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STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
PROPOSED ORDER AMENDING PERMANENT RULE CR 22-051

The Wisconsin Department of Transportation proposes an order to:

Repeal ss. Trans 327.01 (2), 327.05, and 327.09 (5) and (6);

amend ss. Trans 327 (title), 327.03 (2) (a) 1. and (7) and (Note), 327.07 (1) and (2), 327.09 (1), (4) (intro.), and (b), and 327.13 (Note);

repeal and recreate s. Trans 327.03 (10); and to

create s. Trans 327.09 (1) (Note), 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.

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The Statement of Scope for this permanent rule, SS 009-21, was approved by the Governor on October 23, 2020, published in Register No. 781B on January 25, 2021, and approved by Secretary of the State of Wisconsin Department of Transportation Craig Thompson, as required by s. 227.135 (2), Stats., on September 23, 2020.

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The state of Wisconsin Department of Transportation (“Department”) proposes an order to amend permanent rule 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). The analysis below was prepared by the Department.

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ANALYSIS

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Statutes Interpreted: Wis. Stats. ss. 194.38, 194.43, 340.01, 343.02 (1), and 343.06 (2).

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Statutory Authority: Wis. Stats. ss. 110.07, 110.075, 194.38, and 194.43.

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Explanation of Agency Authority: 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 FMSCA 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

1 disqualification under state or federal law, or under the law of another jurisdiction disqualifying a person
2 from operating a CMV under circumstances similar to those specified in state or federal law, or under a
3 determination by the FMCSA that the person is no longer qualified to operate a CMV under federal law, or
4 to any person whose operating privilege is revoked, suspended, or canceled.

5 Current law requires the Department to promulgate and enforce rules as the Department deems necessary
6 in the interests of the safety of persons and property being transported to cover the transportation, design,
7 construction, equipment, inspection and operation of motor buses, and human service vehicles school buses
8 and their drivers. Current law requires the Department to prescribe rules and regulations as to safety of
9 operations and the hours of labor of drivers of common motor carriers of property or of passengers or
10 contract motor carriers or private motor carriers, although such regulations do not apply to any farm truck
11 or dual-purpose farm truck combined with any semitrailer or farm trailer, or any vehicle combined with a
12 horse trailer, if the vehicle combination's gross combination weight rating, registered weight, and actual
13 gross weight do not exceed 26,000 pounds, the vehicle combination does not include a CMV described in
14 s. 340.01 (8) (c) or (d), Stats., and the vehicle combination is operated solely in intrastate commerce.

15 **Related Statute or Rule:** Wis. Admin. Code chs. Trans 102, 325, 326, and 327.

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

23 This rulemaking makes the following changes:

24 **Section 1.** Amends the title to clarify that this chapter applies only to intrastate commercial operation.

25 **Section 2.** Repeals obsolete definitions, "Driver's record of duty status" and "Emergency."

26 **Section 3.** Deletes a requirement that a driver with diabetes mellitus controlled by insulin must provide
27 statements from 2 physicians that the diabetes is not likely to cause loss of ability to control or operate
28 a vehicle. Instead, this state adopts the federal physical qualifications, which allows a driver whose
29 diabetes mellitus is controlled by insulin to meet the physical qualifications by obtaining a medical
30 evaluation from only one treating clinician, who must be currently managing and prescribing insulin to
31 the driver, and a statement from the medical examiner who completes the federal medical examination
32 that the driver is free of complications from diabetes mellitus that might impair the driver's ability to
33 safely to operate a CMV.

34 **Section 4.** Limits authority of law enforcement to declare a driver out-of-service for violating hours of
35 service to the state hours of service limits, not the more restrictive federal hours of service limits.
36 Updates an address.

1 **Section 5.** Makes various changes to hours of service limitations. Increases the number of continuous
2 driving hours permissible for a property-carrying CMV driver from 11 to 12 hours. Adopts federally
3 approved enlarged hours of service wherever possible. Adopts 49 CFR 395.8 which includes the
4 Electronic Logging Device (ELD) requirements put forth by the Commercial Motor Vehicle Safety
5 Enhancement Act of 2012 49 U.S. Code § 31137 but delays the adoption for one year. All applicable
6 exemptions from the ELD mandate for interstate transportation will also be applied by this rulemaking.

7 **Section 6.** Repeals existing state hours of service limitations since the rule adopts federal hours of
8 service limitations. See the description above in Section 5.

9 **Section 7.** This section provides enforcement authority for the Division of State Patrol to issue citations
10 of \$50-\$100 per violation for violations of certain federal motor carrier regulations, for which only
11 warnings are now issued, including falsified records and incorrect vehicle markings and for controlled
12 substance and alcohol testing violations. It authorizes the Division of State Patrol to stop and inspect a
13 vehicle if the officer has a reasonable basis to believe a violation of 49 CFR 390 (an expansive federal
14 regulation covering ‘Motor Carrier Safety Regulations; General’) has occurred. This authority to
15 enforce 49 CFR 390 does not apply to any farm truck or dual-purpose farm truck combined with any
16 semitrailer or farm trailer, or any vehicle combined with a horse trailer, if the vehicle combination’s
17 gross combination weight rating, registered weight, and actual gross weight do not exceed 26,000
18 pounds and is operated exclusively in intrastate commerce. This section also authorizes the Division of
19 State Patrol to enforce 49 CFR 382 (‘Controlled Substances and Alcohol Use and Testing’) under
20 sections 194.38 and 194.43 of the statutes, which subjects violators to forfeitures.

21 **Section 8.** Makes drivers of school buses used in charter activities and in extracurricular activities that
22 are not school-related subject to the hours of service and driver qualifications.

23 **Section 9.** Contains a note summarizing the exemptions authorized by 49 CFR 350.305(b)(2) for school
24 bus drivers engaged in intrastate operations.

25 **Section 10.** Updates a cross reference to reflect changes made by this rule to retain existing hours of
26 service limitation exemptions for authorized emergency vehicles: tow trucks and drivers of CMVs that
27 weigh 26,000 pounds or less, transport fewer than 16 passengers, or transport hazardous materials that
28 do not require placarding. See the descriptions above in Sections 6 and 7.

29 **Section 11.** Expands an exemption from hours of service to any vehicle that does not meet the state
30 definition of CMV. Deletes exemptions from hours of service limitations for drivers located within 150
31 miles of home office or work site. Deletes the authority of motor carriers to declare emergencies that
32 exempt themselves from driver qualifications and hours of service limitations. These drivers are subject
33 to federal hours of service requirements. See the description above in Section 6.

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35 **Section 12.** Updates a web address.

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37 **Section 13.** Provides the effective date of changes accomplished by this rulemaking.
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1 **Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:**

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3 These proposed rule changes will mirror existing federal statutes and regulations and would make
4 Wisconsin consistent with other adjacent states that are presently compliant with certain federal regulations.
5 However, because some states are presently not compliant with every federal regulation, Wisconsin could
6 be inconsistent with other states until these states become compliant with federal law. FMCSA identified
7 three nonconforming areas in its 2009 audit:

- 8 1. The state's exemption of intrastate drivers from driver qualifications and hours of service
9 regulations during emergencies, in s. Trans 327.09 (6) is not compatible with 49 CFR 390.23. A
10 qualifying emergency may be declared only by certain specified federal, state, or local officials.
11 Currently, Wisconsin regulations allow the motor carrier to declare the emergency.
12 2. FMCSA noted that the permissible federal exemption is limited to driver physical qualifications,
13 a smaller subset of the requirements of 49 CFR 391, and that Wisconsin's exemption is overbroad.
14 The department intends to address this in another rulemaking.
15 3. 49 CFR 395.8 requires Electronic Logging Devices in intrastate commerce put forth by the
16 Commercial Motor Vehicle Safety Enhancement Act of 2012 49 U.S. Code § 31137.

17 **Comparison with Rules in Adjacent States:**

18 **Illinois**

- 19 1. Illinois does not allow a motor carrier to self-declare an emergency.
20 2. Illinois does have a grandfather provision for part 49 CFR 391.
21 Section 391.2000 Incorporation by Reference of 49 CFR 391

22 Paragraphs (b) (3) (insulin dependent diabetic) and (b) (10) (minimum visual acuity) of 49 CFR 391.41, shall
23 not apply to the driver of a CMV with a gross vehicle weight rating (GVWR) or gross combination weight
24 (GCW) of over 12,000 lbs., used in the intrastate transportation of property who immediately prior to July 29,
25 1986, was eligible and licensed to operate a motor vehicle subject to the Illinois Motor Carrier Safety
26 Regulations (IMCSR) and was engaged in operating such vehicles, and who was disqualified on July 29, 1986,
27 by the adoption of 49 CFR 391, by reason of the application of paragraphs (b) (3) and (b) (10) of 49 CFR
28 391.41, with respect to a physical condition existing at that time unless such driver has a record of accidents
29 which would indicate a lack of ability to operate a motor vehicle in a safe manner. (Section 18b-105 of the
30 law).

31 Paragraphs (b) (3) (insulin dependent diabetic) and (b) (10) (minimum visual acuity) of 49 CFR 391.41, shall
32 not apply to the driver of a CMV that either has a GVWR or gross combination weight rating (GCWR) of
33 between 10,000 and 12,001 pounds; or that is designed to transport more than 15 passengers, including the
34 driver; or that has a GVWR or GCWR of less than 12,001 pounds and transports hazardous materials in a
35 quantity requiring placarding under the Illinois Hazardous Materials Transportation Act [430 ILCS 30]. The
36 vehicle must be used in intrastate transportation. The driver must have been eligible and licensed to operate a
37 motor vehicle subject to the IMCSR and engaged in operating that vehicle immediately prior to January 17,
38 1992. The driver must have been disqualified on January 17, 1992, by the adoption of Public Act 87-829 that
39 made the IMCSR applicable to vehicles described in this subsection (c) (4). The reason for disqualification
40 must have been the application of paragraphs (b) (3) and (b) (10) of 49 CFR 391.41, with respect to a physical
41 condition existing at that time. This exception does not apply to any driver who has a record of accidents that
42 would indicate a lack of ability to operate a motor vehicle in a safe manner.

- 43 3. Illinois requires an ELD in intrastate commerce.

1 **Iowa**

- 2 1. Iowa does not allow a motor carrier to self-declare an emergency.
3 2. Iowa does have a grandfather provision for part 49 CFR 391.

4 **Iowa law: 321.449 Motor Carrier Safety Rules**

5 3. a. Notwithstanding other provisions of this section, rules adopted under this section concerning
6 physical and medical qualifications for drivers of commercial vehicles engaged in intrastate commerce shall
7 not be construed as disqualifying any individual who was employed as a driver of commercial vehicles
8 engaged in intrastate commerce whose physical or medical condition existed prior to July 29, 1996.

9 b. Notwithstanding other provisions of this section, rules adopted under this section concerning
10 physical and medical qualifications for a driver shall not apply to a farmer or a farmer's hired help when
11 operating a vehicle owned by the farmer while it is being used in connection with the intrastate
12 transportation of fertilizers and chemicals used in the farmer's crop production.

- 13 4. Iowa requires an ELD in intrastate commerce.

14 **Michigan**

- 15 1. Michigan does not allow a motor carrier to self-declare an emergency.
16 2. Michigan does not have a grandfather provision from part 49 CFR 391.
17 3. Michigan requires an ELD in intrastate commerce.

18 **Minnesota**

- 19 1. Minnesota does not allow a motor carrier to self-declare an emergency.
20 2. Minnesota does have a grandfather provision for part 49 CFR 391.

21 **Minnesota law: MN Statute 221.031 Subd. 3 (b)**

22 The state of MN has had this exemption in their law before April 1988. Therefore, when motor carriers
23 are transporting the below commodities, they are exempted from 49.CFR 391. (49CFR350.305(b)(2).

- 24 • Delivery of Ag Lime.
25 • Transportation of fresh vegetables from farms to canneries or viner stations, and transportation of
26 sugar beets, wild rice, rutabagas from field of production to first place of delivery or unloading.
27 • Transportation of unprocessed dairy products in bulk within 100-mile radius from the home post
28 office of the person providing the transportation.
29 • Transportation of agricultural, horticultural, dairy, livestock, other farm products within an area
30 having a 100-mile radius from the person's home post office and the carrier may transport other
31 commodities within the 100-mile radius if the destination of each haul is a farm.
32 • Farmers/employees transporting diesel fuel, gasoline, ag. chemicals, or ag. fertilizers for use on
33 the transporter/farm when diesel fuel/gasoline tank truck vehicles <1,500 gallon owned by the
34 transporter or other motor vehicles with GVW <10,000 lbs.

- 35 3. Minnesota requires an ELD in intrastate commerce.

36 **Summary of the Factual Data and Analytical Methodologies:** The changes proposed in this rulemaking
37 are recommended by the FMCSA audit conducted in 2009 of Wisconsin's Motor Carrier Enforcement
38 Program, which noted several incompatibilities between state law and federal law.

39 **Analysis Regarding Rule's Effect on Small Businesses:** The state's exemption of intrastate drivers from
40 its adoption of driver qualifications and hours of service regulations during emergencies, in s. Trans 327.09 (6)

1 is not compatible with 49 CFR 390.23. The emergency must be declared by certain specified federal, state, or
2 local officials. The Wisconsin regulations allow the motor carrier to declare the emergency.

3 Effect: No effect on small business. If a regional emergency exists, the current governor will declare
4 an emergency per 49 CFR 390.23.

5
6 **Anticipated costs incurred by private sector:** The state's exemption of intrastate drivers from its adoption of
7 driver qualifications and hours of service regulations during emergencies, in s. Trans 327.09 (6) is not
8 compatible with 49 CFR 390.23. The emergency must be declared by certain specified federal, state, or local
9 officials. The Wisconsin regulations allow the motor carrier to declare the emergency.

10 Effect: The Department anticipates increased shipping or driver labor costs for businesses that
11 previously declared emergencies that were not also declared emergencies by qualifying state or federal officials,
12 although the Department cannot quantify this cost increase.

13
14 **Proposed rule's effect on small businesses:** The ELD requirement would significantly reduce drivers'
15 paperwork and recordkeeping duties, which saves the driver and their employer time and money.
16 Additionally, ELDs prevent crashes, injuries, and deaths, which can reduce costs. If a crash occurs, carriers
17 may experience increased insurance costs and be at risk to be sued if a CMV driver is at fault.

18
19 The agency contact person listed below is also the small business regulatory coordinator for this
20 proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at
21 <https://docs.legis.wisconsin.gov/code>.

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23 **Agency Contact Person:**

24 Captain Karl Mittelstadt
25 State of Wisconsin Department of Transportation
26 Division of State Patrol
27 4822 Madison Yards Way
28 Madison, Wisconsin 53705
29 608-215-2804
30 DOTAdminRules@dot.wi.gov

31
32 **Place Where Comments Should Be Submitted and Deadline:** Comments may be submitted to the
33 agency contact person listed above or through the Legislature's Administrative Rules website
34 <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

1 TEXT OF PERMANENT RULE

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3 **SECTION 1. Trans 327 (title) is amended to read:**

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5 **Trans 327 (title) Motor Carrier Safety – Intrastate**

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7 **SECTION 2. Trans 327.01 (2) is repealed.**

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9 **SECTION 3. Trans 327.03 (2) (a) 1. is amended to read:**

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11 **Trans 327.03 (2) (a) 1.** ~~391.11(b)(1), and 391.41(b)(3) if, in the alternative a driver with diabetes controlled by~~
12 ~~insulin obtains statements from 2 licensed physicians indicating, on a form provided by the department of~~
13 ~~transportation, that the diabetes is not likely to cause loss of ability to control or operate a motor vehicle.~~

14
15 **SECTION 4. Trans 327.03 (7) and (Note) are amended to read:**

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17 **Trans 327.03 (7)** Every traffic officer and state patrol inspector employed under the authority of s. 110.07,
18 Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the North American
19 ~~standard out of service criteria,~~ Standard Out-of-Service Criteria, except that s. Trans 327.03 (10) shall be used
20 to determine the maximum number of hours allowed to drive after coming on duty.

21
22 **(Note)** The North American Standard Out-of-Service Criteria is on file with the Legislative Reference Bureau
23 and the Department of Transportation, Division of State Patrol. ~~Copies may be obtained by writing to the~~
24 ~~Division of State Patrol, P. O. Box 7912, Madison, WI 53707 7912, or~~ A copy may be requested from ~~to the~~
25 Commercial Vehicle Safety Alliance, 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling
26 ~~202-775-1623~~ 301-830-6143. You may also request copies via their website at www.cvsa.org.

27
28 **SECTION 5. Trans 327.03 (10) is repealed and recreated to read:**

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30 **Trans 327.03 (10) (a)** Title 49, Code of Federal Regulations, part 395, hours of service of drivers, except
31 as follows:

- 32 **1.** Title 49, Code of Federal Regulations, 395.3 (a) (2) and (3) are not adopted.
33 **2.** Title 49, Code of Federal Regulations, 395.3 (b) is not adopted.
34 **3.** Title 49, Code of Federal Regulations, 395.8 (a) (1) (i) through (iv) does not apply to operation on or
35 before the last day of the 12th month beginning after the effective date of this subdivision **[LRB inserts**
36 **date]**.

37 **(b)** No driver may drive a property-carrying vehicle for:

- 38 **1.** More than 12 hours following 10 consecutive hours off duty.
39 **2.** Any period after having been on duty for 16 hours following 10 consecutive hours off duty.
40 **3.** After having been on duty for 70 hours in any period of 7 consecutive days.
41 **4.** After having been on duty for 80 hours in any period of 8 consecutive days.

42
43 **SECTION 6. Trans 327.05 is repealed.**

1 **SECTION 7. Trans 327.07 (1) and (2) are amended to read:**

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3 **Trans 327.07 (1)** The provisions of ~~s. ss.~~ Trans 327.03 (4) and (5) shall be enforced under the provisions of
4 ~~ss. 110.07 and 110.075~~ ch. 110, Stats.

5
6 **(2)** The provisions of ss. ~~Trans 327.03 (1), (2), (3), (6), (8), and (10), and 327.05~~ shall be enforced under
7 the provisions of ~~ss. 194.38 and 194.43~~ ch. 194, Stats.

8
9 **SECTION 8. Trans 327.09 (1) is amended to read:**

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11 **Trans 327.09 (1)** The provisions of s. ~~Trans 327.03~~ do not apply to a driver ~~or~~ of a school bus when the
12 school bus is being used for authorized educational or extracurricular ~~or charter~~ school-related activities.

13
14 **SECTION 9. Trans 327.09 (1) (Note) is created to read:**

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16 **Trans 327.09 (1) (Note)** This section preserves exemptions authorized by 49 CFR 350.305(b)(2) that were in
17 effect on March 31, 1988, for school bus drivers engaged in intrastate operations for authorized educational
18 or extracurricular school-related activities.

19
20 **SECTION 10. Trans 327.09 (4) (intro.) and (b) are amended to read:**

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22 **Trans 327.09 (4) (intro.)** The provisions of s. ~~Trans 327.05~~ 327.03 (10) do not apply to the following:
23 **(b)** Drivers who operate motor vehicles ~~which have a manufacturers' gross vehicle weight rating equal to or~~
24 ~~less than 26,000 pounds~~ that are not defined as a commercial motor vehicle in s. 340.01 (8), Stats.

25
26 **SECTION 11. Trans 327.09 (5) and (6) are repealed.**

27
28 **SECTION 12. Trans 327.13 (Note) is amended to read:**

29
30 **Trans 327.13 (Note)** Federal motor regulations may also be obtained through the Internet via:
31 http://www.fmcsa.dot.gov/rules_regulations/administration/fmcsr/fmcsrguide.asp <http://www.fmcsa.dot.gov>

32
33 **SECTION 13. EFFECTIVE DATE.** This rule shall take effect on the first day of the month following
34 publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

35
36 **(END OF RULE TEXT)**

37
38 Signed this ____ day of _____ 2023.

39
40
41 _____
42 Craig Thompson
43 Secretary
44 State of Wisconsin Department of Transportation