs due between now and 2029.
	Utilities should not be required to accept identical bids in parallel RFPs (WAC 480-107-009). The rules require an all-source RFP when *any*need is shown in the IRP but also provides for a parallel targeted RFP, which, to a very limited degree mitigates Pacific Power's concern with the rules' requirement to issue an all-source RFP regardless of the size of the need found in the IRP. Pacific Power seeks clarification on whether the rules require Pacific Power to accept identical bids in both the all-source and the targeted RFPs as they run in parallel. Pacific Power asserts that evaluating the same bid in both RFPs undermines the efficiency of having two RFP processes and requests clarification that it is not required to accept identical bids in parallel RFPs.	Staff disagrees that the rule should limit a qualified bidder's participation in the RFP. Staff encourages the company to communicate with potential bidders and direct them to the most appropriate RFP. Staff believes that the occasional bidder that bids into both RFPs will not unduly burden the utility, especially considering that the two parallel RFPs must pick the lowest reasonable cost resources from either RFP.
Avista	WAC 480-107-007(2), Avista proposes clarifying language. (2) When the commission evaluates the prudence of the utility's acquisition of new resources in rate and other proceedings, it ~~the commission~~ will consider the information the utility obtained through its ~~acquisition~~ solicitation and procurement efforts. ~~when the commission evaluates the performance of the utility in through rate and other proceedings.~~	Staff appreciates the proposed language. However, staff views it as changing the meaning of the rule. Avista's proposed language limits the commission action to evaluations of prudence of a utility "acquisition" of "new resource." The language in rule is intentionally much broader, covering any aspect of utility performance for which such information may be relevant.

Party	Summary of Comment	Staff Response
	WAC 480-107-007, definition of repowering. Avista proposes clarifying language. "Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required in order to extend the useful life or economic life of the generator or facility~~, due to the generator or facility reaching the end of its useful life or the useful reasonable economic life~~. The rebuild or refurbishment does not constitute repowering if it is part of ~~routing~~ routine major maintenance or operations, existing hydroelectric licensing obligations, or replacement of equipment that does not materially affect the physical or economical longevity of the generator or generation facility.	Staff does not agree with the change in the first sentence. The rule is based on the end of useful life or economic life of the generation facility because a utility must establish such a date to evaluate plant acquisition and continued investment to maintain the plant. Investments beyond this purpose trigger the bidding of the repowering project into the utility RFP. Unlike routine major maintenance, staff does not believe routine "operations" could be misconstrued by a stakeholder to be included in the term repower or refurbish. Staff agrees with and has corrected the typo in the second sentence.
	WAC 480-107-015(4), Avista proposes language to clarify when the evaluation process begins.	Staff agrees that this language is essentially the same as that in rule. However, staff is concerned that Avista's version does not provide explicit permission to "prepare for" the evaluation phase. Staff prefers to maintain an explicit differentiation between the evaluation phase and preparing for the evaluation phase to protect against misinterpretations that might misconstrue preparation activities to be part of the evaluation phase. Staff could support:
	Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids. The evaluation phase will not occur until such time as all bids have been received and the bidding timeframe has officially closed. ~~and to prepare for, but not to begin, the evaluation phase of the RFP process~~	Prior to the official closure of the bidding timeframe ~~expiration of the solicitation period~~ specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.
	WAC 480-107-023(4), Avista proposes clarifying language. Avista considers the language to be overly broad. The utility must provide the independent evaluator with all data and information reasonably necessary to perform a thorough examination of the bidding process and responsive bids.	Staff disagrees. The current proposal requires the utility to provide only data and information that is necessary for the IE to examine the bidding process. The commission can weigh the reasonableness of the IE data requests if they arise.
PSE	PSE supports the elimination of the requirement to pursue an all-source RFP in response to a two-year IRP update, as well as the clarifications made around the use of a targeted RFP.	No response needed.
	*PSE remains concerned with the scope of the term "major maintenance" used in the draft rule, WAC 480-107-007.*The breadth and application of repowering and major maintenance should be narrowed in rule or, in the alternative, clarification of the reach of their application is needed in the adoption order. Specifically, the commission should allow the utility to perform certain types of predictive and corrective maintenance of power generation equipment without such action constituting a "repowering" under the rules.	Staff's general use of the term "routine major maintenance" in the rule was intended to include predictive and corrective maintenance. Staff will recommend clarifying in the adoption order that the term major routine maintenance includes predictive and corrective maintenance.
	PSE strongly recommends that major maintenance activities within the term of a federal hydropower license be specifically exempted from the definition of repowering, even if the activity materially affects the physical and economic longevity of the facility within the license period. PSE observes that long-lived hydroelectric projects do not have a defined routine maintenance manual which may lead to future misinterpretation of the rule. PSE states that in its November 3, 2020, comment matrix staff states that repairs necessary for reliability that are discovered during routine major maintenance are not part of routine major maintenance. PSE also asks that staff clarify that work to correct problems detected during routine major maintenance be included in the definition of routine major maintenance.	Staff views the expected life of a generation facility at the time of its in-service date to include predictive and corrective maintenance, both those known at the time of the generator in-service date and those developed as best practices after the in-service date. Though those types of maintenance activities may increase the life of the generation facility compared to what was known to be possible at the time of its in-service date, staff views a generation facility's life as a combination of the physical plant at the time of in-service and good utility practice during the life of the plant. Staff recognizes that the expected end of life and actual failure date of the components of a generation facility will not all be the same.

Party	Summary of Comment	Staff Response
	WAC 480-107-007, proposed amendments to definition of repowering. PSE recommends two ways to modify the definition. (1) Limit the definition of "repower" to the first sentence and eliminate the second sentence. (2) Expand the definition of "major maintenance" to include activities within the terms of the hydroelectric facilities license.	Staff agrees in part with the suggested changes. In the final sentence, staff will change "routing" to "routine," add "the maintenance of or" before "replacement," and add "expected" before "physical."
	"**Repowering"** means a rebuild or refurbishment, including fuel source changes, of a utility owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of ~~routing~~ routine major maintenance, major maintenance within the terms of an existing federal hydropower license, ~~existing hydroelectric licensing obligations,~~ or the maintenance of or replacement of equipment that does not materially ~~affect~~ increase the expected physical or economical longevity of the generator or generation facility."	Staff disagrees with changing "affect" to "increase" and to changing "existing hydroelectric licensing obligations." Staff recognizes, as does the rule, that if repair or replacement of the plant is required by "terms of an existing federal hydropower license" or "existing hydroelectric licensing obligations" or other equivalent phrase, the work is considered part of the expected good utility practice of maintaining a plant for its licensed life or is a pre-existing requirement that must be met to operate the plant for its licensed life.
Public Counsel	Public counsel (PC) supports restoring the requirement for an independent evaluator when an IRP shows a need above an 80 megawatt (MW) threshold, i.e., when a utility is required to issue an all-source RFP. Though an all-source RFP may contain utility self-bids or considerations of repowering, thus triggering the IE requirement, public counsel believes the use of an IE should be required every time an all-source RFP is issued.	Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.
	In the alternative, PC recommends adding language to the rule that explicitly provides that interested persons may ask the commission to require an IE by order when a utility files its RFP. This explicit statement is necessary for stakeholders who are not familiar with the commission's process.	Staff agrees that interested persons may ask the commission to require an IE where the rule does not require it due to changed circumstances not considered or accounted for in rule. Staff supports stating in the adoption order that interested parties have the option to request that the commission require a utility to use an IE.
	PC requests the commission workshops outside of the rule making to consider how to develop contracting goals with a diversity of suppliers with the goal of issuing a policy statement or other guidance on how to best include bids from minority-, women-, disabled-, and veteran-owned businesses.	Staff supports scheduling conversations on supplier diversity via workshop or other forums outside of this rule making as CETA is implemented and as utilities and the commission have collected additional data supporting such conversations, including but not limited to data collected under proposed WAC 480-107-075(3) and 480-107-145(2).
NIPPC	NIPPC recommends that voluntary RFPs undergo the same robust process as required and targeted RFPs. A comment period for voluntary RFPs should be provided similar to the comment period for required and targeted RFPs. For circumstances in which the utility must retain an IE for its voluntary RFP, there is no substantive review by the commission or stakeholders and no approval process of the voluntary RFP. In the case of a voluntary RFP that does not trigger the need for an IE, the only requirement in rule is that the voluntary RFP be filed with the commission. There is no requirement to notify stakeholders. NIPPC believes that the abbreviated process will likely lead to uncompetitive procurements. NIPPC expresses concern that utilities will sidestep using the RFP required after the IRP and instead use the voluntary RFP to acquire a large portion of its resources.	Staff disagrees that the voluntary RFPs must be reviewed in detail. Staff believes that in the review and approval by the commission of required RFPs, the commission will set standards for an RFP that a utility should consider in any voluntary RFP. Staff does not believe utilities will or can sidestep acquisitions in the required RFP. The required RFP will provide ample information from bidders to show the cost of resources the utility passed over and is available to use in a prudence review of resources acquired by the utility in its voluntary RFP.

Party	Summary of Comment	Staff Response
Northwest Energy Coalition (coalition)	The coalition supports the rules' requirement to have the IE rank bids and explain in the final report to the commission, after reconciling rankings with the utility, why the IE and the utility were or were not able to reconcile any differences. As an objective and independent third party, an IE will provide a non-self-interested evaluation on behalf of ratepayers. The use of an IE is a major improvement to the current RFP process. The coalition supports the expanded application of equity indicators beyond generators and wires to such items as energy efficiency or incentive programs that result from the newly added definition of resource.	No response required.
	The coalition supports the use of an IE for any RFP resulting from an IRP with a resource need within four years or for any RFP seeking to fill a large resource need. Short of including that requirement in rule, the coalition seeks guidance in the adoption order on what conditions might warrant, outside of 480-107-023(1), the commission to require the utility to use an IE.	Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need. Staff does not believe, absent a particular circumstance, it is possible or useful for the commission to speculate on a fact pattern that would result in a future commission determining the need for an IE.
	The coalition asks for clarification of when a voluntary RFP could be used, after an IRP progress report? After a utility rejects bids from a required all-source RFP?	Staff believes there could be numerous possible circumstances but cannot speculate on their probability. Changing market conditions either driven by pressures of supply and demand or technology advancements may create opportunities for additional RFPs. Staff does not foresee a condition in which a utility will refuse fulfilling its need in a required all-source RFP for the purpose of using a voluntary RFP to fill the same resource need.
RNW	RNW supports the trigger for requiring an all-source RFP, the timelines for issuing a required RFP, the forty-five day comment period on the required RFP. RNW also "appreciates the draft rules' attention to stakeholder outreach in Draft WAC 480-107-015, the establishment of a 45-day comment period as noted above, the informational filing requirements of Draft WAC 480-107-020, the stakeholder consultation required before independent evaluator ("IE") selection in Draft WAC 480-107-023(2), and the opportunity for stakeholder comment on the required IE report in Draft WAC 480-107-023(7)."	No response required.
	While RNW supports the rules' existing application of an IE and the role of the IE, it recommends applying the IE requirement for any RFP seeking to meet resource needs greater than 50 MW.	Staff disagrees that an IE is necessary in the case of every all-source RFP. However, staff will consider recommending the use of an IE on a case-by-case basis considering the circumstances at the time of the resource need.
	RNW encourages the commission to consider requiring rather than only encouraging the utility to consult with staff and interested stakeholders during the development of an RFP and the associated evaluation rubric (WAC 480-107-015).	Staff believes the rules appropriately encourage utilities to engage stakeholders during the development of an RFP and the associated evaluation rubric.
	The clean version of draft WAC 480-107-XXX contains a typographical error mistakenly designating it as a section of the rule as WAC 480-107-001. The redline version labels that section WAC 480-107-011. Also, the internal cross-reference to WAC 480-107-035(5) appears to be an error in both the clean and redline version of the draft rules and WAC 480-107-035(6) appears to be the correct internal cross-reference.	Staff agrees and has made these changes.
Sierra Club	Sierra Club strongly requests that the rules require a utility to provide more bidder price information. Understanding the need for confidentiality, Sierra Club suggest[s] that stakeholders could enter into nondisclosure agreements (NDA) to ensure confidentiality and a utility could aggregate data to provide price averages or means.	Staff disagrees with requiring utilities to enter into NDAs. However, staff believes the rules do not prevent a utility from voluntarily entering into such agreements.
		Staff does not consider the filing of bidder information necessary until the time at which a bid is awarded a contract (and only the information related to the awarded bid) or at the time the resource costs are requested in rates.

Party	Summary of Comment	Staff Response
		Staff supports the rules' requirements for a summary of bid information and the protection of confidential bid information.
	An IE should be required when a utility has under-performed in its acquisition of non-generation resources, especially for demand response. Due to chronic under-funding of demand response, Sierra Club proposed six criteria for evaluating demand response.	Staff considers the Sierra Club's suggested criteria for evaluating demand response to be part of the IRP modeling and analysis and, as such, would also be applied in the resource evaluation process of the RFP. With the evaluation criteria included in the IRP methodology, it is not necessary to restate them in the PoE rules.
	To achieve fair evaluation of non-generation resources, Sierra Club proposes eight criteria setting out roles and responsibilities for the utility, the IE, the staff, and the commission in the RFP development, review and bid evaluation process.	Staff appreciates Sierra Club's suggested list of IE functions and believes these items are either part of the rule or that the rule provides for their enforcement.
Michael Laurie, Sustainability Consultant	Supports the comments of the Sierra Club.	No response required.

Appendix B
WAC 480-107 - RULES

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-001 Purpose and scope. (1) The rules in this chapter ((~~require utilities to solicit bids, rank project proposals, and identify any bidders that meet the minimum selection criteria~~)) establish the requirements for various utility solicitations and procurements, including provisions governing competitive solicitations, all-source RFPs, targeted RFPs, independent evaluators and system emergencies. The rules in this chapter do not establish the sole procedures ((~~utilities must~~)) a utility may use to acquire new resources. ((~~Utilities~~)) A utility may construct ((~~electric~~)) new resources, operate conservation and efficiency resource programs, purchase power through negotiated contracts, or take other action to satisfy ((~~their~~)) the utility's public service obligations.

(2) The commission will consider the information the utility obtained through ((~~these bidding procedures~~)) its acquisition efforts when ((~~it~~)) the commission evaluates the performance of the utility in rate and other proceedings.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-002 ((~~Application of~~)) Exemptions from rules. (((~~1) The rules in this chapter apply to any utility that is subject to the commission's jurisdiction under RCW 80.04.010 and chapter 80.28 RCW.~~

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

~~(3) No exception from the provisions of any rule in this chapter is permitted without prior written authorization by the commission. Such exceptions may be granted only if consistent with the public interest, the purposes underlying regulation, and applicable statutes. Any deviation from the provisions of any rule in this chapter without prior commission authorization will be subject to penalties as provided by law.~~)) Consistent with WAC 480-07-110, the commission may grant an exemption from the provisions of any rule in this chapter.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-007 Definitions. "Affiliate" means a person or corporation that meets the definition of an "affiliated interest" in RCW 80.16.010.

((~~**"Avoided costs"** means the incremental costs to a utility of electric energy, electric capacity, or both, that the utility would generate itself or purchase from another source, but for purchases to be made under these rules. A utility's avoided costs are the prices, terms and conditions, including the period of time and the power supply attributes, of the least cost final contract entered into as a result of the competitive bidding process described in these rules. If no final contract is entered into in response to a request for proposal (RFP) issued by a utility under these rules, the utility's avoided costs are the lesser of:~~

~~(a) The price, terms and conditions set forth in the least cost project proposal that meets the criteria specified in the RFP; or~~

~~(b) Current projected market prices for power with comparable terms and conditions.~~)) **"All-source RFP"** means an RFP that solicits and accepts bids from any resource capable of meeting all or part of the resource need outlined in the utility's solicitation documents.

"Bid" means bidder's document containing a description of a project and other information responsive to the requirements set forth in an RFP. If a bid contains multiple projects, each individual project will be considered as a separate bid.

"Bidder" means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility to fill a resource need or portion thereof.

"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 or distribution, or from demand response, load management or efficiency measures that reduce peak capacity demand~~)) has the same meaning as defined in WAC 480-100-605.

((~~**"Conservation supplier"** means a third party supplier or utility affiliate that provides equipment or services that save capacity or energy.~~

~~**"Generating facilities"** means plant and other equipment used to generate electricity purchased through contracts entered into under these rules.~~))

"Customer benefit indicator" has the same meaning as defined in WAC 480-100-605.

"Demand response" has the same meaning as defined in WAC 480-100-605.

"Equitable distribution" has the same meaning as defined in WAC 480-100-605.

"Highly impacted community" has the same meaning as defined in WAC 480-100-605.

"Independent evaluator" means a third party, not affiliated with the utility, that provides, at a minimum, evaluations as required in these rules.

"Independent power producers" means an entity other than a utility or its subsidiary or affiliate that develops or owns generating facilities or portions thereof that are not ((~~included in a utility's rate base and that are not~~)) qualifying facilities as defined in ((~~this section~~)) WAC 480-106-007.

"Integrated resource plan" or **"IRP"** means the filing made ((~~every two years~~)) by a utility in accordance with WAC ((~~480-100-238 Integrated resource planning~~)) 480-100-625.

((~~**"Project developer"** means an individual, association, corporation, or other legal entity that can enter into a power or conservation contract with the utility.~~

~~**"Project proposal"** means a project developer's document containing a description of a project and other information responsive to the requirements set forth in a request for proposal, also known as a bid.~~)) **"Lowest reasonable cost"** has the same meaning as defined in WAC 480-100-605.

"Qualifying facilities" ((~~means generating facilities that meet the criteria specified by the FERC in 18 C.F.R. Part 292 Subpart B~~)) has the same meaning as defined in WAC 480-106-007.

"Renewable resource" has the same meaning as defined in WAC 480-100-605.

"Repowering" means a rebuild or refurbishment, including fuel source changes, of a utility-owned generator or generation facility that is required due to the generator or facility reaching the end of its useful life or useful reasonable economic life. The rebuild or refurbishment does not constitute repowering if it is part of routine major maintenance, existing hydroelectric licensing obligations, or the maintenance of or replacement of equipment that does not materially affect the expected physical or economical life of the generator or generation facility.

"Request for proposals" or **"RFP((~~s~~))"** means the documents describing a utility's solicitation of bids for delivering ((~~electric capacity, energy, or capacity and energy, or conservation~~)) a resource need.

"Resource" has the same meaning as defined in WAC 480-100-605.

"Resource ((~~block~~)) need" ((~~means the deficit of capacity and associated energy that the IRP shows for the near term~~)) has the same meaning as defined in WAC 480-100-605.

"Resource supplier" means a third-party supplier, utility or affiliate that provides electric power, equipment or services that serve a resource need.

"Subsidiary" means any company in which the utility owns directly or indirectly five percent or more of the voting securities, and that may enter a power or conservation contract with that electric utility. A company is not a subsidiary if the utility can demonstrate that it does not control that company.

"Targeted RFP" means an RFP that solicits and accepts bids for certain types or locations of resources (including, for example, demand response, conservation and efficiency resources) capable of meeting all or part of the utility's specific resource need.

"Utility" means an electrical company as defined by RCW 80.04.010.

"Vulnerable populations" has the same meaning as defined in WAC 480-100-605.

NEW SECTION

WAC 480-107-009 Required all-source RFPs and conditions for targeted RFPs. (1) All-source RFP requirements. All-source RFPs must allow bids from different types of resources that may fill all or part of the characteristics or attributes of the resource need. Such resource types include, but are not limited to, unbundled renewable energy credits, conservation and efficiency resources, demand response or other distributed energy resources, energy storage, electricity from qualifying facilities, electricity from independent power producers, or other resources identified to contribute to an equitable distribution of energy and nonenergy benefits to vulnerable populations and highly impacted communities.

(2) Required RFP. A utility must issue an all-source RFP if the IRP demonstrates that the utility has a resource need within four years. A utility may supplement its all-source RFP with one or more targeted RFPs issued at the same time. The required RFP and any supplemental RFPs are subject to commission approval.

(3) Voluntary RFP. Whenever a utility chooses to issue an RFP to meet resource needs outside of the timing of its required RFP, it may issue an all-source RFP or a targeted RFP. Voluntary RFPs are not subject to commission approval.

(4) Targeted RFP requirements. If the utility issues a targeted RFP in conjunction with an all-source RFP, it must fairly compare all resource options in its combined analysis.

NEW SECTION

WAC 480-107-011 Applicability of rule sections. (1) The required RFP issued pursuant to WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(2) A targeted RFP filed with a required RFP under WAC 480-107-009(2) must comply with all sections of this chapter except WAC 480-107-021 requiring an informational filing.

(3) A voluntary RFP issued pursuant to WAC 480-107-009(3) must comply with all sections of this chapter except WAC 480-107-017 requiring commission approval.

(4) For all other actions by the utility to acquire resources not included in WAC 480-107-009, the utility must comply with WAC 480-107-115.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-015 ((~~The~~)) Solicitation process for any RFP. (1) ((~~Any owner of a generating facility, developer of a potential generating facility, marketing entity, or provider of energy savings may participate in the RFP process. Bidders may propose a variety of energy resources including: Electrical savings associated with conservation; electricity from qualifying facilities; electricity from independent power producers; and, at the utility's election, electricity from utility subsidiaries, and other electric utilities, whether or not such electricity includes ownership of property. Qualifying facility producers with a generation capacity of one megawatt or less may choose to participate in the utilities' standard tariffs without filing a bid~~)) The provisions of this section apply to any RFP issued to fill a resource need. The commission strongly encourages a utility to consult with commission staff and other interested stakeholders during the development of an RFP and the associated evaluation rubric.

(2) A utility ((~~may participate in the bidding process as a power supplier, or may allow a subsidiary or affiliate to participate in the bidding process as a power supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. The utility's RFP submittal must declare the utility's or affiliate's participation and must demonstrate how the utility will satisfy the requirements of WAC 480-107-135~~)) must conduct outreach to potential bidders or resource suppliers, including nonprofit organizations and under-represented bidders such as minority-, women-, disabled-, and veteran-owned businesses, to encourage equitable participation in the bidding process. A utility must provide to all potential bidders equitable access to information relevant to responding to the utility's RFP including, but not limited to, accommodation required by the Americans with Disabilities Act's communications guidance.

(3) ((~~Timing of the solicitation process.~~

~~(a) The rules in this section do not apply when a utility's integrated resource plan, prepared pursuant to WAC 480-100-238, demonstrates that the utility does not need additional capacity within three years.~~

~~(b) A utility must submit to the commission a proposed request for proposals and accompanying documentation no later than one hundred thirty-five days after the utility's integrated resource plan is due to be filed with the commission. Interested persons will have sixty days from the RFP's filing date with the commission to submit written comments to the commission on the RFP. The commission will approve or suspend the RFP within thirty days after the close of the comment period.~~

~~(c) A utility must solicit bids for electric power and electrical savings within thirty days of a commission order approving the RFP.~~

~~(d) All bids will remain sealed until expiration of the solicitation period specified in the RFP~~)) A utility must post a copy of the RFP on the utility's public website and make best efforts to ensure the RFP is known to industry participants and potential bidders, such as by placing notices in relevant industry publications, including publications aimed at women-, minority-, disabled-, and veteran-owned businesses.

(4) ((~~In addition to the solicitation process required by these rules, a utility may, at its own discretion, issue an RFP that limits project proposals to resources with specific characteristics. In addition, a utility, at its own discretion, may issue RFPs more frequently than required by this rule~~)) The utility must publish on its public website information about how interested persons can participate in or follow the utility's RFP process, including RFP approval, if required, and how to contact the commission's records center to be placed on relevant distribution lists for utility RFPs.

(5) ((~~Persons interested in receiving commission notice of a specific utility's RFP filings can request the commission to place their names on a mailing list for notification of future RFP filings by that utility.~~)) Prior to the expiration of the solicitation period specified in the RFP, the utility may allow the bid contents to be available to its employees and the independent evaluator, within the limitations established in WAC 480-107-024(3). Such availability must be solely for the purpose of tracking the receipt of bids and to prepare for, but not to begin, the evaluation phase of the RFP process.

(6) A utility or its subsidiary or affiliate may participate in the utility's own RFP process as a bidder consistent with the requirements in WAC 480-107-023 and 480-107-024.

(7) If demand response may meet some or all of the identified resource need, the utility must make a good faith effort to provide sufficiently detailed information that allows a bidder the opportunity to develop a demand response bid that includes, but is not limited to, stacked values of benefits and costs.

NEW SECTION

WAC 480-107-017 RFP filing and approval. (1) For required and targeted RFPs under WAC 480-107-009(2), a utility must file the RFPs and accompanying documentation with the commission no later than one hundred twenty days after the utility files its final IRP.

(2) The utility must provide information on its public website detailing the commission approval process required in subsection (1) of this section, including a link to the RFP filed with the commission, and a description of the subsequent public comment period and, if applicable, the independent evaluator selection and commission approval process.

(3) Within forty-five days after the utility files an RFP, interested persons may submit written comments to the commission on the RFP.

(4) The commission will approve, approve with conditions, or suspend the filed RFP, including the procedures and criteria the utility will use to evaluate and rank bids in accordance with WAC 480-107-035, within seventy-five days after the utility files its RFP.

(5) A utility must solicit bids for a resource need within thirty days of a commission order approving an RFP unless the commission establishes a different deadline.

NEW SECTION

WAC 480-107-021 Informational filing requirement. (1) A utility must file any voluntary RFP allowed under WAC 480-107-009(3) and accompanying documentation thirty days prior to accepting bids.

(2) If the utility must retain an independent evaluator under WAC 480-107-023, the utility must publish, on its public website, information explaining its independent evaluator selection process and commission approval process, including how interested persons can participate in the approval process.

NEW SECTION

WAC 480-107-023 Independent evaluator for repowering and bids from a utility or its subsidiary or affiliate. (1) A utility must engage the services of an independent evaluator to assess and report on the solicitation process if:

(a) The utility or its subsidiary or affiliate participates in the utility's RFP bidding process;

(b) The utility intends to retain the option to procure resources that will result in the utility owning or having a purchase option in the resource over its expected useful life; or

(c) The utility is considering repowering its existing resources to meet its resource need.

(2) After consulting with commission staff and stakeholders, the utility may issue a solicitation for an independent evaluator and must recommend an independent evaluator for approval by the commission.

(3) The independent evaluator will contract with, and be paid by, the utility. The utility will also manage the contract terms with the independent evaluator.

(4) The utility must provide the independent evaluator with all data and information necessary to perform a thorough examination of the bidding process and responsive bids.

(5) The independent evaluator will, at a minimum:

(a) Ensure that the RFP process is conducted fairly, transparently, and properly;

(b) Participate in the design of the RFP;

(c) Evaluate the unique risks, burdens, and benefits of each bid;

(d) Provide to the utility the independent evaluator's minutes of meetings and the full text of written communications between the independent evaluator and the utility and any third-party related to the independent evaluator's execution of its duties;

(e) Verify that the utility's inputs and assumptions, including capacity factors and capital costs, are reasonable;

(f) Assess whether the utility's process of scoring the bids and selection of the initial and final shortlists is reasonable;

(g) Prepare a final report to the commission after reconciling rankings with the utility in accordance with WAC 480-107-035(3) that must:

(i) Include an evaluation of the competitive bidding process in selecting the lowest reasonable cost acquisition or action to satisfy the identified resource need, including the adequacy of communication with stakeholders and bidders; and

(ii) Explain ranking differences and why the independent evaluator and the utility were or were not able to reconcile the differences.

(6) The commission may request that additional analysis be included in the final report.

(7) Interested persons may file comments on the final report filed with the commission, including concerns about routine processes, such as administrative corrections or recommending removal of bids that do not comply with the minimum criteria identified in the RFP, but no stakeholder, including the utility or commission staff, shall have any editorial review or control over the independent evaluator's final report.

NEW SECTION

WAC 480-107-024 Conditions for purchase of resources from a utility, utility subsidiary, or affiliate. (1) A utility or its subsidiary or affiliate may participate in the utility's RFP bidding process, and the utility may accept bids that will result in the utility owning or having a purchase option in the resource over its expected useful life. The utility may also consider repowering its existing resources to meet its resource need. If any one of these circumstances is expected to occur:

(a) The RFP solicitation and bidding process will be subject to the requirement for a utility to retain an independent evaluator to ensure that no unfair advantage occurs; and

(b) The utility must include statements regarding whether such circumstances exist:

(i) In its RFP;

(ii) In the transmittal letter accompanying the RFP filing; and

(iii) In the notice required by WAC 480-107-015(3).

(2) If the utility is considering repowering a resource to meet a resource need, the utility must submit its repowering project as a bid during the RFP process.

(3) A utility and its independent evaluator may not disclose the contents or results of an RFP or competing bids to personnel involved in developing the utility's bid, or to any subsidiary or affiliate prior to making such information public. The utility must include in the RFP the methods the utility used, and will use, to ensure that it or its independent evaluator did not, and will not, improperly disclose that information.

AMENDATORY SECTION (Amending WSR 19-13-031, filed 6/12/19, effective 7/13/19)

WAC 480-107-025 Contents of ((~~the~~)) RFP solicitations. (1) ((~~The~~)) An RFP must ((~~identify~~)) define the resource ((~~block, consisting of the overall~~)) need, including specific attributes or characteristics the utility is soliciting, such as the amount and duration of power ((~~the utility is soliciting, the initial estimate of avoided cost schedule as calculated in WAC 480-106-040 Avoided cost schedule, and any additional information necessary for potential bidders to make a complete bid~~)), time and locational attributes, operational attributes, the type of technology or fuel source necessary to meet a compliance requirement, and any additional information necessary for potential bidders to make a com-

plete bid, including a copy or link to the complete assessment of avoided costs identified in WAC 480-100-615(12).

(2) The RFP must request information identifying energy and nonenergy benefits or burdens to highly impacted communities and vulnerable populations, short-term and long-term public health impacts, environmental impacts, resiliency and energy security impacts, or other information that may be relevant to identifying the costs and benefits of each bid, such as a bidder's past performance utilizing diverse businesses and a bidder's intent to comply with the labor standards in RCW 82.08.962 and 82.12.962. After the commission has approved the utility's first clean energy implementation plan (CEIP), requested information must contain, at a minimum, information related to indicators approved in the utility's most recent CEIP, including customer benefit indicators, as well as descriptions of all indicators.

(3) The RFP must document that the size and operational attributes of the resource ((~~block is~~)) need requested are consistent with the range of estimated new resource needs identified in the utility's ((~~integrated resource plan~~)) IRP.

(((~~3~~))) (4) The RFP must explain ((~~general evaluation and~~)) the specific ranking procedures and assumptions that the utility will use in accordance with WAC 480-107-035 ((~~Project ranking procedure~~)). The RFP must ((~~also specify any minimum criteria that bidders must satisfy to be eligible for consideration in the ranking procedure~~)) include a sample evaluation rubric that quantifies, where possible, the weight the utility will give each criterion during the bid ranking procedure, and provides a detailed explanation of the aspects of each criterion that would result in the bid receiving higher priority.

(((~~4~~))) (5) The RFP must specify ((~~the timing of~~)) a detailed timeline for each stage of the RFP process including ((~~the~~)) solicitation ((~~period, the~~)), ranking ((~~period~~)), and ((~~the expected~~)) selection ((~~period~~)), as well as the utility's schedule of planned informational activities and contact information for the RFP.

(((~~5~~))) (6) The RFP must generally identify ((~~all security requirements and the rationale for them.~~

~~(6) Utilities are encouraged to consult with commission staff during the development of the RFP. Utilities, at their own discretion, may submit draft RFPs for staff review prior to formally submitting an RFP to the commission.~~)) any utility-owned assets, including merchant-side assets that the utility has available, for the purpose of receiving bids that assist the utility in meeting its resource need at the lowest reasonable cost. The utility must make reasonable efforts to provide bidders with necessary technical details they request and to allow bidders to design their bids for use in conjunction with utility-owned assets.

(7) The RFP must identify any minimum bidder requirements, including for financial security requirements and the rationale for such requirements, such as proof of a bidder's industry experience and capabilities.

(8) The RFP must include standard form contracts to be used in acquisition of resources.

(9) All RFPs must discuss the impact of any applicable multistate regulation on RFP development including the requirements imposed by other states for the RFP process.

(10) All RFPs must clearly state the scope of the solicitation and the types of bids that the utility will accept consistent with WAC 480-107-024.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-035 ((~~Project~~)) Bid ranking procedure. (1) ((~~The procedures and criteria the utility will use in its RFP to evaluate and rank project proposals are subject to commission approval.~~

~~(2)~~)) At a minimum, ((~~the~~)) a utility's RFP ranking criteria must recognize resource cost, market-volatility risks, demand-side resource uncertainties and benefits, resource dispatchability, resource effect on system operation, credit and financial risks to the utility, the risks imposed on ratepayers, public policies regarding resource preference ((~~adopted by~~)), and Washington state or ((~~the~~)) federal government ((~~and environmental effects including those associated with resources that emit carbon dioxide~~)) requirements. The ranking criteria must recognize differences in relative amounts of risk and benefit inherent among different technologies, fuel sources, financing arrangements, and contract provisions, including risks and benefits to vulnerable populations and highly impacted communities. The ranking ((~~process must complement power acquisition goals identified~~)) criteria must also be consistent with the avoided cost methodology developed in the ((~~utility's integrated resource plan.~~

~~(3) After the project proposals have been opened for ranking, the utility must make available for public inspection at the utility's designated place of business a summary of each project proposal and a final ranking of all proposed projects.~~

~~(4)~~)) IRP the utility uses to support its determination of its resource need. The utility must consider the value of any additional net benefits that are not directly related to the specific need requested.

(2) In choosing to remove a bid during any stage of its evaluation process, the utility may not base its decision solely on the project's ability to only meet a portion of the resource need.

(3) The utility may ((~~reject any project proposal that does not specify, as part of the price bid, the costs of complying with environmental laws, rules, and regulations in effect at the time of the bid~~)) not discriminate based on a bidder's ownership structure in the ranking process.

(((~~5~~))) (4) The utility ((~~may reject all project proposals if it finds that no proposal adequately serves ratepayers' interests. The commission will review, as appropriate, such a finding together with evidence filed in support of any acquisition in the utility's next general rate case or other cost recovery proceeding.~~

~~(6) When the utility, the utility's subsidiary or an affiliate submits a bid in response to an RFP, one or more competing bidders may request the commission to appoint an independent third party to assist commission staff in its review of the bid. Should the commission grant such a request, the fees charged by the independent third party will be paid by the party or parties requesting the independent review~~)) and any independent evaluator selected by the utility will each score and rank the qualifying bids using the RFP's ranking criteria

and methodology. If bids include unexpected content, the utility may modify the ranking criteria but must notify all bidders of the change, describe the change, and provide an opportunity for bidders to modify their bids.

(5) Within thirty days after the close of the bidding period, the utility must post on its public website a summary of each bid the utility has received. Where use of confidential data prohibits the utility from identifying specifics of a bid, a generic but complete description is sufficient.

(6) The utility may reject any bids that do not comply with the minimum requirements of the RFP or identify the costs of complying with environmental, public health, or other laws, rules, and regulations in effect at the time of the bid.

(7) Within thirty days after executing an agreement for acquisition of a resource, the utility must file the executed agreement and supporting documents with the commission.

(8) The commission may review any acquisitions resulting from the RFP process in the utility's general rate case or other cost recovery proceeding.

(9) The commission will review, as appropriate, a utility's finding that no proposal adequately serves ratepayers' interests, together with evidence filed in support of any acquisition made outside of the RFP process, in the utility's general rate case or other cost recovery proceeding.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-045 Pricing and contracting procedures. (1) Once ((~~project proposals have been~~)) bids are ranked in accordance with WAC 480-107-035 ((~~Project ranking procedure~~)), the utility must ((~~identify the bidders that~~)) determine which bids best meet the selection criteria and ((~~that are expected to~~)) produce the ((~~energy, capacity, and electrical savings as defined by~~)) relevant attributes required in that portion of the resource ((~~block~~)) need to which the ((~~project proposal~~)) bid is directed.

(2) The ((~~project proposal's~~)) bid's price, pricing structure, and terms are subject to negotiation.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-065 ((~~Eligibility for long-run~~)) Acquisition of conservation ((~~purchase rates~~)) and efficiency resources. (1) ((~~Any~~)) A conservation and efficiency resource supplier may participate in the bidding process for any resource need. A utility ((~~may allow a utility~~)) or its subsidiary ((~~to~~)) or affiliate may participate as a conservation resource supplier((~~, on~~)) subject to the conditions described in WAC ((~~480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal~~)) 480-107-024.

(2) All conservation and efficiency measures ((~~included in a project proposal~~)) within a bid must((~~:~~

~~(a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;~~

~~(b) Be consistent with the utility's integrated resource plan; and~~

~~(c)~~)) produce savings that can be reliably measured or estimated with accepted engineering, statistical, or meter-based methods.

(3) A utility must acquire conservation and efficiency resources through a competitive procurement process as described in this rule unless the utility is implementing a competitive procurement framework for conservation and efficiency resources as approved by the commission.

(a) As part of that process, a utility may develop, and update each biennium, a competitive procurement framework for conservation and efficiency resources in consultation with its conservation advisory group, as described in WAC 480-109-110. The utility may file its first competitive procurement framework for conservation and efficiency resources with the utility's 2022-2023 biennial conservation plan.

(b) The competitive procurement framework for conservation and efficiency resources must:

(i) Define the specific criteria that the utility will use to determine the frequency of competitive bidding for conservation and efficiency resource programs, in whole or part;

(ii) Address appropriate public participation, outreach, and communication of evaluation and selection criteria;

(iii) Enhance or, at minimum, not interfere with the adaptive management of programs;

(iv) Include documentation of support by the advisory group; and

(v) Be filed as an appendix to the utility's biennial conservation plan, as described in WAC 480-109-120.

(c) The competitive procurement framework for conservation and efficiency resources may:

(i) Exempt particular programs from competitive procurement, such as low-income, market transformation, or self-directed programs; and

(ii) Consider if and when to use an independent evaluator.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-075 Contract finalization. (1) Unless otherwise prohibited by law, a utility ((~~has discretion to~~)) may decide whether to enter into a final contract with any ((~~project~~)) bidder that meets the selection criteria of the RFP. Any such bidder may petition the commission to review a utility's decision not to enter into a final contract.

(2) Any ((~~project~~)) bidder and utility may negotiate changes to the selected ((~~project proposal~~)) bid, subject to any limitation established in the RFP, for the purpose of finalizing a particular contract consistent with the provisions of this chapter.

(3) ((~~The utility may sign contracts for any appropriate time period specified in a selected project proposal for up to a twenty-year term. The utility may sign longer-term contracts if such provisions are specified in the utility's RFP.~~)) Any contract signed by the utility to fill a resource need as a result of an RFP process must require the firm awarded the

contract to track and report to the utility its use of diverse businesses including, but not limited to, women-, minority-, disabled-, and veteran-owned businesses, and to track and report to the utility the firm's application of the labor standards in RCW 82.08.962 and 82.12.962.

(4) If a bidder makes material changes ((~~are made~~)) to ((~~the project proposal~~)) its bid after ((~~project~~)) bid ranking, including material price changes, the utility must suspend contract finalization with that ((~~party~~)) bidder, and the utility and any independent evaluator must rerank ((~~projects~~)) bids according to the revised ((~~project proposal~~)) bid. If the material changes cause the revised ((~~project proposal~~)) bid to rank lower than ((~~projects~~)) bids the utility has not originally selected, the utility must instead pursue contract finalization with the next highest ranked ((~~project~~)) bid.

(((~~5) A project developer must provide evidence that the developer has obtained or will obtain a generation site (e.g., letter of intent) before signing a contract with the purchasing utility.~~)))

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-115 System emergencies. (1) A generating facility entering into a power contract ((~~under these rules is required to~~)) must provide energy or capacity to a utility during a system emergency only to the extent:

(a) Provided by agreement between such generating facility and utility; or

(b) Ordered under section 202(c) of the Federal Power Act.

(2) During any system emergency, a utility may discontinue or curtail:

(a) Purchases from a generating facility if such purchases would contribute to such emergency; and

(b) Sales to a generating facility, if such discontinuance or curtailment:

(i) Does not discriminate against a generating facility; and

(ii) Takes into account the degree to which purchases from the generating facility would offset the need to discontinue or curtail sales to the generating facility.

(3) System emergencies resulting in utility action under this chapter are subject to verification by the commission upon request by either party to the power contract.

AMENDATORY SECTION (Amending WSR 06-08-025, filed 3/28/06, effective 4/28/06)

WAC 480-107-145 Filings—Investigations. (1) The commission retains the right to examine ((~~project proposals~~)) bids as originally submitted to the utility by ((~~potential developers~~)) bidders. The utility must keep all documents supplied by ((~~project~~)) bidders or on their behalf, and all documents created by the utility relating to each bid, including materials provided to the utility by an independent evaluator, for ((~~at least~~)) the later of seven years from the close of the bidding process, or the conclusion of the utility's ((~~next~~)) general rate case((~~, whichever is later~~)) in which the commission reviewed the fully-developed project for prudence, including any time period allowed for reconsideration or appeal.

(2) The utility must file with the commission ((~~and maintain on file for inspection at its place of business, the current rates, prices, and charges established in accordance with this chapter~~)) within ninety days of the conclusion of any RFP process, a summary report of responses including, at a minimum:

(a) Specific reasons for rejecting any bid under WAC 480-107-035(6);

(b) The number of bids received, categorized by technology type;

(c) The size of the bids received, categorized by technology type;

(d) The median and average bid price, categorized by technology type and sufficiently general to limit the need for confidential designation whenever possible;

(e) The number of bids received by location, including locations designated as highly impacted communities;

(f) The number of bids received and accepted by bidder type, including women-, minority-, disabled-, or veteran-owned businesses;

(g) The number of bids received, categorized by ownership structures; and

(h) The number of bids complying with the labor standards identified in RCW 82.08.962 and 82.12.962.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 480-107-135	Conditions for purchase of electrical power or savings from a utility, a utility's subsidiary or affiliate.

WSR 21-02-024
PERMANENT RULES
UTILITIES AND TRANSPORTATION COMMISSION

[Docket UE-190652, General Order R-603—Filed December 28, 2020, 1:15 p.m., effective January 28, 2021]

In the matter of amending rules in chapter 480-109 WAC relating to the Energy Independence Act (EIA) and the Clean Energy Transformation Act (CETA).

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 20-18-075, filed with the code reviser on September 1, 2020. The commission has authority to take this action pursuant to RCW 80.01.040, 80.04.160, 19.285.080, and 19.405.100.

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 RULE: RCW 34.05.325(6) requires the commission to prepare

and publish a concise explanatory statement about adopted rules. The statement must identify the commission's reasons for adopting the rules, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

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

6 REFERENCE TO AFFECTED RULES: This order amends the following sections of the Washington Administrative Code: Amending WAC 480-109-060 Definitions, 480-109-100 Energy efficiency resource standard, 480-109-200 Renewable portfolio standard, 480-109-210 Renewable portfolio standard reporting, and 480-109-300 Greenhouse gas content calculation and energy and emissions intensity metrics.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed with the code reviser a Preproposal statement of inquiry (CR-101) on October 4, 2019, at WSR 19-21-016, and filed the CR-101 in Docket UE-190652. The statement advised interested persons that the commission was initiating a rule making to address changes to chapter 480-109 WAC as well as to clarify, streamline, and incorporate changes to EIA found in chapter 288, Laws of 2019, passed as E2SSB 5116, portions of which are now codified in CETA chapter 19.405 RCW, and also incorporate changes found in chapter 315, Laws of 2017, passed as ESB 5128. The amendments adopted by this order improve the processes in administering the EIA and address provisions and legislative intent not explicitly addressed by the commission's prior rules. The commission has coordinated the rules amended by this order with the Washington department of commerce (commerce).

8 On October 4, 2019, the commission issued a notice of opportunity to file written comments, informing persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all registered electric companies. Pursuant to the notice, the commission received comments between November 3 and December 6, 2019. The commission received written comments from Brian Henning, Klickitat Public Utility District and Renewable Hydrogen Alliance, Avista Corporation, d/b/a Avista Utilities (Avista), Vashon Climate Action Group, Northwest Renewables, Erica Dellwo, Sierra Club, PacifiCorp, d/b/a Pacific Power & Light Co. (PacifiCorp), NW Energy Coalition (NWEC), Puget Sound Energy (PSE), Solar Installers of Washington, Washington Environmental Council, the public counsel unit of the Washington attorney general's office (public counsel), Front and Centered, Trenton Miller, Robert Briggs, The Energy Project, and Cascade Natural Gas Corporation.

9 On January 8, 2020, the commission jointly with the Washington department of commerce issued a notice of joint workshop and discussion in this Docket and Docket UE-190698,[1] and pursuant to that notice held a workshop on January 28, 2020, to discuss and further inform potential rules and guidelines concerning the definitions of low-income, energy assistance, energy assistance need, and energy burden.

1 On January 9, 2020, the commission issued an addendum to the notices of joint workshops and discussions, which clarified that the January 28, 2020, workshop would be held at the commission's headquarters in Lacey, Washington.

10 SMALL BUSINESS ECONOMIC IMPACT ANALYSIS: On January 16, 2020, the commission issued a small business economic impact statement (SBEIS) questionnaire to all interested persons. The commission received no responses to this questionnaire. Thus, the commission has no evidence that any business will incur more than minor costs to comply with the proposed rules. Accordingly, no small business economic impact statement is required.[2]

2 *See* RCW 19.85.020 (2)-(3), 19.85.025(4), and 19.85.030 (1)(a).

11 WITHDRAWN NOTICES OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making on March 27, 2020, at WSR 20-08-081. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-08-081 at 1:30 p.m. on June 2, 2020, in the commission's Richard Hemstad Hearing Room, located at 621 Woodland Square Loop S.E., Lacey, WA. The notice provided interested persons the opportunity to submit written comments to the commission by May 1, 2020.

12 On May 18, 2020, the commission issued a notice of telephonic adoption hearing, modifying the June 2, 2020, hearing to permit only virtual participation due to the ongoing COVID-19 public health crisis.

13 The commission received written comments from Avista, Front and Centered, PSE, NWEC, The Energy Project, public counsel, and PacifiCorp. Some of the commenters requested that the commission modify the definition of "low-income" to include both statutory metrics: The higher of two hundred percent of the federal poverty level, or eighty percent of area median income, adjusted for household size.[3]

3 The March 27, 2020, proposed rules included only two hundred percent of the federal poverty level in the definition of "low-income."

14 On May 27, 2020, the commission issued a notice canceling adoption hearing, informing all interested stakeholders that the commission would withdraw its Notice No. WSR 20-08-081 due to the commission's determination that additional revisions to the rules were necessary.

15 The commission made substantive modifications to the rules contemplated in Notice No. WSR 20-08-081, including a modification to the definition of "low-income," to include the second available metric set at the statutory maximum of eighty percent of area median income, and the following additional changes:

- Clarifying language pertaining to low-income conservation;
- Updating two subsection titles to reflect their content more accurately; and
- Referencing CETA in WAC 480-109-300(2).

16 The modification to the definition of "low-income" is intended to denote thresholds of eligibility only. The commission will provide guidance at a later time related to assistance program design, prioritization of benefits, and benefit calculations, all of which will be informed by RCW 19.405.120. Specifically, RCW 19.405.120(2) requires utilities to prioritize low-income households with a higher energy burden to the extent practicable.

17 On June 5, 2020, the commission filed a new notice of proposed rule making at WSR 20-13-014 with the identified modifications. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-13-014 at 9:30 a.m. on July 28, 2020.[4] The notice provided interested persons the opportunity to submit written comments to the commission by July 6, 2020.

4 The commission conducted this rule-making hearing virtually, with telephonic or online participation, to conform to social distancing requirements related to the COVID-19 pandemic.

18 The commission received written comments from NWEC, PSE, The Energy Project, Climate Solutions, and commerce.

19 On July 28, 2020, the commission held a virtual adoption hearing in this matter. The commission heard oral comments from staff representatives Andrew Rector and Deborah Reynolds. Avista, PacifiCorp, PSE, public counsel, The Energy Project, and NWEC also provided comments during the virtual adoption hearing.

20 During the July 28, 2020, hearing, PacifiCorp supported Avista's recommendation that the commission modify WAC 480-109-200 (2)(a). Avista explained that the subsection was confusing and could pose difficulty for the utilities to comply with EIA under circumstances noticed by Avista in 2020.

21 After consideration of the comments provided at [the] hearing regarding WAC 480-109-200 (2)(a), along with relevant written comments submitted, we determined that substantively modifying the rules as proposed at WSR 20-13-014 to address PacifiCorp and Avista's recommendation was justified. We found that removing WAC 480-109-200 (2)(a) eliminates confusion and provides greater clarity for all stakeholders. This deletion will not alter the requirement that electric utilities have adequate eligible renewable resources or equivalent renewable energy credits (RECs) under contract to meet their annual targets by January 1 of the target year, as required by RCW 19.285.040(2). Rather, this deletion will clarify the commission's existing practice to allow utilities to buy RECs after January 1 if there is any additional need, or if cheaper options become available to replace the RECs already acquired by January 1. Accordingly, the commission determined that WAC 480-109-200 (2)(a) should be removed and that, therefore, a new notice of proposed rule making should be filed.

22 NOTICE OF PROPOSED RULE MAKING: The commission made a substantive modification to the rules contemplated in the Notice at WSR 20-13-014 and subsequently filed a new notice of proposed rule making (CR-102) on September 1, 2020, at WSR 20-18-075. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 20-18-075 at 9:30 a.m. on November 6, 2020.[5] The notice provided interested persons the opportunity to submit written comments to the commission by October 1, 2020. The CR-102 proposed clarifying and streamlining amendments to chapter 480-109 WAC to incorporate changes to EIA found in CETA, portions of which are now codified in chapter 19.405 RCW, and also to incorporate changes found in ESB 5128.

5 The commission conducted this rule-making hearing virtually, with telephonic or online participation, to conform to social distancing requirements related to the COVID-19 pandemic.

23 WRITTEN COMMENTS: Initially, the commission received written comments to the first withdrawn notice of proposed rule making at WSR 20-08-081 from Avista, Front and Centered, PSE, NWEC, The Energy Project, public counsel, and PacifiCorp. The commission later received written comments in response to the second withdrawn notice of proposed rule making at WSR 20-13-014 from NWEC, PSE, The Energy Project, Climate Solutions, and commerce. Subsequently, the commission received written comments to the CR-102 at WSR 20-18-075 from Avista and public counsel. Staff's responses to the written comments submitted in this proceeding, which the commission adopts by this order, are contained in Appendix A.

24 RULE-MAKING HEARING: On September 1, 2020, the commission issued a notice of opportunity to file written comments on proposed rules and notice of proposed rule virtual adoption hearing, finding good cause to conduct the rule-making hearing virtually due to social distancing requirements related to the COVID-19 pandemic. The commission considered the proposed rules for adoption at a rule-making hearing on Friday, November 6, 2020, before Chair David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The commission heard oral comments from staff representative Andrew Rector. Representatives from PSE and NWEC also provided comments.

25 SUGGESTIONS FOR CHANGES: Stakeholder comments suggested changes to the proposed rules. A summary of the suggested changes to the proposed rules submitted to this docket and staff's proposed reasons for rejecting or accepting the suggestions are included in Appendix A. The commission adopts as its own the reasons proposed by staff for rejecting or accepting stakeholders' suggested changes to the rules as proposed in the CR-102 at WSR 20-18-075, subject to any modifications we make to the proposed rules and the rationale for those modifications explained in this order. Several of the stakeholders' comments with suggested changes warrant further discussion below.[6]

6 In the event of any discrepancy between the rationale presented in this order and the responses contained in Appendix A, this order will control.

26 Commission Authority. In Avista's written comments, it recommends removing: (1) The proposed definitions of energy assistance, energy assistance need, energy burden, and low-income from WAC 480-109-060; (2) proposed language in WAC 480-109-100 (1)(a)(ii) that would require a utility's conservation portfolio to include programs and mechanisms identified in CETA pertaining to energy assistance; and (3) proposed language in WAC 480-109-100 (10)(b) requiring a utility's biennial conservation plan to include conservation programs and mechanisms identified in

CETA pertaining to energy assistance and requiring the utility to prioritize energy assistance to low-income households with a higher energy burden. Avista argues that the commission lacks authority to amend its rules regulating utility conservation programs, including low-income conservation programs, with language consistent with or in light of CETA. We disagree.

27 In CETA, the Washington legislature stated:

It is the policy of the state to eliminate coal-fired electricity, transition the state's electricity supply to one hundred percent carbon-neutral by 2030, and one hundred percent carbon-free by 2045. In implementing this chapter, the state must prioritize the maximization of family wage job creation, seek to ensure that all customers are benefiting from the transition to a clean energy economy, and provide safeguards to ensure that the achievement of this policy does not impair the reliability of the electricity system or impose unreasonable costs on utility customers.[7]

7 RCW 19.405.010(2).

CETA authorizes the commission to adopt rules to ensure CETA's proper implementation and enforcement, and also requires the commission to adopt rules to streamline its implementation with EIA in order to simplify compliance and avoid duplicative processes.[8] CETA's policy goals, among others, include lowering household energy burden and making energy assistance funds available to low-income households.[9]

8 RCW 19.405.100(1), 19.405.100(2). CETA authorizes the commission to, among other things, use its broad regulatory authority over utility ratemaking and its regulatory tools and incentives to empower utilities to achieve the goals of CETA's policy. *See* RCW 19.405.010(5); *see also* RCW 19.405.050, 19.405.060, 19.405.090, 19.405.120.

9 RCW 19.405.020, 19.405.120.

28 The commission has authority to regulate utilities' conservation programs and determine whether they are cost-effective based on the commission's policies and practice.[10] Since EIA was approved, the commission has given special consideration for low-income conservation because of the higher barriers to such programs. For example, in General Order R-578, the commission found that, because low-income conservation programs have significant non-energy benefits, it was appropriate that utilities "maintain robust low-income conservation offerings" despite the high barriers to cost-effectiveness, even allowing utilities to exclude low-income conservation from portfolio-level cost-effectiveness screens.[11]

10 RCW 19.285.040(1); *see* RCW 80.01.040, 80.04.160, 19.285.080.

11 *In re Amending, Adopting, and Repealing Rules in WAC 480-109 Relating to the EIA*, Docket UE-131723, General Order R-578, 14, ¶ 41 (Mar. 15, 2015); *Id.* at 13-14, ¶¶ 39-41; WAC 480-109-100 (10)(b).

29 Considering the directives in CETA and EIA, the commission finds it appropriate in this order to update its policies and procedures for cost-effective low-income conservation programs and to amend chapter 480-109 WAC accordingly. We determine that the commission's broad grant of regulatory authority includes authority to amend its rules in chapter 480-109 WAC to address the cost-effectiveness of low-income conservation programs in light of CETA and in consideration of low-income energy assistance and household energy burden.[12]

12 RCW 80.01.040, 80.04.160, 19.285.040, 19.285.080, 19.405.010, 19.405.020, 19.405.120.

30 Definition and Calculation of Energy Burden. Several stakeholders, including PacifiCorp and public counsel, submitted comments recommending language limiting or expanding the meaning of "energy burden" and what types of fuel sources and income are included in the calculation of a household's energy burden. PacifiCorp recommends that the commission limit the meaning of energy burden only to those services delivered by the utility - in PacifiCorp's case, electricity. Public counsel recommends that the commission clarify that the meaning includes a customer's total energy expense, without an apparent limitation. To address these comments, we observe that the commission has made no change or supplement to the definition of "energy burden" found in CETA. We do, however, find it necessary to specify how energy burden should be calculated and what types of fuels and the types of income should, therefore, be included.

31 We understand the term "energy burden" as relating only to expenses incurred for residential or domestic purposes. This includes more than PacifiCorp's recommended definition, but less than public counsel's. Energy burden therefore includes expenses of any fuel source for residential or domestic energy, such as electricity, natural gas, propane, heating oil, and wood. It excludes nonenergy utilities and transportation-related energy expenses. To the extent feasible, it would distinguish and exclude electricity expenses for electric vehicle charging, home businesses or shops, and agricultural or irrigation purposes. Thus, for purposes of RCW 19.405.120, we determine that energy burden can be calculated using the following formula.

$$\textit{energy burden} = \frac{\textit{annual home energy expenses}}{\textit{annual household income}}$$

Annual household income used in the calculation above should be based on gross income for all household members, consistent with the method identified by commerce for the Low-Income Home and Energy Assistance Program (LIHEAP) in Washington.[13] Use of this method, or one consistent with it, will align with existing processes, thereby reducing administrative burden and duplicative processes.

13 Wash. Dep't of Commerce, *2020 LIHEAP State Plan,* "Determination of Eligibility - Countable Income" at 9 (Jun. 2019) *available at* http://www.commerce.wa.gov/wp-content/uploads/2019/06/ceo-liheap-state-plan-2020.pdf.

32 This understanding of energy burden is also pertinent to energy assistance and energy assistance need. The commission opened Docket UE-200269 to investigate, among other topics, the relationship between the definition of "low-income" in the rules amended and adopted by this order and CETA's goals to provide energy assistance to low-income households.[14] We encourage stakeholders interested in this topic to follow Docket UE-200269, wherein the commission intends to provide further guidance on these goals.

14 *See* RCW 19.405.120(2).

33 Fully-funding Low-Income Conservation. Several comments from stakeholders addressed the proposed amended language in WAC 480-109-100 (10)(a) related to a utility's obligation to fully fund low-income conservation measures. The intent of this subsection is to require utilities to fully fund cost-effective low-income conservation measures without limiting the source of funding to utilities. Instead, the amended language of this section should allow a utility and nonutility entities to leverage other funds, when available, in combination with utility funds. Neither the commission nor utilities have the discretion to determine dispersion of outside funds. We therefore expect that a utility will collaborate with community action agencies and any other interested outside entities when contributing to the most cost-effective funding to implement low-income conservation projects.

34 As it regards subsection (b) of that same section, PSE provided comments in this rule making expressing concern with the requirement that a utility must prioritize energy assistance to low-income households with a higher energy burden. We understand PSE's concern with regard to what is practicable for a utility and to what extent a utility should be directly involved in the intake and prioritization of low-income customers. The language PSE recommends modifying is directly from CETA and we do not attempt in this rule making to modify the language or intent of the Washington legislature.[15] We are able, however, to provide some guidance for utilities. A utility should seek review and advice from its low-income advisory group when developing a plan to prioritize energy assistance to households with a higher energy burden. It should then coordinate with community action agencies and other interested outside entities to meet this requirement. We expect that with the advice of its low-income advisory group and collaboration with community action agencies, a utility will develop, manage, and improve its program in compliance with this statutory requirement.

15 RCW 19.405.120(2).

35 CETA Compliance as EIA Compliance Alternative. We next address WAC 480-109-200(10), concerning alternative compliance with the renewable portfolio standard, and explain how "average annual retail electric load" as provided in RCW 19.285.040 (2)(m) should be interpreted for purposes of determining compliance with EIA starting in 2030. Consistent with statute, this subsection will allow utilities to use compliance with CETA as an alternative compliance mechanism for EIA. While EIA uses a one-year compliance period based on the average annual load of the previous two years, CETA uses a four-year compliance period, with all calculations of compliance based on the four years within the compliance period.[16] To comply with EIA, a utility must use eligible renewable resources or acquire equivalent RECs to meet at least fifteen percent of its load by January 1.[17] Starting in 2030, a utility can comply with EIA by using electricity equaling one hundred percent of the utility's average annual retail electric load from any combination of renewable resources and associated RECs as defined in EIA, and nonemitting electric generation as defined in CETA.[18] However, no statute defines how the utility's average annual retail electric load is determined.

16 *See* RCW 19.285.040 (2)(a), 19.405.040(1).

17 RCW 19.285.040 (2)(a).

18 WAC 480-109-200(10); RCW 19.285.030, 19.285.040 (2)(m), 19.405.020.

36 We find that the proper interpretation should be consistent with the calculation of a utility's EIA target, found in RCW 19.285.040. A utility's EIA target, also referred to as its "annual load," is calculated based on the average of the utility's load for the previous two years.[19] While compliance with CETA is prescribed as an alternative for EIA compliance, basing our interpretation on EIA's calculation will maintain consistency for the commission's implementation of EIA and avoid incompatible duplicative processes between EIA and CETA. Accordingly, we determine that for purposes of RCW 19.285.040 (2)(m) and WAC 480-109-200(10), a utility's average annual retail electric load should be calculated as the average of the utility's load for the previous two years.

19 RCW 19.285.040 (2)(c).

37 Emissions Rate for Unspecified Electricity. Several interested stakeholders commented upon the commission's proposed language updating WAC 480-109-300. Although many recommendations for striking or modifying this subsection were subsequently withdrawn, we provide additional guidance or clarity regarding the use of the emissions rate of 0.437 metric tons of carbon dioxide per megawatt-hour of electricity for unspecified electricity. This rate comes directly from legislative direction in CETA at RCW 19.405.070(2). The commission's understanding is that the rate stems from calculations contained in the California Air Resources Board's rules. It is used in CETA, and here, as a back-stop figure until the department of ecology (DOE) adopts an emissions rate for unspecified electricity. CETA requires DOE to update its adopted emissions rate periodically, but it has not yet made any adoption. The rule we adopt by this order is designed to require utilities to apply DOE's adopted emissions rate for unspecified electricity or, if DOE has not adopted a rate, to apply the emissions rate of 0.437 metric tons of carbon dioxide per megawatt-hour of electricity identified in CETA.

38 CHANGE FROM PROPOSAL: The commission adopts the proposal with the following modification from the text noticed at WSR 20-18-075. The ministerial modification described below was made in consideration of and in coordination with amendments to and the adoption of other commission rules relevant to those under consideration in this rule-making proceeding.

39 The commission makes a ministerial modification to the definition of integrated resource plan (IRP) in WAC 480-109-060 as follows:

"Integrated resource plan" or "IRP" ~~means the filing made every two years by an electric utility in accordance with WAC 480-100-238, integrated resource planning~~ has the same meaning as in WAC 480-100-605.[20]

20 Currently, the definition of IRP is identified in subsection (15) of WAC 480-109-060. With the amendments to the chapter adopted by [the] commission in this order, the definition will now be identified in subsection (20).

40 WAC 480-100-238 is affected by the commission's rule making in Docket UE-190698 relating to integrated

resource planning. The commission has not substantially revised its IRP rules since 2006, and those rules need to be updated to reflect statutory amendments made after 2009.[21] When the Washington legislature passed E2SSB 5116 in May 2019, it made changes to chapter 19.280 RCW pertaining to IRPs, and required the commission, by January 1, 2021, to incorporate those changes in its rules. We must therefore remove the reference to WAC 480-100-238 in the IRP definition in WAC 480-109-060 to correctly identify the applicable rule.

21 *In re Amending, Adopting, and Repealing WAC 480-100-238, Relating to Integrated Resource Planning,* Docket UE-190698, CR-101 at WSR 19-23-005 (Nov. 6, 2019).

41 The commission also is undertaking a separate rule making in Docket UE-191023 relating to Clean Energy Implementation Plans (CEIP) and compliance with CETA as directed by the Washington legislature. That rule making adopts a definition of IRP in WAC 480-100-605. Therefore, and in summary, we find it appropriate to amend the definition of IRP in WAC 480-109-060 to align with the meaning in WAC 480-100-605.

42 Accordingly, the commission determines that the definition of IRP in WAC 480-109-060 should be amended to read as reflected in Paragraph 39, above.

43 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rules as proposed in the CR-102 at WSR 20-18-075 with the change described in Paragraphs 38-42, above.

44 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that it should amend WAC 480-109-060, 480-109-100, 480-109-200, 480-109-210, and 480-109-300 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 5, Repealed 0.

ORDER

THE COMMISSION ORDERS:

45 (1) The commission amends WAC 480-109-060, 480-109-100, 480-109-200, 480-109-210, and 480-109-300 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

46 (2) This order and the rules set forth in Appendix B, 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, and effective December 28, 2020.

Washington Utilities and Transportation Commission

David W. Danner, Chairman
Ann E. Rendahl, Commissioner
Jay M. Balasbas, Commissioner

Appendix A
Comment Summary Matrix
Energy Independence Act Rule Making, Docket UE-190652

Summary of Comments

This document summarizes all CR-102 comments the commission received regarding the Energy Independence Act (EIA) rule making, Docket UE-190652. Note: Two CR-102 forms, with accompanying proposed rules, were submitted in this docket. Some stakeholders submitted comments during both CR-102 comment periods. Where necessary, the commission has indicated which CR-102 comment is being summarized using superscript numbers [1] and [2].

CR-102 PHASE

COMMENTS FROM THE NOTICES OF OPPORTUNITY TO FILE WRITTEN COMMENTS ISSUED ON MARCH 27, 2020, AND JUNE 5, 2020		
Stakeholder	**General Comments Not Applicable to a Specific Section of the Rule**	**Staff Response**
Front and Centered	Hopes that the commission will consider the adoption of all prior comments.	See responses provided in "UE-190652 EIA Rulemaking CR-101 Comment Summary Matrix.pdf" posted to the commission website on March 30, 2020.

Pacific Power	Requested clarification on the proposed addition of the "carbon dioxide equivalent" (CO2e) and "greenhouse gas" (GHG) definitions in the revised rules. Asked how CO2e can impact emitting resource dispatch in its integrated resource plan (IRP) based on CETA.	After discussion with staff, Pacific Power revised its comments to disregard its request for clarification on the inclusion of CO2e into utility planning processes. The company does not have any concerns with the inclusion of the definition of CO2e as proposed in the draft EIA rules. The company may file the planning portions of the CO2e comments in a subsequent CETA rule making.
	Expressed concern that RECs associated with new qualifying facilities (QFs), in operation after the effective date of the law, are not addressed in statute or the draft rules. In case the utility cannot procure RECs from new QFs, a penalty will be imposed. Requested that the commission resolve this issue by requiring QFs to provide project RECs to the purchasing utility.	After discussion with staff, the company agreed that this section is not a part of the EIA rule making. Pacific Power may resolve ownership of RECs associated with energy procured from QFs by revising its Public Utilities Regulatory Policies Act tariff(s).
Comments affecting WAC 480-109-060 Definitions		
(13) Energy assistance		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Recommends removing the definition of energy assistance from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate low-income (LI) energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue all cost-effective conservation consistently with state law and commission policy.
Front and Centered	Recommends: "Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, reduction of shut-offs and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's energy burden."	The definition provided in rule is the statutory definition. The commission will provide additional guidance on eligible energy assistance programs in the future.
	By calling out the needs of those who are not connected to or are at risk of being disconnected from energy, we ensure those households receive the attention and assistance needed for the energy security necessary to protect families.	
The Energy Project	Definition appropriately mirrors the statutory definition in RCW 19.405.020(15).	No staff response needed.
(14) Energy assistance need		
Stakeholder	**Summary of Comments**	**Staff Response**
Public Counsel	Believes the definition should reflect WA state data and recommends further discussion to consider local data on energy burden. For WA households with income between zero to 150 percent of the federal poverty limit (FPL), the average energy burden is eight percent. For WA households with income between zero to 200 percent of the FPL, the average energy burden is six percent. WA households also have varying levels of energy burden based on respective county of residence.	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	Flexibility is needed in setting an appropriate energy burden target for a particular energy assistance program. If the average local energy burden is lower than six percent, the draft rules could have unintended consequences. Recommends: "'Energy assistance need' means the amount of assistance necessary to achieve an energy burden, from all energy sources, equal to six percent or less for utility customers."	
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.

Front and Centered	Recommends: "'Energy assistance need[']" means the amount of assistance necessary to ~~achieve an energy burden equal~~ reduce a household's energy burden to well below six percent ~~for utility customers~~ and for those who do not have energy due to lack of access or income."	The statutory definition in RCW 19.405.020 states that the commission will determine "a level of household energy burden" within the definition of "energy assistance need."
	The statutory directive is not to establish a flat level of burden, conveyed with the use of the phrase "equal to," but rather it is to reduce the energy burden as low as possible with six percent as a ceiling. This change brings greater clarity in addition to alignment with the intent of the statute.	
	Believes that selecting a specific percentage warrants a deeper discussion and input because energy burden is a portion of disposable income available to pay energy costs. If the income of a household is so low that they are not able to pay bills, they may not have a measurable energy burden, but clearly, they have an energy burden.	Energy burden is defined by statute and included as the sole metric within the statutory definition of "energy assistance need." Energy burden is an imperfect metric for assessing all needs. Additional metrics are outside the scope of this rule making. The definition of "energy assistance need" does not limit the commission's discretion to approve programs.
	Recommends specific recognition of those who have had their energy shut off due to an inability to pay or do not have an energy bill because they lack access to the energy grid.	
NW Energy Coalition	Recommends: "'Energy assistance need' means the amount of assistance necessary to achieve an energy burden ~~equal to~~ not to exceed six percent for utility customers." (Reiterated in 2nd CR-102 comments.)	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	While WA state's overall utility costs and average energy burden are lower compared to the rest of the United States, those lower costs are often offset by much higher housing and other living costs in several parts of the state. Utilities should be able to determine a threshold lower than six percent to determine bill affordability based on local economic conditions.	
The Energy Project	Supports the use in the proposed rule of a six percent energy burden. There is ample support in the record for using this metric.	No staff response needed.
	Notes that staff has indicated that utility programs could target any level of energy burden subject to commission approval, as the definition of "energy assistance need" does not interact with programmatic design.	Six percent energy burden is an appropriate input for "energy assistance need" calculations pursuant to the statewide assessment required in RCW 19.405.120(3) and the utility assessments pursuant to RCW 19.405.120(4). Defining energy assistance as six percent or less would introduce variability into the statewide assessment pursuant to RCW [19.405].120(3). The definition of "energy assistance need" does not limit the commission's discretion to approve energy assistance programs that target levels of energy burden below six percent.
	To clarify this intent in the rule language itself, believes that including language stating the level is "no greater than" six percent would remove doubt that the rule allows utilities to adopt more aggressive standards for their programs if they desire.	
(15) Energy burden		
Stakeholder	**Summary of Comments**	**Staff Response**
Public Counsel	Recommends that the definition of "energy burden" should clarify that the term considers the customer's total energy expense. Recommends: "'Energy burden' means the share of annual household income used to pay annual home energy bills from all energy sources."	The definition included in the rules is from statute. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood.
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of low-income conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.
The Energy Project	Definition appropriately mirrors the statutory definition in RCW 19.405.020(17).	No staff response needed.
Pacific Power	"Energy burden" should be clearly defined to be specific to the utility services for which the utility bills its customers. Recommends: "(15) 'Energy burden' means the share of annual household income used to pay annual home energy bills for the services delivered by the utility for which it bills its customers."	The definition included in the rules is from statute. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood.

(22) Low-income		
Stakeholder	**Summary of Comments**	**Staff Response**
Public Counsel	Recommends the definition be more flexible and reflect the maximum limit contained in CETA, which is the higher or [of] 80 percent area median income (AMI) or 200 percent of the federal poverty level (FPL), adjusted for household size.	The definition has been updated to include 80 percent AMI.
	Limiting the definition to 200 percent FPL may unnecessarily exclude households that fall between 200 percent of the FPL and 80 percent AMI. The rule should preserve the use of AMI if it becomes a better measure for LI programs.	
	A more flexible definition would allow utilities and their partners to design programs that best suit their service territories.	The commission will provide guidance in the future on how the definition of "low-income" interacts with program eligibility.
Avista	Recommends removing the definition from the rules.	The EIA rules have provisions governing LI conservation and the commission chooses to update those rules in light of CETA.
	The changes that incorporate LI energy assistance from CETA into the EIA are inappropriate.	As discussed in the 2015 order adopting amendments to chapter 480-109 WAC, the commission's rules provide for determining the cost-effectiveness of LI conservation programs to ensure utilities pursue all cost-effective conservation. These amendments ensure that utilities pursue cost-effective conservation consistently with state law and commission policy.
Front and Centered	Recommends: "'Low-income' means household incomes that are less than or equal to the higher of 80 percent of area median household income or 200 percent of federal poverty level ~~or less~~, adjusted for household size."	The definition has been updated to include 80 percent AMI.
	The statute included both measures because the federal poverty level alone is not an adequate measure for WA state given the extreme range of cost of living across the state.	The statute provided the commission and the WA department of commerce (commerce) discretion in setting the definition for "low-income" as long as the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.
	Interprets this definition to mean that some assistance must be provided to households up to 80 percent of AMI, but not to mean that all programs must be offered to all customers.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interacts with program eligibility in future guidance.
	The statutory direction to prioritize households with the greatest energy burden and to equitably distribute benefits requires a geographically variable definition of "low income."	RCW 19.405.120(2), which is mirrored in WAC 480-109-100 (10)(b), requires utilities to prioritize LI households with a higher energy burden. This prioritization is based on the definition of "low-income" set by the commission and commerce for investor-owned and consumer-owned utilities, respectively. The statute does not require a geographically variable definition of "low-income." The statute only requires that the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.
PSE	Recommends: "'Low-income' means household incomes that do not exceed two hundred percent of federal poverty level or eighty percent of area median household income, adjusted for household size."	The definition has been updated to include 80 percent AMI.
	The company's LI weatherization programs currently use 200 percent FPL or 60 percent state median income (SMI), whichever is greater. Eligibility criterion is based on how commerce currently administers the state weatherization assistance program. Concerned that the current definition would result in agencies losing the ability to leverage utility funds for those applicants that qualify at 60 percent SMI, which is higher than 200 percent FPL for most households served by the program.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interacts with program eligibility in future guidance.
NW Energy Coalition	Recommends: "'Low-income' means household incomes that ~~are~~ may not exceed the higher of eighty percent of area median household income or two hundred percent of federal poverty level or less, adjusted for household size.	The definition has been updated to include 80 percent AMI.
	Appreciates efforts to maintain administrative simplicity but believes CETA is explicit in its intentions to improve service to LI and highly impacted communities throughout the state. Notes that achieving this goal will require less simplicity and more fine-tuned efforts to understand influencing factors to poverty and vulnerability in utility service territories.	
	The statutory language choice was intentional, to allow utilities to choose the standard that adjusts for circumstances in local jurisdictions.	The statute provided the commission and commerce discretion in setting the definition for "low-income" as long as the definition does not exceed 200 percent FPL or 80 AMI, adjusted for household size.

The Energy Project	Recommends use of 200 percent of FPL in the proposed rule's definition of LI in conjunction with 80 percent of AMI, with the greater of the two establishing the income eligibility cap.	The definition has been updated to include 80 percent AMI.
	Notes that the FPL metric has long been viewed as "one of the most challenged indicators" and an outdated and unreliable way to measure actual poverty levels. The use of AMI allows recognition of income disparities and high cost of living areas. Notes that using a metric lower than 80 percent AMI could nullify the benefit of including the AMI metric.	
	Does not have a significant concern about the administrative burden of using both metrics. Overlapping eligibility criteria are already in use for LI weatherization.	
	Notes that CETA's definition of LI allows the commission and commerce to establish a combined metric for both FPL and AMI as part of the definition. Believes the rule language is most reasonably interpreted as requiring the agencies to use both metrics.	The statute restricts the content of the definition(s) created by commerce or the commission. The statute does not require a combined metric.
	Believes that giving utilities more flexibility to tailor programs to specific LI households will improve services. Gives example of offering arrearage management programs to households at the higher end of the eligibility spectrum, which can be as useful as offering percentage-of-income payment plans for very LI households.	RCW 19.405.120 is not fully represented in chapter 480-109 WAC. The commission will provide guidance on how the definition of "low-income" interact[s] with program eligibility in future guidance.
All other definitions		
Stakeholder	**Summary of Comments**	**Staff Response**
NW Energy Coalition	In subsection (12)(f)(ii) incremental energy from qualified biomass, recommends including the missing part from current rule WAC 194-37-135 (3)(b): "(ii) Beginning January 1, 2007, the facility must demonstrate its baseline level of <u>average net</u> generation over a three-year period, <u>excluding any periods in which operation of the qualified biomass facility was unrepresentative of normal operating conditions</u>, prior to the capital investment in order to calculate the amount of incremental electricity produced"; (Reiterated in 2nd CR-102 comments.)	Staff declines to recommend this definition change. Follow up with the NW Energy Coalition confirmed this revision was requested to harmonize the commission's EIA rules with those of commerce. While staff generally supports such rule alignment, follow-on discussions with commerce staff confirmed the circumstances causing the department's corresponding biomass definition to deviate are largely inapplicable to the WA electric investor-owned utility landscape.
	Proposes new draft language for subsection (12)(g) federal incremental eligible hydropower (IEH) omitted part of the description in the statute RCW 19.405.040 (1)(d) from which it is derived: "(g) That portion of incremental electricity produced…where the additional generation does not result in new water diversions, ~~or~~ impoundments<u>, bypass reaches or expansion of existing reservoirs</u> …" (Reiterated in 2nd CR-102 comments.)	Staff declines to recommend this definition change. Proposed new language refers to nonemitting electric generation per RCW 19.405.040 (1)(d), not eligible renewable resources. The subsection (12)(g) definition for federal IEH currently in draft rule is an augmentation to the definition of eligible renewable resources required by RCW 19.285.030 (12)(g).
	In subsection (17), GHG content calculation, recommends adding additional underlined text: "(17) "Greenhouse gas content calculation" means a calculation expressed in CO2e made by the department of ecology for the purposes of determining <u>the complete lifecycle</u> emissions <u>attributable to a fuel, including emissions resulting from the extraction, production transport, and</u> ~~from~~ the complete combustion or oxidation of fossil fuels and the GHG emissions in electricity for use in calculating the GHG emissions content in electricity." (Reiterated in 22nd CR-102 comments.)	The definition in the proposed rules is directly from CETA. The commission is still evaluating if and where to require additional GHG information, considering the dynamics of all CETA rule makings.
<u>Comments affecting WAC 480-109-100 Energy efficiency resource standard</u>		
Subsection (1) Process for pursuing all conservation		
Stakeholder	**Summary of Comments**	**Staff Response**
The Energy Project	Supports adoption of the proposed rule language for portfolio development.	No staff response needed.
	Understands the proposed rule to not require inclusion of energy assistance which do not involve conservation, such as discount-based bill assistance. The first clause of the new sentence is clear that it is "conservation programs and mechanisms" that must be included.	No staff response needed.

Pacific Power	Recommends adding: The portfolio must include all conservation programs and mechanisms identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need, including the low-income conservation programs and mechanisms in subsection 10(b) of this section.	Language already included in proposed rule in WAC 480-109-100 (1)(a)(ii).
Subsection (10) Low-income conservation		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Maintains the changes that incorporate LI energy assistance goals from CETA into the EIA [which] go beyond the commission's authority which is bound by a strict "cost-effective" test and based on "standard practice." Maintains the term "non-energy benefits" is not defined in WAC 480-109-060, however, the EIA requires utilities to use Northwest Power and Conservation Council methodology.	The commission's authority in RCW 19.285.040 (1)(e) to determine if a conservation program is cost-effective is based on "the Commission's policies and practice." The changes to the LI conservation standard evaluate cost-effectiveness using the commission's policies and practice[s], which have historically given special consideration to LI conservation. While RCW 19.285.040 (1)(a) requires utilities to use methodologies consistent with the NWPCC's most recent plan to set targets, the EIA gives the commission the power to determine whether conservation is cost-effective, and the amended rules provide the manner it will do so in accordance with its policies and practices.
PSE	To balance the requirement in CETA with the practical realities of how weatherization programs are administered through agencies today, suggests the following revisions to subsection (10)(b): "(b) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to RCW 19.405.120 with advice and review provided by its Advisory Group. To the extent practicable, a utility must include a description of how the plan prioritizes energy assistance to low-income households with the highest energy burden, in conjunction with low-income agencies, and future actions under consideration to improve this prioritization. ~~prioritize energy assistance to low-income households with a higher energy burden.~~" (Reiterated in 2nd CR-102 comments.)	The second sentence in subsection (10)(b) is directly from RCW 19.405.120(2). The commission expects to provide guidance in the future on what is "practicable." The utility can and should seek advice and review from its advisory group, including a description of how the plan prioritizes energy assistance to households with a higher energy burden, coordinate with LI agencies to accomplish the statutory requirement, and adaptively manage the program to improve this prioritization when necessary.
	Believes it would be administratively burdensome for utilities to become directly involved in the intake process or for the LI weatherization program to become involved in applications, which is what would be required to prioritize LI customers with the highest energy burden.	
	Believes within weatherization programs that are currently implemented today, energy burden is best taken into consideration at a local level where program implementation and the intake process occurs.	
	Believes the Weatherization Manual already requires agencies to prioritize customers with high energy burden, among other criteria for prioritization.	
	Has concerns with section (a) and has worked with TEP and NW Energy Coalition to align proposed changes to the third sentence of this subsection. In addition, recommends the following additional language: "For purposes of this subsection, "fully fund" may include the agency leveraging other funding sources, in combination with utility funds, to fund LI conservation projects."	This change has been incorporated into the proposed rules, along with the modification suggested by NW Energy Coalition.
	Company proposes that it work with its advisory group and commission staff to develop a clear set of guidelines accounting for nonenergy impacts in subsection (c). Suggests modifying language "in consultation with its Advisory Group, develop metrics to," "quantifiable," and "to the extent practicable." (Reiterated in 2nd CR-102 comments.)	Utilities should consult with their advisory groups on these issues, as outlined in existing rules. The commission may issue additional guidance at a later date. The additional language is unnecessary.
NW Energy Coalition[1]	Believes the changes to this section overall are appropriate and needed for the adequate implementation of CETA. Particularly supports the changes in subsections (b) and (c), which effectively capture needed elements of CETA to account for LI conservation in an appropriate manner, acknowledging that these costs are not exclusively conservation costs, but also energy assistance costs, and therefore must be excluded from portfolio level cost-effectiveness calculations.	No staff response needed.

	Recommends adding the word "either" for clarity and removing "when alternate funding sources are unavailable" and reverting back to "may" from "must" in the sentence to retain flexibility. Language recommendation: (a) A utility must fully fund LI conservation measures that are determined by the implementing agency to be cost-effective consistent with either the Weatherization Manual maintained by the department or when it is cost-effective to do so using utility-specific avoided costs. Measures identified through the priority list in the Weatherization Manual are considered cost-effective. In addition, ~~when alternate funding sources are unavailable~~, a utility may ~~(must)~~ fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective LI conservation measures.	This change has been incorporated into the proposed rules.
NW Energy Coalition[2]	Concerned that the new language "For purposes of this subsection, "fully fund" may include … conservation projects" is ambiguous and open for interpretation. Suggests a clarifying edit that replace "may include" with "does not prohibit." Requests a clarifying statement be included in the adoption order if modification of the language is unwelcome at this stage.	Staff will recommend that the commission adopt this clarifying edit.
The Energy Project[1]	Supports the proposed amendment to subsection (10)(b). As CETA places new emphasis on LI programs, it is appropriate to ensure that EIA conservation plans incorporate these CETA-related efforts.	No staff response needed.
	Supports most language in subsection (10)(a) with the exception of recommending a return to "may" fund repairs, administrative costs, and health and safety improvements after consideration of alternative language.	This change has been incorporated into the proposed rules.
	Supports the requirement to account for costs and benefits, including nonenergy impacts.	No staff response needed.
The Energy Project[2]	Concerned that the new language "For purposes of this subsection, "fully fund" may include … conservation projects" could be interpreted to allow a utility to decline funding for a project by asserting how an agency could or should be utilizing funds. Suggests a clarifying edit that replace "may include" with "does not prohibit." Requests a statement be included in the adoption order, if modification of the language is unwelcome at this stage, clarifying that the intent of the language is to allow the agency to leverage other funds, in combination with utility funds, to fund low-income conservation projects.	Staff will recommend that the commission adopt this clarifying edit.
Pacific Power	Believes the portfolio of conservation resources to meet energy assistance need must be based on information known to the electric utility through its own billing systems. Other types of energy costs from gas, propane, or wood are not known by the electric utility. Energy assistance must provide an opportunity to mitigate the impact through changes to electricity consuming equipment at the customer location.	LI conservation has traditionally been provided utilizing income data not available to the utility. The commission will provide additional guidance in the adoption order to clarify which fuels are associated with "home energy bills." A plain-language interpretation of "home energy" includes commonly used energy sources, including electricity, natural gas, propane, and wood. The definition of energy burden used to determine energy assistance need included in the rules is from statute.
	Proposes that energy assistance costs be compared with a historical average of LI weatherization investments in prior biennial periods and that the difference, if any, be treated as an incremental cost of CETA compliance.	Incremental cost of CETA compliance will be addressed in Docket UE-191023.
Comments affecting WAC 480-109-200 Renewable portfolio standard		
Subsection (2) Credit eligibility		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Believes draft rule requirement, "renewable energy credits were acquired by January 1st of the target year," appears to conflict with the timing and use of RECs for meeting RPS requirements. Provides the following language revisions: (2) Credit eligibility. A qualifying utility may use renewable energy credits to meet the provisions of this section, provided the renewable energy credits meet the following requirements: (a) Renewable energy credits were acquired by ~~January 1st~~ December 31 of the target year or the following year pursuant to subsection (b) of this subsection;	Staff declines to recommend Avista's requested rule revision. The rule language in question requiring RECs to be acquired by January 1st of the target year aligns with EIA statute that utilities, "acquire … RECs … to meet … annual targets … by January 1" of each target year (RCW 19.285.040 (2)(a)). Avista may be confusing the REC acquisition requirement with the REC creation eligibility guidance provided in the proposed rules. Draft WAC 480-109-200 (2)(b) allows for nonfreshwater RECs to be used for compliance in the year they were created, the year before, or the year after. Rule subsection (2)(c) only allows freshwater RECs to be used in the year they were created.

Pacific Power and Light	Maintains the revised WAC section adds that the annual report must include the number of renewable resources needed to meet the annual target by January 1st of the target year. This concept is missing in the statute. In other words, the administrative rules require a specific plan for how the utility will comply, whereas the statute appears to require only a compliance report showing the utility's "progress in the preceding year." When dealing with unbundled RECs, believes the term "acquired" is not defined in EIA statute, so there is no reason for the commission to change its practical interpretation of this term, which has been interpreted as "acquired" in a contractual sense. Such RECs should be eligible for use in a given target year, if they are expected to be generated at any point in the target year or the year following the target year.	Staff maintains "by January 1st of the target year," a rule clause that precedes this current EIA revision cycle, is mandated by statute based on the following passages within RCW 19.285.040 and [19.285].070. Within the target section of RCW 19.285.040 (2)(a) - Utilities must account for "at least [X] percent of load by January 1 [of the target year]." Within the reporting requirements specified in RCW 19.285.070(1) - "report progress … in meeting the target established in RCW 19.285.040, include[s] … the amount of megawatt-hours of each type of eligible renewable resource acquired, the type and amount of renewable energy credits acquired …" No revision to the rule language is needed. Staff maintains the current rule language allows for "acquired" to be interpreted in a contractual sense. As long as a relevant contract is in place, the rule language allows for RECs to be generated at any point in the target year or the year following the target year. No revision to the rule language is needed.
Subsection (10) Use of nonemitting electric generation		
Stakeholder	**Summary of Comments**	**Staff Response**
Climate Solutions	Agrees the EIA has an annual renewable energy compliance obligation. However, the language in CETA relieves the utility of that renewable compliance obligation if a utility has met 100 percent of its "average annual retail electric load" using renewable energy, RECs, or nonemitting generation. A conflict exists because the CETA compliance obligation is based on four-year average loads, but the EIA is based on the utility's annual load over the previous two years. The "average annual retail electric load" is never defined in statute nor rules. Hence, there should be some clarification in rule so that a utility is not relieved of their annual compliance obligation until the end of the given four-year CETA compliance period.	Per RCW 19.405.110, the four-year compliance obligation in CETA does not impact the EIA. Therefore, there is no conflict. The commission will continue to verify EIA compliance as noted in WAC 480-109-210(6).
WA Department of Commerce	Title of WAC [480-109]-200(10), which currently reads: "Use of nonemitting electric generation," should be changed. Nonemitting generation will likely account for a small amount of the combination of renewable resources, RECs, and nonemitting electric generation utilities will use to elect this compliance option come 2030. Instead utilities electing this option would primarily rely on legacy hydropower, which is categorized as a renewable resource per RCW 19.285.030(21) and not nonemitting generation per WAC 480-109-060 (23)(b) of the current version of the draft EIA rules.	Staff has incorporated into the proposed rules a revised subsection title reading, "Compliance when renewable and nonemitting electric generation used to meet one hundred percent of annual retail electric load." Staff acknowledge utilities electing this compliance option will likely not rely on nonemitting electric generation.
NW Energy Coalition	To comply with section 4, chapter 288, Laws of 2019, with regard to renewable resources and section 4 (1)(f) nonemitting resources, believes the rules should be modified to ensure that it is clear that utilities utilizing this compliance option must comply with the requirement to surrender nonpower attribute documentation for any non-emitting resources used to meet the law. Recommend adding additional underlined text: "(b) Non-emitting electric generation, as defined in WAC 480-109-060(23) and consistent with RCW 19.405.040 (1)(f)."	Staff declines to recommend this rule change given the request is outside the scope of this EIA rule making. RCW 19.405.040 (1)(f) addresses nonpower attributes of the electricity generated by the nonemitting electric generation resource. A more appropriate venue for resolution is the joint carbon and electricity markets rule making the commission will undertake with commerce (*see U-190485 Energy Legislation Implementation Plan Phase II*). Pursuant to RCW 19.405.130 (3)(b), that rule making will "address the prohibition on double counting of nonpower attributes under RCW 19.405.040(1) that could occur under other programs" like the EIA RPS.

Comments affecting WAC 480-109-210 Renewable portfolio standard reporting		
Subsection (2) Annual report contents		
Stakeholder	**Summary of Comments**	**Staff Response**
Pacific Power and Light	Believes the incremental costs of eligible renewable resources should be included in the target year in which those resources are used for compliance. Specifically, the incremental costs should reflect the operating attributes of relevant resources, even if the given resources are not operating as described by January 1st of the target year but at some point later in the calendar year.	Staff declines to recommend any further action at this time. Staff maintains "by January 1st of the target year," a rule clause that precedes this current EIA revision cycle, is mandated by statute based on the following passages within RCW 19.285.040 and [19.285].070. Within the target section of RCW 19.285.040 (2)(a) - Utilities must account for "at least [X] percent of load by January 1 [of the target year]." Within the reporting requirements specified in RCW 19.285.070(1) - "report progress … in meeting the target established in RCW 19.285.040, include[s] … the incremental cost of eligible renewable resources and the cost of renewable energy credits." Based on stakeholder collaboration concurrently taken outside of this EIA rule making, staff acknowledge the existing rule language does not specifically address incremental cost considerations associated with upgrades or renovations to existing eligible renewable resources.
Subsection (6) Final compliance report		
Stakeholder	**Summary of Comments**	**Staff Response**
Pacific Power and Light	Believes the EIA RPS has a two-step compliance process, with the annual report being the first step and actual compliance being determined two years after the compliance year. It would be logical for the June 1 report to be in the form of an estimate, given non-IEH RECs can be used on a year-ahead, year-behind, or year-of-creation basis.	Staff maintains the current rule language indicates the annual renewable portfolio standard report is a plan or an "estimate." The final compliance report described in subsection (6) confirms how the utility actually met the annual target. No revision to the rule language is needed.
Comments affecting WAC 480-109-300 Greenhouse gas content calculation and energy and emission intensity metrics		
Subsection (1) "A utility must report its …"		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
Subsection (2) "Each utility must perform its …"		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Recommends striking the entire subsection. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
NW Energy Coalition	Recommends adding "… consistent with RCW 19.405.020(22)" at end of subsection.	This change has been incorporated into the proposed rules.
Subsection (3) "In addition to the greenhouse gas content calculation …"		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.
Subsection (4) Unknown generation sources		
Stakeholder	**Summary of Comments**	**Staff Response**
WA Department of Commerce	Recommends changing the title of the subsection to "Unspecified electricity" to more accurately reflect the content of the subsection.	This change has been incorporated into the proposed rules.
Subsection (5) "The greenhouse gas content calculation and…"		
Stakeholder	**Summary of Comments**	**Staff Response**
Avista	Recommends striking the GHG content calculation language. Did not provide an explanation for why this language should be struck.	Avista confirmed via email that these amendments were proposed in error and the commission should disregard them.

Appendix B
Amended Rules

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

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

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

(2) "Biomass energy" means:

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

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

(ii) Animal manure;

(iii) Solid organic fuels from wood;

(iv) Forest or field residues;

(v) Untreated wooden demolition or construction debris;

(vi) Food waste and food processing residuals;

(vii) Liquors derived from algae;

(viii) Dedicated energy crops; and

(ix) Yard waste.

(b) Biomass energy does not include:

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

(ii) Wood from old growth forests; or

(iii) Municipal solid waste.

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

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

(((~~(4)~~))) (5) "Coal transition power" means the output of a coal-fired electric generation facility that is subject to an obligation to meet the standards contained in RCW 80.80.040 (3)(c).

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

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

(((~~(7)~~))) (8) "Cost-effective" means, consistent with RCW 80.52.030, that a project or resource is forecast:

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

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

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

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

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

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

(12) "Eligible renewable resource" means:

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

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

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

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

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

(d) Qualified biomass energy; ((~~or~~))

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

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

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

(((~~(13)~~))) (f)(i) Incremental electricity produced as a result of a capital investment completed after January 1, 2010, that increases, relative to a baseline level of generation prior to the capital investment, the amount of electricity generated in a facility that generates qualified biomass energy as defined under subsection (29)(c)(ii) of this section and that commenced operation before March 31, 1999;

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

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

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

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

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

(a) Energy assistance includes, but is not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for

lower income households, intended to lower a household's energy burden.

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

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

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

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

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

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

(a) The heat rate (in British thermal units per megawatt hour) of the cogeneration facility based on the additional fuel requirements attributable to electricity production and excluding the fuel that would be required to produce all other useful energy outputs of the project without cogeneration, divided by the heat rate (in British thermal units per megawatt hour) of a combined cycle natural gas-fired combustion turbine. The heat rate of the combustion turbine must be based on a facility using best commercially available technology on a new and clean basis.

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

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

(((~~14~~))) (19) "Incremental cost" means the difference between the levelized delivered cost of an eligible renewable resource, regardless of ownership, compared to the levelized delivered cost of an equivalent amount of reasonably available substitute resources that do not qualify as eligible renewable resources, where the resources being compared have the same contract length or facility life.

(((~~15~~))) (20) "Integrated resource plan" or "IRP" ((~~means the filing made every two years by an electric utility in accordance with WAC 480-100-238, integrated resource planning~~)) has the same meaning as in WAC 480-100-605.

(((~~16~~))) (21) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers. Load does not include off-system sales or electricity delivered to transmission-only customers.

(((~~17~~))) (22) "Low-income" means household incomes that do not exceed the higher of eighty percent of area median income or two hundred percent of federal poverty level, adjusted for household size.

(23)(a) "Nonemitting electric generation" means electricity from a generating facility or a resource that provides electric energy, capacity, or ancillary services to an electric utility and that does not emit greenhouse gases as a by-product of energy generation.

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

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

(b) "Nonpower attributes" does not include any aspects, claims, characteristics, and benefits associated with the 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.

(((~~18~~))) (25) "Pacific Northwest" has the same meaning as defined for the Bonneville Power Administration in section 3 of the Pacific Northwest Electric Power Planning and Conservation Act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(((~~19~~))) (26) "Pro rata" means the calculation dividing the utility's projected ten-year conservation potential into five equal proportions to establish the minimum biennial conservation target.

(((~~20~~))) (27) "Production efficiency" means investments and actions that save electric energy from power consuming equipment and fixtures at an electric generating facility. The installation of electric power production equipment that increases the amount of power generated for the same energy input is not production efficiency in this chapter or conservation under RCW 19.285.030(4) because no reduction in electric power consumption occurs.

(((~~21~~))) (28) "Pursue all" means an ongoing process of researching and evaluating the range of possible conservation

technologies and programs, and implementing all programs which are cost-effective, reliable and feasible.

(((~~(22)~~))) (29) "Qualified biomass energy" means electricity produced from a biomass energy facility that:

(a) Commenced operation before March 31, 1999;

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

(c) Is owned either by:

(i) A qualifying utility; or

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

(((~~(23)~~))) (30) "Regional technical forum" means the advisory committee established by the Northwest Power and Conservation Council.

(((~~(24)~~))) (31) "Renewable energy credit" means a tradable certificate of proof of ((~~at least~~)) one megawatt-hour of an eligible renewable resource ((~~where the generation facility is not powered by fresh water,~~)). The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity((~~,~~)) and the certificate is verified by a renewable energy credit tracking system selected by the department.

(((~~(25)~~))) (32) "Renewable resource" means:

(a) Water;

(b) Wind;

(c) Solar energy;

(d) Geothermal energy;

(e) Landfill gas;

(f) Wave, ocean, or tidal power;

(g) Gas from sewage treatment facilities;

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

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

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

(((~~(26)~~))) (33) "Request for proposal" or "RFP" means the documents describing an electric utility's solicitation of bids for delivering electric capacity, energy, capacity and energy, or conservation.

(((~~(27)~~))) (34) "River discharge" means the total volume of water passing through, over and around all structural components of a hydroelectric facility over a given time.

(((~~(28)~~))) (35) "Single large facility conservation savings" means cost-effective conservation savings achieved in a single biennial period at the premises of a single customer of a utility whose recent annual electricity consumption prior to the conservation savings exceeded five average megawatts.

(((~~(29)~~))) (36) "System cost" means, consistent with RCW 80.52.030, an estimate of all direct costs of a project or resource over its effective life including, if applicable, the costs of distribution to the consumer and among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource.

(((~~(30)~~))) (37) "Target year" means the twelve-month period commencing January 1st and ending December 31st used for compliance with the renewable portfolio standard requirement in WAC 480-109-200(1).

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

(((~~(32)~~))) (39) "WREGIS" means the Western Renewable Energy Generation Information System. WREGIS is the renewable energy credit tracking system designated by the department according to RCW 19.285.030(20).

(((~~(33)~~))) (40) "Year" means the twelve-month period commencing January 1st and ending December 31st.

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

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

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

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

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

(ii) **Develop portfolio.** Develop a conservation portfolio that includes all available, cost-effective, reliable, and feasible conservation. A utility must develop programs to acquire available conservation from all of the types of conservation identified in (b) of this subsection. The portfolio must include all conservation programs and mechanisms identified pursuant to RCW 19.405.120, which pertain to energy assistance and progress toward meeting energy assistance need, including the low-income conservation programs and mechanisms in subsection (10)(b) of this section.

If no cost-effective, reliable and feasible conservation is available from one of the types of conservation, a utility is not obligated to acquire such a resource.

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

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

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

(i) End-use efficiency;
(ii) Behavioral programs;
(iii) High-efficiency cogeneration;
(iv) Production efficiency;
(v) Distribution efficiency; and
(vi) Market transformation.

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

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

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

(b) This projection must be derived from the utility's most recent IRP, including any information learned in its subsequent resource acquisition process, or the utility must document the reasons for any differences. When developing this projection, utilities must use methodologies that are consistent with those used in the Northwest Conservation and Electric Power Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A utility ((~~may~~)) must fully fund low-income conservation measures that are determined by the implementing agency to be cost-effective consistent with either the *Weatherization Manual* maintained by the department or when it is cost-effective to do so using utility-specific avoided costs. For purposes of this subsection, "fully fund" does not prohibit the agency leveraging other funding sources, in combination with utility funds, to fund low-income conservation projects. Measures identified through the priority list in the *Weatherization Manual* are considered cost-effective. In addition, a utility may fully fund repairs, administrative costs, and health and safety improvements associated with cost-effective low-income conservation measures.

(b) The utility's biennial conservation plan must include low-income conservation programs and mechanisms identified pursuant to RCW 19.405.120. To the extent practicable, a utility must prioritize energy assistance to low-income households with a higher energy burden.

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

utility must account for the costs and benefits, including non-energy impacts, which accrue over the life of each conservation measure.

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

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

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

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

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

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

(2) **Credit eligibility.** ((~~Renewable energy credits produced during the target year, the preceding year or the subsequent year may be used to comply with this annual renewable resource requirement provided that they were acquired by January 1st of the target year.~~)) A qualifying utility may use renewable energy credits to meet the provisions of this section, provided the renewable energy credits meet the following requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) **Incremental hydropower calculation.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Make a one-time calculation of incremental cost for each eligible resource at the time of acquisition or, for historic acquisitions, the best information available at the time of the acquisition:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **Multistate allocations.**

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

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

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

(3) **Report review.**

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

(b) Upon conclusion of the commission review of the utility's annual renewable portfolio standard report, the commission will issue a decision accepting or rejecting the calculation of the utility's renewable resource target; determining whether the utility has generated, acquired or arranged to acquire enough renewable energy credits or qualifying generation to comply with its renewable resource target; and determining the eligibility of new renewable resources pursuant to subsection (2)(d) of this section.

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

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

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

(6) **Final compliance report.** Within two years following submission of its annual renewable portfolio standard report, a utility must submit, in the same docket, a final renewable portfolio standard compliance report ((~~that~~)).

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

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

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

(b) If a utility does not meet its annual target described in WAC 480-109-200, the commission will determine the amount in megawatt-hours by which the utility was deficient.

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

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

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

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

(a) Average megawatt-hours per residential customer;

(b) Average megawatt-hours per commercial customer;

(c) Megawatt-hours per capita;

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

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

(((~~(3) **Unknown generation sources.**~~)) (4) **Unspecified electricity.** For resources where the utility purchases energy from unknown generation sources, ((~~often called "spot market" purchases,~~)) from which the emission rates are unknown, the utility ((~~shall report emission metrics using the average electric power CO_2 emissions rate described as the net system mix (spot market) in the Washington state electric utility fuel mix disclosure reports compiled by the department pursuant to RCW 19.29A.080~~)) must use an emissions rate determined by the department of ecology. If the department of ecology has not adopted an emissions rate for unspecified electricity, a utility must apply an emissions rate of 0.437 metric tons of CO_2 per megawatt-hour of electricity. For the resources described in this subsection, a utility must show in the report required in subsection (1) of this section the following:

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

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

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

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

WSR 21-03-003
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed January 7, 2021, 8:28 a.m., effective February 7, 2021]

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

Purpose: The department is amending WAC 388-823-1095 to implement 2SHB 1651 (2019), which is related to the rights of developmental disabilities administration clients.

Citation of Rules Affected by this Order: Amending WAC 388-823-1095.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.26.030.

Adopted under notice filed as WSR 20-22-054 on October 29, 2020.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@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 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 1, Repealed 0.

Date Adopted: January 5, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-12-046, filed 5/29/14, effective 7/1/14)

WAC 388-823-1095 What are ((~~my~~)) a person's rights as a DDA client or eligible person? ((~~As a DDA client, you have the following rights:~~))

(1) The ((~~right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;~~

~~(2) The right to appeal any decision by DDA that denies, reduces, or terminates your eligibility, your services or your choice of provider;~~

~~(3) The right to receive only those services you agree to;~~

~~(4) The right to meet with and talk privately with your friends and family;~~

~~(5) The right to personal privacy and confidentiality of your personal and other records;~~

~~(6) The right to choose activities, schedules, and health care that meet your needs;~~

~~(7) The right to be free from discrimination because of your race, color, creed, national origin, religion, sex, age, disability, marital status, gender identity, or sexual orientation;~~

~~(8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;~~

~~(9) The right to request information regarding services that may be available from DDA;~~

~~(10) The right to know what your doctor wants you to do or take and to help plan how that will happen;~~

~~(11) The right to be free from unnecessary medication, restraints and restrictions;~~

~~(12) The right to vote and help people get elected to office;~~

~~(13) The right to complain and not to have someone "get even";~~

~~(14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;~~

~~(15) The right to receive help from an advocate;~~

~~(16) The right to manage your money or choose other persons to assist you;~~

~~(17) The right to be part of the community;~~

~~(18) The right to make choices about your life;~~

~~(19) The right to wear your clothes and hair the way you want;~~

~~(20) The right to work and be paid for the work you do; and~~

~~(21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research~~)) following definitions apply to this section:

(a) "Administration" means the division of the department responsible for providing services to eligible persons, but does not include the division of the department responsible for the licensing and certification of services and facilities for eligible persons.

(b) "Assessment" has the same meaning as defined in RCW 71A.10.020.

(c) "Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and has been determined to be eligible to receive services under chapter 71A.16 RCW.

(d) "Department" means the department of social and health services.

(e) "Developmental disabilities ombuds" means the office created under chapter 43.382 RCW.

(f) "Eligible person" has the same meaning as defined in RCW 71A.10.020.

(g) "Legal representative" means a parent of a client under age eighteen, a court-appointed guardian or limited guardian under Title 11 RCW if the subject matter is within the scope of the guardianship order, or any other person authorized by law to act for the client.

(h) "Necessary supplemental accommodation representative" means an individual who receives copies of administration correspondence to help a client or eligible person understand the documents and exercise the client or eligible person's rights. The necessary supplemental accommodation representative is identified by the client or eligible person when the client or eligible person does not have a legal guardian and is requesting or receiving services from the administration.

(i) "Provider" means an individual, a facility, or an agency that is one or more of the following: Licensed, certified, contracted by the department, or state operated to provide services to administration clients.

(j) "Restraint" includes:

(i) Physical restraint, which is a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the client's body that restricts freedom of movement or access to the client's body, is used for discipline or convenience, and is not required to treat the client's medical symptoms; and

(ii) Chemical restraint, which is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the client's medical symptoms.

(k) "Restriction" means a limitation on the client's use or enjoyment of property, social activities, or engagement in the community.

(l) "Service plan" means any plan required by the department to deliver the services authorized by the administration to the client.

(2) The rights set forth in this section are the minimal rights guaranteed to all clients of the administration, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

(3) The administration must notify the individual and the individual's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon determining the individual is an eligible person. The notification the administration provides must be in written form. The administration must document the date that the notification required in this subsection was provided.

(4) The administration must notify a client and a client's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon conducting a client's assessment. The notification the administration provides must be in written form. The administration must document the date it provided the notification required in this subsection.

(5) The client has the right to exercise autonomy and choice free from provider interference. This includes the client's right to:

(a) Be free from sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(b) Be free from discrimination based on race, color, creed, national origin, religion, sex, age, disability, marital and family status, gender identity, or sexual orientation;

(c) Make choices regarding the type of food available within the client's resources and service plan;

(d) Have visitors at the client's home and associate with persons of the client's choosing and subject to limitations as negotiated with the client's housemates;

(e) Control the client's schedule and choose activities, schedules, and health care that meet the client's needs;

(f) Information about the treatment ordered by the client's health care provider and help plan how the treatment will be implemented;

(g) Be free from unnecessary medication, restraints, and restrictions;

(h) Vote, participate in the democratic process, and help people with getting elected to office;

(i) Manage the client's money or choose a person to assist;

(j) Be part of the community;

(k) Make choices about the client's life;

(l) Choose the clothes and hairstyle the client wears;

(m) Furnish and decorate the client's bedroom to the client's preferences or furnish and decorate the client's home to the client's preferences subject to agreement with the client's housemates;

(n) Seek paid employment;

(o) Receive the services that the client agrees to receive;

(p) Decide whether or not to participate in research after the research has been explained to the client, and after the client or the client's legal representative gives written consent for the client to participate in the research; and

(q) Be free from financial exploitation.

(6) The client has the right to participate in the administration's service planning. This includes the client's right to:

(a) Be present and provide input on the client's service plans written by the administration and providers;

(b) Have meaningful opportunities to lead planning processes;

(c) Have the client's visions for a meaningful life and the client's goals for education, employment, housing, relationships, and recreation included in the planning process;

(d) Choose an advocate to attend the planning processes with the client; and

(e) Have access to current and accurate information about recreation, education, and employment opportunities available in the client's community.

(7) The client has the right to access information about services and health care. This includes the client's right to:

(a) View a copy of all of the client's service plans;

(b) Possess full copies of the client's current service plans;

(c) Review copies of the policies and procedures for any service the client receives, at any time. This includes policies and procedures about how the client may file a complaint to providers and the department;

(d) Examine the results of the department's most recent survey or inspection conducted by state surveyors or inspectors, statements of deficiency, and plans of correction in effect with respect to the client's provider and the client's residence. The client's service provider must assist the client with locating and accessing this information upon the client's request; and

(e) Receive written notification of enforcement actions taken by the department against the client's provider. The administration's case manager or designee must provide notification to the client and the client's legal representative or necessary supplemental accommodation representative within twenty days, excluding weekends and holidays, of the date of enforcement. For purposes of this subsection, a "provider" means an entity that provides residential services received by a client that is operated by or contracted through the administration. An enforcement action that requires this notification includes:

(i) Conditions placed on the provider certification or license;

(ii) Suspension or limited suspension of referrals or admissions;

(iii) Imposition of provisional certification or decertification; or

(iv) Denial, suspension, or revocation of a license or certification.

(8) The client has the right to file complaints and grievances, and to request appeals. This includes the client's right to:

(a) Appeal any decision by the department that denies, reduces, or terminates the client's eligibility, services, or choice of provider as defined in federal medicaid law and state public assistance laws;

(b) Submit grievances to the client's provider about the client's services or other concerns. This includes, but is not limited to, concerns about the behavior of other people where the client lives. The provider must maintain a written policy on the grievance process that includes timelines and possible remedies. If a grievance is unresolved, the provider must provide the client with information on how to submit the grievance to the department;

(c) File complaints and grievances, and request appeals without penalty or retaliation by the department or providers; and

(d) Receive information about how to obtain accommodation for disability in the appeal process.

(9) The client has the right to privacy and confidentiality. This includes the client's right to:

(a) Personal privacy and confidentiality of the client's personal records;

(b) Communicate privately, including the right to send and receive mail and email, and the right to use a telephone in an area where calls can be made without being overheard; and

(c) Meet with and talk privately with the client's friends and family.

(10) The client has rights during discharge, transfer, and termination of services as set forth in this subsection.

(a) Clients who are residents of a long-term care facility that is licensed under chapter 18.20, 72.36, or 70.128 RCW have the rights set forth in RCW 70.129.110.

(b) Clients who receive certified community residential services have the right to:

(i) Remain with the client's provider. Services must not be terminated unless the provider determines and documents that:

(A) The provider cannot meet the needs of the client;

(B) The client's safety or the safety of other individuals in the facility or residence is endangered;

(C) The client's health or the health of other individuals in the facility or residence would otherwise be endangered; or

(D) The provider ceases to operate.

(ii) Receive written notice from the provider of any potential termination of services at least thirty days before such termination, except when there is a health and safety emergency that requires termination of service, in which case notice must be provided at least seventy-two hours before the date of termination. The notice must be provided to the client and the client's legal representative or necessary supplemental accommodation representative. The notice must include:

(A) The reason for termination of services; and

(B) The effective date of termination of services.

(iii) Receive a transition plan at least two days before the effective date of the termination of services, or if the termination was based on a health and safety emergency receive a transition plan within two days of the administration's receipt of notice for emergency termination. The administration must provide the client and the client's legal representative or necessary supplemental accommodation representative with the plan. The plan must include:

(A) The location where the client will be transferred;

(B) The mode of transportation to the new location; and

(C) The name, address, and telephone number of the developmental disabilities ombuds.

(c) A provider that provides services to clients in a residence owned by the provider must exhaust the procedures for termination of services prior to the commencement of any unlawful detainer action under RCW 59.12.030.

(11) The client has the right to access advocates. The client has the right to receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. The provider must not interfere with the client's access to any of the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The developmental disabilities ombuds; or

(d) Any representative of the organization designated to implement the protection and advocacy program pursuant to RCW 71A.10.080.

(12) If a client is subject to a guardianship order pursuant to chapter 11.88 RCW, the rights of the client under this section are exercised by the client's guardian if the subject matter is within the scope of the guardianship order.

WSR 21-03-008
PERMANENT RULES
OFFICE OF THE INSURANCE COMMISSIONER

[Filed January 7, 2021, 6:02 p.m., effective February 7, 2021]

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

Purpose: Filing of plans for coverage supplementing medicare Part D coverage provided through a federally authorized employer group waiver plan.

Citation of Rules Affected by this Order: Amending WAC 284-58-030.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.030, 48.19.035, 48.20.025, 48.20.550, 48.38.075, 48.43.730, 48.43.733, 48.44.050, and 48.46.030.

Adopted under notice filed as WSR 20-23-037 on November 10, 2020.

Changes Other than Editing from Proposed to Adopted Version: There is one nonsubstantive change to the supplemental CR-102 proposed rule text. To correct a grammatical error, the word "supplements" was revised to read "supplement" in the final CR-103 adopted text.

A final cost-benefit analysis is available by contacting Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, phone 360-725-7170, email TabbaA@oic.wa.gov, website www.insurance.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 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 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: January 7, 2021.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 20-01-048, filed 12/9/19, effective 1/9/20)

WAC 284-58-030 General form and rate filing rules. (1) Each credit, life or disability insurance form or rate filing must be submitted to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* available within the SERFF application and state specific filing instructions applicable to the particular filing, as revised from time to time and posted on the commissioner's website (www.insurance.wa.gov), including the:

(a) *Washington State SERFF Life and Disability Form Filing General Instructions;*

(b) *Washington State SERFF Life, Health and Disability Rate Filing General Instructions;*

(c) *Washington State SERFF Health and Disability Form Filing General Instructions;* and

(d) *Washington State SERFF Health and Disability Binder Filing General Instructions* (also called "plan management instructions").

(4) Filers must submit separate filings for each type of insurance. This section does not apply to:

(a) Credit insurance filings made under RCW 48.34.040; or

(b) Group insurance where different types of insurance are incorporated into a single certificate.

(5) All stand-alone prescription drug plans which exclusively supplement a medicare Part D employer group waiver plan and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

WSR 21-03-017
PERMANENT RULES
HORSE RACING COMMISSION

[Filed January 8, 2021, 2:24 p.m., effective February 8, 2021]

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

Purpose: Adds the category of "stable manager" to the license fee structure.

Citation of Rules Affected by this Order: Amending WAC 260-36-085 License and fingerprint fees.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-23-065 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2021.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-23-034, filed 11/12/19, effective 12/13/19)

WAC 260-36-085 License and fingerprint fees. (1) The following are the license fees for any person actively participating in racing activities:

Apprentice jockey	$96.00
Assistant trainer	$46.00
Association employee - Management	$31.00
Association employee - Hourly/seasonal	$20.00
Association volunteer nonpaid	No fee
Authorized agent	$31.00
Clocker	$31.00
Exercise rider - Farm	$96.00
Exercise rider - Track	$96.00
Groom	$31.00
Honorary licensee	$20.00
Jockey agent	$96.00
Jockey	$96.00
Other	$31.00
Owner	$96.00
Pony rider - Farm	$96.00
Pony rider - Track	$96.00
Service employee	$31.00
Stable manager	$96.00

Spouse groom	$31.00
Stable license	$59.00
Trainer	$96.00
Vendor	$146.00
Veterinarian	$146.00

(2) Exercise and pony riders.

(a) A person receiving an exercise rider - track license must first obtain an exercise rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second exercise rider's license will not be charged an additional license fee for that second license.

(b) A person receiving a pony rider - track license must first obtain a pony rider - farm license if that person works off the grounds of a Washington race track. A person receiving a second pony rider's license will not be charged an additional license fee for that second license.

(3) In other cases, the license fee for multiple licenses may not exceed $146.00, except persons applying for owner, veterinarian or vendor license must pay the license fee established for each of these licenses.

The following are examples of how this section applies:

Example one - A person applies for the following licenses: Trainer ($96.00), exercise rider ($96.00), and pony rider ($96.00). The total license fee for these multiple licenses would only be $146.00.

Example two - A person applies for the following licenses: Owner ($96.00), trainer ($96.00) and exercise rider ($96.00). The total cost of the trainer and exercise rider license would be $146.00. The cost of the owner license ($96.00) would be added to the maximum cost of multiple licenses ($146.00) for a total license fee of $242.00.

Example three - A person applies for the following licenses: Owner ($96.00), vendor ($146.00), and exercise rider ($96.00). The license fees for owner ($96.00) and vendor ($146.00) are both added to the license fee for exercise rider ($96.00) for a total license fee of $338.00.

In addition to the above fees, except for association volunteers (nonpaid) at Class C race meets and those excluded as listed in WAC 260-36-100, a $10.00 fee will be added to cover the costs of conducting a fingerprint-based background check. The background check fee will be assessed only once annually per person regardless of whether the person applies for more than one type of license in that year.

The commission will review license and fingerprint fees annually to determine if they need to be adjusted to comply with RCW 67.16.020.

WSR 21-03-018

PERMANENT RULES

HORSE RACING COMMISSION

[Filed January 8, 2021, 2:25 p.m., effective February 8, 2021]

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

Purpose: Allows for multiple unique ownership groups to race under one stable name controlled by a "manager."

Citation of Rules Affected by this Order: Amending WAC 260-28-020 Stable names—fees and restrictions.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-23-066 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2021.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 14-03-057, filed 1/13/14, effective 2/13/14)

WAC 260-28-020 Stable names—Registration fees and restrictions. Licensed owners and lessees may adopt a stable name subject to the approval of the stewards.

(1) Four or more owners are required to race under a stable name.

(2) The applicant must identify all persons using the stable name. Changes must be reported immediately to the commission.

(3) Application for a stable name must include a designation of a managing owner and an address. Receipt of any correspondence, notice or order at such address will constitute official notice to all persons involved in the ownership of such horse.

(4) A single stable name may be used for more than one unique ownership group under the following conditions:

(a) An individual must be designated as the "stable manager" who will be responsible for all actions of the stable. The "stable manager" must obtain an authorized agents license with the authority that allows them to act in all duties of the stable;

(b) The stable manager must report to the commission each individual owner and percentage owned of all horses listed by the stable;

(c) The stable manager will be responsible to ensure all expenses and bills are paid by the stable and to disperse any purse money, bonuses, or other funds awarded the stable; and

(d) The horseman's bookkeeper will provide any owner that requests a copy of activity of the stable account but is not required to separate the stable account by unique ownership groups.

(5) All persons with an ownership interest in the stable name must comply with all rules regarding licensing of owners.

(((~~(5)~~))) (6) A person who has registered a stable name may cancel it upon written notice to the commission.

(((~~(6)~~))) (7) The stewards will not approve a stable name that has been registered by any other person with any association conducting a recognized race meeting.

(((~~(7)~~))) (8) When applying for a stable name that may be deemed as being used for advertising purposes, the requestor may be required to provide documentation from the business or other entity that they have permission to use said name.

(((~~(8)~~))) (9) A stable name must be clearly distinguishable from other stable names.

WSR 21-03-019
PERMANENT RULES
HORSE RACING COMMISSION

[Filed January 8, 2021, 2:25 p.m., effective February 8, 2021]

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

Purpose: Allows a horse to compete without the physical registration papers on file with the racing association, with certain conditions.

Citation of Rules Affected by this Order: Amending WAC 260-40-090 Registration certificates.

Statutory Authority for Adoption: RCW 67.16-020 [67.16.020].

Adopted under notice filed as WSR 20-23-062 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2020.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 19-03-074, filed 1/14/19, effective 2/14/19)

WAC 260-40-090 Registration certificate. No horse may be allowed to start unless a Jockey Club registration certificate, American Quarter Horse Association certificate of registration, or other applicable breed certificate of registration is on file in the office of ((~~the racing secretary, except that the stewards may waive this requirement, if~~)) an official recognized race office and the racing association in which the horse is entered has an agreement with that race office to maintain the papers in accordance with the rules.

(1) The horse ((~~is otherwise~~)) must be properly identified ((~~and the horse is not entered for a claiming price, with the exception of those horses whose registration certificate is on file in electronic form~~)) with a facsimile copy or electronic copy of the registration certificate.

(2) Horses for which the registration certificate is issued in electronic form are required to transfer control of the certificate to the racing association in which the horse is entered.

WSR 21-03-020
PERMANENT RULES
HORSE RACING COMMISSION

[Filed January 8, 2021, 2:26 p.m., effective February 8, 2021]

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

Purpose: To prohibit the practice of "icing" a horse's legs prior to a scheduled veterinarian inspection.

Citation of Rules Affected by this Order: Amending WAC 260-70-570 All horses subject to inspection.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-23-061 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2021.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 18-07-020, filed 3/9/18, effective 4/9/18)

WAC 260-70-570 All horses are subject to inspection. All horses at locations under the jurisdiction of the commission are subject to inspections at the discretion of the stewards or an official veterinarian.

(1) The trainer of each horse or a representative of the trainer must present the horse for inspection as required by an official veterinarian.

(a) The inspection shall be conducted by an official veterinarian.

(b) The horse shall be in the trainers assigned stable area unless the official veterinarian is notified prior to the time of inspections.

(c) Every horse to be inspected shall have its legs cleaned of any poultice or other topical applications.

(d) The horse must be free of bandages, or wearing bandages that are easily removed.

(e) The horse must not have been subjected to freezing, icing, or prolonged hosing with cold water, or any other means of reducing the temperature of the legs ((~~within one hour of the inspection~~)) on the day it is scheduled to be inspected until the inspection has been completed.

(2) The assessment of a horse's racing condition will be based on the recommendations of the American Association of Equine Practitioners and may include:

(a) Proper identification of the horse;

(b) Observation of each horse in motion;

(c) Manual palpation when indicated;

(d) Close observation in the paddock and saddling area, during the parade to post and at the starting gate; and

(e) Any other inspection deemed necessary by an official veterinarian.

(3) An official veterinarian will maintain a continuing health and racing soundness record of each horse inspected.

WSR 21-03-021
PERMANENT RULES
HORSE RACING COMMISSION

[Filed January 8, 2021, 2:27 p.m., effective February 8, 2021]

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

Purpose: Clarifies language to support the commissioner's authority to review and approve the application for an individual previously denied or revoked.

Citation of Rules Affected by this Order: Amending WAC 260-36-120 Denial, suspension revocation—Grounds.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-23-067 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2021.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 12-23-015, filed 11/9/12, effective 12/10/12)

WAC 260-36-120 Denial, suspension, and revocation—Grounds. (1) The commission, executive secretary, or board of stewards may refuse to issue or may deny a license to an applicant, may modify or place conditions upon a license, may suspend or revoke a license issued, may order disciplinary measures, or may ban a person from all facilities under the commission's jurisdiction, if the applicant licensee, or other person:

(a) Has been convicted of any felony or gross misdemeanor crime;

(b) Is subject of current prosecution of any felony crime;

(c) Has any felony conviction under appeal;

(d) Has pending criminal charges;

(e) Has failed to meet the minimum qualifications required for the license for which they are applying;

(f) Has failed to disclose or states falsely any information required in the application;

(g) Has been found in violation of statutes or rules governing racing in this state or other jurisdictions;

(h) Has a proceeding pending to determine whether the applicant or licensee has violated the rules of racing in this state or other racing jurisdiction;

(i) Has been or is currently excluded from a racetrack at which parimutuel wagering on horse racing is conducted by a recognized racing jurisdiction;

(j) Has had a license denied by any racing jurisdiction;

(k) Is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or who may interfere or has interfered with the orderly conduct of a race meeting;

(l) Demonstrates financial irresponsibility by accumulating unpaid obligations, defaulting in obligations or issuing drafts or checks that are dishonored or payment refused;

(m) Has violated any of the alcohol or substance abuse provisions outlined in chapter 260-34 WAC;

(n) Has violated any of the provisions of chapter 67.16 RCW;

(o) Has violated any provisions of Title 260 WAC;

(p) Has association with persons of known disreputable character;

(q) Has not established the necessary skills or expertise to be qualified for a license as required by WAC 260-36-060; or

(r) Has committed any act with the outcome or intent of defrauding the industrial insurance benefits provided under the horse industry account.

(2) The ((~~commission,~~)) executive secretary or board of stewards must deny the application for license or suspend or revoke an existing license if the applicant or licensee:

(a) Is certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order;

(b) Has any outstanding arrest warrants; or

(c) Is currently suspended or revoked in Washington by a commission order, or by another recognized racing jurisdiction.

(3) A license suspension or revocation will be reported in writing to the applicant or licensee and electronically to the Association of Racing Commissioners International, Inc.

WSR 21-03-022
PERMANENT RULES
HORSE RACING COMMISSION

[Filed January 8, 2021, 2:27 p.m., effective February 8, 2021]

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

Purpose: To remove language that requires an official veterinarian to hold a Washington state veterinarian license to be employed by the agency per RCW 18.92.060.

Citation of Rules Affected by this Order: Amending WAC 260-24-550 Official veterinarian(s).

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 20-23-063 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 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 8, 2021.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 08-05-088, filed 2/15/08, effective 3/17/08)

WAC 260-24-550 Official veterinarian(s). The official veterinarian(s) will be employed by the commission, and be a graduate veterinarian, licensed to practice veterinary medicine in ((~~the state of Washington~~)) a recognized jurisdiction approved by the executive secretary. An official veterinarian is exempt from Washington state licensure per RCW 18.92.060. The official veterinarian(s) will perform the following duties:

(1) Recommend to the board of stewards any horse the official veterinarian believes is unsafe to be raced, or a horse that it would be inhumane to allow to race;

(2) Place and remove horses from the veterinarian's list;

(3) Place and remove horses from the bleeder list;

(4) Supervise the test barn;

(5) Supervise the collection of all specimens for testing;

(6) Provide proper safeguards in the handling of all collected specimens to prevent tampering, confusion or contamination;

(7) Provide the stewards a written report regarding the nature, seriousness, and meaning of concentration levels, if any, for all laboratory reports of prohibited substances in equine samples;

(8) Have jurisdiction over all licensed veterinarians on the grounds for the purpose of these rules;

(9) Report to the commission the names of all horses humanely destroyed or that die on the grounds at the race meet. This report will include the reason a horse was destroyed;

(10) Maintain records of postmortem examinations performed on horses that have died on association grounds;

(11) Be available to the stewards prior to scratch time each race day to inspect any horses and report on their condition;

(12) Be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(13) Inspect any horse when there is a question as to its physical condition or soundness;

(14) Recommend to the stewards a horse be scratched if the horse is physically incapable of exerting its best effort to win;

(15) Inspect any horse that appears in physical distress during the race or at the finish of the race and report their findings to the stewards;

(16) Work with practicing veterinarians and other regulatory agencies to take measures to control communicable and/or reportable equine diseases;

(17) Periodically review horse registration certificates to ensure that all required test and health certificates are current and properly filed in accordance with these rules; and

(18) Humanely destroy any horse so seriously injured that it is in the best interests of the horse to act.

WSR 21-03-046
PERMANENT RULES
DEPARTMENT OF LICENSING

[Filed January 14, 2021, 1:10 p.m., effective February 14, 2021]

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

Purpose: To codify into permanent rule the option for collection agencies to offer licensees and their employees the ability to remotely work. This would outline detailed and necessary security measures and data storage requirements; and detailed definitions and requirements of remote work.

As per the governor's proclamations to keep Washington residents safe and healthy during the COVID-19 pandemic, it was identified that to be consistent with other business and professions in this state that are able to remotely work from home that rule language was needed to allow the option for collection agency licensees and their employees to do the same. It is necessary to offer licensees the option to remotely work to support the return of commerce in all business sectors. This would allow them to continue to offer the public their necessary services.

Citation of Rules Affected by this Order: New WAC 308-29-085; and amending WAC 308-29-010.

Statutory Authority for Adoption: RCW 19.16.351.

Adopted under notice filed as WSR 20-23-083 on November 17, 2020.

Changes Other than Editing from Proposed to Adopted Version: In new WAC 308-29-085(4) a nonsubstantive change was made removing the word "debts" from OTS 2393.3. This simplified the definition of collection agency activities and removed any opportunity for different interpretations in the industry. The board unanimously voted and approved it on January 12, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 1, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2021.

Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-11-132, filed 5/22/01, effective 6/22/01)

WAC 308-29-010 Definitions. (1) Words and terms used in these rules have the same meaning as each has under chapter 19.16 RCW unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

(2) "Branch office" is any location physically separated from the principal place of business of a licensee where the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(3) "Business office" is the licensed principal place of business or certified branch office from which the licensee conducts any activity meeting the criteria of a collection agency or out-of-state collection agency as defined in RCW 19.16.100.

(4) "Collection activities" as used in this section means those activities performed by collection agencies or the employees of collection agencies pursuant to chapter 19.16 RCW.

(5) "Employee" is a natural person employed by a licensee and shall not be deemed a "collection agency" or a "branch office" as defined in RCW 19.16.100 (5)(a) so need not have an additional license or certificate to perform collection activities on behalf of the licensee whether working from a business office or from the employee's virtual office.

(6) "Repossession services" conducted by any person shall not be deemed a collection agency as defined in RCW 19.16.100, unless such person is repossessing or is attempting to repossess property for a third party and is authorized to accept cash or any other thing of value from the debtor in lieu of actual repossession.

(((~~(4)~~))) (7) "Managing employee" is an individual who has the general power to exercise judgment and discretion in acting on behalf of the licensee on an overall or partial basis and who does not act in an inferior capacity under close supervision or direction of a superior authority (as distinguished from a nonmanaging employee who is told what to do and has no discretion about what he or she can and cannot do and who is responsible to an immediate superior).

(8) "Remote work" occurs when an employee performs collection activity for a licensee from the employee's "virtual office" as defined herein and more particularly described in WAC 308-29-085. Work performed by a licensed attorney litigating claims on behalf of a licensee is not remote work subject to WAC 308-29-085.

(9) "Virtual office," for purposes of chapters 19.16 and 18.235 RCW and chapter 308-29 WAC, is a virtual extension of the licensee's business office, which is fully connected via electronic means and telecommunications to the business office and its employees and from which an individual employee may perform the same collection activities and be similarly monitored as if located in the business office and as more particularly described in WAC 308-29-085.

NEW SECTION

WAC 308-29-085 Remote work requirements. A licensee may allow qualified employees to perform collection activities from virtual offices if the following requirements are met:

(1) **Employee list.** A licensee must keep a record of employees who are permitted to perform collection activities from a virtual office. The list must be kept current, and must include the employee's name, telephone number and email address, and the virtual office location address.

(2) **Equipment list.** A licensee must maintain a current record of licensee equipment supplied to an employee for use in their virtual office.

(3) **Employee remote work agreement.** A licensee must provide the employee a written agreement or checklist signed by the employee that indicates the employee has reviewed and agrees to the following requirements:

(a) While working remotely, the employee must agree to maintain confidentiality of consumer data, must maintain all collection agency data electronically and may not print hard copies or otherwise reproduce copies of collection agency data.

(b) The employee must read and agree to comply with the licensee's IT security policy and any updates.

(c) Employee must agree to maintain the safety and security of licensee's equipment at all times as more particularly described by the licensee.

(d) An employee must review a description of the specific type of collection work the employee or class of

employee is allowed to perform while working from their virtual office.

(e) The employee must agree not to disclose or convey to the consumer that the employee is working from a virtual office or that the virtual office is a place of business.

(f) An employee must be advised that the employee's collection agency activities are subject to review and calls to and from the virtual office will be monitored and recorded.

(4) **Virtual office requirements.** An individual employee's virtual office is an extension of the licensee's business office and must meet the following requirements:

(a) It must have full connectivity with the licensee's business office systems including computer networks and phone system and must provide the licensee the same level of oversight and monitoring capacity as if the employee were performing their activities in the business office.

(b) It must have the capability to record calls made to and from the virtual office and to monitor virtual office calls in real time.

(c) It must be located within the United States and, within one hundred miles of the licensee's business office.

(d) It must be in a private location where the employee can maintain consumer confidentiality during the performance of their collection activities.

(e) It must meet all security requirements of this section and contain the equipment necessary to conduct the licensee's work safely and efficiently.

(f) Each employee shall be connected to the business office via a virtual office that requires unique credentialing for access by each employee.

(g) No more than one employee may work from a virtual office from the same physical location, except that cohabitating employees may each maintain a virtual office from their shared residence.

(h) Employees may not print or store physical records in the employee's virtual office.

(5) **Employee requirements.** The licensee is responsible for ensuring that an employee working from a virtual office meets all of the following requirements:

(a) To become eligible to work from a virtual office, the employee must have completed a training program at the licensee's business office, which covers topics including compliance, privacy, confidentiality, monitoring and security, and other issues that apply particularly to working remotely from a virtual office.

(b) In addition, an employee must complete a minimum of forty-five days of direct oversight and mentoring in the licensee's business office prior to working from a virtual office. This requirement may be waived by the board under emergency circumstances that the board has determined makes it impossible to perform.

(c) Once an employee begins to work from a virtual office, they must be subject to the same levels of communication, management, oversight and monitoring via telecommunications and computer monitoring as they would if working in the business office.

(d) While working remotely the employee must comply with all applicable laws and regulations as outlined in chapters 19.16 and 18.235 RCW and chapter 308-29 WAC.

(6) **IT security requirements.** Licensees are responsible for developing and following a written IT security policy for virtual offices that outlines the security protocols in place safeguarding the company and consumer data. Consumer data in the form of an electronic record must have the appropriate protections against unauthorized or accidental disclosure, access, use, modification, duplication, or destruction.

The IT security policy shall include the following additional requirements:

(a) Virtual office access to the collection agency's secure system must be through the use of a virtual private network "VPN" or other system that requires usernames and passwords, frequent password changes, authorization, multifactor authentication, data encryption, and/or account lockout implementation.

(b) The immediate installation or implementation of any system updates or repairs in order to keep information and devices secure.

(c) The provision of safe and secure storage with expandable capacity for all electronic data including consumer and licensee data.

(d) Virtual offices must contain computers and/or other electronic devices that have secure computer configurations and reasonable security measures such as updated antivirus software and firewalls.

(e) Access to licensee's systems must occur on company-issued computers and electronic devices whose use is restricted to authorized employees while working at their virtual office, and an employee's use of devices must be limited to employment related activities on behalf of licensee.

(f) Consumer data is accessed securely through the use of encryption or other secure transmission sources.

(g) An action plan has been developed and communicated with relevant employees on how to handle a data breach arising from remote access devices in accordance with applicable laws, which shall include any required disclosures of such breach.

(h) A disaster recovery plan has been developed and communicated with relevant employees on how to respond to emergencies (e.g., fire, natural disaster, etc.) that have the potential to impact the use and storage of licensee's data.

(i) The secure and timely disposal of licensee's data as required by applicable laws and contractual requirements.

(j) An annual internal or external risk assessment is performed on the collection agency's protection of licensee's data from reasonably foreseeable internal or external risks. Based on the results of the annual risk assessment, the collection agency shall make adjustments to its data security policy if warranted.

(k) The licensee can stop the virtual office's connectivity with the network and remotely disable or wipe company issued computers and electronic devices that contain or have access to licensee's information and data when an employee no longer has an employment relationship with the company.

(7) **Call recording and monitoring.** Licensees must consistently record and monitor calls in which employees are performing collection activities. Call recordings must be maintained for a minimum of four years and call monitoring must be regularly performed, a portion of which must be in real time. Recording and monitoring calls from virtual offices

must meet industry standards for collection agencies and ensure that virtual office calls comply with chapter 19.16 RCW and more particularly with RCW 19.16.250 (13)(c), (18), and (19) and also chapter 9.73 RCW.

(8) **Nondisclosure.** Neither the employee nor the licensee shall represent to debtors or any other party that the employee is working independently from licensee in a virtual office. Such acts include, but are not limited to:

(a) Advertising in any form, including business cards and social media, an unlicensed address or personal telephone or facsimile number associated to an unlicensed location.

(b) Meeting consumers at, or having consumers come to the employee's virtual office.

(c) Holding out in any manner, directly or indirectly, by the employee or licensee, an address that would suggest or convey to a consumer that the virtual office is a licensed collection agency location or "branch office," including receiving licensee's mail, or storing books or records at the virtual office.

It shall not be considered a violation of this section if, in response to an inquiry about the remote worker's location, a remote worker responds that the worker is working remotely or working from a virtual office, or words to that effect.

(9) **Data breach.** Should a licensee or virtual office experience a data breach as defined under chapter 19.255 RCW, the licensee must comply with the requirements of chapter 19.255 RCW.

(10) **Evaluation.** The board will review and evaluate the adequacy of this section at least annually and will make amendments, as the board deems necessary.

WSR 21-03-048
PERMANENT RULES
DEPARTMENT OF AGRICULTURE

[Filed January 14, 2021, 2:35 p.m., effective February 14, 2021]

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

Purpose: This rule-making order amends chapter 16-483 WAC, Grape pest quarantine, by:

1. Adding glassy winged sharpshooter, European grapevine moth, *Xiphinema index*, and grapevine red blotch virus to the list of pests under quarantine (WAC 16-483-001).

2. Clarifying that only one strain of *Xylella fastidiosa*, Pierce's Disease, is under quarantine (WAC 16-483-001).

3. Adding an updated scientific name for the grape pest phylloxera, *Viteus vitifoliae* (Fitch), to the list of pests under quarantine (WAC 16-483-001).

4. Adding new and clarifying existing definitions (WAC 16-483-005).

5. Clarifying that the quarantine applies to infected grape plantings within Washington, as well as outside of the state (WAC 16-483-010).

6. Adding cultivation and harvesting equipment to the list of items regulated under the quarantine (WAC 16-483-020).

7. Within Washington, restricting the movement of grape planting stock from a site found infested with a quarantine pest until it meets the requirements of a pest management plan approved by the director (WAC 16-483-030).

8. Reorganizing and clarifying the requirements for grape planting stock being shipped into the state (WAC 16-483-030).

9. Removing the exemption allowing small shipments of softwood cuttings to be visually inspected for insect pests in lieu of treatment (WAC 16-483-030).

10. Allowing tissue culture plantlets in vitro from infested states in lieu of treatment for insect pests (WAC 16-483-030).

11. Revising the acceptable treatments for insect pests to reflect current research (WAC 16-483-030).

12. Requiring all equipment used for cultivation or harvesting of grapes and vines within Washington be thoroughly washed or steam cleaned prior to movement out of an infested site, in accordance with an approved pest management plan (WAC 16-483-033).

13. Requiring phytosanitary certificates and laboratory reports (if applicable) accompany advance notice of shipments of grape planting stock imported from outside of the state (WAC 16-483-037).

14. Requiring any grapevines shipped from an infested site within the state in violation of the quarantine be returned or destroyed at the expense of the owner (WAC 16-483-040).

15. Specifying that the Clean Plant Center Northwest is not required to obtain written permission from the department when exchanging G1 material between foundation sources (WAC 16-483-050).

16. Allowing the department to issue a compliance agreement (with conditions or restrictions) to allow the movement of regulated articles not otherwise eligible for movement (WAC 16-483-050).

Citation of Rules Affected by this Order: Amending WAC 16-483-001, 16-483-005, 16-483-010, 16-483-020, 16-483-030, 16-483-033, 16-483-037, 16-483-040, and 16-483-050.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Adopted under notice filed as WSR 20-23-118 on November 18, 2020.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 9, 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 9, 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 14, 2021.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-001 Establishing a quarantine. (1) A quarantine is established against harmful pests of grapevines that could endanger the grape industries of Washington.

(2) Quarantine pests include:

(a) Grapevine fanleaf virus;

(b) Grapevine leafroll associated viruses;

(c) Grapevine virus A;

(d) Grapevine virus B;

(e) Grapevine red blotch virus;

(f) Pierce's disease (a strain of *Xylella fastidiosa*);

((~~(f)~~)) (g) Grapevine phylloxera (*Daktulosphaira vitifoliae*, *Viteus vitifoliae (Fitch)*); ((~~and~~

~~(g)~~)) (h) Vine mealybug (*Planococcus ficus*);

(i) Glassy winged sharpshooter (*Homalodisca vitripennis*);

(j) European grapevine moth (*Lobesia botrana*); and

(k) *Xiphinema index*.

AMENDATORY SECTION (Amending WSR 00-05-105, filed 2/16/00, effective 3/18/00)

WAC 16-483-005 Grape virus quarantine—Definitions. "Department" means the Washington state department of agriculture.

"Director" means the director of the Washington state department of agriculture or the director's authorized representative.

"G1 foundation sources" means any National Clean Plant Network-funded clean plant center, or other sources approved by the director.

"Grape planting stock" means live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant (Vitis species), except fruit, capable of propagation.

"((~~Official~~)) Phytosanitary certificate" means ((~~a~~)) an official document issued by ((~~an official~~)) the plant protection organization ((~~including but not limited to phytosanitary certificates, inspection certificates, or other letters, tags, stamps, or similar documents certifying plant quality or condition~~)) in the state, district or territory of origin, attesting that a consignment has been inspected and meets phytosanitary import requirements, through specific additional declarations. The department may issue compliance agreements that take the place of a phytosanitary certificate.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-010 Area under quarantine. The area under quarantine includes all states, districts, and territories of the United States. Within the state of Washington, sites with grape plantings infested with a quarantine pest from WAC 16-483-001 are subject to additional restrictions.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-020 Regulated articles. Grape planting stock including live plants, hardwood cuttings, softwood cuttings, and any other plant parts capable of propagation, except fruit are regulated under the terms of this quarantine. Equipment used in harvesting grapes in another state, or in an infested site within the state is a regulated article.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-030 Restrictions. ((~~Grape planting stock will be admitted into the state of Washington provided the following provisions are complied with:~~

~~(1) An official certificate issued by the plant protection organization of the state, district, or territory of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state.~~

~~(2)~~)) (1) Within the state of Washington, grape planting stock produced in a site found infested with a quarantine pest may only be moved from that site if it meets requirements of a pest management plan that is:

(a) Designed to prevent the spread of quarantine pests from that site; and

(b) Approved by the director.

(2) Grape planting stock entering the state must be accompanied by an official phytosanitary certificate that certifies the grape planting stock was produced in accordance with the regulations of an official grapevine virus certification program that includes inspection and testing for grapevine fanleaf virus, grapevine leafroll associated viruses, grapevine virus A, grapevine virus B, grapevine red blotch virus and *Xylella fastidiosa* (Pierce's disease strain). The official phytosanitary certificate must:

(a) Include a statement that "The grape planting stock ((~~has been certified~~)) was produced in accordance with the regulations of an official grapevine virus certification program ((~~that includes inspection and testing by methods approved by the director for grapevine fanleaf virus, grapevine leafroll associated viruses, grapevine virus A, grapevine virus B, and *Xylella fastidiosa*.~~

~~(3) Each shipment of grapevines, grape rootstock, or softwood cuttings from a state infested with grapevine phylloxera or vine mealybug require one of the following statements on the certificate:~~

~~(a) The grapevines, rootstock, or softwood cuttings were~~)) in the state of orgin."; and

(b) Include one of the following statements:

(i) "The grape planting stock was grown in and shipped from an area known to be free from grape phylloxera ((~~and~~)), vine mealybug, glassy winged sharpshooter, and European grapevine moth, by official survey"; or

(((~~b) The grapevines, rootstock, or softwood cuttings were grown under an approved sterile media system; or~~

~~(c) For small shipments (five hundred articles or less), softwood cuttings were inspected by a state, district, or territory plant regulatory official and were found to be free from grape phylloxera and vine mealybug; or~~

~~(d)~~)) (ii) "The grape planting stock was grown in containers of soilless media, in a greenhouse screened to exclude grape phylloxera, vine mealybug, glassy winged sharpshooter and European grapevine moth"; or

(iii) "The shipment consists entirely of tissue cultures in vitro, or plantlets ex vitro"; or

(iv) A statement that the grapevines, rootstock, or softwood cuttings were ((~~subject~~)) subjected to one of the two treatments in subsection ((~~(4)~~)) (3) of this section, or other treatments determined to be effective and ((~~are~~)) approved in writing by the director. The treated grapevines must be stored ((~~in a manner~~)) after treatment ((~~that would~~)) in a manner to prevent reinfestation. The details of the treatment must be listed on the accompanying phytosanitary certificate.

((~~(4)~~)) (3) Acceptable treatments for grapevine insect pests include:

(a) Hot water treatment. Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three minutes nor more than five minutes at a temperature of not less than 125°F (52°C), nor more than 130°F (55°C) ((~~at any time during immersion~~)); or

(b) ((~~Methyl bromide~~)) Fumigation treatment. Grapevines, rootstock, or softwood cuttings may be treated ((~~by methyl bromide fumigation. The fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, fan for dispersal of gas and clearing the chamber of gas after fumigation, and interior thermometer readable from the outside. Fumigation shall be with a dosage of two pounds (0.908 kg) of methyl bromide per one thousand cubic feet (twenty-eight cubic meters) for a period of three hours at a temperature of between 65°F (18.3°C) and 70°F (21.1°C). The fan shall be operated for a period of ten minutes after the injection of the gas.~~

~~(5) All shipments of grapevines, rootstock, or softwood cuttings from a quarantine area shall be plainly marked with the contents on the outside of the package or container as "grapevines," "grape rootstock," or "grape cuttings"~~)) with a fumigant labeled for such purpose.

(4) Each shipment of grape planting stock originating from a state infested with *Xiphinema index* as determined by the department must be accompanied by an official phytosanitary certificate that, in addition to the requirements in WAC 16-483-030(2), must include:

(a) A statement that "The potted grape plants in this shipment were grown in soilless media"; or

(b) A statement that "The grape planting stock in this shipment was grown in an area of the state where *Xiphinema index* is not found, by official survey"; or

(c) Where there is no recent official survey, a statement that "The grape planting stock in this shipment was grown in a field sampled and tested and found to be free from *Xiphinema index* in the growing season immediately prior to harvest. Official lab results are attached." Phytosanitary certificates providing this statement must be accompanied by test results from the growing season prior to harvest showing the vines were grown in a field free of *Xiphinema index*.

(5) All shipments of grape planting stock shall be plainly marked with the contents on the outside of the package or container as "grapevines," "grape rootstock," or "grape cuttings."

Reviser's note: The spelling error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-033 Equipment cleaning requirements. (1) All equipment used for cultivation or harvesting of grapes ((~~in the grape insect pest quarantine areas~~)) and vines must be thoroughly washed or steam cleaned to remove all soil and plant material prior to entry into the state of Washington, and prior to movement out of an infested site within the state according to the approved pest management plan for the infested site. Such equipment shall be subject to inspection by ((~~authorized inspectors of~~)) the department.

(2) Any equipment found to be in violation of this ((~~cleaning requirement~~)) section shall be subject to detention by the department until such equipment is thoroughly cleaned at the expense of the owner or shipper, or provisions are made by the owner or shipper to immediately transport the equipment directly out of the state.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-037 Notification requirement. Persons bringing ((~~grapevines~~)) grape planting stock into the state must ((~~first~~)) notify the department in advance, under this grape pest quarantine. Notification may be by U.S. mail, email, or ((~~telefacsimile~~)) facsimile to: Plant Protection Division, Washington State Department of Agriculture, 1111 Washington Street S.E., P.O. Box 42560, Olympia, WA 98504-2560; email: PlantServices@agr.wa.gov; ((~~fax~~)) facsimile: 360-902-2094((~~, prior to the shipment of grapevines or cuttings under the grape pest quarantine into this state from an infested area~~)). Such notice shall include, ((~~but not be limited to~~)) at a minimum, the ((~~approximate~~)) number of grapevines, rootstocks, or softwood cuttings; the ((~~shipper~~)) shipper's name and address; the ((~~consignee~~)) consignee's name and address; the method of treatment used, if applicable; ((~~and~~)) the approximate date of delivery; and applicable copies of phytosanitary certificates and lab reports.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-040 Disposition of products shipped in violation of this quarantine—Violations. At the option and expense of the owner, the department will return to the point of origin or destroy any grapevines shipped into the state of Washington, or moved from an infested site within the state, in violation of this chapter.

AMENDATORY SECTION (Amending WSR 14-21-036, filed 10/7/14, effective 11/7/14)

WAC 16-483-050 Grape pest quarantine—Exemptions. (1) The restrictions on the movement of regulated arti-

cles set forth in this chapter do not apply to grape planting stock imported for experimental or trial purposes by the United States Department of Agriculture or Washington State University((÷)), provided((,)) the director's written permission is first obtained.

(2) The Clean Plant Center Northwest is not required to obtain the director's permission when exchanging G1 material between G1 foundation sources.

(3) The department, upon receipt of an application in writing, may issue a compliance agreement allowing movement into this state, or movement within this state, of regulated articles not otherwise eligible for movement under the provisions of this quarantine order. Movement of such articles will be subject to any conditions or restrictions stipulated in the agreement. These conditions and restrictions may vary depending upon the intended use of the article and the potential risk of introduction or spread of a harmful pest or disease.

WSR 21-03-067
PERMANENT RULES
DEPARTMENT OF LABOR AND INDUSTRIES

[Filed January 19, 2021, 10:09 a.m., effective February 19, 2021]

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

Purpose: The purpose of this rule making is to adopt amendments to the boiler rules and fees. The board of boiler rules reviews the rules on a regular basis to ensure the rules are consistent with national safety standards for boilers and unfired pressure vessels, and industry practice.

This rule making will:

- Increase fees by the fiscal growth factor of 5.91 percent for fiscal year 2021, to support operating expenses for inspections;
- Modify the civil penalties for repairs and alterations to improve public safety by:
  - Making repair organizations of boilers and pressure vessels liable for civil penalties for violations of the boiler laws and rules;
  - Making a welded repair or alteration to a boiler or pressure vessel without meeting the procedure and filing requirements a violation; and
  - Clarifying when a violation of the procedure and filing requirements for welded repairs or alterations is a second or additional offense.
- Add a new definition for "repair organization" to clarify its meaning; and
- Correct a reference in the definition of "historical boilers and unfired pressure vessels" to align with SB 6240 (chapter 259, Laws of 2018) that passed the legislature in 2018.

Citation of Rules Affected by this Order: Amending WAC 296-104-010 Administration—What are the definitions of terms used in this chapter?, 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?, and 296-104-701 What are the civil penalties?

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Adopted under notice filed as WSR 20-24-115 on December 1, 2020.

A final cost-benefit analysis is available by contacting Alicia Curry, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, website https://lni.wa.gov/licensing-permits/boilers/laws-rules.

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 3, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: January 19, 2021.

Terry Chapin
Chair

AMENDATORY SECTION (Amending WSR 19-15-120, filed 7/23/19, effective 9/1/19)

WAC 296-104-010 Administration—What are the definitions of terms used in this chapter? "Accident" shall mean a failure of the boiler or unfired pressure vessel resulting in personal injury or property loss or an event which renders a boiler or unfired pressure vessel unsafe to return to operation.

"Agriculture purposes" shall mean any act performed on a farm in production of crops or livestock, and shall include the storage of such crops and livestock in their natural state, but shall not be construed to include the processing or sale of crops or livestock.

"Attendant" shall mean the person in charge of the operation of a boiler or unfired pressure vessel.

"Automatic operation of a boiler" shall mean automatic unattended control of feed water and fuel in order to maintain the pressure and temperature within the limits set. Controls must be such that the operation follows the demand without interruption. Manual restart may be required when the burner is off because of low water, flame failure, power failure, high temperatures or pressures.

"Board of boiler rules" or **"board"** shall mean the board created by law and empowered under RCW 70.79.010.

"Boiler and unfired pressure vessel installation/reinstallation permit," shall mean a permit approved by the chief inspector before starting installation or reinstallation of any boiler and unfired pressure vessel within the jurisdiction of Washington.

"Boilers and/or unfired pressure vessels" - Below are definitions for types of boilers and unfired pressure vessels used in these regulations:

- **"Boiler/unfired pressure vessel status"** shall mean:

* Active - Boilers or pressure vessels that are currently in service.
* Inactive - Boilers or pressure vessels still located at the facility but are physically disconnected from the energy input and system.
* Out-of-service - Boilers or pressure vessels that are no longer at the facility.
* Scrapped - Boilers or pressure vessels that have been condemned as defined below.

- **"Condemned boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that has been inspected and declared unsafe or disqualified for further use by legal requirements. The following procedure shall be utilized:

(a) The inspector will issue and follow the department's "red tag" procedure.

(b) The object will be immediately removed from service.

(c) The existing national board and state number shall be obliterated by the inspector.

(d) The ASME nameplate and/or stamping shall be physically removed by the owner/user and verified by the inspector.

(e) If required by the inspector, a portion of the pressure vessel shall be physically removed by the owner/user. This action will render the object incapable of holding pressure.

(f) The inspector shall document this procedure on the boiler/pressure vessel inspection report and change the object status to "scrapped."

- **"Corrosion"** shall mean the destruction or deterioration of a material, that results from a reaction with its environment.
- **"Expansion tank"** shall mean a tank used to absorb excess water pressure. Expansion tanks installed in closed water heating systems and hot water supply systems shall meet the requirements of ASME Section IV, HG-709.
- **"Historical boilers and unfired pressure vessel"** shall mean nonstandard boilers and pressure vessels including steam tractors, traction engines, hobby steam boilers, portable steam boilers, and other such boilers or pressure vessels that are preserved, restored, and maintained only for demonstration, viewing, or educational purposes. They do not include miniature hobby boilers as described in RCW ((~~70.79.070~~)) 70.79.080.
- **"Hot water heater"** shall mean a closed vessel designed to supply hot water for external use to the system.

* All vessels must be listed by a nationally recognized testing agency.
* Shall be protected with an approved temperature and pressure safety relief valve with the appropriate pressure and relieving capacity ratings.
* The hot water heater shall not exceed any of the following limits:
* Pressure of 160 psi (1100 kpa);
* Temperature of 210 degrees F (99°C).
* 120 gallons in capacity.
* 200,000 Btu/hr (58.6 kW).

Additional requirements:

* Hot water heaters exceeding 120 gallons (454 liters) must be ASME code stamped;
* Hot water heaters exceeding 200,000 Btu/hr (58.6 kW) input must be ASME code stamped.

- **"Indirect water heater"** shall mean a closed vessel appliance used to heat water for use external to itself, which includes a heat exchanger used to transfer heat to water from an external source. The requirements and limits described above shall apply.
- **"Installer"** shall mean any entity or individual who physically or mechanically installs a boiler, pressure vessel or water heater that meets the in-service inspection requirements of this chapter. The installer is defined as a registered contractor, owner, user or designee.
- **"Low pressure boiler"** shall mean a steam boiler operating at a pressure not exceeding 15 psig or a boiler in which water is heated and intended for operation at pressures not exceeding 160 psig or temperatures not exceeding 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy. Low pressure boilers open to atmosphere and vacuum boilers are excluded.
- **"Nonstandard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel that does not bear marking of the codes adopted in WAC 296-104-200.
- **"Pool heaters"** shall mean a gas, oil, or electric appliance that is used to heat water contained in swimming pools, spas, and hot tubs.

(a) Pool heaters with energy input equivalent to 399,999 Btu/hr (117.2 kW) or less shall be manufactured and certified to ANSI Z21.56, UL1261, CSA 4.7 or equivalent manufacturing standards, as approved by the chief inspector, and are excluded from the limit and control devices requirements of WAC 296-104-300 through 296-104-303.

(b) Pool heaters with energy input of 400,000 Btu/hr and above shall be stamped with an ASME Section IV Code symbol, and the requirements of WAC 296-104-300 through 296-104-303 shall apply.

(c) Pool heaters open to the atmosphere are excluded.

- **"Power boiler"** shall mean a boiler in which steam or other vapor is generated at a pressure of more than 15 psig for use external to itself or a boiler in which water is heated and intended for operation at pressures in excess of 160 psig and/or temperatures in excess of 250 degrees F by the direct application of energy from the combustion of fuels or from electricity, solar or nuclear energy.
- **"Reinstalled boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel removed from its original setting and reset at the same location or at a new location without change of ownership.
- **"Rental boiler"** shall mean any power or low pressure heating boiler that is under a rental contract between owner and user.
- **"Second hand boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel of which both the location and ownership have changed after primary use.
- **"Standard boiler or unfired pressure vessel"** shall mean a boiler or unfired pressure vessel which bears the marking of the codes adopted in WAC 296-104-200.
- **"Unfired pressure vessel"** shall mean a closed vessel under pressure excluding:

* Fired process tubular heaters;
* Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices where the primary design considerations and/or stresses are derived from the functional requirements of the device;
* Piping whose primary function is to transport fluids from one location to another;
* Those vessels defined as low pressure heating boilers or power boilers.

- **"Unfired steam boiler"** shall mean a pressure vessel in which steam is generated by an indirect application of heat. It shall not include pressure vessels known as evaporators, heat exchangers, or vessels in which steam is generated by the use of heat resulting from the operation of a processing system containing a number of pressure vessels, such as used in the manufacture of chemical and petroleum products, which will be classed as unfired pressure vessels.

"Certificate of competency" shall mean a certificate issued by the Washington state board of boiler rules to a person who has passed the tests as set forth in WAC 296-104-050.

"Certificate of inspection" shall mean a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. The boiler or unfired pressure vessel must comply with rules, regulations, and appropriate fee payment shall be made directly to the chief boiler inspector.

"Code, API-510" shall mean the Pressure Vessel Inspection Code of the American Petroleum Institute with addenda and revisions, thereto made and approved by the institute which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, ASME" shall mean the boiler and pressure vessel code of the American Society of Mechanical Engineers with addenda thereto made and approved by the council of the society which have been adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Code, NBIC" shall mean the National Board Inspection Code of the National Board of Boiler and Pressure Vessel Inspectors with addenda and revisions, thereto made and approved by the National Board of Boiler and Pressure Vessel Inspectors and adopted by the board of boiler rules in accordance with the provisions of RCW 70.79.030.

"Commission" shall mean an annual commission card issued to a person in the employ of Washington state, an insurance company or a company owner/user inspection agency holding a Washington state certificate of competency which authorizes them to perform inspections of boilers and/or unfired pressure vessels.

"Department" as used herein shall mean the department of labor and industries of the state of Washington.

"Director" shall mean the director of the department of labor and industries.

"Domestic and/or residential purposes" shall mean serving a private residence or an apartment house of less than six families.

"Existing installations" shall mean any boiler or unfired pressure vessel constructed, installed, placed in operation, or contracted for before January 1, 1952.

"Inspection certificate" see "certificate of inspection."

"Inspection, external" shall mean an inspection made while a boiler or unfired pressure vessel is in operation and includes the inspection and demonstration of controls and safety devices required by these rules.

"Inspection, internal" shall mean an inspection made when a boiler or unfired pressure vessel is shut down and handholes, manholes, or other inspection openings are open or removed for examination of the interior. An external ultrasonic examination of unfired pressure vessels less than 36" inside diameter shall constitute an internal inspection.

"Inspector" shall mean the chief boiler inspector, a deputy inspector, or a special inspector.

- **"Chief inspector"** shall mean the inspector appointed under RCW 70.79.100 who serves as the secretary to the board without a vote.
- **"Deputy inspector"** shall mean an inspector appointed under RCW 70.79.120.
- **"Special inspector"** shall mean an inspector holding a Washington commission identified under RCW 70.79.130.

"Jacketed steam kettle" shall mean a pressure vessel with inner and outer walls that is subject to steam pressure and is used to boil or heat liquids or to cook food. Jacketed steam kettles with a total volume greater than or equal to one and one-half cubic feet (11.25 gallons) shall be ASME code stamped.

(a) **"Unfired jacketed steam kettle"** is one where the steam within the jacket's walls is generated external to itself, such as from a boiler or other steam source.

(b) **"Direct fired jacketed steam kettle"** is a jacketed steam kettle having its own source of energy, such as gas or electricity for generating steam within the jacket's walls.

"Nationwide engineering standard" shall mean a nationally accepted design method, formulae and practice acceptable to the board.

"Operating permit" see "certificate of inspection."

"Owner" or **"user"** shall mean a person, firm, or corporation owning or operating any boiler or unfired pressure vessel within the state.

"Owner/user inspection agency" shall mean an owner or user of boilers and/or pressure vessels that maintains an established inspection department, whose organization and inspection procedures meet the requirements of a nationally recognized standard acceptable to the department.

"Place of public assembly" or **"assembly hall"** shall mean a building or portion of a building used for the gathering together of fifty or more persons for such purposes as deliberation, education, instruction, worship, entertainment, amusement, drinking, or dining or waiting transportation. This shall also include child care centers (those agencies which operate for the care of thirteen or more children), public and private hospitals, nursing homes, and assisted living facilities that provide housing and basic services for seven or more residents.

"Repair organization" shall mean an organization in possession of a valid "Certificate of Authorization" from the National Board of Boiler and Pressure Vessel Inspectors, to use the "R" symbol stamp for repair and/or alteration to pressure retaining items within their scope of authority.

"Special design" shall mean a design using nationally or internationally recognized engineering standards other than the codes adopted in WAC 296-104-200.

AMENDATORY SECTION (Amending WSR 20-06-058, filed 3/3/20, effective 4/3/20)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

The boiler and pressure vessel installation/reinstallation permit fee of ((~~$59.00~~)) $62.40 shall be paid by the installer, as defined in WAC 296-104-010.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is ((~~$25.40~~)) $26.90.

Hot water heaters per RCW 70.79.090, inspection fee: ((~~$7.70~~)) $8.10.

The department shall assess a $7.00 fee, per object, for processing of jurisdictional inspection reports to any authorized in-service inspection agency or inspector who does not file the report directly into the department's electronic inspection report system.

Heating boilers:	Internal	External
Cast iron—All sizes	((~~$42.90~~)) $45.40	((~~$34.30~~)) $36.30
All other boilers less than 500 sq. ft.	((~~$42.90~~)) $45.40	((~~$34.30~~)) $36.30
500 sq. ft. to 2500 sq. ft.	((~~$85.80~~)) $90.80	((~~$42.90~~)) $45.40
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	((~~$34.30~~)) $36.30	((~~$16.80~~)) $17.70
Power boilers:	Internal	External
Less than 100 sq. ft.	((~~$42.90~~)) $45.40	((~~$34.30~~)) $36.30
100 sq. ft. to less than 500 sq. ft.	((~~$52.00~~)) $55.00	((~~$34.30~~)) $36.30
500 sq. ft. to 2500 sq. ft.	((~~$85.80~~)) $90.80	((~~$42.90~~)) $45.40
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	((~~$34.30~~)) $36.30	((~~$16.80~~)) $17.70
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.	Internal	External
Less than 15 sq. ft.	((~~$34.30~~)) $36.30	((~~$25.40~~)) $26.90
15 sq. ft. to less than 50 sq. ft.	((~~$50.90~~)) $53.90	((~~$25.40~~)) $26.90
50 sq. ft. to 100 sq. ft.	((~~$59.40~~)) $62.90	((~~$34.30~~)) $36.30
For each additional 100 sq. ft. or any portion thereof	((~~$59.30~~)) $62.80	((~~$16.80~~)) $17.70

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	((~~$52.00~~)) $55.00
For each hour or part of an hour in excess of 8 hours	((~~$77.60~~)) $82.10

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	((~~$77.60~~)) $82.10
For each hour or part of an hour in excess of 8 hours	((~~$121.50~~)) $128.60

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:

For each hour or part of an hour up to 8 hours	((~~$52.00~~)) $55.00
For each hour or part of an hour in excess of 8 hours	((~~$77.60~~)) $82.10

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours	((~~$77.60~~)) $82.10
For each hour or part of an hour in excess of 8 hours	((~~$121.50~~)) $128.60

Examination fee: A fee of ((~~$96.10~~)) $101.70 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: A fee of ((~~$51.90~~)) $54.90 for initial work card. A fee of ((~~$32.20~~)) $34.10 for annual renewal.

If a special inspector changes companies: A work card fee of ((~~$51.90~~)) $54.90.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of ((~~$483.60~~)) $512.10 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

AMENDATORY SECTION (Amending WSR 18-01-113, filed 12/19/17, effective 1/31/18)

WAC 296-104-701 What are the civil penalties? (1) An installer, owner, user, ((~~or~~)) operator, or repair organization of a boiler or pressure vessel that violates a provision of chapter 70.79 RCW, or of the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Operating under pressure a boiler or pressure vessel which the department has condemned, has issued a red tag or has suspended the inspection certificate:

First offense	$150.00
Second offense	$300.00
Each additional offense	$500.00

Each day of such unlawful operation shall be deemed a separate offense.

Operating under pressure a boiler or pressure vessel without a valid inspection certificate:

First offense	$50.00
Second offense	$100.00
Each additional offense	$200.00

Each day of such unlawful operation shall be deemed a separate offense.

Installation of a boiler or pressure vessel without meeting prior filing requirements of WAC 296-104-020:

First offense	$100.00
Second offense	$200.00
Each additional offense	$500.00

Performing a welded repair or alteration to a boiler or unfired pressure vessel, ((~~involving welding to a pressure retaining part,~~)) without meeting the filing and procedural requirements of WAC ((~~296-104-502~~)) 296-104-503:

First offense	$150.00
Second offense	$300.00
Each additional offense	$500.00

((~~Performing an alteration to a boiler or pressure vessel without meeting requirements of WAC 296-104-502:~~

~~First offense~~	~~$150.00~~
~~Second offense~~	~~$300.00~~
~~Each additional offense~~	~~$500.00~~))

A violation will be a second or additional offense only if it occurs within one calendar year from the first violation.

Performing resetting, repair or restamping of safety valves, safety relief valves, or rupture discs, without meeting requirements of WAC 296-104-520:

First offense	$150.00
Second offense	$300.00
Each additional offense	$500.00

Failure of owner to notify chief inspector in case of accident which serves to render a boiler or unfired pressure vessel inoperative, as required by WAC 296-104-025:

Each offense	$100.00

Failure to comply with a noncompliance report requirement:

Within 90 days	$100.00
Within 91-180 days	$250.00
Within 181-270 days	$400.00
Within 271-360 days	$500.00

(2) The inspection agency responsible for the in-service inspector of a boiler or unfired pressure vessel that violates a provision of chapter 296-104 WAC, or the rules adopted under that chapter, is liable for a civil penalty based on the following schedule.

Failure to file a report of inspection per WAC 296-104-040:

Each offense $50.00

Failure to apply a state serial number per WAC 296-104-140:

Each offense $50.00

Failure to attach a "Red TAG" per WAC 296-104-110:

Each offense $50.00

Each object (boiler or unfired pressure vessel) is considered a separate offense.

(3) The department shall by certified mail notify a person of its determination that the person has violated this section.

(4) Any person aggrieved by an order or act under the boiler and unfired pressure vessels law or under the rules and regulations may appeal to the board of boiler rules. This appeal shall be filed within twenty days after service of the notice of the penalty to the assessed party by filing a written notice of appeal with the chief boiler inspector per RCW 70.79.361.

(5) Each day that a violation occurs will be a separate offense. A violation will be a second or additional offense only if it occurs within one year from the first violation.

WSR 21-03-070
PERMANENT RULES
GAMBLING COMMISSION

[Filed January 19, 2021, 12:48 p.m., effective February 19, 2021]

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

Purpose: SB 6120 was signed on March 26, 2020, which amended RCW 9.46.0209 (1)(i) to include "scientific" to the list of purposes of which a bona fide charitable or nonprofit organization may be organized or operated and therefore qualify for licensure to operate gambling activities under the Gambling Act. The gambling commission needed to adopt rule language defining "scientific" as authorized in RCW 9.46.0209.

Citation of Rules Affected by this Order: New WAC 230-03-133 Defining "scientific."

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 20-17-139 [20-24-027] on January 14, 2021 [November 20, 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 1, 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 1, 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 1, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 14, 2021.

Ashlie Laydon
Rules Coordinator

NEW SECTION

WAC 230-03-133 Defining "scientific." "Scientific" as used in RCW 9.46.0209 means the carrying on of scientific research in the public interest. Scientific research will be regarded as carried out in the public interest if it either is performed for the federal or state government or is directed toward benefiting the public. This includes scientific research carried out for the purpose of:

(1) Aiding in the scientific education of students; or

(2) Obtaining scientific information which is published in a treatise, thesis, trade publication, or other form that is made available to the public; or

(3) Discovering a cure for a disease.

WSR 21-03-071
PERMANENT RULES
GAMBLING COMMISSION

[Filed January 19, 2021, 12:50 p.m., effective February 19, 2021]

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

Purpose: Under current rules, single prize and merchandise prizes are limited at $2,500 and carry-over jackpot prizes are limited at $5,000. The gambling commission received a petition requesting an increase of the current limits on single cash and merchandise prizes to $5,000 and an increase of current limits on carry-over jackpot prizes to $10,000. The petition was accepted as this change would complement SB 6357, which was passed by the legislature in 2020 and increased the single chance pull-tab price from $1 to $5. Payout and cash reserve requirements were amended as it pertains to pull-tabs.

Citation of Rules Affected by this Order: Amending WAC 230-14-080 Prize limits and percentage of winners required, 230-14-085 Calculating markup for merchandise prizes, 230-14-220 Prize limits for carry-over jackpot pull-tab series, and 230-14-090 Controlling prizes.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 20-24-028 on January 14, 2021 [November 20, 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 3, 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 4, 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 14, 2021.

Ashlie Laydon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-17-077, filed 8/14/09, effective 1/1/10)

WAC 230-14-080 Prize limits and percentage of winners required. Punch board or pull-tab operators must not possess, display, put out for play, sell, or otherwise transfer punch boards or pull-tab series that:

(1) Have a total payout of less than sixty percent of the total gross gambling receipts of the board or series, except in cumulative prize pool pull-tab games. In cumulative prize pool pull-tab games, the sixty percent prize payout requirement will be calculated based on the total amount of prizes from the cumulative prize pool board and the instant winners from each series, divided by the number of series contained in the game; and

(2) Offer boards or series, except for progressive series or carry-over jackpots, with a single cash prize that is more than ((~~twenty-five hundred~~)) five thousand dollars; or

(3) Offer a single merchandise prize that is more than ((~~twenty-five hundred~~)) five thousand dollars including markup; or

(4) Have a single pull-tab or punch with multiple winning combinations that are more than the prize limit; or

(5) Offer prizes for purchasing the last pull-tab or last punch (last sale) that are more than:

(a) One hundred dollars cash; or

(b) Merchandise that costs the licensee more than one hundred dollars; or

(c) The highest prize offered, whichever is less; or

(6) Series that have a key to any winning numbers or symbols.

AMENDATORY SECTION (Amending WSR 08-11-044, filed 5/14/08, effective 7/1/08)

WAC 230-14-085 Calculating markup for merchandise prizes. (1) To calculate sixty percent of total gross for merchandise prizes, operators take the amount actually paid for the prize and add to it no more than fifty percent of that cost as markup.

(2) Gift certificates from a licensee's own establishment may be used as merchandise prizes for pull-tab games but must not be included in the sixty percent payout calculation.

(3) The total cost to the operator for the purchase of a prize must not exceed ((~~twenty-five hundred~~)) five thousand dollars.

AMENDATORY SECTION (Amending WSR 07-21-116, filed 10/22/07, effective 1/1/08)

WAC 230-14-220 Prize limits for carry-over jackpot pull-tab series. Operators may use pull-tab series which include carry-over jackpots. Operators must use the following calculations for prizes and prize payouts for carry-over jackpots:

(1) Guaranteed prizes must be sixty percent or more of gross gambling receipts available from the pull-tab series. "Guaranteed prizes" means all prizes available, excluding the contribution amount or carry-over jackpot; and

(2) The manufacturer determines the contribution amount and the method of play and discloses both on the flare; and

(3) The contribution amount for each series must not be more than five hundred dollars; and

(4) An accumulated carry-over jackpot must not be more than ((~~five~~)) ten thousand dollars; and

(5) If the carry-over jackpot is awarded, the sum of the advance-level prize and the carry-over jackpot prize combined must not be more than ((~~five~~)) ten thousand dollars; and

(6) If the operator carries over the jackpot to a new series, the total of the advance-level prize and the consolation prize must not be more than five hundred dollars.

AMENDATORY SECTION (Amending WSR 10-09-032, filed 4/14/10, effective 7/1/10)

WAC 230-14-090 Controlling prizes. Punch board and pull-tab operators must:

(1) Protect players from fraud and game manipulation.

(2) Award all prizes won.

(3) Only award cash or merchandise as prizes. A player who has won a cash prize may make a request to the person redeeming the winning pull-tab that the player be given additional pull-tabs instead of cash. An operator may agree to such a request.

(4) Not offer to pay cash instead of merchandise prizes.

(5) Not award additional punches or tabs as a prize. Prizes, however, may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab series. Operators must award an immediate additional opportunity to advance called a bonus prize when offered in a bonus pull-tab series or a step-up prize when offered on a punch board.

(6) Immediately pay out a minimum of two thousand five hundred dollars for verified cash prizes won and pay the remaining balance within twenty-four hours by check. The winner may request that the operator pay up to the entire prize balance by check. Operators must then issue a check for the entire prize balance within twenty-four hours.

(7) Have funds available to pay out all cash prizes offered. A licensee's failure to pay out all cash prizes as required by this rule is prima facie evidence of defrauding the public and a violation of RCW 9.46.190.

WSR 21-03-095
PERMANENT RULES
LIQUOR AND CANNABIS BOARD

[Filed January 20, 2021, 10:16 a.m., effective February 20, 2021]

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

Purpose: Implementation of 2020 alcohol legislation. The Washington state liquor and cannabis board (board) has adopted new rule sections and amendments to existing rule sections to align existing rules with and implement the law as established by the following four alcohol-related bills enacted during the 2020 legislative session:

- HB 2412 (chapter 230, Laws of 2020), which is codified in RCW 66.24.240(4), 66.24.244(4), 66.28.200 (2) and (3), 66.28.210 (1) and (2), and 66.28.220 (1), (3), and (4);
- ESSB 5006 (chapter 186, Laws of 2020), which is codified in RCW 66.24.246;
- ESSB 6095 (chapter 200, Laws of 2020), which is codified in RCW 66.28.310 (1), (5), (7), (11) and (12), and 66.24.395(2) and (3); and
- SSB 6392 (chapter 210, Laws of 2020), which is codified in RCW 66.24.165.

Specifically, the adopted rules:

- Amend WAC 314-20-017 and 314-02-115 to align existing rule language with the changes made to statute by HB 2412;
- Create two new rule sections WAC 314-20-019 and 314-24-163 to implement the new brewery/winery on-premise consumption endorsement created in ESSB 5006;
- Amend WAC 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140 to align existing rule language with the changes made to statute by ESSB 6095; and
- Create a new rule section WAC 314-24-270 to implement the new local wine industry association license created by SSB 6392.

The following section in chapter 314-02 WAC is revised: WAC 314-02-115 What are the requirements for licensees that sell keg beer?

The following section in chapter 314-12 WAC is revised: WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc.

The following sections in chapter 314-20 WAC are revised or new: WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers, and 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine.

The following sections in chapter 314-24 WAC are new: WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer, and 314-24-270 Local wine industry association license.

The following section in chapter 314-27 WAC is revised: WAC 314-27-010 Liquor purchases by Interstate Common Carrier licensees—Reports.

The following sections in chapter 314-52 WAC are revised: WAC 314-52-080 Novelty advertising, 314-52-090 Advertising sponsored jointly by retailers and manufacturers, imports, or distributors, and 314-52-110 Advertising by retail licensees.

Citation of Rules Affected by this Order: New WAC 314-20-019, 314-24-163 and 314-24-270; and amending WAC 314-02-115, 314-12-140, 314-20-017, 314-27-010, 314-52-080, 314-52-090, and 314-52-110.

Statutory Authority for Adoption: RCW 66.08.030.

Other Authority: For WAC 314-20-017 and 314-02-115: RCW 66.24.240, 66.24.244, 66.28.200, 66.28.210, and 66.28.220 (HB 2412); for WAC 314-20-019 and 314-24-163: RCW 66.24.246 (ESSB 5006); for WAC 314-27-010, 314-52-080, 314-52-090, 314-52-110, and 314-12-140: RCW 66.28.310 and 66.24.395 (ESSB 6095); and for WAC 314-24-270: RCW 66.24.165 (SSB 6392).

Adopted under notice filed as WSR 20-23-125 on November 18, 2020.

A final cost-benefit analysis is available by contacting Audrey Vasek, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-664-1758, fax 360-704-5027, email rules@lcb.wa.gov, website www.lcb.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 3, Amended 7, 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 3, Amended 7, Repealed 0.

Date Adopted: January 20, 2021.

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 00-07-091, filed 3/15/00, effective 4/15/00)

WAC 314-02-115 ((~~What are the~~)) Requirements for licensees that sell keg beer((~~?~~)). ((~~Per~~)) Consistent with RCW 66.28.200 and 66.28.210((~~, any~~)):

(1)(a) Any licensee, except for a domestic brewery or microbrewery selling beer of its own production as provided in subsection (3) of this section, who sells beer for off-premises consumption in kegs or other containers holding four or more gallons of beer must((~~:~~

~~(1)~~)) require the purchaser to provide at least one piece of identification (see ((~~RCW 66.16.040~~)) WAC 314-11-025 for acceptable forms of identification); and

(((~~(2)~~)) (b) The licensee or employee and purchaser must fill out a keg registration form, provided by the board, which contains:

(((~~(a)~~)) (i) The name and address of the purchaser;

(((~~(b)~~)) (ii) The type and number of the identification presented by the purchaser;

(((~~(c)~~))) (iii) The address where the beer will be consumed and the date on which it will be consumed; and

(((~~(d)~~))) (iv) A sworn statement, signed by the purchaser under penalty of perjury, that ((~~the purchaser~~)):

(((~~(i)~~))) (A) The purchaser is at least twenty-one years of age;

(((~~(ii)~~))) (B) The purchaser will not allow persons under twenty-one years of age to consume the beer purchased;

(((~~(iii)~~))) (C) The purchaser will not remove or obliterate the keg registration form affixed to the keg or allow it to be removed or obliterated; and

(((~~(iv)~~))) (D) The address listed in (((~~(c)~~))) (b)(iii) of this subsection is the true and correct address at which the beer will be consumed or physically located.

(((~~(3)~~))) (2) It is the licensee's or employee's responsibility to distribute the properly completed keg registration form as follows:

(a) One copy to the purchaser;

(b) One copy affixed to the keg or container holding four gallons or more of beer, prior to it leaving the licensed premises; and

(c) One copy must be retained on the licensed premises for one year, available for inspection and copying by any law enforcement officer.

(3) Domestic breweries and microbreweries and their licensed retail locations are not subject to the keg registration and container identification requirements when selling kegs or other containers containing four gallons or more of beer of the licensee's own production, and purchasers of these kegs or containers are not subject to the related purchaser requirements, except that the purchaser must be at least twenty-one years of age and must not allow persons under twenty-one years of age to consume any beer purchased.

(4) Except in cases involving sales by domestic breweries and microbreweries of beer of the licensee's own production as described in subsection (3) of this section, possession of a keg or other container which holds four gallons or more of beer without a properly completed keg registration form affixed to it, other than on the licensee's premises, will be a violation of this title.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-12-140 Prohibited practices—Contracts—Gifts—Rebates, etc. (1) No industry member or retailer shall enter into any agreement which causes undue influence over another retailer or industry member. This regulation shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of liquor which are made in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(2) Except as permitted under RCW 66.28.310, no industry member shall advance and no retailer, any employee thereof, or applicant for a retail liquor license shall receive money or money's worth under any written or unwritten agreement or any other business practice or arrangement such as:

(a) Gifts;

(b) Discounts;

(c) Loans of money;

(d) Premiums;

(e) Rebates;

(f) Free liquor of any kind; or

(g) Treats or services of any nature whatsoever except such services as are authorized in this regulation.

(3) Pursuant to RCW 66.28.310 and 66.44.318 an industry member or licensed agent may perform the following services for a retailer:

(a) Build, rotate, and restock displays, utilizing filled cases, filled bottles or filled cans of its own brands only, from stock or inventory owned by the retailer.

(b) Rotate, rearrange or replenish bottles or cans of its own brands on shelves or in the refrigerators but is prohibited from rearranging or moving displays of its products in such a manner as to cover up, hide or reduce the space of display of the products of any other industry member.

(c) Industry members or any employees thereof may move or handle in any manner any products of any other manufacturer, importer or distributor on the premises of any retail licensee when a two-day notice is given to other interested industry members or their agents and such activity occurs during normal business hours or upon hours that are mutually agreed.

(d) Provide price cards and may also price goods of its own brands in accordance with the usual and common business practice and which are otherwise in compliance with the regulations.

(e) Provide point of sale advertising material and brand signs.

(f) Provide sales analysis of beer and wine products based on statistical sales data voluntarily provided by the retailer involved for the purpose of proposing a schematic display for beer and wine products. Any statistical sales data provided by retailers for this purpose shall be at no charge.

(g) Such services may be rendered only upon the specific approval of the retail licensee. Displays and advertising material installed or supplied for use on a retailer's premises must be in conformity with the board's advertising rules as set forth in chapter 314-52 WAC.

(h) Licensees holding nonretail class liquor licenses are permitted to allow their employees between the ages of eighteen and twenty-one to stock, merchandise, and handle liquor on or about the:

(i) Nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises; and

(ii) Retail licensee's premises, except between the hours of 11:00 p.m. and 4:00 a.m., as long as there is an adult twenty-one years of age or older, employed by the retail licensee, and present at the retail licensee's premises during the activities.

Any act or omission of the nonretail class liquor licensee's employee occurring at or about the retail licensee's premises, which violates any provision of this title, is the sole responsibility of the nonretail class liquor licensee.

(4) No industry member or employee thereof shall, directly or indirectly, give, furnish, rent or lend to, or receive from, any retailer, any equipment, fixtures, supplies or property of any kind, nor shall any retail licensee, directly or indi-

rectly, receive, lease or borrow from, or give or offer to, any industry member any equipment, fixtures, supplies or property of any kind. Sales authorized in this regulation shall be made on a cash on delivery basis only.

(5) No industry member or employee thereof shall sell to any retail licensee or solicit from any such licensee any order for any liquor tied in with, or contingent upon, the retailer's purchase of some other beverage, alcoholic or otherwise, or any other merchandise, property or service.

(6) In selling equipment, fixtures, supplies or commodities other than liquor, no industry member shall grant to any retailer, nor shall such retailer accept, more favorable prices than those extended to nonlicensed retailers. The price thereof shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retailer.

(7) Any industry member who sells what is commonly referred to as heavy equipment and fixtures, such as counters, back bars, stools, chairs, tables, sinks, refrigerators or cooling boxes and similar articles, shall immediately after making any such sales have on file and available for inspection, records including a copy of the invoice covering each such sale, which invoice shall contain the following information:

(a) A complete description of the articles sold;

(b) The purchase price of each unit sold together with the total amount of the sale;

(c) Transportation costs and services rendered in connection with the installation of such articles; and

(d) The date of such sale and affirm that full cash payment for such articles was received from the retailer as provided in subsection (4) of this section.

(8) If the board finds in any instance that any licensee has violated this regulation, then all licenses involved shall be held equally responsible for such violation.

Note: WAC 314-12-140 is not intended to be a relaxation in any respect of section 90 of the Liquor Act (RCW 66.28.010). As a word of caution to persons desiring to avail themselves of the opportunity to sell to retail licensees fixtures, equipment and supplies subject to the conditions and restrictions provided in section 90 of the act and the foregoing regulation, notice is hereby given that, if at any time such privilege is abused or experience proves that as a matter of policy it should be further curtailed or eliminated completely, the board will be free to impose added restrictions or to limit all manufacturers and distributors solely to the sale of liquor when dealing with retail licensees. WAC 314-12-140 shall not be considered as granting any vested right to any person, and persons who engage in the business of selling to retail licensees property or merchandise of any nature voluntarily assume the risk of being divested of that privilege and they will undertake such business subject to this understanding. The board also cautions that certain trade practices are prohibited by rulings issued under the Federal Alcohol Administration Act by the United States Bureau of Alcohol, Tobacco and Firearms, and WAC 314-12-140 is not intended to conflict with such rulings or other requirements of federal law or regulations.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to ((~~two~~)) four retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions. For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more beer.

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210 ((~~(6)~~)) without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery;

(b) Sell containers of beer for off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.-210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

NEW SECTION

WAC 314-20-019 Domestic brewery or microbrewery endorsement for on-premises consumption of wine. Consistent with RCW 66.24.246:

(1) A domestic brewery or microbrewery may apply for an endorsement to sell wine for on-premises consumption.

(2) The endorsement holder must comply with each of the following requirements:

(a) The wine must be produced in Washington;

(b) The wine must be sold by the single serving for on-premises consumption; and

(c) The number of wine offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars.

NEW SECTION

WAC 314-24-163 Domestic winery endorsement for on-premises consumption of beer. Consistent with RCW 66.24.246:

(1) A licensed domestic winery may apply for an endorsement to sell beer for on-premises consumption. A separate endorsement is required for each location.

(2) The endorsement holder must comply with each of the following requirements:

(a) The beer must be produced in Washington;

(b) The beer must be sold by the single serving for on-premises consumption; and

(c) The number of beer offerings for sale at any one time is limited to three.

(3) The annual fee for the on-premises consumption endorsement is two hundred dollars for each location.

NEW SECTION

WAC 314-24-270 Local wine industry association license. Consistent with RCW 66.24.165:

(1) A nonprofit society or organization that is specifically created with the express purpose of encouraging consumer education of and promoting the economic development for a designated area of the Washington state wine industry, including both Washington statewide and Washington regional organizations, may apply for a local wine industry association license. Consistent with RCW 66.24.010(9), the board will send a local authority notice before issuing a local wine industry association license.

(2) A local wine industry association licensee may conduct a maximum of twelve events per year, and must provide notification to the board at least forty-five days before an event or the start of a marketing program conducted under the license. The board will send a local authority notice to the jurisdiction in which the event or marketing program is to be conducted under the license.

(3) A local wine industry association licensee may also apply for special occasion licenses under RCW 66.24.380 (see chapter 314-05 WAC) and special permits under RCW 66.20.010 (see chapter 314-38 WAC). The twelve events allowable under the local wine industry association license are separate and distinct from the twelve events allowable under the special occasion license.

(4) Wine furnished to a local wine industry association licensee is subject to taxes under RCW 66.24.210 (see WAC 314-19-015).

(5) The annual fee for the local wine industry association license is seven hundred dollars.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

WAC 314-27-010 ((~~Liquor purchases by~~)) Interstate common carrier ((~~licensees~~)) license—Reports. (1) Any licensee authorized by the board to sell liquor may sell liquor to the holder of an interstate common carrier license upon presentation of a special permit issued by the board to such licensee.

(2) Sales of liquor to such properly licensed interstate commercial common passenger carriers shall be treated as sales for export.

(3) Every federally licensed interstate commercial common passenger carrier, holding an interstate common carrier license shall, on or before the twentieth day of each month, make a report to the board, upon forms approved by the board, of all ((~~spirituous liquor,~~)) beer and wine served or sold at retail for passenger consumption by such common carrier within or over the territorial limits of the state of Washington during the preceding calendar month.

(4) Licensed beer and wine importers and distributors who sell beer or wine to such properly licensed interstate commercial common passenger carriers shall treat such sales as exports from the state.

(5) Licensed interstate common carriers may provide complimentary alcoholic beverages to passengers aboard passenger trains, vessels, or airplanes as authorized under RCW 66.24.395.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

WAC 314-52-080 Novelty advertising. (1) Novelty branded promotional advertising items which are of nominal value, singly or in the aggregate, may be provided to retailers by industry members. Singly or in the aggregate is per licensed location. Such items include, but are not limited to: Trays, lighters, blotters, post cards, pencils, coasters, menu cards, meal checks, napkins, clocks, mugs, glasses, bottle or can openers, corkscrews, matches, printed recipes, shirts, hats, visors, and other similar items. Branded promotional items:

(a) Must be used exclusively by the retailer or its employees in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only;

(c) May only be provided by industry members to retailers and their employees;

(d) May not be provided by or through retailers or their employees to retail customers.

(2) An industry member is not obligated to provide any branded promotional items, and a retailer may not require an industry member to provide such branded promotional items as a condition for selling any alcohol to the retailer.

(3) Any industry member, retailer, or other person asserting the provision of branded promotional items has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise

inconsistent with the criteria in subsection (1) of this section, may file a complaint with the board.

Upon receipt of a complaint the board may conduct an investigation as it deems appropriate in the circumstances.

(a) The board may issue an administrative violation notice to the industry member, to the retailer, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

(4) An industry member or their employee, may sell, and a retail licensee may purchase, for use, resale, or distribution on the licensed premises any novelty advertising items. The price shall be not less than the industry member's cost of acquisition. In no event shall credit be extended to any retail licensee. The purchase by retail licensees of such items shall be supported by invoices or signed vouchers which shall be preserved for three years on the licensed premises and available for immediate inspection by board enforcement officers.

(5) An industry member who sells novelty advertising items to retail licensees shall keep on file the original or copy of all sales slips, invoices, and other memoranda covering all purchases of novelty advertising items by the industry member and shall also keep on file a copy of all invoices, sales slips, or memoranda reflecting the sales to retail licensees or other disbursement of all novelty advertising items. Such records shall be maintained in a manner satisfactory to the board and must be preserved in the office of the industry member for a period of at least three years after each purchase or sale. Any manufacturer which does not maintain a principal office within the state shall, when requested, furnish the above required records at a designated location within the state for review by the board.

(6) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-090 Advertising sponsored jointly by retailers and manufacturers, importers, or distributors. (1) The name of a retail licensee shall not appear in, or as a part of, or supplementary to, any advertising of a manufacturer, importer or distributor, except:

(a) To produce brochures and materials promoting tourism in Washington state;

(b) A manufacturer, importer, or distributor may list on their web sites information related to retailers who sell or promote their products.

(2) The brand name of liquor may appear in or as a part of advertising by a retail licensee: Provided, such advertising is upon the retail licensee's free initiative and no moneys or moneys' worth has been offered or solicited as an inducement to secure such mention of any manufacturer, importer, or distributor's product.

(3) A professional sports team who holds a liquor license may accept liquor advertisements from manufacturers, importers, or distributors for use in sports entertainment facilities and may allow a manufacturer, importer, or distributor to use the name and trademark of the professional sports team in their advertising and promotions, if such advertising:

(a) Is paid for by the manufacturer, importer, or distributor at reasonable fair market value; and

(b) Carries no express or implied offer by the manufacturer, importer, or distributor on the part of the retail licensee to stock or list any particular brand of liquor to the total or partial exclusion of any other brand.

(4) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

WAC 314-52-110 Advertising by retail licensees. (1) Every advertisement by a retail licensee shall carry the licensed trade name or the registered franchise name or the trademark name. The term "trade name" shall be defined as the name as it appears on the license issued to the licensee:

(a) Words such as tavern, cafe, grocery, market, wine shop, and other similar words used to identify the type of business licensed, and numbers used to identify chain licensees, shall neither be required nor prohibited as part of the trade name in advertisements.

(b) Advertisements by a spirit, beer and wine restaurant licensee may also refer to cocktails, bar, lounge and/or the "room name." The term "room name" shall be defined as the name of the room designated as the cocktail lounge and/or the dining room.

(2) No retail licensee shall offer for sale any liquor for on premises consumption under advertising slogans where the expressed or implied meaning is that a customer, in order to receive a reduced price, would be required to purchase more than one drink at a time, such as "two for the price of one," "buy one—get one free," or "two for $_____."

(3) Beer, wine, or spirituous liquor shall not be advertised, offered for sale, or sold by retail licensees at less than acquisition cost. The provisions of this section shall not apply to any sales made:

(a) For the purpose of discontinuing the trade of any product or disposing of seasonal goods after the season has passed;

(b) When the goods are damaged or deteriorated in quality, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation provided notice is given to the public;

(c) By an officer acting under the orders of any court; or

(d) In an endeavor to meet the prices of a competitor selling the same article or product in the same locality or trade area and in the ordinary channels of trade.

(4) Specialty shops, wineries, breweries, and craft distilleries acting as a retail licensee, providing free tastings to the public, are prohibited from using any term that implies the product is free in their advertising for such events.

(5) Licensed interstate common carriers and industry members may engage in promotional, advertising, and other activities permitted under RCW 66.28.310.