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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-057

Comments

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

1. Statutory Authority

Section Trans 258.08 (3) requires an insurer to notify the Department of Transportation (DOT) 10 days in advance of canceling a certificate of insurance required for obtaining a seed potato overweight permit. This provision is parallel to one found in s. 344.34, Stats., which prohibits an insurer from canceling or terminating the required certificate of insurance until at least 10 days after a notice of cancelation or termination of the insurance is filed with the Secretary of Transportation. This latter provision applies to insurance policies required under various sections of chs. 343 and 344, Stats.

Seed potato overweight permits are authorized under s. 348.27 (9t), Stats. Section 348.25 (5) and (6), Stats., authorize DOT to require permittees to obtain insurance, but do not contain a requirement that an insurer notify the department 10 days in advance of canceling any insurance policy required under those sections. Also, s. 348.25 (3), Stats., authorizes the department to impose reasonable conditions for granting the permits and to adopt reasonable rules for the operation of permittees under the permits.

None of the cited statutory sections provide authority to the department to promulgate the provision contained in s. Trans 258.08 (3). Section 348.25 (3), Stats., authorizes the department to impose requirements on persons operating under a permit, but not to impose requirements on insurers. Section 344.34, Stats., contains an identical requirement to the requirement in question, but applies it in different circumstances. Finally, s. 348.25 (5) and (6), Stats., authorize the requirement of insurance coverage, but do not require insurers to provide advance notice to the department of cancelation of policies. In light of the existence of s. 344.34, Stats., if the Legis-

lature had intended to require insurers to provide advance notice of policy cancellations to the department, it could have either made s. 344.34, Stats., apply to permits under ss. 348.26 and 348.27, Stats., or included appropriate language in s. 348.25, Stats. Consequently, it appears that s. Trans 358.08 (3) exceeds the statutory authority of the DOT. [An indirect method of achieving the same goal in s. Trans 258.08 (3) would be to require the permittee to purchase insurance that includes the appropriate cancellation provisions.]

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule and the introduction to the rule should cite ss. 348.25 (3) and 227.11 (2) (a), Stats., in addition to s. 348.27 (9t), Stats., as providing authority for this rule-making. In addition, s. 348.25 (3), (5) and (6), Stats., should be cited as being interpreted by the rule.

b. In s. Trans 258.01, the phrase “as created by 1995 Wisconsin Act 163” should be omitted.

c. Section Trans 258.02 (1) should refer to “a seed potato overweight permit.” In addition, the phrase “which includes a permit page, all attachments thereto, and a copy of this chapter” is substance, which does not belong in a definition. Rather, this should be placed in a substantive provision of the rule.

d. In s. Trans 258.02 (3), the phrase “have the meaning in s. Trans 258.10 (2)” should be replaced by the phrase “mean the route specified in s. Trans 258.10 (2).”

e. The method that this rule uses to designate the seed potato route and an alternative route works but is somewhat cumbersome. The following is an alternative the department may wish to consider. The term “seed potato route” would be defined as “the route designated in s. Trans 258.10.” Section Trans 258.10 would be titled “Designation of Seed Potato Route.” Section Trans 258.10 (1) would begin with a sentence such as: “Except as provided in this subsection, the seed potato route shall be the route specified in sub. (2).” The remainder of that subsection would be largely unchanged. Subsection (2) would read: “The primary seed potato route shall be....” Subsection (3) would read: “The alternative seed potato route shall be....” If these changes are made, appropriate changes to internal cross-references also must be made.

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

a. Section Trans 258.05 (1) requires that a vehicle operating under a seed potato overweight permit be in compliance with any requirements of s. 348.25, Stats. Are there any such requirements that are not reproduced in ch. Trans 258? If not, this provision would seem to be unnecessary.

b. In s. Trans 258.06 (4) (a), the word “On” should be omitted.

c. In s. Trans 258.08 (4), the phrase “Unless different amounts are required under sub. (5)” should be replaced with the phrase “Except as provided under sub. (5) or (6).” A reference to sub. (6) is necessary, since that subsection refers to two items not mentioned in sub. (4).

These items are the possibility of satisfying an insurance requirement with an appropriate bond and a department waiver of the insurance requirement.

d. In s. Trans 258.08 (5), under what circumstances may the department require additional liability insurance and what standards will be applied to these determinations? Some elaboration of this provision would seem to be warranted.

e. Section Trans 258.10 (3) (a) provides that the department may declare the alternate potato route by publishing a notice in a newspaper of general distribution in the Antigo area. Is this adequate notice for Michigan-based haulers?