

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_98-111

➤ Committee Hearings ... CH

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➤ Committee Reports ... CR

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➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

JEANS 197- PROOF OF ISSUE.
98-1111

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

Ronald Sklansky
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Legislative Council Staff
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CLEARINGHOUSE REPORT TO AGENCY

[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 98-111

AN ORDER to create chapter Trans 197, relating to charges for submission of proof of insurance.

Submitted by **DEPARTMENT OF TRANSPORTATION**

08-12-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-08-98 REPORT SENT TO AGENCY.

RS:GAA;jal;rv

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)]

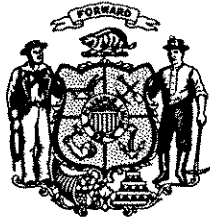
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 98-111

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 September 1998.]

1. Statutory Authority

a. Section 344.42, Stats., as created by 1997 Wisconsin Act 27, provides that if certain insurance certifications and recertifications are submitted to the Department of Transportation (DOT), an insurer must pay a fee of \$1.50 for each certification or recertification that is not transmitted electronically to the department. Under ss. Trans 197.02 (2), 197.03, 197.04 and 197.05 (2), DOT intends to include, as a source of fee revenue, notices of cancellation or termination of insurance policies. Given the specificity with which s. 344.42, Stats., refers to certifications and recertifications, what statutory authority exists for including insurance cancellations or terminations?

b. Section 344.42, Stats., provides that whenever the certifications and recertifications under ss. 344.31, 344.32 and 344.34 that are submitted by an insurer to DOT in any year exceeds 1,000, the insurer must pay a transaction fee of \$1.50 for each certification or recertification that is not transmitted electronically. In s. Trans 197.03, it appears that the department, in determining whether an insurance company reaches the 1,000 filing limit, intends to include filings submitted under s. 344.38, Stats., although the latter filings will in no case be assessed a fee of \$1.50. Under what statutory authority does the department include the filings under s. 344.38, Stats., in the 1,000 limit described in s. 344.42, Stats.?

2. Form, Style and Placement in Administrative Code

a. The fiscal estimate included in the rule is inadequate. Section 227.14 (4) (b) 2., Stats., provides that a fiscal estimate must include a projection of the anticipated state fiscal

effect during the current biennium and a projection of the net annualized fiscal impact on state funds. The department must have ample experience with the receipt of certifications and recertifications from insurance companies for purposes of proof of financial responsibility in order to make a reasonable and reliable estimate of the amount of revenues to be derived from the new \$1.50 fee. [See also s. 227.14 (4) (c), Stats., which provides that if a rule has no independent fiscal effect, the fiscal estimate prepared must be based on the fiscal effect of the statute.]

b. In s. Trans 197.02 (intro.), “words and phrases defined” should be replaced by “definitions” and “shall” should be deleted.

c. In ss. Trans 197.03 (1) and 197.06 (2), a comma should be inserted following the “1” in “1000.”

d. In s. Trans 197.03 (1) (a), “shall count” should be replaced by “counts.” The same change should be made in s. Trans 197.03 (1) (b).

e. Section Trans 197.03 (2) states that “To determine the number of certain certifications that are not submitted to the department by electronic means, the department shall count each original or duplicate paper filing as a separate filing, except filings submitted on behalf of an employe or family member under s. 344.38, Stats.” The material beginning with “to determine” through the comma on line 2 is unnecessary. Also, the material beginning with “except filings” through s. 344.38, Stats., can be excluded since the statute under which the rule is promulgated, s. 344.42, Stats., refers to certifications and recertifications under ss. 344.31, 344.32 and 344.34, Stats., that are submitted by an insurer to the department. Section Trans 197.03 could be rewritten as two sentences: “Each electronic filing counts as one filing.” “Each original or duplicate paper filing counts as a separate filing.” Section Trans 197.04 could then be rewritten to state: “The department shall assess a fee of \$1.50 for each paper filing if the insurer has filed 1,000 or more insurance certifications in a year.”

f. In s. Trans 197.05 (2), the title “Electronic SR-22 certifications” is the same as the title to s. Trans 197.05 (1) (a). It could be rewritten as “effect of electronic SR-22 certifications.”

g. In s. Trans 197.06 (4), “the rate of 18 percent per annum” should be replaced by “an annual rate of 18%.”

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

a. Section Trans 197.02 (3) refers to certifications submitted by “handwritten or typewritten documents or facsimile.” This excludes “printed” documents. There are two alternatives: (1) delete the material beginning with the comma preceding “including certifications”; or (2) add “printed” to the enumerated certifications.

b. Since s. Trans 197.05 (1) (a) and (b) are the same except for the form references, they could be combined as follows: “An electronic filing is considered to be filed on the date the electronic filing is posted to the department’s computerized database of driver records.” Also,

the provisions as currently written are confusing, since they provide that a form is considered filed on the date the transmission is received by the department and is posted at the department's computerized database. If the two events occur on different dates, it is obviously intended that the latter date, when the electronic filing is posted, will be the effective date. Also, who does the "posting"?

c. Section Trans 197.06 (2) states that "Twice per year the department shall bill each insurance company that has submitted in excess of 1000 filings to the department in a year as counted under s. Trans 197.03 (1) for all fees assessed under s. Trans 197.04." In addition to format changes [inserting a comma in "1000,"], the provision is confusing. Is it intended that the department will bill each insurance company in the calendar year during which the company has submitted in excess of 1,000 filings, or that the department will bill the insurance company in the following calendar year if it exceeded 1,000 filings in the previous year? The provision could provide that the department will bill insurance companies twice each year and will bill each insurance company that has exceeded 1,000 filings in the calendar year for the paper filings.

d. Section Trans 197.06 (3) should state that "Payment is due 30 days from the date of billing."

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 197, related to charges for submission of proof of insurance.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to s. 344.42, Stats., as created by 1997 Wis. Act 27, and interpreting s. 344.42, Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **21st** day of **September**, 1998, at **10:00 AM**, to consider the creation of chapter Trans 197, Wisconsin Administrative Code, relating to fees charged for filing of proof of insurance forms with the Division of Motor Vehicles by non-electronic means.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business September 21, 1998, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Richard Kleist, Department of Transportation, Compliance and Restoration Section, Room 301, P. O. Box 7917, Madison, WI 53707-7917.

Parking for persons with disabilities and an accessible entrance are available on the north side of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 344.42, Stats., as created by 1997 Wis. Act 27.
STATUTES INTERPRETED: s. 344.42, Stats., as created by 1997 Wis. Act 27.

General Summary of Proposed Rule. This proposed rule making is intended to codify procedures for collection and auditing of fees charged to insurers under s. 344.42, Stats.

Section 344.42, Stats., imposes a \$1.50 fee for filing SR-22 (certifications of proof of insurance) or SR-26s (insurance cancellation notices) in paper rather than electronic form if the insurer files more than 1000 certifications in a year. To determine whether an insurer meets the 1000 certification in a year requirement, all SR-22 and SR-26 filings are counted.

The \$1.50 fee per "paper" filing fee is imposed on insurers who exceed that 1000 certification threshold. No fee will be assessed for "on behalf" filings made by employers or parents on behalf of employees or children under s. 343.38, Stats. The Department's computer systems are unable to accept those types of filings electronically.

The Department proposes to bill insurers twice per year for paper filings. Payment is due 30 days after billing. Interest accrues on unpaid balances, and the Department may refuse to accept additional filings from an insurer that fails to pay the fees imposed under s. 344.42, Stats.

Fiscal Estimate. This proposed rule will clarify the fee collection process used by the Department. This proposed rule will have no adverse fiscal effect on state or local governments. ?

Initial Regulatory Flexibility Analysis. This proposed rule will not have any adverse effect on small businesses, except to the extent that s. 342.42, as created by 1997 Wis. Act 27, imposes fees on businesses that submit more than 1000 insurance filings to the Department in a year and do not use electronic systems to make the filings.

Copies of Proposed Rule. Copies of this proposed rule are available without cost upon request from the Wisconsin Department of Transportation, Compliance and Restoration Section, P.O. Box 7917, 4802 Sheboygan Avenue, Room 301, Madison, Wisconsin, 53707-7917, telephone (608) 266-2261.

Contact Person. Persons having questions about this proposed rule may write or call Richard Kleist, Wisconsin Department of Transportation, Compliance and Restoration Section, P.O. Box 7917, Madison, Wisconsin, 53707-7917, telephone (608) 264-7029. Legal questions may be addressed to John Sobotik, Assistant General Counsel, Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, Wisconsin 53707-7910, telephone (608) 267-9320. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 344.42, Stats., as created by 1997 Wis. Act 27, the department of transportation hereby proposes to create a rule interpreting s. 344.42, Stats., relating to fees charged for filing proof of financial responsibility with the department by non-electronic means.

SECTION 1. Chapter Trans 197 is created to read:

PROOF OF INSURANCE CERTIFICATIONS

Trans 197.01 PURPOSE AND SCOPE. (1) The purpose of this chapter is to administratively interpret s. 344.42, Stats., and to establish billing and collection procedures for the collection of fees related to the filing of proof of insurance forms by non-electronic means with the department.

(2) This chapter applies to any ^{insurer} person that files proof of insurance with the department on behalf of insured drivers.

Trans 197.02 DEFINITIONS. The ^{definitions} words and phrases defined in ss. 340.01 and 344.01, Stats., shall have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Electronic filing" means an insurance certification submitted to the department by an insurer using the department's electronic certification submission process.

(2) "Insurance certification" means an SR-22, certification of proof of insurance for the future, or SR-26, notice of cancellation or termination of certified policy, submitted to the department by an insurance company on behalf of an insured driver.

Mention forms in a rule

(3) "Paper filing" means any insurance certification submitted to the department by an insurer that does not use the department's electronic certification process, including certifications submitted by handwritten or typewritten documents or facsimile.

Printed ?

(4) "Year" means calendar year.

Trans 197.03 COUNTING. (1) To determine whether an insurer has filed 1000 or more proof of insurance certifications in a year, the following shall be counted as provided:

(a) Each electronic filing shall count as one filing.

(b) Each original or duplicate paper filing shall count as a separate filing.

(2) To determine the number of insurance certifications that are not submitted to the department by electronic means, the department shall count each original or duplicate paper filing as a separate filing, except filings submitted on behalf of an employe or family member under s. 344.38, Stats.

NOT NECESSARY
should be at cert file

NOTE: See s. 344.42, Stats. The Department does not currently accept s. 344.38 filings electronically.

Trans 197.04 FEES. The department shall assess a fee of \$1.50 per filing counted under s. Trans 197.03(2).

nothing that says fee applies OR file

NOTE: This fee is established in s. 344.42, Stats.

Trans 197.05 TIME AND EFFECT OF ELECTRONIC CERTIFICATIONS.

(1) TIME OF FILING. (a) Electronic SR-22 certifications. An electronic SR-22, certification of proof of financial responsibility for the future, is considered filed on the date the electronic transmission is received by the department and is posted to the department's computerized database of driver records.

is this always the same electronic time

(b) Electronic SR-26 certifications. An electronic SR-26, notice of cancellation or termination of certified policy, is considered filed on the date the electronic transmission is received by the department and is posted to the department's computerized database of driver records.

NOTE: Section 344.34, Stats., provides that certified insurance policies may not be cancelled or terminated earlier than ten days after filing a notice of cancellation or termination with the department.

Effect of

(2) ELECTRONIC SR-22 CERTIFICATIONS. An insurer who submits an electronic SR-22, certification of proof of financial responsibility for the future, to the department certifies that the insurer provides coverage for the named insured as of the effective date of the certification for any motor vehicle operated by the named insured.

NOTE: The purpose of an electronic SR-22 filing is to meet the insurance filing requirements of s. 344.31, Stats.

Trans 197.06 BILLING PROCEDURES. (1) The department shall establish an account for any insurance company that files proofs of insurance on behalf of drivers with the department. The billing address shall be the address of the insurer provided with the filing, unless a different billing address is specified by the insurer.

(2) Twice ^{each} per year the department shall bill each insurance company that has submitted in excess of 1000 filings to the department in a year as counted under s. Trans 197.03(1) for all fees assessed under s. Trans 197.04.

(3) Payment shall be due 30 days from the date of billing.

(4) The department shall assess interest charges at the rate of 18 per cent per annum on all past due accounts. Interest shall accrue from the date of billing.

(5) The department may refuse to accept insurance certifications submitted by an insurance company that has not made timely payment under sub. (3) until the insurance company pays all outstanding fees and interest charges.

(6) Partial payments shall be applied first to outstanding interest charges, if any, then to outstanding fees due.

(7) An insurance company shall promptly advise the department of any change in billing address.

(END OF RULE TEXT)

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. *(12/200)*

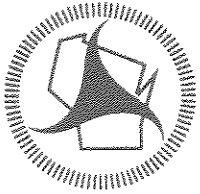
Signed at Madison, Wisconsin, this 12 day of August, 1998.



CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation



Wisconsin Department of Transportation



Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

The Honorable Robert Welch
Senate Chairman
Joint Committee for Review
of Administrative Rules
One East Main, Suite 201
Madison, Wisconsin 53707

August 12, 1998

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 125, State Capitol
Madison, Wisconsin 53707

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **charges for submission of proof of insurance**, Trans 197

Dear Senator Welch and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

Julie A. Johnson
Paralegal

Enclosure

cc: Gene Kussart
Sandy Beaupre
Mike Goetzman
Roger Cross
Rick Kleist
John Alley

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 197, related to charges for submission of proof of insurance.

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Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 344.42, Stats., as created by 1997 Wis. Act 27.

STATUTES INTERPRETED: s. 344.42, Stats., as created by 1997 Wis. Act 27.

General Summary of Proposed Rule. This proposed rule making is intended to codify procedures for collection and auditing of fees charged to insurers under s. 344.42, Stats.

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The \$1.50 fee per "paper" filing fee is imposed on insurers who exceed that 1000 certification threshold. No fee will be assessed for "on behalf" filings made by employers or parents on behalf of employees or children under s. 343.38, Stats. The Department's computer systems are unable to accept those types of filings electronically.

The Department proposes to bill insurers twice per year for paper filings. Payment is due 30 days after billing. Interest accrues on unpaid balances, and the Department may refuse to accept additional filings from an insurer that fails to pay the fees imposed under s. 344.42, Stats.

Fiscal Estimate. This proposed rule will clarify the fee collection process used by the Department. This proposed rule will have no adverse fiscal effect on state or local governments.

Initial Regulatory Flexibility Analysis. This proposed rule will not have any adverse effect on small businesses, except to the extent that s. 342.42, as created by 1997 Wis. Act 27, imposes fees on businesses that submit more than 1000 insurance filings to the Department in a year and do not use electronic systems to make the filings.

Copies of Proposed Rule. Copies of this proposed rule are available without cost upon request from the Wisconsin Department of Transportation, Compliance and Restoration Section, P.O. Box 7917, 4802 Sheboygan Avenue, Room 301, Madison, Wisconsin, 53707-7917, telephone (608) 266-2261.

Contact Person. Persons having questions about this proposed rule may write or call Richard Kleist, Wisconsin Department of Transportation, Compliance and Restoration Section, P.O. Box 7917, Madison, Wisconsin, 53707-7917, telephone (608) 264-7029. Legal questions may be addressed to John Sobotik, Assistant General Counsel, Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, Wisconsin 53707-7910, telephone (608) 267-9320. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 344.42, Stats., as created by 1997 Wis. Act 27, the department of transportation hereby proposes to create a rule interpreting s. 344.42, Stats., relating to fees charged for filing proof of financial responsibility with the department by non-electronic means.

SECTION 1. Chapter Trans 197 is created to read:

PROOF OF INSURANCE CERTIFICATIONS

Trans 197.01 PURPOSE AND SCOPE. (1) The purpose of this chapter is to administratively interpret s. 344.42, Stats., and to establish billing and collection procedures for the collection of fees related to the filing of proof of insurance forms by non-electronic means with the department.

(2) This chapter applies to any person that files proof of insurance with the department on behalf of insured drivers.

Trans 197.02 DEFINITIONS. The words and phrases defined in ss. 340.01 and 344.01, Stats., shall have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Electronic filing" means an insurance certification submitted to the department by an insurer using the department's electronic certification submission process.

(2) "Insurance certification" means an SR-22, certification of proof of insurance for the future, or SR-26, notice of cancellation or termination of certified policy, submitted to the department by an insurance company on behalf of an insured driver.

(3) "Paper filing" means any insurance certification submitted to the department by an insurer that does not use the department's electronic certification process, including certifications submitted by handwritten or typewritten documents or facsimile.

(4) "Year" means calendar year.

Trans 197.03 COUNTING. (1) To determine whether an insurer has filed 1000 or more proof of insurance certifications in a year, the following shall be counted as provided:

(a) Each electronic filing shall count as one filing.

(b) Each original or duplicate paper filing shall count as a separate filing.

(2) To determine the number of insurance certifications that are not submitted to the department by electronic means, the department shall count each original or duplicate paper filing as a separate filing, except filings submitted on behalf of an employe or family member under s. 344.38, Stats.

NOTE: See s. 344.42, Stats. The Department does not currently accept s. 344.38 filings electronically.

Trans 197.04 FEES. The department shall assess a fee of \$1.50 per filing counted under s. Trans 197.03(2).

NOTE: This fee is established in s. 344.42, Stats.

Trans 197.05 TIME AND EFFECT OF ELECTRONIC CERTIFICATIONS.

(1) TIME OF FILING. (a) Electronic SR-22 certifications. An electronic SR-22, certification of proof of financial responsibility for the future, is considered filed on the date the electronic transmission is received by the department and is posted to the department's computerized database of driver records.

(b) Electronic SR-26 certifications. An electronic SR-26, notice of cancellation or termination of certified policy, is considered filed on the date the electronic transmission is received by the department and is posted to the department's computerized database of driver records.

NOTE: Section 344.34, Stats., provides that certified insurance policies may not be cancelled or terminated earlier than ten days after filing a notice of cancellation or termination with the department.

(2) **ELECTRONIC SR-22 CERTIFICATIONS.** An insurer who submits an electronic SR-22, certification of proof of financial responsibility for the future, to the department certifies that the insurer provides coverage for the named insured as of the effective date of the certification for any motor vehicle operated by the named insured.

NOTE: The purpose of an electronic SR-22 filing is to meet the insurance filing requirements of s. 344.31, Stats.

Trans 197.06 BILLING PROCEDURES. (1) The department shall establish an account for any insurance company that files proofs of insurance on behalf of drivers with the department. The billing address shall be the address of the insurer provided with the filing, unless a different billing address is specified by the insurer.

(2) Twice per year the department shall bill each insurance company that has submitted in excess of 1000 filings to the department in a year as counted under s. Trans 197.03(1) for all fees assessed under s. Trans 197.04.

(3) Payment shall be due 30 days from the date of billing.

(4) The department shall assess interest charges at the rate of 18 per cent per annum on all past due accounts. Interest shall accrue from the date of billing.

(5) The department may refuse to accept insurance certifications submitted by an insurance company that has not made timely payment under sub. (3) until the insurance company pays all outstanding fees and interest charges.

(6) Partial payments shall be applied first to outstanding interest charges, if any, then to outstanding fees due.

(7) An insurance company shall promptly advise the department of any change in billing address.

(END OF RULE TEXT)

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.

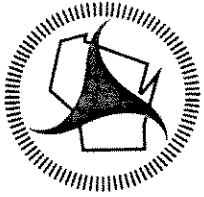
Signed at Madison, Wisconsin, this 12 day of August, 1998.



CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation



Wisconsin Department of Transportation



Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

The Honorable Brian Rude
President, Wisconsin State Senate
Room 301
119 MLK Jr. Blvd.
Madison, Wisconsin 53707

October 19, 1998

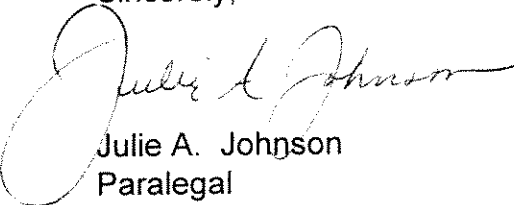
The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 315 North, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 197**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 98-111

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **98-111**, relating to **charges for submission of proof of insurance**. 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/Roger Cross/Rick Kleist/
John Alley

CR 98-111

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 197, related to charges for submission of proof of insurance.

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

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:



JOHN J. SOBOTIK
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 267-9320

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 344.42, Stats., as created by 1997 Wis. Act 27.

STATUTES INTERPRETED: s. 344.42, Stats., as created by 1997 Wis. Act 27.

General Summary of Proposed Rule. This proposed rule making is intended to codify procedures for collection of fees charged to insurers under s. 344.42, Stats., as created by 1997 Wis. Act 27.

Section 344.42, Stats., imposes a \$1.50 fee for filing SR-22 (certifications of proof of insurance) or SR-26s (insurance cancellation notices) in paper rather than electronic form if the insurer files more than 1000 certifications in a year. To determine whether an insurer meets the 1000 certification in a year requirement, all SR-22 and SR-26 filings are counted.

The \$1.50 fee per "paper" filing fee is imposed on insurers who exceed that 1000 certification threshold. No fee will be assessed for "on behalf" filings made by employers or parents on behalf of employees or children under s. 343.38, Stats. The Department's computer systems are unable to accept those types of filings electronically.

The Department proposes to bill insurers twice per year for paper filings. Payment is due 30 days after billing. Interest accrues on unpaid balances, and the Department may refuse to accept additional filings from an insurer that fails to pay the fees imposed under s. 344.42, Stats.

Fiscal Estimate. This proposed rule will clarify the fee collection process used by the Department. This fiscal estimate is based on the effect of s. 344.42, Stats. The expected impact will be an eventual reduction of 7.5 FTE totaling \$198,000. It is estimated in fiscal 1999, revenues will be increased by approximately \$250,000, and in fiscal 2000, revenues will be increased by approximately \$140,000. This proposed rule will have no adverse effect on state or local governments.

Copies of Proposed Rule. Copies of this proposed rule are available without cost upon request from the Wisconsin Department of Transportation, Compliance and Restoration Section, P. O. Box 7917, 4802 Sheboygan Avenue, Room 301, Madison, Wisconsin, 53707-7917, telephone (608) 266-2261.

Contact Person. Persons having questions about this proposed rule may write or call Richard Kleist, Wisconsin Department of Transportation, Compliance and Restoration Section, P. O. Box 7917, Madison, Wisconsin, 53707-7917, telephone (608) 264-7029. Legal questions may be addressed to John Sobotik, Assistant General Counsel, Wisconsin Department of Transportation, Office of General Counsel, P. O. Box 7910, Madison, Wisconsin 53707-7910, telephone (608) 267-9320. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 344.42, Stats., as created by 1997 Wis. Act 27, the department of transportation hereby proposes to create a rule interpreting s. 344.42, Stats., relating to fees charged for filing proof of financial responsibility with the department by non-electronic means.

SECTION 1. Chapter Trans 197 is created to read:

CHAPTER TRANS 197
PROOF OF INSURANCE CERTIFICATIONS

TRANS 197.01 Purpose and scope. (1) The purpose of this chapter is to administratively interpret s. 344.42, Stats., and to establish billing and collection procedures for the collection of fees related to the filing of proof of insurance forms by non-electronic means with the department.

(2) This chapter applies to any person that files proof of insurance with the department on behalf of insured drivers.

TRANS 197.02 Definitions. The definitions in ss. 340.01 and 344.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Electronic filing" means an insurance certification submitted to the department by an insurer using the department's electronic certification submission process.

(2) "Insurance certification" means an SR-22, certification of proof of insurance for the future, or SR-26, notice of cancellation or termination of certified policy, submitted to the department by an insurance company on behalf of an insured driver.

(3) "Paper filing" means any insurance certification submitted to the department by an insurer that does not use the department's electronic certification process, including certifications submitted by handwritten or typewritten documents, on preprinted forms, or by facsimile.

(4) "Year" means calendar year.

TRANS 197.03 Counting. (1) **ELECTRONIC FILINGS.** Each electronic filing counts as one filing. Duplicate electronic filings shall be disregarded by the department and may not be counted.

(2) **PAPER FILINGS.** (a) Each original or duplicate paper filing counts as a separate filing.

(b) Filings made pursuant to s. 344.38, Stats., on behalf of an employe, family member or household member may not be counted.

NOTE: See s. 344.42, Stats. The Department does not accept s. 344.38 filings electronically.

TRANS 197.04 Fees. The department shall assess a fee of \$1.50 for each paper filing, except filings made pursuant to s. 344.38, Stats., if the insurer has filed more than 1,000 insurance certifications in the year.

TRANS 197.05 Time and effect of electronic certifications. (1) **TIME OF FILING.** An electronic insurance certification is considered filed on the date the electronic transmission is posted to the department's computerized database of driver records.

NOTE: Filings are usually posted the same day they are received. Section 344.34, Stats., provides that certified insurance policies may not be canceled or terminated earlier than ten days after filing a notice of cancellation or termination with the department.

(2) **EFFECT OF ELECTRONIC SR-22 CERTIFICATIONS.** An insurer who submits an electronic SR-22, certification of proof of financial responsibility for the future,

to the department certifies that the insurer provides coverage for the named insured as of the effective date of the certification for any motor vehicle operated by the named insured.

NOTE: The purpose of an electronic SR-22 filing is to meet the insurance filing requirements of s. 344.31, Stats.

TRANS 197.06 Billing procedures. (1) The department shall establish an account for any insurance company that files proofs of insurance on behalf of drivers with the department. The billing address shall be the address of the insurer provided with the filing, unless a different billing address is specified by the insurer.

(2) Fees assessed under s. Trans 197.04 shall be billed twice per year.

(3) Payment is due 30 days from the date of billing.

(4) The department shall assess interest charges at an annual rate of 18% on all past due accounts. Interest shall accrue from the date of billing.

(5) The department may refuse to accept insurance certifications submitted by an insurance company that has not made timely payment under sub. (3) until the insurance company pays all outstanding fees and interest charges.

(6) Partial payments shall be applied first to outstanding interest charges, if any, then to outstanding fees due.

(7) An insurance company shall promptly advise the department of any change in billing address.

(END OF RULE TEXT)

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 19 day of October, 1998.



CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[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 98-111

AN ORDER to create chapter Trans 197, relating to charges for submission of proof of insurance.

Submitted by **DEPARTMENT OF TRANSPORTATION**

08-12-98 RECEIVED BY LEGISLATIVE COUNCIL.

09-08-98 REPORT SENT TO AGENCY.

RS:GAA:jal;rv

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)]

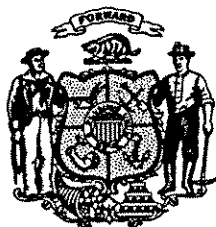
Comment Attached YES NO

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CLEARINGHOUSE RULE 98-111

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 September 1998.]

1. Statutory Authority

a. Section 344.42, Stats., as created by 1997 Wisconsin Act 27, provides that if certain insurance certifications and recertifications are submitted to the Department of Transportation (DOT), an insurer must pay a fee of \$1.50 for each certification or recertification that is not transmitted electronically to the department. Under ss. Trans 197.02 (2), 197.03, 197.04 and 197.05 (2), DOT intends to include, as a source of fee revenue, notices of cancellation or termination of insurance policies. Given the specificity with which s. 344.42, Stats., refers to certifications and recertifications, what statutory authority exists for including insurance cancellations or terminations?

b. Section 344.42, Stats., provides that whenever the certifications and recertifications under ss. 344.31, 344.32 and 344.34 that are submitted by an insurer to DOT in any year exceeds 1,000, the insurer must pay a transaction fee of \$1.50 for each certification or recertification that is not transmitted electronically. In s. Trans 197.03, it appears that the department, in determining whether an insurance company reaches the 1,000 filing limit, intends to include filings submitted under s. 344.38, Stats., although the latter filings will in no case be assessed a fee of \$1.50. Under what statutory authority does the department include the filings under s. 344.38, Stats., in the 1,000 limit described in s. 344.42, Stats.?

2. Form, Style and Placement in Administrative Code

a. The fiscal estimate included in the rule is inadequate. Section 227.14 (4) (b) 2., Stats., provides that a fiscal estimate must include a projection of the anticipated state fiscal

effect during the current biennium and a projection of the net annualized fiscal impact on state funds. The department must have ample experience with the receipt of certifications and recertifications from insurance companies for purposes of proof of financial responsibility in order to make a reasonable and reliable estimate of the amount of revenues to be derived from the new \$1.50 fee. [See also s. 227.14 (4) (c), Stats., which provides that if a rule has no independent fiscal effect, the fiscal estimate prepared must be based on the fiscal effect of the statute.]

b. In s. Trans 197.02 (intro.), "words and phrases defined" should be replaced by "definitions" and "shall" should be deleted.

c. In ss. Trans 197.03 (1) and 197.06 (2), a comma should be inserted following the "1" in "1000."

d. In s. Trans 197.03 (1) (a), "shall count" should be replaced by "counts." The same change should be made in s. Trans 197.03 (1) (b).

e. Section Trans 197.03 (2) states that "To determine the number of certain certifications that are not submitted to the department by electronic means, the department shall count each original or duplicate paper filing as a separate filing, except filings submitted on behalf of an employe or family member under s. 344.38, Stats." The material beginning with "to determine" through the comma on line 2 is unnecessary. Also, the material beginning with "except filings" through s. 344.38, Stats., can be excluded since the statute under which the rule is promulgated, s. 344.42, Stats., refers to certifications and recertifications under ss. 344.31, 344.32 and 344.34, Stats., that are submitted by an insurer to the department. Section Trans 197.03 could be rewritten as two sentences: "Each electronic filing counts as one filing." "Each original or duplicate paper filing counts as a separate filing." Section Trans 197.04 could then be rewritten to state: "The department shall assess a fee of \$1.50 for each paper filing if the insurer has filed 1,000 or more insurance certifications in a year."

f. In s. Trans 197.05 (2), the title "Electronic SR-22 certifications" is the same as the title to s. Trans 197.05 (1) (a). It could be rewritten as "effect of electronic SR-22 certifications."

g. In s. Trans 197.06 (4), "the rate of 18 percent per annum" should be replaced by "an annual rate of 18%."

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

a. Section Trans 197.02 (3) refers to certifications submitted by "handwritten or typewritten documents or facsimile." This excludes "printed" documents. There are two alternatives: (1) delete the material beginning with the comma preceding "including certifications"; or (2) add "printed" to the enumerated certifications.

b. Since s. Trans 197.05 (1) (a) and (b) are the same except for the form references, they could be combined as follows: "An electronic filing is considered to be filed on the date the electronic filing is posted to the department's computerized database of driver records." Also,

the provisions as currently written are confusing, since they provide that a form is considered filed on the date the transmission is received by the department and is posted at the department's computerized database. If the two events occur on different dates, it is obviously intended that the latter date, when the electronic filing is posted, will be the effective date. Also, who does the "posting"?

c. Section Trans 197.06 (2) states that "Twice per year the department shall bill each insurance company that has submitted in excess of 1000 filings to the department in a year as counted under s. Trans 197.03 (1) for all fees assessed under s. Trans 197.04." In addition to format changes [inserting a comma in "1000,"], the provision is confusing. Is it intended that the department will bill each insurance company in the calendar year during which the company has submitted in excess of 1,000 filings, or that the department will bill the insurance company in the following calendar year if it exceeded 1,000 filings in the previous year? The provision could provide that the department will bill insurance companies twice each year and will bill each insurance company that has exceeded 1,000 filings in the calendar year for the paper filings.

d. Section Trans 197.06 (3) should state that "Payment is due 30 days from the date of billing."

PART 4
CR 98-111

ANALYSIS OF FINAL DRAFT OF TRANS 197

(a) **Need for Rule.** This proposed rule making is needed to establish procedures for collection of fees charged to insurers under s. 344.42, Stats., as created by 1997 Wis. Act 27.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held on September 21, 1998 in Madison. No persons appeared at the public hearing on this rule or submitted written testimony. Accordingly, no modifications were made as a result of public hearing testimony. A number of modifications, described below, were made as a result of Legislative Council recommendations.

(c) **List of Persons who Appeared or Registered at Public Hearing.** None.

(d) **Response to Legislative Council Recommendations:**

1a. The Legislative Council questions whether WISDOT has authority to impose the fee required under s. 344.42, Stats., to certifications of insurance cancellations. Section 344.42, Stats., as created by 1997 Wisconsin Act 27, requires WISDOT to impose the fee on all certifications received under ss. 344.31, 344.32 and 344.34, Stats. Certifications of insurance cancellation are filed pursuant to s. 344.34, Stats.

1b. The Department is not going to include filings under s. 343.38 in counting the total number of certifications filed by an insurer.

2a. A revised fiscal estimate accompanies this draft of the rule.

2b-2d. The Legislative Council's recommendations are adopted.

2e. The legislative council's recommendation to rewrite s. 197.03 in a more straightforward manner is adopted.

2f-2g. The Legislative Council's recommendations are adopted.

5a. The Legislative Council's recommendation is adopted. Preprinted forms are now specifically referred to in the rule text.

5b. The Legislative Council's recommendation to clarify that the date the information is posted by the Department to its database is considered the effective date of a filing.

5c-5d. The Legislative Council's recommendations are adopted.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule will not have any adverse effect on small businesses, except to the extent that s. 342.42, as created by 1997 Wis. Act 27, imposes fees on businesses that submit more than 1000 insurance filings to the Department in a year and do not use electronic systems to make the filings.