

WSR 07-17-062
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed August 13, 2007, 9:15 a.m., effective September 13, 2007]

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

Purpose: The department is amending WAC 388-543-1100, 388-543-1150, 388-543-1600, 388-543-1700, 388-543-2000, and 388-543-2800 to fix cross-references, change references from "MAA" to "the department," clarify the department's coverage of a wheelchair, and/or specialty bed for clients in a nursing facility, clarify prescribing requirements for dual-eligible clients, clarify the department's policy on client use of a combination of products, clarify/add/remove items from the limits and limitation extension list under WAC 388-543-1150 (e.g., such as removing lice comb, diaphragmatic pacing antennae, deluxe floor sitter/feeder seat, and high back activity chair; and adding pneumatic compressor, positioning car seat, beds, mattresses, and related equipment, other patient room equipment, noninvasive bone growth/nerve stimulators, communication devices, ambulatory aids, bathroom equipment, and blood monitoring).

Citation of Existing Rules Affected by this Order: Amending WAC 388-543-1100, 388-543-1150, 388-543-1600, 388-543-1700, 388-543-2000, and 388-543-2800.

Statutory Authority for Adoption: RCW 74.08.090 and 74.04.050.

Adopted under notice filed as WSR 07-11-042 on May 9, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-543-1150 (10)(f) Limits and limitation extensions. The department removed the following text as proposed by stakeholders during the proposed rule-making (CR-102) stage:

~~(f) Breast pumps~~

~~(g) (f) Pneumatic compressor - one in a five-year period~~

~~(h) (g) Positioning car seat - one in a five-year period~~

A final cost-benefit analysis is available by contacting Erin Mayo, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1729, fax (360) 586-9727, e-mail mayoe@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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 0.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 6, Repealed 0.

Date Adopted: August 10, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-543-1100 Scope of coverage and coverage limitations for DME and related supplies, prosthetics, orthotics, medical supplies and related services. The federal government deems **durable medical equipment (DME)** and related supplies, **prosthetics, orthotics, and medical supplies** as optional services under the **medicaid** program, except when prescribed as an integral part of an approved plan of treatment under the home health program or required under the early and periodic screening, diagnosis and treatment (**EPSDT**) program. The **department** may reduce or eliminate coverage for optional services, consistent with legislative appropriations.

(1) The department covers DME and related supplies, prosthetics, orthotics, medical supplies, related services, repairs and labor charges when they are:

(a) Within the scope of an eligible client's medical care program (see WAC 388-501-0060 and 388-501-0065);

(b) Within accepted medical or physical medicine community standards of practice;

(c) Prior authorized as described in WAC 388-543-1600, 388-543-1800, and 388-543-1900;

(d) Prescribed by a physician, advanced registered nurse practitioner (ARNP), or physician assistant certified (PAC). Except for dual eligible medicare/medicaid clients (~~the prescription must~~) when medicare is the primary payer and the department is being billed for co-pay and/or deductible only:

(i) ~~(Be dated and signed by the prescriber))~~ The prescriber must use DSHS 13-794 (Health and Recovery Services (HRSA) Prescription Form) to write the prescription. The form is available for download at <http://www1.dshs.wa.gov/msa/forms/eforms.html>; and;

(ii) The prescription (DSHS 13-794) must:

(A) Be signed and dated by the prescriber;

(B) Be ((less than six months in duration)) no older than one year from the date the prescriber signs the prescription; and

~~((iii))~~ (C) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity;

(e) Billed to the department as the payor of last resort only. The department does not pay first and then collect from medicare and;

(f) **Medically necessary** as defined in WAC 388-500-0005. The provider or client must submit sufficient objective evidence to establish medical necessity. Information used to establish medical necessity includes, but is not limited to, the following:

(i) A physiological description of the client's disease, injury, impairment, or other ailment, and any changes in the client's condition written by the prescribing physician, ARNP, PAC, licensed prosthetist and/or orthotist, physical therapist, occupational therapist, or speech therapist; and/or

(ii) Video and/or photograph(s) of the client demonstrating the impairments as well and client's ability to use the requested equipment, when applicable.

(2) The department evaluates a request for any equipment or device listed as noncovered in WAC 388-543-1300 under the provisions of WAC 388-501-0160.

(3) The department evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.

(4) The department evaluates requests for covered services in this chapter that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions under the provisions of WAC 388-501-0165 and 388-501-0169.

(5) The department does not reimburse for DME and related supplies, prosthetics, orthotics, medical supplies, related services, and related repairs and labor charges under **fee-for-service (FFS)** when the client is any of the following:

- (a) An inpatient hospital client;
- (b) Eligible for both **medicare** and **medicaid**, and is staying in a **nursing facility** in lieu of hospitalization;
- (c) Terminally ill and receiving hospice care; or
- (d) Enrolled in a risk-based managed care plan that includes coverage for such items and/or services.

(6) The department covers medical equipment and related supplies, prosthetics, orthotics, medical supplies and related services, repairs, and labor charges listed in the department's published issuances, including Washington Administrative Code (WAC), billing instructions, and numbered memoranda.

(7) An interested party may request the department to include new equipment/supplies in the billing instructions by sending a written request plus all of the following:

- (a) Manufacturer's literature;
- (b) Manufacturer's pricing;
- (c) Clinical research/case studies (including FDA approval, if required); and
- (d) Any additional information the requester feels is important.

(8) The department bases the decision to purchase or rent DME for a client, or to pay for repairs to client-owned equipment on medical necessity.

(9) The department covers replacement batteries for purchased medically necessary DME equipment covered within this chapter.

(10) The department covers the following categories of medical equipment and supplies only when they are medically necessary, prescribed by a physician, ARNP, or PAC, are within the scope of his or her practice as defined by state law, and are subject to the provisions of this chapter and related WACs:

- (a) Equipment and supplies prescribed in accordance with an approved plan of treatment under the home health program;
- (b) Wheelchairs and other DME;
- (c) Prosthetic/orthotic devices;
- (d) Surgical/ostomy appliances and urological supplies;
- (e) Bandages, dressings, and tapes;

(f) Equipment and supplies for the management of diabetes; and

(g) Other medical equipment and supplies listed in department published issuances.

(11) The department evaluates a **BR** item, procedure, or service for its medical appropriateness and reimbursement value on a case-by-case basis.

(12) For a client in a **nursing facility**, the department covers only the following when medically necessary. All other DME and supplies identified in the department's billing instructions are the responsibility of the nursing facility, in accordance with chapters 388-96 and 388-97 WAC. See also WAC 388-543-2900 (3) and (4).

(a) The department covers:

~~((#))~~ (i) The purchase and repair of a speech generating device (SGD)~~((#))~~ and one of the following:

(A) A powered or manual wheelchair for the exclusive full-time use of a permanently disabled nursing facility resident when the wheelchair is not included in the nursing facility's per diem rate~~((#))~~ and

~~((#))~~ (b) The rental of

(B) A specialty bed or the rental of a specialty bed outside of the skilled nursing facility per-diem when:

(I) The specialty bed is intended to help the client heal; and

(II) The client's nutrition and laboratory values are within normal limits.

(b) A heavy duty bariatric bed is not considered a~~((#))~~ specialty bed.

(13) Vendors must provide instructions for use of equipment; therefore, instructional materials such as pamphlets and video tapes are not covered.

(14) Bilirubin lights are limited to rentals, for at-home newborns with jaundice.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-543-1150 Limits and limitation extensions.

The department covers non-DME (MSE), DME, and related supplies, prosthetics, orthotics, medical supplies, and related services as described in WAC 388-543-1100(1). The department limits the amount, frequency, or duration of certain covered MSE, DME, and related supplies, prosthetics, orthotics, medical supplies, and related services, and reimburses up to the stated limit without requiring prior authorization. These limits are designed to avoid the need for prior authorization for items normally considered medically necessary and for quantities sufficient for a thirty-day supply for one client. In order to exceed the stated limits, the provider must request a limitation extension (LE), which is a form of prior authorization (PA). The department evaluates such requests for LE under the provisions of WAC 388-501-0169. Procedures for LE are found in department billing instructions. The following items and quantities do not require prior authorization; requests to exceed the stated quantities require LE:

(1) Antiseptics and germicides:

(a) Alcohol (isopropyl) or peroxide (hydrogen) - one pint per month;

- (b) Alcohol wipes (box of two hundred) - one box per month;
- (c) Betadine or pHisoHex solution - one pint per month;
- (d) Betadine or iodine swabs/wipes (box of one hundred) - one box per month;
- (e) Disinfectant spray - one twelve-ounce bottle or can per six-month period; or
- (f) Periwash (when soap and water are medically contraindicated) - one five-ounce bottle of concentrate solution per six-month period.
- (2) Blood monitoring/testing supplies:
 - (a) Replacement battery of any type, used with a client-owned, medically necessary home or specialized blood glucose monitor - one in a three-month period; and
 - (b) Spring-powered device for lancet - one in a six-month period.
- (3) Braces, belts and supportive devices:
 - (a) Custom vascular supports (CVS) - two pair per six-month period. CVS fitting fee - two per six-month period;
 - (b) Surgical stockings (below-the-knee, above-the-knee, thigh-high, or full-length) - two pair per six-month period;
 - (c) Graduated compression stockings for pregnancy support (panty hose style) - two per twelve-month period;
 - (d) Knee brace (neoprene, nylon, elastic, or with a hinged bar) - two per twelve-month period;
 - (e) Ankle, elbow, or wrist brace - two per twelve-month period;
 - (f) Lumbosacral brace, rib belt, or hernia belt - one per twelve-month period;
 - (g) Cervical head harness/halter, cervical pillow, pelvic belt/harness/boot, or extremity belt/harness - one per twelve-month period.
- (4) Decubitus care products:
 - (a) Cushion (gel, sacroiliac, or accuback) and cushion cover (any size) - one per twelve-month period;
 - (b) Synthetic or lambs wool sheepskin pad - one per twelve-month period;
 - (c) Heel or elbow protectors - four per twelve-month period.
- (5) Ostomy supplies:
 - (a) Adhesive for ostomy or catheter: Cement; powder; liquid (e.g., spray or brush); or paste (any composition, e.g., silicone or latex) - four total ounces per month.
 - (b) Adhesive or nonadhesive disc or foam pad for ostomy pouches - ten per month.
 - (c) Adhesive remover or solvent - three ounces per month.
 - (d) Adhesive remover wipes, fifty per box - one box per month.
 - (e) Closed pouch, with or without attached barrier, with a one- or two-piece flange, or for use on a faceplate - sixty per month.
 - (f) Closed ostomy pouch with attached standard wear barrier, with built-in one-piece convexity - ten per month.
 - (g) Continent plug for continent stoma - thirty per month.
 - (h) Continent device for continent stoma - one per month.
 - (i) Drainable ostomy pouch, with or without attached barrier, or with one- or two-piece flange - twenty per month.

- (j) Drainable ostomy pouch with attached standard or extended wear barrier, with or without built-in one-piece convexity - twenty per month.
- (k) Drainable ostomy pouch for use on a plastic or rubber faceplate (only one type of faceplate allowed) - ten per month.
- (l) Drainable urinary pouch for use on a plastic, heavy plastic, or rubber faceplate (only one type of faceplate allowed) - ten per month.
- (m) Irrigation bag - two every six months.
- (n) Irrigation cone and catheter, including brush - two every six months.
- (o) Irrigation supply, sleeve - one per month.
- (p) Ostomy belt (adjustable) for appliance - two every six months.
- (q) Ostomy convex insert - ten per month.
- (r) Ostomy ring - ten per month.
- (s) Stoma cap - thirty per month.
- (t) Ostomy faceplate - ten per month. The department does not allow the following to be used on a faceplate in combination with drainable pouches (refer to the billing instructions for further details):
 - (i) Drainable pouches with plastic face plate attached; or
 - (ii) Drainable pouches with rubber face plate.
- (6) Supplies associated with client-owned transcutaneous electrical nerve stimulators (TENS):
 - (a) For a four-lead TENS unit - two kits per month. (A kit contains two leads, conductive paste or gel, adhesive, adhesive remover, skin preparation material, batteries, and a battery charger for rechargeable batteries.)
 - (b) For a two-lead TENS unit - one kit per month.
 - (c) TENS tape patches (for use with carbon rubber electrodes only) are allowed when they are not used in combination with a kit(s).
 - (d) A TENS stand alone replacement battery charger is allowed when it is not used in combination with a kit(s).
- (7) Urological supplies - diapers and related supplies:
 - (a) The standards and specifications in this subsection apply to all disposable incontinent products (e.g., briefs, diapers, pull-up pants, underpads for beds, liners, shields, guards, pads, and undergarments). See subsections (b), (c), (d), and (e) of this section for additional standards for specific products. All of the following apply to all disposable incontinent products:
 - (i) All materials used in the construction of the product must be safe for the client's skin and harmless if ingested;
 - (ii) Adhesives and glues used in the construction of the product must not be water-soluble and must form continuous seals at the edges of the absorbent core to minimize leakage;
 - (iii) The padding must provide uniform protection;
 - (iv) The product must be hypoallergenic;
 - (v) The product must meet the flammability requirements of both federal law and industry standards; and
 - (vi) All products are covered for client personal use only.
 - (b) In addition to the standards in subsection (a) of this section, diapers must meet all the following specifications. They must:
 - (i) Be hourglass shaped with formed leg contours;
 - (ii) Have an absorbent filler core that is at least one-half inch from the elastic leg gathers;

(iii) Have leg gathers that consist of at least three strands of elasticized materials;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have a backsheet that is moisture impervious and is at least 1.00 mm thick, designed to protect clothing and linens;

(vi) Have a topsheet that resists moisture returning to the skin;

(vii) Have an inner lining that is made of soft, absorbent material; and

(viii) Have either a continuous waistband, or side panels with a tear-away feature, or refastenable tapes, as follows:

(A) For child diapers, at least two tapes, one on each side.

(B) The tape adhesive must release from the backsheet without tearing it, and permit a minimum of three fastening/unfastening cycles.

(c) In addition to the standards in subsection (a) of this section, pull-up pants and briefs must meet the following specifications. They must:

(i) Be made like regular underwear with an elastic waist or have at least four tapes, two on each side or two large tapes, one on each side;

(ii) Have an absorbent core filler that is at least one-half inch from the elastic leg gathers;

(iii) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling;

(iv) Have leg gathers that consist of at least three strands of elasticized materials;

(v) Have a backsheet that is moisture impervious, is at least 1.00 mm thick, and is designed to protect clothing and linens;

(vi) Have an inner lining made of soft, absorbent material; and

(vii) Have a top sheet that resists moisture returning to the skin.

(d) In addition to the standards in subsection (a) of this section, underpads are covered only for incontinent purposes in a client's bed and must meet the following specifications:

(i) Have an absorbent layer that is at least one and one-half inches from the edge of the underpad;

(ii) Be manufactured with a waterproof backing material;

(iii) Be able to withstand temperatures not to exceed one hundred-forty degrees Fahrenheit;

(iv) Have a covering or facing sheet that is made of non-woven, porous materials that have a high degree of permeability, allowing fluids to pass through and into the absorbent filler. The patient contact surface must be soft and durable;

(v) Have filler material that is highly absorbent. It must be heavy weight fluff filler or the equivalent; and

(vi) Have four-ply, nonwoven facing, sealed on all four sides.

(e) In addition to the standards in subsection (a) of this section, liners, shields, guards, pads, and undergarments are covered for incontinence only and must meet the following specifications:

(i) Have channels to direct fluid throughout the absorbent area, and leg gathers to assist in controlling leakage, and/or be contoured to permit a more comfortable fit;

(ii) Have a waterproof backing designed to protect clothing and linens;

(iii) Have an inner liner that resists moisture returning to the skin;

(iv) Have an absorbent core that consists of cellulose fibers mixed with absorbent gelling materials;

(v) Have pressure-sensitive tapes on the reverse side to fasten to underwear; and

(vi) For undergarments only, be contoured for good fit, have at least three elastic leg gathers, and may be belted or unbelted.

(f) The department covers the products in this subsection only when they are used alone; they cannot be used in combination with each other. The department approves a client's use of a combination of products only when the client uses different products for daytime and nighttime use (see department billing instructions for how to specify this when billing). The total quantity of all products in this section used in combination cannot exceed the monthly limitation for the product with the highest limit (see subsections (g), (h), (i), (j), (k), (l), and (m) of this section for product limitations). The following products cannot be used together:

(i) Disposable diapers;

(ii) Disposable pull-up pants and briefs;

(iii) Disposable liners, shields, guards, pads, and undergarments;

(iv) Rented reusable diapers (e.g., from a diaper service); and

(v) Rented reusable briefs (e.g., from a diaper service), or pull-up pants.

(g) Purchased disposable diapers (any size) are limited to:

(i) Three hundred per month for a child three to eighteen years of age; and

(ii) Two hundred forty per month for an adult nineteen years of age and older.

(h) Reusable cloth diapers (any size) are limited to:

(i) Purchased - thirty-six per year; and

(ii) Rented - two hundred forty per month.

(i) Disposable briefs and pull-up pants (any size) are limited to:

(i) Three hundred per month for a child age three to eighteen years of age; and

(ii) One hundred fifty per month for an adult nineteen years of age and older.

(j) Reusable briefs, washable protective underwear, or pull-up pants (any size) are limited to:

(i) Purchased - four per year.

(ii) Rented - one hundred fifty per month.

(k) Disposable pant liners, shields, guards, pads, and undergarments are limited to two hundred forty per month.

(l) Underpads for beds are limited to:

(i) Disposable (any size) - one hundred eighty per month.

(ii) Purchased, reusable (large) - forty-two per year.

(iii) Rented, reusable (large) - ninety per month.

(8) Urological supplies - urinary retention:

(a) Bedside drainage bag, day or night, with or without anti-reflux device, with or without tube - two per month. This cannot be billed in combination with any of the following:

(i) With extension drainage tubing for use with urinary leg bag or urostomy pouch (any type, any length), with connector/adaptor; and/or

(ii) With an insertion tray with drainage bag, and with or without catheter.

(b) Bedside drainage bottle, with or without tubing - two per six month period.

(c) Extension drainage tubing (any type, any length), with connector/adaptor, for use with urinary leg bag or urostomy pouch. This cannot be billed in combination with a vinyl urinary leg bag, with or without tube.

(d) External urethral clamp or compression device (not be used for catheter clamp) - two per twelve-month period.

(e) Indwelling catheters (any type) - three per month.

(f) Insertion trays:

(i) Without drainage bag and catheter - one hundred and twenty per month. These cannot be billed in combination with other insertion trays that include drainage bag, catheters, and/or individual lubricant packets.

(ii) With indwelling catheters - three per month. These cannot be billed in combination with: Other insertion trays without drainage bag and/or indwelling catheter; individual indwelling catheters; and/or individual lubricant packets.

(g) Intermittent urinary catheter - one hundred twenty per month. These cannot be billed in combination with: An insertion tray with or without drainage bag and catheter; or other individual intermittent urinary catheters.

(h) Irrigation syringe (bulb or piston) - cannot be billed in combination with irrigation tray or tubing.

(i) Irrigation tray with syringe (bulb or piston) - thirty per month. These cannot be billed in combination with irrigation syringe (bulb or piston), or irrigation tubing set.

(j) Irrigation tubing set - thirty per month. These cannot be billed in combination with an irrigation tray or irrigation syringe (bulb or piston).

(k) Leg straps (latex foam and fabric). Allowed as replacement only.

(l) Male external catheter, specialty type, or with adhesive coating or adhesive strip - sixty per month.

(m) Urinary suspensory with leg bag, with or without tube - two per month. This cannot be billed in combination with: a latex urinary leg bag; urinary suspensory without leg bag; extension drainage tubing; or a leg strap.

(n) Urinary suspensory without leg bag, with or without tube - two per month.

(o) Urinary leg bag, vinyl, with or without tube - two per month. This cannot be billed in combination with: A leg strap; or an insertion tray with drainage bag and without catheter.

(p) Urinary leg bag, latex - one per month. This cannot be billed in combination with an insertion tray with drainage bag and with or without catheter.

(9) Miscellaneous supplies:

(a) Bilirubin light therapy supplies - five days' supply. The department reimburses only when these are provided with a prior authorized bilirubin light.

(b) Continuous passive motion (CPM) softgoods kit - one, with rental of CPM machine.

(c) Eye patch with elastic, tied band, or adhesive, to be attached to an eyeglass lens - one box of twenty.

(d) Eye patch (adhesive wound cover) - one box of twenty.

~~(e) ((Lice comb (e.g., LiceOut TM, or LiceMeister [LiceMeister] TM, or combs of equivalent quality and effectiveness) - one per year.~~

~~(f))~~ (f)) Nontoxic gel (e.g., LiceOut TM) for use with lice combs - one bottle per twelve month period.

~~((g))~~ (f) Syringes and needles ("sharps") disposal container for home use, up to one gallon size - two per month.

(10) Miscellaneous DME:

(a) Bilirubin light or light pad - five days rental per twelve-month period.

(b) Blood glucose monitor (specialized or home) - one in a three-year period.

(c) Continuous passive motion (CPM) machine - up to ten days rental and requires prior authorization.

~~(d) ((Diaphragmatic pacing antennae - four per twelve month period.~~

~~(e))~~ (e)) Lightweight protective helmet/soft shell (including adjustable chin/mouth strap) - two per twelve-month period.

~~((f))~~ (e) Lightweight ventilated hard-shell helmet (including unbreakable face bar, woven chin strap w/adjustable buckle and snap fastener, and one set of cushion pads for adjusting fit to head circumference) - two per twelve-month period.

(f) Pneumatic compressor - one in a five-year period.

(g) Positioning car seat - one in a five-year period.

(11) Prosthetics and orthotics:

(a) Thoracic-hip-knee-ankle orthosis (THKAO) standing frame - one every five years.

(b) Preparatory, above knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot plaster socket, molded to model - one per lifetime, per limb.

(c) Preparatory, below knee "PTB" type socket, non-alignable system, pylon, no cover, SACH foot thermoplastic or equal, direct formed - one per lifetime, per limb.

(d) Socket replacement, below the knee, molded to patient model - one per twelve-month period.

(e) Socket replacement, above the knee/knee disarticulation, including attachment plate, molded to patient model - one per twelve-month period.

(f) All other prosthetics and orthotics are limited to one per twelve-month period per limb.

(12) Positioning devices:

~~(a) ((Deluxe floor sitter/feeder seat (small, medium, or large), including floor sitter wedge, shoulder harness, and hip strap - one in a three-year period.~~

~~(b) High back activity chair, including adjustable foot rest, two pairs of support blocks, and hip strap - one in a three-year period.~~

~~(e))~~ (e)) Positioning system/supine boards (small or large), including padding, straps adjustable armrests, footboard, and support blocks - one in a five-year period.

~~((f))~~ (b) Prone stander (child, youth, infant or adult size) - one in a five-year period.

~~((e))~~ (c) Adjustable standing frame (for child/adult thirty - sixty-eight inches tall), including two padded back support blocks, a chest strap, a pelvic strap, a pair of knee blocks, an abductor, and a pair of foot blocks - one in a five-year period.

(13) Beds, mattresses, and related equipment:

(a) Pressure pad, alternating with pump - one in a five-year period.

(b) Dry pressure mattress - one in a five-year period.

(c) Gel or gel-like pressure pad for mattress - one in a five-year period.

(d) Gel pressure mattress - one in a five-year period.

(e) Water pressure pad for mattress - one in a five-year period.

(f) Dry pressure pad for mattress - one in a five-year period.

(g) Mattress, inner spring - one in a five-year period.

(h) Mattress, foam rubber - one in a five-year period.

(i) Hospital bed, semi-electric - one in a ten-year period.

(j) Bedside rails - one in a ten-year period.

(14) Other patient room equipment:

(a) Patient lift, hydraulic, with seat or sling - one in a five-year period.

(b) Traction equipment - one in a five year period.

(c) Trapeze bars - one in a five-year period.

(d) Fracture frames - one in a five-year period.

(e) Transfer board or devices - one in a five-year period.

(15) Noninvasive bone growth/nerve stimulators:

(a) Transcutaneous electrical nerve stimulation device (TNS) - one in a five-year period.

(b) Osteogenesis stimulators - one in a five-year period.

(16) Communication devices - artificial larynx, any type - one in a five-year period.

(17) Ambulatory aids:

(a) Canes - one in a five-year period.

(b) Crutches - one in a five-year period.

(c) Walkers - one in a five-year period.

(18) Bathroom equipment:

(a) Commode chairs - one in a five-year period.

(b) Tub stool or bench - one in a five-year period.

(c) Transfer bench for tub or toilet - one in a five-year period.

(d) Bed pans - one in a five-year period.

(e) Urinals - one in a five-year period.

(f) Shower/commode chairs - one in a five-year period.

(g) Bath seats/chairs - one in a five-year period.

(h) Potty chairs - one in a five-year period.

(19) Blood monitoring:

(a) Sphygmomanometer/blood pressure apparatus - one in a five-year period.

(b) Automatic blood pressure monitor - one in a five-year period.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-1600 Items and services which require prior authorization. (1) ~~((MAA))~~ The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related ser-

vices require **prior authorization (PA)** or **expedited prior authorization (EPA)** on utilization criteria. (See WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA.) ~~((MAA))~~ The department considers all of the following when establishing utilization criteria:

(a) High cost;

(b) Potential for utilization abuse;

(c) Narrow therapeutic indication; and

(d) Safety.

(2) ~~((MAA))~~ The department requires providers to obtain prior authorization for certain items and services, except for dual-eligible medicare/medicaid clients when medicare is the primary payer. This includes, but is not limited to, the following:

(a) Augmentative communication devices (ACDs);

(b) Certain by report (BR) DME and supplies as specified in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda;

(c) Blood glucose monitors requiring special features;

(d) Certain equipment rentals and certain prosthetic limbs, as specified in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda;

(e) Decubitus care products and supplies;

~~((g))~~ (f) Decubitus care mattresses, including flotation or gel mattress, if the provider fails to meet the criteria in WAC 388-543-1900;

(g) Equipment parts and labor charges for repairs or modifications and related services;

(h) Hospital beds, if the provider fails to meet the requirements in WAC 388-543-1900;

(i) Low air loss flotation system, if the provider fails to meet the requirements in WAC 388-543-1900;

(j) Orthopedic shoes and selected orthotics;

(k) Osteogenic stimulator, noninvasive, if the provider fails to meet the requirements in WAC 388-543-1900;

(l) Positioning car seats for children under five years of age;

(m) Transcutaneous electrical nerve stimulators, if the provider fails to meet the requirements in WAC 388-543-1900;

(n) Wheelchairs, wheelchair accessories, wheelchair modifications, air, foam, and gel cushions, and repairs;

(o) Wheelchair-style shower/commode chairs;

(p) Other DME not specifically listed in ~~((MAA's))~~ the department's published issuances, including billing instructions and numbered memoranda, and submitted as a miscellaneous procedure code; and

(q) Limitation extensions.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-1700 When ~~((MAA))~~ the department covers rented DME. (1) ~~((MAA's))~~ The department's reimbursement amount for rented durable medical equipment (DME) includes all of the following:

(a) Delivery to the client;

(b) Fitting, set-up, and adjustments;

(c) Maintenance, repair and/or replacement of the equipment; and

(d) Return pickup by the provider.

(2) ((MAA)) The department requires a dispensing provider to ensure the DME rented to a ((MAA)) client is both of the following:

(a) In good working order; and

(b) Comparable to equipment the provider rents to clients with similar medical equipment needs who are either private pay clients or who have other third-party coverage.

(3) ((MAA)) The department considers rented equipment to be purchased after twelve months' rental unless one of the following apply:

(a) The equipment is restricted as rental only; or

(b) Other ((MAA)) department published issuances state otherwise.

(4) ((MAA)) The department rents, but does not purchase, certain medically necessary equipment for clients. This includes, but is not limited to, the following:

(a) Bilirubin lights for newborns at home with jaundice; and

(b) Electric breast pumps.

(5) ((MAA's)) The department's minimum rental period for covered DME is one day.

(6) If a fee-for-service (FFS) client becomes a managed care plan client, both of the following apply:

(a) ((MAA)) The department stops paying for any rented equipment on the last day of the month preceding the month in which the client becomes enrolled in the managed care plan; and

(b) The plan determines the client's continuing need for the equipment and is responsible for reimbursing the provider.

(7) ((MAA)) The department stops paying for any rented equipment effective the date of a client's death. ((MAA)) The department prorates monthly rentals as appropriate.

(8) For a client who is eligible for both medicaid and medicare, ((MAA)) the department pays only the client's coinsurance and deductibles. ((MAA)) The department discontinues paying client's coinsurance and deductibles for rental equipment when either of the following applies:

(a) The reimbursement amount reaches medicare's reimbursement cap for the equipment; or

(b) Medicare considers the equipment purchased.

(9) ((MAA)) The department does not obtain or pay for insurance coverage against liability, loss and/or damage to rental equipment that a provider supplies to a ((MAA)) DSHS client.

AMENDATORY SECTION (Amending WSR 01-01-078, filed 12/13/00, effective 1/13/01)

WAC 388-543-2000 Wheelchairs. (1) ((MAA)) The department bases its decisions regarding requests for wheelchairs on ((medically)) medical necessity and on a case-by-case basis.

(2) The following apply when ((MAA)) the department determines that a wheelchair is medically necessary for six months or less:

(a) If the client lives at home, ((MAA)) the department rents a wheelchair for the client; or

(b) If the client lives in a nursing facility, the nursing facility must provide a **house wheelchair** as part of the per diem rate paid by ((AASA)) the aging and disability services administration (ADSA).

(3) ((MAA)) The department considers rental or purchase of a **manual wheelchair** for a home client who is non-ambulatory or has limited mobility and requires a wheelchair to participate in normal daily activities. ((MAA)) The department determines the type of manual wheelchair based on the following:

(a) A standard wheelchair if the client's medical condition requires the client to have a wheelchair to participate in normal daily activities;

(b) A standard lightweight wheelchair if the client's medical condition is such that the client:

(i) Cannot self-propel a standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight wheelchair.

(c) A high-strength lightweight wheelchair for a client:

(i) Whose medical condition is such that the client cannot self-propel a lightweight or standard weight wheelchair; or

(ii) Requires custom modifications that cannot be provided on a standard weight or lightweight wheelchair.

(d) A heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing up to three hundred pounds; or

(ii) Accommodate a seat width up to twenty-two inches wide (not to be confused with custom heavy duty wheelchairs).

(e) A custom heavy duty wheelchair for a client who requires a specifically manufactured wheelchair designed to:

(i) Support a person weighing over three hundred pounds; or

(ii) Accommodate a seat width over twenty-two inches wide.

(f) A rigid wheelchair for a client:

(i) With a medical condition that involves severe upper extremity weakness;

(ii) Who has a high level of activity; and

(iii) Who is unable to self-propel any of the above categories of wheelchair.

(g) A custom manufactured wheelchair for a client with a medical condition requiring wheelchair customization that cannot be obtained on any of the above categories of wheelchairs.

(4) ((MAA)) The department considers a **power-drive wheelchair** when the client's medical needs cannot be met by a less costly means of mobility. The prescribing physician must certify that the client can safely and effectively operate a power-drive wheelchair and that the client meets all of the following conditions:

(a) The client's medical condition negates his or her ability to self-propel any of the wheelchairs listed in the manual wheelchair category; and

(b) A power-drive wheelchair will provide the client the only means of independent mobility; or

(c) A power-drive wheelchair will enable a child to achieve age-appropriate independence and developmental milestones.

(d) All other circumstances will be considered based on medical necessity and on a case-by-case basis.

(e) The following additional information is required for a three or four-wheeled power-drive scooter/cart:

(i) The prescribing physician certifies that the client's condition is stable; and

(ii) The client is unlikely to require a standard power-drive wheelchair within the next two years.

(5) ((MAA)) The department considers the power-drive wheelchair to be the client's primary chair when the client has both a power-drive wheelchair and a manual wheelchair.

(6) In order to consider purchasing a wheelchair, ((MAA)) the department requires the provider to submit the following information from the prescribing physician, physical therapist, or occupational therapist:

(a) Specific medical justification for the make and model of wheelchair requested;

(b) Define the degree and extent of the client's impairment (such as stage of decubitus, severity of spasticity or flaccidity, degree of kyphosis or scoliosis); and

(c) Documented outcomes of less expensive alternatives (aids to mobility) that have been tried by the client.

(7) In addition to the basic wheelchair, ((MAA)) the department may consider wheelchair accessories or modifications that are specifically identified by the manufacturer as separate line item charges. The provider must submit specific medical justification for each line item, with the modification request.

(8) ((MAA)) The department considers wheelchair modifications to a medically necessary wheelchair when the provider submits all of the following with the modification request:

(a) The make, model, and serial number of the wheelchair to be modified;

(b) The modification requested; and

(c) Specific information regarding the client's medical condition that necessitates the modification.

(9) ((MAA)) The department may consider wheelchair repairs to a medically necessary wheelchair; the provider must submit to ((MAA)) the department the make, model, and serial number of the wheelchair for which the repairs are requested.

(10) ((MAA)) The department may cover two wheelchairs, a manual wheelchair and a power-drive wheelchair, for a noninstitutionalized client in certain situations. One of the following must apply:

(a) The architecture of the client's home is completely unsuitable for a power-drive wheelchair, such as narrow hallways, narrow doorways, steps at the entryway, and insufficient turning radii;

(b) The architecture of the client's home bathroom is such that power-drive wheelchair access is not possible, and the client needs a manual wheelchair to safely and successfully complete bathroom activities and maintain personal cleanliness;

(c) The client has a power-drive wheelchair, but also requires a manual wheelchair because the power-drive

wheelchair cannot be transported to meet the client's community, workplace, or educational activities; the manual wheelchair would allow the caregiver to transport the client in a standard automobile or van. In these cases, ((MAA)) the department requires the client's situation to meet the following conditions:

(i) The client's activities that require the second wheelchair must be located farther than one-fourth of a mile from the client's home; and

(ii) Cabulance, public buses, or personal transit are neither available, practical, nor possible for financial or other reasons.

(iii) All other circumstances will be considered on a case-by-case basis, based on medical necessity.

AMENDATORY SECTION (Amending WSR 05-21-102, filed 10/18/05, effective 11/18/05)

WAC 388-543-2800 Reusable and disposable medical supplies. (1) ((MAA)) The department requires that a physician, advanced registered nurse practitioner (ARNP), or physician's assistant certified (PAC) prescribe reusable and disposable medical supplies. Except for dual eligible medicare/medicaid clients, the prescription must:

(a) Be dated and signed by the prescriber;

(b) Be less than six months in duration from the date the prescriber signs the prescription; and

(c) State the specific item or service requested, diagnosis, estimated length of need (weeks, months, or years), and quantity.

(2) ((MAA)) The department bases its determination about which DME and related supplies, prosthetics, orthotics, medical supplies and related services require prior authorization (PA) or expedited prior authorization (EPA) on utilization criteria (see WAC 388-543-1000 for PA and WAC 388-543-1800 for EPA). ((MAA)) The department considers all of the following when establishing utilization criteria:

(a) High cost;

(b) The potential for utilization abuse;

(c) A narrow therapeutic indication; and

(d) Safety.

(3) ((MAA)) The department requires a provider to obtain a limitation extension in order to exceed the stated limits for nondurable medical equipment and medical supplies. See WAC 388-501-0165.

(4) ((MAA)) The department categorizes medical supplies and non-DME (MSE) as follows (see WAC 388-543-1150, 388-543-1600, and ((MAA's)) department's billing instructions for further information about specific limitations and requirements for PA and EPA):

(a) Antiseptics and germicides;

(b) Bandages, dressings, and tapes;

(c) Blood monitoring/testing supplies;

(d) Braces, belts, and supportive devices;

(e) Decubitus care products;

(f) Ostomy supplies;

(g) Pregnancy-related testing kits and nursing equipment supplies;

(h) Supplies associated with transcutaneous electrical nerve stimulators (TENS);

- (i) Syringes and needles;
- (j) Urological supplies (e.g., diapers, urinary retention catheters, pant liners, and doublers); and
- (k) Miscellaneous supplies.

WSR 07-18-009
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket UT-070199, General Order R-543—Filed August 23, 2007, 11:56 a.m., effective September 23, 2007]

In the matter of amending WAC 480-120-262 relating to operator service providers and E911 emergency calls.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 07-11-050, filed with the code reviser on May 10, 2007. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04-160.

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

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including Appendix A, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends the following section of the Washington Administrative Code: WAC 480-120-262, governing operator service providers (OSPs).

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on February 7, 2007, at WSR 07-04-108.

8 The statement advised interested persons that the commission was considering entering a rule making to amend the rule by deleting subsection (8) of WAC 480-120-262 relating to the obligations of operator service providers (OSPs) for handling emergency, or E-911, calls. Because of new tech-

nology, the commission was concerned that the requirement may be obsolete. 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 notice to all registered telecommunications companies, the commission's list of telecommunications attorneys, and the list for all persons interested in rule-making dockets. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/070199>. Pursuant to the notice, the commission received comments from five telecommunications companies stating support of the review of the rule.

9 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on May 10, 2007, at WSR 07-11-050. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 07-11-050 at 1:30 p.m., Wednesday, August 15, 2007, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

10 WRITTEN COMMENTS: The commission received written comments from Qwest Corporation and Verizon Northwest Inc. supporting the proposal to remove subsection (8) from WAC 480-120-262.

11 RULE-MAKING HEARING: The commission considered the proposed rule for adoption at a rule-making hearing on August 15, 2007, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. Robert Oenning of the Military Department, Emergency Management Division, attended the hearing in support of the adoption, but did not make oral comments.

12 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR 07-11-050.

13 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-120-262 should be amended to read as set forth in Appendix A, as a rule 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 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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

ORDER

THE COMMISSION ORDERS:

14 The commission amends WAC 480-120-262 to read as set forth in Appendix A, as a rule 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).

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

DATED at Olympia, Washington, August 22, 2007.

Washington State Utilities and Transportation Commission

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket No. UT 040015, General Order No. R-516, filed 1/10/05, effective 2/10/05)

WAC 480-120-262 Operator service providers (OSPs). (1) Only for the purpose of this section:

"Consumer" means the party paying for a call using operator services. For collect calls, a consumer is both the originating party and the party who receives the call.

"Customer" means the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison, campus, or similar entity.

"Operator service provider (OSP)" means any corporation, company, partnership, or person providing a connection to intrastate or interstate long-distance or to local services from locations of call aggregators.

"Operator services" means any telecommunications service provided to a call aggregator location that includes automated or live assistance to consumers in billing or completing (or both) telephone calls, other than those billed to the number from which the call originated or those completed through an access code used to bill a consumer's account previously established with the company.

This section applies to OSPs providing operator services from pay phones and other call aggregator locations. Each OSP must maintain a current list of the customers it serves in Washington and the locations and telephone numbers where the service is provided.

(2) **Posted disclosure.** OSPs must post clearly, legibly, and unobstructed, on or near the front of the pay phone the presubscribed OSP's name, address, and toll-free number, as registered with the commission. This information must be updated within thirty days after a change of OSPs. OSPs must post a notice to consumers that they can access other long distance companies and, in contrasting colors, the commission compliance number for consumer complaints and the following information:

"If you have a complaint about service from this pay phone and are unable to resolve it by calling the

repair or refund number or operator, please call the commission at 1-888-333-WUTC (9882)."

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars;

or

(iii) Charges for a ten-minute call exceeded five dollars and fifty cents.

(4) **Access.** Pay phones must provide access to the services identified in WAC 480-120-263(3).

(5) **Branding.** The OSP must identify audibly and distinctly the OSP providing the service at the beginning of every call, including an announcement to the called party on collect calls. The OSP must ensure that the call begins no later than immediately following the prompt to enter billing information on automated calls and on live and automated operator calls, when the call is initially routed to the operator. The OSP must state the name of the company as registered with the commission (or its registered "doing business as" name) whenever referring to the OSP. When not necessary to identify clearly the OSP, the company may omit terms such as "company," "communications," "incorporated," or "of the Northwest."

(6) **Billing.** The OSP must provide to the billing company applicable call detail necessary for billing purposes and an address and toll-free number for consumer inquiries. The OSP must ensure that consumers are not billed for calls that are not completed. For billing purposes calls must be itemized, identified, and rated from the point of origination to the point of termination. An OSP may not transfer a call to another company unless the call can be billed from the point of origin. The OSP must provide specific call detail upon request, in accordance with WAC 480-120-161 (Form of bills). Charges billed to a credit card need not conform to the call detail requirements of that section.

(7) **Operational capabilities.** The OSP must answer at least ninety percent of all calls within ten seconds of the time the call reaches the company's switch. The OSP must maintain adequate facilities in all locations so the overall blockage rate for lack of facilities, including the facilities for access to consumers' preferred interexchange companies, does not exceed one percent in the time-consistent busy hour. Should excessive blockage occur, the OSP must determine what caused the blockage and take immediate steps to correct the problem. The OSP must reoriginate calls to another company upon request and without charge when technically able to accomplish reorigination with screening and allow billing from the point of origin of the call. If reorigination is not available, the OSP must provide dialing instructions for the consumer's preferred company.

~~(8) **Emergency calls.** For purposes of emergency calls, every OSP must be able to transfer the caller into the appropriate E911 system and to the public safety answering point (PSAP) serving the location of the caller with a single keystroke from the operator's console, to include automatic identification of the exact location and address from which the call is being made. The OSP must be able to stay on the line with the emergency call until the PSAP representative advises the operator that they are no longer required to stay on the call. The OSP must provide a toll-free number for direct access to PSAPs should additional information be needed when responding to a call for assistance from a phone using the provider's services. That emergency contact information must not be considered proprietary.~~

~~(9))~~ **Fraud protection.**

(a) A company may not bill a call aggregator for:

(i) Charges billed to a line for originating calls using company access codes, toll-free access codes, or originating calls that otherwise reach an operator position if the originating line subscribed to outgoing call screening or pay phone

specific ANI coding digits and the call was placed after the effective date of the outgoing call screening or pay phone specific ANI coding digits order; or

(ii) Collect or third-number-billed calls if the line serving the call that was billed had subscribed to incoming call screening (also termed "billed number screening") and if the call was placed after the effective date of the call screening service order.

(b) The access line provider must remove from the call aggregator's bill any calls billed through the access line provider in violation of this subsection. If investigation by the access line provider determines that the pertinent call screening or pay phone specific ANI coding digits was operational when the call was made, the access line provider may return the charges for the call to the company as not billable.

(c) Any call billed directly by an OSP, or through a billing method other than the access line provider, which is billed in violation of this subsection, must be removed from the call aggregator's bill. The company providing the service may request an investigation by the access line provider. If the access line provider determines that call screening or pay phone specific ANI coding digits (which would have prevented the call) was subscribed to by the call aggregator and was not operational at the time the call was placed, the OSP must bill the access line provider for the call.

~~((+0))~~ **(9) Suspension.** The commission may suspend the registration of any company providing operator services if the company fails to meet minimum service levels or to provide disclosure to consumers of protection available under chapter 80.36 RCW and pertinent rules.

Except as required by federal law, no provider of pay phone access line service may provide service to any OSP whose registration is suspended.

**WSR 07-18-010
PERMANENT RULES
UTILITIES AND TRANSPORTATION
COMMISSION**

[Docket PG-061027, General Order R-544—Filed August 23, 2007, 12:01 p.m., effective September 23, 2007]

In the matter of amending and adopting rules in chapter 480-93 WAC, relating to Gas companies—Safety.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under CR-101 Notice No. WSR 06-15-124, filed with the code reviser on July 19, 2006, and CR-102 Notice No. WSR 07-10-124, filed with the code reviser on May 2, 2007. The commission brings this proceeding pursuant to RCW 80.01.040, 81.01.010, and 81.88.060.

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

5 In this docket, to avoid unnecessary duplication, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide a complete but concise explanation of the agency 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: Amending WAC 480-93-005 Definitions, 480-93-013 Covered task, 480-93-015 Odorization of gas, 480-93-017 Filing requirements for design, specification, and construction procedures, 480-93-018 Records, 480-93-100 Valves, 480-93-124 Pipeline markers, 480-93-170 Tests and reports for pipelines, 480-93-180 Plans and procedures, 480-93-188 Gas leak surveys and 480-93-200 Reporting requirements for operators of gas facilities; and adopting WAC 480-93-250 Damage prevention.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on July 19, 2006, at WSR 06-15-124.

8 The statement advised interested persons that the commission was considering entering a rule making to address possible corrections and clarifications to selected sections of chapter 480-93 WAC, Gas companies—Safety, specifically rules governing operators of gas facilities. In addition, the statement advised interested persons that the commission was considering a new rule to address compliance with the damage prevention requirements of chapter 19.22 RCW.

9 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 a notice to all gas companies, to the commission's lists of persons interested in intrastate and interstate pipeline issues, pipeline safety, rule makings generally, rule makings related to gas companies, pipeline companies and pipeline safety, and to the commission's lists of regulatory attorneys. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/061027>.

10 **NOTICE OF PROPOSED RULE MAKING:** The commission filed a notice of proposed rule making (CR-102) on May 2, 2007, at WSR 07-10-124. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 07-10-124 at 1:30 p.m. on July 11, 2007, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

11 **WRITTEN COMMENTS:** The commission received written comments from the Northwest Gas Association (NWGA). A summary of these written comments and commission responses are presented below.

12 **RULE-MAKING HEARING:** The commission considered the proposed rules for adoption at a rule-making hearing on July 11, 2007, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Dan S. Kirschner, the Executive Director of NWGA.

13 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED:** NWGA submitted written comments suggesting changes to the proposed rules. NWGA suggested that the commission modify WAC 480-93-100(5) by deleting the language "by reducing the amount of time that a pipeline has an uncontrolled release of gas." NWGA also suggested the commission delete the requirement in subsection (5) that an operator include in its emergency response plan a section addressing its emergency valve program. NWGA also suggested deleting requirements in WAC 480-93-124 for placing pipeline markers over service lines at railroad crossings and the placement of markers at fence lines.

14 **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 07-10-124 with the changes described below.

15 **CHANGES FROM PROPOSAL:** The commission adopts the proposal with the following changes from the text noticed at WSR 07-10-124:

16 NWGA suggested deleting language in WAC 480-93-100(5). We revised the rule language to delete "by reducing the amount of time that a pipeline has an uncontrolled release of gas." We disagree with deleting the requirement in subsection (5) that an operator include in its emergency response plan a section addressing its emergency valve program to ensure that operators understand that valve programs are designed as part of, and integrated into, emergency response plans.

17 We agree to delete the requirement in WAC 480-93-124 that requires operators to place markers over service lines at railroad crossings and at fence lines. The rule has been redrafted to eliminate this language. Pipeline markers are needed primarily to mark high-pressure lines or mains. This rule requires that mains be marked and the majority of lines at railroad crossings and fence lines are main lines. Those service lines at railroad crossings and fence lines are low-pressure lines that do not require marking.

18 We disagree that a new subsection should be added to WAC 480-93-124 to address the lettering size requirements for pipeline markers. This requirement is well defined in 49 C.F.R. Part 192.707.

19 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the commission determines that WAC 480-93-005, 480-93-013, 480-93-015, 480-93-017, 480-93-018, 480-93-100, 480-93-124, 480-93-170, 480-93-180, 480-93-188, and 480-93-200 should be amended, and WAC 480-93-250 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.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 11, 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.

ORDER

20 THE COMMISSION ORDERS:

21 The commission amends WAC 480-93-005, 480-93-013, 480-93-015, 480-93-017, 480-93-018, 480-93-100, 480-93-124, 480-93-170, 480-93-180, 480-93-188, and 480-93-200, and adopts WAC 480-93-250 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 filing with the code reviser pursuant to RCW 34.05.380(2).

22 This order and the rules 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, 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, August 22, 2007.

Washington State Utilities and Transportation Commission
 Mark H. Sidran, Chairman
 Patrick J. Oshie, Commissioner
 Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket No. PG-050933, General Order No. R-524, filed 11/23/05, effective 12/24/05)

WAC 480-93-005 Definitions. (1) "**Bar hole**" means a hole made in the soil or paving for the specific purpose of testing the subsurface atmosphere with a combustible gas indicator.

(2) "**Building**" means any structure that is normally or occasionally entered by humans for business, residential, or other purposes and where gas could accumulate.

(3) "**Business district**" means an area where the public regularly congregates or where the majority of the buildings on either side of the street are regularly utilized, for financial, commercial, industrial, religious, educational, health, or recreational purposes.

(4) "**CFR**" means the Code of Federal Regulations.

(5) "**Combustible gas indicator**" (**CGI**) means a device capable of detecting and measuring gas concentrations in air.

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

(7) "**Enclosed space**" means any subsurface structure of sufficient size that could accommodate a person and within which gas could accumulate, e.g., vaults, catch basins, and manholes.

(8) "**Follow-up inspection**" means an inspection performed after a repair has been completed in order to determine the effectiveness of the repair.

(9) "**Gas**" means natural gas, flammable gas, or gas that is toxic or corrosive.

(10) "**Gas associated substructures**" means those devices or facilities utilized by an operator which are not intended for storing, transporting, or distributing gas, such as valve boxes, vaults, test boxes, and vented casing pipe.

(11) "**Gas company**" means, as defined in RCW 80.04.010, every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receiver appointed by any court whatsoever, and every city or town, owning, controlling, operating or managing any gas plant within this state.

(12) "**High occupancy structure or area**" means a building or an outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by twenty or more persons on at least five days a week for ten weeks in any twelve-month period. (The days and weeks need not be consecutive.)

(13) "**Indication**" means a response indicated by a gas detection instrument that has not been verified as a reading.

(14) "**LEL**" means the lower explosive limit of the gas being transported.

(15) "**MAOP**" means maximum allowable operating pressure.

(16) "**Master meters system**" is defined as set forth in 49 CFR § 191.3.

(17) "**Operator**":

(a) For purposes of chapter 480-93 WAC, the term "operator" means:

(i) Every gas distribution company that has tariffs on file with the commission;

(ii) Every city or town that owns, controls, operates, or manages any gas plant in this state; and

(iii) Every other person or corporation transporting (~~nat-ural~~) gas by pipeline, or having for one or more of its principal purposes the construction, maintenance, or operation of pipelines for transporting (~~natural~~) gas in this state; even though such person or corporation does not deliver, sell, or furnish any such gas to any person or corporation within this state. The terms "person" and "corporation" are defined in RCW 80.04.010. "Transporting (~~natural~~) gas by pipeline" means transmission or distribution of (~~natural~~) gas through a pipe.

(b) A single entity may qualify as an operator under one or more of the provisions of this subsection.

(c) The term "operator" includes operators of master meter systems, as (~~that term is~~) defined in (~~WAC 480-93-005~~) this section.

(18) "**Prompt action**" means to dispatch qualified personnel without undue delay.

(19) "**Psig**" means pounds per square inch gauge.

(20) "**Public service company**" is defined in RCW 80.04.010.

(21) "**Reading**" means a repeatable representation on a combustible gas indicator or equivalent instrument expressed in percent LEL or gas-air ratio.

(22) "**Record(s)**" means any electronic or paper document, map, data base, report or drawing created by or kept by an operator.

(23) "**Sniff test**" means a qualitative test utilizing both threshold and readily detectable methods for determining proper concentrations of odorant.

~~((23))~~ (24) "**Transmission line**" means a gas pipeline as defined in 49 CFR § 192.3 on the date specified in WAC 480-93-999.

~~((24))~~ (25) "**Weak link**" means a device or method used when pulling polyethylene pipe to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

~~((25))~~ (26) Other terms that correspond to those used in 49 CFR Parts 191, 192 and 199 (Minimum Federal Safety Standards for Gas Pipelines) must be construed as used therein on the date specified in WAC 480-93-999.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-013 Covered tasks. (1) Background. 49 CFR §§ 192.803 through 192.809 prescribe the requirements associated with qualifications for operator personnel to perform "covered tasks." 49 CFR § 192.801 defines a "covered task." In WAC 480-93-999, the commission adopts 49 CFR §§ 192.801 through 192.809.

(2) In this section, the commission includes "new construction" in the definition of "covered task." Accordingly, for the purpose of this chapter, the commission defines a covered task that will be subject to the requirements of 49 CFR §§ 192.803 through 192.809 as an activity, identified by the operator, that:

- (a) Is performed on a pipeline facility;
- (b) Is an operations, maintenance, or new construction task;
- (c) Is performed as a requirement of Part 192 CFR; and
- (d) Affects the operation or integrity of the pipeline.

(3) In all other respects, the requirements of 49 CFR §§ 192.801 through 192.809 apply to this chapter.

(4) The equipment and facilities used for training and qualification must be similar to the equipment and facilities on which the employee will perform the covered task.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-015 Odorization of gas. (1) ~~((All natural))~~ Operators transporting gas ((that is transported)) by pipeline must ((be odorized)) odorize the gas at a concentration in air of at least one-fifth of the lower explosive limit, so that the gas is readily detectable by a person with a normal sense of smell.

(2) Operators must use an odorant testing ((instrumentation)) instrument when conducting sniff tests. Sniff tests must be performed at least once monthly. Master meter operators who comply with 49 CFR § 192.625(f) are exempt from this requirement.

~~((3))~~ ~~((Instruments used to conduct odorant sniff tests must be maintained, tested for accuracy, calibrated, and operated in accordance with the))~~ Operators must take prompt action to investigate and remediate odorant concentrations that do not meet the minimum requirements of subsection (1) of this section.

~~((4))~~ Operators must follow the instrument manufacturer's recommendations for maintaining, testing for accuracy, calibrating and operating odorant testing instruments. When ~~((there are no))~~ the manufacturer((s)) does not provide a recommendation((s)), operators must conduct accuracy checks and calibrate instruments if outside specified tolerances, at least once annually.

~~((4))~~ (5) Operators must keep all records of odorant usage, sniff tests performed, and ~~((equipment))~~ odorant testing instrument calibration for five years.

(6) Exception. This rule does not apply to pipelines that transport gas where the odorant would make the gas unfit for its intended purpose.

AMENDATORY SECTION (Amending Docket No. PG-050933, General Order No. R-524, filed 11/23/05, effective 12/24/05)

WAC 480-93-017 Filing requirements for design, specification, and construction procedures. (1) Any operator intending to construct or operate a gas pipeline facility in this state must file ~~((with the commission))~~ all applicable construction procedures, designs, and specifications used for each pipeline facility ((prior to operating the pipeline)) with the commission at least forty-five days prior to the initiation of construction activity. All procedures must detail the acceptable types of materials, fittings, and components for the different types of facilities in the operator's system.

(2) With the exception of emergency situations, any construction plans that do not conform with a gas company's existing and accepted construction procedures, designs, and specifications on file with the commission, must be submitted to the commission for review at least forty-five days prior to the initiation of construction activity.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-018 ~~((Maps, drawings, and records of gas facilities)) Records.~~ (1) ~~((In addition to any document required to be maintained by this chapter, each operator must also prepare, maintain, and make available to the commission, any record, map or written procedure required by federal law to be kept by an operator concerning the reporting of gas releases, and the design, construction, testing, or operation and maintenance of gas pipelines.~~

~~((2))~~ Nothing in subsection (1) of this section limits the commission's right to inspect any other accounts, books, papers or documents of any public service company, pursuant

to RCW 80.04.070.)) Operators must maintain records sufficient to demonstrate compliance with all requirements of 49 CFR §§ 191, 192 and chapter 480-93 WAC.

(2) Operators must give the commission access to records for review during an inspection and provide copies of requested records.

(3) Operators must maintain a list of forms and data bases, including examples where applicable, that specify what records the operator maintains. Operators must make this list available to the commission upon request.

(4) Operators must record and maintain records of the actual value of any required reads, tests, surveys or inspections performed. The records must include the name of the person who performed the work and the date the work was performed. The records must also contain information sufficient to determine the location and facilities involved. Examples of the values to be recorded include, but are not limited to, pipe to soil potential reads, rectifier reads, pressure test levels, and combustible gas indicator reads. A range of values may not be recorded unless the measuring device provides only a range of values.

(5) Operators must update records within six months of completion of any construction activity and make them available to appropriate company operations personnel.

(6) If an operator believes a record provided to the commission is confidential as that term is defined in WAC 480-07-160(2), the operator will follow the procedures in WAC 480-07-160 for designating and treating that record as confidential.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-100 Valves. (1) Each operator must have a written valve maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which valves will be maintained under 49 CFR § 192.745, 49 CFR § 192.747, and this subsection. The written program must also outline how the operator will monitor and maintain valves during construction projects to ensure accessibility. The following criteria and locations must be ~~((considered when))~~ incorporated in the written program. The written program shall explain how each of the following are considered in selecting which valves require annual inspections and maintenance under 49 CFR § 192.747:

- (a) Each pressure regulating station.
- (b) Principal feeds into business districts.
- (c) Geographical size of the area to be isolated.
- (d) Number of potential customers affected.
- (e) Pipeline size and operating pressures.
- (f) Class locations.
- (g) Potential threats including, but not limited to, earthquakes, floods, and landslides.
- (h) Emergency response time.
- (i) High occupancy structures or areas.
- (j) Pipeline material: For example steel, polyethylene, or cast iron.

(2) Each operator must have a written service valve installation and maintenance program detailing the valve selection process, inspection, maintenance, and operating procedures. The written program must detail which new services will be required to have valves installed and maintained under this section. ~~((Preexisting services with valves already installed, and meeting the same inspection criteria established for new valve installation,))~~ Service valve installation requirements do not apply to existing services (they are not retroactive). Existing service valves that historically have not been maintained but are deemed necessary for maintenance by the written valve maintenance program must be maintained in accordance with subsection (3) of this section (service valve maintenance requirements are retroactive). ((The following criteria and/or locations must be considered when)) The written program shall explain how each of the following criteria and/or locations are considered in selecting which services will have valves installed and/or maintained under this section((-):

- (a) Services to churches, schools, hospitals.
 - (b) Service line length and size.
 - (c) Service line pressure.
 - (d) Services to buildings occupied by persons who are confined, are of impaired mobility, or would be difficult to evacuate.
 - (e) Services to commercial or industrial buildings or structures.
 - (f) Services to high occupancy structures or areas.
- (3) All service valves selected for inspection in the program required in subsection (2) of this section must be operated and maintained at least once annually, but not to exceed fifteen months between operation and maintenance.

(4) Each operator must select which valves to inspect based on the unique operating conditions of the operator's pipeline system.

(5) Each operator must install and maintain valves for the purpose of minimizing the hazards resulting from a gas pipeline emergency and to aid in the timely control of an uncontrolled release of gas. In determining the minimum number and spacing of valves, the operator's primary objective shall be the protection of life and property. The operator must consider this objective in conjunction with the criteria listed in subsections (1) and (2) of this section. Operators must also incorporate their valve programs established in subsections (1) and (2) of this section into their emergency plan and other plans and procedures designed to protect life and property in the event of an emergency.

(6) Operators must fully implement the requirements of ((subsections (2) and (3) of)) this section within one year of the adoption date of this rule.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-124 Pipeline markers. (1) ~~((Operators must place pipeline markers at all railroad, road, irrigation, and drainage ditch crossings, and at all fence lines where a pipeline crosses private property, or where a pipeline or pipeline facility is exposed.~~

~~(2)(a) For buried pipelines, operators must place pipeline markers approximately five hundred yards apart, if practical, and at points of horizontal deflection of the pipeline.~~

~~(b) The following pipelines must have pipeline markers installed, not withstanding any exceptions in 49 CFR § 192.707(b):~~

~~(i)) Pipeline markers must be placed at the following locations:~~

~~(a) Where practical, ((on all mains)) over pipelines operating above two hundred fifty psig;~~

~~((ii) On both sides of crossings of)) (b) Over mains and transmission lines crossing navigable waterways (custom signage may be required to ensure visibility);~~

~~((iii) On both sides of)) (c) Over mains and transmission lines at river, creek, drainage ditch, or irrigation canal crossings where hydraulic scouring, dredging, or other activity could pose a risk to the pipeline (custom signage may be required to ensure visibility); ((and~~

~~(iv) On both sides of)) (d) Over pipelines at railroad crossings;~~

~~(e) At above ground pipelines and pipeline facilities. Service risers and meter set assemblies, and operator owned piping downstream of the meter set assembly are exempt from this requirement. The minimum lettering size requirements located in 49 CFR § 192.707 (d)(1) do not apply to services;~~

~~(f) Over mains located in Class 1 and 2 locations;~~

~~(g) Over transmission lines in Class 1 and 2 locations, and where practical, over transmission lines in Class 3 and 4 locations; and~~

~~(h) Over mains and transmission lines at interstate, U.S. and state route crossings where practical.~~

~~(2) Where markers are required at any crossings listed in subsection (1) of this section, they must be placed on both sides where practical.~~

~~(3) Where markers are required on buried pipelines, operators must, if practical, place them approximately five hundred yards apart and at points of horizontal deflection of the pipeline.~~

~~(4) Where gas pipelines are attached to bridges or otherwise span an area, operators must place pipeline markers at both ends of the suspended pipeline. ((Each)) Operators must conduct ((inspections)) surveys at least annually, ((but)) not to exceed fifteen months ((between inspections, and maintain the markers to ensure that they are visible and legible)).~~

~~((4)) (5) Operators must replace markers that are reported damaged or missing within forty-five days.~~

~~((5)) (6) Surveys of pipeline markers not associated with subsection ((3)) (4) of this section must be conducted ((as frequently as necessary)) at least every five calendar years but not to exceed sixty-three months, to ((maintain the markers to)) ensure that ((they)) markers are visible and legible((- but at intervals not to exceed five years. The survey records must be kept for a minimum of ten years)).~~

~~((6)) (a) The operator must keep on file the last two surveys, or all surveys for the past five years, whichever number of surveys is greater.~~

~~(b) Survey records must include a description of the system and area surveyed.~~

~~(7) Operators must have maps, drawings or other sufficient records indicating class locations and other areas where pipeline markers are required.~~

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-170 Tests and reports for pipelines. (1)

Operators must notify the commission in writing at least ~~((two))~~ three business days prior to the commencement of any pressure test of a gas pipeline that will have a MAOP that produces a hoop stress of twenty percent or more of the specified minimum yield strength of the pipe used. Pressure test procedures must be on file with the commission or submitted at the time of notification.

(a) The pressure tests of any such gas pipeline built in Class 3 or Class 4 locations, as defined in 49 CFR § 192.5, or within one hundred yards of a building, must be at least eight hours in duration.

(b) When the test medium is to be a gas or compressible fluid, each operator must notify the appropriate public officials so that adequate public protection can be provided for during the test.

(c) In an emergency situation where it is necessary to maintain continuity of service, the requirements of subsection (1) of this section and subsection (1)(a) of this section may be waived by notifying the commission by telephone prior to performing the test.

(2) The minimum test pressure for any steel service line or main, regardless of the intended operating pressure, must be determined by multiplying the intended MAOP by a factor determined in accordance with the table located in 49 CFR § 192.619 (a)(2)(ii).

(3) Operators must perform pressure tests for all new or replacement pipeline installations.

(4) All service lines that are broken, pulled, or damaged, resulting in the interruption of gas supply to the customer, must be pressure tested from the point of damage to the service termination valve (generally the meter set) prior to being placed back into service.

(5) Operators may only use pretested pipe when it is not feasible to conduct a pressure test.

(6) Operators must perform soap tests at the tie-in joints at not less than the current operating pressure of the pipeline.

(7) Operators must keep records of all pressure tests performed for the life of the pipeline and must document the following information:

- (a) Operator's name;
- (b) Employee's name;
- (c) Test medium used;
- (d) Test pressure;
- (e) Test duration;
- (f) Pipe size and length;
- (g) Dates and times; and
- (h) Test results.

(8) Where feasible, operators must install and backfill plastic pipe prior to pressure testing to expose any potential damage that could have occurred during the installation and backfill process.

(9) Where multiple pressure tests are performed on a single installation, operators must maintain a record of each test. An example of a single installation with multiple tests would be any continuous on-going job or installation such as a new plat or long main installation where more than one pressure test was conducted during construction.

(10) Pressure testing equipment must be maintained, tested for accuracy, or calibrated, in accordance with the manufacturer's recommendations. When there are no manufacturer's recommendations, then pressure testing equipment must be tested for accuracy at an appropriate schedule determined by the operator. Test equipment must be tagged with the calibration or accuracy check expiration date. The requirements of this section also apply to equipment such as pressure charts, gauges, dead weights or other devices used to test, monitor or check system pressures or set-points.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-180 (~~Plan of operations and maintenance procedures; emergency policy; reporting requirements~~) Plans and procedures. (1) Each operator must have and follow a gas pipeline plan and procedure manual (manual) for operation, maintenance, inspection, and emergency response activities that is specific to the operator's system. (~~The manual must comply with the provisions of the "Pipeline Safety Improvement Act of 2002."~~) The manual must include plans and procedures for meeting all applicable requirements of 49 CFR §§ 191, 192 and chapter 480-93 WAC, and any plans or procedures used by an operator's associated contractors.

(2) (~~Plans~~) The manual must be filed with the commission (~~as soon as practical for review and determination as to their adequacy, when properly executed, to achieve an acceptable level of safety~~) forty-five days prior to the operation of any gas pipeline. Operators must file revisions to the manual with the commission annually. The commission may, after notice and opportunity for hearing, require that a manual be revised or amended. Applicable portions of the manual related to a procedure being performed on the pipeline must be retained on-site where the activity is being performed.

(3) The manual must be written in detail sufficient for a person with adequate training to perform the tasks described. For example, a manual should contain specific, detailed, step-by-step instructions on how to maintain a regulator or rectifier, conduct a leak survey or conduct a pressure test.

AMENDATORY SECTION (Amending Docket No. UG-011073, General Order No. R-520, filed 5/2/05, effective 6/2/05)

WAC 480-93-188 Gas leak surveys. (1) Operators must perform gas leak surveys using a gas detection instrument covering the following areas:

(a) Over all mains, services, and transmission lines including the testing of the atmosphere near other utility (gas, electric, telephone, sewer, or water) boxes or manholes, and other underground structures;

(b) Through cracks in paving and sidewalks;

(c) On all above ground piping (may be checked with either a gas detection instrument or with a soap solution);

(d) Where a gas service line exists, a survey must be conducted at the building wall at the point of entrance, using a bar hole if necessary; and

(e) Within all buildings where gas leakage has been detected at the outside wall, at locations where escaping gas could potentially migrate into and accumulate inside the building.

(2) Gas detection instruments must be maintained, tested for accuracy, calibrated, and operated in accordance with the manufacturer's recommendations. If there are no written manufacturer's recommendations or schedules, then instruments must be tested for accuracy at least monthly, but not to exceed forty-five days between testing, and include testing at least twelve times per year. Any instrument that fails its applicable tolerances must be calibrated or removed from service. Records of accuracy checks, calibration and other maintenance performed must be maintained for five years.

(3) Gas leak surveys must be conducted according to the following minimum frequencies:

(a) Business districts - at least once annually, but not to exceed fifteen months between surveys. All mains in the right of way adjoining a business district must be included in the survey;

(b) High occupancy structures or areas - at least once annually, but not to exceed fifteen months between surveys;

(c) (~~Mains~~) Pipelines operating at or above two hundred fifty psig - at least once annually, but not to exceed fifteen months between surveys; (~~and~~)

(d) Where the gas system has cast iron, wrought iron, copper, or noncathodically protected steel - at least twice annually, but not to exceed seven and one-half months between surveys; and

(e) Unodorized pipelines - at least monthly.

(4) Special leak surveys must be conducted under the following circumstances:

(a) Prior to paving or resurfacing, following street alterations or repairs where gas facilities are under the area to be paved, and where damage could have occurred to gas facilities;

(b) In areas where substructure construction occurs adjacent to underground gas facilities, and damage could have occurred to the gas facilities, operators must perform a gas leak survey following the completion of construction, but prior to paving;

(c) Unstable soil areas where active gas lines could be affected;

(d) In areas and at times of unusual activity, such as earthquake, floods, and explosions; and

(e) After third-party excavation damage to services, operators must perform a gas leak survey from the point of damage to the service tie-in.

(5) Survey records must be kept for a minimum of five years. At a minimum, survey records must contain the following information:

(a) Description of the system and area surveyed (including maps and leak survey logs);

(b) Survey results;

(c) Survey method;

- (d) Name of the employee who performed the survey;
- (e) Survey dates; and
- (f) Instrument tracking or identification number.

(6) Each operator must perform self audits of the effectiveness of its leak detection and recordkeeping programs. Operators must maintain records of the self audits for five years. Self audits must be performed as frequently as necessary, but not to exceed three years between audits. At a minimum, self audits should ensure that:

- (a) Leak survey schedules meet the minimum federal and state safety requirements for gas pipelines;
- (b) Consistent evaluations of leaks are being made throughout the system;
- (c) Repairs are made within the time frame allowed;
- (d) Repairs are effective; and
- (e) Records are accurate and complete.

~~((7) Operators must fully implement subsection (3)(a) of this section within two years of the adoption of this rule.))~~

AMENDATORY SECTION (Amending Docket No. PG-050933, General Order No. R-524, filed 11/23/05, effective 12/24/05)

WAC 480-93-200 Reporting requirements for operators of gas facilities. (1) Every operator must give notice to the commission by telephone within two hours of discovering an incident or hazardous condition arising out of its operations that:

- (a) Results in a fatality or personal injury requiring hospitalization;
- (b) Results in damage to the property of the operator and others of a combined total exceeding fifty thousand dollars;
- (c) Results in the evacuation of a building, or a high occupancy structure~~((s))~~ or area~~((s))~~;
- (d) Results in the unintentional ignition of gas;
- (e) Results in the unscheduled interruption of service furnished by any operator to twenty-five or more distribution customers;

(f) Results in a pipeline or system pressure exceeding the MAOP plus ten percent or the maximum pressure allowed by proximity considerations outlined in WAC 480-93-020;

~~(g) ((Is significant, in the judgment of the operator, even though it does not meet the criteria of (a) through (e) of this subsection; or))~~ Results in the news media reporting the occurrence; or

~~(h) ((Results in the news media reporting the occurrence))~~ Is significant, in the judgment of the operator, even though it does not meet the criteria of (a) through ~~((e))~~ (g) of this subsection.

(2) Operators must give notice to the commission by telephone within twenty-four hours of occurrence of every incident or hazardous condition arising out of its operations that results in:

- (a) The uncontrolled release of gas for more than two hours;
- (b) The taking of a high pressure supply or transmission pipeline or a major distribution supply pipeline out of service;

(c) A pipeline or system operating at low pressure dropping below the safe operating conditions of attached appliances and gas equipment; or

(d) A pipeline or system pressure exceeding the MAOP.

(3) Routine or planned maintenance and operational activities of the operator that result in operator-controlled plant and equipment shut downs, reduction in system pressures, flaring or venting of gas, and normal leak repairs are not reportable items under this section.

(4) Operators must provide to the commission a written report within thirty days of the initial telephonic report required under subsections (1) and (2) of this section. At a minimum, written reports must include the following:

- (a) Name(s) and address(es) of any person or persons injured or killed, or whose property was damaged;
- (b) The extent of such injuries and damage;
- (c) A description of the incident or hazardous condition including the date, time, and place, and reason why the incident occurred. If more than one reportable condition arises from a single incident, each must be included in the report;

(d) A description of the gas facilities involved in the incident or hazardous condition, the system operating pressure at that time, and the MAOP of the facilities involved;

(e) The date and time the operator was first notified of the incident;

(f) The date and time the operators' first responders arrived on-site;

(g) The date and time the gas facility was made safe;
~~((f))~~ (h) The date, time, and type of any temporary or permanent repair made; ~~(and~~

~~(g))~~ (i) The cost of the incident to the operator;

(j) Line type;

(k) City and county of incident; and

(l) Any other information deemed necessary by the commission.

(5) Operators must submit a supplemental report if required information becomes available after the thirty-day report is submitted.

~~(6) Operators must provide to the commission a ((written report within forty-five days of receiving the))~~ copy of each failure analysis ~~((of))~~ report completed or received by the operator, concerning any incident or hazardous condition ~~((that was))~~ due to construction defects or material failure within five days of completion or receipt of such report.

~~((6))~~ (7) Operators must file with the commission the following annual reports no later than March 15 for the preceding calendar year:

(a) A copy of every Pipeline and Hazardous Materials Safety Administration (PHMSA) F-7100.1-1 and F-7100.2-1 annual report required by U.S. Department of Transportation, Office of Pipeline Safety.

(b) A report titled, "Damage Prevention Statistics." The Damage Prevention Statistics report must include in detail the following information:

- (i) Number of gas-related one-call locate requests completed in the field;
- (ii) Number of third-party damages incurred; and
- (iii) Cause of damage, where cause of damage is classified as ~~((either))~~ one of the following:

(A) Inaccurate locate;

- (B) Failure to use reasonable care; ~~((B))~~
 (C) Excavated prior to a locate being conducted; or
 (D) Excavator failed to call for a locate.

(c) A report detailing all construction defects and material failures resulting in leakage. Operators must categorize the different types of construction defects and material failures anticipated for their system. The report must include the following:

- (i) Types and numbers of construction defects; and
 (ii) Types and numbers of material failures.

~~((7))~~ (8) Operators must file with the commission, and with appropriate officials of all municipalities where operators have facilities, the names, addresses, and telephone numbers of the responsible officials of the operator who may be contacted in the event of an emergency. In the event of any changes in operator personnel, the operator must notify immediately the commission and municipalities.

~~((8))~~ (9) Operators must send to the commission, by e-mail, daily reports of construction and repair activities ~~((electronically to the commission. Operators may send reports either by facsimile or e-mail to the commission))~~. Reports may be faxed only if the operator does not have e-mail capability. ~~((The))~~ Reports must be received no later than 10:00 a.m. each day of the scheduled work, and must include both operator and contractor construction and repair activities. Report information must be broken down by individual crews and the scheduled work must be listed by address, as much as practical. To the extent possible the reports will only contain construction and repair activity scheduled for that day, but they may include a reasonable allowance for scheduling conflicts or disruptions.

~~((9))~~ (10) When an operator is required to file a copy of a DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form with the U.S. Department of Transportation, Office of Pipeline Safety, the operator must simultaneously submit a copy of the form to the commission.

NEW SECTION

WAC 480-93-250 Damage prevention. Each operator must comply with chapter 19.122 RCW, including:

- (1) Subscribe to the appropriate one-number locator service;
- (2) Provide, upon receipt of locate notice, reasonably accurate information as to its locatable underground facilities by surface-marking the location of the facilities;
- (3) Respond with locate markings within two business days after receipt of the notice or within a time mutually agreed upon between the operator and the excavator requesting the utility locate information.

Purpose: Establishes new rule guidelines for funeral director and embalmer interns, internships and intern sponsors and provides clarification for the transporting of human remains.

Citation of Existing Rules Affected by this Order: Amending WAC 308-48-010, 308-48-150, 308-48-160, and 308-48-800.

Statutory Authority for Adoption: RCW 18.39.175 and chapter 34.05 RCW.

Adopted under notice filed as WSR 07-11-152 on May 22, 2007.

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 4, 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 5, Amended 4, 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 4, Repealed 0.

Date Adopted: August 27, 2007.

Joe Vincent Jr.
 Administrator

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-010 Definitions. For the purpose of these rules, the following term will be construed as follows:

"Embalmer intern" is a person engaged in the study and supervised practical training of embalming under the instruction of a qualified sponsor.

"Funeral director intern" is a person engaged in the study and supervised practical training of funeral directing under the instruction of a qualified sponsor.

"In its employ" as used in RCW 18.39.148 will include personnel who are employed on a part-time basis as well as personnel who are employed on a full-time basis.

"Internship" means a course of required practical training, for a specified period of time, as a prerequisite for obtaining a license to practice the profession of funeral directing or embalming.

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-150 Course of training—Funeral director intern. (1) For the purposes of RCW 18.39.035, the term "one year course of training" shall include assisting a licensed funeral director in coordinating all aspects of at least twenty-five arrangements for funeral, memorial and/or final disposition services for human remains.

WSR 07-18-030

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed August 28, 2007, 10:28 a.m., effective September 28, 2007]

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

(2) The term "one year" shall consist of at least eighteen hundred hours of employment and cannot be completed in a period of time less than one calendar year.

(3) Registered funeral director interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the arrangements, services, final dispositions, and other duties of a funeral director the intern has assisted with or performed during the required term of internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the intern toward the skill level required to work independently.

~~((5) Registered apprentice funeral director interns may receive training from their sponsor and other licensed funeral directors as approved by the sponsor.))~~

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-160 Course of training—Embalmer interns. (1) For the purposes of RCW 18.39.035, the term "two year course of training" shall include the embalming of at least fifty human remains under the supervision of a licensed embalmer.

(2) The term "two year" shall consist of at least thirty-six hundred hours of employment and cannot be completed in a period of time less than two calendar years.

(3) Registered embalmer interns shall provide a quarterly report to the board on a form supplied by the board containing information relating to the embalmings the intern has assisted with or performed during the required term of internship.

(4) Licensed sponsors shall provide a quarterly report to the board on a form supplied by the board showing the progress of the intern toward the skill level required to work independently.

~~((5) Registered apprentice embalmer interns may receive training from their sponsor and other licensed embalmers as approved by the sponsor.))~~

AMENDATORY SECTION (Amending WSR 07-03-027, filed 1/5/07, effective 2/5/07)

WAC 308-48-800 Funeral director/embalmer fees. The following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Embalmer:	
State examination or reexamination	\$100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Embalmer intern:	
Intern application	75.00
<u>Application for examination</u>	<u>100.00</u>
Intern renewal	45.00

Title of Fee	Fee
Duplicate	15.00
Funeral director:	
State examination or reexamination	100.00
Renewal	70.00
Late renewal penalty	35.00
Duplicate	15.00
Funeral director intern:	
Intern application	75.00
<u>Application for examination</u>	<u>100.00</u>
Intern renewal	45.00
Duplicate	15.00
Funeral establishment:	
Original application	300.00
Renewal	150.00
Branch registration	250.00
Branch renewal	150.00
Preneed application	140.00
Preneed renewal:	
0-25 sales	25.00
26-99 sales	75.00
100 or more sales	125.00
Crematory endorsement registration	140.00
Crematory endorsement renewal	
3.20 per cremation performed during previous calendar year.	
Academic intern	No fee
Certificate of removal registration:	
Application	30.00
Renewal	15.00

NEW SECTION

WAC 308-48-840 Funeral director and embalmer interns. (1) Registration as a funeral director intern or embalmer intern shall not exceed a time period of five years from the date of initial registration. Following completion of the internship program:

- The registration for internship will not be renewed.
- The intern must qualify for licensure as a funeral director, embalmer or funeral director and embalmer.

(2) Interns must be eighteen years of age and registered under the sponsorship and supervision of a licensed funeral director, embalmer or funeral director and embalmer.

(3) Interns whose job duties require that they perform work at multiple funeral establishment locations may do so and receive training from their sponsor and other licensees as approved by the sponsor.

NEW SECTION

WAC 308-48-850 Intern sponsors—Qualifications, limitations and responsibilities. Licensees who supervise interns:

- Must be working and located in the same licensed establishment as the intern, provided: Sponsors may permit interns to perform work at multiple funeral establishment locations if required by their job duties.
- Each sponsor can supervise a maximum of three interns.
- Sponsors of funeral director interns must have a minimum of one year of practical experience as a licensed funeral director in the state of Washington.
- Sponsors of embalmer interns must have a minimum of one year of practical experience as a licensed embalmer in the state of Washington.
- Sponsors are responsible for work performed by interns registered under the supervision of the sponsor.

NEW SECTION

WAC 308-48-860 Registered intern examination. (1) Interns registered prior to January 1, 2004, can maintain registration as an intern and not be subject to the five-year limitation, provided:

- The registered intern passes an examination in funeral service law and public health within three years of the effective date of this rule.
- The intern maintains a current, valid and nonexpired intern registration with the board.
- Registered interns will not be eligible for examination under this section if the intern leaves the funeral service profession and reactivates the internship registration at a later date.

(2) Registered intern examinations shall be held by the director at least once each year for a period of three years from the effective date of this rule. The director will designate the time and place of the examination. An application for examination shall be filed with the director at least fifteen days prior to the examination date. The department will provide each applicant a written notice of the time and place of the next examination. The applicant will be deemed to have passed the examination if the applicant attains a grade of not less than seventy-five percent. Applicants qualified for examination shall:

- Have three opportunities to take and pass the examination;
- Pay a fee, determined by the director, for each examination.

NEW SECTION

WAC 308-48-870 Leave of absence—Interns. A leave of absence from internship requirements may be granted by the board with the following provisions:

- The intern submits an appeal to the board for a leave of absence.
- The intern is enlisted in military service of the United States or called to active duty in the United States armed

forces and resumes internship within one year of release from military service.

- The intern is enrolled as a full-time student in a funeral service education program accredited by the American Board of Funeral Service Education (ABFSE).
- The board reserves the right to make a determination to waive internship requirements for extenuating circumstances.

NEW SECTION

WAC 308-48-880 Transporting of human remains. For the purpose of RCW 18.39.010(1), the board has determined that transportation of human remains may be performed by unregistered persons who are employed by licensed funeral establishments.

WSR 07-18-050**PERMANENT RULES****TRANSPORTATION IMPROVEMENT BOARD**

[Filed August 30, 2007, 3:48 p.m., effective September 30, 2007]

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

Purpose: Revising Title 479 WAC to update program changes that may include, but not limited to, program name changes, deleting programs no longer funded by the transportation improvement board (repealed by passage of I-695), and incorporating policy language into WACs.

Citation of Existing Rules Affected by this Order: Repealing WAC 479-05-010, 479-05-050, 479-05-070, 479-05-090, 479-05-110, 479-05-150, 479-05-160, 479-05-180, 479-05-190, 479-05-200, 479-05-210, 479-05-220, 479-05-230, 479-05-240, 479-05-250, 479-05-260, 479-05-270, 479-05-280, 479-05-290, 479-14-008, 479-14-010, 479-14-100, 479-14-110, 479-14-120, 479-14-130, 479-14-140, 479-14-150, 479-14-160, 479-14-170, 479-14-180, 479-14-190, 479-12-008, 479-12-100, 479-12-110, 479-12-120, 479-12-130, 479-12-140, 479-12-150, 479-12-200, 479-12-210, 479-12-220, 479-12-230, 479-12-240, 479-12-250, 479-12-300, 479-12-310, 479-12-340, 479-12-350, 479-12-360, 479-12-370, 479-12-400, 479-12-410, 479-12-420, 479-12-430, 479-12-440, chapter 479-15 WAC (all sections); chapter 479-17 WAC (all sections); and chapter 479-510 WAC (all sections).

Amending WAC 479-01-010, 479-01-020, 479-01-030, 479-01-040, 479-01-050, 479-02-010, 479-02-050, 479-02-060, 479-02-070, 479-02-080, 479-02-090, 479-02-100, 479-02-110, 479-02-120, 479-02-130, 479-05-020, 479-05-030, 479-05-040, 479-05-060, 479-05-080, 479-05-100, 479-05-120, 479-05-130, 479-05-140, 479-05-170, 479-14-005, 479-12-005, and 479-12-011.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 07-11-138 on May 22, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 59, Amended 28, Repealed 69.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 59, Amended 28, Repealed 69.

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 59, Amended 28, Repealed 69.

Date Adopted: July 27, 2007.

Stevan Gorcester
Executive Director

AMENDATORY SECTION (Amending WSR 03-16-077, filed 8/4/03, effective 9/4/03)

WAC 479-01-010 Organization of the transportation improvement board. The transportation improvement board is a twenty-one member board, organized under the provisions of (~~chapter 269, Laws of 1995~~) RCW 47.26.121. The board administers the urban arterial trust account (~~and~~), the transportation improvement account, and the small city pavement and sidewalk account. (~~The board evaluates petitions requesting any additions to or deletions from the state highway system and forwards recommendations to the legislature. Board membership is defined in RCW 47.26.121.~~)

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-01-020 The time and place of board meetings. Regular public meetings of the board are held at least quarterly or more frequently as decided by a majority vote of the board. Regular (~~public~~) meetings (~~of the board shall be~~) are held on the fourth Friday of the month (or the third Friday if), unless the week of the fourth Friday (is) includes a holiday, wherein the board will determine the date of the meeting. Each (~~such~~) regular meeting (~~shall be~~) is held at the (offices of the board in Olympia, Washington, and begin at the hour of 9:00 a.m. or at such other) time and place as designated by the board. The meeting schedule, for the following calendar year, will be approved at least three months before the beginning of the year.

A special meeting of the board may be called by the chairperson or by a majority of the members of the board (~~by delivering personally or by mail~~). A written notice to all other board members (of the board) is required at least twenty-four hours before the time of (such) the meeting (as specified in the notice). The notice calling a special meeting (~~shall state~~) will include:

- The purpose for (which) the meeting (is called and);
- The date(, hour, and);
- The time;
- The place (of such meeting and);

All provisions of RCW 47.26.150 transportation improvement board meetings, and chapter 42.30 RCW (shall) otherwise known as the Open Public Meetings Act will apply.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-01-030 The address of the board. (~~Persons wishing to obtain information or to make submissions or requests of any kind shall address their correspondence to:)~~
The official mailing address of the board is:

(~~Executive Director,~~)
Transportation Improvement Board
Post Office Box 40901
Olympia, Washington 98504-0901.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-01-040 Definitions and acronyms. (~~For purposes of implementing the requirements of RCW 47.26.160 relative to the transportation improvement board,)~~
The following definitions (shall) and acronyms apply:

- (1) TIB - the transportation improvement board.
- (2) Board - the transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.
- (~~2~~) ~~TIB - the transportation improvement board.~~
- (3) Director - the executive director of the transportation improvement board.
- (4) Staff - refers to the employees of the transportation improvement board excluding the executive director.
- (5) Agency - all cities, towns, counties, and (public transit agencies) transportation benefit districts eligible to receive board funding.
- (~~5~~) (6) Local agency official - refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.
- (7) Urban area - (the term "urban area" as used for the arterial improvement program and the transportation partnership program) refers to the portion of a county within the federal urban area boundary as designated by (FHWA) the Federal Highway Administration and/or Washington state's Growth Management Act.
- (8) Six-year transportation plan - refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81.121.
- (9) Small city - refers to an incorporated city or town with a population of less than five thousand.
- (10) Sidewalk program - refers to both the urban and small city sidewalk programs.
- (11) Population - is defined as office of financial management official published population at the time of application.
- (12) Highway urban area population - as published by the office of financial management.
- (13) Scope change - refers to a change in the physical characteristics and/or dimensions of a project.
- (14) RJT - route jurisdiction transfer.
- (15) RTP - road transfer program (also known as the City Hardship Assistance Program or CHAP).
- (16) UATA - urban arterial trust account.

(17) TIA – transportation improvement account.

(18) Matching funds – all funds contributed to a project other than TIB funds.

AMENDATORY SECTION (Amending WSR 03-16-077, filed 8/4/03, effective 9/4/03)

WAC 479-01-050 ~~((Administration))~~ **Administrative costs.** The ~~((board))~~ costs for ~~((necessary))~~ board activities, staff services, and facilities ~~((that are attributable to the urban arterial trust account and))~~ will be paid out of the transportation improvement account ~~((shall be paid))~~ and the urban arterial trust account as determined by the biennial appropriation.

NEW SECTION

WAC 479-01-060 Executive director—Powers and duties. The board appoints an executive director who will serve at its pleasure to carry out the board priorities and the mission of the agency including the following administrative duties:

(1) The executive director will direct and supervise all day-to-day activities of the staff.

(2) The executive director is the appointing authority of the staff and may authorize subordinates to act in the executive director's place to carry out administrative duties.

(3) The executive director has waiver authority for value engineering studies as described in WAC 479-05-040.

(4) The executive director has sidewalk deviation authority as described in WAC 479-12-500 and 479-14-200.

(5) The executive director has administrative increase authority for projects up to the following levels:

(a) Urban corridor program – fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.

(b) Urban arterial program – fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.

(c) Small city arterial program – up to one hundred twenty-five thousand dollars.

(d) Road transfer program – up to seventy-five thousand dollars.

(e) Sidewalk program – up to fifty thousand dollars.

(f) Small city preservation program – up to two hundred thousand dollars within available funding limitations.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-02-010 Purpose. The purpose of this chapter shall be to ensure compliance by the ~~((Washington))~~ transportation improvement board with the provisions of chapter 42.56 RCW ~~((42.17.250 through 42.17.348))~~ dealing with public records.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-02-050 Public records officer. ~~((The transportation improvement board public records shall be in the~~

~~charge of the executive secretary who shall be the public records officer for the board. The person so designated shall be officed in the Transportation Improvement Boards office in Olympia, Washington. The public records officer shall be responsible for implementation of the board's rules and regulations regarding release of public records, coordinating staff efforts of the board in this regard and generally ensuring compliance of the staff with the public records disclosure requirements of chapter 1, Laws of 1973.))~~ The executive secretary is the public records officer for the transportation improvement board. The public records officer is responsible for implementation of the board's rules and regulations regarding release of public records and ensuring compliance with the public records disclosure requirements of chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-02-060 Public records available. All public records ~~((of the board as))~~ defined in ~~((chapter 42.17))~~ RCW 42.17.020 are ~~((deemed))~~ available for public inspection and copying ~~((pursuant to these rules.))~~ unless the record falls within the specific exemptions of chapter 42.56 RCW ~~((42.17.310))~~ or other specific statute ~~((that exempts or prohibits disclosure of specific information or records)).~~

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-070 Requests for public records. ~~((Subject to the provisions of subsection (3) of this section, public records are obtainable by members of the public when those members of the public comply with the following procedures.~~

~~((1) A request shall be addressed to the public records officer. Such request shall include the following:))~~ Public records requests should be sent to the public records officer at the office location using the following procedures:

(1) To ensure accuracy, any requests for public records should be made in writing and may be mailed, e-mailed, faxed, or delivered to the office during business hours.

(2) For prompt response, the following information should be provided in the request:

(a) The name of the person requesting the record~~((:))~~;

(b) The ~~((time of day and calendar))~~ date on which the request ~~((was))~~ is made~~((:))~~;

(c) ~~((If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as it is described in such current index.~~

~~((d) If the requested matter is not identifiable by reference to the board's current index, a statement that identifies the specific record requested.~~

~~((e))~~ A specific description of the material requested;

(d) A verification that the records requested ~~((shall))~~ will not be used to compile a sales list or used for commercial ~~((sales list.~~

~~((2) The public records officer shall inform the member of the public making the request whether the requested record is available for inspection or copying at the Transportation Improvement Boards office in Olympia, Washington.~~

(3) When it appears that a request for a record is made by or on behalf of a party to a lawsuit or a controversy to which the board is also a party or when such a request is made by or on behalf of an attorney for such a party the request shall be referred to the assistant attorney general assigned to the board for appropriate response)) gain.

(e) Instructions as to whether the requestor wants to view the document at the TIB offices, receive a copy by mail, or receive an electronic copy if available.

(3) TIB's public records request form is available on the web site.

NEW SECTION

WAC 479-02-075 Response to requests. Upon receiving a request, the public records officer will respond within five business days in writing or by e-mail acknowledging receipt of the request and with one or more of the following:

- (1) The requested record;
- (2) An estimate of the time it will take to provide the record or a schedule for providing the records in installments, including:
 - (a) An estimate of the copying and shipping costs of the record; and
 - (b) A request for advanced partial payment of the copy and shipping costs;
- (3) A request for further information or identification of the desired public records;
- (4) A request for verification that the records requested will not be used to compile a sales list, or that the records will not be sold for commercial gain; or
- (5) A denial of the request pursuant to WAC 479-02-110.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-080 Availability (~~for public inspection and copying of public records—Office hours~~)). Public records (~~shall~~) will be available for inspection and copying during the normal business hours of (~~the board~~) TIB. (~~For the purposes of this chapter, the~~) Normal office hours (~~shall be~~) are from 8:00 a.m. to 5:00 p.m., Monday through Friday, (~~excluding legal~~) except state holidays.

AMENDATORY SECTION (Amending WSR 91-13-056, filed 6/17/91, effective 7/18/91)

WAC 479-02-090 Inspection and copying cost. (1) No fee (~~shall be~~) is charged for inspection of public records.

(2) The board (~~shall impose~~) will charge a reasonable (~~charge~~) fee for providing copies of public records (~~and for the use by any person of agency equipment to copy records; such charges shall not exceed the amount necessary to reimburse the board for its actual costs incident to such copying. Actual costs shall include the labor costs of staff, machine cost and paper cost necessary to provide copies of requested records~~) as provided in RCW 42.56.120.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-100 Protection of public records. (~~In order to implement the provisions of RCW 42.17.290, requiring agencies to enact reasonable rules~~) To protect public records (~~from damage or disorganization~~), the following rules have been adopted(~~(-)~~):

(1) Copying of public documents (~~shall~~) will be done by (~~the board personnel and~~) staff or under (~~the~~) their supervision (~~of said personnel, upon the request of members of the public under the procedures set down in WAC 479-02-070~~).

(2) (~~No document shall be physically removed by a member of the public from the area designated by the board for the public inspection of documents for any reason whatever.~~

(3) ~~When a member of the public requests to examine an entire file or group of documents, as distinguished from a request to examine certain individual documents which can be identified and supplied by themselves, the board shall be allowed a reasonable time to inspect the file to determine whether information protected from disclosure by RCW 42.17.310, is contained therein, and the board shall not be deemed in violation of its obligation to reply promptly to requests for public documents by reason of causing such an inspection to be performed)~~ Public documents will not be removed by the requestor.

(3) Inspection of documents will be monitored by staff.

(4) If a request is submitted to examine or copy an entire file or group of documents, the public records officer will review the file and identify any protected records under RCW 42.17.310. A reasonable time to do the review will be given to the public records officer without being in violation of the obligation to reply promptly.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-02-110 Denial of request. (~~(1) The executive director shall determine which public records requested in accordance with these rules are exempt under the provisions of RCW 42.17.310 or other statute.~~

(2) ~~Each denial of a request for a public record shall be accompanied by a written statement to the person requesting the record clearly specifying the reasons for denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.)~~ Whenever the record requested clearly falls within the statutory exemptions of chapter 42.56 RCW, or when the exempt status of the record is unclear:

(1) The public records officer will consult with the assistant attorney general to determine if a requested public record is exempt; and

(2) Any denial of a request based upon an exemption will be made by a written statement to the requestor together with specific explanation of the reasons for and how to request a review of the exemption.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-120 Review of agency denial. ~~((When ever a person objects to a conclusion that))~~ Denial of a public records ~~((is exempt from disclosure, the person may))~~ request ~~((the attorney general to review the matter))~~ will be in accordance with RCW ~~((42.17.325))~~ 42.56.530.

AMENDATORY SECTION (Amending WSR 95-04-072, filed 1/30/95, effective 3/2/95)

WAC 479-02-130 Records index. ~~((The board has available for public inspection and copying at its offices in Olympia a current index of the following records:~~

(a) ~~State legislation and proposed rules and regulations pertaining to board standards.~~

(b) ~~Those statements of policy and interpretations of policy, statute and bylaws which have been adopted by the board;))~~ The public records officer will maintain a current index of board records.

(1) The following list of records is included in the index:

(a) Legislation, rules, and regulations of the board;

(b) Bylaws adopted by the board;

(c) Minutes of board meetings;

(d) Resolutions approved by the board;

(e) ~~((TIB))~~ Program guidelines;

(f) Program reports and publications;

(g) Budgets and expenditures;

(h) ~~TIB project administration and accounting files).~~

(2) ~~((A system of indexing shall be as follows:~~

(a) ~~The indexing system will be administered by the board's public record officer.~~

(b) ~~Copies of the index shall be available for public inspection and copying in the manner provided in chapter 479-02 WAC.~~

(c) ~~The public records officer ((shall)) will update the index at least once a year ((and shall revise the index)) or when deemed necessary by the ((board)) executive director.~~

(3) The index will be available for inspection and copying as other public records.

NEW SECTION

WAC 479-05-011 Submission of proposed projects. A call for projects may be made as the board deems appropriate. Subsequent to a call, a priority array may be adopted. The array will be published and will list all approved applications.

Special funding programs or a special call for projects may be made by the board as funds allow.

NEW SECTION

WAC 479-05-012 Emergent nature project submission and limitations. An eligible agency may request the transportation improvement board consider a project for funding outside of the normal call for projects. To be considered as emergent nature, a project must demonstrate the following:

(1) There has been a significant change in the location or development of traffic generators in the area of the project.

(2) The work proposed is necessary to avoid or reduce serious traffic congestion in the area of the project in the near future.

(3) A partially funded project that, if completed, would enable a community to secure an unanticipated economic development opportunity.

(4) Other funding sources the local agency has applied for or secured for the project.

(5) The funding of the project would not adversely impact currently funded projects.

The agency may be asked to make a presentation to the board on the project.

NEW SECTION

WAC 479-05-013 Urban project transfer for completion. If an urban project meets the criteria of both the urban arterial trust account (UATA) and transportation improvement account (TIA), the funding source for the project may be transferred from one account to the other as the board deems necessary to ensure project completion.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-020 Six-year transportation ~~((programs for urban areas))~~ plan. ~~((The))~~ Projects selected in the priority array must be included in the local agency's six-year transportation ~~((programs of agencies required, respectively, by RCW 35.77.010, 36.81.121 and 35.58.2795 must have proposed transportation improvement board projects included))~~ plan prior to ~~((board approval of funds))~~ receiving authorization to proceed on the project.

~~((A copy of the six year transportation program including the proposed projects to be approved shall be submitted to the board along with a copy of the resolution of the city or county adopting such program.))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-030 ~~((Six-year financial plan.))~~ A registered professional engineer must be in charge. ~~((At the beginning of each fiscal year the board shall update its six-year financial plan to determine the amount of estimated revenue to be available for new project starts in the ensuing biennium. The estimate of funds for new project starts shall take into consideration projects approved by the board for the design phase where construction funding approval is pending.))~~ All projects using UATA or TIA funds will be supervised by a professional engineer registered in the state of Washington.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-040 Value engineering study requirements. A value engineering ~~((studies shall be))~~ study is required ~~((in accordance with the policy adopted by the~~

~~board~~) for urban projects with total cost exceeding two and one-half million dollars or when determined by the executive director to be in the best interest of the project.

NEW SECTION

WAC 479-05-041 When a value engineering study may be waived. If the project meets one of the following criteria, the study is automatically waived:

- (1) Project receives less than twenty percent in TIB funds; or
- (2) Project is construction only.

The executive director has the discretion to waive the value engineering study requirement if the total project cost is less than five million dollars.

The board has the discretion to waive the value engineering study requirement on any project.

NEW SECTION

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

- (1) Design phase – documents that must be received prior to phase approval include:

- (a) Signed funding status form confirming that the funding partners are fully committed;
- (b) Page from the adopted six-year transportation plan which lists the project;
- (c) Signed fuel tax agreement; and if applicable
- (d) Consultant agreement (small city arterial and small city sidewalk programs only).

- (2) Bid phase – documents that must be received prior to phase approval include:

- (a) Signed bid authorization form that contains:
 - (i) Plans and specification package;
 - (ii) Written confirmation of funding partners; and
 - (iii) Confirmation that full funding is available for the project;
- (b) Signed confirmation that right of way is acquired or possession and use agreement is in place;
- (c) Engineer's estimate is in final format; and if applicable:

- (i) Consultant agreement (small city arterial and small city sidewalk programs only);
- (ii) Certification that a cultural resource assessment was completed;
- (iii) Traffic signal warrants.

- (3) Construction phase – documents that must be received prior to phase approval include:

- (a) Updated cost estimate form signed by a local agency official and the project engineer;
- (b) Bid tabulations; and
- (c) Description of cost changes.
- (4) Project closeout phase – documents that must be received prior to phase approval include:
 - (a) Updated cost estimate form signed by a local agency official and the project engineer;
 - (b) Final summary of quantities; and
 - (c) Accounting history signed by a local agency official or the financial manager.

NEW SECTION

WAC 479-05-052 Project modification and scope change. The executive director may approve scope changes except the following which require the board's approval:

- (1) A change in the project limits with a request for an increase in funding beyond the executive director's administrative authority in WAC 479-01-060;
- (2) Adding or decreasing through lanes;
- (3) Adding or eliminating grade separations;
- (4) Reducing limits greater than one hundred lineal feet;
- (5) Inclusion or exclusion of major project element that may be considered a scope change by the executive director; or
- (6) Changes to project components that were used to rate the project.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-060 Methods of construction. All construction (~~by agencies~~) using (~~board~~) UATA or TIA funds shall be advertised, competitively bid and contracted, except:

- (1) Utility and railroad relocations and adjustments; (~~and~~)
- (2) (~~Installation of traffic control devices, if accomplished by the personnel of the agency.~~

~~A competitive bid is not required for projects which meet the requirements of~~) Government force work;

- (3) Work eligible from the small works roster; and
- (4) Local agencies may be otherwise exempt from bidding requirements if so authorized by an applicable statute contained in chapter(s) 36.77, 35.22, 35.23, (~~and~~) or 35.27 RCW.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-080 Standard specifications. The current edition of *the Standard Specifications for Road, Bridge, and Municipal Construction* or equivalent, (~~shall be included in any contract entered into by an agency using~~) will be used as the standard for construction of board (~~funds~~) funded projects.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-100 Utility (~~and railroad~~) adjustments (~~and~~) or relocations. Utility (~~and railroad~~) adjustments (~~and~~) or relocations may be (~~performed by negotiated contract with the owner of those facilities. The administering agency shall review and approve a written statement that includes the items of work and an estimate of cost prepared by the utility or railroad for the work required as a result of the improvement. Updated statements of items of work and estimates of cost may be reviewed and approved by the administering agency. All costs of utility and railroad adjustments, as finally approved by the administering agency, shall be subject to audit. If federal aid highway funds are included in the project, the negotiated contract shall~~)

include the applicable provisions of federal Highway Administration policies and procedures prescribed in 23 C.F.R. 140, 23 C.F.R. 645 and 23 C.F.R. 646, Federal Aid Policy Guide)) reimbursed using the following criteria:

(1) If it is a direct cost for utility adjustments that are owned by the local government;

(2) If the utility provider owns the property in fee title; or

(3) If the utility franchise agreement requires the local agency to pay for those utility adjustments or relocations required by state or local government.

Upgrading of utilities is not eligible for reimbursement by UATA or TIA funds.

If the proposed work will cause a significant change in scope, the agency must seek board approval.

NEW SECTION

WAC 479-05-101 Railroad adjustments or relocation. Railroad adjustments or relocations may be reimbursed using the following criteria:

(1) TIB will reimburse the local agency for reasonable and necessary costs.

(2) There is a direct impact within the project limits.

Improvements beyond the necessary replacement costs to mitigate the impacts of the project will not be reimbursed.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-120 Street illumination and traffic control devices. Traffic control devices (~~(included in a participating))~~ for an approved project may be purchased and installed (~~(by the employees and with the equipment and materials of the local governmental units subject to the limits of)~~ under RCW 35.22.620(3), 35.23.352(1), and 36.77.065 (3) by: (~~(Provided, That the basis for payment of board funds is reimbursement of the appropriate portion of actual cost of such work, subject to audit.)~~)

(1) The contractor for the construction phase of the project; or

(2) Local agency employees.

UATA or TIA funds may be used in the costs to underground service connections for street illumination and traffic signal services within the approved project scope.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-130 Project landscaping and aesthetic improvements. (~~(Board funds may be used at the appropriate matching ratio in the cost of landscaping and the use of other plantings and supporting materials within the project right of way to a maximum of three percent of the total authorized project costs: Provided, That requests for increases in the authorized amount of board funds to cover landscaping and related costs shall be considered jointly with other cost increases and approval of all such requests shall be limited to the amount authorized by WAC 479-05-250 to be approved by the director. Erosion control treatment shall not be considered a part of landscaping costs.~~)

The three percent limitation for landscaping and related costs shall not affect the agency's authority to include landscaping and the use of other plantings or supporting materials in the project in amounts that exceed the three percent limit provided they are paid for solely with funds other than board supplied funds.) Cost of landscaping and aesthetic improvements is limited to three percent of the total eligible authorized project costs.

(1) Landscaping includes:

(a) Cost of trees, shrubs, sod, and other plant material.

(b) Top soil and bark.

(c) Irrigation and tree grates.

(d) Labor for installation.

(2) Aesthetic improvement includes:

(a) Ornamental lighting.

(b) The local agency share of the cost of undergrounding of utilities.

(c) Public art.

(d) Special surfacing treatments (stamped concrete, pavers).

(e) Labor for installation.

(3) Items not considered landscaping or aesthetic improvements are:

(a) Erosion control treatments.

(b) Wetland mitigation (plantings) required by federal or state regulations.

(c) Property restoration.

Requests for increases in landscaping and related costs are subject to WAC 479-05-201, 479-05-202, and 479-05-203. Landscaping costs in excess of the three percent limit may be paid for by funding sources other than TIB funds.

NEW SECTION

WAC 479-05-131 Mitigation costs and limitations. Mitigation costs may include:

(1) Sound walls/berms: Unless required by specific regulations, TIB will not participate in this cost.

(2) Superfund sites: TIB funds will not participate in the cost of cleanup.

(3) Bridges: Bridge designs exceeding the most cost effective are not eligible for participation.

(4) Wetlands: Mitigation in excess of what is required by federal or state requirements is not eligible to be reimbursed.

UATA or TIA funds may not be used for excessive design, mitigation beyond federal or state requirements, or other unusual project features.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-140 Acquisition of rights of way. Right of way for board funded projects shall be acquired in accordance with chapters 8.26 RCW and 468-100 WAC. Reimbursement of right of way acquisition costs are eligible within the design phase of the project.

At bid phase, right of way acquisitions should be completed and certified. If all right of way cannot be certified, the local agency must have possession and use agreements for the remaining parcels.

NEW SECTION

WAC 479-05-141 What is eligible for reimbursement of right of way costs. Only the square footage needed for the roadway is eligible to be reimbursed, unless:

- (1) It is deemed by TIB to be in the best interest of the project to purchase the entire parcel;
 - (2) An entire parcel take is required by local resolution;
- or
- (3) An uneconomic remnant will remain.

If after the completion of the project, the uneconomic remnant is sold, transferred, or rezoned to make it an economic remnant, the proceeds of any sale will be placed back in the local agency's motor vehicle fund to be used for road improvement purposes only.

In the event the project is not built, TIB funds expended for right of way may be requested to be refunded to the board.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-05-170 ((Reimbursable costs for)) Reimbursement of engineering costs. Design and construction engineering costs eligible for reimbursement ((shall be)) are limited to twenty-five percent of the approved contract bid amount ((including adjustments for change orders and actual quantity amounts during construction and agency force construction)), excluding special studies or right of way costs.

Surveying and materials testing costs, even if they are part of the contract costs, are considered part of construction engineering and are subject to the twenty-five percent limit. Exceptions to the twenty-five percent engineering limit may be considered ((by the board)) for small city projects when an unforeseen issue arises that is beyond the control of the local agency. The local agency may request an increase through WAC 479-05-202 processes. ((Agency costs for value engineering and other special studies and right of way appraisals and acquisition costs will not be used to determine the amount subject to the limit.))

NEW SECTION

WAC 479-05-171 Reimbursement of cultural resource assessment costs for TIB funded projects. If a cultural resource assessment is required by the state department of archaeology and historical preservation, TIB will reimburse the normal costs required for the assessment. The assessment is considered part of design engineering, is not a special study, and not included in the twenty-five percent limitation in WAC 479-05-170.

NEW SECTION

WAC 479-05-201 When an agency may request an increase in TIB funds. Local agencies may request an increase in funds at the bid, construction, and project closeout phases.

NEW SECTION

WAC 479-05-202 How an agency requests an increase in TIB funds. Increases in TIB funds may be requested by the lead local agency and submitted to TIB staff through the bid authorization form or updated cost estimate form.

The executive director will consider increase requests up to the levels in WAC 479-01-060.

Increase requests above the executive director administrative authority require board action. The local agency may be asked to prepare and make a presentation to the board justifying the increase.

NEW SECTION

WAC 479-05-203 Criteria the board and the executive director use when reviewing increase requests. The board and executive director will consider the following when reviewing increase requests:

- (1) Whether the granting of the request will obligate funding beyond an acceptable level or will adversely affect authorized funds previously approved by the board.
- (2) Whether the request would fund expansion of the scope of work beyond that approved at design phase.
- (3) Whether the local agency should have anticipated an increase would be necessary at the outset of the project.
- (4) Requests for increases at construction phase will take priority over other phase requests.
- (5) Local agency funding partner ability to contribute to the increased costs.
- (6) Other criteria on a case-by-case basis.

NEW SECTION

WAC 479-05-204 If an increase is not approved. An agency request for an increase in funds may go to either the executive director or the board, as described in WAC 479-05-202, depending on the size of the request:

- (1) If the executive director hears the request and does not approve it, the local agency may:
 - (a) Proceed with the project, paying for any additional costs with local or other funds;
 - (b) Withdraw the request for participation;
 - (c) Request a formal review of the executive director's decision by the board; or
 - (d) Submit a request to the executive director to reduce the scope of the project as provided in WAC 479-05-052.
- (2) If the board hears the request and does not approve it, the local agency may:
 - (a) Proceed with the project, paying for additional costs;
 - (b) Withdraw the request for participation; or
 - (c) Request a scope modification or reduction as provided in WAC 479-05-052.

In either case, the project will need to retain a usable and functional improvement to be granted a scope reduction.

NEW SECTION

WAC 479-05-211 When a project is considered delayed. Projects are considered delayed when one of the following occurs:

- (1) Urban corridor program projects do not reach construction phase within five years and six months.
- (2) Urban arterial program projects do not reach construction phase within four years and six months.
- (3) All other programs must reach construction phase within two years and six months.

The date funding is made available to the local agency by TIB is the starting point in calculating the delay date.

NEW SECTION

WAC 479-05-212 The stages of delayed projects. For TIB funded projects, there are three stages of delay:

- (1) Stage 1 delay - if the project does not meet the project target date per WAC 479-05-211.
- (2) Stage 2 delay - if the project does not meet the revised bid date as agreed in Stage 1 delay under WAC 479-05-213(1), or one year after Stage 1 delay.
- (3) Stage 3 delay - if the project does not meet the revised bid date as agreed to under Stage 2 delay under WAC 479-05-213(2), or one year after Stage 2 delay.

The executive director has discretion when moving projects from one stage of delay to the next and may consider pending bid dates or other indications or impending progress.

NEW SECTION

WAC 479-05-213 Review and consequences of delay. Delayed projects will be reviewed as follows:

- (1) Stage 1 - agency plan letter. The TIB staff report the delayed project to the board at a regularly scheduled board meeting. The executive director requests a letter from the local agency to respond with a progress plan to get back on schedule.
- (2) Stage 2 - explanation and commitment. The local agency provides TIB staff with an explanation of why the project continues to be delayed and a commitment date which is acceptable to the executive director or board.
- (3) Stage 3 - hearing. If the agency misses the agreed upon date(s) or deadlines set in the Stage 2 review, the agency will be provided a hearing in front of the board at the next regularly scheduled meeting. The result of the hearing will include an absolute date for resolution which is agreed to by the board.

If the local agency does not meet the absolute date for resolution as agreed to by the board in the Stage 3 hearing, the project may be suspended or the agency may be requested to withdraw the project and reapply for funding in a later application cycle.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-05-010	Time and place for submission of proposed transportation improvement board projects.
WAC 479-05-050	Procedures for project approval.
WAC 479-05-070	Registered engineer in charge.
WAC 479-05-090	Design standards for transportation improvement board projects.
WAC 479-05-110	Undergrounding utilities.
WAC 479-05-150	Inclusion of bicycle facilities in transportation improvement board projects.
WAC 479-05-160	Reimbursable costs.
WAC 479-05-180	Direct costs.
WAC 479-05-190	Indirect costs.
WAC 479-05-200	Partial or progress payments for project costs.
WAC 479-05-210	Record requirements.
WAC 479-05-220	Audits of project records.
WAC 479-05-230	Expenditure schedule of board funds.
WAC 479-05-240	Procedure to request increase in board funds.
WAC 479-05-250	Review of delayed projects.
WAC 479-05-260	Recovery of board funds on canceled projects.
WAC 479-05-270	Identification and consideration of surplus funds on authorized board projects.
WAC 479-05-280	Funding shortfall.
WAC 479-05-290	Over-programming of funds.

Chapter 479-06 WAC

FINANCIAL REQUIREMENTS

NEW SECTION

WAC 479-06-010 Transportation improvement board sixteen-year financial plan. The board will update its sixteen-year financial plan at the beginning of each fiscal year. The financial plan will include estimated revenue to be available for new project starts in the ensuing biennium based

on forecast council's revenue forecast. Other factors included are fund balance, bond debt, interest revenue, legislative appropriation, projected expenditures by program, and any other issues that may impact new project starts.

NEW SECTION

WAC 479-06-020 Reimbursable costs. Costs must be reasonable and chargeable to the project to be eligible for reimbursement. Project costs eligible for reimbursement are defined as direct and indirect.

NEW SECTION

WAC 479-06-030 Direct costs. Direct costs eligible for reimbursement are costs that are directly charged to the project and may include:

- (1) Agency direct labor and employee benefits:
 - (a) Salaries and wages of agency nonadministrative employees working directly on the project as documented by payroll records.
 - (b) Employee benefits are calculated as a percentage of direct labor dollars as set by the board and include:
 - (i) F.I.C.A. (Social Security) - employer's share;
 - (ii) Retirement benefits (employer's share of actual cost);
 - (iii) Hospital, health, dental and other welfare insurance;
 - (iv) Life insurance;
 - (v) Industrial and medical insurance.
 - (c) Employee leave:
 - (i) Vacation;
 - (ii) Sick leave;
 - (iii) Holiday pay;
 - (iv) Civil leave.
- (2) Contract engineering services as specified by a consultant agreement.
- (3) Permit fees.
- (4) Right of way acquired for the project includes the following costs:
 - (a) Purchase cost of all property and property rights needed for specific projects in accordance with chapter 8.26 RCW including access rights, easements, losses in property value or damages (if any);
 - (b) Salaries, expenses, or fees of appraisers, negotiators and attorneys.
- (5) Contract construction work.
- (6) Project specific capital equipment acquisition approved by the board.
- (7) Project specific vehicle and equipment charges will be reimbursed based on the actual rental cost paid for the equipment. If agency owned equipment is used, rental rates established by the agency's "equipment rental and revolving fund" will be reimbursed. All vehicle and equipment costs will be charged the agency standard rate for all projects regardless of the source of funding. Agencies without an equipment revolving fund will be reimbursed based on rates published by department of transportation for similar equipment.
- (8) Project specific direct materials, supplies, and services used for projects will be reimbursed based on actual cost.

NEW SECTION

WAC 479-06-040 Indirect/overhead costs. Indirect or overhead costs are common administrative cost objectives that cannot be easily charged to the project. Indirect costs incurred by an agency for administrative costs will be reimbursed up to a maximum of ten percent of the direct labor costs.

NEW SECTION

WAC 479-06-050 Progress payments. Payments of funds are governed by the following:

- (1) Incurred costs must be in conformity with all applicable federal and state laws, rules, regulations, and procedures.
- (2) Agencies will submit requests for payment on forms prescribed by the board. Requests for payment will be submitted as the project progresses.
- (3) The director may require a payment to be divided into installments if one of the following criteria is met:
 - (a) The agency has not billed for six months or longer;
 - (b) The agency has billed for an amount over the director determined level; or
 - (c) Cash balance of the account is below fifty percent of the minimum operating reserve.
- (4) Costs incurred prior to phase approval are not eligible for reimbursement.

NEW SECTION

WAC 479-06-060 Financial records requirement. (1) Agencies must maintain documents that support project costs incurred. The supporting documentation may be required by the board for first project payment and at other times during the project life.

- (2) Records must be maintained in accordance with the *Records Retention Schedule* as published by the secretary of state's office.

NEW SECTION

WAC 479-06-070 Project record review. Project records may be reviewed by the board to ensure that project costs are eligible for reimbursement. The records may be requested at any time during the project.

NEW SECTION

WAC 479-06-080 Final settlement. Up to five percent of total transportation improvement board funds may be retained until the agency submits final, complete, and accurate closeout documentation for a project.

A unilateral closeout of a project may be initiated by the board when an agency has not responded to requests for final documentation and all funds are expended.

NEW SECTION

WAC 479-06-090 Recovery of board funds on canceled projects. If the grant award was made as a result of falsification, negligence, or deliberate misrepresentation on the part of the agency, the board may require repayment of funds.

An agency is not responsible to repay transportation improvement board funds if the effort was made in good faith and circumstances are beyond the agency's control.

NEW SECTION

WAC 479-06-100 Programming of funds. The transportation improvement board selects projects based on an estimate of fund balance, projected revenues, current project expenditures, and future program obligations. The amount allocated per program will not exceed projected cash needs for a six-year period.

Chapter 479-12 WAC

~~((SUBMISSION OF PROPOSED)) URBAN ARTERIAL TRUST ACCOUNT PROJECTS ((TO TRANSPORTATION IMPROVEMENT BOARD))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-12-005 Purpose and authority. ~~((RCW 47.26.160 provides that))~~ The transportation improvement board ~~((shall))~~ adopts reasonable rules necessary to implement the urban arterial trust account.

NEW SECTION

WAC 479-12-006 Previously funded projects. Projects are not eligible to compete for funding within the term limits of a previously funded project for a period of ten years from contract completion. A project that is divided into multiple phases or stages is not considered a previously funded project.

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-12-011 Programs funded from the urban arterial trust account. ~~((Funds from))~~ The urban arterial trust account ~~((shall))~~ funds the ~~((arterial improvement program, the small city program, the city hardship assistance program, and the pedestrian safety and mobility program))~~ following programs:

- (1) The urban arterial program;
- (2) The small city arterial program; and
- (3) The sidewalk programs:
 - (a) Urban sidewalk program;
 - (b) Small city sidewalk program.

NEW SECTION

WAC 479-12-111 Who is eligible to receive urban arterial program funding. Agencies eligible to receive urban arterial program funds are:

- (1) Incorporated cities with a population of five thousand or greater.
- (2) Incorporated cities with a population less than five thousand which are located in a federal urban area.
- (3) Counties with a federally designated urban area.

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

NEW SECTION

WAC 479-12-121 What projects are eligible for urban arterial program funding. Eligible projects are improvements located on a route with an urban federal functional classification.

Any urban street that is not functionally classified at the time of award must obtain functional classification prior to approval to expend board funds.

For the urban arterial program, sidewalks are required on both sides of the roadway unless a sidewalk deviation is granted by the executive director or board through WAC 479-12-500.

NEW SECTION

WAC 479-12-131 Award criteria for the urban arterial program. The board establishes the following criteria for use in evaluating urban arterial program grant applications:

- (1) Safety improvements - addresses accident reduction, eliminates roadway hazards, and corrects roadway deficiencies.
- (2) Mobility improvements - improves level of service, improves access to generators, and connects urban street networks.
- (3) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.
- (4) Mode accessibility - provides additional high occupancy vehicle lanes, bus volume, or nonmotorized facilities.
- (5) Local support - demonstrates initiative to achieve full funding and project completion.

NEW SECTION

WAC 479-12-141 Regions of the urban arterial program. The board allocates urban arterial program funding across five regions to ensure statewide distribution of funds. The five regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) Northwest region includes eligible agencies within Clallam, Island, Jefferson, Kitsap, San Juan, Skagit, and Whatcom counties.
- (3) Northeast region includes eligible agencies within Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.
- (4) Southeast region includes eligible agencies within Asotin, Benton, Columbia, Franklin, Garfield, Kittitas, Klickitat, Walla Walla, and Yakima counties.
- (5) Southwest includes eligible agencies within Clark, Cowlitz, Grays Harbor, Lewis, Mason, Pacific, Skamania, Thurston, and Wahkiakum counties.

NEW SECTION

WAC 479-12-151 Funding distribution formula for the urban arterial program. The statewide distribution of urban arterial program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus the region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-161 Matching requirement for the urban arterial program. The urban arterial program provides funding which will be matched by other funds as follows:

(1) For cities:

(a) If the city valuation is under \$1.0 billion, the matching rate is ten percent of total project costs.

(b) If the city valuation is \$1.0 billion to \$2.5 billion, the rate is fifteen percent of total project costs.

(c) If the city valuation is over \$2.5 billion, the rate is twenty percent of total project costs.

(2) For counties:

(a) If the road levy valuation is under \$3.0 billion, the rate is ten percent of total project costs.

(b) If the road levy valuation is between \$3.0 billion to \$10.0 billion, the rate is fifteen percent of total project costs.

(c) If the road levy valuation is over \$10.0 billion, the rate is twenty percent of total project costs.

The board uses the current valuations from the department of revenue.

NEW SECTION

WAC 479-12-211 Who is eligible to receive small city arterial program funding. An eligible agency is an incorporated city or town that has a population of less than five thousand.

NEW SECTION

WAC 479-12-221 What projects are eligible for small city arterial program funding. To be eligible for funding, a proposed project must improve an arterial that meets at least one of the following standards:

(1) Serves as a logical extension of a county arterial or state highway through the city; or

(2) Acts as a bypass or truck route to relieve the central core area; or

(3) Serves as a route providing access to local facilities such as:

(a) Schools;

(b) Medical facilities;

(c) Social centers;

(d) Recreational areas;

(e) Commercial centers;

(f) Industrial sites.

Sidewalks are required on one side of the roadway unless a deviation is granted under WAC 479-12-500.

NEW SECTION

WAC 479-12-231 Award criteria for the small city arterial program. The board establishes the following criteria for use in evaluating small city arterial program grant applications:

(1) Safety improvement - projects that address accident reduction, hazard elimination, and roadway deficiencies.

(2) Pavement condition - replaces or rehabilitates street surfaces and structural deficiencies.

(3) Local support - projects that improve network development and address community needs.

NEW SECTION

WAC 479-12-241 Regions of the small city arterial program. The board allocates small city arterial program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-12-251 Funding distribution formula for the small city arterial program. The statewide distribution of small city arterial program funds is allocated between regions according to the following formula:

Region small city population divided by statewide small city population.

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-261 Matching requirement for the small city arterial program. There is no match requirement for cities with a population of five hundred or less. Cities

with a population over five hundred must provide a minimum match of five percent of the total project cost.

NEW SECTION

WAC 479-12-402 Sidewalk program subprograms.

In order to provide equity for project grant funding, the sidewalk program is divided into the urban sidewalk program and the small city sidewalk program.

NEW SECTION

WAC 479-12-411 Who is eligible to receive sidewalk program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

(1) Urban sidewalk program agency eligibility:

(a) Incorporated cities with a population of five thousand and over.

(b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.

(c) Counties with a federally designated urban area.

(2) Small city sidewalk program agency eligibility:

Incorporated cities with a population under five thousand.

NEW SECTION

WAC 479-12-421 What projects are eligible for sidewalk program funding. Minimum project requirements for each subprogram are as follows:

(1) Urban sidewalk program project eligibility:

(a) Must be on or related to a functionally classified route; and

(b) Primary purpose of the project is transportation and not recreation.

(2) Small city sidewalk program project eligibility:

(a) The project must be located on or related to a street within the TIB designated arterial system; and

(b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

For the urban sidewalk program, TIB does not provide funding increases.

NEW SECTION

WAC 479-12-431 Award criteria for the sidewalk program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city sidewalk projects:

(1) Safety improvement - projects that address hazard mitigation and accident reduction.

(2) Pedestrian access - projects that improve or provide access to facilities including:

(a) Schools;

(b) Public buildings;

(c) Central business districts;

(d) Medical facilities;

(e) Activity centers;

(f) High density housing (including senior housing);

(g) Transit facilities;

(h) Completes or extends existing sidewalks.

(3) Local support - addresses local needs and is supported by the local community.

NEW SECTION

WAC 479-12-441 Regions of the sidewalk program.

The board allocates sidewalk program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-12-451 Distribution formula for the sidewalk program.

For the purpose of allocating funds, the sidewalk program is divided into two subprograms, the urban sidewalk program and the small city sidewalk program. The distribution formulas are as follows:

(1) Urban sidewalk program - the average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

(2) Small city sidewalk program - region small city population divided by statewide small city population.

For either program, the board may adjust regional allocations by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

NEW SECTION

WAC 479-12-461 Matching requirement for the sidewalk program. The sidewalk program provides funding which will be matched by other funds as follows:

(1) The urban sidewalk program requires a match of at least twenty percent of total project costs.

(2) Small city sidewalk program matching rates are dependent on the city population as follows:

(a) Cities with a population of five hundred and below are not required to provide matching funds.

(b) Cities with a population over five hundred but less than five thousand, require a match of at least five percent of the total project costs.

NEW SECTION

WAC 479-12-500 Sidewalk deviation authority for urban arterial program and small city arterial program.

The transportation improvement board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban arterial program and small city arterial program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

(1) The executive director has administrative authority to grant sidewalk deviations as follows:

(a) On one side if the roadway is a frontage road immediately adjacent to a limited access route;

(b) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians;

(c) On both sides if the roadway is a ramp providing access to a limited access route; or

(d) On both sides of a designated limited access facility if:

(i) Route is signed to prohibit pedestrians; or

(ii) Pedestrian facilities are provided on an adjacent parallel route.

(2) All other sidewalk deviation requests require board action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 479-12-008 Definitions.
- WAC 479-12-100 Intent of the arterial improvement program.
- WAC 479-12-110 Priority criteria for arterial improvement program projects.
- WAC 479-12-120 Establishing regions for arterial improvement program.
- WAC 479-12-130 Apportionment of funds to arterial improvement program regions.
- WAC 479-12-140 Eligible arterial improvement program projects.
- WAC 479-12-150 Matching ratios for arterial improvement program projects.
- WAC 479-12-200 Intent of the small city program.
- WAC 479-12-210 Priority criteria for small city projects.

- WAC 479-12-220 Establishing regions for small city program.
- WAC 479-12-230 Apportionment of funds to small city program regions.
- WAC 479-12-240 Eligible small city program projects.
- WAC 479-12-250 Matching requirements for small city program projects.
- WAC 479-12-300 Intent of the city hardship assistance program.
- WAC 479-12-310 Priority criteria for city hardship assistance program projects.
- WAC 479-12-340 Eligible city hardship assistance program agencies or streets.
- WAC 479-12-350 Matching ratios for city hardship assistance program projects.
- WAC 479-12-360 Allowable city hardship assistance program activities.
- WAC 479-12-370 City hardship assistance program participation with other funds.
- WAC 479-12-400 Intent of pedestrian safety and mobility program.
- WAC 479-12-410 Priority criteria for pedestrian safety and mobility projects.
- WAC 479-12-420 Establishing regions for the pedestrian safety and mobility program.
- WAC 479-12-430 Apportionment of funds to pedestrian safety and mobility program regions.
- WAC 479-12-440 Eligible pedestrian safety and mobility projects.

Chapter 479-14 WAC

~~((SUBMISSION OF PROPOSED)) TRANSPORTATION IMPROVEMENT ACCOUNT PROJECTS ((TO TRANSPORTATION IMPROVEMENT BOARD))~~

AMENDATORY SECTION (Amending WSR 99-24-038, filed 11/23/99, effective 12/24/99)

WAC 479-14-005 Purpose and authority. ~~((RCW 47.26.084 and 47.26.086 provides that))~~ The transportation improvement board ~~((shall))~~ adopts reasonable rules necessary to implement the transportation improvement account.

NEW SECTION**WAC 479-14-006 Previously funded projects.**

Projects are not eligible to compete for funding within the term limits of a previously funded project for a period of ten years from contract completion. A project that is divided into multiple phases is not considered a previously funded project.

NEW SECTION

WAC 479-14-011 Program funded from the transportation improvement account. The transportation improvement account funds the urban corridor program.

NEW SECTION

WAC 479-14-111 Who is eligible to receive urban corridor program funding. Eligible agencies are:

- (1) Counties that have an urban area;
- (2) Incorporated cities with a population of five thousand or more; and
- (3) Transportation benefit districts.

Generally, the eligible agency will be designated as the project lead. However, the executive director may designate another agency as lead in the best interest of project completion or for convenience to both parties.

NEW SECTION

WAC 479-14-121 What projects are eligible for urban corridor program funding. Eligible projects are:

- (1) Improvements on federally classified arterials; or
- (2) Within the urban growth area in counties which are in full compliance with Washington state's Growth Management Act.

Any urban street that is not functionally classified at the time of award must obtain functional classification prior to approval to expend board funds.

Sidewalks are required on both sides of the arterial unless a deviation is granted under WAC 479-14-200.

NEW SECTION

WAC 479-14-131 Award criteria for the urban corridor program. The board establishes the following criteria for use in evaluating urban corridor program grant applications:

- (1) Mobility improvements - includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.
- (2) Local support - demonstrates initiative to achieve full funding and project completion.
- (3) Growth and development improvements - provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.
- (4) Safety improvements - addresses accident reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.

(5) Mode accessibility - additions to or enhancements of high occupancy vehicle and nonmotorized transportation modes.

NEW SECTION

WAC 479-14-141 Regions of the urban corridor program. The board allocates urban corridor program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

(1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.

(2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

NEW SECTION

WAC 479-14-151 Funding distribution formula for the urban corridor program. The statewide distribution of urban corridor program funds is allocated between regions according to the following formula:

The average of the ratios of region urban area population (RUP) divided by the statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

The board may adjust the regional allocation by plus or minus five percent to fully fund the approved list of regional projects. When requested by the board, TIB staff will update the regional allocation to ensure equitable distribution of funds.

NEW SECTION

WAC 479-14-161 Matching requirement for the urban corridor program. The urban corridor program provides funding which will be matched by other funds as follows:

- (1) For cities:
 - (a) If the city valuation is under \$1.0 billion, the matching rate is ten percent of total project costs.
 - (b) If the city valuation is \$1.0 billion to \$2.5 billion, the rate is fifteen percent of total project costs.
 - (c) If the city valuation is over \$2.5 billion, the rate is twenty percent of total project costs.
- (2) For counties:
 - (a) If the road levy valuation is under \$3.0 billion, the rate is ten percent of total project costs.
 - (b) If the road levy valuation is between \$3.0 billion to \$10.0 billion, the rate is fifteen percent of total project costs.

(c) If the road levy valuation is over \$10.0 billion, the rate is twenty percent of total project costs.

The board uses the current published valuation from the department of revenue.

NEW SECTION

WAC 479-14-200 Sidewalk deviation authorities for urban corridor program. The board recognizes the need for pedestrian facilities on arterial roadways and has required that sidewalks be provided under the urban corridor program. A sidewalk deviation may be requested by the lead agency and may be granted under the following authorities:

(1) The executive director has administrative authority to grant sidewalk deviations as follows:

(a) On both sides if the roadway is a ramp providing access to a limited access route;

(b) On both sides of a designated limited access facility if:

(i) Route is signed to prohibit pedestrians; or

(ii) Pedestrian facilities are provided on an adjacent parallel route;

(c) On one side if the roadway is a frontage road immediately adjacent to a limited access route; or

(d) On one side if the roadway is immediately adjacent to a railroad or other facility considered dangerous to pedestrians.

(2) All other sidewalk deviation requests require board action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 479-14-008	Definitions.
WAC 479-14-010	Programs funded from the transportation improvement account.
WAC 479-14-100	Intent of the transportation partnership program.
WAC 479-14-110	Priority criteria for the transportation partnership program.
WAC 479-14-120	Establishing regions for transportation partnership program.
WAC 479-14-130	Apportionment of funds to transportation partnership program regions.
WAC 479-14-140	Eligible transportation partnership program projects.
WAC 479-14-150	Designation of lead agency for transportation partnership program projects.

WAC 479-14-160	Verification of coordination with planning authority for transportation partnership program projects.
WAC 479-14-170	Planning requirements for multiagency transportation partnership program projects.
WAC 479-14-180	Local/private matching funds on transportation partnership program projects.
WAC 479-14-190	Certification of local/private matching funds for transportation partnership program projects.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 479-15-005	Purpose and authority.
WAC 479-15-008	Definitions.
WAC 479-15-010	Programs funded from the public transportation systems account.
WAC 479-15-100	Intent of the public transportation systems program.
WAC 479-15-110	Priority criteria for public transportation systems program.
WAC 479-15-120	Establishing regions for public transportation systems program.
WAC 479-15-130	Apportionment of funds to public transportation systems program regions.
WAC 479-15-140	Eligible public transportation systems program projects.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 479-17-100	Transportation Equity Act for the 21st Century or its successor acts, surface transportation program, statewide competitive program account—Eligibility.
WAC 479-17-200	Transportation Equity Act for the 21st Century or its successor acts, statewide competitive program account—Criteria.

- WAC 479-17-300 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Eligibility.
- WAC 479-17-400 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Criteria.

Date Adopted: August 20, 2007.
 Katherine D. Vasquez, Manager
 Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 00-03-034, filed 1/12/00, effective 2/12/00)

WAC 388-440-0005 (~~(Exception to rule—Notification requirement.)~~) **How am I informed of the decision on my request to the department for an exception to rule?** (1) (~~Clients are notified~~) You will receive the decision in writing within ten days (~~(of)~~) when department staff:

- (a) (~~The department staff's decision~~) Decides not to file (~~an~~) the exception to rule request; (~~and~~) or
- (b) (~~The department's decision~~) Decides to approve or deny (~~an~~) the exception to rule request.
- (2) The notice (~~will~~) includes information on how to file a (~~the~~) complaint (~~(procedures)~~) as specified in chapter 388-426 WAC.
- (3) This section does not apply to notification requirements for exceptions to rules concerning noncovered medical or dental services or related equipment. See WAC 388-501-0160.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 479-510-450 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Eligibility.
- WAC 479-510-460 Transportation Equity Act for the 21st Century or its successor acts, enhancement program account—Criteria.

WSR 07-18-053
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed August 31, 2007, 8:15 a.m., effective October 1, 2007]

Effective Date of Rule: October 1, 2007.

Purpose: This change will simplify the process for the department to respond to individual requests for an exception to policy.

Citation of Existing Rules Affected by this Order: Amending WAC 388-440-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Adopted under notice filed as WSR 07-14-017 on June 22, 2007.

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 Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

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

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

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