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Details: Emergency Rules by Department of Transportation.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (June 2012)



Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Jim Doyle, Governor
Frank J. Busalacchi, Secretary
Internet: www.dot.wisconsin.gov
Telephone: 608-266-8810
Facsimile (FAX): 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

Robert J. Marchant
Senate Chief Clerk
Room B-20 Southeast, State Capitol
Madison, Wisconsin 53707

January 8, 2009

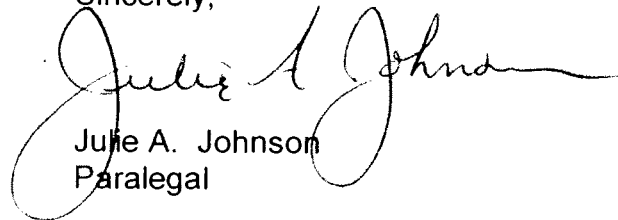
Patrick E. Fuller
Assembly Chief Clerk
17 West Main, Room 401
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 325/326/327**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 08-100

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **08-100**, relating to **motor carrier safety, and hazardous material transportation safety**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: David Schmiedicke, DOA State Budget Director
Bruce Hoesly
Senator Jim Holperin
Rep. Josh Zepnick
Supt. David Collins
Capt. Chuck Lorentz
Lt. Patricia Hansen



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Telephone: 608-266-8810
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E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South
State Capitol
Madison, Wisconsin 53707

January 8, 2009

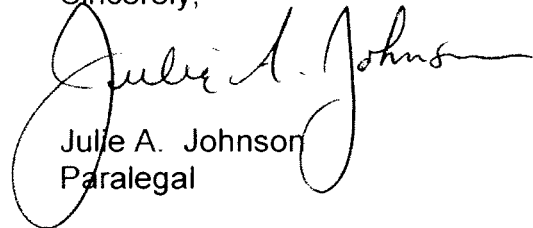
The Honorable Representative John Steinbrink
Chairman, Assembly Transportation Committee
Room 104 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 325/326/327**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 08-100

Gentlemen:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rule making actions, enclosed is a courtesy copy of Final Draft rule **Trans 325/326/327**, relating to **motor carrier safety, and hazardous material transportation safety**, which is being submitted to the Legislature for committee review.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Supt. David Collins
Capt. Chuck Lorentz
Lt. Patricia Hansen

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 08-100

The Wisconsin Department of Transportation proposes an order amending TRANS 325.02(intro.) and (8), 325.15, 326.01(intro.) and (8), 326.15, 327.03(intro.) and (7), 327.09(6)(note) and 327.13; and creating TRANS 325.02(7g) and (7r), 326.01(7m) and 327.03(11), relating to motor carrier safety, and hazardous material transportation safety.

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

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

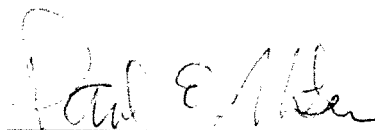
Part 1--Analysis prepared by the Department of Transportation.

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:



PAUL NILSEN
Attorney Supervisor
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 261-0126

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 194, Stats.

Statutory authority: s. 110.075, Ch. 194, ss. 343.02 and 343.03(1)(a), Stats.

Explanation of agency authority: 49 USC 31102 requires states to adopt and enforce federal regulations, standards, and orders on commercial motor vehicle safety, hazardous materials transportation safety, or compatible State regulations, standards, and orders, in exchange for grants under the federal Motor Carrier Safety Assistance Program ("MCSAP"). The primary goal of the MCSAP program is to reduce the number and severity of crashes and hazardous material spills involving large trucks. In fiscal year 2009, Wisconsin will receive \$4,000,000 in federal moneys under the MCSAP program.

Under federal law, "A State that fails to adopt any new regulation or amendment to the FMCSRs [federal motor carrier safety regulations] or HMRs [hazardous materials regulations] within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds." 49 CFR 350.335.

Wisconsin law requires DOT to administer and enforce driver licensing laws and authorizes DOT to promulgate rules that "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." Section 343.02, Stats. Wisconsin law expressly assents to those federal laws relating to commercial motor vehicle drivers and "declares its purpose and intent to make provisions to implement and enforce that law and those regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under 23 USC 104 (b) (1), (2), (5) and (6), including all increased and advanced appropriations." Section 343.02, Stats. Wisconsin law also requires DOT to "institute a classified driver license system meeting all federal standards under 49 USC 30304 (e) and 31301 to 31317 and 49 CFR 383 and 384. Section 343.03(1)(a), Stats.

Consistent with federal and state law, DOT promulgates administrative rules each time those FMCSRs or HMRs are amended. The delay in implementing administrative rules through the rule making process creates potential enforcement conflicts and limits the Department's ability to balance both state and federal requirements and to set consistent expectation about safety requirements, particularly among interstate motor carriers who face different (i.e., current) federally-required standards when entering neighboring states.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: As prescribed by state statute, the Department is required to regulate both intrastate and interstate transportation of property and passengers by commercial motor vehicles. Federal law prescribes various laws and

regulations affecting commercial motor vehicles, and requires states to adopt and enforce those federal regulations as a condition of receiving various federal traffic safety grants. Commercial motor vehicles traveling between states could encounter enforcement difficulties traveling between states that have adopted or are enforcing different year federal regulations. Applying outdated regulations can adversely affect interstate transportation where those other states apply current regulations. In practice, many states generally appear to apply the current federal regulations despite apparently lacking necessary state adoption of the revised, current federal regulations. It is in the best interest of the public when current regulations are used for enforcement of these regulations.

In addition, the adoption of Trans 325, 326 and 327 will give the Department the authority to apply current federal standards by which traffic officers and state patrol inspectors declare vehicles and drivers out of service. Similarly, the Attorney General's office has consented to the incorporation by reference of the revised North American Standard Out-of-Service Criteria under the provision of § 227.21(2)(b), Stats.

The national motor carrier industry is informed of Federal Rule changes through the Commercial Vehicle Safety Alliance and related motor carrier memberships. The Wisconsin Motor Carriers Association also provides current links to federal and state agencies (including surrounding states) at: www.witruck.org/links.htm. Through these industry interest groups, the motor carriers are often aware of federal regulation changes before the Department. The State Patrol informs the Wisconsin Motor Carriers Association as federal changes are made, and the Federal Motor Carrier Safety Administration (FMCSA) maintains updated information on their website. Regular discussions are held between the local FMCSA representative, the Wisconsin State Patrol and the Wisconsin Motor Carriers Association.

The Department has never conducted formalized motor carrier industry training sessions and currently has no plans to do so. The Department does, however, provide media releases on any statutory or regulatory changes or updates and does operate an information booth at the Wisconsin Trucking Association Annual Conference and provides speakers on legal updates upon request.

This rule making adopts numerous changes to federal law promulgated since October 1, 2006. Those changes were summarized in the federal register, published at the time of their promulgation as federal regulations. The summaries include a plain language analysis of the regulatory change, the objective of the regulatory change, a summary of comments received in response to the proposed federal rulemaking and the response to those comments. These summaries of federal regulatory changes adopted by this rule making can be found at the federal Government Printing Office website at: <http://www.gpoaccess.gov/fr/index.html>. The Department will provide any requester with a copy of any of the federal registers identified below upon request.

Federal regulatory changes adopted by ch. Trans 325:

Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment, 73 Fed. Reg. 76793 (December 17, 2008);

New Entrant Safety Assurance Process, 73 Fed. Reg. 76471 (December 16, 2008);

Medical Certification Requirements as Part of the CDL; National Registry of Certified Medical Examiners, 73 Fed. Reg. 73095 (December 1, 2008);

Hours of Service of Drivers, 73 Fed. Reg. 69567 (November 19, 2008);

Amendments to Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 72 Fed. Reg. 36759 (July 5, 2007);

Parts and Accessories Necessary for Safe Operation; Lamps and Reflective Devices, 72 Fed. Reg. 32011 (June 11, 2007);

Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements, 72 Fed. Reg. 9855 (March 6, 2007).

Federal regulatory changes adopted by ch. Trans 326:

Requirements for Intermodal Equipment Providers and for Motor Carriers and Drivers Operating Intermodal Equipment, 73 Fed. Reg. 76793 (December 17, 2008);

Medical Certification Requirements as Part of the CDL; National Registry of Certified Medical Examiners, 73 Fed. Reg. 73095 (December 1, 2008);

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; Railroad Safety Enforcement Procedures; Enforcement, Appeal and Hearing Procedures for Rail Routing Decisions, 73 Fed. Reg. 72181 (November 26, 2008);

Amendments to Implement Certain Provisions of the Safe, Accountable, Flexible, Efficient Hours of Service of Drivers, 73 Fed. Reg. 69567 (November 19, 2008);

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications, 73 Fed. Reg. 57001 (October 1, 2008);

Hazardous Materials: Fuel Cell Cartridges and Systems Transported on Board Passenger Aircraft in Carry-On Baggage, 73 Fed. Reg. (April 30, 2008);

Hazardous Materials: Enhancing Rail Transportation Safety and Security for Hazardous Materials Shipments; Railroad Safety Enforcement Procedures, 73 Fed. Reg. 20751 (April 16, 2008);

Hazardous Materials; Miscellaneous Amendments, 73 Fed. Reg. 4699 (January 28, 2008);

Hazardous Materials: Revisions to the List of Hazardous Substances and Reportable Quantities, 73 Fed. Reg. 1089 (January 7, 2008);

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications, 72 Fed. Reg. 55678 (October 1, 2007);

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft, 72 Fed. Reg. 55091 (September 28, 2007);

Hazardous Materials: Revision and Reformatting of Requirements for the Authorization to Use International Transport Standards and Regulations; Correction, 72 Fed. Reg. 55090 (September 28, 2007);

Hazardous Materials; Transportation of Lithium Batteries, 72 Fed. Reg. 44929 (August 9, 2007);

Transportation Equity Act: A Legacy for Users (SAFETEA-LU), 72 Fed. Reg. 36759 (July 5, 2007);

Hazardous Materials: Revision and Reformatting of Requirements for the Authorization to Use International Transport Standards and Regulations, 72 Fed. Reg. 25161 (May 3, 2007);

Hazardous Materials Transportation; Miscellaneous Revisions to Registration and Fee Assessment Program, 72 Fed. Reg. 24536 (May 3, 2007);

Hazardous Materials Regulations: Transportation of Compressed Oxygen, Other Oxidizing Gases and Chemical Oxygen Generators on Aircraft, 72 Fed. Reg. 4442 (January 31, 2007);

Hazardous Materials: Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions, 71 Fed. Reg. 78595 (December 29, 2006).

Federal regulatory changes adopted by ch Trans 327:

Chapter Trans 327 adopts many of the same chapters of the federal regulations as ch. Trans 325, so many of the regulatory changes listed above for ch. Trans 325 are

also adopted by ch. Trans 327. In addition, ch. 327 adopts the following federal regulatory changes:

Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 73 Fed. Reg. 70283 (November 20, 2008);

Procedures for Transportation Workplace Drug and Alcohol Testing Programs, 73 Fed. Reg. 35961 (June 25, 2008);

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: State Laws Requiring Drug and Alcohol Rule Violation Information, 73 Fed. Reg. 33735 (June 13, 2008);

OST Technical Corrections, 73 Fed. Reg. 33326 (June 12, 2008);

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Procedures for Non-Evidential Alcohol Screening Devices, 72 Fed. Reg. 1298 (January 11, 2007).

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR part 385, subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and parts 390 to 393 and 395 to 397. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) adopts Federal Regulations 49 CFR parts 107, 171-173, 177, 178, 180 and 385, subpart E (Hazardous Materials Safety Permits). Trans 327 (Motor Carrier Safety) adopts Federal regulations part 385, subpart C, (Certification of Safety Auditors, Safety Investigators and Safety Inspectors), parts 40, 390-general, except 390.23(a)(3); 391-general except 391.11(b)(1) and 391.41(b)(3), 391.41(b)(10); 392 except 392.16; 393-general except 393.42 shall not apply to vehicles placed in operation in common, contract or private carriage prior to June 1, 1987; 395, general-except 395.1(e)(1), 395.1(h), 395.1(i) 395.5, 395.8, and the maximum number of hours identified in 395.3 as follows: (a) more than 12 hours following 10 consecutive hours off duty; (b) for any period after having been on duty 16 hours following 10 consecutive hours off duty; (c) after having been on duty for 70 hours in any period of 7 consecutive days; and (d) after having been on duty for 80 hours in any period of 8 consecutive days, and parts 396 and 397.

Comparison with Rules in Adjacent States: All adjacent states (Michigan, Minnesota, Illinois and Iowa) adopt the same Federal regulations and subsequent revisions to those regulations. Two of the four states adjacent to Wisconsin appear to adopt federal regulations automatically upon enactment, without specific reference to the date of the regulations, while two adjacent states appear to engage in rule making to specify the date of federal regulations that are adopted.

Minnesota: Minnesota statutes incorporate federal motor carrier regulations by reference, but do not appear to specify a year or effective date of those regulations, which presumably incorporates subsequent revisions to those regulations. For

example, Minnesota statutes require their DMV to “disqualify a person from operating commercial motor vehicles in accordance with the driver disqualifications and penalties in Code of Federal Regulations, title 49, part 383, subpart D and Code of Federal Regulations, title 49, section 384.219.” Minn. Stat. § 171.165 (2007). Minnesota administrative code similarly adopts federal regulations without reference to the year or effective date of those federal regulations, which presumably incorporates subsequent revisions to those regulations. See, for example, Commercial Vehicle Equipment Safety Standards, which requires, among other things, commercial motor vehicles to be “equipped as required by Code of Federal Regulations, title 49, section 392.7 or 392.8 or part 393.” Minn. R. 7410.5160 (2007).

Michigan: Since 1963, Michigan statutes appear to have adopted federal commercial motor carrier safety regulations and hazardous materials regulations on file with the Michigan Secretary of State, but without reference to specific year or effective date of those regulations, which presumably incorporates subsequent revisions to those regulations when possessed by the Secretary of State. MCLS § 480.11a (2008). There appear to be no administrative code provisions adopted or excepting specific portions of those federal regulations. That Michigan statute, MCLS § 480.11a (2008), provides, in part:

§ 480.11a. Adoption of federal regulations; exceptions; definitions.

Sec. 1a. (1) This state adopts the following provisions of title 49 of the code of federal regulations, on file with the office of the secretary of state except where modified by this act:

(a) Hazardous materials regulations, being 49 CFR parts 100 through 180 except for the transportation of agricultural products for which an exception from the application of 49 CFR subchapter C and 49 CFR subchapters G and H, part 172, is provided under 49 CFR 173.5, is specifically authorized if the transportation is in compliance with this act and other state law.

(b) Motor carrier safety regulations, being 49 CFR parts 40, 356, 365, 368, 371 through 373, 375, 376, 379, 382, 385, 387, 390 through 393, 395 through 399 including the appendices of each part except for the following:

Michigan prescribes no process for filing revised federal regulations, which presumably allows Michigan to adopt revised federal regulations by filing them.

Illinois: Adopts the federal motor carrier safety regulations and federal hazardous materials regulations dated October 1, 2006, by reference, at 92 Ill. Adm. Code 390.2000 (2008).

Iowa: Adopts the federal motor carrier safety regulations and federal hazardous materials regulations dated October 1, 2007, by reference, at 761 IAC 520.1(321) (2008).

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Federal Motor Carrier Safety Administration continues to do ongoing research into vehicle equipment, driver safety, carrier authority and hazardous materials. Its research, coupled with the input from the motor carrier industry, resulted in ongoing updates to federal regulations for interstate commerce. It is imperative the same regulations are enforced from state to state.

Analysis and supporting documentation used to determine effect on small businesses: The research provided by the Federal Motor Carrier Safety Administration was used in analyzing the effects on small business.

Effect on small business: This rule making will have no significant adverse effect on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on private sector revenues or liabilities.

Agency contact person and copies of rule: The public record on this proposed rule making was held open until close of business on December 5, 2008, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Lt. Patricia Hansen, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Lt. Hansen by phone at (608) 266-0094, or by e-mail at patricia.hansen@dot.state.wi.us to obtain copies of the proposed rule.

PART 2 **TEXT OF RULE**

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 January 1, 2006,~~ 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(7g) and (7r) are created to read:

Trans 325.02(7g) Title 49, Code of Federal Regulations, part 385, subpart C, certification of safety auditors, safety investigators and safety inspectors.

(7r) Title 49, Code of Federal Regulations, part 387, as it pertains to the financial responsibility requirements applicable to commercial motor vehicles that are subject to the provisions of 392.9a.

SECTION 3. Trans 325.02(8) and 325.15 are amended 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 2006 North American ~~uniform~~ standard out-of-service criteria.

NOTE: The North American Uniform Standard Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, Legislative Reference Bureau~~ 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~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at www.cvsa.org.

Trans 325.15 Copies of rules. The department shall advise carriers upon request as to where copies of the federal rules adopted in this chapter may be obtained.

NOTE: Federal motor regulations may also be obtained through the Internet via: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

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 January 1, 2006,~~ 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(7m) is created to read:

Trans 326.01(7m) Title 49, Code of Federal Regulations, part 385, subpart E, hazardous materials safety permits.

SECTION 6. Trans 326.01(8) and 326.15 are amended 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 2006 North American uniform standard out-of-service criteria.

NOTE: The North American Uniform Standard Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, Legislative Reference Bureau~~ 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~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at www.cvsa.org.

Trans 326.15 Copies of rules. The department shall advise carriers upon request that copies of the federal regulations cited in s. Trans 326.01 may be obtained by contacting the division of state patrol.

NOTE: Federal motor regulations may also be obtained through the Internet via: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

SECTION 7. Trans 327.03(intro.) and (7) are amended to read:

Trans 327. 03 Federal regulations adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation ~~and in effect on October 1, 2006~~, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles which operate in intrastate commerce in the same manner as though the regulations were set out in full in this chapter:

(7) 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 2006 North American uniform standard out-of-service criteria.

NOTE: The North American Uniform Standard Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, Legislative Reference~~

Bureau 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 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at www.cvsa.org.

SECTION 8. Trans 327.03(11) is created to read:

Trans 327.03(11) Title 49, Code of Federal Regulations, part 385, subpart C, certification of safety auditors, safety investigators and safety inspectors.

SECTION 9. Trans 327.09(6)(note) and 327.13 are amended to read:

Trans 327.09(6)(note) Note: Declarations can be faxed to (608) 266-4495 267-9600.


Trans 327.13 Copies of federal regulations. The department shall advise carriers upon request that copies of the federal regulations cited in s. Trans 327.03 may be obtained by contacting the division of state patrol, Wisconsin department of transportation.

NOTE: Federal motor regulations may also be obtained through the Internet via: <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

(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)(intro.), Stats.

Signed at Madison, Wisconsin, this 3rd day of
January, 2009.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

**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 08-100

AN ORDER to amend Trans 325.02 (intro.) and (8), 326.01 (intro.) and (8), 327.03 (intro.) and (7), and 327.09 (6) (Note); and to create Trans 325.02 (7g) and (7r), 326.01 (7m), and 327.03 (11), relating to motor carrier safety, and hazardous material transportation safety.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-28-2008 RECEIVED BY LEGISLATIVE COUNCIL.

11-14-2008 REPORT SENT TO AGENCY.

RNS:LAK

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 RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-100

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

1. Statutory Authority

This rule proposal would eliminate the need for the department to amend its administrative rules each time that there are changes in federal requirements related to motor carrier safety. The current system apparently creates potential enforcement conflicts and limits the department’s ability to balance both state and federal requirements and to set consistent expectations about safety requirements. The “explanation of agency authority” section of the rule analysis should emphasize any federal requirements under which the state must adopt changes in federal motor carrier safety regulations, the department’s state statutory authority to regulate in this area, and an explanation of why the above issues direct the department to interpret its authority to allow the proposed changes to be made.

2. Form, Style and Placement in Administrative Code

The department correctly struck the words “offices of the Revisor of Statutes” from three notes since that office no longer exists. However, “Legislative Reference Bureau” should be added to the notes. See s. 227.21 (2) (b). Stats.

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

a. The “plain language analysis” section of the rule analysis should be clarified to explain what changes are included in the rule proposal, to what safety issues these changes apply, why current rules cause outdated regulations to be applied, why this is a problem, and

how the proposal would eliminate this problem. It would also be helpful if the department described how it will disseminate information about changes to federal regulations that would be automatically adopted under this rule proposal.

b. The "comparison with rules in adjacent states" section of the rule analysis could be clarified to indicate whether subsequent revisions to federal regulations are automatically adopted by reference by neighboring states or whether these states must adopt changes through their rule-making processes.

PART 4
CR 08-100

ANALYSIS OF FINAL DRAFT OF TRANS 325 / 326 / 327

(a) **Basis and Purpose of Rule.** Federal law regulates various aspects of commercial motor vehicles and their drivers as a condition of receiving various federal traffic safety grants. Wisconsin must adopt the federal regulations within three years after their enactment. Interstate commercial motor carriers expect that states will apply identical criteria to avoid inadvertent violations or being frustrated trying to comply with inconsistent or contradictory state requirements at the border of each state. The delay in enacting federal regulations by the rule making process means that Wisconsin is constantly behind, applying and enforcing federal regulations that may lag years behind federal regulations in effect and enforced by neighboring states. This rule making deletes the year of reference and simply requires the Department to apply the federal regulations then in effect. A desired consequence is that the Department will be required to apply any of the listed federal regulations immediately upon adoption of any by the federal government.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on December 2, 2008. Modifications made as a result of testimony at the hearing are discussed in par. (d).

(c) **List of Persons who Appeared or Registered at Public Hearing:** The following individual spoke in favor of the proposed rule:

R. B. Willder, Loss Control Director, Wisconsin, Agri-Service Association, Madison, Wisconsin.

(d) **Summary of Public Comments and Agency Response to those Comments:** Listed below are the comments provided at the hearing, along with the Department's response to those comments. The written comment period was held open until close of business December 5, 2008. No written comments were received.

Mr. Willder spoke in favor of the rule. He explained that he believed the trucking industry generally supported efforts to establish uniformity between states, and believed the Department's efforts to adopt changes to federal regulations upon their promulgation would help motor carriers. Mr. Willder also offered a couple of housekeeping changes to the proposed rule which have been incorporated.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** The Legislative Council recommended clarification on a number of issues explaining what changes are included in the rule proposal, to what safety issues these changes apply, why current rules cause outdated regulations to be applied, why this is a problem, and how the proposal would eliminate this problem. It also suggested that DOT describe how it will disseminate information about changes to federal regulations that would be automatically adopted under this rule proposal. Accordingly, the Department has

completely re-written the plain language analysis. The most significant addition is the identification of federal regulations that have been promulgated since these rules last adopted the federal regulations.

(f) **Response to Legislative Council Recommendations:** The Legislative Council report contained numerous comments. The manner in which each numbered comment is addressed is as follows:

1. The statutory authority section was rewritten to more fully explain the Department's legal authority and to identify the relevant state and federal laws.

2. The Legislative Council's recommendation was adopted.

5a. The plain language analysis was rewritten to include more detail recommended by Legislative Council. The Department has identified the federal regulatory changes adopted by this rule making.

5b. The Department expanded its analysis of laws of the surrounding states by examining how those states adopt the same federal regulations. Two states adopt changes to federal regulations by operation of state law, as this rule proposes. Two states adopt changes to federal language by specifically adopting a published volume of the bound federal regulations, referenced by date, as this state does now.

(g) **Final Regulatory Flexibility Analysis.** This rule making will have no significant adverse effect on small businesses.





Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Jim Doyle, Governor
Frank J. Busalacchi, Secretary
Internet: www.dot.wisconsin.gov
Telephone: 608-266-8810
Facsimile (FAX): 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Jim Holperin
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

June 17, 2009

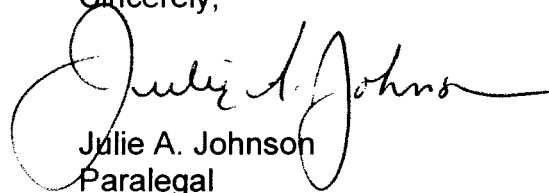
The Honorable Josh Zepnick
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 219 North, State Capitol
Madison, Wisconsin 53702

RE: **ORDER ADOPTING EMERGENCY RULE ON TRANS 315**, relating to safety
belt medical use exemption

Gentlepersons:

Enclosed is a copy of the above-referenced emergency rule for your information.
Pursuant to sec. 227.24(1)(c), Stats., the rule will take effect upon publication in the
Wisconsin State Journal, scheduled on or about Thursday, June 25, 2009.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Supt. David Collins
Mike Goetzman
Casey Newman
Laura Andreasson

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order amending TRANS 315.03(1)(a) and (c), relating to safety belt medical use exemption.

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.015, 84.41(7) and 347.48(2m)(e), Stats., interpreting s. 347.48(2m)(e), Stats., the Department of Transportation will hold a public hearing on the 8th day of **September**, 2009, at the Hill Farms State Transportation Building, Room **144-B**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the amendment of ch. Trans 315, Wisconsin Administrative Code, relating to safety belt medical use exemption.

An interpreter for the hearing impaired will be available on request for this hearing.

Parking for persons with disabilities and an accessible entrance are available.

A copy of the emergency rule may be obtained upon request from Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Ms. Andreasson by phone at (608) 267-5136.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order amending TRANS 315.03(1)(a) and (c), relating to safety belt medical use exemption.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 347.48(2m)(e), Stats.

Statutory authority: ss. 84.015, 84.41(7) and 347.48(2m)(e), Stats.

Explanation of agency authority: Current law requires every person over 8 years of age to be properly restrained by a safety belt whenever traveling in a motor vehicle. Current law allows the Department to exempt from this safety belt use requirement any person who, because of a physical or medical condition, cannot properly be restrained in a safety belt. Department rules authorize physicians, chiropractors and Christian Science practitioners to grant exemptions from wearing safety belts. Federal law makes highway safety grant moneys available for safety belt use requirements, but federal law recognizes only medical exemptions issued by physicians. Federal grant moneys expire on July 1, 2009, and this state may not qualify for approximately \$15,000,000 in federal moneys if persons other than physicians are authorized to exempt persons from safety belt use laws.

Related statute or rule: 23 USC 406, 71 Fed. Reg. 4196 (Jan. 25, 2006).

Plain language analysis: This rule making deletes authority of any person other than physicians to exempt persons from safety belt use requirements. This rule making will result in increased use of safety belts, and increase receipt of federal moneys for highway safety activities.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Federal policy states that safety belt use requirements do not apply to, "Persons with medical conditions who are unable to use a safety belt, provided there is written documentation from a physician." The Department's current rules go further by allowing chiropractors and Christian Science practitioners to grant those exemptions.

Comparison with Rules in Adjacent States:

Michigan: Mich. Comp. Laws. Annot. 257.710e(1)(e) exempts a person who possesses a written statement from a physician from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Minnesota: Minn. Stats. Annot. § 169.686 (2)(3) allows physicians to exempt persons from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Illinois: 92 IL Admin. Code 1030.84 exempts from safety belt use requirements only to a person "possessing a written statement from a physician that the person is unable, for medical or physical reasons, to wear a seat safety belt."

Iowa: IA Admin. Code 761-600.16(321) authorizes physicians and chiropractors to exempt a person from safety belt use requirements for medical reasons. The Department identified no authority for Christian Science practitioners to exempt persons from safety belt use requirements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: None. NHTSA legal counsel informed the Department that in order to qualify for funds under 23 USC 406, any administrative rule that exempts a person from safety belt use requirements must be consistent with the medical exemption permitted in the implementing guidelines for section 406 eligibility. Those guidelines limit the exemption to physicians.

Analysis and supporting documentation used to determine effect on small businesses: This rule making has no effect on small businesses.

Effect on small business: This rule making will eliminate one issue of noncompliance specifically identified by NHTSA that makes Wisconsin ineligible for approximately \$15,000,000 in federal safety belt use grant moneys. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@wisconsin.gov, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Copies of emergency rule: Requests for copies of the emergency rule should be submitted to Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Ms. Andreasson by phone at (608) 267-5136.

To view or print a copy of the emergency rule, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF EMERGENCY RULE

SECTION 1. Trans 315.03(1)(a) and (c) are amended to read:

Trans 315.03(1)(a) The person has a written statement signed by a licensed physician, ~~chiropractor or a Christian Science practitioner~~ residing in this state and listed in the ~~Christian Science Journal~~ indicating the person cannot be restrained by a safety belt because of a physical or medical condition, or words to that effect.

Trans 315.03(1)(c) The statement in par. (a) contains an address and telephone number of the physician, ~~chiropractor, or Christian Science practitioner.~~

(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of public health and safety. Current federal law at 23 USC 406 provides safety belt performance grants to a state that has in effect and is enforcing a conforming primary safety belt use law for all passenger motor vehicles. A grant of federal funds estimated at roughly \$15,000,000 are available if this state is eligible on or before September 30, 2009; a secondary grant based on "share of unallocated funds," estimated at not more than \$1,000,000, may be available if this state is eligible on or before June 30, 2009. The Wisconsin Legislature is currently deliberating a primary safety belt use law as part of the executive biennial budget bill, 2009 Assembly Bill 75, with the aim of qualifying for safety belt performance grants. Were the law timely enacted, this state could remain ineligible for safety belt performance grants because Department rules allow persons other than physicians to grant medical exemptions from safety belt use requirements. Immediate action is necessary to avoid forfeiting approximately \$16,000,000 in federal funds for highway safety activities. Increased use of safety belts has been shown to reduce the severity of injuries sustained in motor vehicle collisions, and limiting the medical use exemption to physicians would increase use of safety belts.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 16th day of June, 2009.


FRANK J. BUZALACCHI
Secretary
Wisconsin Department of Transportation





Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
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Jim Doyle, Governor
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E-mail: ogc.exec@dot.state.wi.us

The Honorable Jim Holperin
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

May 21, 2010

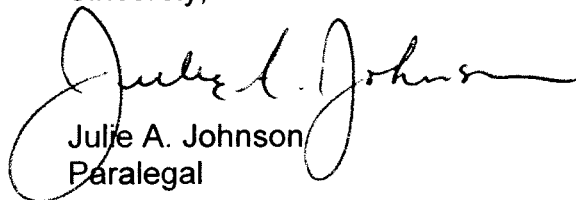
The Honorable Josh Zepnick
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 219 North, State Capitol
Madison, Wisconsin 53702

RE: **ORDER ADOPTING EMERGENCY RULE ON TRANS 100**, relating to
mandatory insurance exemptions

Gentlepersons:

Enclosed is a copy of the above-referenced emergency rule for your information.
Pursuant to sec. 227.24(1)(c), Stats., the rule will take effect upon publication in the
Wisconsin State Journal, scheduled on or about Tuesday, June 1, 2010.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Lynne B. Judd
Mike Goetzman
Casey Newman
Reggie Paradowski
Rick Kleist
Gerri Stanczyk

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order creating TRANS 100.25, relating to mandatory insurance exemptions.

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11, 343.02 and 344.66, Stats., interpreting ss. 344.37, and 344.61 to 344.67, Stats., the Department of Transportation will hold a public hearing on the **24th** day of **June**, 2010, at the Hill Farms State Transportation Building, Room **144-B**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the creation of ch. Trans 100.25, Wisconsin Administrative Code, relating to mandatory insurance exemptions.

This hearing is held in an accessible facility. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call Reggie Paradowski at (608) 264-7002 with specific information on your request at least 10 days before the date of the scheduled hearing. Accommodations such as interpreters, English translators, or materials in alternative format will, to the fullest extent possible, be made available upon a request from a person with a disability to accommodate your needs.

A copy of the rule may be obtained upon request from Reggie Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983. You may also contact Mr. Paradowski via e-mail: reginald.paradowski@wisconsin.gov to obtain copies of the emergency rule. Copies will also be available at the hearing.

**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order to create TRANS 100.25, relating to mandatory insurance exemptions.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 344.37, 344.61 to 344.67, Stats.

Statutory authority: ss. 85.16(1), 227.11, 343.02 and 344.66, Stats.

Explanation of agency authority: The Department is charged with administering the safety responsibility, damage judgment and mandatory insurance laws contained in Chapter 344, Stats. This rule making deals with exceptions to the mandatory insurance provisions of Subchapter VI to Chapter 344, Stats.

Related statute or rule: s. 344.01(2)(d), Stats.

Plain language analysis: The purpose of this emergency rule making is to set interim standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28.

One deposit accepted in lieu of insurance under s. 344.63, Stats., is \$60,000 cash. The \$60,000 amount is set in the statutes and is far less than the minimum insurance required under the law. U.S. currency, cashiers and certified checks, money orders, bank checks, and attorney trust fund checks may be accepted as a cash deposit by the Department. In addition to depositing cash, the depositor must prove no judgments are outstanding against the depositor in the depositor's county of residence. s. 344.37(1), Stats.

A second deposit accepted by the Department is a bond. There are two types of bonds. First, a bond issued by a surety company for the minimum liability coverage amounts required by law (currently \$15,000 property, \$50,000 personal injury to one person, \$100,000 personal injury of multiple persons). The bond will need to be in a form approved by the Department. The other form of bond permitted under the statutes is a judicial bond. If requested, judges will have to approve or disapprove of applications to create a bond secured by \$330,000 in real estate (twice the amount of the bond).

The third mechanism available under the statute is posting securities. Securities are the most problematic from an administrative and enforcement standpoint. The value of securities can vary greatly over time. The Department cannot and will not know the value of securities after deposit. The burden will be on the depositor to be able to prove the value of any securities deposited with the Department to police when asked. Deposits of securities must be accompanied by an opinion of counsel verifying that the securities

meet the statutory requirements for use in lieu of insurance. The depositor will need to provide an affidavit as to the value of the securities at the time of deposit and will need to pledge the securities in a manner that permits the Department to sell them in order to use the proceeds to satisfy damages resulting from accidents. The share or bond certificates will need to be physically deposited with the Department.

Summary of, and preliminary comparison with, existing or proposed federal regulation: There are no existing or proposed federal regulations on this issue.

Comparison with Rules in the Following States:

Michigan: All motorists must carry liability coverage also referred to as “Michigan no fault insurance.” Insurance certificate must be kept in vehicle at all times when operating vehicle.

Minnesota: Drivers must provide proof of insurance upon request by a peace officer.

Illinois: All motor vehicles operated in Illinois must be covered by liability insurance. Vehicle owners are required to provide insurance information at the time of registration renewal.

Iowa: Motorists must prove financial responsibility if involved in an accident or stopped by law enforcement.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Section 344.63, Stats., as created by 2009 Wis. Act 28, provides exceptions to the requirement of having a motor vehicle liability insurance policy to operate a motor vehicle on Wisconsin highways. The exceptions defined in the statutes are nearly identical to those provided for under Wisconsin’s Safety Responsibility Law. The administration of the exceptions, as defined in this emergency rule, are purposely drafted to closely mirror the procedures currently in place under the Safety Responsibility Law.

Analysis and supporting documentation used to determine effect on small businesses: This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification.

Effect on small business: This regulatory change has no impact on small business. The Department does not anticipate any fiscal effect upon small businesses from this codification. The Department’s Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department does not anticipate any fiscal effect from this codification. The statutes already impose the requirement that the Department accept these filings. This rule making merely creates an efficient framework for performing that required work.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on private sector revenues or liabilities.

Copies of Emergency Rule and Contact Person: Copies of this emergency rule are available, without cost, upon request by writing to Reginald Paradowski, Section Chief, Division of Motor Vehicles, Driver Information Section, Room 301, P. O. Box 7983, Madison, WI 53707-7983, or by calling (608) 264-7002. You may also contact Mr. Paradowski via e-mail at: reginald.paradowski@wisconsin.gov.

To view the emergency rule, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF EMERGENCY RULE

SECTION 1. Trans 100.25 is created to read:

Trans 100.25 Mandatory insurance. (1) EXCEPTIONS. The purpose of this section is to implement and administer the provisions of Subch. VI of Chapter 344, Stats., relating to mandatory insurance requirements and exceptions to the requirement of having automobile insurance in Wisconsin.

(2) DEPOSITS IN LIEU OF MANDATORY INSURANCE. A person making a deposit with the department under s. 344.63, Stats., shall file a complete application with the department containing all required information. In addition, the person shall provide the additional materials or information and deposit in the form required in subs. (3) to (5).

(3) CASH DEPOSITS. (a) For purposes of s. 344.63(1)(d), Stats., any of the following shall be considered a deposit of cash with the department:

1. United States currency.
2. A cashier's check or draft.
3. A money order.
4. A financial institution check or draft.
5. A certified personal or business check or draft.

6. An attorney trust account check or draft.

(b) Any person attempting to file cash in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(d), Stats., shall file, with the deposit, a certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.

(4) BOND. (a) *Surety bonds.* Any person attempting to file a surety company bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), shall file a bond of a surety company duly authorized to transact business within this state that is conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats. The bond may not be cancelable except after 10 days written notice to the secretary. The bond shall be in the form specified by the department.

(b) *Judicial bonds.* Any person attempting to file a judicially authorized bond in lieu of maintaining automobile liability insurance with the department pursuant to s. 344.63(1)(a), Stats., shall file a bond with at least 2 individual sureties each owning real estate within this state and together having equities equal in value to at least twice the amount of the bond, which real estate shall be scheduled in the bond approved by a judge of a Wisconsin circuit or appellate court. The bond must be conditioned for the payment of the amounts specified in s. 344.01(2)(d), Stats., and may not be cancelable except after 10 days written notice to the secretary.

Note: ss. 344.63(1)(a) and 344.36(1), Stats.

(5) SECURITIES. Any person attempting to file securities with the department pursuant to s. 344.63(1)(d), Stats., shall file all of the following:

1. A certification from the clerk of courts in the county where the depositor resides dated no later than 15 calendar days prior to the date the deposit is received by the department, that indicates the clerk has searched the official records of the county and that no records of unsatisfied judgments of any character against the depositor exist in that county.

2. An opinion of counsel, for the benefit of the department and persons intended to be protected by the filing described in s. 344.37(2), Stats., that the securities to be filed by the depositor are securities that may legally be purchased by savings banks or for trust funds of in this state. The opinion shall identify the state or federal statute or regulation permitting the purchase of each deposited security.

3. An affidavit that the securities have a fair market value in excess of \$60,000.

4. A pledge of the securities to the department in the form required by the department pledging the securities for the payment of damages resulting from the ownership, maintenance, use or operation of a motor vehicle after such deposit was made, including damages for care and for loss of services because of bodily injury to or death of any person and damages because of injury to or destruction of property and the consequent loss of use thereof. The pledge shall assign all rights to sell or redeem the securities or any coupons associated with the securities to the department in trust for the purposes set forth in this subdivision. The pledge shall exempt the department from any liability for selling or not selling the securities at any time, and shall specify that the depositor relinquishes all rights to sell the securities or to demand their sale by the department. The pledge shall remain effective until the earlier of the return of the deposit pursuant to s. 344.63(3), Stats., or of the sale of the securities, whether made

so that the proceeds of sale can be applied to the payment of judgments and assignments relating to motor vehicle accidents, following the procedure described in s. 344.20 (2), Stats., or made for any other reason.

5. The share certificates, bonds, including all bond coupons, if any, or other certificate.

Note: ss. 344.63(1)(d) and 344.37(1), Stats.


(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public health and welfare. A statement of the facts constituting the emergency is the requirements of the mandatory insurance laws in Chapter 344, Stats., as created by 2009 Wis. Act 28, contain exceptions to furnishing proof of a motor vehicle liability insurance policy. This emergency rule defines the administration of those exceptions. These mandatory insurance requirements, and the exceptions, are effective June 1, 2010, thereby necessitating an emergency rule being put into place until the effective date of the permanent rule. Clarification of the mechanism to be used to qualify for an exception under the new statute will be useful to persons wishing to file for an exception. Persons whose religious beliefs preclude them from buying insurance will benefit from this rule making.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.

Signed at Madison, Wisconsin, this 20th day of **May**, 2010.



FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



**ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order amending TRANS 315.03(1)(a) and (c), relating to safety belt medical use exemption.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 347.48(2m)(e), Stats.

Statutory authority: ss. 84.015, 84.41(7) and 347.48(2m)(e), Stats.

Explanation of agency authority: Current law requires every person over 8 years of age to be properly restrained by a safety belt whenever traveling in a motor vehicle. Current law allows the Department to exempt from this safety belt use requirement any person who, because of a physical or medical condition, cannot properly be restrained in a safety belt. Department rules authorize physicians, chiropractors and Christian Science practitioners to grant exemptions from wearing safety belts. Federal law makes highway safety grant moneys available for safety belt use requirements, but federal law recognizes only medical exemptions issued by physicians. Federal grant moneys expire on July 1, 2009, and this state may not qualify for approximately \$15,000,000 in federal moneys if persons other than physicians are authorized to exempt persons from safety belt use laws.

Related statute or rule: 23 USC 406, 71 Fed. Reg. 4196 (Jan. 25, 2006).

Plain language analysis: This rule making deletes authority of any person other than physicians to exempt persons from safety belt use requirements. This rule making will result in increased use of safety belts, and increase receipt of federal moneys for highway safety activities.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Federal policy states that safety belt use requirements do not apply to, "Persons with medical conditions who are unable to use a safety belt, provided there is written documentation from a physician." The Department's current rules go further by allowing chiropractors and Christian Science practitioners to grant those exemptions.

Comparison with Rules in Adjacent States:

Michigan: Mich. Comp. Laws. Annot. 257.710e(1)(e) exempts a person who possesses a written statement from a physician from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Minnesota: Minn. Stats. Annot. § 169.686 (2)(3) allows physicians to exempt persons from safety belt use requirements. The Department was unable to identify any administrative rules on this topic.

Illinois: 92 IL Admin. Code 1030.84 exempts from safety belt use requirements only to a person "possessing a written statement from a physician that the person is unable, for medical or physical reasons, to wear a seat safety belt."

Iowa: IA Admin. Code 761-600.16(321) authorizes physicians and chiropractors to exempt a person from safety belt use requirements for medical reasons. The Department identified no authority for Christian Science practitioners to exempt persons from safety belt use requirements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: None. NHTSA legal counsel informed the Department that in order to qualify for funds under 23 USC 406, any administrative rule that exempts a person from safety belt use requirements must be consistent with the medical exemption permitted in the implementing guidelines for section 406 eligibility. Those guidelines limit the exemption to physicians.

Analysis and supporting documentation used to determine effect on small businesses: This rule making has no effect on small businesses.

Effect on small business: This rule making will eliminate one issue of noncompliance specifically identified by NHTSA that makes Wisconsin ineligible for approximately \$15,000,000 in federal safety belt use grant moneys. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@wisconsin.gov, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Copies of emergency rule: Requests for copies of the emergency rule should be submitted to Laura Andreasson, Department of Transportation, Division of State Patrol, Room 551, P.O. Box 7936, Madison, WI 53707-7936. You may also contact Ms. Andreasson by phone at (608) 267-5136.

To view or print a copy of the emergency rule, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF EMERGENCY RULE

SECTION 1. Trans 315.03(1)(a) and (c) are amended to read:

