



# EXPEDITED RULE MAKING

## CR-105 (October 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON  
FILED

DATE: November 14, 2017

TIME: 2:13 PM

WSR 17-23-084

**Agency:** Washington State Patrol

**Title of rule and other identifying information:** (describe subject) Commercial Motor Vehicle Regulations  
WAC 446-65-010 - Transportation Requirements

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rulemaking amends WAC 446-65-010(1) to bring current to October 1, 2017, all of the parts of the Code of Federal Regulations (CFRs) relating to regulation of interstate and intrastate drivers and carriers that are incorporated by reference.

**Reasons supporting proposal:** A recent regulatory review performed by the Federal Motor Carrier Safety Administration (FMCSA) noted that many of the CFRs adopted in WAC 446-65-010(1) were out of date. The lack of conformity was the result of specific language in WAC 446-65-010(1) 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.

The Washington State Patrol (WSP) was also notified that a petition was submitted to the 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(1 to incorporate all of the recent amendments to the CFRs adopted by reference therein could jeopardize grant funding to the state. 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.

**Statutory authority for adoption:** RCW 46.32.020; RCW 46.68.170

**Statute being implemented:**

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION: 49 CFR Part 395

**Name of proponent:** (person or organization) Chief John R. Batiste, Washington State Patrol

Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
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Drafting:	Linda Powell	Olympia, WA	360-596-3807
Implementation:	Washington State Patrol	Olympia, WA	360-596-4000
Enforcement:	Washington State Patrol	Olympia, WA	360-596-4000

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Expedited Adoption - Which of the following criteria was used by the agency to file this notice:**

Relates only to internal governmental operations that are not subject to violation by a person;

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

Content is explicitly and specifically dictated by statute;

Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

Is being amended after a review under RCW 34.05.328.

**Expedited Repeal - Which of the following criteria was used by the agency to file notice:**

The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

The rule is no longer necessary because of changed circumstances; or

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.


**Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):** An emergency Rule-Making Order was filed on July 24, 2017, for WAC 446-65-010 to allow for the immediate enforcement of the CFRs as they exist on October 1, 2017. The proposed rule will allow the permanent adoption of the CFRs identified in WAC 446-65-010(1) and will allow the continued enforcement of all of the current federal regulations contained in the WAC and will enable the uninterrupted receipt of grant funds to Washington.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO**

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**AND RECEIVED BY** (date) January 22, 2018

<b>Date:</b> November 9, 2017	<b>Signature:</b> 
<b>Name:</b> John R. Batiste	
<b>Title:</b> 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](http://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.