

Report From Agency
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
REPORT FROM AGENCY
CLEARINGHOUSE RULE 22-051

In the matter of rulemaking proceedings before the Department of Transportation Wisconsin Administrative Code Ch. Trans 327 relating to: Motor Carrier Safety Assistance Program (MCSAP) Review for the State of Wisconsin by the Federal Motor Carrier Safety Administration (FMCSA) July 14-15, 2009, and affecting small businesses.

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

Current law authorizes the Department to promulgate such rules as the Secretary considers necessary relating to operator's licenses and requires that any such rules be at least as stringent as standards set by FMCSA and the regulations adopted under that Act. Also under current law, the state of Wisconsin specifically assents to the provisions of FMCSA and the regulations adopted under that Act, and declares its purpose and intent to make provisions to implement and enforce that law and those regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under the National Highway Performance Program, Surface Transportation Block Grant Program, and National Highway Freight Program under 23 U.S.C. § 104 (b) (1), (2), (5). Current law requires the Department to institute a classified driver license system meeting all federal standards under 49 U.S.C. §§ 30304 (e) and 31301 to 31317 and 49 CFR 383 and 384, and to issue driver licenses in conformity with the classified driver license system.

Finally, current law prohibits the Department from issuing any commercial driver license (CDL), including a renewal or reinstated license, to any person, or reinstate a person's authorization to operate a commercial motor vehicle (CMV), during any period of disqualification under state or federal law, or under the law of another jurisdiction disqualifying a person from operating a CMV under circumstances similar to those specified in state or federal law, or under a determination by the FMCSA that the person is no longer qualified to operate a CMV under federal law, or to any person whose operating privilege is revoked, suspended, or canceled.

Current law requires the Department to promulgate and enforce rules as the Department deems necessary in the interests of the safety of persons and property being transported to cover the transportation, design, construction, equipment, inspection and operation of motor buses, and human service vehicles school buses and their drivers. Current law requires the Department to prescribe rules and regulations as to safety of operations and the hours of labor of drivers of common motor carriers of property or of passengers or contract motor carriers or private motor carriers, although such regulations 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 CMV described in s. 340.01 (8) (c) or (d), Stats., and the vehicle combination is operated solely in intrastate commerce.

The proposed rule revisions would bring the state closer into compliance with federal regulations pertaining to the intrastate transportation of passenger and property identified as part of a FMCSA audit conducted in 2009 of Wisconsin's Motor Carrier Enforcement Program. Implementing these rule revisions would help ensure that Wisconsin is receiving the full amount of federal grant funds allocated to the state and would serve to simplify and clarify ambiguous language not readily understood by enforcement and industry. The proposed changes would also guarantee that sufficient rules are in place to ensure the safe transportation of passengers and property within the borders of the state.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The Department received one written comment. The Wisconsin Chapter of the National Waste & Recycling Association (NWRA), which represents private solid waste companies offering waste collection, recycling and landfill disposal services to communities, local governments, commercial, industrial, and residential customers throughout Wisconsin and in all 50 states, wrote: "NWRA strongly supports this proposal, which will align the state with key federal regulations pertaining to intrastate transportation of passenger and property and result in needed standardization of the rules

and restrictions applying to our drivers. For example, the changes to Section 7 will bring Wisconsin's driver hours of service limitations into uniformity with federal law. This will simplify enforcement by authorities, resolve conflicting requirements for our drivers and law enforcement, and help the trucking industry operate safely and efficiently. Implementation of these proposed changes to Trans 327 (CR 22-051) will be a positive for our members, our industry, and the customers we serve. NWRA encourages the Department of Transportation to move its proposal forward without delay."

The Department modified the final rule draft to eliminate the following from the pre-hearing draft filed with the Legislative Council Rules Clearinghouse:

- Section 1, which previously updated a cross-reference in ch. Trans 112. Because of the revision to Section 5, this cross-reference no longer exists.
- Section 5, which previously limited the federal driver qualifications to CMV weighing 26,001 or more pounds, rather than the federal minimum CMV weight of 10,001 pounds. This section also reorganizes the rule to retain the "grandfather" exemption under s. Trans 327.09 (2) which allows a CDL holder who does not meet federal driver qualifications to hold a CDL if the CDL holder met state driver qualifications, was licensed before July 29, 1996 and has held the license in effect since that date and continues to meet state medical requirements as found in ch. Trans 112., but sunsets that exemption when the driver renews their CDL, upgrades or downgrades their license classification, or adds a new endorsement authorizing operation of a new class of CMV or cargo, or after 8 years and 7 months, whichever occurs first. After that event or date, the driver must meet federal driver qualifications to retain the CDL.
- Section 12, which previously repealed the exemption from federal driver qualifications that allows a CDL holder who does not meet federal driver qualifications to hold a CDL if the CDL holder met state driver qualifications. These drivers will become subject to federal driver qualifications upon changes to or renewal of their CDL; see the treatment of Section 5.
- Section 16, which previously allowed a driver who is "grandfathered" from federal driver qualification requirements due to meeting state physical qualifications to delay submitting federal medical certificates until the driver becomes subject to federal driver qualifications. See the description above in Section 5.

The Department eliminated the above-mentioned provisions from the final rule draft and will consider them in a separate rulemaking.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

Clearinghouse Comment 2a. In SECTION 5 of the proposed rule, it appears that s. Trans 327.03 (2) (a) 1g. is intended to apply to all of the exceptions listed in s. Trans 327.03 (2) (a); i.e., s. Trans 327.03 (2) (a) 1., 1r., and 2. If that is the case, it might be more logically placed after each of those subdivisions and numbered, for example, s. Trans 327.03 (2) (a) 3.

Agency response: The Department removed Section 5 from the final rule draft.

Clearinghouse Comment 2b. In SECTION 9, references to “, Stats.” should be maintained for the updated references to statutory chapters.

Agency response: The Department updated this section, now Section 7, at the suggestion of the Rules Clearinghouse.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

No report received.