

Report From Agency

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 06-043

The Wisconsin Department of Transportation proposes an order to repeal TRANS 327.01(2)(b) and (c), and (e) to (h), 327.05(3) and (4), and 327.09(6) to (12); renumber TRANS 327.01(2)(d), 327.05(5) and (6), and 327.09(13); amend TRANS 327.03(intro.), (2) and (7), 327.07(2), and 327.09(5)(intro.), (b) and (c); and create TRANS 327.03(10) and 327.09(7), relating to motor carrier safety.

REPORT OF THE DEPARTMENT OF TRANSPORTATION ON THE FINAL RULE DRAFT

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

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

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

JOE MAASSEN
Attorney
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-7364

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 110.07 and 110.075, and ch. 194, Stats.

Statutory authority: ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats.

Explanation of agency authority: The secretary shall set standards and adopt rules to establish a plan of inspection to implement the inspection program. It shall be the duty of the Department to prescribe rules and regulations as to safety and operations and the hours of service of drivers of motor vehicles operated under the authority of this chapter.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations which went into effect on April 1, 2006. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers. The update of this rule will also keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

The Department annually updates ch. Trans 327 to keep current with the most recent changes to 49 CFR parts 390, 391, 392, 393, 395, 396 and 397.

In addition, the adoption of Trans 327 will give the Department the authority to use federal standards by which traffic officers and state patrol inspectors declare vehicles and drivers out of service. The offices of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of the revised North American Uniform Out-of-Service Criteria under the provision of § 227.21(2), Stats.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 327 (Motor Carrier Safety) adopts Federal regulations 49 CFR parts 390 to 397, with exceptions.

Comparison with Rules in Adjacent States: All adjacent states (Michigan, Minnesota, Illinois, and Iowa) adopt the same Federal regulations.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Federal Motor Carrier Safety Administration did extensive research into the most recent changes to the rules regulating commercial motor carriers and commercial drivers. Its research, coupled with input from the motor carrier industry, resulted in the recently revised regulations for interstate and intrastate commerce effective April 1, 2006.

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

Effect on small business: This rule will have minimal adverse impact on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, 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 or sewerage district. The Department estimates that there will no fiscal impact on state revenues or liabilities, and some impact on the private sector.

Agency contact person and copies of proposed rule: Copies of the proposed rule can be obtained, without cost, by writing to Capt. Chuck Teasdale, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Capt. Teasdale by phone at (608) 266-0305.

PART 2 **TEXT OF PROPOSED RULE**

SECTION 1. Trans 327.01(2)(b) and (c) are repealed.

SECTION 2. Trans 327.01(2)(d) is renumbered Trans 327.01(2)(b).

SECTION 3. Trans 327.01(2)(e) to (h) are repealed.

SECTION 4. Trans 327.03(intro.) is amended to read:

Trans 327.03 Federal regulations adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~January 4, 2004~~ January 4, 2004 October 1, 2006, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles which operate in intrastate commerce in the same manner as though the regulations were set out in full in this chapter:

SECTION 5. Trans 327.03(2) and (7) are amended to read:

Trans 327.03(2)(a) Title 49, Code of Federal Regulations, part 391, qualifications of drivers, except:

1. 391.11(b)(1) and 391.41(b)(3), if in the alternative a driver with diabetes controlled by insulin obtains statements from 2 physicians indicating on a form provided by the department of transportation that the diabetes is not likely to cause loss of ability to control or operate a commercial motor vehicle.

2. 391.41(b)(10), if a driver who does not meet the vision standards provides documentation from a licensed vision specialist that he or she does not have progressive eye disease; that his or her vision in the best eye, corrected or uncorrected, is at least 20/40 (Snellen); and that he or she has a minimum of 70-degree visual field from the center of at least one eye. The documentation shall be accompanied by a statement from the specialist indicating that the driver's vision is not likely to cause a loss of ability to control or operate a commercial motor vehicle. A driver may apply for an exception or waiver to drive in intrastate commerce by submitting this information with his or her application.

(b) A driver is not eligible for an exception or waiver under par. (a) if he or she has had any moving violations or any reportable at-fault accidents while driving any motor vehicle within the 3-year period prior to the date of the application. After a driver receives an exception or waiver, his or her noncompliance with any applicable reporting requirements may result in cancellation of the exception or waiver.

(7) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the 2003 ~~2003-2006~~ North American uniform out-of-service criteria.

SECTION 6. Trans 327.03(10) is created to read:

Trans 327.03(10) Title 49, Code of Federal Regulations, part 395, hours of service of drivers, except 395.1(e)(1), 395.1(h), 395.1(i), 395.5, 395.8, and the maximum number of hours identified in 395.3 ~~are changed to read~~ is adopted as follows:

(a) More than 12 hours following 10 consecutive hours off duty.

(b) For any period after having been on duty 16 hours following 10 consecutive hours off duty.

(c) After having been on duty for 70 hours in any period of 7 consecutive days.

(d) After having been on duty for 80 hours in any period of 8 consecutive days.

SECTION 7. Trans 327.05(3) and (4) are repealed.

SECTION 8. Trans 327.05(5) and (6) are renumbered Trans 327.05(3) and (4) and Trans 327.05(4)(b)1. and 2., as renumbered, are amended to read:

Trans 327.05(4)(b)1. No driver shall drive after being on duty in excess of the maximum periods permitted by ~~sub. (3)~~ s. Trans 327.03(10).

2. No driver required to maintain a record of duty status under sub. ~~(5)~~ (3) shall fail to have a true and accurate record of duty status current on the day of examination and for the prior 7 consecutive days.

SECTION 9. Trans 327.07(2) is amended to read:

Trans 327.07(2) The provisions of ss. Trans 327.03(2), (3) ~~and~~ (6) and (10), and 327.05 shall be enforced under the provisions of ss. 194.38 and 194.43, Stats.

SECTION 10. Trans 327.09(5)(intro.), (b) and (c) are amended to read:

Trans 327.09(5)(intro.) The provisions of s. Trans 327.05~~(5)~~(3) do not apply to drivers of vehicles operating within an area having a 150 air mile radius from the drivers' home post office or a 150 air mile radius from the official worksite of the vehicle if:

(b) At least & 10 consecutive hours off duty separate each 12 hours on duty.

(c) The driver does not exceed 12 hours maximum driving time following § 10 consecutive hours off duty.

SECTION 11. Trans 327.09(6) to (12) are repealed.

SECTION 12. Trans 327.09(13) is renumbered Trans 327.09(6) and, as renumbered, Trans 327.09(6)(a) is amended to read:

Trans 327.09(6)(a) The provisions of ss. Trans 327.03(2) and 327.05 do not apply to drivers of motor vehicles when transporting property or passengers during a declared emergency as defined in s. Trans 327.01(2)~~(d)~~(b). Each employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. Each employer shall maintain such documentation for one year and shall make it available upon request of a traffic officer or state patrol inspector. Each employer shall also notify the Wisconsin department of transportation, division of state patrol of such declarations by fax or first class mail within 30 days or by the end of the calendar year, whichever is greater.

SECTION 13. Trans 327.09(7) is created to read:

Trans 327.09(7) The provisions of this chapter do not apply to any farm truck or dual purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000 pounds, the vehicle combination does not include a commercial motor vehicle described in s. 340.01 (8)(c) or (d), Stats., and the vehicle combination is operated solely in intrastate commerce.

(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 ____ day of
June, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 06-043

ANALYSIS OF FINAL DRAFT OF TRANS 327

(a) **Basis and Purpose of Rule.** This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations which went into effect on April 1, 2006. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers. The update of this rule will also keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on May 26, 2006. There were no significant modifications made to the proposed rule as a result of the public hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared registered at the hearing:

Tom Howells, President, Wisconsin Motor Carriers Association, P. O. Box 44849, Madison, WI 53744-4849—spoke in favor and for information.

Michael DeHaan, Wisconsin Motor Carriers Association, P. O. Box 44849, Madison, WI 53744-4849—spoke in favor and for information.

Pat Stevens, Executive Director, Wisconsin Transportation Builders Association, One South Pinckney Street, Suite 818, Madison, WI 53551—spoke for information.

David L. Palubicki, Compliance Manager, Payne and Dolan, Inc., Zenith Tech, Inc., 143 W. 23650 Badinger Road, Waukesha, WI 53187—spoke for information.

Rick Nesbit, Safety Manager, Wingra Stone Company/Wingra Redi-Mix, Inc., P. O. Box 44284, Madison, WI 53744-4284—spoke for information.

Blake Moschel, Manager, Mathy Construction, 920 10th Avenue North, Onalaska, WI 54650—registered for information.

Gregory G. Stahl, Dispatcher, Dorner Stahl Trucking, E506 Luxemburg Road, Luxemburg, WI 53217—registered for information.

Glenn Hewitt, Logistics Manager, Northeast Asphalt Inc., W6380 Design Drive, Greenville, WI 54942—registered in favor of the rule.

R. B. Willder, Loss Control Director, Wisconsin Agri-Service Association, 6000 Gisholt Drive, Suite 208, Madison, WI 53713—registered for information.

(d) **Summary of Public Comments and Agency Response to those Comments:**

Written comments were received from:

Tom Howells, Wisconsin Motor Carriers Association—Mr. Howells provided five recommendations regarding the proposed rule. First, Mr. Howells suggested that the Department broaden the application of the variance allowed under federal regulation by exempting commercial motor vehicles with a GVW, GVWR, GCW or GCWR of 26,000 pounds or less. This would allow the Department to better focus its limited resources. Second, Mr. Howells suggested that the Department consult with the Federal Motor Carrier Safety Administration to confirm that the change in off-duty hours from 8 to 10 hours is required to meet the tolerance guidelines for compatibility under federal regulation. Third, Mr. Howells suggested that the proposed rule adopt the expanded definition of “agricultural commodity” identified in the most recent reauthorization bill thereby exempting transporters of milk and milk products from the maximum hours of service. Next, Mr. Howells suggested that a summary of Part 395 be developed and included in an addendum or appendix to the rule. Finally, Mr. Howells requested an extension to the time period for submitting written comments. Mr. Howells also disagreed with the Department’s claim that the proposed rule will have no fiscal impact on the private sector. More specifically, the increase in the driver’s required continuous rest period from 8 to 10 hours will likely increase transportation costs during certain periods of the year.

Agency Response: Although the Department agrees that exempting vehicles under 26,000 pounds would provide for a clearer more focused rule, the Federal Motor Carrier Safety Administration holds the State accountable for the crash rate involving vehicles between 10,001 and 26,000 pounds. The only mechanism available for identifying the carriers and vehicles that pose the greatest safety risk is through the regulations adopted by this rule. The Department has consulted with the Federal Motor Carrier Safety Administration and it has been determined that Part 350 does not allow a variance for an eight hour off-duty period. Failure to adopt a 10-hour off-duty period would result in an FMCSA determination that Wisconsin regulations are incompatible with federal regulation. The current rule does adopt the expanded definition of agricultural commodity as identified in the most recent reauthorization bill. Chapter Trans 327 has a long history of adopting federal regulation and the addition of Part 395 should not present a problem. As stated in s. Trans 327.13, a copy of the federal regulations adopted by this administrative code are available by contacting the Division of State Patrol. As a result of Mr. Howells’ request, the written comment period was extended by seven days. Although the increase in off-duty time from 8 hours to 10 hours may require a change in some business practices, it may have some fiscal impact.

R. B. Willder, Wisconsin Agri-Service Association, Inc.--The majority of Mr. Willder’s comments were seeking clarification to the proposed rule. First, Mr. Willder questioned the significance of the April 1, 2006 date identified in the plain language analysis. Mr. Willder also questioned the fiscal impact of the change to 10 hours off-duty and whether the State has sought a legal interpretation regarding the compatibility of the existing language. Mr. Willder also questioned the language adopting the federal regulations in effect on October 1, 2006. Mr. Willder’s comments also sought clarity on the “agricultural

exemption” enacted by the reauthorization bill and questioned how the exemption impacted the proposed rule. Finally, Mr. Willder identified two typos in the proposed rule.

Agency Response: The Department intends to adopt the most current federal regulations and therefore included the October 1, 2006 regulations in the proposed rule. The April date discussed in the plain language analysis pertains to specific changes to the federal regulations. Failure to adopt a 10-hour off-duty period would result in an FMCSA determination that Wisconsin regulations are incompatible with federal regulation. As stated above, the proposed rule will adopt the expanded definition of “agricultural commodity” identified in SAFETEA-LU reauthorization bill. The typos identified by Mr. Willder have been corrected.

Wayne P. Kokta, Transportation Manager, Dawes Rigging & Crane Rental, Inc., Milwaukee, WI (via e-mail)--Mr. Kokta requested an exemption from the hours of service regulations for crane operators.

Agency Response: Federal regulation (Part 350.343) prevents this type of exemption unless the state submits documentation to the Federal Motor Carrier Safety Administration containing information supporting evaluation in 10 specific factors. The Department does not feel the exemption is warranted or in the best interest of highway safety.

Patrick Stevens, Wisconsin Transportation Builders Association-- Mr. Stevens provided comments in three specific areas. First, Mr. Stevens expressed a general concern with the Department’s approach to adopting federal regulations by reference. It states that this approach makes it difficult for the regulated community to read and understand. Second, Mr. Stevens expressed concern regarding the definition of “transportation of construction materials and equipment.” More specifically, Mr. Stevens requested that the term “normal work reporting location” be more clearly defined. Finally, Mr. Stevens expressed concern with the transition to 10-hours off-duty and suggested that FMCSA be consulted as to the compatibility requirements under Part 350.341(e).

Agency Response: The Department has a long history of adopting federal regulations by adoption and this is a standard practice throughout the nation. As stated above, a copy of the federal regulations adopted by this administrative code are available by contacting the Division of State Patrol. Secondly, the proposed rule does not change the definition of “transportation of construction materials and equipment.” Although the definition will be incorporated by reference, the definition remains unchanged and the guidance regarding the “normal work reporting location” will be interpreted in the same manner as it is today. As previously stated, FMCSA has been consulted with regards to the variance issue and Part 350.341 does not currently allow for a variance on off-duty time.

Patrick Essie, Wisconsin Ready Mixed Concrete Association--Mr. Essie requested that the Department delay the implementation of the revised hours of service until October 2008 as mandated by 49 CFR 350.335(b).

Agency Response: Part 350.335 requires the state to adopt compatible regulations “as soon as practical after the effective date of any newly enacted regulation...but no later than three year after that date...” The Department recognizes the positive impact this change will have and believes it to be in the best interest of highway safety. Delaying the implementation would lead to inconsistency and only delay the inevitable.

Tim Clay, Wisconsin Federation of Cooperatives (via e-mail)--Mr. Clay expressed concern regarding the adoption of the additional hours of service exemptions granted under the SAFETEA-LU reauthorization bill. More specifically, the agricultural exemption and the utility service exemption. Mr. Clay also expressed concern regarding the fiscal estimate of transitioning from 8 to 10 consecutive hours. Additionally, Mr. Clay questioned whether the proposed transition is a result of a state-demonstrated safety shortfall or just necessary to maintain current MCSAP funding.

Agency Response: As stated above, the proposed rule will include the adoption of the hours of service exemptions identified in SAFETEA-LU.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** A change was made to the fiscal estimate to reflect some impact to the private sector.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of recommendations, all of which have been addressed.

(g) **Final Regulatory Flexibility Analysis.** This rule will have some adverse impact on small businesses.