

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤ 97hr\_JCR-AR\_CRule\_98-105

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

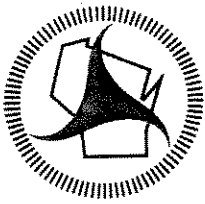
➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

98-105) TRANS 325 326 & 328 - H/A2-MAT  
TRANSPOETATION - MOTOR CARRIERS



## Wisconsin Department of Transportation



Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

OFFICE OF GENERAL COUNSEL  
P. O. Box 7910  
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The Honorable Brian Rude  
President, Wisconsin State Senate  
Room 301  
119 MLK Jr. Blvd.  
Madison, Wisconsin 53707

October 7, 1998

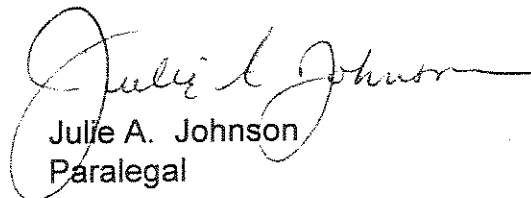
The Honorable Scott Jensen  
Speaker, Wisconsin State Assembly  
Room 315 North, State Capitol  
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 325/326/328**  
Notification of Legislative Standing Committees  
**CLEARINGHOUSE RULE 98-105**

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **98-105**, relating to **motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

  
Julie A. Johnson  
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson (Deputy Revisor of Statutes)/Senator Robert Welch/  
Representative Glenn Grothman/Gene Kussart/Bill Singletary/Lyle Walheim

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**CR 98-105**

The Wisconsin Department of Transportation proposes an order to renumber TRANS 326.07; amend TRANS 325.02(intro.), 325.05(1) and (2), 326.01(intro.) and 328.03(intro.) and (1); and create TRANS 325.02(8), 326.01(8), 326.07(2) and (3), 328.03(6) and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

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**REPORT OF THE DEPARTMENT OF TRANSPORTATION  
ON THE FINAL RULE DRAFT**

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This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



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**PART 1**

**Analysis Prepared by the Wisconsin Department of Transportation**

**STATUTORY AUTHORITY:** ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats.

**STATUTES INTERPRETED:** ss. 110.07, 110,075, 194.38 and 194.43, Stats.

**General Summary of Proposed Rule.** This proposed rule making will amend three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of January 1, 1998. These changes are as follows:

**Chapter Trans 325** adopted motor carrier safety regulations of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between November 1, 1996 and August 1, 1998.

**Chapter Trans 326** adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate commerce are already subject under federal law to any changes that have been adopted between November 1, 1996 and August 1, 1998.

The Department proposes to incorporate changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades."

**Chapter Trans 328** adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials and will include exceptions provided in revised federal rules.

In addition, the adoption of Trans 325, 326 and 328 will give the Department the authority to use federal standards by which traffic officers and state patrol inspectors declare vehicles and drivers out of service. The offices of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of the North American Uniform Out-of-Service Criteria under the provision of § 227.21(2), Stats.

**Fiscal Impact.** The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, technical college district, sewerage district, or any federally-recognized tribes or bands.

**Copies of Rule.** This proposed rule was prepared by Lyle Walheim, Division of State Patrol. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 266-6936. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

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**PART 2**  
**TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., the department of transportation hereby proposes an order to amend a rule interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

**SECTION 1.** Trans 325.02(intro.) is amended to read:

**TRANS 325.02 Federal rules adopted.** (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, 1996 ~~1998~~ are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

**SECTION 2.** Trans 325.02(8) is created to read:

**TRANS 325.02(8)** Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the 1998 North American uniform out-of-service criteria.

**NOTE:** The North American Uniform Out-of-Service Criteria is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814.

**SECTION 3.** Trans 325.05(1) and (2) are amended to read:

TRANS 325.05(1) The provisions of s. Trans ~~325.01(4)~~ 325.02(4) and (6)(title 49, Code of Federal Regulations, parts 393 and 396) shall be enforced under the provisions of s. 110.075, Stats.

(2) The provisions of s. Trans ~~325.01(2)~~ 325.02(2), (3), (5) and (7), (Title 49, Code of Federal Regulations, parts 391, 392, 395 and 397) shall be enforced under the provisions of ch. 194, Stats.

**SECTION 4.** Trans 326.01(intro.) is amended to read:

**TRANS 326.01 Federal rules adopted.** (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, 1996 1998, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

**SECTION 5.** Trans 326.01(8) is created to read:

TRANS 326.01(8) Every traffic officer and state patrol inspector, employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the 1998 North American uniform out-of-service criteria.

**NOTE:** The North American Uniform Out-of-Service Criteria is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814.

**SECTION 6.** Trans 326.07 is renumbered Trans 326.07(1).

**SECTION 7.** Trans 326.07(2) and (3) are created to read:

TRANS 326.07(2) The provisions of s. Trans 326.01(4), (6) and (7) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(3)(a) The provisions of s. Trans 326.01(3), (4), (6) and (7) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases, over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements in s. Trans 326.01(3), 49 CFR part 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.

2. 502 gallons for liquid or gases.

3. 5,070 pounds for solids of any other agricultural product.

**SECTION 8.** Trans 328.03(intro.) and (1) are amended to read:



**TRANS 328.03 Federal rules adopted.** The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, 1996 1998, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, ~~except 171.1(a)(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2(a) and (b) for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1994~~ general information, regulations and definitions.

**SECTION 9.** Trans 328.03(6) is created to read:

TRANS 328.03(6) Every traffic officer and state patrol inspector, employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the 1998 North American uniform out-of-service criteria.

**NOTE:** The North American Uniform Out-of-Service Criteria is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814.

**SECTION 10.** Trans 328.04 is created to read:

**TRANS 328.04 Exclusions and exceptions.** (1) The provisions of s. Trans 328.03(3), (4) and (5) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(2)(a) The provisions of s. Trans 328.03(2), (3), (5) and (6) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements s. Trans 328.03(2), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.
2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

**(END OF RULE TEXT)**

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**Effective Date.** This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 7 day of October, 1998.



CHARLES H. THOMPSON

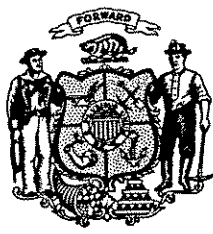
Secretary

Wisconsin Department of Transportation

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PART 3

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**CLEARINGHOUSE REPORT TO AGENCY**

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[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

**CLEARINGHOUSE RULE 98-105**

AN ORDER to renumber Trans 326.07; to amend Trans 325.02 (intro.), 325.05 (1) and (2), 326.01 (intro.) and 328.03 (intro.) and (1); and to create Trans 325.02 (8), 326.01 (8), 326.07 (2) and (3), 328.03 (6) and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Submitted by **DEPARTMENT OF TRANSPORTATION**

07-30-98      RECEIVED BY LEGISLATIVE COUNCIL.  
08-21-98      REPORT SENT TO AGENCY.

RS:WF;jal;kjf

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached            YES                             NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached            YES                             NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached            YES                             NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached            YES                             NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached            YES                             NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached            YES                             NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

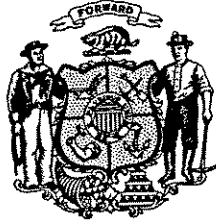
Comment Attached            YES                             NO

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## RULES CLEARINGHOUSE

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## CLEARINGHOUSE RULE 98-105

### Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

#### 4. Adequacy of References to Related Statutes, Rules and Forms

- a. A more specific reference to "the North Americans standard out of service criteria" should be provided in SECTIONS 2, 5 and 9. [See s. 2.08, Manual.]
- b. The word "part" should be substituted for the word "parts" in s. Trans 326.07 (3) (b).

#### 5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the third paragraph of the analysis, should the date "January 1, 1998" be replaced by the date "November 1, 1996"?
- b. In SECTIONS 2, 5 and 9, it is suggested that the phrase "employed under the authority of" be substituted for the phrase "as set forth in." Section 110.07, Stats., authorizes the Department of Transportation to employ traffic officers constituting the state traffic patrol and state patrol inspectors. The term "as set forth in" is unnecessarily vague.

**PART 4**  
CR 98-105

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ANALYSIS OF FINAL DRAFT OF TRANS 325/326/328

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(a) **Need for Amended Rule.** This proposed rule making will amend these three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of January 1, 1998. In addition, the Department proposes to incorporate changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades."

(b) **Modifications as a Result of Testimony at Public Hearing.** Notice of intent to adopt this proposed rule without public hearing was given under the procedure set forth in s. 227.16(2)(e), Stats. No one petitioned for a public hearing and no public hearing was held.

(c) **List of Persons who Appeared or Registered at Public Hearing.** Because there was no hearing, there were none.

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council recommendations have been incorporated into the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule will have no adverse impact on small businesses.