

NEW SECTION

**WAC 480-07-307 Probable cause determinations.** An administrative law judge will review the information or evidence supporting a proposed complaint or penalty assessment and determine whether probable cause exists to issue the complaint or assess penalties. If the judge determines that the information would support the proposed penalties or sustain the complaint, if proved at hearing and if not rebutted or explained, the judge will sign the complaint or penalty assessment on behalf of the commission. The existence of a finding of probable cause may not in any later stage of the proceeding be considered as support for the proposed penalties or the complaint.

AMENDATORY SECTION (Amending General Order R-510, Docket No. A-010648, filed 11/24/03, effective 1/1/04)

**WAC 480-07-825 Initial orders--Petitions for administrative review.** (1) **When a petition for administrative review is appropriate.** A party who wishes to challenge any finding of fact, conclusion of law, remedy, or result proposed by an initial order may file a petition for administrative review. A party also may file a petition for administrative review to challenge the reasons stated in support of any result reached in an initial order. The commission will accept only one petition for administrative review from any party.

(2) **Timing of petition.** Any party to an adjudicative proceeding may file and serve a petition for administrative review within twenty days after the initial order is served. The commission may extend the time on a showing of good cause.

(3) **Contents; length.** Petitions for administrative review must clearly identify the nature of each challenge to the initial order, the evidence, law, rule or other authority that the petitioner relies upon to support the challenge, and state the remedy that the petitioner seeks. Petitions for review of initial orders must be specific. The petitioner must separately state and number every contention. A petition that challenges a finding of fact must cite the pertinent page or part of the record or must otherwise state the evidence it relies on to support its petition, and should include a recommended finding

of fact. A petition that challenges a conclusion of law must cite the appropriate statute, rule, or case involved and should include a recommended conclusion of law. A petition that challenges the summary or discussion portion of an initial order must include a statement showing the legal or factual justification for the challenge, and a statement of how the asserted defect affects the findings of fact, the conclusions of law, and the ultimate decision. Petitions for administrative review must not exceed sixty pages, without prior permission from the commission.

(4) **Answers.**

(a) **Who may answer.** Any party to the adjudication may answer another party's petition for administrative review.

(b) **Filing and service.** An answer to a petition for administrative review must be filed and served within ten days after the petition is filed. The commission may designate a different time for filing answers to petitions.

(c) **Challenge to order in answer.** A party who did not file a petition for administrative review of an initial order may challenge the order or portions of the order in its answer to the petition of another party.

(5) **Reply.**

(a) **By right.** A party has the right to reply to new challenges to the order that are raised under subsection (c) of this section.

(b) **By leave of commission.** A party otherwise has no right to reply to an answer, but may petition for leave to reply, citing new matters raised in the answer and stating why those matters were not reasonably anticipated and why a reply is necessary. The petitioner may attach a reply to the petition for leave to accept the reply.

(c) **Timing.** A reply under (a) of this subsection, or a petition for leave to reply under (b) of this subsection, must be filed no later than five days after service of the answer. The commission may extend the time upon a showing of good cause.

(6) **Oral argument.** The commission may hear oral argument on a petition for administrative review at a time and place the commission designates by notice to all parties to the proceeding. A party who desires to present oral argument may request argument, stating why oral argument is necessary to assist the commission in making its decision and why written presentations will be insufficient.

(7) **Initial order finality.**

(a) The initial order of an administrative law judge will become a final order of the commission unless, within the time for filing petitions for administrative review:

(i) A party petitions for administrative review, or receives an extension of time to file a petition for administrative review and files within the extended period; or

(ii) The commission serves a notice to the parties of its intention to review the initial order.

(b) Parties who seek finality of an initial order before the end of the petition period may waive the right to seek administrative review. If all parties waive review, the order will become final on the day the commission declines to exercise administrative review or when the time for exercising review ends. If the commission exercises administrative review, all parties may state objections and responses as permitted in subsection (8) of this section.

(c) An initial order that becomes final by operation of law does not reflect a decision by the commissioners and has no precedential value. Such orders may be cited as ALJ orders, but their persuasiveness depends on the quality of the decision rather than the mere fact they are technically final.

(8) **Designation for review.** The commission may designate an initial order for administrative review by serving on the parties a notice of its intention to review the order. The notice will identify the docket number and the title of the proceeding, a time period within which the parties may state objections to the initial order, and a time to respond to others. The notice may invite the parties to address specific issues relating to the initial order.

(9) **Final order.** The commission may by final order adopt, modify, or reject an initial order after ((~~reviewing~~)) considering the ((~~initial order and any petitions for review, answers, replies, briefs, and oral arguments,~~)) pleadings and the record. Alternatively, the commission may remand the matter for further proceedings with instructions to the presiding officer.

(10) **Judicial review.** The statutory time for filing a petition for judicial review commences when the commission serves its final order, when an initial order becomes final under RCW 80.01.060(3) and subsection (7) of this section, or when a petition for reconsideration is deemed denied as a matter of law, as provided in RCW 34.05.470. However, if a party timely files a petition for reconsideration of the final order, and complies with the commission's procedural rules governing reconsideration, the time for filing a petition for judicial review does not commence until the date on which the agency serves an order disposing of the petition for reconsideration, or the date on which the petition is deemed denied as a matter of law, as provided in RCW 34.05.470.

NEW SECTION

**WAC 480-07-903 Delegation of authority to the executive secretary. (1) General provisions.**

(a) The working title of the secretary position authorized in RCW 80.01.030 is "executive secretary."

(b) The commission delegates authority to the executive secretary as set out in this section and WAC 480-07-904 and 480-07-905, pursuant to RCW 80.01.030 and subject to oversight and direction by a majority of the commissioners.

(c) The commission may also delegate functions to the executive secretary by order.

(d) When the executive secretary is absent or otherwise unavailable to perform authorized duties, the commission authorizes the executive secretary's designee to perform the duties on behalf of the executive secretary.

(2) **General delegation of authority.** The commission authorizes the executive secretary to supervise the general administrative functions of the agency, including without limitation the following specific tasks.

(a) **Filings, correspondence and documents.** The executive secretary will sign commission documents to be filed with the code reviser, courts, or other agencies or governmental entities. The executive secretary will sign other official commission correspondence and filings that the commissioners do not sign. The executive secretary will sign all permits and other official commission documents.

(b) **Appointing authority.** The executive secretary is the "appointing authority" for the commission and has authority over appointment, separation, and discipline of commission employees. This authority includes, but is not limited to, appointments, terminations, reductions in force, dismissals, suspensions, and demotions pursuant to WAC 356-30-007 and 356-34-011

(c) **Grievance procedure.** The commission authorizes the executive secretary to hear bargaining unit employee grievances and enter a final agency decision. The commission reserves the right to hear individual grievances or to select another designee to hear grievances on a case-by-case basis.

(d) **Rejection of defective filings.** The executive secretary will sign orders or letters rejecting tariffs, contracts, applications, or other filings that do not comply with statutory requirements or commission rules regarding effective dates, required supporting documents, or other standards for a complete filing.

(3) **Authority to resolve delegated matters.** Matters delegated to the executive secretary by rule are specified in this section and in WAC 480-07-904 and 480-07-905. The executive secretary may exercise discretion to defer any delegated matter to the commissioners for decision.

(4) **Authority to sign discretionary orders implementing commission decisions.**

(a) **Commissioner direction.** A majority of the commissioners may direct the executive secretary to sign an order or decision implementing a decision made by a majority of the commissioners.

(b) **Commissioner unavailability.** When a majority of the commissioners are unavailable to sign and enter decisions and orders of the commission, the executive secretary is authorized to do so without express direction only when:

(i) A majority of the commissioners has previously reached a decision on the merits of the particular matter; and

(ii) In the executive secretary's judgment, in consultation with any available commissioner, entry of the order cannot be deferred pending commissioner availability.

(5) **Commission review.** Commission review of decisions delegated under RCW 80.01.030 is *de novo*.

#### NEW SECTION

**WAC 480-07-904 Delegation of authority to the executive secretary to decide certain matters.** (1) The commission delegates the following matters to the executive secretary for decision. The executive secretary's decision shall take effect immediately on entry of an order or on a later date specified in the order, without prior notice. Upon request, the commission will review the matter under subsection (3) of this section at a commission open meeting.

(a) Applications for funding highway-railroad grade crossing improvements under the grade crossing protection fund for applications under WAC 480-62-405 (1)(a).

(b) Petitions for approval of changes to existing highway-railroad grade crossings, including installation or modification of signals; reconstruction of the crossing; or implementation of changes in design or construction.

(c) Applications by water companies for removal from regulation or for the commission to exercise regulation under RCW 80.04.010.

(d) Applications for approval of:

(i) Fully negotiated telecommunications interconnection

agreements; and

(ii) Adoptions of existing interconnection agreements.

(e) Applications for less than statutory notice approval of transportation company fuel surcharges and requests for rate increases limited to passing through costs that are authorized for pass-through, such as tipping fees.

(f) Requests for a commission order establishing that a securities filing complies with RCW 80.08.040.

(g) Requests for assignment of telephone number resources.

(h) Petitions for mitigation of penalties when the petitioner does not request a hearing, or when commission staff supports the request for mitigation.

(i) Requests for approval of service area agreements.

(j) Requests for extensions of time to make filings under deadlines set by rule or order, not including deadlines established in an adjudication.

(2) **Notice.** The commission will post on its internet web site for at least fourteen days a listing of all matters decided pursuant to subsection (1)(a) of this section, showing the docket number, date of entry of decision, and company name. The commission will regularly publish electronic notice of listings to persons requesting such notice.

(3) **Opportunity for review.** Any affected person may ask the commission to review any matter delegated under subsection (1) of this section. A person seeking review must file his or her request for commission consideration no later than the fourteenth day after the date of the posting. The commission will provide a form for this purpose on the commission's web site. The commission will schedule a request for review promptly for consideration and will notify the affected company, and any person requesting review, of the time and place of the open meeting at which review will be taken.

#### NEW SECTION

**WAC 480-07-905 Delegation of authority to executive secretary to enter ex parte orders.** The commission authorizes the executive secretary to enter the following *ex parte* orders in the name of the commission in nonadjudicative matters. Notice of the order will be published, and responses must follow the procedure outlined, in WAC 480-07-904 (2) and (3).

(1) **Motor freight carriers, chapter 480-14 WAC, (excluding household goods carriers).**

(a) Orders and permits authorizing intrastate transportation of general commodities, materials transported by

armored car, or hazardous materials if the applicant satisfies the requirements of chapter 480-14 WAC.

(b) Orders and permits authorizing or reflecting change of carrier name and business structure if the carrier satisfies the requirements of chapter 480-14 WAC.

(c) Orders and permits reinstating previously held authority if the carrier meets the requirements of chapter 480-14 WAC.

(d) Orders suspending and/or canceling a permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier:

(i) That the permit may be reinstated prior to cancellation if the carrier corrects conditions leading to suspension; and

(ii) That the carrier may contest the suspension and/or cancellation by requesting an adjudication or brief adjudication.

(e) Orders permanently canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request an adjudication or brief adjudication.

(f) Orders permanently canceling permit authority or dismissing an application by request of carrier or applicant.

(g) Orders dismissing an application after notice to the applicant of failure to meet the requirements of chapter 480-14 WAC.

**(2) Household goods carriers, chapter 480-15 WAC.**

(a) Permit authority granted by a commission order authorizing permanent, provisional or temporary intrastate transportation of household goods.

(b) Orders and permits authorizing permanent intrastate transportation of household goods if the applicant satisfies the requirements of chapter 480-15 WAC.

(c) Orders and permits authorizing or reflecting change of a carrier's permit name, corporate name, trade name, or addition of a trade name.

(d) Orders authorizing voluntary suspension of permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(e) Orders reinstating voluntarily suspended permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(f) Orders permanently canceling permit authority or dismissing application by request of carrier or applicant.

(g) Orders suspending and/or canceling a permit if the carrier fails to maintain evidence of required cargo and/or liability insurance coverage. Such orders will inform the carrier that a permit may be reinstated if the carrier corrects conditions leading to suspension and that the carrier may

contest the suspension and/or cancellation by requesting an adjudicative or brief adjudicative proceeding.

(h) Orders vacating suspension of a permit if the commission receives the insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(i) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(j) Orders reinstating previously canceled permit authority if the carrier satisfies the requirements of chapter 480-15 WAC.

(k) Orders rejecting applications for temporary authority if WAC 480-15-285 applies.

**(3) Solid waste collection companies--Specialized, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by any existing carrier.

(b) Orders and permits authorizing change of carrier's corporate name, trade name, or addition of a trade name.

(c) Orders and permits approving unprotested applications to transfer or lease certificate.

(d) Orders suspending a permit if the carrier fails to maintain evidence of the required liability insurance coverage. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting an adjudication or brief adjudicative proceeding.

(e) Orders vacating suspension of permit if the commission receives the carrier's insurance filing during the suspension period and orders of abeyance if the carrier requests an adjudication or brief adjudicative proceeding.

(f) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension, and fails to request a hearing or brief adjudicative proceeding, during the suspension period.

(g) Orders reinstating a permit canceled for cause if the conditions for reinstatement in chapter 480-70 WAC and in the order of cancellation are met.

(h) Orders dismissing application or canceling permit authority by request of applicant or carrier.

**(4) Solid waste collection companies--Traditional, chapters 81.77 RCW and 480-70 WAC.**

(a) Orders and permits authorizing intrastate solid waste collection services involving unprotested applications in territory not served by an existing carrier.

(b) Orders and permits authorizing change of carrier's name, trade name or addition of a trade name.



**(5) Private, nonprofit transportation providers, chapter 480-31 WAC.**

(a) Orders and permits authorizing intrastate transportation of persons with special needs.

(b) Orders and permits authorizing sale, assignment, lease, acquisition or transfer.

(c) Orders suspending a permit if the carrier fails to maintain evidence on file that it has the required level of insurance in effect for its operations. The order must inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(d) Orders vacating suspension of a permit if the commission receives an insurance filing during the suspension period and orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

**(6) Charter and excursion busses.**

(a) Orders authorizing intrastate transportation of passengers by charter or excursion.

(b) Orders suspending permit if the carrier fails to show that it has the required level of insurance in effect for its operations. The order will inform the carrier that the permit may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest the suspension by requesting a hearing or brief adjudicative proceeding.

(c) Orders vacating suspension of permit if the commission receives an insurance filing during the suspension period or orders of abeyance if the carrier requests a hearing or brief adjudicative proceeding.

(d) Orders canceling previously suspended permit authority if the carrier fails to correct conditions leading to suspension and fails to request a hearing or brief adjudicative proceeding during the suspension period.

(e) Orders canceling permit authority or dismissing an application by request of the carrier or applicant.

(f) Orders dismissing application after due notice to applicant for failure to meet the requirements of chapter 480-40 WAC.

(g) Orders authorizing lease, assignment, or transfer of permit authority.

**(7) Auto transportation companies, chapter 81.68 RCW.**

(a) Orders and permits authorizing intrastate, intercity transportation of passengers involving unprotested applications to serve routes not served by any existing carrier and that do not fall within the boundaries of a transit district.

(b) Orders and permits involving name changes, including trade names.

**(8) Commercial ferries, chapter 480-51 WAC.**

(a) Orders suspending a certificate if the carrier fails to maintain the required insurance coverage. The order will inform the carrier that the certificate may be reinstated if the carrier corrects the conditions leading to suspension and that the carrier may contest suspension by requesting a brief adjudication or an adjudication.

(b) Orders vacating suspension of a certificate if the carrier corrects conditions leading to suspension and orders of abeyance if the respondent requests a brief adjudication or an adjudication.

(c) Orders canceling a previously suspended certificate if the carrier fails to correct conditions leading to suspension and fails to timely request an adjudication or brief adjudication.

(9) **Temporary transportation authority.** The commission delegates to the executive secretary decisions in applications for temporary motor carrier or solid waste authority. The decision takes effect immediately on entry of an order without prior notice of delegation. An applicant whose application is denied, in whole or in part, may obtain review by requesting an adjudication within twenty days following entry of the order. Commission review of delegated decisions under this provision will be *de novo*.