STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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| IN THE MATTER OF RULEMAKING PROCEEDINGS BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES | : | PROPOSED ORDER OF THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES<br><br>ADOPTING EMERGENCY RULES |

The statement of scope for this rule, SS 047-15, was approved by the Governor on May 8, 2015, published in Register 713A3 on May 18, 2015, and approved by Department of Safety and Professional Services on May 28, 2015.

This emergency rule as approved by the Governor on July 30, 2015.

## ORDER

An order of the Department of Safety and Professional Services to create Chapter SPS 210 relating to transportation network companies.

Analysis prepared by the Department of Safety and Professional Services.

## EXEMPTION FROM FINDING OF EMERGENCY

The Legislature by SECTION 6 in 2015 Wisconsin Act 16 provides an exemption from a finding of emergency for the adoption of the rule.

## ANALYSIS

**Statutes interpreted:**

Subchapter IV, Chapter 440, Stats.

**Statutory authority:**

Sections 227.11 (2) (a), 227.11 (2) (b), 440.415 (1) (a), and 440.415 (2) (a), Stats.

**Explanation of agency authority:**

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency's rule-making authority, stating an agency, "may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation."

Section 227.11 (2) (b), Stats., sets forth the parameters of an agency's rule-making authority, stating an agency, "may prescribe forms and procedures in connection with any

statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute, but this paragraph does not authorize the imposition of a substantive requirement in connection with a form or procedure."

Section 440.415 (1) (a), Stats., requires transportation network company applicants to submit an initial application that includes, "any other information required by the department by rule."

Section 440.415 (2) (a), Stats., requires licensed transportation network company to submit a renewal application that includes, "any other information required by the department by rule."

**Related statute or rule:**

None.

**Plain language analysis:**

Pursuant to the enactment of 2015 Wisconsin Act 16, the Department of Safety and Professional Services is authorized to execute and enforce a statewide uniform licensure program for transportation network companies. Currently, the Wisconsin Administrative Code does not address transportation network companies. The proposed rule will implement and delineate the requirements enacted under 2015 Wisconsin Act 16 for the regulation of transportation network companies.

**Summary of, and comparison with, existing or proposed federal regulation:**

To comply with the assurances under 49 USC 47107 a city, village, town or county may impose fees or charges under s. 114.14 (1), Stats., for the use of an airport by participating drivers engaged in transportation network services.

**Comparison with rules in adjacent states:**

**Illinois**: Illinois Statutes contain many similar requirements for transportation network companies as those created by 2015 Wisconsin Act 16 in the Wisconsin Statutes; however, individual municipalities are responsible for licensing transportation network companies. (625 Illinois Compiled Statutes 57). There are no effective rules regarding transportation network companies in Illinois.

**Iowa**: The state of Iowa does not regulate transportation network companies.

**Michigan**: The state of Michigan does not regulate transportation network companies.

**Minnesota:** A transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that recognizes that the driver is a transportation network company driver. The

transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company's digital network:
(1) the insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; (2) that the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride depending on its terms; and (3) that using a vehicle with a lien against the vehicle to provide transportation network services may violate the transportation network driver's contract with the lienholder [65B.472, MN Statutes]. Other specific requirements for insurance are spelled out in MN Statute. There are no effective rules regarding transportation network companies in Minnesota.

**Summary of factual data and analytical methodologies:**

The methodology used for developing the proposed rule included incorporating the administrative code changes necessitated by the enactment of 2015 Wisconsin Act, reviewing all laws applicable to credentials issued by the Department, and evaluating and incorporating valuable input from stakeholders. Adjacent states' requirements were also reviewed.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:**

The rule will be posted for a period of 14 days for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units, and individuals.

**Fiscal Estimate:**

The proposed rule will have an estimated one time fiscal impact $4,800 on the Department.

**Effect on small business:**

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

**Agency contact person:**

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TEXT OF RULE

SECTION 1. Chapter SPS 210 is created to read:

CHAPTER 210

TRANSPORTATION NETWORK COMPANIES

**SPS 210.10 Authority.** The rules in this chapter are adopted pursuant to the authority delegated by ss. 227.11 (2) (a), 227.11 (2) (b), 440.415 (1) (a), and 440.415 (2) (a), Stats.

**SPS 210.20 Definitions.** In this chapter:

**(1)** "Department" means the department of safety and professional services.

**(2)** "Licensed company" has the meaning given in s. 440.40 (2), Stats.

**Note:** Section 440.40 (2) of the Statutes reads as follows: "'Licensed company' means a transportation network company that is licensed under s. 440.415., [Stats.]"

**(3)** "Participating Driver" has the meaning given in s. 440.40 (3), Stats.

**Note:** Section 440.40 (3) of the Statutes reads as follows: "'Participating driver' means an individual who does all of the following: (a) Pays a fee to a transportation network company to be connected to a passenger for the purpose of engaging in transportation network services. (b) Uses a personal vehicle to engage in transportation network services for compensation."

**(4)** "Transportation network company" has the meaning given in s. 440.40 (6), Stats.

**Note:** Section 440.40 (6) of the Statutes reads as follows: "'Transportation network company' means a business that, for compensation, uses a digital network to connect passengers to participating drivers for the purpose of providing transportation network services to those passengers. "Transportation network company" does not include a taxicab, limousine, shuttle, or other for-hire vehicle service."

**(5)** "Transportation network services" has the meaning given in s. 440.40 (7), Stats.

**Note:** Section 440.40 (7) of the Statutes reads as follows: "'Transportation network services' means transportation provided to a passenger in the participating driver's personal vehicle. A participating driver is considered to be engaged in transportation network services beginning when the participating driver accepts a passenger's request for transportation received through a transportation network company's digital network, continuing while the participating driver transports that passenger in the participating driver's personal vehicle, and ending when that passenger, or the last person in that passenger's party,

whichever occurs later, exits the participating driver's personal vehicle. 'Transportation network services' does not include transportation in a taxicab, limousine, shuttle, or other for-hire vehicle."

**SPS 210.30 License required.**

**(1)** TRANSPORTATION NETWORK COMPANY. As provided under s. 440.41 (1), Stats., no person may operate a transportation network company unless the transportation network company is licensed by the department.

**(2)** INITIAL LICENSE. The department shall grant a license to operate a transportation network company upon payment of an initial licensure fee of $5,000, notwithstanding s. 440.03 (9) (a), Stats., and submittal of an application on a form prescribed by the department. The application shall include the applicant's name, address, tax identification number, and an attestation that the applicant is a transportation network company that satisfies all applicable requirements under ss. 440.42, 440.44, 440.45, and 440.48, Stats.

**(3)** RENEWAL. To renew a license, a licensed company shall, by the date specified in s. 440.08 (2) (a) 69m., Stats., file with the department a renewal fee of $5,000, or the renewal fee determined by the department under s. 440.03 (9) (a), Stats., whichever is less; and a renewal application on a form prescribed by the department. The application shall include an attestation that the applicant is a transportation network company that satisfies all applicable requirements under ss. 440.42, 440.44, 440.45, and 440.48, Stats.

**(4)** LATE RENEWAL AND REINSTATEMENT. **(a)** *Late renewal before 5 years.* If the application for renewal is filed after the deadline specified in s. 440.08 (2) (a) 69m., Stats., but less than 5 years after the expiration of the applicant's license, the applicant shall meet the requirements under sub. (3) and the applicant shall pay the late renewal fee in s. 440.08 (3) (a), Stats., in addition to the renewal fee determined by the department under sub (3).

**(b)** *Late renewal after 5 years.* If the application for renewal is filed 5 years or more after the deadline specified in s. 440.08 (2) (a) 69m., Stats., the applicant shall pay the late renewal fee in s. 440.08 (3) (a), Stats., in addition to the renewal fee determined by the department under sub (3). The department may require the applicant to complete the requirements for initial licensure under sub. (2). This section does not apply to licensed companies who have unmet disciplinary requirements or whose licenses have been surrendered or revoked.

**(c)** *Reinstatement.* A transportation network company whose license has been surrendered or revoked or who has a license with unmet disciplinary requirements which has not been renewed within five years of the renewal date may apply to have the license reinstated in accordance with all of the following:

1. Evidence of completion of the requirements in sub. (4) (b), if the credential has not been active within the last 5 years.

2. Evidence of completion of disciplinary requirements, if applicable.

3. Evidence of rehabilitation or change in circumstances warranting reinstatement of the credential.

**(5)** PARTICIPATING DRIVER. As provided in s. 440.41 (2), Stats, no person may engage in transportation network services in this state unless the person is a participating driver for a transportation network company licensed by the department.

**SPS 210.40 Disciplinary proceedings and actions.**

**(1)** INVESTIGATIONS AND HEARINGS. Subject to the rules promulgated under s. 440.03 (1), Stats., the department may conduct investigations and hold hearings to determine whether a violation of subchapter IV of Chapter 440, Stats., or any rule promulgated under subchapter IV of Chapter 440, Stats., or a violation of any other law that substantially relates to the operation of a transportation network company or to transportation network services has occurred.

**(2)** DISCIPLINE. Subject to the rules promulgated under s. 440.03 (1), Stats., the department may reprimand a licensed company or deny, limit, suspend, or revoke a license granted under s. 440.415, Stats., if the department finds that an applicant for licensure or a licensed company has done any of the following:

**(a)** Intentionally made a material misstatement in an application for a license or license renewal.

**(b)** Advertised in a manner that is false or misleading.

**(c)** Obtained or attempted to obtain compensation through fraud or deceit.

**(d)** Violated subchapter IV of Chapter 440, Stats., or any rule promulgated under subchapter IV of Chapter 440, Stats., or violated any other law that substantially relates to the operation of a transportation network company or to transportation network services. A transportation network company that has been the subject of an administrative, judicial, or other sanction shall send to the department within 30 days after the determination or sanction becomes final, an official form of notice, judgment, or other record from the administrative, judicial, or other governing body forum.

**(e)** Failed to cooperate with the department in connection with an investigation under this section. Failure to provide a substantive response to an inquiry or a request for information by the department in connection with an investigation under this section constitutes a failure to cooperate.

**(f)** Failed to timely respond to a request for information by the department in connection with an investigation under this section. There is a rebuttable presumption

that a credential holder has failed to respond in a timely manner if the credential holder takes longer than 30 days to respond to a request for information or longer than 10 days to respond if provided with an investigative subpoena.

**(3)** FORFEITURES. In addition to or in lieu of a reprimand or other action under sub. (2), the department may assess against a licensed company, for the violations under sub. (2), a forfeiture of not more than $1,000 for each separate offense. Each day of non-compliance constitutes a separate offense.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the Wisconsin State Journal.

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(END OF TEXT OF RULE)

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Dated 7/31/15

Agency

Dave Ross, Secretary
Department of Safety and
Professional Services