

WSR 21-18-114

EXPEDITED RULES

WASHINGTON STATE PATROL

[Filed September 1, 2021, 8:22 a.m.]

Title of Rule and Other Identifying Information: WAC 446-50-080 Transportation of hazardous materials—Authority and 446-65-010 Commercial motor vehicle regulations—Transportation requirements.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making amends WAC 446-65-010(1) and 446-50-080(1) to bring current to October 1, 2020, 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Motor Carrier Safety Administration noted that many of the CFRs adopted in WAC 446-65-010(1) and 446-50-080(1) were out of date. Since the rule adoption in 2017, many of the CFRs adopted by reference in the rule have been amended, some to a significant degree.

Failure to update WAC 446-65-010(1) and 446-50-080(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, 2020, 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 and 46.48.170.

Rule is necessary because of federal law, [no information supplied by agency].

Name of Proponent: Chief John R. Batiste, Washington State Patrol, governmental.

Name of Agency Personnel Responsible for Drafting: Kimberly Mathis, 106 11th Avenue S.W., Olympia, WA 98504, 360-596-4017; Implementation and Enforcement: Washington State Patrol, 106 11th Avenue S.W., Olympia, WA 98504, 360-596-4000.

This notice meets the following criteria to use the expedited adoption process for these rules:

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.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed rule will allow the permanent adoption of the CFRs identified in WAC 446-65-010(1) and 446-50-080(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 Ms. Kimberly Mathis, Washington State Patrol, 106 11th Avenue S.W., Olympia, WA 98504, phone 360-596-4017, email wsprules@wsp.wa.gov, AND RECEIVED BY August 30, 2021.

August 31, 2021
John R. Batiste
Chief

OTS-3291.1

AMENDATORY SECTION (Amending WSR 13-18-068, filed 9/3/13, effective 10/4/13)

WAC 446-50-080 Transportation requirements. (1) The Washington state patrol acting by and through the chief of the Washington state patrol after conferring with the emergency management council under RCW 38.52.040 hereby adopts the following parts of Title 49 Code of Federal Regulations, ((in effect on the effective date of this section)) as they exist on October 1, 2020, for motor carriers used in intrastate or interstate commerce in their entirety:

(a) The following sections of part 107 Hazardous materials program procedures:

(i) Subpart F - Registration of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers; and

(ii) Subpart G - Registration of persons who offer or transport hazardous materials.

(b) Part 170 (Reserved).

(c) Part 171 General information, regulations, and definitions.

(d) Part 172 Hazardous materials table, special provisions, hazardous materials communications, emergency response information and training requirements.

(e) Part 173 Shippers—General requirements for shipments and packaging.

(f) Part 177 Carriage by public highway.

(g) Part 178 Specifications for packagings.

(h) Part 180 Continuing qualification and maintenance of packagings.

(i) Part 189 (Reserved).

(2) Title 49 C.F.R., parts 100 through 199, relates to safety in the transportation of hazardous materials upon the public highways. This regulation is intended to apply only to the transportation of hazardous materials by highway in Washington, to the handling and storage operations incident to such transportation, and to the highway portion of an intermodal shipment of hazardous materials.

(3) Copies of Title 49 C.F.R., parts 100 through 199, now in force are on file at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Copies of the C.F.R. may be purchased through the Superintendent of Documents, United States Gov-

ernment Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20402.

[Statutory Authority: RCW 46.48.170. WSR 13-18-068, § 446-50-080, filed 9/3/13, effective 10/4/13. Statutory Authority: RCW 46.48.170 - 46.48.190. WSR 85-20-070 (Order 85-1), § 446-50-080, filed 9/30/85. Statutory Authority: RCW 46.48.170. WSR 84-05-010 (Order 82-3), § 446-50-080, filed 2/7/84; WSR 83-03-008 (Order 82-3), § 446-50-080, filed 1/11/83; WSR 82-07-100 (Order 82-2), § 446-50-080, filed 3/24/82. Statutory Authority: RCW 46.48.190. WSR 81-03-008 (Order 80-2), § 446-50-080, filed 1/8/81; WSR 80-01-009 (Order 79-4), § 446-50-080, filed 12/11/79.]

OTS-3292.1

AMENDATORY SECTION (Amending WSR 21-08-002, filed 3/24/21, effective 4/24/21)

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.), as they exist on October 1, ((2017)) 2020, 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:

(i) 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 in RCW 46.32.130.

(3) Links to the C.F.Rs. are available on the Washington state patrol website 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.

[Statutory Authority: RCW 46.32.020 and 46.48.170. WSR 21-08-002, § 446-65-010, filed 3/24/21, effective 4/24/21; WSR 18-06-029, § 446-65-010, filed 2/28/18, effective 3/1/18. Statutory Authority: RCW 46.32.020. WSR 13-18-069, § 446-65-010, filed 9/3/13, effective 10/4/13; WSR 12-03-080, § 446-65-010, filed 1/13/12, effective 2/13/12; WSR 09-01-016, § 446-65-010, filed 12/5/08, effective 1/5/09; WSR 06-08-082, § 446-65-010, filed 4/4/06, effective 5/5/06; WSR 05-20-090, § 446-65-010, filed 10/5/05, effective 11/5/05; WSR 05-04-002, § 446-65-010, filed 1/19/05, effective 2/19/05. Statutory Authority: RCW 46.48.170. WSR 98-19-043, § 446-65-010, filed 9/11/98, effective 10/12/98. Statutory Authority: RCW 46.33.020. WSR 96-22-035, § 446-65-010, filed 10/31/96, effective 12/1/96. Statutory Authority: RCW 46.32.020. WSR 95-13-080, § 446-65-010, filed 6/20/95, effective

7/21/95; WSR 94-01-178, § 446-65-010, filed 12/22/93, effective
1/22/94; WSR 91-06-066 (Order 90-005), § 446-65-010, filed 3/1/91, ef-
fective 4/1/91.]