



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: July 11, 2023

TIME: 2:31 PM

WSR 23-15-040

Agency: Washington State Patrol

Original Notice

Supplemental Notice to WSR \_\_\_\_\_

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 23-11-130 ; or

Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW \_\_\_\_\_.

Title of rule and other identifying information: (describe subject)

Hearing location(s):

Date: Time: Location: (be specific) Comment:

Date:	Time:	Location: (be specific)	Comment:
August 22, 2023	8:30am	Washington State Patrol Helen Somers Building 106 11 <sup>th</sup> Street SE, Room 4023 Olympia, WA 98507	

Date of intended adoption: August 22, 2023 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Agency Rules Coordinator

Address: 106 11<sup>th</sup> Street SE, Olympia, WA 98507

Email: wsprules@wsp.wa.gov

Fax:

Other:

By (date) August 21, 2023

Assistance for persons with disabilities:

Contact Kimberly Mathis, Agency Rules Coordinator

Phone: 360-596-4017

Fax:

TTY:

Email: wsprules@wsp.wa.gov

Other:

By (date) August 21, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: WAC 446-65-010(1) needs to be amended to bring all the Code of Federal Regulations adopted by reference current to October 1, 2023

Reasons supporting proposal: Failure to update WAC 446-65-010(1) to incorporate all of the recent amendments to the Code of Federal Regulations adopted by reference therein could jeopardize grant funding to the state. Therefore, the adoption of this rule change, which brings all of the Code of Federal Regulations incorporated by reference current to October 1, 2023, will allow enforcement of all of the federal regulations contained in the WAC and will enable the uninterrupted receipt of grant funds to Washington, both of which will preserve the public health, safety and general welfare of our citizens.

Statutory authority for adoption: RCW 46.32.020 and 46.48.170

Statute being implemented: RCW 46.32.020 and 46.48.170

Is rule necessary because of a:

Federal Law?

Yes  No

Federal Court Decision?

Yes  No

State Court Decision?

Yes  No

If yes, CITATION: Title 49 Code of Federal Regulations

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

Type of proponent:  Private  Public  Governmental

Name of proponent: (person or organization) Washington State Patrol

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Kimberly Mathis	Olympia, WA	360-596-4017
Implementation:	Washington State Patrol	Olympia, WA	360-596-3807
Enforcement:	Washington State Patrol	Olympia, WA	360-596-3807

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: A cost-benefit analysis is not required per RCW 34.05.328(5)(a)(i) – (ii) and 34-05-328(5)(b)(iii).

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.  
Citation and description: Title 49 Code of Federal Regulations – The proposed rule will allow the permanent adoption of the Code of Federal Regulations 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.

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b) (Internal government operations)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e) (Dictated by statute)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c) (Incorporation by reference)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f) (Set or adjust fees)
<input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d) (Correct or clarify language)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** July 11, 2023

**Name:** John R. Batiste

**Title:** Chief

**Signature:**



**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)) 2023, 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)) 100 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)) 10 consecutive hours off duty separating each on-duty period;

(C) Not drive:

• More than ((twelve)) 12 hours following at least ((ten)) 10 hours off duty; or

• After the ((fourteenth)) 14th hour after coming on duty on at least five days of any period of seven consecutive days; and

• After the ((sixteenth)) 16th 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~~) 80 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~~) 90 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~~) 24 or more consecutive hours.

(ii) The motor carrier that employs the driver must maintain and retain for a period of (~~twelve~~) 12 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.R.s.~~) C.F.R. are available on the Washington state patrol website at [www.wsp.wa.gov](http://www.wsp.wa.gov). Copies of the (~~C.F.R.s.~~) C.F.R. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.