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Details: Public Hearing notices 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 ...

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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
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- 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)



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

June 19, 2009

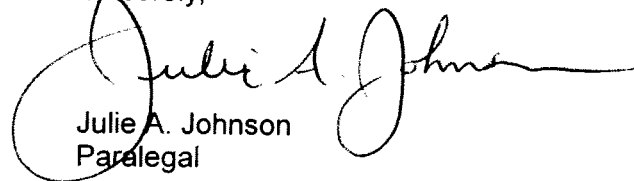
The Honorable Josh Zepnick
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 219 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
registration of non-standard vehicles, Trans 123

Dear Senator Holperin and Representative Zepnick:

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 Legislative Reference Bureau, 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: Casey Newman
Mike Goetzman
Lynne B. Judd
Linda Lewis
Carson Frazier



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The Honorable Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South, State Capitol
Madison, Wisconsin 53702

June 19, 2009

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
registration of non-standard vehicles, Trans 123

Dear Senator Holperin and Representative Steinbrink:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Legislative Reference Bureau and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Linda Lewis
Carson Frazier

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

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 123, relating to registration of non-standard vehicles.

NOTICE IS HEREBY GIVEN that pursuant to ss. 341.08(2)(e), 341.10(6), 341.63 and 342.255, Stats., and interpreting s. 341.10(6), Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **29th** day of **July**, 2009, at **10:00 AM**, to consider the creation of ch. Trans 123, Wisconsin Administrative Code, relating to registration of non-standard vehicles.

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

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

A copy of the proposed rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail at carson.frazier@dot.state.wi.us.

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

The Wisconsin Department of Transportation adopts an order creating ch. TRANS 123, relating to registration of non-standard vehicles.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 341.10(6), Stats.

Statutory authority: "Grounds for refusing registration," s. 341.10(6), Stats.; "When registration to be suspended," s. 341.63, Stats.; "Cancellation of title or registration," s. 342.255, Stats.; "Application for registration," s. 341.08(2)(e), Stats.

Explanation of agency authority: Current law prohibits the Department of Transportation from registering for on-road use any motor vehicle that is "originally designed and manufactured for off-highway operation" unless the vehicle bears a label on which the manufacturer certifies that the vehicle meets federal standards for on-road vehicles. Current law also requires the Department to suspend registration if it discovers that the registrant does not or cannot register the vehicle properly, and to cancel registration and title if it discovered that law prohibits the issuance or possession of a title or registration. Current law does not specify how to determine whether a vehicle is "originally designed and manufactured for off-highway operation." Federal law states that any vehicle made for on-road use in this country after 1967 must meet federal equipment standards. The Department applied that policy to conclude that a vehicle "originally designed and manufactured for off-highway operation" after 1967 is any vehicle that was not made for on-road use in this country. Federal law allows importation of vehicles originally made for foreign markets if the vehicle meets U.S. on-road standards, or is a model deemed to be "substantially similar" to vehicle models made for sale in this country, or is more than 25 years old at the time of importation. This rule making is intended to harmonize state law regarding registration for on-road use with the federal law requiring that vehicles meet U.S. on-road standards, except that this rule making does not adopt the federal exception for imported vehicles made after 1967 that are more than 25 years old.

Related statute or rule: "Motor Vehicle Safety," 49 USC 30101-30170 (2006); "Importing motor vehicles capable of complying with standards," 49 USC 30141 (2006); "Prohibitions on manufacturing, selling, and importing noncomplying motor vehicles and equipment," 49 USC 30112 (2006); "Certification of compliance," 49 USC 30115; "Federal motor vehicle safety standards" 49 CFR 571 (2008); "Certification," 49 CFR 567 (2008).

Plain language analysis: This rule making creates ch. Trans 123, relating to grounds for the Department to refuse vehicle registration. Section 341.10(6), Stats., refers to a vehicle "originally designed and manufactured for off-highway operation." This proposed rule clarifies that the Department's registration or refusal of registration

conforms to the National Highway Traffic Safety Administration (NHTSA) regulations implementing Federal Motor Vehicle Safety Standards (FMVSS). In 1967, Congress declared a need to reduce traffic accidents and deaths and injuries resulting from traffic accidents and found it necessary to prescribe motor vehicle safety standards for motor vehicles and motor vehicle equipment in interstate commerce. The FMVSS were established in response.

NHTSA defines a "motor vehicle" as a vehicle that uses the public highways on a necessary and recurring basis and can exceed 20 miles per hour. The proposed rule defines "off-road vehicle" as a motor vehicle under Ch. 340, Stats., that does not meet the definition of "motor vehicle" under federal law.

The proposed rule states that the Department shall register any vehicle that was manufactured before 1968. The vehicle may be subject to equipment requirements under Ch. 347, Stats., and registration requirements under s. 341.268, Stats., regarding homemade and replica vehicles.

The proposed rule clarifies that the proof that a vehicle complies with FMVSS is that the vehicle displays a certification label as required by s. 114 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, or bears an FMVSS-conforming vehicle identification number (VIN). A vehicle manufactured for the non-U.S. market may be registered if it meets one of three certification methods to show that it complies with FMVSS.

The proposed rule establishes that an off-road vehicle with a model year 1968 or newer will be registered only if the vehicle displays a certification label that indicates the vehicle is certified by the manufacturer as meeting Federal Motor Vehicle Safety Standards, or if the manufacturer or importer certifies in one of three other methods that the vehicle complies with FMVSS.

The proposed rule requires the Department to cancel registrations initially made after the rule takes effect if the registration application contained incorrect or false information. The rule "grandfathers" in vehicles currently registered and allows them to continue to be registered until the vehicle is transferred to a new owner.

Summary of, and preliminary comparison with, existing or proposed federal regulation: This proposed rule establishes Wisconsin refusal of registration for motor vehicles in conformity with federal NHTSA regulations implementing FMVSS.

Comparison with Rules in the Following States:

Michigan: Michigan law requires vehicles to comply with Michigan law equipment requirements for on-road operation, for titling and registration. If an imported vehicle is subject to federal standards, it must be upgraded by a registered importer before it may be titled and registered in Michigan. If a vehicle was manufactured before 1968, it is considered an antique vehicle and must have all on-road equipment required by Michigan law in effect at the time of manufacture.

Minnesota: Minnesota law requires that a vehicle comply with federal motor vehicle safety standards, for titling and registration. An imported vehicle must be certified by the importer as meeting federal safety standards. A collector military vehicle, 20 years old or older, may be registered only by a non-profit organization and only for operation as a collector's item and not for general transportation purposes.

Illinois: Illinois law requires that a vehicle comply with federal motor vehicle safety standards, for titling and registration. An imported vehicle must be certified by the importer as meeting federal safety standards.

Iowa: Iowa law requires that if federal law requires a vehicle to bear a manufacturer's label, that the vehicle complies with federal motor vehicle safety standards, the label must be present for titling and registration.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Department had for several years followed a policy interpreting s. 341.10(6), Stats., which prohibits the Department from registering off-road vehicles that do not meet the requirements of s. 114 of the National Traffic and Motor Vehicle Safety Act of 1966. This Department policy does not define "off-road" vehicles but essentially refuses to register for on-road use any vehicle that does not meet federal on-road safety and equipment standards.

The Department concluded that the statutory provision requires Wisconsin to conform to federal regulations. The Department has revised its policy to conform to federal interpretations, and this rule codifies the current Department policy. The Department also addresses issues that were raised in a recent WDOA Division of Hearings and Appeals administrative hearing regarding the Department's cancellation of registration of imported military vehicles made after 1967. Vehicle Owned by Paul Underwood, Case TR-08-0027 (Sept. 18, 2008).

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule clarifies statutory provision that the Department will refuse registration to certain motor vehicles that do not meet FMVSS. Motor vehicle dealers and importers will need to understand eligibility criteria for vehicle registration, before they import or attempt to sell motor vehicles intended for on-road use in this state.

Effect on small business: The rule will enable small businesses that are dealers and importers to know the criteria for registration before they import or attempt to sell motor vehicles. 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 state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing 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 Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Chapter Trans 123 is created to read:

CHAPTER TRANS 123 REGISTRATION OF NON-STANDARD VEHICLES

Trans 123.01 Purpose. The purpose of this chapter is to interpret s. 341.10(6), Stats., and to establish eligibility criteria for off-road vehicles for the purpose of vehicle registration under ch. 341, Stats.

Trans 123.02 Applicability. This chapter applies to any vehicle presented to the department for registration under ch. 341, Stats.

Trans 123.03 Definitions. Unless otherwise stated, the definitions of words and phrases in ss. 340.01 and 341.01, Stats., apply to this chapter. In this chapter:

(1) "Manufacturer's certification label" means the label or tag permanently affixed to the vehicle in conformity with s. 114 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended, 49 USC 30115 (2006) and 49 CFR 567 (2008), that indicates the vehicle complies with applicable federal motor vehicle safety standards.

(2) "NHTSA" means the National Highway Traffic Safety Administration of the U. S. Department of Transportation.

(3)(a) "Off-road vehicle" means a motor vehicle that is any of the following, and includes any motor vehicle that is made after 1967 and that does not conform to federal motor vehicle safety standards or is not required to conform to those standards:

1. Not considered to be a motor vehicle for purposes of the National Traffic and Motor Vehicle Safety Act of 1966 as amended, 49 USC 30101-30170 (2006), that is subject to Federal Motor Vehicle Safety Standards established by NHTSA at 49 CFR 571 (2008).

2. Deemed by NHTSA to be a motor vehicle under its regulations and interpretations prior to the effective date of this chapter [legislative reference bureau inserts date], but is not subject to federal motor vehicle safety standards established by NHTSA.

3. Not deemed to be a motor vehicle by NHTSA.

4. Not a motor vehicle that uses public highways on a necessary and recurring basis or is not capable of exceeding 20 miles per hour on paved, level ground.

(b) Notwithstanding par. (a), "off-road vehicle" does not include any vehicle that:

1. Has been certified to NHTSA as meeting federal motor vehicle safety standards by an importer that is registered with NHTSA.

2. Is listed by NHTSA as a model made for use in another country that is substantially similar to a motor vehicle originally made for import into and sale in this country and that meets federal motor vehicle safety standards or meets the requirements in 49 USC 30112(2) (2006).

(4) "Register" means to register a vehicle under ch. 341, Stats.

Trans 123.04 Vehicles manufactured before 1968. Upon application to register a vehicle, the department shall register any vehicle manufactured before 1968 for which a

vehicle classification exists under ch. 341, Stats. The vehicle may be subject to equipment requirements under s. 347.02(7), Stats., and registration requirements under s. 341.268, Stats.

Trans 123.05 Registration of off-road vehicles manufactured 1968 or after.

(1) Upon application to register a vehicle, the department may register an off-road vehicle manufactured 1968 or after only if the vehicle displays a manufacturer's certification label. The department shall consider the manufacturer's certification label as the only proof that the vehicle meets the provisions of s. 114 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended.

(2) Title or registration obtained in another state does not conclusively establish the vehicle's eligibility for title and registration issued by Wisconsin. The Department shall independently assess whether a vehicle is eligible for registration under the laws of this state.

Trans 123.06 Grandfathered nonconforming vehicles. Notwithstanding any provision of this chapter that might otherwise prohibit registration, the owner of any vehicle that is registered in this state on the effective date of this section [legislative reference bureau inserts date] may renew that registration and may change the type of registration. This section applies only until the owner shown on department records on the effective date of this section [legislative reference bureau inserts date] is removed from department records as an owner of the vehicle. For vehicles owned by more than one owner on the effective date of this section [legislative reference bureau inserts date], this section applies only until the last owner shown on department records on the effective date of this section [legislative reference bureau inserts date] is removed from department records as an owner of the vehicle. Lien holders are


not considered owners for purposes of this section.

Trans 123.07 Cancellation of registration. If, subsequent to registering a vehicle, the department learns that the information the applicant had presented was incorrect or false and the vehicle should not have been registered, the department shall cancel the registration of the vehicle. If the department cancels the registration of the vehicle under this section, the applicant may reapply for registration at any time but shall present to the department information that proves to the department that the vehicle is eligible for registration. This section does not apply to vehicles eligible for registration under s. Trans 123.065.

(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 16th day of **June**, 2009.



FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation





Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
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The Honorable Jim Holperin
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 409 South, State Capitol
Madison, Wisconsin 53702

June 30, 2009

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to the
Transportation Facilities Economic Assistance and Development Program,
and the Transportation Infrastructure Loan Program, Trans 510/512

Dear Senator Holperin and Representative Zepnick:

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 Legislative Reference Bureau, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Mark Wolfgram
Dennis Leong



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The Honorable Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South, State Capitol
Madison, Wisconsin 53702

June 30, 2009

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
the **Transportation Facilities Economic Assistance and Development
Program, and the Transportation Infrastructure Loan Program, Trans
510/512**

Dear Senator Holperin and Representative Steinbrink:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Legislative Reference Bureau and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

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Dennis Leong

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

The Wisconsin Department of Transportation proposes an order to renumber TRANS 512.06; renumber and amend TRANS 510.08(1) and (3); amend TRANS 510.08(2)(b); and create TRANS 510.08(1)(a) and (b), (3)(a) to (c), and 512.06(2) and (3), relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program.

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.01(6m)(b)6. and 7., Stats., as created by 2007 Wis. Act 125, and 227.11(2)(a), Stats., interpreting s. 84.01(6m)(b)6. and 7., Stats., as created by 2007 Wis. Act 125, the Department of Transportation will hold a public hearing on the 5th day of **August**, 2009, at the Hill Farms State Transportation Building, Room **901**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the amendment of ch. Trans 101, Wisconsin Administrative Code, relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program.

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 rule may be obtained upon request from Dennis Leong, Department of Transportation, Division of Investment Management, Economic Development Section, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Leong by phone at (608) 266-9910 or via e-mail at dennis.leong@dot.state.wi.us.

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

The Wisconsin Department of Transportation proposes an order to renumber TRANS 512.06; renumber and amend TRANS 510.08(1) and (3); amend TRANS 510.08(2)(b); and create TRANS 510.08(1)(a) and (b), (3)(a) to (c), and 512.06(2) and (3), relating to the transportation facilities economic assistance and development program, and the transportation infrastructure loan program.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 84.01(6m)(b)6. and 7., Stats., as created by 2007 Wis. Act 125

Statutory authority: ss. 84.01(6m)(b)6. and 7., Stats., as created by 2007 Wis. Act 125, and 227.11(2)(a), Stats.

Explanation of agency authority: Presently, chs. Trans 510 and 512 do not include a requirement for the submittal of a verified statement signed by both an independent certified accountant and the director or principal officer of the recipient of an economic development grant or loan as required under 2007 Wis. Act 125. Also, these rules do not specify what actions the department is permitted to take in the event of the submittal of false or misleading information or noncompliance with the contract. Ch. Trans 510 includes no specific guidelines requiring that grant or loan recipients submit a report to the Department, as required under 2007 Wis. Act 125.

Related statute or rule: ss. 84.185(4) and 85.52, Stats.

Plain language analysis: This rule making will implement the provisions of 2007 Wis. Act 125 that relate to: (1) providing verified statements from an independent certified accountant and the director or principal officer of the recipient of a grant or loan, (2) permitting the Department to recoup payments made, withhold payments due, or impose a forfeiture on a noncompliant recipient of a grant or loan, and (3) including contract provisions into project agreements specifying the format and frequency of the report to be submitted by the recipient to the Department. These rule changes will affect the reporting and evaluation of performance measures for each economic development program administered by the Department.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulation applies to other DOT programs defined as an "economic development program" under 2007 Wis. Act 125. The Act defines economic development program as a program or activity having the primary purpose of encouraging the establishment of growth of business in the state, including the creation

and retention of jobs. Department programs are transportation infrastructure projects that contribute to the mobility, safety and transportation efficiency for transporting freight and the traveling public.

Comparison with Rules in the Following States:

Michigan: Economic grants and loans to businesses are administered through the Michigan Economic Development Corporation, formed in 1999 through an alliance between the State of Michigan and several local communities. The Corporation is the successor to the Michigan Jobs Commission, the state's economic development department. The corporation maintains the database regarding the grant and loan awards and conducts audits regarding the performance of the financial programs. Travel Michigan, a division of the Corporation, provides the tourism promotional functions for the state. There is no online website or annual reports available via the website with a listing for the grant and loan recipients.

Minnesota: s. 116J.994, creation of a Business Assistance Report with a list of businesses receiving state assistance, amount of subsidy, number of jobs, hourly wages, and cost of health insurance broken down by wage level. Information on companies receiving assistance is posted online.

Illinois: Public Act 552-93 of 2003, annual progress reports required as to the amount and type of assistance, job creation/retention, job classifications and average wages. Progress reports are available online in searchable database by year and program type.

Iowa: Iowa Code s. 15.113 and other statutes require mandatory reports regarding the financial assistance provided to private businesses. The Iowa Department of Economic Development administers and provides oversight for the assistance programs. The development agency adopted rules on June 15, 2007, to implement a new job counting and tracking method. Under this Department, there is a legal and compliance team responsible for conducting onsite monitoring at project completion, job maintenance, contract amendments, and the preparation of progress reports. These reports are published periodically and are available online.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The amendments to ss. Trans 510.08 and 512.06 were proposed to bring the Department's economic development programs in compliance with the specific reporting and evaluation requirements of s. 84.01(6m)(b)6. and 7., as created by 2007 Wis. Act 125.

Analysis and supporting documentation used to determine effect on small businesses: A database of 296 previous and current TEA grant awards were analyzed for impacts to small businesses

Effect on small business: Since TEA grants provide transportation infrastructure necessary for newly-created or expanded businesses in the state, the analysis revealed that the kind of businesses in the program will have little or no difficulty in complying with the jobs reporting requirement. Job numbers are also reported as part of the unemployment compensation program under the Department of Workforce Development. The sponsoring community receiving the grant award will be asked to provide a jobs information report compiled by an independent certified accountant and a public official of the recipient community for each business as specified in the jobs guarantee agreement that benefited from the transportation infrastructure improvement. The annual jobs report will be provided to the TEA grant manager annually for seven years or for a duration as specified in the jobs guarantee agreement. Failure to provide annual reports could result in the reimbursement of the grant to the Department of Transportation. 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 state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing 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 Dennis Leong, Department of Transportation, Division of Investment Management, Economic Development Section, Room 901, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Leong by phone at (608) 266-9910 or via e-mail at dennis.leong@dot.state.wi.us to obtain copies of the proposed rule.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 510.08(1) is renumbered Trans 510.08(1)(intro.) and amended to read:

Trans 510.08(1)(intro.) The scheduling of an approved transportation facility improvement and the obligation of state funds shall occur only after the eligible

applicant, the department, and any applicable third parties execute a formal project agreement, setting forth specific terms, conditions and responsibilities of the parties. The secretary or his or her designee shall execute the agreement on behalf of the department. Responsibilities for scheduling and monitoring an approved transportation facility improvement shall be determined cooperatively by the department, the applicant and the governmental entity in which the transportation facility improvement is primarily located. The contract entered into by a grant or loan recipient is subject to the following requirements:

SECTION 2. Trans 510.08(1)(a) and (b) are created to read:

Trans 510.08(1)(a) Each grant or loan recipient shall submit a report to the department. Each contract shall specify the frequency and format of the report to be submitted to the department and the performance measures to be included in the report.

(b) For recipients of a grant or a loan of at least \$100,000, a verified statement shall be submitted to the department. The verified statement shall be signed by both an independent certified public accountant licensed or certified under ch. 442 and the director or principal officer of the recipient to attest to the accuracy of the verified statement. The recipient shall make available for inspection the documents supporting the verified statement.

SECTION 3. Trans 510.08(2)(b) is amended to read:

Trans 510.08(2)(b) The guaranteed number of direct jobs associated with the economic development project do not exist 7 years after the date the project agreement is executed. The base number of jobs to be used for comparison shall be established on the

date funds are awarded. Verification of the number of direct jobs associated with the economic development project shall be made utilizing information available from the department of ~~industry, labor and human relations~~ workforce development and other sources.

SECTION 4. Trans 510.08(3) is renumbered Trans 510.08(3)(intro.) amended to read:

Trans 510.08(3)(intro.) In order to ensure compliance with the terms of the project agreement under sub. (1), the department may perform audits and inspections of the applicant's and third parties' records related to the transportation facility improvement. The applicant shall, on request, provide the department with information necessary to document whether the jobs guarantee has been satisfied. If the applicant submits false or misleading information to the department, or fails to comply with the terms of the contract entered into with the department and fails to provide to the satisfaction of the department an explanation for the noncompliance, then the department is permitted to do all of the following:

SECTION 5. Trans 510.08(3)(a) to (c) are created to read:

Trans 510.08(3)(a) Recoup payments made to the recipient.

(b) Withhold payments to be made to the recipient.

(c) Impose a forfeiture on the recipient.

SECTION 6. Trans 512.06 is renumbered Trans 512.06(1).

SECTION 7. Trans 512.06(2) and (3) are created to read:

Trans 512.06(2) For agreements entered into by recipients of a loan of at least \$100,000, a verified statement shall be submitted to the department. The verified

statement shall be signed by both an independent certified public accountant licensed or certified under ch. 442 and the director or principal officer of the recipient to attest to the accuracy of the verified statement. The recipient shall make available for inspection the documents supporting the verified statement.


(3) If the applicant submits false or misleading information to the department, or fails to comply with the terms of the contract entered into with the department and fails to provide to the satisfaction of the department an explanation for the noncompliance, then the department is permitted to do all of the following:

- (a) Recoup payments made to the recipient.
- (b) Withhold payments to be made to the recipient.
- (c) Impose a forfeiture on the recipient.

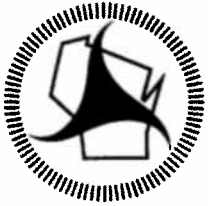
(END OF RULE TEXT)

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 26th day of
June, 2009.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation





Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

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

Telephone: 608-266-8810
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

September 1, 2009

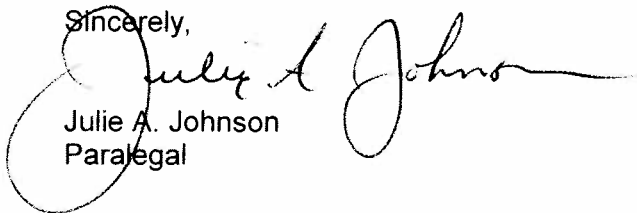
The Honorable Josh Zepnick
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 219 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
**emergency agricultural transportation permits, and emergency energy
conservation permits**, Trans 267/268

Dear Senator Holperin and Representative Zepnick:

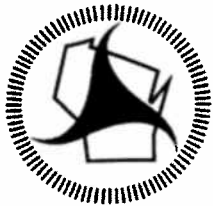
Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Legislative Reference Bureau, the Legislative Council, and the Department of Administration in accordance with the requirements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

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Supt. David Collins
Dave Vieth
Chuck Lorentz
Paul Bernander
Carson Frazier
Kathleen Nichols



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

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

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South, State Capitol
Madison, Wisconsin 53702

September 1, 2009

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
**emergency agricultural transportation permits, and emergency energy
conservation permits**, Trans 267/268

Dear Senator Holperin and Representative Steinbrink:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Legislative Reference Bureau and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in black ink that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Mike Goetzman
Lynne B. Judd
Supt. David Collins
Dave Vieth
Chuck Lorentz
Paul Bernander
Carson Frazier
Kathleen Nichols

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

The Wisconsin Department of Transportation proposes an order to repeal chs. TRANS 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11(2) and 348.25(3), Stats., interpreting s. 348.17(3) and (5), Stats., the Department of Transportation will hold a public hearing on the **19th** day of **October**, 2009, at the Hill Farms State Transportation Building, **Room 254**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the repeal of chs. Trans 267 and 268, Wisconsin Administrative Code, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

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 rule may be obtained upon request from Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

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

The Wisconsin Department of Transportation proposes an order to repeal chs. TRANS 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 348.17(3) and (5), Stats.

Statutory authority: ss. 85.16(1), 227.11(2), and 348.25(3), Stats.

Explanation of agency authority: The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights and lengths. Prior to May 2006, the Department issued emergency declarations authorizing overweight loads of agricultural products during the Fall Harvest season. 2005 Wis. Act 364, effective May 4, 2006, eliminated this authority and replaced it with a statutory seasonal overweight allowance for agricultural products. Chapter Trans 267, which implemented emergency agricultural transportation permits is no longer needed. Although the Department has the authority to issue emergency energy conservation permits, it can do so only when the Governor declares an energy emergency pursuant to ss. 340.01(15s) and 348.17(3), Stats. It has been the Department's practice to forego issuing energy emergency permits because it has relied on Emergency Executive Orders issued by the Governor to authorize oversize or overweight loads during energy emergencies. Because energy emergencies are declared by the Governor, pursuant to ss. 340.01(15s) and 348.17(3), Stats., and 49 C.F.R. sections 390.23 and 390.25, and because the Department has not issued separate energy emergency permits, Chapter Trans 268 is not needed.

Related statute or rule: Chapter 348 and s. 166.03(1)(b)1, Stats., Chapters Trans 250 to 278, Wis. Admin. Code, 49 C.F.R. sections 390.23 and 390.25.

Plain language analysis: Chapter Trans 267 governs emergency agricultural transportation permits under s. 348.17(4), Stats. Chapter Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. The scope statement for this rule making stated that the Department proposes to combine ch. Trans 267 into ch. Trans 268 and to incorporate provisions consistent with other overweight rules. However, as the Department has considered such changes, the Department has determined that in fact neither rule is any longer valid, and thus proposes to repeal both rules.

Chapter Trans 267 interprets s. 348.17(4), Stats. 2005 Wis. Act 364 repealed s. 348.17(4), Stats., and instead created s. 348.17(5), Stats., allowing overweight transport of certain crops during certain time periods without requiring a permit. Ch. Trans 267 is no longer valid. Therefore, the Department proposes to repeal ch. Trans 267.

Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. Section 348.17(3), Stats., states that during an energy emergency the Department of Transportation, after consulting with the Department of Administration, may waive the statutory divisible load limitation on overweight loads, and authorize, for up to 30 days, overweight operation within certain limits. An energy emergency is certified by executive order of the Governor.

Section 348.17(3), Stats., does not specifically state that the Department of Transportation may or shall require permits for overweight movement during an energy emergency. In practice, when the Governor has declared an energy emergency, the Department of Transportation has not required permits for overweight transport, but the statutory weight limitations specified in s. 348.17(3), Stats., have been considered the limitations under the gubernatorial emergency declaration. Since s. 348.17(3), Stats., will always govern and the Department has never required permits under ch. Trans 268, the Department proposes to repeal ch. Trans 268.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulation covers the overweight permits addressed in these rules. Like all statutes and administrative rules governing overweight movement, these rules comply with federal law and regulation regarding operation on Interstate highways and other federal-aid highways.

Comparison with Rules in the Following States:

Michigan: Not applicable.

Minnesota: Not applicable.

Illinois: Not applicable.

Iowa: Not applicable.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: These two administrative rules no longer serve a purpose, as both are superseded by statute. Therefore, the Department proposes to repeal these two rules.

Analysis and supporting documentation used to determine effect on small businesses: Not applicable.

Effect on small business: Repeal of these chapters has no effect on small business, since statutory language prevails. 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 state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing 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 Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Chapters Trans 267 and 268 are repealed.

(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 31 day of **August**, 2009.

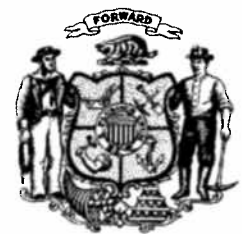

FRANK J. BUSALACCHI

Secretary

Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE





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
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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

July 31, 2009

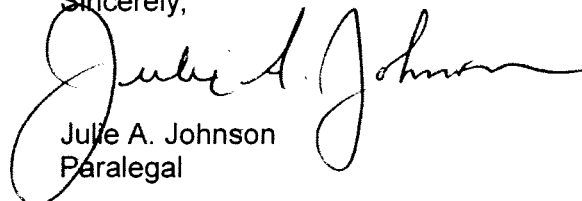
The Honorable Josh Zepnick
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 219 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **safety belt medical use exemption**, Trans 315

Dear Senator Holperin and Representative Zepnick:

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 Legislative Reference Bureau, 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: Casey Newman
Mike Goetzman
Capt. David Collins
Laura Andreasson



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 Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South, State Capitol
Madison, Wisconsin 53702

July 31, 2009

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
safety belt medical use exemption, Trans 315

Dear Senator Holperin and Representative Steinbrink:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Legislative Reference Bureau and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

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

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

The Wisconsin Department of Transportation proposes to adopt an 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 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.

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

The Wisconsin Department of Transportation proposes to adopt an 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.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at either hearing. Any such comments 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 Laura by phone at (608) 267-5136 or via e-mail at laura.andreasson@wisconsin.gov.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED 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.

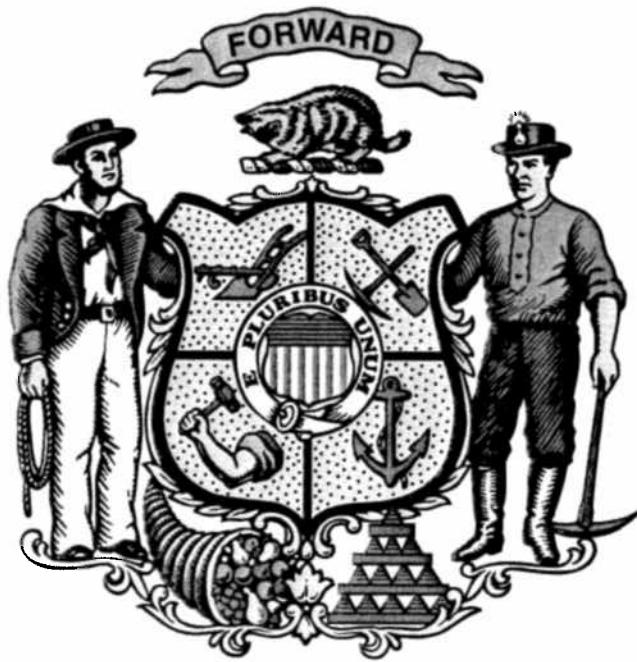
Trans 315.03(1)(c) The statement in par. (a) contains an address and telephone number of the physician, ~~chiropractor, or Christian Science practitioner.~~

(END OF RULE TEXT)

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 31 day of July, 2009.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation





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 Senator Jim Holperin
Chairman, Senate Transportation Committee
Room 409 South, State Capitol
Madison, Wisconsin 53702

June 14, 2010

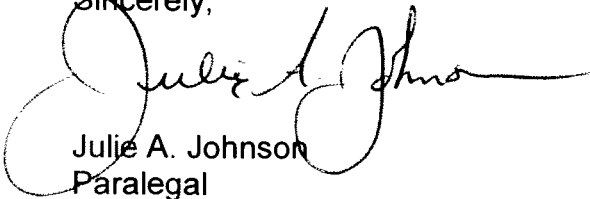
The Honorable Representative John Steinbrink
Chairman, Assembly Transportation Committee
Room 104 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
safety responsibility, damage judgment and mandatory insurance
laws, Trans 100

Dear Senator Holperin and Representative Steinbrink:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Legislative Reference Bureau and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

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

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

The Wisconsin Department of Transportation proposes an order to repeal TRANS 100.15(5)(a) to (e), 100.18(3)(b)1. to 3. and 3.(note); to renumber TRANS 100.18(3)(b)2.(note); to amend TRANS 100.01(1), 100.08(1)(a), (b), (d), (e) and (f), 100.09(4)(intro.) and (c)(note), 100.10(10), 100.13(1)(h)(note), 100.15(5)(intro.), 100.16(4)(a), 100.18(1)(intro.), (2)(a) and (b), (3)(a) and (b)(intro.), and (4)(title); and to create TRANS 100.09(1m) and (2)(note), 100.13(1)(i) and (4), 100.18(1)(e)(note), (2)(am) and (c), and (5), and 100.25, relating to safety responsibility, damage judgment and mandatory insurance laws.

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11, 343.02 and 344.66, Stats., interpreting ss. 344.25 to 344.27, 344.37, 344.61 to 344.67 and 346.70, Stats., the Department of Transportation will hold a public hearing on the **21st** day of **July**, 2010, at the Hill Farms State Transportation Building, **Room 144-B**, 4802 Sheboygan Avenue, Madison, WI, at **10:30 AM**, to consider the amendment of ch. Trans 100, Wisconsin Administrative Code, relating to license reinstatement.

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 Reginald 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 Reginald 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 by phone at (608) 264-7002 or via e-mail: reginald.paradowski@wisconsin.gov to obtain copies of the proposed rule. Copies will also be available at the hearing.

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

The Wisconsin Department of Transportation proposes an order to repeal TRANS 100.15(5)(a) to (e), 100.18(3)(b)1. to 3. and 3.(note); to renumber TRANS 100.18(3)(b)2.(note); to amend TRANS 100.01(1), 100.08(1)(a), (b), (d), (e) and (f), 100.09(4)(intro.) and (c)(note), 100.10(10), 100.13(1)(h)(note), 100.15(5)(intro.), 100.16(4)(a), 100.18(1)(intro.), (2)(a) and (b), (3)(a) and (b)(intro.), and (4)(title); and to create TRANS 100.09(1m) and (2)(note), 100.13(1)(i) and (4), 100.18(1)(e)(note), (2)(am) and (c), and (5), and 100.25, relating to safety responsibility, damage judgment and mandatory insurance laws.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 344.25 to 344.27, 344.37, 344.61 to 344.67 and 346.70, 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 and damage judgment laws contained in Ch. 344. This rule making deals with reinstatement of operating privileges following suspension for nonpayment of a damage judgment. The Department is also charged with administering provisions of the mandatory insurance law, Subchapter VI to Ch. 344, Stats. This rule making implements that new law.

Related statute or rule: s. 344.01(2)(d), Subch. VI of Ch. 344, Stats.

Plain language analysis: This proposed rule making revises those provisions of Ch. Trans 100 to reflect statutory requirements and to codify DMV practices and procedures that are used in the administration of the safety responsibility and damage judgment laws. The damage judgment law provides that a driver's operating privilege may be suspended for up to 20 years if the driver fails to pay down the judgment to the same extent it would have been paid had the driver carried the minimum insurance required under Wisconsin's safety responsibility law. The safety responsibility law requires drivers involved in accidents without insurance to post a deposit with the Department to cover potential damages resulting from the accident. Failure to post the deposit results in suspension of operating privileges.

A second objective of this rule making, discussed below, is to establish standards for filings made in lieu of insurance with the Department pursuant to s. 344.63, Stats., as created by 2009 Wis. Act 28, and establish any other regulations made necessary by Wisconsin's new mandatory insurance law.

Safety Responsibility and Damage Judgment Law Related Proposed Rules

Section 344.01(2)(d), Stats., sets minimum mandatory insurance limits in Wisconsin of \$50,000 because of bodily injury to or death of one person in any one accident and, subject to such limit for one person, in the amount of \$100,000 because of bodily injury to or death of 2 or more persons in any one accident and in the amount of \$15,000 because of injury to or destruction of property of others in any one accident.¹ Section 344.26(3), Stats., provides that unpaid damage judgments in excess of those amounts are “deemed satisfied” for purposes of the damage judgment law when payments in those amounts have been credited to the judgments. Payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident are credited in reduction of the respective amounts so specified.

It should be noted in this regard that the term “satisfied” as used in ss. 344.25 to 344.27, Stats., is not used in the commonly understood legal parlance of the term. Ordinarily, to lawyers, “satisfaction” of a judgment means the payment of all amounts due under the judgment. In s. 344.26(3), Stats., however, the different meaning described in the preceding paragraph is ascribed to the term solely for purposes of the damage judgment law. This is consistent with the safety responsibility law. Under the safety responsibility law, a person who had a contract of insurance with the minimum coverages described in s. 344.01(2)(d), Stats., would not be subject to that law’s bond requirements. s. 344.14(2)(a), Stats.

This proposed rule making would amend Ch. Trans 100 to make clear that payment of a judgment to the \$15,000 for property damage plus \$50,000 or \$100,000 level for injuries is sufficient to warrant release of any damage judgment suspension by the Division of Motor Vehicles. It also imposes a requirement that any settlement agreement between the parties state the nature of the damages involved and the amount at which the possibility of re-suspension under the DMV damage judgment law expires.

An additional proposed amendment to Ch. Trans 100 is intended to resolve a potential ambiguity in ss. 344.25 to 344.27, Stats. Since the inception of this program, DOT has interpreted those statutes as permitting release of a DMV damage judgment suspension once upon a debtor driver entering into a private repayment agreement and once upon that debtor driver obtaining a court-ordered repayment plan under s. 344.27, Stats. DMV has required satisfaction of the judgment as a condition of reinstatement following default on any judicial plan because of the s. 344.27(3), Stats., requirement that “[I]f the judgment debtor fails to pay any installment as specified by such order, the secretary, upon notice of such default, shall immediately suspend the operating privilege and registrations of the judgment debtor until such judgment is satisfied as provided in s. 344.26.” In drafting this rule, the Department considered whether it could

¹ These dollar amounts can be adjusted in accordance with variance in the consumer price index beginning in 2017. The rule text reflects this fact, but for purposes of the analysis, the current \$15,000, \$50,000 and \$100,000 amounts shall be used to simplify the text and improve the understandability of the analysis.

permit these steps to be done in a different sequence and whether multiple agreements could be permitted.

In the end, the Department concluded that the above-quoted language of s. 344.27(3), Stats., prevents DMV from permitting reinstatement of operating privileges following default on a court-ordered repayment plan unless the driver (or someone on the driver's behalf) actually pays \$15,000, \$50,000 or \$100,000, as appropriate, to the judgment creditor. DMV also concluded that it would not permit repeated private repayment agreements for a single damage judgment. The proposed rule reflects these determinations.

Amendments to s. Trans 100.08(1) are proposed merely to eliminate inconsistent use of language in the amended paragraphs. The paragraphs amended used alternatively the term "check" or the term "draft," when either a check or a draft is adequate in any of those instances and either is accepted by DMV. The amendments simply make it clear that either is acceptable in lieu of cash.

Finally, the unencumbered asset base formula amount required for self-insurance in s. Trans 100.16(4)(a) is raised from \$60,000 to \$115,000 to match the new minimum liability limits required under state law. The formula is expressed in a manner that will allow the amount to rise or fall as minimum insurance limits rise or fall under s. 344.11, Stats.

Mandatory Insurance Related Proposed Rules

As stated above, one purpose of this proposed 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. The statutes require the Department to accept and release deposits made in lieu of mandatory insurance under particular circumstances, and these rules cannot modify those statutorily established requirements. The Department believes the legislature may wish to consider modifying some of those requirements in the future because the effects of some of the provisions may undermine the legislature's apparent intentions in enacting the laws. These effects are explained below.

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. The Department proposes in this rulemaking to require that the securities be of a type readily sold on a recognized market, such as the NASDAQ or New York Stock Exchange, so that DMV has a means of converting the securities to cash if the securities must be used to pay damages resulting from an accident. Securities in closely held corporations, certificates of deposit that are subject to early withdrawal penalties, and other types of securities that are not readily converted to cash would not be accepted. Minimum standards of capitalization and liquidity are suggested as mechanisms for ensuring that penny stocks and unmarketable securities that are difficult to sell will not be accepted.

As set forth at the outset of this plain language analysis, there are some issues related to the return of deposits made in lieu of mandatory insurance established by the new mandatory insurance law that may merit further legislative attention. For example, s. 344.63(3)(a) provides that any bond, cash or securities deposited in lieu of insurance with the Department would have to be returned to the depositor if the owner or operator of the vehicle for whom the deposit was made obtains insurance, dies, becomes permanently incapacitated to operate a motor vehicle, no longer holds a valid operator's license or no longer owns a motor vehicle registered with the Department. The Department lacks authority under that statute to retain any bond or deposit to satisfy damages resulting from an accident once any of those events triggering return of the deposit occurs.

Because of this statutory requirement, the person posting the bond or deposit will have ample opportunity to withdraw any deposit prior to the Department being able to apply it to any judgment for damages for the injured party's benefit. For example, if the depositor were to be involved in an accident, he or she could walk into any DMV service center, surrender his or her license and demand return of the deposit. Under the new law, DMV has a ministerial non-discretionary responsibility to return the deposit, even if the Department knows that the accident has occurred. Once the deposit is returned, the driver can request DMV reinstate his or her license, and DMV is required to do so. Similarly, if the driver who made the deposit in lieu of insurance killed himself by negligently causing an accident injuring others, the Department is required to return the deposit to the depositor's estate and cannot retain the deposit for the benefit of the persons the depositor negligently injured. In these and other foreseeable types of

situations, the deposit made in lieu of insurance would not be available to satisfy the damages suffered by those injured in the accident. The legislature may wish, at some point, to consider amending the statutory provisions that lead to such results so that deposits made in lieu of insurance could be held by the Department in order to help offset damages caused by drivers using deposits in lieu of insurance.

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: Owners of passenger vehicles, vans, and light trucks must purchase Michigan no-fault insurance before registering their vehicle. Out-of-state insurance policies cannot be used to meet Michigan insurance requirements for registering a vehicle. Motorcycles must also be insured, but it is not no-fault insurance.

Required coverages include bodily injury/property damage, personal injury protection, and property protection insurance. These required coverages do not pay for damage to vehicles or cover theft. Drivers may carry collision coverage (damage) and comprehensive coverage (theft) at their option.

Drivers are required to keep a Michigan no-fault insurance certificate in their vehicle or carry it with them when they drive. If they cannot show proof of insurance to a law enforcement officer, their operating privilege or vehicle registration may be suspended.

Persons (usually companies) owning more than 25 vehicles may be exempt from the mandatory insurance requirement by obtaining a certificate of self insurance from the Michigan Secretary of State. Applicants must have a net worth in excess of \$20 million to be exempt from carrying insurance, or a have net worth in excess of \$5 million and carry an excess insurance policy. Section R 257.532, Michigan Admin. Code.

Department staff did not find any provision of Michigan law allowing deposits in lieu of insurance similar to those set forth in s. 344.63, Stats.

Michigan has a damage judgment law similar to Wisconsin's. If someone is driving a vehicle without insurance and is at-fault in an accident, the injured party may file a suit against the uninsured motorist in court for damages. The court may award a judgment for damages to the injured party against the uninsured motorist. Unlike Wisconsin, if the uninsured motorist cannot pay the judgment, their driver license is suspended until the judgment is paid in full. Wisconsin requires only that the minimum mandatory insurance amounts be paid before a driver may reinstate his or her license.

Michigan does not have a safety responsibility law similar to Wisconsin's.

Minnesota: The Minnesota No-Fault Act (M.S. 65B.48), requires owners of registered motor vehicles to maintain no-fault insurance. The law makes it a crime for a vehicle owner to operate or permit operation of any uninsured motor vehicle or motorcycle upon any public road, street, or highway. Violation of the law can result in fines or

imprisonment and/or loss of driving privileges.

Drivers must carry liability, personal injury protection, uninsured motorist, and underinsured motorist coverage. Collision and comprehensive coverage are optional.

Minnesota Law (M.S. 169.791) requires drivers to carry proof of insurance in the vehicle at all times and to provide it to peace officers upon demand.

Minnesota does not appear to have a safety responsibility law. Minn. Stat. 171.182 provides for revocation of operating privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

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.

Drivers operating without proof of insurance in Illinois, are subject to a five hundred dollar fine and a sixty day suspension of vehicle registration. Illinois requires drivers to carry bodily injury liability limits of \$20,000/\$40,000, property damage liability limits of \$15,000, and uninsured motorist coverage.

Illinois does not appear to have a safety responsibility law. Illinois law does provide for revocation of operating privileges for drivers who have unpaid damage judgments resulting from automobile accidents. Unlike Wisconsin, complete payment of the judgment is required prior to reinstatement.

Iowa: Iowa does not mandate that drivers or vehicle owners carry insurance. Iowa has a safety responsibility law similar to Wisconsin's, which is used to compel uninsured drivers to post deposits in order to cover damages potentially attributable to them from an accident. Any person involved in an accident in Iowa, as either the driver or owner of a motor vehicle, is subject to the requirements of the law.

Iowa does not have a compulsory insurance law. Instead, the Financial & Safety Responsibility Act provides for:

- Suspending the operating and registration privileges of a driver or owner who cannot show immediate financial responsibility following an accident; and,
- By requiring anyone whose driver's license has been suspended or revoked because of a conviction, unsatisfied judgment or violation of the OWI law to prove financial responsibility for any future damages or injuries that driver may cause.

Just as in Wisconsin, in Iowa drivers must file an accident report and must be filed with the Office of Driver Services within a set timeframe if an accident results in bodily injury, death or total property damage over a statutorily established amount. Drivers do not need to file a personal accident report if the accident was investigated by a law

enforcement agency and the investigating officer files a report.

A driver who causes personal injury or damage exceeding \$1,000 to the other party must prove his or her financial responsibility or be subject to license suspension. Similar to Wisconsin's safety responsibility law, drivers can prove financial responsibility by showing that they were covered by automobile liability insurance at the time of the accident, posting cash, getting releases from all other damaged or injured parties, being absolved of responsibility by a court judgment, filing an agreement to pay the other damaged or injured parties on an installment plan, or reaching a settlement with the injured persons. Iowa also allows the uninsured motorist to confess judgment and enter into a judicially-approved payment plan as a mechanism for resolving safety responsibility matters.

Both the owners and drivers of the vehicles involved in an accident must prove their financial responsibility. This means that the person who owns the vehicle involved in an accident has to show financial responsibility even if they weren't driving. Like Wisconsin, Iowa will suspend registrations of all the owners' vehicles if they do not comply. Similarly, the driver of the vehicle has to show financial responsibility or lose all licenses to operate motor vehicles.

Iowa does not appear to have a damage judgment law similar to Wisconsin's.

Overall, it appears that states having mandatory insurance laws do not have a safety responsibility law similar to Wisconsin's. Iowa, which has a safety responsibility law, does not mandate insurance.

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 proposed 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. This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. 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 safety responsibility and damage judgment portions of this rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. This proposed rule making related to filings in lieu of mandatory insurance are not expected to impact small business in any manner. The new mandatory insurance law itself may require small businesses that lack automobile coverage to obtain insurance or make a filing in lieu of insurance with the

Department. 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: This rule making largely codifies existing DOT policy with regard to the administration of the safety responsibility and damage judgment laws. The Department believes any fiscal effect from this codification to be indeterminate as the number of citations issued for not carrying proof of liability insurance, failure to have liability insurance, or fraud in providing proof of liability insurance cannot be summed at this time. The Department will incur costs for computer changes necessary to develop codes used to indicate the new types on convictions on violators driving records and an unknown amount of time spent by staff explaining insurance requirements and processing license suspensions and reinstatements for persons whose operating privilege is suspended for not paying the forfeitures associated with the violations listed above. The Department will also receive an indeterminate amount of revenue resulting from reinstatement fees collected from those persons whose operating privilege is suspended for not paying forfeitures. Local revenue has the potential to increase through collection of forfeitures and other charges related to the penalties associated with convictions for violations of the new charges.

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 place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing 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 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: dotuninsuredmotorist@dot.wi.gov.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 100.01(1) is amended to read:

Trans 100.01(1) STATUTORY AUTHORITY. As authorized by ss. 85.16(1), 227.11 and 343.02, Stats., the purpose of this chapter is to administratively interpret s. 343.23(2), Stats., relating to department records, ss. 344.01 to 344.48, Stats., relating

to financial responsibility in accidents, and s. 346.70, Stats., relating to accident reporting, and ss. 344.25 to 344.27, Stats., relating to damage judgments.

SECTION 2. Trans 100.02(11m), (12m), and (13m) are created to read:

Trans 100.02(11m) "Multiple injury minimum coverage" means \$100,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for multiple injuries after that date.

(12m) "Property damage minimum coverage" means \$15,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for property damage after that date.

(13m) "Single injury minimum coverage" means \$50,000 until the department publishes adjusted liability limit amounts as required by s. 344.11, Stats., and means the most recently published adjusted liability amount for a single person injured in an accident after that date.

SECTION 3. Trans 100.08(1)(a), (b), (d), (e) and (f) are amended to read:

Trans 100.08(1)(a) ~~Cash~~ United States currency.

(b) A cashiers cashier's check or draft.

(d) A financial institution check or draft.

(e) A certified personal or business check or draft.

(f) An attorney trust account check or draft.

SECTION 4. Trans 100.09(1m) and (2)(note) are created to read:

Trans 100.09(1m) A person shall be presumed to own a vehicle if it is titled in the person's name. Ownership may be disputed and the presumption rebutted informally

with the department or in a hearing under this chapter. The person in whose name a vehicle is titled shall have the burden of rebutting that presumption.

Note: See *State v. Kirch*, 222 Wis. 2d 598, 587 N.W.2d 919 (Ct. App. 1998); *Young v. West Bend Mutual Ins. Co.*, 2008 WI App 147; *Kruse v. Weigand*, 204 Wis. 195 (1931); *Knutson v. Mueller*, 68 Wis. 2d 199 (1974).

(2)(note) Note: If A loans a vehicle to B, even with conditions or contractual obligations on that loan, such as not re-loaning the vehicle, and B loans the vehicle to C, C has A's implied consent to operate the vehicle notwithstanding the conditions or agreement between A and B. A's relinquishment of control of the vehicle to B makes A responsible for any accident in which B is involved or in which any person operating the vehicle with B's consent is involved. *Plevin v. WisDOT*, 267 Wis. 2d 281 (Ct. App. 2003). A is responsible for maintaining insurance on or covering damages caused by A's vehicle.

SECTION 5. Trans 100.09(4)(intro.) and (c)(note) are amended to read:

Trans 100.09(4)(intro.) The owner of a motor vehicle involved in an accident is exempt from depositing security under s. 344.14 (2) (g), Stats., if the owner or the owner's insurer produces uncontroverted proof that the motor vehicle was operated or parked without actual or implied permission at the time of the accident. Acceptable proof shall be in one of the following forms:

(c)(note) This is an exclusive list of mechanisms that may be used for proving unauthorized operation of a vehicle. See *Plevin v. WisDOT*, 267 Wis. 2d 281 (Ct. App. 2003).

SECTION 6. Trans 100.10(10) is amended to read:

Trans 100.10(10) All parties and their counsel shall be respectful of the hearing examiner and behave in a professional manner. A hearing examiner may exclude a

person or attorney from a hearing for engaging in disrespectful, contemptuous, or disruptive conduct. An attorney who is repeatedly excluded from hearings for the conduct may be barred from participating in administrative hearings before the department.

SECTION 7. Trans 100.13(1)(h)(note) is amended to read:

Trans 100.13(1)(h)(note) Note: ss. 807.10, 344.14(2)(h) and 344.18(1)(b), Stats.;

Note: Form MV 3128--Installment Agreement to Pay Damages.

SECTION 8. Trans 100.13(1)(i) and (4) are created to read:

Trans 100.13(1)(i) A statement as to whether the claim is for injury to property, injury to a person, or injury to a combination of persons or property, and that upon payment of the appropriate amount specified in s. Trans 100.18(1)(f) to (i), the judgment creditor shall report the judgment as "satisfied for purposes of s. 344.26(3), Stats.," to the division of motor vehicles.

(4) A person may not reinstate his or her operating privilege upon filing a written installment agreement if the person's operating privilege has been suspended for failure to comply with a court-ordered installment plan under s. 344.27(3), Stats., until the case is resolved under s. Trans 100.18.

Note: Section 344.27(3), Stats., provides that "[i]f the judgment debtor fails to pay any installment as specified by such order, the secretary, upon notice of such default, shall immediately suspend the operating privilege and registrations of the judgment debtor until such judgment is *satisfied* as provided in s. 344.26." Section 344.26 provides that a person whose operating privilege is suspended for a damage judgment may be reinstated if the judgment is stayed, satisfied or discharged. But, s. 344.26(3) makes clear that "satisfaction," as used in the statute, does not have its ordinary and generally understood meaning of paying a judgment in full (see, for example, s. 806.20, Stats.). Rather, "satisfaction" under the damage judgment law means to pay a creditor the same amount the creditor would have received if the judgment debtor had held insurance in the minimum mandatory amounts required to avoid responsibility under the safety responsibility laws. Trans 100.18 deals with the process of resolving a damage judgment suspensions, including paying off the amount required to "satisfy" a judgment under s. 344.26(3), Stats.

SECTION 9. Trans 100.15(5)(intro.) is amended to read:

Trans 100.15(5) RESOLVING CLAIM IN DAMAGE JUDGMENT CASES. A person whose operating privilege or motor vehicle registration was suspended or revoked for failure to pay a damage judgment ~~shall meet one of the following conditions as a prerequisite to reinstating the~~ may not reinstate an operating privilege or motor vehicle registration until the person resolves the damage judgment case in a manner permitted under s. Trans 100.18:

Note: Section 128.21, Stats., voluntary proceeding orders do not stay Ch. 344 license suspension or revocation actions, and are therefore inadequate to resolve a damage judgment suspension or revocation under sub. (5)(b). See s. Trans 100.18 regarding the effect of a bankruptcy on a damage judgment revocation.

SECTION 10. Trans 100.15(5)(a) to (e) are repealed.

SECTION 11. Trans 100.16(4)(a) is amended to read:

Trans 100.16(4)(a) A person shall be considered to have the ability to pay judgments arising out of motor vehicle accidents if the person has unencumbered assets of at least ~~\$60,000~~ the sum of multiple injury minimum coverage plus property damage minimum coverage times the square root of the total number of motor vehicles owned by the person and operated on Wisconsin highways, is paying creditors as the person's debts become due, and does not have any judgment, fine or forfeiture that has remained unpaid more than 30 days.

NOTE: The sum of multiple injury minimum coverage plus property damage minimum coverage is \$115,000 until the Department publishes adjusted amounts pursuant to s. 344.11, Stats.

SECTION 12. Trans 100.18(1)(intro.) is amended to read:

Trans 100.18(1)(intro.) SUSPENSION. Upon receipt of a certified damage judgment from a Wisconsin court, the department shall immediately suspend the judgment debtor's operating privilege and the registration of the judgment debtor's

motor vehicles. The suspension shall remain in effect until ~~the person pays all fees required for operating privilege and motor vehicle registration reinstatement, files any required proof of financial responsibility for the future~~ the person meets the criteria of sub. (5), and until one of the following conditions is met:

SECTION 13. Trans 100.18(1)(e)(note), (f) to (i) and (1m) are created to read:

Trans 100.18(1)(e)(note) Note: See s. 893.40, Stats.

(f) If the judgment is for property damage, the person files proof of payment of an amount equal to the property damage minimum coverage level described in s. Trans 100.02(12m) to the judgment creditor, including payments made in settlement or partial settlement of the property damage claim or payments made to the court for application to the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following s. Trans 100.18(1)(i).

(g) If the judgment is for injury to a single person, the person files proof of payment of an amount equal to the single injury minimum coverage level described in s. Trans 100.02(13m) to the judgment creditor, including payments made in settlement or partial settlement of the injury claim or payments made to the court for application to the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following Trans s. 100.18(1)(i).

(h) If the judgment is for injury to more than one person, the person files proof of payment of an amount equal to the multiple injury minimum coverage level described in s. Trans 100.02(11m) to the judgment creditor, including payments made in settlement or partial settlement of the injury claim or payments made to the court for application to

the judgment. Payments on the claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach that amount.

Note: See the note following s. Trans 100.18(1)(i).

(i) If the judgment results from any combination of property damage, injury to one person, or injury to more than one person, the person files proof of payment of the amount applicable under par. (f) plus the amount applicable under par. (g) or (h), whichever is applicable, to the judgment creditor, including payments made in settlement or partial settlement of the property damage or injury claims or payments made to the court for application to the judgment. Payments on the judgment creditor's claim made by the judgment debtor, an insurance carrier, or any other person may be aggregated to reach the amount required to be paid prior to satisfaction of the damage judgment for driver licensing purposes under this paragraph.

NOTE: Under s. 346.26(3), Stats., a judgment is deemed "satisfied" to the extent that a person should be able to reinstate their operating privilege once the person has paid a judgment debtor an amount equal to the minimum required insurance amounts a person needs to avoid operating privilege suspension under the safety responsibility law. The actual judgment may not be partially satisfied to the same extent because payment of interest, costs and attorneys fees all qualify as payment toward this total dollar amount. Pars. (f), (g) and (h) address this means of "satisfying" specific types of damage judgments for driver licensing purposes. Par. (i) addresses situations where a debtor owes for both property damage and personal injury and requires payment of up to \$65,000 (\$15,000 + \$50,000) for such an accident to property and one person or \$115,000 (\$15,000 + \$100,000) for damages to property and injuries to multiple persons as a precondition of reinstatement. Of course, providing evidence that the entire judgment has been satisfied with a court is also acceptable. Minimum mandatory insurance amounts are set under s. 344.01(2)(am), Stats.

(1m) RESUSPENSION. If a judgment debtor fails to comply with the payment terms of a voluntary or court-ordered agreement under sub. (1)(b) or (c), upon notice of the default, the secretary shall suspend the debtor's operating privilege. That suspension shall remain in effect until the judgment debtor meets the requirements of sub (1)(a) to (i), provided that a driver who has previously entered into a voluntary

agreement complying with (1)(b) may not remedy the suspension by entering into a second sub. (1)(b) agreement, and further provided that a driver who has previously been the subject of a court-ordered plan under sub. (1)(c) may not remedy the suspension by entering into a second sub. (1)(b) agreement or (1)(c) court-ordered repayment plan.

NOTE: The first sentence of this provision provides that a person whose operating privilege is suspended for a damage judgment may reinstate by paying off the judgment, entering into a voluntary payment agreement with the judgment creditor, obtaining a court-ordered payment plan, filing for bankruptcy, waiting 20 years, or paying the creditor an amount equal to the insurance that would have been paid to the creditor had the judgment debtor held insurance in the minimum mandatory insurance amounts specified in s. 344.01(2)(am), Stats. The second and third sentences make clear that a judgment debtor may only use voluntary or court-ordered plans to reinstate one time. A second application to use a voluntary plan to reinstate or a second application to use a court ordered plan will be denied.

SECTION 14. Trans 100.18(2)(a) is amended to read:

Trans 100.18(2)(a) *Out-of-state judgments against Wisconsin drivers*. Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed operator as judgment debtor from a court or driver licensing authority in another jurisdiction, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to (e) (i) or, files a letter of clearance or other proof of license reinstatement in that other state from the driver licensing authority in the other jurisdiction.

SECTION 15. Trans 100.18(2)(am) is created to read:

Trans 100.18(2)(am) *Out-of-state judgments against drivers moving to Wisconsin from another state*. If a judgment debtor's operating privilege is suspended or revoked in another state for nonpayment of a judgment before the debtor obtains a Wisconsin

driver license, the judgment debtor must reinstate his or her operating privilege in that other state before the driver may be licensed in Wisconsin. If another state provides notice to Wisconsin of entry of a damage judgment in that other state which may result in suspension for nonpayment of the judgment in Wisconsin under s. 344.25(5), Stats., the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to (i) or, files a letter of clearance or other proof of license reinstatement in that other state from the driver licensing authority in the other jurisdiction.

NOTE: Where notice of a judgment debt is sent to the Department by a licensing authority in another state, obtaining a release letter may be required as a precondition to obtaining or keeping a Wisconsin driver license. If the judgment debtor has moved to Wisconsin from the other state, the Department is prohibited from issuing the person a license if the person's operating privilege is suspended or revoked in the other state. s. 343.38 (4), Stats. If the person has been issued a license, it will be cancelled. s. 343.25, Stats.

SECTION 16. Trans 100.18(2)(b) is amended to read:

Trans 100.18(2)(b) *Tribal judgments.* Upon receipt of a certified damage judgment naming a Wisconsin resident or licensed driver as judgment debtor from an Indian tribal court in Wisconsin, the department shall provide notice of the receipt of the certification to the judgment debtor. The department shall suspend the operating privilege and motor vehicle registrations of the judgment debtor unless, within 30 days of the issuance of the notice by the department, the person satisfies one of the requirements of sub. (1) (a) to ~~(e)~~ (i).

SECTION 17. Trans 100.18(2)(c) is created to read:

Trans 100.18(2)(c) *Period of suspension.* If a judgment debtor's operating

privilege or vehicle registration is suspended because of non-payment of an out-of-state or tribal judgment, the person's operating privilege or vehicle registration shall remain suspended until the person meets the criteria of sub. (5) and the person satisfies one of the requirements of sub. (1) (a) to (i).

SECTION 18. Trans 100.18(3)(a) and (b)(intro.) are amended to read:

Trans 100.18(3)(a) If a judgment creditor consents to allow a judgment debtor to retain or reinstate the debtor's operating privilege or motor vehicle registration under s. 344.25(2), Stats., the parties shall file a copy of the written installment agreement between the parties. The agreement shall meet the requirements of s. Trans 100.13. In applying the requirements of s. Trans 100.13, the term "injured party" shall mean the judgment creditor, and the term "uninsured person" shall mean the judgment debtor. The installment agreement shall provide that upon payment of the sums specified in the agreement, the judgment will be satisfied. The installment agreement shall clearly state whether the judgment is for damages to property, or damages to a single individual or multiple individuals, or both, shall state the aggregate payment amount sufficient to permit reinstatement of the person's operating privilege under pars. (1)(f) to (i), and shall require the judgment creditor to advise the division of motor vehicles upon receipt of payments totaling that amount.

(3)(b) If the department is notified that a judgment debtor has defaulted on a written installment agreement filed under s. 344.25, Stats., and 6 months have not elapsed from the date of the agreement, the department shall advise the person notifying the department of the default that no action may be taken until 6 months have elapsed and take no further action. If 6 months have elapsed from the date of the agreement, the department shall immediately suspend the person's operating privilege

and motor vehicle registration. The suspension shall remain in effect until the person ~~pays all fees required for operating privilege and motor vehicle registration reinstatement, files any required proof of financial responsibility for the future, complies with sub. (5) and meets one of the following:~~ conditions required for reinstatement under sub. (1)(a), (b), or (d) to (i).

SECTION 19. Trans 100.18(3)(b)1. and 2. are repealed.

SECTION 20. Trans 100.18(3)(b)2.(note) is renumbered Trans 100.18(3)(b)(note).

SECTION 21. Trans 100.18(3)3. and (note) are repealed.

SECTION 22. Trans 100.18(4)(title) is amended to read:

Trans 100.18(4)(title) BANKRUPT PERSONS UNDER DAMAGE JUDGMENT LAW.

SECTION 23. Trans 100.18(5) and 100.25 are created to read:

Trans 100.18(5) STANDARD REINSTATEMENT REQUIREMENTS. (a) In order to reinstate an operating privilege after a suspension or revocation for nonpayment of a damage judgment, in addition to satisfying the damage judgment by complying with subs. (1) to (3), a driver must also pay all fees required for operating privilege reinstatement and file any required proof of financial responsibility for the future.

(b) In order to reinstate vehicle registration after a suspension or revocation for nonpayment of a damage judgment, a driver must also pay any fee required for reinstatement of the vehicle registration.

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. (a) Securities filed with the department pursuant to s. 344.63(1)(d), Stats., shall be of a type sold on the New York Stock Exchange, NASDAQ or NYSE Amex Equities exchange. The stock must have a minimum capitalization of \$1,000,000,000. The stock must be liquid to the extent that over the 3-month period preceding filing with the department an average of at least 100,000 shares of the stock must have been traded on a daily basis on the exchange.

(b) 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 in this state and that the securities meet the requirements of sub. (5)(a). 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 and meet the requirements of sub. (5)(a).

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)

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 11th day of June, 2010.



FRANK J. BUSLACCHI

Secretary

Wisconsin Department of Transportation