

Agenda Date: January 25, 2006
Item Number: C1

Docket: T-051915

Subject: CR-105, Expedited Rulemaking, regarding repeal of a rule requiring non-profit bus service providers to keep specific records.

Staff: Betty Young, Compliance Specialist, Business Practices Investigations
Karen Caillé, Administrative Law Judge
Jonathan Thompson, Assistant Attorney General

Background:

The Commission's non-profit bus rules (chapter 480-31 WAC) require service providers to keep specific records on file and subject to inspection by the Commission. The rules also adopt by reference Title 49 Code of Federal Regulations (CFR), which contains specific recordkeeping requirements.

As outlined in the attached table, the records required by WAC 480-31-140 are already required by other sections of chapter 480-31 WAC; therefore, this rule is unnecessary. In addition, the duplicative recordkeeping requirements in the same set of rules have caused confusion among a number of company operators. Accordingly, this rulemaking proposal would repeal WAC 480-31-140. In addition, since WAC 480-31-140 is referenced in WAC 480-31-999, Adoption by reference, the proposal would amend WAC 480-31-999(2)(b) to eliminate the reference to WAC 480-31-140.

The proposed rule changes are attached to this memo. Interested persons may file objections to the expedited rulemaking within 45 days after the notice is published in the Washington State Register. Staff anticipates no objections because the proposal would simply clarify recordkeeping requirements.

Discussion:

According to the Administrative Procedures Act (RCW 34.05.353), the Commission may pursue an expedited rulemaking to repeal a rule if other rules of the agency or of another agency govern the same activity making the rule redundant, as in this case.

Conclusion:

We recommend that at the January 25 commission open meeting you direct the Secretary to file a Notice of Expedited Rulemaking (CR-105) to repeal WAC 480-31-140, and amend WAC 480-31-999 (2)(b).

**WAC 480-31-140 Record-Keeping Requirements vs.
 Records Required in CFR or WAC**

WAC 480-31-140 Requires:	Other Rules in WAC 480-31 Require:
In subsection (1), that the carrier keep records that include a description of each vehicle used, including make, serial number, and year.	In 49 CFR §396.3, adopted by reference in WAC 480-31-100, retention of records for each vehicle used, including make, serial number, year, and tire size.
In subsection (2), that the carrier keep records that reflect the driver's hours of service (duty status).	In 49 CFR §395.8, adopted by reference in WAC 480-31-130, retention of records that reflect the driver's record of duty status.
In subsection (3), that the carrier keep records for each driver's license number.	In 49 CFR §391.21, adopted by reference in WAC 480-31-130, retention of records for the issuing state, number, and expiration date of each driver's license.
In subsection (4), that the carrier keep records of complaints.	In WAC 480-31-090, retention of records of all complaints concerning its service or rates.
In subsection (5), that the carrier keep records of repair, inspection, and maintenance as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396.	In 49 CFR §396.3, adopted by reference in WAC 480-31-100, retention of records for repair, inspection, and maintenance.

~~**WAC 480-31-140 Safety inspections.** All providers must keep on file in their main office, subject to inspection by an authorized representative of the commission, or subject to provision to the commission upon request:~~

~~—(1) Description of each vehicle used, including make, serial number, and year. If the provider does not own the vehicle, the records must show the name of the person providing the vehicle;~~

~~—(2) Driver's hours of service (duty status);~~

~~—(3) Each driver's license number;~~

~~—(4) Records of complaints, as required by WAC 480-31-090;~~

~~—(5) Records of repair, inspection and maintenance, to include their date and type, as required by the United States Department of Transportation in Title 49, Code of Federal Regulations, part 396;~~

~~—(6) The commission adopts by reference the provisions of federal rules cited in this section in effect on the date specified in WAC 480-31-999.~~

~~[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-31-140, filed 9/28/01, effective 10/29/01. Statutory Authority: RCW 34.05.310, 34.05.356, 80.01.040, 80.04.160 and 80.04.160 [81.04.160]. 99-20-013 (Order R-465, Docket No. A-980247), § 480-31-140, filed 9/24/99, effective 10/25/99. Statutory Authority: RCW 80.01.040 and chapter 80.01 RCW. 97-08-037 (Order R-440, Docket No. TC-961102), § 480-31-140, filed 3/27/97, effective 4/27/97.]~~

WAC 480-31-999 Adoption by reference. In this chapter, the commission adopts by reference all or portions of regulations and standards identified below. They are available for inspection at the commission branch of the Washington state library. The publications, effective dates, references within this chapter, and availability of the resources are as follows:

(1) **North American Standard Out-of-Service Criteria (OOSC)** is published by the Commercial Vehicle Safety Alliance (CVSA).

(a) The commission adopts the version in effect on April 1, 2005.

(b) This publication is referenced in WAC 480-31-120 (Equipment -- Inspection -- Ordered for repairs).

(c) The North American Out-of-Service Criteria is a copyrighted document. Copies are available from CVSA in Washington, D.C.

(2) **Title 49 Code of Federal Regulations**, cited as 49 CFR, including all appendices and amendments is published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2004.

(b) This publication is referenced in WAC 480-31-100 (Equipment -- Safety), WAC 480-31-120 (Equipment -- Inspection -- Ordered for repairs), and WAC 480-31-130 (Operation of motor vehicles) ~~and WAC 480-31-140 (Safety inspections).~~

(c) Copies of Title 49 Code of Federal Regulations are available from the U.S. Government Online Bookstore, <http://bookstore.gpo.gov/>, and from various third-party vendors.

[Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160 and 34.05.353. 05-21-022, § 480-31-999, filed 10/10/05, effective 11/10/05; 04-01-152 (General Order No. R-511, Docket No. A-030852), § 480-31-999, filed 12/22/03, effective 1/22/04; 02-18-033 (Docket No. A-020379, General Order No. R-501), § 480-31-999, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 80.01.040, 80.04.160, 81.04.160, and 34.05.310. 01-20-061 (Docket No. A-010827, General Order No. R-491), § 480-31-999, filed 9/28/01, effective 10/29/01