

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
PROPOSED ORDER TO ADOPT EMERGENCY RULES**

The State of Wisconsin Department of Transportation adopts the following emergency rule to *repeal and recreate* Trans 154.05(3) and *create* Trans 154.05(4), relating to odometer disclosure requirements and affecting small business.

The Statement of Scope for this Emergency Rule, SS 046-20, was approved by the Governor on May 7, 2020, published in Register No. 773B on May 26, 2020, and approved by Secretary of the State of Wisconsin Department of Transportation (Department) Craig Thompson, as required by s. 227.135(2), Stats, on March 16, 2020.

FINDING OF EMERGENCY

The preservation of public welfare necessitates the promulgation of this rule as an emergency rule, pursuant to Section 227.24(1)(a), Stats. The National Highway Traffic Safety Administration (NHTSA) promulgated a final rule, (Odometer Disclosure Requirements, 84 FR 52664 (October 2, 2019), which adopts changes related to odometer reporting exemptions. That regulation was further amended by 84 FR 65017 (November 26, 2019). The changes, effective on January 1, 2021, include exemptions to the reporting requirement based on the model year of the vehicle. Currently, vehicles are subject to odometer reporting requirements for the first 10 years of the vehicle's life. Under the new regulations, vehicles manufactured in or after 2011 will only be exempt from mileage disclosure if the transfer is at least 20 years after January 1 of the calendar year corresponding to the designated model year of the vehicle. Current Wisconsin law does not conform with the recent federal changes to odometer disclosure requirements. This portion of the federal rule affects all states and is intended to further consumer protection against odometer fraud by lessening the interruptions of odometer records. Without an emergency rule, public welfare may be jeopardized by this state's failure to collect an additional ten (10) years of odometer reading records. NHTSA estimates that more than 450,000 vehicles are sold each year with false odometer readings, This crime costs American car buyers more than \$1 billion annually. Reporting and preserving odometer readings deters odometer fraud and allows a prospective buyer to determine the vehicle's value based on its mileage. A delay in Wisconsin adopting this lengthened odometer reporting requirement will result in the loss of approximately 396,023 odometer readings annually.

ANALYSIS

Statutes Interpreted:

Sections 85.16 and 342.155, Stats.

Explanation of Agency Authority:

Section 85.16(1), Stats., authorizes the Secretary of Transportation to, “make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department.”

Section 342.155. requires the department to promulgate administrative rules to, among other things, “identify which vehicles are exempt from the mileage disclosure requirements...” Specifically, section 342.155(c), Stats., identifies areas for which the Department shall promulgate rules related to mileage disclosure requirements of transferors and transferees. The section requires transferors of non-exempt motor vehicles to certify the odometer reading at the time of sale. Additionally, transferors of non-exempt motor vehicles are required to certify whether:

- a) the odometer reading is known to be actual mileage, or
- b) the odometer reading is not the actual mileage and should not be relied upon or
- c) the odometer reading reflects the mileage in excess of the designed mechanical limit.

The transferee is required to submit the odometer statement to the department as part of the title application.

Related Statute or Rule:

Section 342.10, Stats., requires the Department to include on a certificate of title a space for the owner to make the required odometer reading disclosure upon transfer or sale.

Section 342.255 requires the Department to cancel a certificate of title if the odometer of a vehicle for which the Department has issued a certificate of title has been subjected to tampering and return of the certificate of title to the Department is considered necessary to make a notation of that information on the certificate.

Plain Language Analysis:

Chapter Trans 154 establishes the Department’s interpretation of statutes relating to the implementation of the provisions of the federal odometer law, as they affect regulation of vehicle odometer disclosure. The Department proposes to amend Wisconsin Administrative Code ch. Trans 154, relating to odometer disclosure requirements, to conform with federal changes recently adopted by the National Highway Traffic Safety Administration (“NHTSA”) regarding odometer reporting exemptions. The new federal regulation extends the duration of odometer reporting requirement and record retention from ten (10) years, to twenty (20) years. Vehicles having model year 2010 and older will retain their existing exemption from the odometer reading reporting requirement. Vehicles having model year 2011 and newer will be required to report odometer readings at the time of transfer until the vehicles reach twenty years of age. Changes to 49 CFR 580.17 will be effective January 1, 2021 and requires the amendment of Wis. Admin. Code ch. Trans 154. The proposed rule will bring Wisconsin Administrative Code ch. Trans 154 into conformity with the updated federal regulations.

Because vehicles having a model year 10 years old or older are already exempt from reporting odometer readings at time of transfer, the mileage history kept by state law for those vehicles is already incomplete with respect to vehicle transfers occurring after the vehicle became ten years old. Commercial vehicle information services still collect and associate odometer readings with the vehicle, though those readings after 10 years are not part of the vehicle records maintained by states. It will take some time for the odometer readings kept by the state to extend to 20 years.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations :

This rulemaking is intended to conform to federal regulations at 49 CFR 580.17. That federal regulation was amended on October 2, 2019, at 84 FR 52664 to amend the mileage disclosure exemption to vehicles that are 20 years old or older, and later amended at 84 FR 65017 (November 26, 2019) to delay the implementation of that change until January 2020. Prior to those changes, federal regulations exempted vehicles that more than 10 years old were from the odometer disclosure requirements. Because the average age of the United States vehicle fleet has been trending upward to 11.5 years, the percentage of vehicles that are exempted from odometer disclosures was growing, thereby reducing the consumer protection functions intended by the federal Motor Vehicle Information and Cost Savings Act ('Cost Savings Act', 1972) and the Truth in Mileage Act (1996).

Comparison with Rules in Adjacent States:

Illinois.

Illinois exempts vehicles from odometer reporting requirements at 10 years of age. Illinois will need to amend the state statute to extend the 10-year requirement to 20 years starting with 2011 model year to remain compliant with federal law. 625 Ill. Comp. Stat. Ann. 5/3-112.1 provides:

(d) The transferor will not be required to disclose the current odometer reading and the transferee will not have to acknowledge such disclosure under the following circumstances:

...

(3) A vehicle that is 10 years old or older;

A spokesperson for Illinois Vehicle Services Department stated, "we will be seeking legislation on this issue next year. We ended up having an abbreviated legislative session this year due to COVID and unfortunately odometer legislation wasn't at the forefront of that session! We will be conforming to the new requirements, operating under the dictate that federal law takes precedence."

Iowa.

Effective January 1, 2021, Iowa repealed its odometer readings exemption for vehicles that are 10 years old, instead requiring reporting for all vehicles, "unless an exemption applies under 49 CFR 580.17." Iowa has not yet updated their administrative rules, but will be updating Iowa Administrative Code 761-400.52.

Michigan.

Michigan exempts vehicles from odometer reporting requirements at 10 years of age. Michigan will need to amend the state statute to extend the 10-year requirement to 20 years, starting with 2011 model year to remain compliant with federal law. (MCL 257.233a(5)) provides:

(5) The odometer information described in subsection (1) shall not be required for any of the following:

(c) A vehicle that is 10 years old, or older.

Minnesota.

Minnesota exempts vehicles from odometer reporting requirement consistent with 49 CFR 580.17, “as amended through October 1, 1998”, which then exempted vehicles 10 years old. Minn. Stat. Ann. § 325E.15 (West)

A spokesperson for Minnesota said, “Minnesota will be seeking legislation on this issue next year. Minnesota had an abbreviated legislative session this year due to COVID and unfortunately odometer legislation wasn’t at the forefront of that session. Minnesota will be conforming to the new requirements, operating under the dictate that federal law takes precedence.

Minnesota will also be requesting legislation to address the federal odometer changes. We originally attempted to have legislation introduced during our first special session this summer, but the legislative agenda was focused on COVID-19. The current odometer statute in Minnesota references the federal code of regulations, and is very specific to calling out the code from October 1, 1998 (Minnesota Statutes 325E.15 Transfer of Motor Vehicle; Mileage Disclosure). The requested legislative change is to eliminate the reference to the October 1, 1998, federal code and strike the language that requires written / wet signature (allow for future e-signatures). Since the federal code for odometer has changed a number of times since 1998, we have had a gap in our compliance to state statute for a while.

The current operating system, MNLARS, is hard programmed to not accept mileage for vehicles older than 10 years. However, we are in the process of modernizing our operating system w/a COTS solution from Fast Enterprises and will be going live on November 16, 2020. One of the requirements that we have programmed for the new system, MNDRIVE, is to accept mileage for vehicles older than 10 years. So, we should be in good shape w/ the federal compliance requirement on January 1, 2021.”

Summary of the Factual Data and Analytical Methodologies:

The factual data and methodologies were stated in the federal rulemaking notices published in the Federal Register at 84 FR 52664 (October 2, 2019) and at 84 FR 65017 (November 26, 2019). As stated above, the primary reason for extending the odometer reporting requirement is the increasing longevity of newly manufactured vehicles and the resulting increasing age of the nation’s vehicle fleet.

Analysis Regarding Rule’s Effect on Small Businesses:

In 2018, the most recent complete calendar year data available, DMV processed 396,023 title transactions involving vehicles 10 to 20 years old that, under this proposed rulemaking, would now require an odometer statement. This accounts for 19% of all title transactions for trucks and autos.

Assumptions:

- 1 odometer statement requires an administrative burden of 1 minute.
- The WI fleet would remain consistent moving forward in regard to size and relative age.
- The administrative burden is reflective of when the rule is fully implemented in 10 years.

396,023 annual title transaction results in 396,023 minutes or 6,600 hours of administrative burden annually.

According to NHTSA data, 16% of vehicles over 10 years old are sold by motor vehicle dealers. When the Rule is fully implemented, the estimated annual administrative burden for motor vehicle dealers in Wisconsin would be an estimated (6,600 * 16%) 1,056 hours.

Agency Contact Person:

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

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Place Where Comments Should Be Submitted and Deadline :

Comments may be submitted to the agency contact person listed above or through the Legislature's Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF RULE

Section 1. Trans 154.05 (3) is repealed and recreated to read:

Trans 154.05 (3) A vehicle manufactured in or before the 2010 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year.

Note: Vehicles with model year 2010 or older are exempt for transfers after January 1, 2020.

Section 2. Trans 154.05 (4) is created to read:

Trans 154.05 (4) A vehicle manufactured in or after the 2011 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year

Note: For vehicle transfers occurring during calendar year 2031, model year 2011 or older vehicles are exempt. Vehicles with model year 2011 and newer are not exempt until 20 years after their model year.

SECTION 3. EFFECTIVE DATE. This rule shall take effect on January 1, 2021 and first applies to vehicle transfers completed on that date. This rule shall remain in effect as provided in s. 227.24, Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2020.

Craig Thompson, Secretary
State of Wisconsin Department of Transportation