**EXPEDITED RULE MAKING**

**CR-105 (December 2017)**
(Implements RCW 34.05.353)

**Agency:** Washington State Patrol

**Title of rule and other identifying information:** (describe subject) WAC 446-50-080 Transportation of Hazardous Materials – Authority and WAC 446-65-010 Commercial Motor Vehicle Regulations – Transportation Requirements

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This rulemaking amends WAC 446-65-010(1) and WAC 446-50-080(1) to bring current to October 1, 2020, all of the parts of the Code of Federal Regulations (CRFs) 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Safety Administration (FMCSA) noted that many of the CFIRs adopted in WAC 446-65-010(1) and WAC 446-50-080(1) were out of date. Since the rule adoption in 2017, many of the CFIRs adopted by reference in the rule have been amended, some to a significant degree.

Failure to update WAC 446-65-010(1) and WAC 446-50-080(1) to incorporate all of the recent amendments to the CFIRs adopted by reference therein could jeopardize grant funding to the state. Therefore, the adoption of this rule change, which brings all of the CFIRs incorporated by reference current to October 1, 2020, will allow enforcement of all of the federal regulations contained in the WACs and will enable the uninterrupted receipt of grant funds to Washington.

**Statutory authority for adoption:** RCW 46.32.020 and 46.48.170

**Statute being implemented:**

**Is rule necessary because of a:**

- Federal Law? ☒ Yes ☐ No
- Federal Court Decision? ☐ Yes ☒ No
- State Court Decision? ☐ Yes ☒ No

If yes, CITATION:

**Name of proponent:** (person or organization) Chief John R. Batiste, Washington State Patrol ☒ Private ☐ Public ☒ Governmental

**Name of agency personnel responsible for:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Office Location</th>
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<tbody>
<tr>
<td>Drafting:</td>
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<td>Enforcement:</td>
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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, makes address or name changes, or clarifies 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): The proposed rule will allow the permanent adoption of the CFRs identified in WAC 446-65-010(1) and WAC 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

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AND RECEIVED BY (date) August 30, 2021

Date: August 31, 2020
Name: John R. Batiste
Title: Chief

Signature: [Signature]
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.

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, 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:
(A) The driver must:
(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 pre-
ceeding 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 trans-
porters, 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.