Chapter 446-65 WAC

COMMERCIAL MOTOR VEHICLE REGULATIONS

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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;

(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 (12/21/09)
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 specification 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 aircraft for aerial application.


[Statutory Authority: RCW 46.32.020. 09-01-016, § 446-65-010, filed 12/5/08, effective 12/5/08; 95-13-080, § 446-65-010, filed 6/20/95, effective 7/21/95; 95-13-080, § 446-65-010, 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...
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;
         (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.

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