BEFORE THE

FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

UNITED STATES DEPARTMENT OF TRANSPORTATION

PETITION

OWNER-OPERATOR INDEPENDENT DRIVERS ASSOCIATION, INC.

PURSUANT TO 49 C.F.R. § 350.335(a)(3)

CONCERNING THE INCOMPATIBILITY OF STATE REGULATIONS AND ENFORCEMENT PRACTICES WITH FEDERAL MOTOR CARRER SAFETY REGULATIONS

DEPARTMENT OF TRANSPORTATION
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August 28, 2017

I. PETITION

Petitioner, the Owner-Operator Independent Drivers Association, Inc. ("OOIDA"), hereby submits the following petition pursuant to 49 C.F.R. § 350.335(a)(3):

A. OOIDA hereby petitions the Federal Motor Carrier Safety Administration ("FMCSA") to make a determination that the laws or regulations of the following states are incompatible with the Federal Motor Carrier Safety Regulations ("FMCSRs") because such states have not adopted into state law the recently promulgated Electronic Logging Device ("ELD") rule currently codified in various sections of Part 395, Title 49, Code of Federal Regulations and scheduled for implementation on December 18, 2017.

TABLE 1

States Who Have Not Yet Adopted the ELD Final Rule

State	Last FMCSR Incorporation Date
Alaska	10/1/2014
Arkansas	8/21/1997
Arizona	10/1/2012
Connecticut	10/10/2013
District of Columbia	11/19/2010
Delaware	6/28/2006
Hawaii	11/1/2015
Idaho	10/21/2015
Illinois	10/1/2014
Kansas	10/1/2013
Kentucky	2/3/2006
Louisiana	
Massachusetts	1997
Maine	7/19/2015
Michigan	6/29/2012
Missouri	8/28/2013
Mississippi	5/5/2011
Nevada	5/30/2012
New York	10/1/2013
Oklahoma	7/25/2013
Pennsylvania	4/17/2010
South Carolina	3/27/1998
Utah	4/23/2015
Virginia	1/1/2010
Washington	10/4/2013
Wisconsin	5/1/2009

B. OOIDA hereby petitions FMCSA to withdraw the Motor Carrier Safety Assistance Program ("MCSAP") plan approval and withhold MCSAP funds for the following states because these states have not adopted new or amended FMCSRs for a period of three years or longer as required by 49 C.F.R. § 350.335(a)(2) rendering their regulations and enforcement practices incompatible with the FMCSR within the meaning of Section 350.335(a)(3).

TABLE 2

States Who Are Three or More Years Behind in Adopting Changes to the FMCSRs

State	Last FMCSR Incorporation Date
Arkansas	8/21/1997
Arizona	10/1/2012
Connecticut	10/10/2013
District of Columbia	11/19/2010
Delaware	6/28/2006
Kansas	10/1/2013
Kentucky	2/3/2006
Louisiana	
Massachusetts	1997
Michigan	6/29/2012
Montana	8/28/2013
Mississippi	5/5/2011
Nevada	5/30/2012
New York	10/1/2013
Oklahoma	7/25/2013
Pennsylvania	4/17/2010
South Carolina	3/27/1998
Virginia	1/1/2010
Washington	10/4/2013
Wisconsin	5/1/2009

A state that fails to incorporate a new or modified FMCSR and remains out of compliance for three years is subject to losing approval of its MCSAP plan and withholding of its MCSAP funds. 49 C.F.R. § 350.335(a)(2). Thus, for instance, the rest-break rules in 49 C.F.R. § 395.3(a)(3)(ii) were modified effective October 28, 2013. Hours of Service of Drivers; Amendment of the 30-Minute Rest Break Requirement, 78 Fed. Reg. 64,179 (Oct. 28, 2013). None of the states in Table 2 incorporated this amendment within three years after October 28, 2013 (and indeed still have not incorporated this amendment) and are therefore out of compliance under 49 C.F.R. § 350.335(a)(2). Similarly, states that last adopted the FMCSRs

before October 1, 2013—such as Arizona, Michigan, Nevada, Oklahoma, and others—have not adopted extensive changes to the FMCSRs implementing certain requirements from the Moving Ahead for Progress in the 21st Century Act, Pub. L. 112-141, 126 Stat. 405 (2012). *See* Amendments To Implement Certain Provisions of the Moving Ahead for Progress in the 21st Century Act (MAP–21), 78 Fed. Reg. 60,226 (Oct. 1, 2013). As states' FMCSR incorporation lags further behind, more and more FMCSR changes are missed, and the states drift farther from their up-to-date counterparts.

II. THE INTEREST OF OOIDA

OOIDA is the largest trade association representing the views of small-business truckers and professional truck drivers. OOIDA has more than 158,000 members located in all fifty states that collectively own and operate more than 240,000 individual heavy-duty trucks. Its mission is to promote and protect the interests of its members on any issues that might impact its members' economic well-being, working conditions, and the safe operation of commercial motor vehicles on our nation's highways. The vast majority of OOIDA members are either motor carriers or drivers who are subject to the FMCSRs and who will be required to comply with the ELD mandate when that rule becomes effective on December 18, 2017. OOIDA members operate commercial motor vehicles in all fifty states, including the states identified above, and will be subject to the unauthorized enforcement efforts of inspectors within these states.

The mailing and internet address and phone number of the Association is:

Owner-Operator Independent Drivers Association, Inc.
P.O. Box 1000
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Grain Valley, Missouri 64029
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III. LEGAL BASIS FOR FINDING FAILURE TO INCORPORATE CURRENT VERSIONS OF THE FMCSRS INTO STATE LAW

A. Background

In order to participate in the MCSAP, an individual state is required to incorporate the FMCSRs into state law and to certify to FMCSA that it has done so. It is also required to certify that it is authorized under state law to enforce those regulations. 49 U.S.C. § 31102(b)(2). Most states provide such certification upon becoming a participant in MCSAP. A persistent problem has arisen, however, when FMCSA amends its safety regulations. Unless updated, the original adoption of the FMCSRs by many individual states becomes stale and fails to incorporate newly amended or newly promulgated regulations into state law. Under such circumstances, the regulations and enforcement practices of such states become incompatible with the FMCSRs within the meaning of 49 C.F.R. § 350.335(a)(3). State enforcement officials only have authority to inspect and enforce duly enacted state laws.

Congress has not delegated authority to the states to enforce federal hours of service regulations. Rather, the United States Secretary of Transportation and the United States Attorney General are charged with enforcement duties. 49 U.S.C. § 507. In order to expand the government's enforcement capability, Congress established the MCSAP grant program, whereby states may receive federal grants on the condition that they adopt and enforce state laws that comport with the FMCSRs. 49 U.S.C. § 31102; 49 C.F.R. Part 350 *et seq*. Because the states may not directly enforce the FMCSRs, including hours of service rules, it is imperative that the states regularly update their own laws to reflect new or amended regulations promulgated by FMCSA. Attempting to enforce safety standards that have not been incorporated into state law raises serious constitutional issues under both the federal constitution and various state constitutions.

Enforcement without statutory or regulatory authorization also raises serious Fourth Amendment problems. A warrantless ELD inspection without state statutory or regulatory authorization or published inspection scheme provides drivers with no constitutionally adequate substitute for a warrant, as required under *New York v. Burger*, 482 U.S. 691, 703 (1987), and *Donovan v. Dewey*, 452 U.S. 594, 603 (1981).

B. FMCSA Has Neglected Its Statutory Responsibility to Make State MCSAP Plans Public

A state participating in MCSAP is required to certify to FMCSA that it has adopted the FMCSRs or compatible regulations into state law and that its enforcement agency has the "legal authority, resources and qualified personnel to enforce such regulations." 49 C.F.R. § 350.201(a), (d) and (e).

By statute, FMCSA is required to publish on an internet website each multiyear MCSAP state plan and all annual updates submitted by states participating in MCSAP. 49 U.S.C. § 31102(c)(3)(A). It appears that FMCSA has not complied with this requirement. OOIDA has not been able to locate any website with this information.

Both motor carriers and drivers subject to FMCSRs are entitled to access to all state plans and annual updates. Without such access interested parties are unable to determine whether states participating in MCSAP have properly certified to FMCSA that they have incorporated specific FMCSRs into state law. 49 C.F.R. § 31102(b)(3), (e)(1) and (e)(2). *See also* 49 C.F.R. §§ 350.331(c), 335(a). FMCSA should honor its statutory responsibility under 49 U.S.C. § 31102(c)(3)(A) and make state plans and updates available immediately.

C. States' Methods of Incorporating the Federal Motor Carrier Safety Regulations into State Law

Notwithstanding any certifications that may have been made by participating MCSAP states, Petitioner here has conducted its own state-by-state investigation of the status of incorporation of the FMCSRs into state law. Although the FMCSRs are federal law, and states are directed by federal law to incorporate and enforce the FMCSRs, the means of state FMCSR incorporation and enforcement is a matter of state law. Thus, an analysis of the legal basis of a particular state's FMCSR incorporation is required to determine whether a state has properly adopted the FMCSRs. States have taken different approaches when incorporating the FMCSRs into state law. Incorporation may take place by statute or regulation. State incorporations can be separated into two main categories: static and dynamic (whether adopted through regulation or statute). The result is a dizzying patchwork of FMCSR versions currently in effect and enforced against motor carriers and drivers across the nation.

1. Static Incorporation

"Static" incorporation adopts into state law a statute, regulation, or other external document *as it exists at the time of incorporation*. *See, e.g.*, Or. Admin. R. 740-100-0010(1) (adopting FMCSRs "and all amendments thereto in effect April 1, 2016"). Static incorporation works hand-in-hand with (state) constitutional prohibitions against unlawful delegations of legislative authority. *See, e.g.*, *Brinkley v. Motor Vehicles Div.*, 613 P.2d 1071, 1072 (Or. App. 1980) ("This attempt to adopt future amendments was an unconstitutional delegation of lawmaking power."). That is, by limiting incorporation to material in existence at the time of incorporation and excluding any later additions or changes, a legislature or state agency avoids unlawfully delegating its lawmaking authority to an outside entity. *See, e.g.*, *Radecki v. Dir. of Bureau of Worker's*

Disability Compen., 526 N.W.2d 611, 613 (Mich. App. 1994) ("Statutes that incorporate existing federal statutes by reference are valid and constitutional. . . . However, it is an unlawful delegation of legislative power to adopt by reference future legislation enacted by another sovereign entity.").

2. Dynamic Incorporation

Dynamic incorporation contrasts sharply with static incorporation. Some states have attempted to incorporate the FMCSRs in existence at the time of incorporation *and* as they may be amended in the future. *See, e.g.*, N.M. Admin. Code § 18.2.3.9 (incorporating FMCSRs "as presently in effect including subsequent amendments"). By automatically incorporating future changes to incorporated material, dynamic incorporation permits out-of-state entities (FMCSA) to write state law. In many states, this violates constitutional or other nondelegation principles. *See, e.g.*, *City of Warren v. State Const. Code Commn.*, 239 N.W.2d 640, 644 (Mich. App. 1976); *see also Cheney v. St. Louis S.W. Ry. Co.*, 394 S.W.2d 731, 733 (Ark. 1965); *Freimuth v. State*, 272 So. 2d 473, 476 (Fla. 1972); *Rich v. State*, 227 S.E.2d 761, 767 (Ga. 1976); *State v. Tengan*, 691 P.2d 365, 373 (Haw. 1984); *Dawson v. Hamilton*, 314 S.W.2d 532, 535–36 (Ky. 1958); *In re Op. of the JJ.*, 133 N.E. 453, 454 (Mass. 1921); *Wallace v. Commr. of Taxn.*, 184 N.W.2d 588, 592-93 (Minn. 1971); *Prof. Houndsmen of Mo., Inc. v. Cty. of Boone*, 836 S.W.2d 17, 21 (Mo. Ct. App. 1992); *Clemens v. Harvey*, 525 N.W.2d 185, 189 (Neb. 1994); *Brinkley v. Motor Vehicles Div.*, 613 P.2d 1071, 1072 (Or. App. 1980); *Indep. Community Bankers Ass'n of S. Dakota, Inc. v. State ex rel. Meierhenry*, 346 N.W.2d 737, 744 (S.D. 1984); *Diversified Inv. Partn. v. Dep't of Soc. & Health Servs.*, 775 P.2d 947, 950 (Wash. 1989); *State v. Grinstead*, 206 S.E.2d 912, 919 (W. Va. 1974).

3. Results of FMCSR incorporation

The states have employed these two approaches to wildly diverse results. For many states, incorporations that are either expressly static or static due to nondelegation prohibitions have left a hodge-podge of questionably enforceable FMCSR versions. Some states have simply failed to regularly update their expressly-static incorporations. *See, e.g.*, Ariz. Admin. Code R17-5-202.A (incorporating FMCSRs "revised as of October 1, 2012, and no later amendments or editions"); *see also* 17 Alaska Admin. Code § 25.220(a) (incorporating FMCSRs "as revised as of October 1, 2014"); Kan. Admin. Reg. 82-4-3a(a) (adopting 49 C.F.R., Part 395 "as in effect on October 1, 2013"); Okla. Admin. Code 595-1-4(17) (FMCSR incorporating regulation is effective July 25, 2013 and is static under Oklahoma law (Okla. Admin. Code 655-10-5-15)); D.C. Mun. Regs. 18-1400.2 (adopting, on November 19, 2010, by reference FMCSR "currently in effect"); Nev. Admin. Code 706.247.1 (adopting FMCSR "as those regulations existed on May 30, 2012"); 19 Va. Admin. Code 30-20-80 (adopting FMCSRs "with amendments promulgated and in effect as of January 1, 2010"); Wash. Admin. Code § 446-65-010(1)(u) (adopting Part 395 version "in effect on the effective date of [the incorporating regulation, October 4, 2013]").

Other states have attempted to automatically capture future amendments to the FMCSRs, but such attempted dynamic incorporation often violates state nondelegation principles. *See, e.g.*, S.C. Code Regs. § 38-424 (adopting FMCSRs "and amendments thereto"); *Santee Mills v. Query*, 115 S.E. 202, 206 (S.C. 1922) (construing statute to incorporate only those laws "in force at the time of the approval of the [state] act" because lawmakers are presumed to act in "the legitimate field of legislation"); A.G. Op. dated April 14, 2005, 2005 WL 1024603 ("[I]t is the law in South Carolina that incorporation by reference of future amendments to another statute, rule or regulation constitutes an unlawful delegation of legislative power."); *cf.* Mich. Comp. Laws § 480.11a(1)(b)

(incorporating by reference via statute effective June 29, 2012 without express indication of effective FMCSR year or future amendments); *Radecki v. Dir. of Bureau of Worker's Disability Compen.*, 526 N.W.2d 611, 613 (Mich. App. 1994) (expressly prohibiting dynamic incorporation); *see also* 700 Code Mass. Regs. § 7.10 (incorporating "49 CFR 325, 390-393, 395-396, and 399 (1997)"); *In re Op. JJ.*, 133 N.E. 453, 454 (Mass. 1921) (statute automatically incorporating future changes to federal law would be unconstitutional delegation).

A number of states have managed to successfully maintain compliance with the current FMCSR versions within this framework by regularly updating their incorporations to capture new changes. *See, e.g.*, Neb. Rev. Stat. Ann. § 75-363(3) (current version of statute incorporates FMCSRs in effect on January 1, 2017); *see also* Iowa Admin. Code 761-520.1(321)(1)(a) (October 1, 2016 version). These states demonstrate that it is possible to comply with constitutional nondelegation principles and maintain current FMCSR enforcement authorization.

As a result of these sometimes inconsistent approaches and conflicts between those approaches with inconsistent statutory, regulatory or constitutional requirements, 19 states and the District of Columbia have incorporated FMCSR versions that are more than three years out of date, and another 6 states have not yet incorporated the ELD Rule, leaving 26 jurisdictions that have failed to authorize state officials to enforce the ELD mandate. *See supra* Part I. OOIDA has prepared Table 3 which summarizes its findings with respect to each of the states identified in Tables 1 and 2. Table 3 appears as an attachment to this Petition.

IV. RESOLUTION OF THE PETITION IS URGENT

The failure of a significant number of MCSAP participants to incorporate amendments and additions to the FMCSRs into state law and to enforce such changed versions produces significant adverse consequences for FMCSA and participating MCSAP states, as well as for motor carriers

and drivers whose activities are subject to these regulations. The role of MCSAP states in the overall CMV safety enforcement scheme cannot be overstated. This agency reports that in 2016, 95 percent of roadside inspections were undertaken by states operating under MCSAP grants. Dept. of Transportation, 2016 Pocket Guide to Large Truck and Bus Statistics.

State enforcement officers simply have no authority to enforce federal safety standards that have not been adopted into state law. FMCSA is currently preparing to implement a major change in hours-of-service enforcement under the recently promulgated ELD regulations. 49 C.F.R., Part 395. The ELD implementation date is currently established as December 18, 2017. OOIDA has determined that as of today 26 state jurisdictions have not as yet incorporated the ELD rule into state law. That means, for example, that 26 jurisdictions cannot enforce the ELD mandate that motor carriers install and require drivers to use ELDs to record driver duty status. 49 C.F.R. § 395.8. This has obvious implications for both motor carriers and drivers based within those non-participating states (Table 1) as well as motor carriers and drivers merely hauling freight in transit through such states. The lack of continuity in what is supposed to be a uniform nationwide enforcement regime will be significant. Chaos and uncertainty will rule the day as motor carriers and drivers travel from state to state without knowing which states are authorized to participate in the ELD program and which are not.

The confusion and uncertainty is not limited to motor carriers and drivers. The facts demonstrate that FMCSA itself is largely in the dark as to which states have adopted the current version of the FMCSRs into state law. State certifications in their individual MCSAP submissions almost certainly assert that individual states are in compliance with their incorporation responsibilities, otherwise states would not be receiving MCSAP funding. But OOIDA's legal

research shows that numerous states are three or more years out of compliance with the obligation to incorporate the FMCSRs into state law. *See* Table 2, *supra.*

FMCSA's regulations give MCSAP states a 3-year grace period within which they must update their state regulations, but this grace period has nothing to do with the ability of a state or the authority of their inspectors to actually enforce regulations newly promulgated by FMCSA. 49 C.F.R. § 350.331(c). While this regulation may affect FMCSA's administration of MCSAP funding to participating states, it has no impact whatsoever on the authority of a state to enforce safety standards not incorporated into state law. Thus, if a state has not incorporated a new or amended FMCSR into state law, that state may not inspect a truck or driver for violation of that FMCSR, find and report to FMCSA a violation of these rules, or penalize a motor carrier or driver for failing to obey such a regulation even if FMCSA will not withhold MCSAP funding from them. Section 350.331(d) does not exempt MCSAP states from following state or federal principles of constitutional law.

The preceding analysis assumes that MCSAP states who have not as yet incorporated the ELD rule into state law will simply refrain from taking enforcement action against motor carriers and drivers until they do so. However, by our own investigation, the enforcement activities of states that have been derelict in their duty to incorporate the FMCSRs into state law (Table 2) shows that those states do actively enforce the FMCSRs and report that enforcement activity into the Motor Carrier Management Information System (MCMIS) database. This is so even though there is no legal authority to enforce federal regulatory provisions that have not been incorporated into state law. The consequences of this utterly lawless behavior is significant for all of the stakeholders in commercial motor vehicle safety enforcement.

1. The constitutional rights of the both motor carriers and drivers have been substantially impaired.
2. States have incurred significant liabilities to motor carriers and drivers for imposing fines and penalties on persons for the violation of non-existent state regulations;
3. Reports of bogus violations have been flooding into FMCSA's MCMIS database for years and are having a substantial negative impact on the safety records of hundreds of thousands of motor carriers and millions of professional drivers.
4. These problems are likely to grow substantially worse if FMCSA moves forward blindly with its ELD mandate while 26 states have not as yet adopted that mandate into state law and numerous states are seriously delinquent in their responsibility to incorporate other FMCSRs into state law.

IV. CONCLUSION

This agency's lack of attentiveness in the supervision of the status of states receiving millions of dollars in MCSAP grants is lamentable. Participating MCSAP states should cut their exposure to litigation for improper enforcement practices by limiting enforcement actions to provisions of the FMCSRs that they have actually adopted into state law. It is clearly time to press the "Reset Button" on MCSAP and start restoring order to this untidy mess. FMCSA should proceed with OOIDA's Petition with all deliberate speed, withhold MCSAP funding to non-compliant states, and freeze the *status quo,* particularly with respect to the ELD mandate, until it restores order to its administration of this MCSAP program.

Respectfully submitted,

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August 28, 2017

ATTACHMENT

TABLE 3

Table 3
State-by-State Summary
FMCSR Incorporation into State Law

	Part 395 Incorporation Date	Incorporating Law	Explanation
Alaska	10/1/2014	17 Alaska Admin. Code § 25.210; 17 Alaska Admin. Code § 25.220	Static incorporation
Arizona	10/1/2012	Ariz. Admin. Code R17-5-202.A	Static incorporation
Arkansas	8/21/1997	Ark. Admin. R. 001.01.97-002	Attempted dynamic incorporation but case law suggests adoption by reference of future amendments is unconstitutional
Connecticut	10/10/2013	Regs. Conn. St. Agencies § 14-163c-1(a)	Attempted dynamic incorporation but administrative procedure rules require additional agency action, including presentation to legislative rules committee, to capture later amendments to incorporated material
DC	11/19/2010	18 D.C. Mun. Regs. § 1400.2	Static incorporation
Delaware	6/28/2006	21 Del. Code Ann. § 4702(a)	Static incorporation
Hawaii	11/1/2015	Haw. Admin. R. §§ 19-141-4, 19-141-2	Static incorporation
Idaho	10/21/2015	Idaho Admin. Code r. 11.13.01.004	Static incorporation
Illinois	10/1/2014	625 Ill. Comp. Stat. Ann. § 5/18b-105(b); 92 Ill. Adm. Code, Parts 380–397	Static incorporation
Kansas	10/1/2013	K.A.R. 82-4-3a(a) through 82-4-3o(a)	Static incorporation (Part 395 incorporated as of 10/1/2013)
Kentucky	2/3/2006	601 Ky. Admin. Regs. § 1:005 s 2	Incorporation is implicitly static, and case law suggests Kentucky is likely to follow nondelegation rule
Louisiana		Authorized by La. Stat. Ann. § 32:1504	Louisiana has authorized FMCSR incorporation but has not incorporated by statute or regulation
Maine	7/19/2015	16-222 Code Me. R. Ch. 4, §§ 3, 4	Attempted dynamic incorporation, but case law suggests incorporating future laws is unlawful delegation
Massachusetts	1997	700 Code Mass. Regs. § 7.10	Incorporation is implicitly static, and Massachusetts Supreme Court opined that incorporating future amendments is unconstitutional delegation

Table 3
State-by-State Summary
FMCSR Incorporation into State Law

Michigan	6/29/2012	Mich. Comp. Laws Ann. § 480.11a(1)(b)	Incorporation is implicitly static, as Michigan law prohibits dynamic incorporation as an unlawful delegation of legislative authority
Mississippi	5/5/2011	Code Miss. Rules 37-1-8:04001	Attempted dynamic incorporation, but Mississippi law requires either amendment to incorporating law to capture later amendments to incorporated law or incorporating statute to expressly include later amendments
Missouri	8/28/2013	RSMo. § 307.400.1; RSMo. § 390.201; 11 Mo. Code Regs. § 30-6.010(1)	Attempted dynamic incorporation, but Missouri agency law expressly prohibits dynamic incorporation through regulation, and case law has applied the same rule for statutes
Nevada	5/30/2012	Nev. Admin. Code 706.247.1	Static incorporation
New York	10/1/2013	17 N.Y. Comp. Codes, R. & Regs. §§ 820.1, 820.2, 820.3, 820.4, 820.5, 820.6, 820.7, 820.13	Static incorporation
Oklahoma	7/25/2013	Okla. Admin. Code 595:35-1-4	Incorporation is implicitly static, as administrative procedure rules prohibit agencies from incorporating future amendments
Pennsylvania	4/17/2010	67 Pa. Code § 229.14; 52 Pa. Code § 37.204	Attempted dynamic incorporation, but Pennsylvania Supreme Court prohibits automatic future incorporation
South Carolina	3/27/1998	S.C. Code Regs. § 38-424	Attempted dynamic incorporation, but Attorney General opinion and Supreme Court law suggest that incorporating future changes is an unlawful delegation of authority
Utah	4/23/2015	Utah Admin. Code r. R909-1-2(1)	Static incorporation
Virginia	1/1/2010	19 Va. Admin. Code 30-20-80	Static incorporation
Washington	10/4/2013	Wash. Admin. Code § 446-65-010(1)	Static incorporation
Wisconsin	5/1/2009	Wis. Admin. Code Trans. § 325.02	Incorporation is implicitly static, as Wisconsin follows specific-general rule: incorporation by reference of specific law incorporates only the version of the law at the time of incorporation