

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Ch. Trans 327

Relating to: Motor Carrier Safety Assistance Program (MCSAP) Review for the State of Wisconsin by the Federal Motor Carrier Safety Administration (FMCSA) July 14-15, 2009.

Rule Type: Permanent

1. Finding/nature of emergency (Emergency Rule only):

N/A

2. Detailed description of the objective of the proposed rule:

Following a program review of Wisconsin laws and regulations, the Federal Motor Carrier Safety Administration concluded that this state does not appropriately adopt and enforce state safety laws and regulations that are compatible with the Federal Motor Carrier Safety Regulations (FMCSRs). Compatibility of laws is necessary to ensure this state's continued receipt of federal funds for commercial motor carrier safety and enforcement activities under the Motor Carrier Safety Assistance Program (MCSAP). Wisconsin receives approximately \$4 million each fiscal year in federal MCSAP funds. This rulemaking is intended to adopt administrative rules that are compatible with those FMCSRs. This rulemaking also proposes several additional changes that did not originate from the FMCSA review.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

49 CFR 390.3(f) – School Bus Operations. Wisconsin's exemption in Trans 327.09 (1) of intrastate school buses from its adoption of the FMCSRs when the bus is being used for authorized educational extracurricular or charter activities by a non-governmental entity is not compatible with 49 Code of Federal Regulations (CFR) 390.3(f).

49 CFR 390.23 – Relief from Regulations. The State's exemption of intrastate drivers from its adoption of driver qualifications and hours of service (HOS) regulations during emergencies, in Trans 327.09 (6) is not compatible with 49 CFR 390.23. The emergency must be declared by certain specified Federal, State, or local officials. The Wisconsin regulations allow the motor carrier to declare the emergency.

49 CFR 391 – Driver Qualifications. The State's exemption in Trans 327.09 of intrastate drivers holding a Wisconsin CDL issued prior to July 29, 1996, from the driver qualification requirements contained in 49 CFR 391 is not compatible with the FMCSRs.

49 CFR 391.11(b)(1) – Driver Age. The State’s exception for intrastate drivers of a commercial motor vehicle (CMVs) in Trans 327.03 from the minimum age requirements contained in 49 CFR 391.11(b)(1) is not compatible with the FMCSRs. States may not allow drivers younger than 18 years old to operate a CMVs as defined in 49 CFR 390.5. Wisconsin does require that residents must be 18 years old to hold a commercial driver license (CDL). Nowhere else in Wisconsin statutes or regulations is the minimum age of a non-CDL driver of CMV addressed.

49 CFR 395 – Hours of Service. The State’s exemption in Trans 327.09 (4) of intrastate drivers driving motor vehicles having a gross vehicle weight rating (GVWR) of less than 26,001 pounds from its adoption of the HOS requirements is not compatible with 49 CFR 395 if the vehicles are transporting 16 or more passengers including the driver, and the vehicles requires an Hazardous Material placard.

49 CFR 395.1(e), 395.3, and 395.8 – Records of Duty Status and HOS. The State’s regulations in Trans 327.03 (10), 327.05 (3), and 327.09 concerning intrastate HOS and records of duty status (RODS) are not compatible with 49 CFR 395.

Trans. 327.03(10) excepts 49 CFR 395.1(e), and so fails to adopt some required regulations of that section. Wisconsin does not exclude a driver salesperson from the requirements to return to his/her work reporting location within 12 hours. Wisconsin does not require that a driver used for the first time or intermittently to account for the previous 7 days on duty time. Drivers are not allowed to end any period of 7 or 8 days until after 34 or more consecutive hours off duty as provided in 49 CFR 395.3. (New regulations concerning hours of service at 49 CFR 395.3(2)(ii) that went into effect after this audit was conducted are not part of this rulemaking. Those revisions may be adopted in a subsequent rulemaking.) The wording in Trans. 327.03(10) (“and maximum number of hours identified in 49 CFR 395.3 is adopted as follows:”) is ambiguous, and could reasonably be read to mean that not all of 49 CFR 395.3 is adopted by Trans. 327. This rulemaking will clarify that Wisconsin adopts all of 49 CFR 395.3, except for the maximum number of hours as spelled out in Trans. 327.03(10) (a), (b), (c), and (d).

Trans 327.09(5) exempts drivers from certain record keeping requirements if they are within an area having a 150 air mile radius from the drivers’ home post office or from the official worksite. To be compatible with FMCSRs this distance should be measured, “from the normal work reporting location”, as set forth in 49 CFR 395.1(e)(i).

Trans. 327.03(10) does not adopt 49 CFR 395.8 (“Driver’s record of duty status”). Trans 327.05 (3) has a note at the bottom which does require a driver to document information such as total miles driven each day, to make entries in the driver’s own handwriting, and to make entries on a specific grid as required by 49 CFR 395.8 (f) and (g). When a driver does not meet the mileage exemption (150 air miles) this information must be documented. This rulemaking will clarify the application of those requirements to drivers exempted from records of duty status.

Additional proposed changes that did not originate from FMCSA review:

- Define “planting and harvesting season” to mean the period of time beginning March 15 through December 15 of each year, consistent with Trans 325.01. Currently, “planting and harvesting season” is not defined for intrastate transportation.

- Add an exemption from Trans 327.03(10), hours of service, to Trans 327.09(4) which are vehicle types exempted from federal hours of service limitations. Those vehicles are currently exempted only from the provisions of Trans 327.05, driver hours of service.
- Repeal references to 49 CFR 395.1(h) & 395.1(i) from 327.03(10), which exempt hours of service for Alaska and Hawaii drivers and have no application in this state.
- Remove the exemption from hours of service requirements for passenger vehicle drivers, by deleting 49 CFR 395.5 from Trans 327.03(10).
- Add 'gross combination weight rating' to exemptions in Trans 327.09(2)(a) and (4)(b), consistent with definition of commercial motor vehicle at 49 CFR 390.5.
- Trans 327.09 (2)(a) needs to be clarified to include vehicles designed to carry 16-passengers, consistent with state statute 343.04(2)(d).

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Wisconsin Statutes, ss. 194.38 (1)(b) and (2). Also, Wisconsin Statutes, ss. 110.07(1)(a)1. and (3) ("Traffic officers; powers and duties"), 110.075 ("Motor vehicle inspection"), 194.43 ("Private motor carriers; regulation by department"), 343.02(1) ("Administration of driver license law") and ("Persons not to be licensed"):

194.38 Regulatory powers of department.

(1) It shall be the duty of the department:

(b) To prescribe rules and regulations as to safety of operations and the hours of labor of drivers of motor vehicles operated under the authority of this chapter.

(2) Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 390, 391, 392, 395, and 397 are applicable to, or enforceable with respect to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

110.075(6) The secretary shall set standards and adopt rules to establish a plan of inspection to implement the inspection program provided by this section. Nothing in this section shall permit the department to promulgate any rule under which the provisions of 49 CFR 393 and 396 are applicable to, or enforceable with respect to, any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8) (c) or (d), and the vehicle combination is operated solely in intrastate commerce.

194.43 Private motor carriers; regulation by department. The department may regulate the operations of private motor carriers, including the power to designate from

time to time the public highways over which private motor carrier vehicles may or may not be operated and to designate the time that such vehicles may or may not be operated thereon so as to prevent congestion which shall affect the safety of persons and property upon such public highways; to require the display of satisfactory evidence that such vehicle is not being used for common or contract motor carrier purposes; and to prescribe reasonable and necessary rules and regulations for the safety of operation of private motor carriers.

343.02(1) The department shall administer and enforce this chapter and may promulgate for that purpose such rules as the secretary considers necessary. Rules promulgated under this chapter may not conflict with and shall be at least as stringent as standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act.

343.06(2) The department shall not issue a commercial driver license, including a renewal or reinstated license, to any person, or reinstate a person's authorization to operate a commercial motor vehicle, during any period of disqualification under s. 343.315 or 49 CFR 383.51, under the law of another jurisdiction disqualifying a person from operating a commercial motor vehicle under circumstances similar to those specified in s. 343.315 or 49 CFR 383.51, or under a determination by the federal motor carrier safety administration that the person is no longer qualified to operate a commercial motor vehicle under 49 CFR 391, or to any person whose operating privilege is revoked, suspended, or canceled. Any person who is known to the department to be subject to disqualification as described in s. 343.44 (1) (d) shall be disqualified by the department as provided in s. 343.315.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

400 hours

6. List with description of all entities that may be affected by the proposed rule:

Wisconsin-based motor carriers and enforcement will be affected by this rule change. Some of these findings by the FMCSA review are substantial and will have an effect on Wisconsin-based motor carriers, particularly intrastate carriers whose entire operations are within this state.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

The changes proposed will conform to any federal regulations that exist in Title 49, Code of Federal Regulations, and to resolve the incompatibilities noted by FMCSA following its review of this state's laws and regulations. This rulemaking also proposes several additional changes that did not originate from the FMCSA review.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

There has been no analysis to determine the effect on small business as the majority of the rule changes in this proposal will not impact them in a significant way. The Department anticipates the clarifications made to the rule will make the state requirements easier to understand, and therefore, result in better compliance.

The most significant impact is the rule change which will require school bus operators to comply with the medical provisions found in 49CFR391. Although this proposal is more restrictive than the previous Trans 112 requirements they will only impact transportation when operating for authorized educational extracurricular or charter activities. The state is required to adopt this language or federal funding would be in jeopardy.

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Signed this ____ day of August 2015

Mark Gottlieb, P.E.
Secretary
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