

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of  
Amending WAC 480-07 and Adopting  
WAC 480-160

Relating to

Marine Pilotage Rate-Setting Authority

DOCKET TP-180402

GENERAL ORDER R-596

ORDER AMENDING AND  
ADOPTING RULES  
PERMANENTLY

1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and  
Transportation Commission (Commission) takes this action under Notice WSR # 19-07-  
077, filed with the Code Reviser on March 20, 2019. The Commission has authority to  
take this action pursuant to RCW 80.01.040, RCW 80.04.160, RCW 81.116.020, and  
RCW 81.116.900.

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

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.

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: May 03, 2019**

**TIME: 10:22 AM**

**WSR 19-11-012**

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 and adopts the following sections of the Washington Administrative Code:

<b>Amend</b>	<b>WAC 480-07-140</b>	<b>General requirements for submitting documents to the commission.</b>
<b>Amend</b>	<b>WAC 480-07-500</b>	<b>General rate proceedings—Statement of policy</b>
<b>Amend</b>	<b>WAC 480-07-505</b>	<b>General rate proceedings—Definition—Tariff suspension.</b>
<b>Adopt</b>	<b>WAC 480-07-525</b>	<b>General rate proceedings—Marine pilotage services in Puget Sound.</b>
<b>Amend</b>	<b>WAC 480-07-540</b>	<b>General rate proceedings—Burden of proof.</b>
<b>Amend</b>	<b>WAC 480-07-700</b>	<b>Alternative dispute resolution.</b>
<b>Adopt</b>	<b>WAC 480-160-100</b>	<b>Purpose of chapter.</b>
<b>Adopt</b>	<b>WAC 480-160-005</b>	<b>Application</b>
<b>Adopt</b>	<b>WAC 480-160-010</b>	<b>Resolving disputes about the meaning of these rules.</b>
<b>Adopt</b>	<b>WAC 480-160-020</b>	<b>Definitions.</b>
<b>Adopt</b>	<b>WAC 480-160-030</b>	<b>Change of address, telephone number, or email.</b>
<b>Adopt</b>	<b>WAC 480-160-040</b>	<b>Exemptions from rules in chapter 480-160 WAC</b>
<b>Adopt</b>	<b>WAC 480-160-050</b>	<b>Records retention</b>
<b>Adopt</b>	<b>WAC 480-160-060</b>	<b>Reporting requirements.</b>
<b>Adopt</b>	<b>WAC 480-160-070</b>	<b>Commission compliance policy.</b>
<b>Adopt</b>	<b>WAC 480-160-080</b>	<b>Fees.</b>
<b>Adopt</b>	<b>WAC 480-160-090</b>	<b>Pilots must charge only approved rates.</b>
<b>Adopt</b>	<b>WAC 480-160-100</b>	<b>Tariffs and rates—General.</b>
<b>Adopt</b>	<b>WAC 480-160-110</b>	<b>Tariffs—Changes must be identified.</b>
<b>Adopt</b>	<b>WAC 480-160-120</b>	<b>Changing commission-published tariff—Puget Sound pilotage district.</b>
<b>Adopt</b>	<b>WAC 480-160-130</b>	<b>Changing commission-published tariffs—Grays Harbor pilotage district.</b>
<b>Adopt</b>	<b>WAC 480-160-140</b>	<b>Tariffs—Approval.</b>
<b>Adopt</b>	<b>WAC 480-160-150</b>	<b>Tariffs—Suspension by the commission.</b>
<b>Adopt</b>	<b>WAC 480-160-160</b>	<b>Complaints—Rates and charges.</b>

- 7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The Commission filed a Preproposal Statement of Inquiry (CR-101) on August 8, 2018, at WSR # 18-17-051. The statement advised interested persons that the Commission was considering entering a rulemaking to implement Substitute Senate Bill (SSB) 6519, Chapter 107, Laws of 2018, enacted during the 2018 legislative session and effective on July 1, 2019. 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 providing notice to the Commission's list of transportation attorneys and known stakeholders involved in marine pilotage rate-setting. Pursuant to the notice, the Commission received comments on the subject of the proposed rulemaking on September 14, 2018, and October 3, 2018, from Pacific Merchant Shipping Association (PMSA), Holland America Group, and Puget Sound Pilots (PSP).
- 8 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The Commission held a workshop to discuss draft rules on October 19, 2019.
- 9 **ADDITIONAL COMMENTS:** The Commission circulated revised draft rules following the workshop and received additional written comments from PSP and PMSA on January 31 and February 1, 2019, respectively.
- 10 **SMALL BUSINESS ECONOMIC IMPACT ANALYSIS:** The rules the Commission proposes to adopt establish a process for setting rates, terms, and conditions for pilotage services that is comparable to the general ratemaking process the Commission has long used for utilities and other transportation companies the commission regulates. On January 18, 2019, the Commission mailed a notice to all stakeholders interested in the rulemaking, providing a copy of the draft rules and an opportunity to respond to a small business economic impact statement (SBEIS) questionnaire. The notice requested that entities affected by the proposed rules provide information about possible cost impacts of the rules with specific information for each rule that the entity identified as causing an impact. The Commission did not receive any information in response to the questionnaire.
- 11 Based on the information available to the Commission, the proposed rules merely implement the statute and extend existing Commission procedures to marine pilotage services as required by the legislature. The draft rules will impose no costs beyond those already imposed by statute or that apply to the other industries the Commission regulates. Accordingly, because the proposed rules will not impose more than minor costs on marine pilots or shippers, the Commission concludes that no SBEIS is required.

- 12 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on March 20, 2019 at WSR #19-07-077. The Commission scheduled this matter for oral comment and adoption under Notice WSR #19-07-077 at 9:30 a.m., Wednesday, April 24, 2019 in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 13 **WRITTEN COMMENTS:** PMSA filed comments in response to the CR-102 on April 19, 2019. A summary of these comments and the Commission's responses are contained in Appendix A, attached to, and made part of, this Order.
- 14 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Wednesday, April 24, 2019 before Chairman David W. Danner, Commissioner Ann E. Rendahl, and Commissioner Jay M. Balasbas. The Commission heard oral comments from Jason Lewis, representing commission staff (Staff), and representatives of PSP and PMSA, all in support of the proposed rules.
- 15 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written comments were supportive of the proposed rules but suggested a few clarifying revisions. The suggested changes and the Commission's reason for rejecting or accepting them are included in Appendix A. In addition, the Commission has made a few non-substantive revisions to the proposed rules to enhance clarity and correct typographical or grammatical errors.
- 16 The Commission appreciates Staff's work to develop proposed rules and coordinate with stakeholders to implement the statute expeditiously. The Commission gratefully acknowledges the assistance of the Board of Pilotage Commissioners and the cooperation and comments of PMSA and PSP, all of which facilitated the rulemaking process and were instrumental in enabling the Commission to promulgate the rules we adopt today. We look forward to working with these entities in the future.
- 17 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR # 19-07-077 with the changes described below.
- 18 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR #19-07-07:
1. **WAC 480-07-500(5)** – delete “or pilotage service provider”
  2. **WAC 480-07-505(1)(e)** – insert “filed by a person with a substantial interest” after “Any petition” and “a” before “marine”

3. **WAC 480-07-505(4)(e)** – substitute “rate changes designed to recover only the costs to comply with government actions that directly impact the costs to provide regulated pilotage services” for “to recover changes in state, local or federal taxes or fees applicable to pilotage services”
4. **WAC 480-07-505(5)** – delete “or pilotage service provider”
5. **WAC 480-07-505(6)** – delete “or pilotage service provider”
6. **WAC 480-07-525(3)** – substitute “cover” for “transmittal” and “WAC 480-07-140” for “WAC 480-07-141”
7. **WAC 480-07-700(3)** – insert “for pilotage rates” before “must allow”
8. **WAC 480-160-020** – insert “an” before “arrangement” and substitute “produces” for “produce”
9. **WAC 480-160-030** – insert “the provider’s” before “physical”
10. **WAC 480-160-070(3)** – delete “district” after “pilotage”
11. **WAC 480-160-090** – insert “in a” before “different”

19 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that the WAC sections listed above should be amended and adopted 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.

### ORDER

20 **THE COMMISSION ORDERS:**

21 The Commission amends WAC 480-07 and adopts WAC 480-160 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).

22 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 RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, May 3, 2019.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



ANN E. RENDAHL, Commissioner



JAY M. BALASBAS, Commissioner

*Note: The following is added at Code Reviser request for statistical purposes:*

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 19, amended 5, repealed 0.

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

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

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

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

**Appendix A**  
**(Comment Summary Matrix)**

TP-180402 Marine Pilotage Ratemaking Rulemaking

Appendix A - Stakeholder Comment Summary for Proposed Rules

WAC Section	PMSA	Staff Response
<b>WAC 480-07-500(5) &amp; (6)</b>	Requests clarification on the inclusion of the phrase “or pilotage service provider” in these subsections, contending that Staff previously agreed that it could cause confusion in rate proceedings but did not delete the language.	Staff agrees and proposes to delete this phrase from these subsections.
<b>WAC 480-07-505(1)(e)</b>	Recommends adding “filed by a person with a substantial interest” after “Any petition” to be consistent with the statutory authority that any person with a substantial interest has a right to petition for a ratemaking proceeding.	Staff agrees and proposes to add this phrase to this subsection.
<b>WAC 480-07-505(4)(c)</b>	Requests that the phrase “automatic periodic or annual” be deleted to make clear that the allowance for prior Commission-approved automatic adjustments applies generally and not just to those adjustments that are time-based.	Staff disagrees. The intent of this subsection is to allow the same opportunity for an automatic adjustment mechanism that exists in other industries, and the meaning of this language is well-accepted and understood.
<b>WAC 480-07-505(4)(e)</b>	Recommends deleting the exemption from general rate proceedings for filings “to recover changes in state, local or federal taxes or fees applicable to pilotage services.” PMSA believes that the language is “overly vague, broad, and fraught with potential unintended impacts, especially given a lack of understanding of the taxes implicated by this exemption and the tax treatment of relationships between PSP and individual pilot licensees.”	Staff agrees that the language should be clarified and proposes to substitute language comparable to the language used for other industries, <i>i.e.</i> , “rate changes designed to recover only the costs to comply with government actions that directly impact the costs to provide regulated pilotage services.”



**Appendix B**

**[WAC 480-07 & 480-160 - RULES]**