

CR 82-113

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C E R T I F I C A T E

STATE OF WISCONSIN)
)
DEPARTMENT OF TRANSPORTATION)

TO ALL TO WHOM THESE PRESENTS COME, GREETINGS:

I, Owen Ayres, Secretary of the Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the financial responsibility requirements for "for hire" property carriers were duly approved and adopted by this Department on August 16, 1982.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Hill Farms State Office Building in the City of Madison this 16th day of August, 1982.



Owen Ayres
OWEN AYRES, P.E.
Secretary
Wisconsin Department of Transportation

IN THE MATTER OF THE ORDER	:	
TO REPEAL TRANS 176.06(1)(c);	:	
RENUMBER TRANS 176.06(1)(d);	:	
REPEAL AND RECREATE TRANS	:	ORDER
176.06(1)(a); AND CREATE	:	ADOPTING
TRANS 176.06(1)(ag) AND (ar)	:	RULE
RELATING TO FINANCIAL RESPON-	:	
SIBILITY REQUIREMENTS FOR	:	
"FOR HIRE" PROPERTY CARRIERS	:	

Clearing House Rule 82-113

Analysis by the Department of Transportation

General summary of the rule. Chapter 347, Laws of 1981, made numerous changes in the laws governing the "for-hire" motor carrier industry in Wisconsin. One of the changes mandated by Chapter 347, Laws of 1981, is a change in insurance requirements for "for-hire" property motor carriers. Chapter 347 eliminated the Department's authority to set minimum limits of insurance coverage at its discretion. Instead, the law (sec. 194.41(6)) now requires the Department to set the minimum limits at the same level as required under the Federal Motor Carrier Act of 1980, except that vehicles of under 10,000 pounds are required to maintain minimum coverage of \$300,000 unless they carry hazardous materials, in which case the higher federal limits apply. The Department interprets sec. 194.41(6) to apply only to "property" carriers. Therefore, the authority of the Department to set insurance requirements for passenger carriers at its discretion is not affected by the creation of sec. 194.41(6). The current insurance requirements for passenger carriers are, therefore, not affected by this rule and remain as provided in Trans 176.06(1)(b). Taxicabs which carry only passengers are exempt from the provisions of Chapter 194 (sec. 194.01(5)). However, taxicabs which have authority to carry packages are subject to Chapter 194. Since the Department's discretion to set the levels of insurance coverage required has been eliminated, taxicabs which hold package authority will be required to maintain the minimum limits set out in sec. 194.41(6).

Section 194.41(6), Stats., which mandates the new minimum levels, refers to 49 U.S.C. 10927(a). However, that provision of the U.S. Code does not itself impose minimum insurance requirements. Instead, that section refers to rules adopted by the Secretary of the U.S. Department of Transportation under Section 30 of the Motor Carrier Act of 1980. Those rules were published June 11, 1981, Federal Register, Vol. 46, No. 112, pages 30974 to 30987. The rules were amended on September 14, 1981, in 46 Federal Register 45612, reprinted on September 24, 1981, and further clarified on March 25, 1982, 47 Federal Register 12800. The rules are adopted

as 49 Code of Federal Regulations Part 387--Minimum Levels of Financial Responsibility for Motor Carriers. Under the federal rule, the minimum limits are set according to the type of carriage and commodity transported as follows:

SCHEDULE OF LIMITS Public Liability Freight Vehicles With Gross Vehicle Weight Rating of 10,000 Pounds or More			
Type of Carriage	Commodity Transported	July 1, 1981	July 1, 1983
(1) For-hire (in interstate or foreign commerce).	Property (nonhazardous).	\$ 500,000	\$ 750,000
(2) For-hire and Private (in interstate or intrastate commerce).	Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquefied compressed gas, or compressed gas; or large quantity radioactive materials as defined in 49 CFR 173.389.	\$1,000,000	\$5,000,000
(3) For-hire and Private (in interstate commerce: in any quantity) or (in intrastate commerce: in bulk only).	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above.	\$ 500,000	\$1,000,000

The federal rules do not apply to vehicles with a gross weight of under 10,000 pounds, but sec. 194.41(6) (b) provides that vehicles of under 10,000 pounds are required to maintain a minimum of \$300,000 unless carrying hazardous materials, in which case the higher limits apply. In addition, the federal rules do not apply to the transportation of non-bulk oil and other non-bulk hazardous substances in intrastate commerce. However, the Wisconsin Legislature has clearly required in sec. 194.41(1) that all "for-hire" motor carriers maintain insurance or other proof of financial responsibility. Therefore, the Department has set the minimum financial responsibility limits for all "for-hire" property carriers, including those transporting non-bulk hazardous materials in intrastate commerce as follows:

Minimum Levels of Financial Responsibility
For "For Hire" Property Carriers

	<u>Oct. 1, 1982 Through</u> <u>June 30, 1983</u>	<u>On and After</u> <u>July 1, 1983</u>
1. Vehicles transporting hazardous substances as defined in 49 C.F.R. 171.8 transported in cargo tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquified compressed gas, or compressed gas; or large quantity radioactive materials as defined in 49 C.F.R. 173.389.	\$1,000,000	\$5,000,000

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|---|------------|-------------|
| 2. Vehicles transporting oil listed in 49 C.F.R. 172.101, hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. 171.8 and listed in 49 C.F.R. 172.101, but not mentioned in subd. 1 above. | \$ 500,000 | \$1,000,000 |
| 3. Vehicles with a gross weight of under 10,000 pounds transporting non-hazardous property. | \$ 300,000 | \$ 300,000 |
| 4. Vehicles with a gross weight of 10,000 pounds or more transporting non-hazardous property. | \$ 500,000 | \$ 750,000 |

The rule also provides definitions of the terms "In bulk," "hazardous waste," "hazardous materials," and "hazardous substances." These definitions are taken directly from the federal rules.

Fiscal Estimate

This rule has no fiscal effect independent of the fiscal effect of the law. The Department does not anticipate that the promulgation of this rule will have any fiscal impact on its operations. The current federal rule requires interstate "for-hire" carriers operating in Wisconsin to maintain insurance in the amounts set out in this rule. Therefore, interstate carriers should not experience any increase in premiums due to the promulgation of this rule. The rule will require those carriers with solely intrastate authority to maintain minimum limits which are higher than those they are required to maintain under the current rule. Consequently, these carriers can expect an increase in premiums due to the increased coverage required. The actual increase in premium costs for any given carrier depends upon many variables and cannot be reliably estimated at this time.

A copy of the rule may be obtained upon request from the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 255, Hill Farms State Office Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702, (608) 266-2233.

Pursuant to authority vested in the Wisconsin Department of Transportation by ss. 194.41 and 227.014, Wis. Stats., the Department repeals, repeals and recreates and creates rules interpreting ss. 194.41(1) and (6), Wis. Stats., as follows:

RULE TEXT

SECTION 1. TRANS 176.06(1)(a) is repealed and recreated to read:

SECTION TRANS 176.06(1)(a) For-hire property carriers:

	<u>Oct. 1, 1982 Through</u> <u>June 30, 1983</u>	<u>On and After</u> <u>July 1, 1983</u>
1. Vehicles transporting hazardous substances, as defined in 49 C.F.R. 171.8 transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquified compressed gas; or large quantity radioactive materials as defined in 49 C.F.R. 173.389.	\$1,000,000	\$5,000,000
2. Vehicles transporting oil listed in 49 C.F.R. 172.101, hazardous waste, hazardous materials and hazardous substances defined in 49 C.F.R. 171.8 and listed in 49 C.F.R. 172.101, but not mentioned in subd. 1.	\$ 500,000	\$1,000,000
3. Vehicles of under 10,000 pounds gross vehicle weight transporting non-hazardous substances.	\$ 300,000	\$ 300,000
4. Vehicles of 10,000 pounds or more gross vehicle weight transporting non-hazardous substances.	\$ 500,000	\$ 750,000

SECTION 2. TRANS 176.07(1)(ag) is created to read:

TRANS 176.06(1)(ag) For purposes of par. (a): 1. "Hazardous material" means a substance or material which has been determined by the U.S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce, and which has been so designated.

2. "Hazardous substance" means a material, and its mixtures or solutions, that is identified by the letter "E" in Column 1 of the Table to 49 C.F.R. 172.101 when offered for transportation in one package, or in one transport vehicle if not packaged, and when the quantity of the material therein equals or exceeds the reportable quantity (RQ). This definition does not apply to petroleum products that are lubricants or fuels; or to a mixture or solution containing a material identified by the letter "E" in Column 1 of the Table to 49 C.F.R. 172.101 if it is in a concentration less than that shown in the following table based on the reportable quantity (RQ) specified for the materials in Column 2 of the Table to 49 C.F.R. 172.101:

<u>Concentration by Weight</u>			
<u>RQ Pounds</u>	<u>RQ Kilograms</u>	<u>Percent</u>	<u>PPM</u>
5,000	2,270	10	100,000
1,000	454	2	20,000
100	45.4	0.2	2,000
10	4.54	0.02	200
1	0.45	0.002	20

3. "Hazardous waste" means any material that is subject to the hazardous waste manifest requirements of the EPA specified in 40 C.F.R. Part 262 or would be subject to these requirements absent an interim authorization to a state under 40 C.F.R. Part 123, Subpart F.

4. "In bulk" means the transportation, as cargo, of property, except Class A and B explosives and poison gases, in containment systems with capacities in excess of 3,500 water gallons.

5. "In bulk Class A and B explosives" means the transportation, as cargo, of any Class A or B explosive or explosives in any quantity.

6. "In bulk poison gas" means the transportation, as cargo, of any poison gas in any quantity.

[Note: The definitions of "hazardous materials," "hazardous substances" and "hazardous waste" in sub. (1)(ag) are taken from 49 C.F.R. 171.8. The definitions of "In bulk," "In bulk Class A and B explosives" and "In bulk poison gas" in sub. (1)(ag) are taken from 49 C.F.R. 387.5.]

SECTION 3. TRANS 176.06(1)(ar) is created to read:

TRANS 176.06(1)(ar) For purposes of par. (a) either a combined single limit or a split limit policy is acceptable. If a split limit policy is utilized, each individual limit must meet the minimum level of coverage required.

[Note: Example. For vehicles of 10,000 pounds or over transporting non-hazardous materials on July 1, 1983, and thereafter, either of the following types of policies is acceptable: a combined single limit of \$750,000.00 or a split limit of \$750,000.00, \$750,000.00, \$750,000.00. These alternatives are consistent with the interpretation of the federal rules set out in 47 Federal Register 12800, March 25, 1982.]

SECTION 4. TRANS 176.06(1)(c) is repealed.

SECTION 5. TRANS 176.06(1)(d) is renumbered TRANS 176.06(2).

(End of Rule Text)

The rules contained in this order shall take effect on October 1, 1982, or upon publication as provided in s. 227.026(1)(intro.), Wis. Stats., whichever is later.

Signed at Madison, Wisconsin, this
16th day of August, 1982.



OWEN AYRES, Secretary
Wisconsin Dept. of Transportation