

Clearinghouse Rule 09-113

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

The Wisconsin Department of Transportation proposes an order to create ch. Trans 148, relating to electronic recording and release of liens by non-individual creditors.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 342.19(2)(a), 342.20(2) and (3), 342.22(1) and (2), and 342.245, Stats.

Statutory authority: ss. 342.245(3) and (4), Stats.

Explanation of agency authority: Section 342.245 of the Wisconsin Statutes requires a secured party to use an electronic process prescribed by the Department of Transportation to file a security interest statement, and deliver a release of a security interest in a motor vehicle and to pay a fee for those actions. The Department may, by rule, exempt a person or a type of transaction from those requirements, except that any person who is exempted shall pay a fee to the department for processing applications and releases submitted by the person utilizing a process other than an electronic process. The statutes require the Department to promulgate rules to implement and administer these requirements. This rulemaking does that.

Related statute or rule: ss. 85.16(1), 227.11, 342.19(2), 342.20(2) and (3), 342.22(1) and (2), 342.245, Stats.

Plain language analysis: 2009 Wis. Act 28 created s. 342.245, Stats., and amended related provisions, to require secured parties that are not individuals to file a security interest in a vehicle utilizing an electronic process prescribed by the Department. Act 28 also authorizes the Department to exempt a person or a type of transaction from that requirement. Act 28 requires the Department to promulgate administrative rules to implement and administer the statute.

In this rule making, the Department proposes policies and procedures to implement the requirement that non-individual secured parties file a security interest statement electronically. The Department uses as a model ch. Trans 141, which requires licensed motor vehicle dealers to process title transactions using an electronic process prescribed by the Department.

Similar to policies established in ch. Trans 141, the Department, in ch. Trans 148, proposes to exempt from the requirement of electronic filing of security interest statement a secured party that has filed fewer than 49 security interest statements on Wisconsin motor vehicle titles during the previous calendar year. The proposed rule states that the Department may deny a secured party the authority to file and release security interest

statements electronically based on the secured party's inadequate performance. As required by s. 342.245, Stats., and following the model of ch. Trans 141, the Department proposes to charge a \$5 fee per transaction for processing applications submitted by secured parties not required to process electronically, and the \$5 fee and a \$20 surcharge per transaction for processing applications submitted by secured parties not authorized to process electronically and by non-exempt secured parties that fail to comply with the law.

The Department proposes to exempt two types of transactions from the requirement that a secured party must file security interest statements electronically and, for these specifically exempted security interest transactions, the Department shall not charge a secured party a processing fee. First, if the security interest statement is being filed as part of a certificate of title transaction for a vehicle; and second, if the security interest statement is part of a transaction that is prohibited from successful electronic transaction because of an express limitation on the vehicle title or customer record, or on the e-MV Agent internet-based web application or APPS.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulations govern the process covered in the proposed rule.

Comparison with Rules in the Following States:

Michigan: Michigan has no requirement, allowance, or means for a secured party to electronically file security interest statements.

Minnesota: Minnesota has no requirement or allowance for a secured party to electronically file security interest statements. Minnesota at one time had such a pilot program; however, Minnesota has discontinued this practice.

Illinois: Illinois has no requirement, allowance, or means for a secured party to electronically file security interest statements.

Iowa: Iowa has no requirement, allowance, or means for a secured party to electronically file security interest statements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Since 2007, all licensed motor vehicle dealers are required to process title and registration transactions. This law is implemented in chs. Trans 141 and Trans 156.

While financial institutions affected by ch. Trans 148 are of course different from motor vehicle dealers, many of the issues involved in electronically processing transactions and updating the DMV database are the same. For example, all transactions are subject to the same federal and state privacy laws and DMV security procedures. All transactions utilize the same methods of payment to DMV.

Therefore, the Department uses chs. Trans 141 and Trans 156 as a basis for ch. Trans 148, with changes as needed to address the different needs of secured parties.

Analysis and supporting documentation used to determine effect on small businesses: The Department has analyzed the number of security interests listed on motor vehicle titles, by non-individual secured party, for calendar year 2008. There are more than 15,700 different secured parties that have current liens listed on motor vehicle titles.

The Department then excluded from the count security interests that were added as part of a title transaction (generally, a vehicle purchase in which the buyer obtained a loan). Of the total 15,700 secured parties, only about 2,080 secured parties listed security interests that are not part of a title transaction. Of the 2,080, only 433 secured parties listed 50 or more security interests, not part of a title transaction, in 2008. The 433 secured parties that listed 50 or more security interests are responsible for a total of 95,489 security interests not part of a title transaction. This is 88% of all security interests that are not part of a title transaction listed in calendar year 2008. The remaining 1,647 secured parties listed only 13,311 security interests not part of a title transaction, or 12% of all non-title security interests listed in 2008.

Therefore, the Department has concluded that a cut-off of 48 or fewer non-title transactions is a reasonable number. This number is the same number of sales which exempt a motor vehicle dealer from requirements under ch. Trans 141, making program administration and communication with DMV's business partners easier while, at the same time, this number captures a very large share of the security interest filing volume.

In this proposed rule, the Department proposes the exemption cut-off at 48 or fewer non-title security interests listed during the previous calendar year.

Effect on small business: Most non-individual secured parties are financial institutions, located in and outside Wisconsin. Virtually all financial institutions maintain their records in electronic format and possess computers and access to the Internet. On the other hand, the Department recognizes that some small businesses do not possess this capability.

While there is not a direct connection between the size of the business and the amount of business done with the Department, the Department believes that this is an adequate measure of a small business for which it may be difficult to purchase necessary hardware and software, or to hire sufficient staff to manage electronic security interest statement filing. Therefore, the proposed rule exempts secured parties that have filed 48 or fewer security interest statements in motor vehicles during the previous calendar year.

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: 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.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

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 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 Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

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 148 is created to read:

ELECTRONIC RECORDING AND RELEASE OF LIENS

BY NON-INDIVIDUAL CREDITORS

Trans 148.01 Purpose and scope. This chapter interprets ss. 342.19(2)(a), 342.20(2) and (3), 342.22(1) and (2), and 342.245, Stats., which require a non-individual secured party to use an electronic process prescribed by the department whenever filing a security interest statement or lien release with the department and to pay fees for such use, unless exempted by the department by rule.

Trans 148.02 Definitions. The words and phrases defined in s. 340.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided.

In this chapter:

(1) "APPS" means the automated processing partnership system program established by the DMV, in which DMV contracts with agents and vendors to provide vehicle registration and titling services.

(2) "Certificate of title" or "title" means the certificate of title for a vehicle as required in ch. 342, Stats.

(3) "Department" means the Wisconsin department of transportation.

(4) "DMV" means the Wisconsin department of transportation division of motor vehicles.

(5) "Exempt" means that a non-individual secured party is not required or not authorized to file and release security interest statements electronically.

(6) "Motor vehicle dealer" or "dealer" means a motor vehicle dealer as defined in s. 218.0101(23), Stats.

(7) "Vendor" means a person, business or organization that contracts with the DMV to provide a host computer system by which agents may obtain access to specified information services of the DMV in order to process registration and title transactions or file security interest statements electronically.

Trans 148.03 Requirement to file and release security interest statement electronically. (1) Unless exempt under s. Trans 148.06, a non-individual secured party shall file all its security interest statements and release all its security interests on Wisconsin vehicle titles electronically as an update to the vehicle title record in the DMV database.

(2) A non-individual secured party that is releasing security interests and filing security interest statements on a vehicle that is not being transferred shall use either the e-

MV Agent Internet-based web application established by the department or the vendor provided interface under the APPS program, as authorized under s. Trans 148.04.

(3) A secured party who is processing an application for a certificate of title as an agent in the APPS program under ch. Trans 156 may file the security interest statement as part of title processing, as authorized under s. Trans 148.04. In the event that a security interest is part of a certificate of title application that a motor vehicle dealer is processing under ch. Trans 141 or ch. Trans 156, or that the DMV is processing, the secured party is required to release the security interest electronically.

(4) A non-individual secured party using DMV's e-MV Agent Internet-based web application shall apply to the DMV on the DMV application form and shall comply with all applicable requirements, including those related to persons who have access to information subject to the federal Driver Privacy Protection Act, 18 USC 2721-2725.

Note: The DMV e-MV Agent Application Form is available on-line at the DOT web site www.dot.wisconsin.gov/business/dealers/emvagent.

(5) A non-individual secured party that has not previously filed a security interest statement on a Wisconsin title shall apply to the department for a secured party number and shall apply to file security interest statements electronically. The secured party shall begin processing electronically within 30 days.

Trans 148.04 Secured party participation in the APPS program. **(1)** Any secured party may file its security interest statement electronically as part of processing a certificate of title, and may release its security interests or file security interest statement for a vehicle that is not being transferred, by contracting with the DMV as an agent in the APPS program under s. 341.21(2), Stats. A secured party who participates in the APPS program shall, as a condition of continued participation in the APPS

program, comply with all requirements and procedures under ch. Trans 156 and with limitations on use of personal identifiers and confidential information under the federal Driver's Privacy Protection Act, 18 USC 2721-2725.

(2) A secured party participating in the APPS program may charge a customer for title processing, including security interest statement filing and release of security interest, any amount not more than the maximum fees specified in the contract under ch. Trans 156.

Trans 148.05 Termination and nonrenewal of APPS secured party contracts. A secured party whose participation in the APPS program is discontinued, by the department or by the secured party, shall continue to file and release security interest statements electronically using the e-MV Agent Internet-based web application offered by the department, and shall comply with all requirements of this chapter.

Trans 148.06 Exemptions from requirement to file security interest statement electronically. (1) EXEMPT SECURED PARTIES NOT REQUIRED TO FILE OR RELEASE SECURITY INTEREST STATEMENTS ELECTRONICALLY.

(a) The department shall grant an exemption if the secured party filed 48 or fewer security interest statements with the department during the previous calendar year. A new secured party is not eligible for an exemption during the first calendar year.

(b) If a secured party was exempt under this subsection during a calendar year and the department determines that the secured party is not eligible for an exemption for the succeeding year, the department may cancel the secured party's exemption for that succeeding year by written notice. The notice shall require the secured party to file or release security interest statements electronically not less than 30 calendar days

after the date the department sends the notice, and the department shall charge the fee and surcharge under s. Trans148.07(2)(c)1. after the date specified in the cancellation notice.

(2) EXEMPT SECURED PARTIES NOT AUTHORIZED TO FILE AND RELEASE SECURITY INTEREST STATEMENTS ELECTRONICALLY. (a) The department shall deny a secured party the authority to file and release security interest statements electronically for any of the following reasons:

1. DMV has reasonable cause to conclude that the accuracy or timeliness of the security interest filings or releases performed by the secured party is insufficient, including the following:

a. The secured party has completed electronic processing of security interest statement filing before the secured party has obtained the original title from the vehicle owner or before the secured party and the vehicle owner have finalized their security interest or loan transaction.

b. If the secured party has not released security interests in vehicles within statutorily mandated dates.

2. Failure or refusal of the secured party to provide DMV with any documents, fees, or information required by DMV to administer this chapter or ch. 342, Stats.

3. DMV has reasonable cause to conclude that the secured party is not in compliance with any provision of written policies and procedures regarding electronic filing of security interest statements, including non-payment of DMV fees.

(b) The department's denial shall remain in effect until the department reauthorizes the secured party to file and release security interest statements electronically.

(3) EXEMPT SECURITY INTEREST FILING TRANSACTIONS. (a) A security interest statement is not required to be filed electronically if the security interest statement is any of the following:

1. Filed as part of a certificate of title transaction for some purpose other than solely filing a security interest statement.

2. Part of a transaction that is prohibited from successful electronic transaction because of an express limitation on the vehicle title or customer record, or on the e-MV Agent internet-based web application or APPS.

(b) The department may not charge a secured party a transaction processing fee for filing a security interest statement exempted by this subsection. The secured party is required to release its security interest in the vehicle electronically.

Trans 148.07 Fees. (1) FEES PAID TO SECURED PARTIES BY CONSUMERS. A secured party may charge the vehicle owner the security interest filing and release fee under s. 342.14(2), Stats. A secured party may charge the vehicle owner a fee to cover transaction processing fees the secured party is required to pay to the department to the extent allowed in this section.

(2) FEES PAID BY SECURED PARTIES TO THE DEPARTMENT. (a) Any secured party who is not required to file security interest statements electronically under s. Trans 148.06(1)(a) shall pay the department a fee of \$5.00 for each security interest statement filing transaction that the department processes on behalf of the secured

party. If an exempt secured party who is not required to file security interest statements electronically under s. Trans 148.06(1)(a) submits to DMV by a customer service center an application to be processed by DMV, the secured party shall pay the department the \$5.00 fee per filing transaction, in addition to the counter service fee and any other required fees. The secured party may charge the vehicle owner a fee to cover the fee that the secured party is required to pay the department.

(b) Any secured party who is not authorized to file security interest statements electronically under s. Trans 148.06(1)(b) shall pay the department a fee for each security interest statement filing transaction that the department processes on behalf of the secured party. The fee consists of the following:

1. A fee of \$5.00 per transaction to process the transaction. The secured party may charge the vehicle owner a fee not to exceed \$5.00.

2. A surcharge of \$20.00 per transaction. The secured party may not charge this surcharge to the vehicle owner.

(c) Any secured party who is required to but fails to file security interest statements electronically as required under s. Trans 148.03 shall pay the department a fee for each security interest statement filing transaction that the department processes on behalf of the secured party. The fee consists of the following:

1. A fee of \$5.00 per transaction to process the transaction. The secured party may charge the vehicle owner a fee not to exceed \$5.00.

2. A surcharge of \$20.00 per transaction. The secured party may not charge this surcharge to the vehicle owner.

(d) In addition to the fee and the surcharge that a secured party must pay to DMV under par. (b) or (c), the department may notify the department of financial institutions to consider disciplinary actions against the secured party. If a secured party described in par. (b) or (c) submits to DMV by a customer service center an application to be processed by DMV, the secured party shall pay the department the \$5.00 transaction fee and the \$20.00 surcharge, in addition to the counter service fee and any other required fees.

Trans 148.08 Records. (1) After submitting an electronic security interest statement filing, a secured party shall retain for 60 days and then promptly destroy the certificate of title that the vehicle owner provides to the secured party, as provided in s. 342.245(2), Stats.

(2) A secured party shall ensure that sufficient funds are in its financial account with the department, as the department or vendor system shall debit the account established for the secured party for all fees owed to the department for a transaction.

(3) The electronic record in the DMV database satisfies the requirement in s. 342.20(3), Stats., that the department notify the secured party of notation of security interest.

(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 **15th** day of
December, 2009.

/s/

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation