

CR 90-220

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Intrastate Transportation of Hazardous Materials**, was duly approved and adopted by this Department on August 27th, 1991.

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 of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 27th day of August, 1991.

Donald H. Fiedler, Deputy
for RONALD R. FIEDLER, P.E.
Secretary

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11-1-91

IN THE MATTER OF a rule to create chapter Trans 328, Wisconsin Administrative Code, relating to Intrastate Transportation of Hazardous Materials

ORDER ADOPTING RULE

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Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.075, 194.38, 194.43, 227.014 and 346.45(4), Stats.

STATUTES INTERPRETED: ss. 110.075, 194.38, 194.43 and 346.45(4), Stats.

General Summary of Rule. These rule provisions adopt, for intrastate carriers, federal standards governing motor vehicle transportation of hazardous materials.

Under 402 of the Surface Transportation Assistance Act of 1982, 49 U.S.C. 2302 (Public Law 97-424, January 6, 1983), the U.S. Secretary of Transportation was empowered to make grants to enforce federal regulations applicable to commercial motor vehicles. A portion of the provision in the Act is reproduced on the following page.

GRANTS TO STATES. (a) Under the terms and conditions of this section, subject to the availability of funds, the Secretary is authorized to make grants to states for the development or implementation of programs for the enforcement of Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety and compatible state rules, regulations, standards and orders.

(b)(1) The Secretary shall formulate procedures for any state to submit a plan whereby the state agrees to adopt and to assume responsibility for enforcing Federal rules, regulations, standards and orders applicable to commercial motor vehicle safety, or compatible state rules, regulations, standards and orders. Such plan shall be approved by the Secretary if, in the Secretary's judgment, the plan is adequate to promote the objectives of this section and the plan:

(a) Designates the state motor vehicle safety agency responsible to administering the plan throughout the state;

(b) Contains satisfactory assurances that such agency has or will have the legal authority, resources and qualified personnel necessary to the enforcement of such rules, regulations, standards and orders;

(c) Gives satisfactory assurances that such state will devote adequate funds to the administration of such plan and enforcement of such rules, regulations, standards and orders;

(d) Provides a right of entry and inspection sufficient to enforce such rules, regulations, standards and orders;

(e) Provides that all reports required pursuant to this section be submitted to the state agency, and that such agency make available upon request to the Secretary all such reports;

(f) Provides that such state agency will adopt such uniform reporting requirements and use such uniform forms for recordkeeping, inspections and investigations as may be established and required by the Secretary; and

(g) Requires registrants of commercial motor vehicles to make a declaration of knowledge of applicable Federal and state safety rules, regulations, standards and orders.

This rule adopts the following parts of Title 49 of the Code of Federal Regulations:

Part 171--Hazardous Materials Regulations, with minor exceptions

Part 172--Hazardous Materials Tables and Hazardous Materials Communications Regulations

--Hazardous Materials Tables

--Shipping Papers

--Marking

--Labeling

--Placarding

Part 173--General Requirements for Shipments and Packages

--Preparation of Hazardous Materials for Transportation

--Class A, B and C Explosives; Definitions

--Flammable, Combustible, and Pyrophoric Liquids; Definitions and Preparation

--Flammable Solids, Oxidizers and Organic Peroxides; Definitions and Preparation

--Corrosive Materials; Definition and Preparation

--Compressed Gases; Definition and Preparation

--Poisonous Materials, Etiologic Agents and Radioactive Materials; Definitions and Preparation

--Other regulated materials

Part 177--Carriage by Public Highways

These regulations are adopted and will be enforced under the provisions of ss. 110.07, 110.075, 194.38, 194.43 and 346.45(4), Stats. Violations of ch. 110 and the rules adopted thereunder are punishable by a forfeiture of not less than \$10 nor more than \$200. Violations of ch. 194 are punishable by a forfeiture of not less than \$50 nor more than \$300. No demerit points will be assessed to a person's driving record for violations of these rules.

The adoption of Trans 328 will give the Department of Transportation the authority to use federal standards governing transportation of hazardous materials as the basis for a State of Wisconsin Administrative Rule governing transportation of hazardous materials by intrastate carriers. The rule will primarily be enforced by troopers and inspectors of the Wisconsin State Patrol.

Certain provisions of the federal regulations are not included because the provisions are inapplicable.

Fiscal Estimate. The adoption of this rule will allow the Department of Transportation, Division of State Patrol, to continue to qualify for grants from the U.S. Department of Transportation.

Final Regulatory Flexibility Analysis. This rule can have an effect on small businesses. The Department will consider suggestions for reducing the impact of the rule on small businesses. To that end, the Department intends to provide broad notice of hearing and will conduct two hearings to enhance participation in the rulemaking process.

Preparation. This analysis was prepared by Joe Maassen, Deputy General Counsel, Wisconsin Department of Transportation, P. O. Box 7910, Madison, WI 53707, (608) 266-8810.

RULE TEXT

Under the authority vested in the Wisconsin Department of Transportation by ss. 110.075, 194.38, 194.43, 227.014, and 346.45(4), Stats., the department hereby adopts Trans 328 interpreting the provisions of ss. 110.075, 194.38, 194.43, and 346.45(4) as follows:

SECTION 1. Trans 328 is created to read:

**TRANS 328
MOTOR CARRIER SAFETY REQUIREMENTS
FOR INTRASTATE TRANSPORTATION OF HAZARDOUS MATERIALS**

Trans 328.01 DEFINITIONS. The words and phrases defined in s. 340.01, Stats., shall apply in the interpretation of this chapter.

Trans 328.03 FEDERAL REGULATION ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on November 1, ~~1990~~ 1991, 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 section:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, except 171.1(a)(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2(a) and (b) for cargo

and portable tanks used in intrastate commerce and placed in operation prior to ~~January 1, 1986~~
the effective date of this chapter.

(2) Title 49, Code of Federal Regulations, part 172, hazardous materials tables and hazardous materials communications regulations.

(3) Title 49, Code of Federal Regulations, part 173, general requirements for shipments and packagings, except 173.33 for cargo and portable tanks used in intrastate commerce and placed in operation prior to ~~January 1, 1986~~ the effective date of this chapter.

(4) Title 49, Code of Federal Regulations, part 177, carriage by public highway.

Trans 328.05 ENFORCEMENT. The provisions of Trans 328.03 shall be enforced under the provisions of ss. 110.07, 110.075, 194.38, 194.43, 346.45(4) and ch. 194, Stats.

Trans 328.07 DEMERIT POINTS NOT APPLICABLE. No demerit points may be assessed for violations of s. Trans 328.03.

Trans 328.09 COPIES OF FEDERAL REGULATIONS. The department shall advise carriers that copies of the federal regulations cited in Trans 328.03 may be obtained by contacting the division of state patrol.

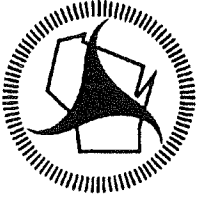
(END OF RULE TEXT)

Effective Date: This rule shall take effect upon the first day of the month following publication as provided in s. 227.22(2), Stats., or on November 2, 1991, whichever date is later.

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Dated at Madison, Wisconsin, this 27th day of August, 1991.

for Donald H. Dunsen, Deputy
Ronald R. Fiedler, P.E.
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, P.E.
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

August 27, 1991

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Mr. Gary Poulson
Assistant Revisor of Statutes
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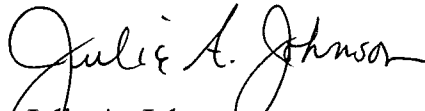
RE: CLEARINGHOUSE RULE 90-220

In the Matter of the Adoption of **TRANS 328**, Wisconsin Administrative Code, relating to **Intrastate Transportation of Hazardous Materials**.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-220**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Dorothy Kapke
Sandy Beaupre
Ted Meekma
Lyle Walheim