

SERVICE DATE

MAR 31 1997

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Adopting)
)
 WAC 480-31-010; 020; 030; 040; 050; 060;)
 070; 080; 090; 100; 110; 120; 130; and 140)
)
 Relating to Private Nonprofit Transportation)
 Providers.)
)
)

DOCKET NO. TC-961102
 GENERAL ORDER NO. R-440
 ORDER ADOPTING RULES
 PERMANENTLY

The Washington Utilities and Transportation Commission takes this action under Notice WSR # 96-23-071, filed with the Code Reviser on November 20, 1996. The Commission brings this proceeding pursuant to RCW 80.01.040.

This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

The Commission undertook this proceeding as a result of Laws of 1996, Chapter 244 to establish rules for providing regulated transportation services to persons with special transportation needs by private, not-for-profit corporations (PNTPs). PNTPs are nonprofit corporations providing transportation services to persons with special transportation needs, including persons, and their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves. Laws of 1996, Chapter 244 expanded the definition of elderly and handicapped for Commission regulatory purposes to include persons with special transportation needs.

The Commission filed a Preproposal Statement of Inquiry (CR-101) on October 1, 1996, at WSR #96-20-090. The notice advised interested persons that the Commission was considering entering a rulemaking on private nonprofit transportation providers to discover amendments that may be needed for consistency with Laws of 1996, Chapter 244. Commission Staff had also met with representatives of affected entities prior to filing the preproposal statement of inquiry to secure information and to discuss possible rules. Commission Staff considered the result of those meetings in developing and recommending rule provisions and language.

CODE REVISER'S OFFICE
 STATE OF WASHINGTON
 FILED

MAR 27 1997

TIME 11:20 AM
 WSR 97-08-037 PM

The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending the notice to all nonprofit companies known to the Commission to be subject to the potential rules. Pursuant to the notice, the Commission did receive inquiries and consider comments.

Written comments or inquiries were received from five entities subject to the rulemaking.

The following persons met with Commission Staff before or after the filing of the preproposal notice regarding the subject of the rulemaking: representatives of state government agencies including the Council on Aging and Human Services, the state Department of Transportation, and the state Department of Licensing; and local governmental and nongovernmental agencies operating qualifying bus service, such as People for People, Yakima; transportation providers from Longview and Colville, Washington; Chicken Soup Brigade, Seattle; Mason County Transit, Shelton; Paratransit Services, Bremerton, and entities from Bellevue and Burlington, Washington. The meetings led to acceptance of draft language by participants.

The Commission filed a notice of Proposed Rulemaking (CR-102) on November 20, 1997, at WSR #96-23-071. The Commission scheduled this matter for oral comment and adoption under Notice WSR #96-23-071 at 9:00 a.m., Monday, December 30, 1996, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

The rule change proposal was considered for adoption, pursuant to the notice, at the Commission's regularly scheduled open public meeting on Monday, December 30, 1996, before Commissioner Richard Hemstad and Commissioner William R. Gillis. Pat Dutton of Commission Staff appeared at the meeting in support of the proposal and presented a written recommendation that the Commission adopt the proposal, with changes. No other person commented on the rules at the meeting. No person offered suggested changes to the proposal that were not adopted. The proposal appears to represent a consensus between Commission Staff and the regulated industry.

The proposed changes, which the Commission adopted, would add specific reference to sections that cite material adopted by reference, stating the location of the referenced material. This change does not affect the substance of the proposal in any way, but does assure procedural compliance with chapter 34.05 RCW.

After considering all of the information regarding this proposal, the Commission adopted the proposed rule adoption, with the changes noted from the text noticed at WSR #96-23-071. The change made was the addition of language in sections WAC 480-31-100; 110; 130; and 140.

In reviewing the entire record, the Commission determines that WAC 480-31-010; 020; 030; 040; 050; 060; 070; 080; 090; 100; 110; 120; 130; and 140 should be adopted to read as set forth in Appendix A, 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

THE COMMISSION ORDERS:

1. WAC 480-31-010; 020; 030; 040; 050; 060; 070; 080; 090; 100; 110; 120; 130; and 140 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of its filing with the Code Reviser pursuant to RCW 34.05.380(2).

2. 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 35.05 RCW and chapter 1-21 WAC.

3. The Commission adopts the Commission Staff memoranda, presented when the Commission considered filing a Preproposal Statement of Inquiry, when it considered filing the formal notice of proposed rulemaking, and when it considered adoption of this proposal, as its Brief Explanatory Statement of the reasons for adoption, under RCW 34.05.025.

DATED at Olympia, Washington, and effective this 25th day of March 1997.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Sharon L. Nelson
SHARON L. NELSON, Chairman

Richard Hemstad
RICHARD HEMSTAD, Commissioner

William R. Gillis
WILLIAM R. GILLIS, Commissioner

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New _____	Amended _____	Repealed _____
Federal rules or standards:	New _____	Amended _____	Repealed _____
Recently enacted state statutes:	New <u>14</u>	Amended _____	Repealed _____

The number of sections adopted at the request of a nongovernmental entity:

New _____	Amended _____	Repealed _____
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The number of sections adopted on the agency's own initiative:

New _____	Amended _____	Repealed _____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____	Amended _____	Repealed _____
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The number of sections adopted using:

Negotiated rule making:	New _____	Amended _____	Repealed _____
Pilot rule making:	New _____	Amended _____	Repealed _____
Other alternative rule making:	New _____	Amended _____	Repealed _____

APPENDIX "A"

Chapter 480-31 WAC

PRIVATE, NONPROFIT TRANSPORTATION PROVIDERS

NEW SECTION

WAC 480-31-010 Purpose. The purpose of this section is to ensure that private, nonprofit transportation providers, who primarily operate by using revenues received from governmental grants and/or charitable organizations, do so in a manner that is safe and reasonable for persons with special transportation needs.

NEW SECTION

WAC 480-31-020 Application of rules. These rules will apply to any private, nonprofit transportation provider so defined by the laws of the state of Washington, engaged in the business of providing transportation subject to the jurisdiction of this commission for persons with special transportation needs.

Any tariff filed by a provider will conform to these rules. In the event of acceptance of a tariff which is in conflict with these rules, such acceptance will not be deemed a waiver of these rules. Tariffs which are in conflict with these rules are hereby superseded unless the commission authorizes the deviation in writing.

Cases of erroneous or doubtful interpretation of these rules by a provider or any other person or corporation are subject to appeal to the commission by any interested and proper party affected.

Upon proper showing of any provider, the commission may waive or modify, as to that provider, the provisions of any rule herein, except when such provisions are fixed by statute. No deviation from these rules will be permitted without written authorization by the commission. Violations will be subject to the penalty provisions of chapter 81.04 RCW.

The adoption of these rules will in no way preclude the commission from altering or amending the same, in whole or in part, or from requiring any other or additional service, equipment or standard, not otherwise herein provided for either upon complaint or upon its own motion, or upon the application of any party, and further, these rules will in no way relieve any provider from any of its duties under the laws of the state of Washington.

Whenever the designation "director, office of motor carrier safety," "director, regional motor carrier safety office,"



"regional highway administrator," and "federal highway administration" are used in the respective parts of Title 49, Code of Federal Regulations, as described in this section, such designations for the purpose of this rule will mean the "Washington utilities and transportation commission."

NEW SECTION

WAC 480-31-030 Definitions. Unless the language or context indicates that a different meaning is intended, the following words, terms, and phrases will, for the purpose of this chapter, mean the following:

- (1) State - The state of Washington.
- (2) Commission - The Washington utilities and transportation commission.
- (3) Certificate - A grant of authority issued by the commission to a private, nonprofit transportation provider for the transportation of persons with special transportation needs as provided in chapter 81.66 RCW.
- (4) Corporation - A corporation, company, association, or joint stock association.
- (5) Public highway - Every street, road or highway in this state.
- (6) Motor vehicle - Every self-propelled vehicle with seating capacity of seven or more persons, including the driver.
- (7) Commercial motor vehicle - A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is designed to transport sixteen or more passengers, including the driver.
- (8) Person - An individual, firm, or copartnership.
- (9) Private, nonprofit transportation provider - A private, nonprofit corporation providing transportation services for compensation to persons with special transportation needs.
- (10) Provider - Private, nonprofit transportation provider.
- (11) Persons with special transportation needs - Those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation.
- (12) Tariff - A public document setting forth services being offered, rates and charges with respect to services and governing rules, regulations and practices relating to those services.
- (13) Donation - A gift without compulsion or consideration, that is, resting solely on the generosity of the donor.

NEW SECTION

WAC 480-31-040 Licenses, and rules and regulations. No provider may operate a motor vehicle upon the public highways of this state until the owner of the vehicle or person lawfully



responsible for the vehicle has complied with the laws of this state pertaining to licenses, obtained a certificate from the commission, and complied with all rules and regulations of the commission governing the operation of private, nonprofit transportation providers.

NEW SECTION

WAC 480-31-050 Certificates. (1) The commission will issue a certificate to any corporation which files a completed application, as provided by the commission, which provides:

- (a) Satisfactory proof of its status as a private, nonprofit corporation;
- (b) Information sufficient to determine the particular service to be provided;
- (c) Satisfactory proof of insurance or surety bond, in accordance with WAC 480-31-070;
- (d) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service, that the vehicles are or will be licensed in compliance with the laws of the state, and that drivers of such vehicles will be adequately trained and qualified;
- (e) Any proposed rates, fares, or charges.

(2) Applications for certificates must be on forms to be furnished by the commission, giving all information requested and accompanied by a fifty dollar application fee.

(3) Remittances will be made by money order, bank draft, personal check or certified check, made payable to the Washington utilities and transportation commission.

(4) No provider may operate, establish, or begin operation of any business for the purpose of transporting persons with special transportation needs on the public highways of this state, without first having obtained from the commission a certificate.

(5) No certificate will be issued to persons operating under a trade name, unless a certificate of said trade name is filed in accordance with the provisions of RCW 19.80.010, and a copy thereof filed with the commission.

(6) Each vehicle operated by a provider must carry a copy of the company's certificate, and will be subject at all times to inspection by an authorized representative of the commission.

(7) Any certificate to operate as a private, nonprofit transportation provider obtained by any false affidavit or representation will be subject to cancellation by the commission.

(8) No certificate will be sold, assigned, leased, acquired, or transferred except upon authorization of the commission.



NEW SECTION

WAC 480-31-060 Tariff. (1) Each provider that assesses to or collects charges, rates, or fares from passengers must file with the commission a tariff setting forth its rates on forms provided by the commission. However, it is not required that a tariff be filed to cover collection of donations when the donations are entirely voluntary and a specific amount is not required to ride in the motor vehicle.

(2) In the event that a provider proposes a new tariff or amendment which will effect an increase in fares, rates or charges, or will in any respect restrict the service offered under the currently effective tariff, a notice must be given to the public at least thirty days before the effective date thereof, unless the commission has granted authority for a lesser period. A copy of the notice must be placed in a conspicuous place on each vehicle. The notice must plainly indicate that the notice has been posted "in compliance with regulations of the Washington utilities and transportation commission," and state the commission's mailing address. A waiver of the thirty-day notice provision may be applied for on forms provided by the commission.

(3) Any provider that receives compensation solely from private, governmental or charitable grants or contracts and donations is not required to file tariffs with the commission concerning these contracts or donations.

NEW SECTION

WAC 480-31-070 Insurance. (1) Evidence of liability and property damage insurance or a surety bond must be on file before a certificate will be issued. The insurance or surety bond must have been written by a company authorized to write such insurance in the state of Washington. The combined bodily injury and property damage liability insurance or surety bond must not be less than:

Five hundred thousand dollars combined single limit for vehicles with a passenger capacity of less than sixteen passengers, including the driver;

One million dollars combined single limit for vehicles with a passenger capacity of sixteen or more passengers, including the driver.

Failure to file and keep such insurance or surety bond in full force and effect will be cause for dismissal of an application or cancellation of a certificate.

(2) Evidence of insurance must be submitted on a "uniform motor carrier bodily injury and property damage liability certificate of insurance (form E).

(3) All liability and property damage insurance policies issued to providers must carry a "uniform motor carrier bodily injury and property damage liability endorsement."

(4) Insurance termination. All insurance policies issued must provide that the same will continue in full force and effect until canceled by at least thirty days written notice served on the



insured and the commission by the insurance company. The thirty-day notice will commence to run from the date notice is actually received by the commission, except for binders which may be canceled on ten days' written notice.

Notice of cancellation or expiration must be submitted in duplicate on forms prescribed by the commission and must not be submitted more than sixty days before the desired termination date, except binders which may be canceled by ten days' written notice from the insurance agency or company.

(5) No provider may operate upon the public highways of this state without insurance as required by this section. The permit of any provider who fails to maintain evidence on file that its insurance is in current effect will be suspended by operation of law beginning with the time of the failure, until the permit is canceled or the cause of the suspension is cured and the permit is reinstated. The commission will make a good faith effort to notify providers of impending suspension for failure to maintain evidence of insurance and enter a timely order of suspension, but failure to do so will not invalidate the suspension.

NEW SECTION

WAC 480-31-080 Fees and annual report. (1) A provider must pay to the commission the sum of ten dollars annually for each vehicle operated. The annual fee must be paid with the filing of the annual report of the provider.

(2) At the close of each calendar year, every provider must secure from the commission the proper forms and file with the commission its annual report as soon as possible after the close of the calendar year, but no later than May 1st of the succeeding year. Failure to file such report will be sufficient cause for the commission, in its discretion to revoke a certificate.

NEW SECTION

WAC 480-31-090 Passenger complaints and disputes. Any complaint or dispute involving a passenger and a provider for which the commission has jurisdiction must be treated in the following manner:

(1) Each complaint or dispute received by a provider from a passenger must be investigated promptly as required by the particular case, and the results reported to the passenger. When the circumstances indicate the need for corrective action, such action must be taken as soon as possible.

(2) Each provider must ensure that personnel engaged in initial contact with a dissatisfied or complaining passenger will inform the passenger that if dissatisfied with the decision or explanation provided, the passenger has the right to have the problem considered and acted upon by supervisory personnel. The



passenger must be provided with the name or department of such supervisory personnel and a telephone number by which they can be reached.

(3) Each provider must ensure that supervisory personnel contacted by a dissatisfied passenger will inform a still-dissatisfied passenger of the availability of the commission for further review of any complaint or dispute. The telephone number and address of the commission must also be provided.

(4) All parties to a dispute between a passenger and the provider have the right to bring before the commission an informal complaint pursuant to the provisions of WAC 480-09-150 and/or a formal complaint pursuant to the provisions of WAC 480-09-420.

(5) When a complaint is referred to a provider by the commission, the provider must, within two business days, report the results of any investigation made regarding the complaint to the commission and must keep the commission currently informed as to progress made with respect to the solution of, and final disposition of, the complaint. If warranted in a particular case, the provider may request an extension of time.

(6) Records - each provider must keep a record of all complaints concerning its service or rates. The record must show at least the name and address of the complainant, the nature and date of the complaint, action taken, and the final disposition of the complaint. Such records must be maintained in a suitable place readily available for commission review and will be provided to the commission upon request.

All written complaints made to a provider must be acknowledged within five business days. Correspondence and records of complaints must be retained by the provider for a minimum period of one year.

NEW SECTION

WAC 480-31-100 Equipment--Safety. In addition to other laws and regulations of this state, all providers must comply with the following:

The rules and regulations governing motor carrier safety prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 392 (Driving of Motor Vehicles), part 393 (Parts and Accessories Necessary for Safe Operation), part 396 (Inspection, Repair and Maintenance), and part 397 (Transportation of Hazardous Materials; Driving and Parking rules).

The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

NEW SECTION

WAC 480-31-110 Identification of motor vehicle equipment. Providers must display identification markings on the driver and passenger side of the vehicles.

The markings must include the name of the provider as registered with the commission and the certificate number. Provided however, providers holding both intrastate and interstate authority may display either the U.S. Department of Transportation certificate number, commission certificate number, or both.

The markings must be clearly legible, with letters no less than three inches high, in a color that contrasts with the surrounding body panel. Leased vehicles may display either permanent markings or placards on the driver and passenger sides of the vehicle.

Vehicles operated by or under lease must display the name and permit number of either the business operating the vehicle or the registered owner. The markings may be permanent or placards on the driver and passenger sides of the vehicle.

When identification of the provider would create an embarrassment to the persons with special transportation needs, the name of the provider may be omitted when authorized by letter from the secretary of the commission.

The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.

NEW SECTION

WAC 480-31-120 Equipment--Inspection--Ordered for repairs.

(1) All motor vehicles operated by providers must be maintained in a safe and sanitary condition. They must at all times be subject to inspection by the commission and its duly authorized representatives who will have power to order out-of-service any vehicle failing to meet the standards set forth in this section, or if not being operated in compliance with state laws in regard to equipment or method.

(2) Every provider must ensure that all its vehicles are regularly inspected, repaired and maintained, as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396 (Inspection, Repair and Maintenance).

(3) All vehicle parts and accessories must be in safe and proper working condition at all times.

(4) Equipment standards. The purpose of this subsection is to identify critical vehicle inspection items and provide criteria for placing a vehicle(s) in an out-of-service category. The criteria for out-of-service condition are those defined in the current North American Uniform Out-Of-Service Criteria.



Out-of-service condition. When any motor vehicle(s) is in out-of-service condition, no provider will require nor will any person operate such motor vehicle until all required repairs have been satisfactorily completed.

NEW SECTION

WAC 480-31-130 Operation of motor vehicles. (1) All motor vehicles must be operated in accordance with the requirements of existing state laws and no driver or operator will operate the same in any other than a careful and prudent manner, nor at any greater speed than is reasonable or proper, having due regard to the traffic and use of the highways by others, or so as to endanger the life and limb of any person.

(2) Qualification of drivers. The rules and regulations governing qualifications of drivers prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 391 (Qualifications of Drivers), are adopted and prescribed by the commission to be observed by all providers. Vehicles meeting the definition of a commercial motor vehicle must also comply with part 382 (Controlled Substances and Alcohol Use, and Testing), and part 383 (Commercial Driver's License Standards, Requirements and Penalties).

(3) The rules and regulations relating to drivers' logs and drivers' hours of service adopted by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 39 (Hours of Service of Drivers), are adopted and prescribed by the commission.

(4) No driver or operator of a motor vehicle carrying passengers may smoke any cigar, cigarette, tobacco or other substance in such vehicle while driving the vehicle.

(5) No driver or operator of any motor vehicle will permit smoking on said vehicle by passengers or other persons.

Suitable signs, of sufficient size and number to adequately inform passengers, must be placed in buses to inform passengers that smoking is not permitted in the motor vehicle.

(6) No driver or operator of a motor vehicle will create any disturbance or unnecessary noise to attract persons to the vehicle.

(7) The driver or operator of any motor vehicle may refuse to carry any person who is in an intoxicated condition or conducting themselves in an unreasonably boisterous or disorderly manner or is using profane language, or whose condition is such as to be obnoxious to other passengers. A driver is responsible for the comfort and safety of passengers and should be constantly on the alert for and immediately correct any act of misconduct on the part of occupants of the vehicle.

(8) The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.



NEW SECTION

WAC 480-31-140 Safety inspections. All providers must keep on file in their main office, subject to inspection by an authorized representative of the commission, or subject to provision to the commission upon request:

(1) Description of each vehicle used, including make, serial number, and year. If the provider does not own the vehicle, the records must show the name of the person providing the vehicle;

(2) Driver's hours of service (duty status);

(3) Each driver's license number;

(4) Records of complaints, as required by WAC 480-31-090;

(5) Records of repair, inspection and maintenance, to include their date and type, as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396;

(6) The commission adopts by reference the provisions of federal rules cited in this section. The material incorporated by reference in this section is available for public examination in the Washington utilities and transportation commission branch of the Washington state library associated with the commission's headquarters office in Olympia and is available for purchase at the Seattle office of the government printing office.