

Chapter 446-65 WAC

COMMERCIAL MOTOR VEHICLE REGULATIONS

WAC

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WAC 446-65-005 Promulgation. By authority of RCW 46.32.020, the Washington state patrol hereby adopts the following rules establishing standards for commercial motor vehicles as defined by chapter 46.32 RCW.

[Statutory Authority: RCW 46.30.020. 94-08-004, § 446-65-005, filed 3/24/94, effective 4/24/94. Statutory Authority: RCW 46.32.020. 91-06-066 (Order 90-005), § 446-65-005, filed 3/1/91, effective 4/1/91.]

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (CFR), and any amendments thereto 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 380 Special training requirements.
- (h) Part 382 Controlled substances and alcohol use and testing.
- (i) Part 383 Compliance with commercial driver's license program.
- (j) Part 385 Safety fitness procedures.
- (k) Part 387 Minimum levels of financial responsibility for motor carriers.
- (l) Part 390 General.
- (m) Part 391 Qualification of drivers. Provided that 49 CFR 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.
- (n) Part 392 Driving of motor vehicles.
- (o) Part 393 Parts and accessories necessary for safe operation.
- (p) Part 395 Hours of service of drivers: Except if a company has:
 - (i) Drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce; or

(ii) Operators of intrastate property-carrying commercial motor vehicles that do not require a commercial drivers license to operate.

They are exempt from the requirements of CFR 395.3 (maximum driving time) and CFR 395.8 (record of duty status) and ineligible to use the provisions of CFR 395.1 (e)(1), (g) and (o) provided that:

(A) The driver must:

(I) 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;

(II) Have at least ten consecutive hours off duty separating each on-duty period;

(III) 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.

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

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

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

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

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

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

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

(r) 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) Agricultural operations exceptions:

(a) Agricultural operations transporting agricultural products other than Class 2 material (Compressed Gases), over roads, other than the National System of Interstate

Defense Highways, between fields of the same farm, is excepted from Part 397 when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier.

(ii) The movement of the agricultural product conforms to all other laws in effect on or before July 1, 1998, and 49 CFR 173.24, 173.24a, and 173.24b.

(b) The transportation of an agricultural product to or from a farm within one hundred fifty miles of the farm, is excepted from the requirements of 49 CFR Part 172 subpart G (emergency response information) and H (training requirements) when:

(i) The agricultural product is transported by a farmer who is an intrastate private motor carrier;

(ii) The total amount of agricultural product being transported on a single vehicle does not exceed:

(A) Sixteen thousand ninety-four pounds of ammonium nitrate fertilizer properly classed as Division 5.1, PGIII, in bulk packaging; or

(B) Five hundred two gallons for liquids or gases, or five thousand seventy pounds for solids, of any other agricultural product;

(iii) The packaging conforms to the requirements of state law and is specifically authorized for transportation of the agricultural product by state law and such state law has been in effect on or before July 1, 1998; and

(iv) Each person having any responsibility for transporting the agricultural product or preparing the agricultural product for shipment has been instructed in the applicable requirements of 49 CFR adopted in this section.

(C) Formulated liquid agricultural products in specific packaging of fifty-eight gallon capacity or less, with closures manifolded to a closed mixing system and equipped with a positive dry disconnect device, may be transported by a private motor carrier between a final distribution point and an ultimate point of application or for loading aboard an airplane for aerial application.

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

[Statutory Authority: RCW 46.32.020. 09-01-016, § 446-65-010, filed 12/5/08, effective 1/5/09; 06-08-082, § 446-65-010, filed 4/4/06, effective 5/5/06; 05-20-090, § 446-65-010, filed 10/5/05, effective 11/5/05; 05-04-002, § 446-65-010, filed 1/19/05, effective 2/19/05. Statutory Authority: RCW 46.48.170. 98-19-043, § 446-65-010, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 46.33.020. 96-22-035, § 446-65-010, filed 10/31/96, effective 12/1/96. Statutory Authority: RCW 46.32.020. 95-13-080, § 446-65-010, filed 6/20/95, effective 7/21/95; 94-01-178, § 446-65-010, filed 12/22/93, effective 1/22/94; 91-06-066 (Order 90-005), § 446-65-010, filed 3/1/91, effective 4/1/91.]

WAC 446-65-020 Physical qualifications for drivers.

(1) If the medical examiner or physician finds any physical condition listed in Title 49 CFR 391.41 (b)(1) through (13) that is likely to interfere with the driver's ability to operate or control a motor vehicle safely, it shall be the responsibility of the driver to immediately forward a copy of the driver's medical examination to the Department of Licensing, Responsibility Division, Medical Section, P.O. Box 9030, Olympia, WA 98507-9030. Upon receipt of the medical examination,

the department of licensing will review and evaluate the driver's physical qualifications to operate the class of motor vehicle the person intends to drive.

(2) The department of licensing shall send a notice of determination to the driver. A department of licensing clearance notification shall be sufficient cause for the medical examiner to issue a medical examiner's certificate.

(3) A failure by the driver to furnish a copy of the medical examination to the department of licensing as required above shall result in no clearance action being taken by the department of licensing.

[Statutory Authority: RCW 46.32.020. 09-01-016, § 446-65-020, filed 12/5/08, effective 1/5/09; 95-13-080, § 446-65-020, filed 6/20/95, effective 7/21/95.]

WAC 446-65-030 Intrastate high risk and imminent hazard carriers. (1) Any intrastate motor carrier receiving a proposed unsatisfactory safety rating may be identified as a high risk carrier pursuant to RCW 46.32.080. They may also be identified as high risk through analysis of various data, including but not limited to the following:

(a) Safety fitness rating (SafeStat score);

(b) Out of service rate that is higher than the national average for drivers and/or vehicles;

(c) Carrier requires or authorizes any driver or vehicle to operate in violation of an out of service order;

(d) The number and severity of collisions to include fatalities and serious injury;

(e) Deficiencies or violations of safety management procedures and/or practices;

(f) Carrier who consistently refuses to come into compliance with federal and state regulations.

(2) If a motor carrier receives a high risk rating, they must undergo a compliance review by the Washington state patrol to determine compliance. During the compliance review:

(a) If no critical/acute violations are found, the carrier will be listed as satisfactory and be removed from the high risk category.

(b) If critical/acute violations are found, the carrier must:

(i) Schedule a follow-up compliance review with the Washington state patrol.

(A) If violations are found after the first compliance review, the follow-up compliance review must be scheduled within sixty to ninety days.

(B) If violations are found after the second compliance review, a third compliance review must be scheduled within one hundred twenty to one hundred eighty days.

(C) If repeat violations are found during any follow-up compliance review, all funds held in abeyance (suspended) from the previous audit will be reinstated along with any repeat violations/penalties.

(ii) Submit a carrier safety action plan within five days to the Washington state patrol outlining the action they have taken or will take to become compliant. This plan must:

(A) Be submitted on company letterhead.

(B) Be signed by the owner/officer of the company.

(C) Provide all supporting documents to show how the carrier plans to become compliant or has become compliant.

(D) Be reviewed and agreed upon by the Washington state patrol. The Washington state patrol may provide

changes and request a carrier revise their safety plan and return it to the carrier for further action.

(iii) If a carrier's intrastate DOT number is inactivated:

(A) The carrier will receive a letter from the Washington state patrol advising them their intrastate DOT number has been inactivated and what steps need to be completed to be considered for reactivation.

(B) The Washington state patrol will notify the department of licensing that they have placed an out of service order on the carrier's intrastate DOT number and all vehicles registered to the carrier.

(C) The carrier will have a follow-up compliance review conducted and submit a carrier safety action plan outlining their plans for compliance.

(D) The Washington state patrol will review the safety plan and a follow-up compliance review will be conducted. If the carrier receives a rating of satisfactory or conditional, then the DOT number will be reinstated.

(iv) If a carrier's intrastate DOT number is reinstated:

(A) The carrier will receive a letter from the Washington state patrol advising them their DOT number will be reinstated.

(B) The carrier will need to update their information on a MCS150 form located on the Federal Motor Carrier Safety Administration (FMCSA) web site.

(C) Motor Carrier Management Information System (MCMIS) will be updated to show the intrastate DOT is active.

(3) An intrastate motor carrier may be deemed an imminent hazard pursuant to RCW 46.32.080 (3)(e) and placed out of service without going through any prior compliance reviews. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief of the Washington state patrol or their designee must consider safety factors. A safety factor which constitutes an imminent hazard includes any safety problem or condition which is likely to result in serious injury or death if not discontinued immediately.

(4) If a carrier is required to have a DOT number, they will be required to properly mark their vehicles as prescribed by the Washington state patrol. The marking must display the following:

(a) The legal name or a single trade name of the motor carrier as listed on the MCS150 form.

(b) The motor carrier identification number issued by the FMCSA, preceded by the letter "USDOT."

(i) Size, shape, location, and color of markings:

(A) Appear on both sides of the CMV;

(B) Be in letters that contrast sharply in color with the background on which the letters are placed;

(C) Be readily legible, during daylight hours, from a distance of fifty feet while the CMV is stationary; and

(D) Be kept and maintained in a manner that retains the legibility.

(ii) Construction and durability:

(A) The marking may be painted on the CMV; or

(B) May consist of a removable device.

[Statutory Authority: RCW 46.32.020, 09-01-016, § 446-65-030, filed 12/5/08, effective 1/5/09.]

(12/21/09)

WAC 446-65-040 Compliance review hearing process. (1) A carrier that receives a written notice of penalty from the state patrol has twenty business days from receipt of notice to:

(a) Pay the penalty as stated in the notice; or

(b) Submit a written application for mitigation of the penalty; or

(c) Submit a written request for an administrative hearing.

(2) **Mitigation.** A carrier may submit a request for mitigation of a penalty, except as provided in RCW 46.32.100.

(a) A carrier's request for mitigation must:

(i) Be in writing;

(ii) Contain a statement explaining what the steps the carrier has taken to come into compliance, or what steps the carrier proposes to take in the future to come into compliance;

(iii) Contain a notarized signature of the requestor; and

(iv) Be received by the state patrol within twenty business days of the receipt of notice.

(b) Upon timely receipt of a written request for mitigation of a penalty, the state patrol will:

(i) Review the materials submitted by the requestor; and

(ii) Notify the carrier in writing of the disposition of the request for mitigation.

(3) **Administrative hearing.** A carrier may request an administrative hearing to contest the violation or penalty, or both.

(a) A carrier's request for an administrative hearing must:

(i) Be in writing; and

(ii) Be received by the state patrol within twenty business days after receipt of the notice of penalty **or** receipt of the disposition of a request for mitigation.

(b) A carrier may request an administrative hearing without first requesting mitigation of the penalty.

(c) An administrative hearing will be conducted under chapter 34.05 RCW (Washington Administrative Procedure Act).

(d) The following process applies to administrative hearings under this chapter:

(i) The state patrol will notify the assistant attorney general of the carrier's request for an administrative hearing.

(ii) The assistant attorney general will draft an administrative complaint and send it to the carrier and to the office of administrative hearings.

(iii) The office of administrative hearings will schedule a hearing date, and will notify the carrier, assistant attorney general, and patrol in writing of the hearing date, time, and location.

(iv) The hearing will be conducted by an administrative law judge assigned by the office of administrative hearings.

(v) At the hearing, the assistant attorney general will present witnesses and other evidence on behalf of the WSP.

(vi) At the hearing, the carrier may be represented by an attorney or may choose to represent himself or herself. The carrier or his/her attorney will be allowed to present witnesses and other evidence.

(e) Nothing in this section will prevent the parties from resolving the administrative matter by settlement agreement prior to conclusion of the administrative hearing.

(4) **Initial and final order.** At the conclusion of the hearing, the administrative law judge will prepare an initial order and send it to the carrier and the assistant attorney general.

(a) Either the carrier or the assistant attorney general, or both, may file a petition for review of the initial order with the patrol within twenty days of the date of service of the initial order. A petition for review must:

(i) Specify the portions of the initial order to which exception is taken;

(ii) Refer to the evidence of record which is relied upon to support the petition; and

(iii) Be filed with the patrol within twenty days of the date of service of the initial order.

(b) A party on whom a petition for review has been served may, within ten days of the date of service, file a reply to the petition. Copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.

(c) The administrative record, the initial order, and any exceptions filed by the parties will be submitted to the chief or his/her designee for review. Following this review, the chief or his/her designee will enter a final order that is appealable under the provisions of chapter 34.05 RCW.

[Statutory Authority: RCW 46.30.020 and Title 49 Code of Federal Regulations (C.F.R.). 10-01-129, § 446-65-040, filed 12/21/09, effective 1/21/10.]