

2011 DRAFTING REQUEST

Bill

Received: **09/09/2010**

Received By: **agary**

Wanted: **As time permits**

Companion to LRB: **-3743**

For: **Transportation**

By/Representing: **Anna Richter**

May Contact:

Drafter: **agary**

Subject: **Transportation - traffic laws**

Addl. Drafters:

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Anna.Richter@dot.wi.gov**

Carbon copy (CC:) to: **aaron.gary@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Revise list of hazardous materials that require stop at railroad crossings (NB 1113 17)

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	agary 09/10/2010	jdyer 09/13/2010	rschluet 09/14/2010	_____	cduerst 09/14/2010		
/1	agary 07/18/2011	jdyer 07/18/2011	jfrantze 07/18/2011	_____	mbarman 07/18/2011	mbarman 07/18/2011	
	agary 01/18/2012	jdyer 02/17/2012		_____			
	agary 02/16/2012			_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2			rschluet 02/17/2012	_____	mbarman 02/17/2012	mbarman 02/17/2012	

FE Sent For:

None

<END>

Sent to
Rep. Petrawski
(per ARG)

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	agary 02/16/2012			_____			

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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rschluet _____
02/17/2012 _____

mbarman
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/1	agary 07/18/2011	jdyer 07/18/2011	jfrantze 07/18/2011	_____	mbarman 07/18/2011	mbarman 07/18/2011	

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Handwritten signature/initials

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FE Sent For:

17/18 jld

rs

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PAs: Please jacket "1" for rep. Petrowski

Thx ARG

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/?	agary	PI 9/13 jld		PP _____ _____			

FE Sent For:

<END>

LEGISLATIVE BUDGET/NON-BUDGET PROPOSAL
2011-2013 BIENNIUM

Wisconsin Department of Transportation

DT1586 6/2010

Instructions: Complete this form for any budget/non-budget legislative initiative for which a Division requests the Secretary's Office (SO) approval. Check the budget box only if the proposal has a fiscal impact on department expenditures or revenue. This form must be signed by the Division Administrator(s). Include this form with your budget submittal materials or return one completed copy to the Office of Policy, Budget & Finance (OPBF), Attention: Paul Hammer. The form is available in the department forms catalog on dotnet.

Short Title of Topic Revise list of hazardous materials that require transporting vehicles to stop at railroad crossings to more closely mirror Division and Classification language used in Federal regulations			
Type of Proposal <input type="checkbox"/> Budget <input checked="" type="checkbox"/> Non-Budget	OGC OFFICE USE ONLY "T" Number Assigned "B" Number Assigned "NB" Number Assigned 1113-17		
Date Submitted 7/9/2010	Division(s) State Patrol		
OPBF Contact Person John Swissler	Area Code - Telephone Number (608) 266-0349		
Lead Division Contact Person Capt. Chuck Lorentz	Area Code - Telephone Number (608) 266-0305		
OGC Contact Person Paul Nilsen	Area Code - Telephone Number (608) 261-0125		
Define Problem Precisely State law requires trucks carrying hazardous materials to stop at railroad crossings. The hazmat categories enumerated in state law do not conform to Federal language used in 49 CFR 392.10, which is more precise and more easily understood.			
Description of Proposed Change Revise statutory language regarding categories of hazardous materials that require transporting vehicles to stop at railroad crossings to more closely mirror Division and Classification language used in Federal regulations (49 CFR Part 392.10).			
Justification for Change This would add clarity and precision to statutory language			
Describe any legislative history and related statutory language s.346.45(c)			

_____	_____
(Division Administrator Signature)	(Date)
_____	_____
(Division Administrator Signature)	(Date)
_____	_____
(Division Administrator Signature)	(Date)

working order before the equipment is operated over the road. Drivers operate the equipment over the road only if all components were in good working order when the driver accepted the equipment:

(1) The brake components that are readily accessible to a driver performing as thorough a visual inspection as possible without physically touching the vehicle, and trailer connections.

(2) The safety devices and reflectors.

(3) The safety devices.

(4) The support frames.

(5) The air bolsters.

(6) The pins, clevises, clamps, or hooks.

(7) The sliding frame lock.

(8) 49 CFR 392.10, Dec. 25, 1968, as amended at 60 FR 3, July 28, 1995; 73 FR 76823, Dec. 17, 2008.

Emergency equipment, inspection and use.

(a) A commercial motor vehicle shall not be driven unless the driver thereof is advised that the emergency equipment required by § 393.95 of this subchapter is in place and ready for use; and all any driver fail to use or make such equipment when and as

(b) 49 CFR 392.10, Sept. 28, 1984, as amended at 60 FR 3, July 28, 1995]

Inspection of cargo, cargo securement devices and systems.

(a) General. A driver may not operate a commercial motor vehicle and a carrier may not require or permit a driver to operate a commercial vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100 through 393.136 of this subchapter.

(2) The commercial motor vehicle's cargo is properly secured by the use of tie-downs, chains, straps, dunnage, air, tailboard, doors, tarpaulins, covers, dunnage, and other equipment used in cargo lashing, lacing, and the means of fastening the commercial motor vehicle's cargo is secured; and

(3) The commercial motor vehicle's cargo is not obstructing the driver's view ahead or to the right or left sides (except for drivers of motor vehicles with air dollies), interfere with the movement of his/her arms or legs, or obstruct his/her free and ready access to

accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) *Drivers of trucks and truck tractors.* Except as provided in paragraph (b)(4) of this section, the driver of a truck or truck tractor must—

(1) Assure himself/herself that the provisions of paragraph (a) of this section have been complied with before he/she drives that commercial motor vehicle;

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle's cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever—

(i) The driver makes a change of his/her duty status; or

(ii) The commercial motor vehicle has been driven for 3 hours; or

(iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.

[67 FR 61224, Sept. 27, 2002, as amended at 72 FR 55703, Oct. 1, 2007]

§ 392.9a Operating authority.

(a) *Operating authority required.* A commercial motor vehicle providing transportation requiring operating authority must not be operated—

(1) Without the required operating authority or

(2) Beyond the scope of the operating authority granted.

(b) *Penalties.* Every motor vehicle providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) *Administrative Review.* Upon issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554 not later than 10 days after issuance of such order.

[71 FR 50867, Aug. 28, 2006]

Subpart B—Driving of Commercial Motor Vehicles

§ 392.10 Railroad grade crossings; stopping required.

(a) Except as provided in paragraph (b) of this section, the driver of a commercial motor vehicle specified in paragraphs (a) (1) through (6) of this section shall not cross a railroad track or tracks at grade unless he/she first: Stops the commercial motor vehicle within 50 feet of, and not closer than 15 feet to, the tracks; thereafter listens and looks in each direction along the tracks for an approaching train; and ascertains that no train is approaching. When it is safe to do so, the driver may drive the commercial motor vehicle across the tracks in a gear that permits the commercial motor vehicle to complete the crossing without a change of gears. The driver must not shift gears while crossing the tracks.

(1) Every bus transporting passengers.

(2) Every commercial motor vehicle transporting any quantity of a Division 2.3 chlorine.

(3) Every commercial motor vehicle which, in accordance with the regulations of the Department of Transportation, is required to be marked or placarded with one of the following classifications:

(i) Division 1.1

- (ii) Division 1.2, or Division 1.3
- (iii) Division 2.3 Poison gas
- (iv) Division 4.3
- (v) Class 7
- (vi) Class 3 Flammable
- (vii) Division 5.1
- (viii) Division 2.2
- (ix) Division 2.3 Chlorine
- (x) Division 6.1 Poison
- (xi) Division 2.2 Oxygen
- (xii) Division 2.1
- (xiii) Class 3 Combustible liquid
- (xiv) Division 4.1
- (xv) Division 5.1
- (xvi) Division 2.2
- (xvii) Class 8
- (xviii) Division 1.4

(4) Every cargo tank motor vehicle, whether loaded or empty, used for the transportation of any hazardous material as defined in the Hazardous Materials Regulations of the Department of Transportation, Parts 107 through 180 of this title.

(5) Every cargo tank motor vehicle transporting a commodity which at the time of loading has a temperature above its flashpoint as determined by § 173.120 of this title.

(6) Every cargo tank motor vehicle, whether loaded or empty, transporting any commodity under exemption in accordance with the provisions of subpart B of part 107 of this title.

(b) A stop need not be made at:

(1) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district, as defined in § 390.5 of this chapter.

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed.

(3) A railroad grade crossing controlled by a functioning highway traffic signal transmitting a green indication which, under local law, permits the commercial motor vehicle to proceed across the railroad tracks without slowing or stopping.

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) An industrial or spur line railroad grade crossing marked with a sign reading "Exempt." Such "Exempt" signs shall be erected only by or with

the consent of the appropriate State or local authority.

(Sec. 12, 80 Stat. 931; 49 U.S.C. 1651 note; 49 U.S.C. 304, 1655; 49 CFR 1.48(b) and 301.60)

[33 FR 19732, Dec. 25, 1968, as amended at 35 FR 7801, May 21, 1970; 38 FR 1589, Jan. 16, 1973; 40 FR 44555, Sept. 29, 1975; 45 FR 16124, July 10, 1980; 47 FR 47837, Oct. 28, 1982; 59 FR 63924, Dec. 12, 1994; 60 FR 38746, 38747, July 28, 1995]

§ 392.11 Railroad grade crossings; slowing down procedure.

Every commercial motor vehicle other than those listed in § 392.10 shall, upon approaching a railroad grade crossing, be driven at a rate of speed which will permit said commercial motor vehicle to be stopped before reaching the nearest rail of such crossing and shall not be driven upon or over such crossing until due caution has been taken to ascertain that the course is clear.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§§ 392.12-392.13 [Reserved]

§ 392.14 Hazardous conditions; extreme caution.

Extreme caution in the operation of a commercial motor vehicle shall be exercised when hazardous conditions, such as those caused by snow, ice, sleet, fog, mist, rain, dust, or smoke, adversely affect visibility or traction. Speed shall be reduced when such conditions exist. If conditions become sufficiently dangerous, the operation of the commercial motor vehicle shall be discontinued and shall not be resumed until the commercial motor vehicle can be safely operated. Whenever compliance with the foregoing provisions of this rule increases hazard to passengers, the commercial motor vehicle may be operated to the nearest point at which the safety of passengers is assured.

[33 FR 19732, Dec. 25, 1968, as amended at 60 FR 38747, July 28, 1995]

§ 392.15 [Reserved]

§ 392.16 Use of seat belts.

A commercial motor vehicle which has a seat belt assembly installed at

the driver's seat shall not be less the driver has properly himself/herself with the seat assembly.

[35 FR 10860, July 3, 1970, as amended at 60 FR 38747, July 28, 1995]

§ 392.18 [Reserved]

Subpart C—Stopped Commercial Motor Vehicle

§§ 392.20-392.21 [Reserved]

§ 392.22 Emergency signaling commercial motor vehicle

(a) *Hazard warning signal.* Whenever a commercial motor vehicle is stopped upon the traveled portion of a highway or the shoulder of a highway for any cause other than a traffic stop, the driver of the commercial motor vehicle shall immediately activate the vehicle warning signal flashers or the flashing until the driver has activated the warning devices required by paragraph (b) of this section. The flashing shall be used during the time the warning devices are picked up before movement of the commercial motor vehicle. The flashing shall be used at other times while the commercial motor vehicle is stopped, but not in lieu of the warning devices required by paragraph (b) of this section.

(b) *Placement of warning signal.* *General rule.* Except as provided in paragraph (b)(2) of this section, a commercial motor vehicle stopped upon the traveled portion of the shoulder of a highway or cause other than necessary stops, the driver shall, as soon as practicable, but in any event within 10 minutes, place the warning signal required by § 393.95 of this subchapter in the following manner:

(i) One on the traffic side of the vehicle at 100 paces (approximately 300 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 100 feet) from the commercial motor vehicle in the center of the traffic lane or shoulder of the highway if provided by the commercial motor vehicle.



in
9/10



jld

D-Note

~~PRELIMINARY DRAFT~~ - NOT READY FOR INTRODUCTION

LPS-check
auto refs
please

✓ providing an
exemption from
emergency rule
procedures, and

- 4
- 1
- 2
- 3

Gen

AN ACT ...; relating to: vehicles required to stop at railroad crossings, requiring the exercise of rule-making authority, and providing an exemption from emergency rule procedures.

Analysis by the Legislative Reference Bureau,

Under current law, the Department of Transportation (DOT) must adopt rules, consistent with federal regulations, for the marking and placarding of vehicles being used to transport hazardous materials.

Also under current law, the operator of certain vehicles, before crossing an at-grade railroad crossing, must stop the vehicle ^{within} at least 50 feet but not less than 15 feet from the nearest rail. Among the vehicles required to stop are motor vehicles that, in accordance with DOT rules, must be marked or placarded with one of ten specified hazardous materials markings.

This bill eliminates the statutory enumeration of ten specific hazardous materials markings that require a marked or placarded vehicle to stop at an at-grade railroad crossing. Instead, the bill requires DOT to promulgate rules identifying classifications of markings or placarding that, consistent with federal regulations, require a marked or placarded vehicle to stop at an at-grade railroad crossing.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 346.45 (1) (c) (intro.)^x of the statutes is renumbered 346.45 (1) (c) and
2 amended to read:

3 346.45 (1) (c)[✓] Every motor vehicle which, in accordance with sub. (4), is
4 required to be marked or placarded with ~~one of the following markings:~~[✓] a
5 classification of marking or placarding that requires the vehicle to stop.[✓]

6 History: 1973 c. 12; 1975 c. 41, 63, 199; 1977 c. 29 s. 1654 (6) (b), (9) (f); 1977 c. 410; 1981 c. 347 s. 80 (2); 1993 a. 16, 123; 2005 a. 250.

6 SECTION 2. 346.45 (1) (c) 1. to 10. are repealed.
of the statutes

7 SECTION 3. 346.45 (4)^x of the statutes is amended to read:

8 346.45 (4) The department shall adopt rules for the marking and placarding
9 of vehicles being used to transport hazardous materials which are potentially
10 dangerous to life and property, which rules shall be in accordance with the
11 regulations of the U.S. department of transportation. These rules shall identify[✓]
12 classifications of markings or placarding that, consistent with federal regulations,
13 when required on a vehicle also require the vehicle to stop as provided in sub. (1) (c).[✓]

14 History: 1973 c. 12; 1975 c. 41, 63, 199; 1977 c. 29 s. 1654 (6) (b), (9) (f); 1977 c. 410; 1981 c. 347 s. 80 (2); 1993 a. 16, 123; 2005 a. 250.

14 SECTION 4. Nonstatutory provisions.

15 (1) The department of transportation shall submit in proposed form the rules[✓]
16 required under section 346.45 (4)[✓] of the statutes to the legislative council staff under
17 section 227.15 (1)[✓] of the statutes no later than the first day of the 4th month[✓]
18 beginning after the effective date of this subsection.[✓]

19 (2) Using the emergency rules procedure under section 227.24[✓] of the statutes,
20 the department of transportation shall promulgate the rules required under section
21 346.45 (4)[✓] of the statutes, for the period before the effective date of the rules

22 submitted under subsection (1), but not to exceed the period authorized under section
23 227.24 (1) (c)[✓] of the statutes, subject to extension under section 227.24 (2)[✓] of the

24 statutes. The department shall promulgate these emergency rules[✓] no later than the

1 first day of the 4th month[✓] beginning after the effective date of this[✓] subsection.
 2 Notwithstanding section 227.24 (1) (a),[✓] (2) (b),[✓] and (3)[✓] of the statutes, the department
 3 is not required to provide evidence that promulgating a rule under this[✓] subsection
 4 as an emergency rule is necessary for the preservation of the[✓] public peace, health,
 5 safety, or welfare[✓] and is not required to provide a finding of emergency for a rule
 6 promulgated under this subsection.[✓]

7 **SECTION 5. Initial applicability.**

8 (1) This act first applies to violations committed on the effective date of this
 9 subsection.[✓]

10 **SECTION 6. Effective dates.** This act takes effect on the first day of the[✓] 4th
 11 month beginning after publication, except as follows:

12 (1) SECTION 4 (1) and (2) of this act[✓] takes effect on the day after publication.[✓]

13 ↑↑ ↑ (END)
 a.r. a.r.

D. Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0063/P1dn

ARG:.....

date

Jld

Please review the attached draft carefully to ensure that it is consistent with your intent. ✓

The attached draft does not repeat the language from 49 C.F.R. 392.10 (a) (3) (i) to (xviii) because this language has no apparent meaning in the context of the Wisconsin statutes. ✓ Initially I prepared the attached draft to simply cross-reference 49 C.F.R. 392.10 (a) (3) in s. 346.45 (1) (c) (intro.) ✓ "Every motor vehicle which, in accordance with sub. (4), is required to be marked or placarded with one of the classifications identified in 49 C.F.R 392.10 (a) (3)." ✓ However, my understanding of the reason for this request is that federal regulations have changed and cross-referencing federal regulations may require more statutory changes in the future. ✓ Therefore, I prepared the attached draft so that DOT can incorporate changes in federal law by changing its existing rules, rather than having to seek statutory changes. ✓ Please advise if this is not consistent with your intent. ✓

Aaron R. Gary
Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0063/P1dn
ARG:jld:rs

September 14, 2010

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Legislative Attorney
Phone: (608) 261-6926
E-mail: aaron.gary@legis.state.wi.us

Gary, Aaron

From: Fiocchi, Tim
Sent: Friday, July 15, 2011 3:05 PM
To: Gary, Aaron
Subject: Drafts from DOT

Attachments: 11-00411.pdf; 11-0042P1.pdf; 11-0063P1.pdf

Aaron,

We received the attached drafts from DOT and will be introducing them at their request. I didn't receive any drafters notes so if there are questions outstanding on the P drafts let me know – otherwise if you could have them jacketed and sent to Rep. Petrowski I'd appreciate it.

Have a good weekend,

Tim

Tim Fiocchi
Clerk, Assembly Transportation Committee
Office of Representative Jerry Petrowski
(608) 266-1182



11-00411.pdf (24
KB)



11-0042P1.pdf (29
KB)



11-0063P1.pdf (28
KB)



State of Wisconsin
2011 - 2012 LEGISLATURE

TODAY
in
7/18



LRB-0063/11
ARG:jld:rs

XMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

No changes

Regen

1 AN ACT *to repeal* 346.45 (1) (c) 1. to 10.; *to renumber and amend* 346.45 (1)
2 (c) (intro.); and *to amend* 346.45 (4) of the statutes; **relating to:** vehicles
3 required to stop at railroad crossings, providing an exemption from emergency
4 rule procedures, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) must adopt rules, consistent with federal regulations, for the marking and placarding of vehicles being used to transport hazardous materials.

Also under current law, the operator of certain vehicles, before crossing an at-grade railroad crossing, must stop the vehicle within 50 feet but not less than 15 feet from the nearest rail. Among the vehicles required to stop are motor vehicles that, in accordance with DOT rules, must be marked or placarded with one of ten specified hazardous materials markings.

This bill eliminates the statutory enumeration of ten specific hazardous materials markings that require a marked or placarded vehicle to stop at an at-grade railroad crossing. Instead, the bill requires DOT to promulgate rules identifying classifications of markings or placarding that, consistent with federal

regulations, require a marked or placarded vehicle to stop at an at-grade railroad crossing.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 346.45 (1) (c) (intro.) of the statutes is renumbered 346.45 (1) (c) and
2 amended to read:

3 346.45 (1) (c) Every motor vehicle which, in accordance with sub. (4), is
4 required to be marked or placarded with ~~one of the following markings: a~~
5 classification of marking or placarding that requires the vehicle to stop.

6 **SECTION 2.** 346.45 (1) (c) 1. to 10. of the statutes are repealed.

7 **SECTION 3.** 346.45 (4) of the statutes is amended to read:

8 346.45 (4) The department shall adopt rules for the marking and placarding
9 of vehicles being used to transport hazardous materials which are potentially
10 dangerous to life and property, which rules shall be in accordance with the
11 regulations of the U.S. department of transportation. These rules shall identify
12 classifications of markings or placarding that, consistent with federal regulations,
13 when required on a vehicle also require the vehicle to stop as provided in sub. (1) (c).

14 **SECTION 4. Nonstatutory provisions.**

15 (1) The department of transportation shall submit in proposed form the rules
16 required under section 346.45 (4) of the statutes to the legislative council staff under
17 section 227.15 (1) of the statutes no later than the first day of the 4th month
18 beginning after the effective date of this subsection.

19 (2) Using the emergency rules procedure under section 227.24 of the statutes,
20 the department of transportation shall promulgate the rules required under section
21 346.45 (4) of the statutes, for the period before the effective date of the rules

1 submitted under subsection (1), but not to exceed the period authorized under section
2 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the
3 statutes. The department shall promulgate these emergency rules no later than the
4 first day of the 4th month beginning after the effective date of this subsection.
5 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department
6 is not required to provide evidence that promulgating a rule under this subsection
7 as an emergency rule is necessary for the preservation of the public peace, health,
8 safety, or welfare and is not required to provide a finding of emergency for a rule
9 promulgated under this subsection.

10 **SECTION 5. Initial applicability.**

11 (1) This act first applies to violations committed on the effective date of this
12 subsection.

13 **SECTION 6. Effective dates.** This act takes effect on the first day of the 4th
14 month beginning after publication, except as follows:

15 (1) SECTION 4 (1) and (2) of this act takes effect on the day after publication.

16 (END)

Gary, Aaron

From: Gary, Aaron
Sent: Monday, January 09, 2012 9:37 AM
To: Krieser, Steven - DOT; Fiocchi, Tim
Cc: Punches, Derek; Sieg, Tricia
Subject: RE: Drafting request for some transportation Senate companion bills

I am drafting the senate companion for LRB-0063. This draft has been complicated by the intervening rules overhaul this session in Acts 21 and 32. I don't believe that this draft continues to work, because of the new procedure and timing of the rules process. One option is for me to "notwithstanding" (that is, override) the newly-created delays in the rule-making process for emergency rules. As the draft now stands, I believe there may be a timing gap between the time that the statutory requirements vanish and the replacement requirements created by rule go into effect. I encourage DOT to take another look at this one.

After you have reviewed, please let me know how to proceed on this one.

Thanks. Aaron

Aaron R. Gary
 Attorney, Legislative Reference Bureau
 608.261.6926 (voice)
 608.264.6948 (fax)
 aaron.gary@legis.state.wi.us

1/9 H/C w/ Tim Fiocchi →
 - make the rulemaking process work

From: Krieser, Steven - DOT [mailto:Steven.Krieser@dot.wi.gov]
Sent: Thursday, January 05, 2012 3:38 PM
To: Fiocchi, Tim
Cc: Punches, Derek; Mueller, Eric; Sieg, Tricia; Gary, Aaron
Subject: Re: Drafting request for some transportation Senate companion bills

Ok to release the drafts as Tim requests. Sorry for the delay.

From: Fiocchi, Tim [mailto:Tim.Fiocchi@legis.wisconsin.gov]
Sent: Thursday, January 05, 2012 03:16 PM
To: Krieser, Steven - DOT
Cc: Punches, Derek - LEGIS; Mueller, Eric - LEGIS; Sieg, Tricia - LEGIS; Gary, Aaron - LEGIS
Subject: RE: Drafting request for some transportation Senate companion bills

Second try – Steve, can you give Aaron and Eric the okay to give us these drafts.

Thanks

From: Fiocchi, Tim
Sent: Thursday, January 05, 2012 8:41 AM
To: Gary, Aaron
Cc: Punches, Derek; Mueller, Eric; Sieg, Tricia
Subject: RE: Drafting request for some transportation Senate companion bills

Hi Steve,

Can you give Aaron the go ahead on these – it's been so long I forgot about this.

Thanks,

Tim

From: Gary, Aaron
Sent: Wednesday, January 04, 2012 6:59 PM
To: Sieg, Tricia
Cc: Fiocchi, Tim; Punches, Derek; Mueller, Eric
Subject: RE: Drafting request for some transportation Senate companion bills

Hi Tricia, Tim, and Derek,

At this time we will prepare companion drafts for LRB-2402 to -2404. Unfortunately the rest of the drafts are not introduced and Rep. Petrowski is not identified as the requester on those drafts. While I imagine arrangements have already been made, because of our strict confidentiality protocol, we will need an official green light from the requester on those other drafts before we can proceed with them for Rep. Petrowski or Sen. Lazich. (If you have already passed along the permission from the original requester on those other drafts, I apologize, but I cannot recall receiving it or find any note of it.) Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Sieg, Tricia
Sent: Wednesday, January 04, 2012 12:09 PM
To: Gary, Aaron
Cc: Fiocchi, Tim; Punches, Derek
Subject: Drafting request for some transportation Senate companion bills

Aaron,

Good afternoon! Hope you had a great holiday and got to take some time off.

I am wondering if we could get some Senate companion bills drafted to some bills Rep. Petrowski has had drafted. The bills that we would like Senate companion bills too are:

LRB 0041
LRB 0042
LRB 0055/3
LRB 0063
LRB 0594
LRB 2402
LRB 2403
LRB 2404

Let me know if this is a problem. As always thank you for your help

Tricia

Gary, Aaron

To: Fiocchi, Tim; Sieg, Tricia
Subject: RE: Drafting request for some transportation Senate companion bills

From: Gary, Aaron
Sent: Monday, January 09, 2012 1:05 PM
To: Fiocchi, Tim
Cc: Punches, Derek
Subject: RE: Drafting request for some transportation Senate companion bills

Tim,
LRB-0063 is jacketed. I'll need the jacket back to make the rule-making change at the end of the bill that we discussed by phone. Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Gary, Aaron
Sent: Monday, January 09, 2012 9:37 AM
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Cc: Punches, Derek; Sieg, Tricia
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I am drafting the senate companion for LRB-0063. This draft has been complicated by the intervening rules overhaul this session in Acts 21 and 32. I don't believe that this draft continues to work, because of the new procedure and timing of the rules process. One option is for me to "notwithstanding" (that is, override) the newly-created delays in the rule-making process for emergency rules. As the draft now stands, I believe there may be a timing gap between the time that the statutory requirements vanish and the replacement requirements created by rule go into effect. I encourage DOT to take another look at this one.

After you have reviewed, please let me know how to proceed on this one.

Thanks. Aaron

Aaron R. Gary
Attorney, Legislative Reference Bureau
608.261.6926 (voice)
608.264.6948 (fax)
aaron.gary@legis.state.wi.us

From: Krieser, Steven - DOT [mailto:Steven.Krieser@dot.wi.gov]

2/16/2012



State of Wisconsin
2011 - 2012 LEGISLATURE

soon
FROM 2011
LRB-3743/PI
LRB-~~3743~~PI - 0063/2
ARG (ld)rs Keep
RMNR

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS-
NOTE: Redraft is
based on a
different draft #

X

Regen

1 AN ACT *to repeal* 346.45 (1) (c) 1. to 10.; *to renumber and amend* 346.45 (1)
2 (c) (intro.); and *to amend* 346.45 (4) of the statutes; **relating to:** vehicles
3 required to stop at railroad crossings, providing an exemption from emergency
4 rule procedures, and requiring the exercise of rule-making authority. ✓

Analysis by the Legislative Reference Bureau

Under current law, the Department of Transportation (DOT) must adopt rules, consistent with federal regulations, for the marking and placarding of vehicles being used to transport hazardous materials.

Also under current law, the operator of certain vehicles, before crossing an at-grade railroad crossing, must stop the vehicle within 50 feet but not less than 15 feet from the nearest rail. Among the vehicles required to stop are motor vehicles that, in accordance with DOT rules, must be marked or placarded with one of ten specified hazardous materials markings.

This bill eliminates the statutory enumeration of ten specific hazardous materials markings that require a marked or placarded vehicle to stop at an at-grade railroad crossing. Instead, the bill requires DOT to promulgate rules identifying classifications of markings or placarding that, consistent with federal

regulations, require a marked or placarded vehicle to stop at an at-grade railroad crossing.

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4 required to be marked or placarded with ~~one of the following markings: a~~
5 classification of marking or placarding that requires the vehicle to stop.

6 **SECTION 2.** 346.45 (1) (c) 1. to 10. of the statutes are repealed.

7 **SECTION 3.** 346.45 (4) of the statutes is amended to read:

8 346.45 (4) The department shall adopt rules for the marking and placarding
9 of vehicles being used to transport hazardous materials which are potentially
10 dangerous to life and property, which rules shall be in accordance with the
11 regulations of the U.S. department of transportation. These rules shall identify
12 classifications of markings or placarding that, consistent with federal regulations,
13 when required on a vehicle also require the vehicle to stop as provided in sub. (1) (c).

14 **SECTION 4. Nonstatutory provisions.**

15 (1) PROPOSED PERMANENT RULES. The department of transportation shall submit
16 in proposed form the rules required under section 346.45 (4) of the statutes to the
17 legislative council staff under section 227.15 (1) of the statutes no later than the first
18 day of the 4th month beginning after the effective date of this subsection.

19 (2) EXCEPTION TO ECONOMIC IMPACT REPORT FOR RULES. Notwithstanding section
20 227.137 (2) of the statutes, the department of transportation is not required to

1 prepare an economic impact analysis for the rules required under section 346.45 (4)
2 of the statutes.

3 (3) EMERGENCY RULES. Using the procedure under section 227.24 of the statutes,
4 the department of transportation shall promulgate the rules required under section
5 346.45 (4) of the statutes, for the period before the effective date of the permanent
6 rules promulgated under section 346.45 (4) of the statutes, but not to exceed the
7 period authorized under section 227.24 (1) (c) of the statutes, subject to extension
8 under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2)
9 (b), and (3) of the statutes, the department is not required to provide evidence that
10 promulgating a rule under this subsection as an emergency rule is necessary for the
11 preservation of public peace, health, safety, or welfare and is not required to provide
12 a finding of an emergency for a rule promulgated under this subsection.
13 Notwithstanding section 227.24 (1) (e) 1d. and 1g. of the statutes, the department is
14 not required to obtain approval of a statement of scope as provided in section 227.135
15 (2) or (4) of the statutes, or submit the proposed emergency rule in final draft form
16 to the governor for approval and obtain such approval, for a rule promulgated under
17 this subsection.

18 **SECTION 5. Initial applicability.**

19 (1) This act first applies to violations committed on the effective date of this
20 subsection.

21 **SECTION 6. Effective dates.** This act takes effect on the first day of the 4th
22 month beginning after publication, except as follows:

23 (1) SECTION 4 of this act takes effect on the day after publication.

24 (END)