

**ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Transportation adopts an emergency order amending TRANS 325.02(intro.) and (8), 326.01(intro.) and (8), 327.03(intro.) and (7), and 327.09(6)(note); and creating TRANS 325.02(7g) and (7r), 326.01(7m) and 327.03(11), relating to motor carrier safety, and hazardous material transportation safety.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 110.075 and Ch. 194, Stats.

Statutory authority: s. 110.075 and Ch. 194, Stats.

Explanation of agency authority: The Department of Transportation sets standards and adopts rules to establish a plan of inspection to implement the inspection program. It is the duty of the Department to prescribe rules and regulations as to safety and operations and the hours of labor of drivers of motor vehicles operated under the authority of these chapters.

Related statute or rule: ss. 110.07, Stats.

Plain language analysis: As prescribed by state statute, the Department is mandated to regulate both intrastate and interstate transportation of property and passengers by commercial motor vehicles. It is in the best interest of the public when current regulations are used for enforcement of these regulations.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Trans 325 (Interstate Motor Carrier Safety regulations) adopts Federal regulations 49 CFR part 385, subpart C (Certification of Safety Auditors, Safety Investigators and Safety Inspectors) and parts 390 to 393 and 395 to 397. Trans 326 (Motor Carrier Safety Requirements for Transportation of Hazardous Materials) adopts Federal Regulations 49 CFR parts 107, 171-173, 177, 178, 180 and 385, subpart E (Hazardous Materials Safety Permits). Trans 327 (Motor Carrier Safety) adopts Federal regulations part 385, subpart C, (Certification of Safety Auditors, Safety Investigators and Safety Inspectors), parts 40, 390-general, except 390.23(a)(3); 391-general except 391.11(b)(1) and 391.41(b)(3), 391.41(b)(10); 392 except 392.16; 393-general except 393.42 shall not apply to vehicles placed in operation in common, contract or private carriage prior to June 1, 1987; 395, general-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 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; and (d) after having been on duty for 80 hours in any period of 8 consecutive days, and parts 396 and 397.

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 continues to do ongoing research into vehicle equipment, driver safety, carrier authority and hazardous materials. Its research, coupled with the input from the motor carrier industry, resulted in ongoing updates to federal regulations for interstate commerce. It is imperative the same regulations are enforced from state to state.

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: This rule making will have no significant adverse effect on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@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, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Copies of Emergency Rule: Requests for copies of the emergency rule should be submitted to Lt. Patricia Hansen, Department of Transportation, Division of State Patrol, Bureau of Field Services, Room 551, P. O. Box 7912, Madison, WI 53707-7912. You may also contact Lt. Hansen by phone at (608) 266-0094.

To view the emergency rule, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF EMERGENCY RULE

SECTION 1. Trans 325.02(intro.) is amended to read:

Trans 325.02 Federal rules adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on January 1, ~~2006~~ 2008, as amended, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 2. Trans 325.02(7g) and (7r) are created to read:

Trans 325.02(7g) Title 49, Code of Federal Regulations, part 385, subpart C, certification of safety auditors, safety investigators and safety inspectors.

(7r) Title 49, Code of Federal Regulations, part 387, as it pertains to the financial responsibility requirements applicable to commercial motor vehicles that are subject to the provisions of 392.9a.

SECTION 3. Trans 325.02(8) is amended to read:

Trans 325.02(8) 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 ~~2006~~ North American uniform out-of-service criteria.

NOTE: The North American Uniform Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol.~~ Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, ~~5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.

NOTE: Federal regulations may be obtained through the Internet via:

<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

SECTION 4. Trans 326.01(intro.) is amended to read:

Trans 326.01 Federal rules adopted. (intro.) The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on January 1, ~~2006~~ 2008, as amended, are adopted by the department and shall be enforced in relation to those carriers, drivers or vehicles to which these federal rules apply in the same manner as though the regulations were set out in full in this chapter:

SECTION 5. Trans 326.01(7m) is created to read:

Trans 326.01(7m) Title 49, Code of Federal Regulations, part 385, subpart E, hazardous materials safety permits.

SECTION 6. Trans 326.01(8) is amended to read:

Trans 326.01(8) 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 ~~2006~~ North American uniform out-of-service criteria.

NOTE: The North American Uniform Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol.~~ Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, ~~5430 Grosvenor Lane,~~

Suite 130, Bethesda, MD 20814 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.

NOTE: Federal regulations may be obtained through the Internet via:
<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

SECTION 7. Trans 327.03(intro.) and (7) are 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 October 1, ~~2006~~ 2008, as amended, 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:

(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 ~~2006~~ North American uniform out-of-service criteria.

NOTE: The North American Uniform Out-of-Service Criteria is on file with the ~~offices of the Revisor of Statutes, the Secretary of State, and the Department of Transportation, Division of State Patrol.~~ Copies may be obtained by writing to the Division of State Patrol, P. O. Box 7912, Madison, WI 53707-7912, or to the Commercial Vehicle Safety Alliance, ~~5430 Grosvenor Lane, Suite 130, Bethesda, MD 20814~~ 1101 17th Street, NW, Suite 803, Washington, DC 20036, or by calling 202-775-1623. You may also request copies via their website at cvsahq@cvsa.org.

NOTE: Federal regulations may be obtained through the Internet via:
<http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp>

SECTION 8. Trans 327.03(11) is created to read:

Trans 327.03(11) Title 49, Code of Federal Regulations, part 385, subpart C, certification of safety auditors, safety investigators and safety inspectors.

SECTION 9. Trans 327.09(6)(note) is amended to read:

Trans 327.09(6)(note) Note: Declarations can be faxed to (608) ~~266-4495~~ 227-9600.

(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety or welfare. Recently enacted commercial motor carrier safety regulations apply to drivers and carriers transporting property and passengers by commercial vehicles in interstate commerce and enhance highway safety. It is imperative the industry operates under a single set of safety regulations to minimize confusion that could result in inadvertent noncompliance or application of an outdated safety standard. Also pursuant to 49 CFR 350.331(d), States are required to adopt compatible laws or rules to remain eligible for Motor Carrier Safety Assistance Program funding. Currently, Wisconsin receives approximately \$4 million in such funding, which is used to administer various highway safety programs, and that funding and the safety programs it supports will be in jeopardy if Wisconsin does not implement these changes immediately. The Motor Carriers Association has urged the Department to implement these changes as it will help ensure uniformity and increased highway safety.

Effective Date. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24(1)(c), Stats.