

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 02-080

The Wisconsin Department of Transportation proposes an order to renumber TRANS 327.01(2)(c) and (4), 327.03(1) and (3) to (6); renumber and amend TRANS 327.01(2)(d), 327.03(2) and (5), 327.05(5) and (6), and 327.09(6); amend TRANS 327.03(intro.); and create TRANS 327.01(2)(c), (e) and (g), 327.03(1), (2) and (9), 327.05(5)(b) and (c), (6)(b)1. and 2. and 327.09(6) to (13), 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:



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Deputy General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
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P. O. Box 7910
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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 in effect on November 1, 2002. 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.

In addition, the adoption of Trans 327 will give the Department the authority to use federal standards by which traffic officers and state patrol inspectors declare vehicles and drivers out of service. The offices of the Attorney General and the Revisor of Statutes Bureau have consented to the incorporation by reference of the revised North American Uniform Out-of-Service Criteria under the provision of § 227.21(2), Stats.

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 Charles Teasdale, 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 327.01(2)(c) is renumbered Trans 327.01(2)(d).

SECTION 2. Trans 327.01(2)(c) is created to read:

Trans 327.01(2)(c)1. "Driver salesperson" means any employee who meets all of the following:

a. Is employed by a private carrier of property by commercial motor vehicle solely for that purpose.

b. Is engaged in both selling goods, services or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed.

c. Does the actions under subd. 1.b. entirely within a radius of 100 miles of the point at which he or she reports for duty.

d. Spends not more than 50% of his or her hours on duty in driving a vehicle under this paragraph.

2. For purposes of this paragraph, "selling goods" means soliciting or obtaining reorders or new accounts. The term may include other selling or merchandising activities designed to retain a person as a customer or to increase the sale of goods or services.

SECTION 3. Trans 327.01(2)(d) is renumbered Trans 327.01(2)(f), and Trans 327.01(2)(f)3., as renumbered, is amended to read:

Trans 327.01(2)(f)3. All driving time as defined in par. ~~(b)~~ subd. 2.;

SECTION 4. Trans 327.01(2)(e) and (g) are created to read:

Trans 327.01(2)(e) "Ground water well drilling rig" means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating

equipment, including water well drilling and pump service rigs equipped to access ground water.

(g) "Transportation of construction materials and equipment" means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of hazardous material under 49 U.S.C. 5103 in a quantity requiring placarding.

NOTE: An active construction site is a construction site between mobilization of equipment and materials to the site to the final completion of the construction project.

SECTION 5. Trans 327.01(4) is renumbered Trans 327.01(2)(h).

SECTION 6. Trans 327.03(intro.) is amended to read:

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 ~~October 1, 2000~~ November 1, 2002, 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 7. Trans 327.03(1) is renumbered Trans 327.03(3).

SECTION 8. Trans 327.03(1) is created to read:

Trans 327.03(1) Title 49, Code of Federal Regulations, part 382, federal motor carrier safety regulations--controlled substances and alcohol use and testing;

SECTION 9. Trans 327.03(2) is renumbered Trans 327.03(4) and amended to read:

Trans 327.03(4) 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;

NOTE: Refer to ch. Trans 112 for criteria requiring cancellation/voluntary temporary surrender of the CDL for medical purposes.

SECTION 10. Trans 327.03(2) is created to read:

Trans 327.03(2) Title 49, Code of Federal Regulations, part 40--procedures for transportation workplace drug and alcohol testing programs;

SECTION 11. Trans 327.03(3) and (4) are renumbered Trans 327.03(5) and (6).

SECTION 12. Trans 327.03(5) is renumbered Trans 327.03(7) and amended to read:

Trans 327.03(7) Title 49, Code of Federal Regulations, part 396, inspection, repair and maintenance, ~~except 396.17, 396.19, 396.21, 396.23 and 396.25;~~

SECTION 13. Trans 327.03(6) is renumbered Trans 327.03(8).

SECTION 14. Trans 327.03(9) is created to read:

Trans 327.03(9) 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 2002 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.

SECTION 15. Trans 327.05(5) is renumbered Trans 327.05(5)(a) and amended to read:

Trans 327.05(5)(a) Every motor carrier shall require every driver used by the motor carrier to record the driver's duty status for each 24-hour period. ~~All drivers' records of duty status shall be maintained by each motor carrier for a period of 6 months. Every driver who operates a motor vehicle shall record the driver's duty status for each 24-hour period. Upon request of a traffic officer or state patrol inspector, each driver shall produce the driver's duty status record covering the current 24-hour period.~~ Failure to complete the record of duty activities of this section, failure to preserve a record of such duty activities, or making of false reports in connection with such duty activities shall constitute a violation of this chapter.

SECTION 16. Trans 327.05(5)(b) and (c) are created to read:

Trans 327.05(5)(b) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of 6 months from the date of receipt of the duty status and reporting documents.

(c) The driver shall retain a copy of each record of duty status for the previous 7 consecutive days which shall be in the driver's possession and available for inspection while on duty.

NOTE: The maintenance and retention of separate driving logs is not necessarily required to meet the 'records of duty status' provisions of this subsection. This subsection does, however, require records showing all off-duty, on-duty and driving time. A time card, for example, that recorded the daily total of off-duty, the daily total of on-duty, and the daily total of driving time for the employee could be used to meet the reporting requirements of this subsection.

SECTION 17. Trans 327.05(6) is renumbered Trans 327.05(6)(a) and amended to read:

Trans 327.05(6)(a) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized, except in the case of an emergency, to declare a driver out of service and to notify the motor carrier of that declaration, upon finding at the time and place of examination that a the driver has been driving or been on duty in excess of the maximum period permitted in sub. (2) violated par. (b).

SECTION 18. Trans 327.05(6)(b)1. and 2. are created to read:

Trans 327.05(6)(b)1. No driver shall drive after being on duty in excess of the maximum periods permitted by sub. (3).

(b)2. No driver required to maintain a record of duty status under sub. (5) 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 19. Trans 327.09(6) is renumbered Trans 327.09(13) and Trans 327.09(13)(a), as renumbered, is amended to read:

Trans 327.09(13)(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)(e)(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.

NOTE: Declarations can be faxed to (608) 266-4495.

SECTION 20. Trans 327.09(6) to (12) are created to read:

Trans 327.09(6) The provisions of s. Trans 327.05(3)(c) and (d) do not apply to any driver salesperson whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

(7) The provisions of s. Trans 327.05(3) do not apply with respect to drivers of commercial motor vehicles engaged solely in making local deliveries from retail stores or retail catalog businesses, or both, to the ultimate consumer, when driving solely within a 100 air mile radius of the driver's work reporting location, during the period from December 10 to December 25, both inclusive, of each year.

(8) The provisions of s. Trans 327.05(3) do not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a state if the transportation:

(a) Is limited to an area within a 100 air mile radius from the source of the commodities or the distribution point for the farm supplies.

(b) Is conducted during the planting and harvesting seasons within the state, as determined by the state.

(9) In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(10) In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7

or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(11) In the instance of a driver of a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(12)(a) In the instance of drivers of commercial motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off duty period of 24 or more successive hours.

(b) In the case of specially trained drivers of commercial motor vehicles which are specially constructed to service oil wells, on duty time may not include waiting time at a natural gas or oil well site, provided that all such time shall be fully and accurately accounted for in records to be maintained by the motor carrier. The records shall be made available upon request of a traffic officer or state patrol inspector.

(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 10th day of January, 2003.



Frank J. Busalacchi

Secretary

Wisconsin Department of Transportation



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

**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 02-080

AN ORDER to renumber TRANS 327.01 (2) (c) and (4) and 327.03 (1) and (3) to (6); to renumber and amend TRANS 327.01 (2) (d), 327.03 (2) and (5), 327.05 (5) and (6) and 327.09 (6); to amend TRANS 327.03 (intro.); and to create TRANS 327.01 (2) (c), (e) and (g), 327.03 (1), (2) and (9), 327.05 (5) (b) and (c) and (6) (b) 1. and 2. and 327.09 (6) to (13), relating to motor carrier safety requirements.

Submitted by **DEPARTMENT OF TRANSPORTATION**

06-03-2002 RECEIVED BY LEGISLATIVE COUNCIL.

06-21-2002 REPORT SENT TO AGENCY.

RNS:DLS

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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-080

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. The definition of "Driver salesperson" is s. Trans 327.01 (2) (c) 1. would be clearer if it were subdivided and rewritten as follows:

1. "Driver salesperson" means any employee who meets all of the following:

a. Is employed by a private carrier of property by commercial motor vehicle solely for that purpose.

b. Is engaged in both selling goods, services or the use of goods, and in delivering by commercial motor vehicle the goods sold or provided or upon which the services are performed.

c. Does the actions under subd. 1. b. entirely within a radius of 100 miles of the point at which he or she reports for duty.

d. Spends not more than 50% of his or her hours on duty in driving a vehicle under this paragraph.

2. For purposes of this paragraph, "selling goods" means soliciting or obtaining reorders or new accounts. The term may include other selling or merchandising activities designed to retain a person as a customer or to increase the sale of goods or services.

- b. In s. Trans 327.05 (5) (b), "of the duty status and reporting documents" should be inserted before the final period.
- c. In s. Trans 327.09 (13) (a), the fax number should be placed in a note.
- d. In s. Trans 327.09 (6) to (8), "s. Trans" should be inserted before the cross-references.
- e. In s. Trans 327.09 (8) (intro.) and (b), "such" should be replaced by an article like "the."

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 in effect on November 1, 2002. 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.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on July 9, 2002. 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/registered at the hearing:

William Vickery, Division Administrator, Federal Motor Carrier Safety Administration, 567 D'Onofrio Drive, Suite 101, Madison, WI—registered for information.

Raymond Lukesic, Safety Specialist, Federal Motor Carrier Safety Administration, 567 D'Onofrio Drive, Madison, WI—registered for information.

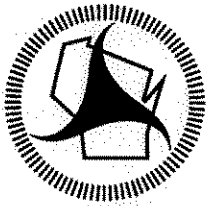
Robert W. Christian, Executive Director, Wisconsin School Bus Association, P. O. Box 168, Sheboygan, WI 53081—spoke in favor of the rule.

The written comment period was held open until close of business the day of the hearing. The Department received a written comment from Tom Walker, Executive Director, Wisconsin Transportation Builders Association. In response to WTBA's written comments, a note was added to s. 327.05(5) in an attempt to clarify the record keeping requirements mandated by that section.

(d) **Response to Legislative Council Recommendations.** The Legislative Council made five recommendations, all of which have been incorporated into the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule will have minimal adverse impact on small businesses.

FILE COPY



Wisconsin Department of Transportation
www.dot.wisconsin.gov

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Governor

Frank J. Busalacchi
Secretary

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The Honorable Alan Lasee
President, Wisconsin State Senate
Room 219 South, State Capitol
Madison, Wisconsin 53707

January 14, 2003

The Honorable John Gard
Speaker, Wisconsin State Assembly
Room 215 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 327**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 02-080

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **02-080**, relating to **motor carrier safety requirements**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson (Deputy Revisor of Statutes)/Senator Joseph Leibham/
Representative Glenn Grothman/David Collins/Lt. Chuck Teasdale

Lindstedt, Daniel

From: Sen.Leibham
Sent: Tuesday, January 21, 2003 7:56 PM
To: Breske, Roger; Kedzie, Neal; Leibham, Joseph; Meyer, Mark; Sen.Breske; Sen.Kanavas; Sen.Kedzie; Sen.Leibham; Sen.Meyer
Cc: Lindstedt, Daniel; Natzke, Ryan; Phillips, Matt; Piliouras, Elizabeth; Shepherd, Jeremey
Subject: Senate Committee on Transportation and Information Infrastructure - Receipt of Rule 02-080

DATE: Wednesday, January 22, 2003

TO: Honorable Members of the Senate Committee on Transportation and Information Infrastructure
FROM: Senator Joe Leibham
RE: Receipt of Clearinghouse Rule

The following Clearinghouse Rule has been referred to the Senate Committee on Transportation and Infrastructure:

Clearinghouse Rule 02-080 (CR 02-080) relating to motor carrier safety requirements.

The deadline for action on this rule is Friday, February 14, 2003.

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 in effect on November 1, 2002. 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.

Attached is a copy of CR 02-080 in .pdf format and is also available on FOLIO. Hard copies are available from the Committee Chair, upon request.



02-080-0.pdf