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JUN 20 2000

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STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 00-072

The Wisconsin Department of Transportation proposes an order to renumber TRANS 327.09(6); amend TRANS 327.03(intro.) and (2); and create TRANS 327.09(6)(b), relating to motor carrier safety requirements.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOE MAASSEN
Deputy General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
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P. O. Box 7910
Madison, WI 53707-7910
(608) 266-7364

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats.
STATUTES INTERPRETED: ss. 110.07 and 110.075, and ch. 194, Stats.

General Summary of Proposed Rule. 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 go into effect on October 1, 2000. 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, 396 and 397 which contains exceptions and hours-of-service requirements currently found in this chapter.

Fiscal Impact. 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.

Copies of Proposed Rule. Copies of the proposed rule may be obtained upon request, without cost, by writing to Lyle Walheim, Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 264-9963. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.07, 110.075, 194.38, 194.43 and 227.11, Stats., the department of transportation hereby proposes to amend a rule interpreting ss. 110.07 and 110.075, and ch. 194, Stats., relating to motor carrier safety requirements.

SECTION 1. Trans 327.03(intro.) and (2) 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 ~~November~~ October 1, 1994 2000, 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:

(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 licensed 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 motor vehicle, ~~and 391.69;~~

SECTION 2. Trans 327.09(6) is renumbered Trans 327.09(6)(a).

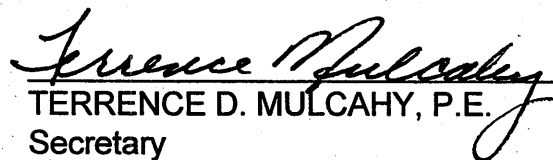
SECTION 3. Trans 327.09(6)(b) is created to read:

Trans 327.09(6)(b) Drivers returning to normal duty following the end of a declared emergency and when s. Trans 327.05 hours of service have been exceeded shall be off duty for at least 24 consecutive hours.

(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), Stats.

Signed at Madison, Wisconsin, this 12 day of June, 2000.


TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL STAFF



RULES CLEARINGHOUSE

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PART=3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-072

AN ORDER to renumber Trans 327.09 (6); to amend Trans 327.03 (intro.) and (2); and to create Trans 327.09 (6) (b), relating to motor carrier safety requirements.

Submitted by **DEPARTMENT OF TRANSPORTATION**

04-10-00 RECEIVED BY LEGISLATIVE COUNCIL.

04-28-00 REPORT SENT TO AGENCY.

RNS:DLS:rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

PART 4
CR 00-072

ANALYSIS OF FINAL DRAFT OF TRANS 327

(a) **Need for Amended Rule.** 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 go into effect on October 1, 2000. 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, 396 and 397 which contains exceptions and hours-of-service requirements currently found in this chapter.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on May 11, 2000. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared and registered for information at the hearing:

Jodi Jensen, Manager of State & Local Public Affairs, Alliant Energy Corp., P. O. Box 192, Madison, WI 53701-0192.

Barry McNulty, Legislative Liaison, Wisconsin Electric, 321 West Michigan Street, Milwaukee, WI 53201.

(d) **Response to Legislative Council Recommendations.** The Legislative Council report contained no recommendations.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule will have no adverse impact on small businesses.

Trans 327.09(6)

(6) 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) (c). 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.

Trans 327.03 Federal regulations adopted. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on November 1, 1994, 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:

Trans 327.03(2)

(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 licensed 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 motor vehicle, and 391.69;



ALLIANT ENERGY

August 17, 2000

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The Honorable Jeff Stone
Chair, Assembly Committee on Highway Safety
P.O. Box 8953
Madison, WI 53708-8953

Dear Representative Stone:

This letter is in regards to the Wisconsin Administrative Rule CR-00-72, which you now have jurisdiction over in your Assembly Committee on Highway Safety.

On behalf of Alliant Energy, I want to express our gratitude for your assistance in extending the time frame we have had to work in, regarding analyzing and responding to this rule. After extensive consideration, our difficulties with the rule remain. However, we are unable to find that other utility line service providers share these perceived problems: therefore, this letter is to communicate our concerns, but to also communicate to you that we recognize there is little to no consensus for delaying the adoption of CR-00-72 any further.

As you recall CR-00-72 would "federalize" the Hours of Service rule the DOT presently has in place, requiring that all truck drivers operating with Commercial Drivers Licenses, may not drive if they have worked 70 hours or more in any period of 7 consecutive days.

Problems for Alliant Energy can arise when larger, potentially catastrophic emergencies strike the communities we serve. The recent severe windstorm in Janesville on August 5 serves as an excellent example. The storm tore through the outskirts and city of Janesville around 3 in the afternoon with 80 mile per hour straight-line winds. 18,000 customers were without power, there were nearly 100 broken poles and many more damaged, and as you can imagine there was extensive tree and property damage. At our peak, we had 115 line workers repairing and cleaning up damage, both in our service territory and assisting the over-burdened municipal utility crews serving the city of Evansville. By late Tuesday all those who could be restored to power were restored, all without a single accident.

Under the proposed rule, our crews would have worked at minimum a 40 hour week when they arrived to respond to the emergency call Saturday afternoon. Crews worked around the clock, into late Sunday, so by Sunday evening linemen were reaching or breaking the 70 hour in 7 day limit. Because this was an emergency, Alliant Energy crews were (and would continue to be under this proposed rule change) exempt for the

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duration of the emergency from the HOS rule. However, as our teams entered Tuesday, some began to be sent home to get rest as the day progressed and as the emergency was lifted in more and more areas, and here is where the 24 hour rule will begin to cause management problems.

Alliant Energy drew on all of its crews from the Janesville service region, and brought in additional crews from outside that area. As crews went home mid-day Tuesday, had the 24 hour rule been in effect, our personnel would not have been able, in reality, to return to work until Thursday – not Wednesday – morning. Had they returned Wednesday, they would have had breaks ranging from 12 to 18 hours. Our service crews staff a regular first-shift operation, where new hookups, new construction, and ongoing maintenance service throughout our service territory is conducted in a planned way. Our emergency response is conducted as a round the clock on-call system, where employees rotate on and off the call list.

Alliant Energy's scheduled work for Janesville and the surrounding regions we borrowed crews from were delayed due to the storm and our response to it; the 24 hour rule will make employee scheduling and management even more problematical, forcing us to shift additional personnel from other regions – at an increased cost – to cover for the employees prohibited from working due to the road safety rule. The rule will unreasonably increase the "ripple" effect of the storm on our staffing patterns, affecting both our scheduled maintenance and our on-call emergency scheduling over a wide region. Alliant Energy will continue to respond efficiently, effectively, and safely, to our customers; this rule seems an unnecessary nuisance that only adds to our costs while providing little real discernable benefit to the public.

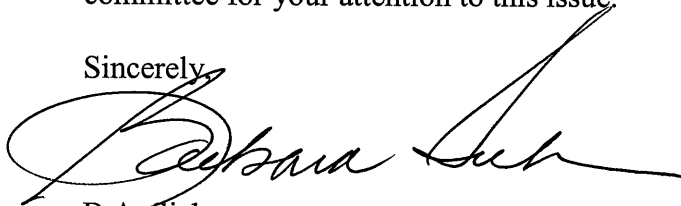
Alliant Energy's commitment – like that of every public utility in Wisconsin – to highway – and employee – safety is unquestionable. Our service managers and our line crews emphasize safety in the workplace, with training and safety programs. Nationally, utility operations like ours typically have accident rates of 50 accidents per 100 million miles driven, well below the still enviable rate of 230 accidents for the same number of miles driven for private contract carriers.

On the Federal level Alliant Energy is joining many other public utilities, opposing the USDOT proposed rules that would further regulate Hours of Service (HOS). Our concerns with CR-00-72 are consistent with our concerns with the Federal proposed rules. We are seeking on the Federal level an exemption from HOS regulations, since our services so strongly resemble the public services provided by emergency responders that are now exempted from the same rules.

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I hope the above outlines our concerns, and if you have any questions, please feel free to contact me at (608) 252-3013. Again, I want to thank you and the members of the committee for your attention to this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "B.A. Siehr". The signature is written in black ink and is positioned above the printed name and title.

B.A. Siehr
General Manager – Customer Operations

cc: Members, Assembly Committee on Highway Safety