



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (October 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 31, 2017

TIME: 4:05 PM

WSR 17-22-123

Agency: Washington State Patrol

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: To amend WAC 446-65-010(1) to bring current the effective date of all the Code of Federal Regulations (CFRs) adopted by reference in the rule.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 446.65.010
 Suspended:

Statutory authority for adoption: RCW 46.32.020

Other authority: RCW 46.48.170

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: A Regulatory Review performed by the Federal Motor Carrier Safety Administration (FMCSA) during the spring of 2017 noted that many of the CFRs adopted in WAC 446-65-010 were not the CFRs currently in effect. The lack of conformity was the result of specific language in WAC 446-65-010 that adopted the federal regulations "in effect on the effective date" of the rule, which was October 4, 2013. Since the rule adoption in 2013, many of the CFRs adopted by reference in the rule have been amended, some to a significant degree.

On August 29, 2017, WSP was notified that the Owner-Operator Independent Driver's Association submitted a petition to FMCSA alleging that Washington State's administrative rules are out of compliance with a 2015 change to 49 CFR 395 relating to electronic logging devices. The petition asserts that under the current WAC, Washington will not have authority to enforce the ELD requirement when it goes into effect in December 2017. The petition asks FMCSA to withdraw funds from non-compliant states, such as Washington.

Failure to update WAC 446-65-010 to incorporate all of the recent amendments to the CFRs adopted by reference therein could jeopardize grant funding to the state in the amount of \$6,462,667. Therefore, the adoption of this rule change, which brings all of the CFRs incorporated by reference current to October 1, 2017, will allow enforcement of all of the federal regulations contained in the WAC and will enable the uninterrupted receipt of grant funds to Washington, both of which will preserve the public health, safety and general welfare of our citizens.

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

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

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	<u> 1 </u>	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

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


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

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

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

Date: October 30, 2017	Signature: 
Name: John R. Batiste	
Title: Chief	

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), (~~in effect on the effective date of this section~~) as they exist on October 1, 2017, for motor carriers used in intrastate or interstate commerce in their entirety:

- (a) Part 40 Procedures for transportation workplace drug and alcohol testing programs.
 - (b) Part 325 Compliance with interstate motor carrier noise emission standards.
 - (c) Part 350 Commercial motor carrier safety assistance program.
 - (d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations.
 - (e) Part 365 Rules governing applications for operating authority.
 - (f) Part 367 Standards for registration with states.
 - (g) Part 372 Exemptions, commercial zones and terminal areas.
 - (h) Part 373 Receipts and bills.
 - (i) Part 376 Lease and interchange of vehicles.
 - (j) Part 379 Preservation of records.
 - (k) Part 380 Special training requirements.
 - (l) Part 381 Waivers, exemptions, and pilot programs.
 - (m) Part 382 Controlled substances and alcohol use and testing.
 - (n) Part 383 Compliance with commercial driver's license program.
 - (o) Part 385 Safety fitness procedures.
 - (p) Part 387 Minimum levels of financial responsibility for motor carriers.
 - (q) Part 390 General.
 - (r) Part 391 Qualification of drivers. Provided that 49 C.F.R. 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.
 - (s) Part 392 Driving of motor vehicles.
 - (t) Part 393 Parts and accessories necessary for safe operation.
 - (u) Part 395 Hours of service of drivers: Except if a company has drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce provided that:
 - (v) The driver must:
 - (A) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must return to the work reporting location at the end of each duty tour;
 - (B) Have at least ten consecutive hours off duty separating each on-duty period;
 - (C) Not drive:
 - More than twelve hours following at least ten hours off duty;
- or
- After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and
 - After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and

• After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or

• After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.

(ii) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The total number of hours the driver drives each day;

(D) The time the driver is released from duty each day; and

(E) The total time the driver is driving and on duty for the preceding seven days.

(v) Part 396 Inspection, repair, and maintenance.

(w) Part 397 Transportation of hazardous materials; driving and parking rules.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined as starting February 1 and ending November 30 of each year.

(3) Links to the C.F.Rs. are available on the Washington state patrol web site at www.wsp.wa.gov. Copies of the C.F.Rs. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.