

Clearinghouse Rule 06-043

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 327.01(2)(b) and (c), and (e) to (h), 327.05(3) and (4), and 327.09(6) to (12); renumber TRANS 327.01(2)(d), 327.05(5) and (6), and 327.09(13); amend TRANS 327.03(intro.), (2) and (7), 327.07(2), and 327.09(5)(b) and (c); and create TRANS 327.03(10) and 327.09(7), relating to motor carrier safety.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to 110.07, 110.075, 194.38, 194.43 and 227.11, Stats., and interpreting ss. 110.07 and 110.075, and ch. 194, Stats., the Department of Transportation will hold a public hearing in **Room 551** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **26th** day of **May**, 2006, at **10:00 AM** to consider the amendment of ch. Trans 327, Wisconsin Administrative Code, relating to motor carrier safety.

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.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 110.07 and 110.075, and ch. 194, Stats.

Statutory authority: ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats.

Explanation of agency authority: The secretary shall set standards and adopt rules to establish a plan of inspection to implement the inspection program. It shall be the duty of the Department to prescribe rules and regulations as to safety and operations and

the hours of service of drivers of motor vehicles operated under the authority of this chapter.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: This rule making will amend ch. Trans 327, relating to intrastate motor carrier safety regulations, to bring it into compliance with the most recent changes to the Federal Motor Carrier Safety Regulations which went into effect on April 1, 2006. Amendment of this rule will assure State Patrol inspectors and troopers are enforcing the most recent Federal Motor Carrier Safety regulations for intrastate carriers. The update of this rule will also keep the Department in compliance to qualify for continued Motor Carrier Safety Assistance Program (MCSAP) funding.

The Department annually updates ch. Trans 327 to keep current with the most recent changes to 49 CFR parts 390, 391, 392, 393, 395, 396 and 397.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 327 (Motor Carrier Safety) adopts Federal regulations 49 CFR parts 390 to 397, with exceptions.

Comparison with Rules in Adjacent States: All adjacent states (Michigan, Minnesota, Illinois, and Iowa) adopt the same Federal regulations.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Federal Motor Carrier Safety Administration did extensive research into the most recent changes to the rules regulating commercial motor carriers and commercial drivers. Its research, coupled with input from the motor carrier industry, resulted in the recently revised regulations for interstate and intrastate commerce effective April 1, 2006.

Analysis and supporting documentation used to determine effect on small businesses: The research provided by the Federal Motor Carrier Safety Administration was used in analyzing the effects on small business.

Effect on small business: All businesses will have the same effect. There is no differentiation between small business and large business. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: 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 or sewerage district. The Department estimates that there will be no fiscal impact on state revenues or liabilities or on the private sector.

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, 2006, 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 Capt. Chuck Teasdale, Department of Transportation, Division of State Patrol, Room 551, P. O. Box 7936, Madison, WI 53707-7936. You may also contact Capt. Teasdale by phone at (608) 266-0305.

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. Trans 327.01(2)(b) and (c) are repealed.

SECTION 2. Trans 327.01(2)(d) is renumbered Trans 327.01(2)(b).

SECTION 3. Trans 327.01(2)(e) to (h) are repealed.

SECTION 4. Trans 327.03(intro.) is amended to read:

Trans 327.03 Federal regulations adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~January 4, 2004~~ ~~January 4, 2004~~ October 1, 2006, 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 chapter:

SECTION 5. Trans 327.03(2) and (7) are amended to read:

Trans 327.03(2) Title 49, Code of Federal Regulations, part 391, qualifications of drivers except 391.11(b)(1) and 391.41(b)(3), if in the alternative a driver with diabetes controlled by insulin obtains statements from 2 physicians indicating on a form provided by the department of transportation that the diabetes is not likely to cause loss of ability to control or operate a commercial motor vehicle; and 391.41(b)(10) if a driver who does not meet the vision standards can provide documentation from a licensed vision

specialist that they have no progressive eye disease, that the vision in the best eye, corrected or uncorrected, is at least 20/40 (Snellen) and has a minimum of 70-degree visual field from the center of at least one eye along with statement indicating that the vision is not likely to cause a loss of ability to control or operate a commercial motor vehicle, these drivers may apply with the department for an exception/waiver to drive intrastate commerce by submitting the above information along with an application. The driver will not qualify if there are any accidents or moving violations within the 3 years prior to applying. Applicable reporting requirements apply after issuance and can result in cancellation of the exception/waiver.

(7) Every traffic officer and state patrol inspector employed under the authority of s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the ~~2003~~ 2003-2006 North American uniform out-of-service criteria.

SECTION 6. Trans 327.03(10) is created to read:

Trans 327.03(10) Title 49, Code of Federal Regulations, part 395, hours of service of drivers, except 395.1(e)(1), 395.1(h), 395.1(i), 395.5, 395.8, and the maximum number of hours identified in 395.3 ~~are changed to read~~ is adopted as follows:

(a) More than 12 hours following 10 consecutive hours off duty.

(b) For any period after having been on duty 16 hours following 10 consecutive hours off duty.

(c) After having been on duty for 70 hours in any period of 7 consecutive days.

(d) After having been on duty for 80 hours in any period of 8 consecutive days.

SECTION 7. Trans 327.05(3) and (4) are repealed.

SECTION 8. Trans 327.05(5) and (6) are renumbered Trans 327.05(3) and (4).

SECTION 9. Trans 327.05(4)(b)1. and 2., as renumbered, are amended to read:

Trans 327.05(4)(b)1. No driver shall drive after being on duty in excess of the maximum periods permitted by ~~sub. (3)~~ s. Trans 327.03(10).

(b)2. No driver required to maintain a record of duty status under sub. ~~(5)~~ (3) shall fail to have a true and accurate record of duty status current on the day of examination and for the prior 7 consecutive days.

SECTION 10. Trans 327.07(2) is amended to read:

Trans 327.07(2) The provisions of ss. Trans 327.03(2), (3) ~~and~~, (6) and (10), and 327.05 shall be enforced under the provisions of ss. 194.38 and 194.43, Stats.

SECTION 11. Trans 327.09(5)(b) and (c) are amended to read:

Trans 327.09(5)(b) At least & 10 consecutive hours off duty separate each 12 hours on duty.

(c) The driver does not exceed 12 hours maximum driving time following & 10 consecutive hours off duty.

SECTION 12. Trans 327.09(6) to (12) are repealed.

SECTION 13. Trans 327.09(13) is renumbered Trans 327.09(6) and, as renumbered, Trans 327.06(a) is amended to read:

Trans 327.09(6)(a) The provisions of ss. Trans 327.03(2) and 327.05 do not apply to drivers of motor vehicles when transporting property or passengers during a declared emergency as defined in s. Trans 327.01(2)~~(d)~~(d). Each employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. Each employer shall maintain such documentation for one year and shall make it available upon request of a traffic officer or state patrol inspector. Each employer shall also notify the Wisconsin department of transportation, division of state patrol of such declarations

by fax or first class mail within 30 days or by the end of the calendar year, whichever is greater.

SECTION 14. Trans 327.09(7) is created to read:

Trans 327.09(7) The provisions of this chapter 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 commercial motor vehicle described in s. 340.01 (8)(c) or (d), Stats., and the vehicle combination is operated solely in intrastate commerce.

(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 ____ day of April, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation