

Clearinghouse Rule 09-044

**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.

/s/
FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation