

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

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

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 194, Stats.

Statutory authority: s. 110.075 and Ch. 194, Stats.

Explanation of agency authority: The Department of Transportation sets standards and adopts rules to establish a plan of inspection to implement the inspection program. This proposed rule making eliminates the date specification for applicable federal regulations enabling the Department to apply current federal regulations. It is the duty of the Department to prescribe rules and regulations as to safety and operations and the hours of labor of drivers of motor vehicles operated under the authority of these chapters.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: As prescribed by state statute, the Department is mandated to regulate both intrastate and interstate transportation of property and passengers by commercial motor vehicles. It is in the best interest of the public when current regulations are used for enforcement of these regulations. Applying outdated regulations can adversely affect interstate transportation where those other states apply current regulations.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR part 385, subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and parts 390 to 393 and 395 to 397. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) adopts Federal Regulations 49 CFR parts 107, 171-173, 177, 178, 180 and 385, subpart E (Hazardous Materials Safety Permits). Trans 327 (Motor Carrier Safety) adopts Federal regulations part 385, subpart C, (Certification of Safety Auditors, Safety Investigators and Safety Inspectors), parts 40, 390-general, except 390.23(a)(3); 391-general except 391.11(b)(1) and 391.41(b)(3), 391.41(b)(10); 392 except 392.16; 393-general except 393.42 shall not apply to vehicles placed in operation in common, contract or private carriage prior to June 1, 1987; 395, general-except 395.1(e)(1), 395.1(h), 395.1(i) 395.5,

395.8, and the maximum number of hours identified in 395.3 as follows: (a) more than 12 hours following 10 consecutive hours off duty; (b) for any period after having been on duty 16 hours following 10 consecutive hours off duty; (c) after having been on duty for 70 hours in any period of 7 consecutive days; and (d) after having been on duty for 80 hours in any period of 8 consecutive days, and parts 396 and 397.

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

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

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

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

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

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

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

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 RULE

SECTION 1. Trans 325.02(intro.) is amended to read:

Trans 325.02 Federal rules adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation ~~and in effect on January 1, 2006,~~ are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 2. Trans 325.02(7g) and (7r) are created to read:

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

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

SECTION 3. Trans 325.02(8) is amended to read:

Trans 325.02(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2006~~ North American uniform out-of-service criteria.

NOTE: The North American Uniform Out-of-Service Criteria is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.

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

SECTION 4. Trans 326.01(intro.) is amended to read:

Trans 326.01 Federal rules adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation ~~and in effect~~

~~on January 1, 2006,~~ are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 5. Trans 326.01(7m) is created to read:

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

SECTION 6. Trans 326.01(8) is amended to read:

Trans 326.01(8) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2006~~ North American uniform out-of-service criteria.

NOTE: ~~The North American Uniform Out-of-Service Criteria is on file with the offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, 5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.~~

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

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

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

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

NOTE: The North American Uniform Out-of-Service Criteria is on file with the offices of ~~the Revisor of Statutes, the Secretary of State, and the~~ Department of Transportation, Division of State Patrol. Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, ~~5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.

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

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

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

SECTION 9. Trans 327.09(6)(note) is amended to read:

Trans 327.09(6)(note) Note: Declarations can be faxed to (608) ~~266-4495~~ 227-9600.

(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 **October**, 2008.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation