

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

- Appointments ... Appt
-
- Clearinghouse Rules ... CRule
- 97hr_JCR-AR_CRule_98-121_pt02
- Committee Hearings ... CH
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-
- Executive Sessions ... ES
-
- Hearing Records ... HR
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- Miscellaneous ... Misc
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- Record of Comm. Proceedings ... RCP
-

TRANS 233-(98-121) - LAND ABUTTING STATE
HIGHWAY

January 15, 1998

Mr. Gene Kussart , Executive Assistant
Wis. Dept. of Transportation
P.O. Box 7910
1208 Hill Farms State Transportation Bldg.
Madison, Wisconsin 53707 - 7910

Dear Gene;

I am enclosing information that I would like you to review. Based on my understanding; what is being proposed here is an "unpurchased takings" I want you to find out about this prior to my seeking a hearing before the Joint Committee for the Review of Administrative Rules.

My staff will be in contact will you to set up a meeting on this issue as soon as you have had time to review it.

Sincerely,

Robert T. Welch
State Senator
14th Senate District

enclosure

	LENGTH FT.
3 E	68.46
	36.88
	31.58
3 W	125.88
	28.38
	70.00
	27.30
3 W	172.70
	2.12
	70.00
	70.00
	30.67
3 W	32.96

height. in the event of any violation of the above conditions, the grantee shall have the right to enter said easement areas and take whatever reasonable action may be necessary to remove said violation and prevent a reoccurrence of the same. This restriction is for the benefit of the public and shall be enforceable by the Wisconsin Department of Transportation,

Highway Set-back Clause Recently Adopted By WisDot Central Office

HIGHWAY SETBACK RESTRICTION

No improvements or structures are allowed between the highway right-of-way line and the highway setback line. Improvements include but are not limited to signs, parking lots, parallel driveways, wells, septic systems, drainage facilities, etc., it being expressly intended that this restriction shall constitute a restriction for the benefit of the public according to Section 236.293, Wisconsin Statutes and shall be enforceable by the Wisconsin Department of Transportation. For more information, contact the Wisconsin Department of Transportation office. The phone number may be obtained by contacting the Brown County Highway Department.

This is an unpurchased taking. This is wrong, we should ask JCAR for a hearing - Set up meeting for JCAR. This is a copy of taking. We should ask JCAR for a hearing - Set up meeting for JCAR.

Chel
for meeting w/Thompson.

Gen Kessart

CORRESPONDENCE/MEMORANDUM _____ **State of Wisconsin**

DATE: January 13, 1998

TO: District Directors

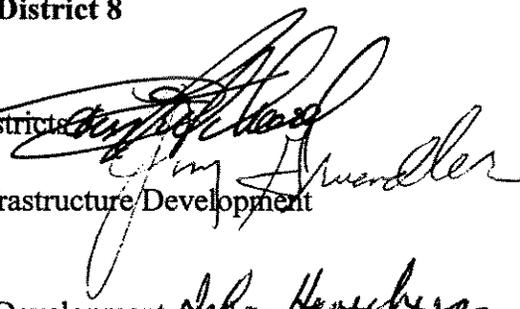
Attn: District Planning and Operations Chiefs:

Rewey, Michael District 1
Friede, Edward District 2
Hollister, Joseph District 3
Fredrickson, Bruce District 4
Brunner, Gary District 5
Beekman, Marlin District 6
Wambold, Edward District 7
Peterson, Daniel District 8

NOV 17 1998

THROUGH:

Daniel Pritchard,
Administrator, Division of Districts
and James Gruendler
Administrator, Division of Infrastructure Development



FROM:

John Haverberg
Director, Bureau of Highway Development



SUBJECT: Highway Setback Restrictions on Subdivision Plats

Enough controversy has occurred in recent months regarding interpretation and enforcement of setback provisions in TRANS 233 that we need to provide revised, interim guidance on handling the setback issue.

First, some background information. The requirement to show and follow a setback line for structures and improvements has been in effect in what is now called TRANS 233 since 1956 for plats developed adjacent to STH right-of-way. The purposes for requiring such a condition stem from Wis Statute 236 on platting of lands and include such items as the need for air, space, and light, and to control what is constructed in areas of possible future highway expansion. At issue is what we consider to be "improvements" and "structures" vs. what the surveying and developer groups think they should be. On November 5, 1997 DTID Design Services staff provided you with a note to be required on all new subdivision plats adjacent to STH right-of-way identifying prohibited uses for lands in the setback areas defined in TRANS 233. The note defined a larger group of non-setback items such as parking lots and internal drive systems that have not been enforced in the past. The surveyors and developers see this as a change of policy and, in effect, a "taking without compensation". We see it as a clarification of the Rule. Several challenges to this note requirement and its implications have occurred from developers and surveyors, one of which was discussed at an Administrators meeting earlier this fall.

TRANS 233 review. Because of the age of TRANS 233, a review and possible revisions has been suggested for some time now including but not limited to the part dealing with setbacks.

We have initiated the formal Rules review process and anticipate a timeline stretching to September 1998. There will be public hearing(s) involved where concerns can be identified and aired. Staff from the Bureau of Highway Development will also be attending the Wisconsin Land Surveyor's Society meeting in January 1998 and will also arrange to meet with the League of Municipalities to discuss this issue as they both will be impacted by decisions made. There is a land use component to this issue which may require meetings with other groups.

What to do until TRANS 233 review is completed. It has been decided at the Division Administrator/Secretary's Office level that we will refrain from strict enforcement of the note-on-the-plat, no improvements requirement issued in November until formal review of TRANS 233 is completed. Therefore, the revised procedure will be:

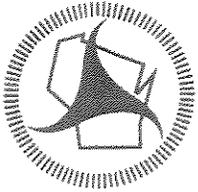
1. Highway setback lines will still need to be shown on subdivision plats adjacent to STH right-of-way at the distances currently required by TRANS 233. This is no different than the requirement that has been in place since 1956. They should be labeled "Highway Setback" and such line is to be enforced for "structures".

2. For those areas where we know we will have highway expansion projects in the relatively near future that are shown on some form of plan indicating that we will encroach into the setback area, you can require the owner/developer not to place "improvements or structures" in the setback area that would require us to pay their cost when we buy the needed right-of-way. The interpretive note provided in November should be placed on such plats with reference to the specific lots in question. Variances are possible to this requirement but must come with a signed agreement that the Department will not have to pay for any damages to business or property because of the acquisition of the "improvements". Language for such agreements is being developed now by OGC.

A known expansion project will include any in the 6-year program requiring additional R/W, a majors project which is enumerated, and a majors or any other project for which a design study is being done or design engineering has commenced. It may also include a roadway where the current ADT shows a clear need for added lanes within the next 10-15 years provided you spend the time to do an evaluation of potential R/W needs.

3. For all other existing plats and for all new preliminary or final plats during this interim time where we do not have certain plans for needing R/W in the setback areas for highway expansion, we will not require the interpretive note on "improvements" be placed on the plats nor will we enforce its intent. For first time reviewed preliminary or final plats, you can ask the developer/owner to do so but not require it if they object.

Please pass this interim policy information on to the personnel in your district who review subdivision plats. Any questions regarding this procedure may be directed to Bonnie Tripoli at (608) 266-2372. DTID staff will request your input and keep you informed as review of TRANS 233 moves forward.



Wisconsin Department of Transportation



Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

The Honorable Robert Welch
Senate Chairman
Joint Committee for Review
of Administrative Rules
One East Main, Suite 201
Madison, Wisconsin 53707

966 5 8 907 July 30, 1998

The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 125, State Capitol
Madison, Wisconsin 53707

RE: **NOTICE OF INTENT TO ADOPT RULE WITHOUT PUBLIC HEARING** and Text of Proposed Rule, relating to **motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials**, Trans 325, 326 and 328

Dear Senator Welch and Representative Grothman:

Enclosed for your information is a Notice of Intent to Adopt Rule Without Public Hearing and Text of Proposed Rule making relating to the above-entitled matter. This document has also been filed with the Legislative Council and with the Revisor of Statutes in accordance with the requirements of ss. 227.15(1) and 227.16(2)(e), Stats.

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Gene Kussart/Sandy Beaupre/Mike Goetzman/Bill Singletary/Lyle Walheim/
Frieda Andreas

STOP

The Wisconsin Department of Transportation proposes an order to renumber TRANS 326.07; amend TRANS 325.02(intro.), 325.05(1) and (2), 326.01(intro.) and 328.03(intro.) and (1); and create TRANS 325.02(8), 326.01(8), 326.07(2) and (3), 328.03(6) and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

**NOTICE OF INTENT TO ADOPT RULE
WITHOUT PUBLIC HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), and 227.11, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending chs. Trans 325, 326 and 328 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Lyle Walheim, Division of State Patrol, Room 551, P. O. Box 7912, Madison, Wisconsin 53707-7912, telephone (608) 266-0305.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats.
STATUTES INTERPRETED: ss. 110.07, 110.075, 194.38 and 194.43, Stats.

General Summary of Proposed Rule. This proposed rule making will amend three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of January 1, 1998. These changes are as follows:

Chapter Trans 325 adopted motor carrier safety regulations of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between November 1, 1996 and August 1, 1998.

Chapter Trans 326 adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on January 1, 1998. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate commerce are already subject under federal law to any changes that have been adopted between November 1, 1996 and August 1, 1998.

The Department proposes to incorporate changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades."

Chapter Trans 328 adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials and will include exceptions provided in revised federal rules.

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, technical college district, sewerage district, or any federally-recognized tribes or bands.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Rule. This proposed rule was prepared by Lyle Walheim, Division of State Patrol. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 266-6936. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., the department of transportation hereby proposes an order to amend a rule interpreting ss. 110.07, 110,075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

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 ~~November~~ August 1, ~~1996~~ 1998 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(8) is created to read:

(8) Every traffic officer and state patrol inspector as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the North American standard out of service criteria.

SECTION 3. Trans 325.05(1) and (2) are amended to read:

Trans 325.05(1) The provisions of s. Trans ~~325.04(4)~~ 325.02(4) and (6)(title 49, Code of Federal Regulations, parts 393 and 396) shall be enforced under the provisions of s. 110.075, Stats.

(2) The provisions of s. Trans ~~325.04(2)~~ 325.02(2), (3), (5) and (7), (Title 49, Code of Federal Regulations, parts 391, 392, 395 and 397) shall be enforced under the provisions of ch. 194, Stats.

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 ~~November~~ August 1, ~~1996~~ 1998, 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(8) is created to read:

Trans 326.01(8) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

SECTION 6. Trans 326.07 is renumbered Trans 326.07(1).

SECTION 7. Trans 326.07(2) and (3) are created to read:

Trans 326.07(2) The provisions of s. Trans 326.01(4), (6) and (7) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of

less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(3)(a) The provisions of s. Trans 326.01(3), (4), (6) and (7) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases, over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements in s. Trans 326.01(3), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.
2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

SECTION 8. Trans 328.03(intro.) and (1) are amended to read:

Trans 328.03 FEDERAL RULES ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, ~~1996~~ 1998, 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:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, ~~except 171.1(a)(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2(a)~~

~~and (b) for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1991 general information, regulations and definitions.~~

SECTION 9. Trans 328.03(6) is created to read:

Trans 328.03(6) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

SECTION 10. Trans 328.04 is created to read:

Trans 328.04 EXCLUSIONS AND EXCEPTIONS. (1) The provisions of s. Trans 328.03(3), (4) and (5) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(2)(a) The provisions of s. Trans 328.03(2), (3), (5) and (6) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements s. Trans 328.03(2), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

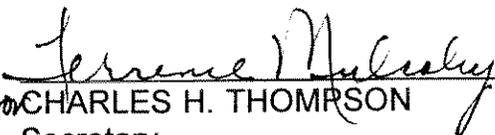
1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.

2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

(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 29 day of July, 1998.


for CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

FAX TRANSMISSION REPORT

DATE: 8/31/98 NUMBER OF PAGES INCLUDING THIS PAGE: 6

PLEASE DELIVER THIS TRANSMISSION TO:

NAME: Senator Welch

ORGANIZATION: _____

TELEPHONE NO.: 60751 FAX NO.: 74350

FROM:

NAME: Jewels Johnson
 WISCONSIN DEPARTMENT OF TRANSPORTATION - OFFICE OF GENERAL COUNSEL
 P.O. BOX 7910, MADISON, WI 53707-7910
 PHONE: (608) 266-8810 FAX: (608) 267-6734

MESSAGE: Notification of an Emergency Rule



**Wisconsin Department of Transportation
Office of General Counsel**



MEMORANDUM

Date: August 31, 1998

To: Senator Robert Welch/ATTN: Les Wakefield
Representative Glenn Grothman/ATTN: Steve Krieser

From: Jewels Johnson
Paralegal/Administrative Rules Coordinator
Office of General Counsel/Department of Transportation

Subject: **AN ORDER OF ADOPTING EMERGENCY RULE AMENDING TRANS 328,
Wisconsin Administrative Code**

Pursuant to the January 27, 1989 memo written by the JCRAR co-chairs to all rulemaking agencies, it is requested that advance notice be given when promulgating emergency rules. Accordingly, the Wisconsin Department of Transportation provides you with this advance notification of its intent to promulgate the attached draft of emergency rule draft Trans 328, relating to **motor carrier safety requirements for intrastate transportation of hazardous materials**. The finding of emergency is self-explanatory.

This emergency rule is scheduled for publication on Tuesday, September 15, 1998. If you have any questions about this emergency rule, feel free to contact Lyle Walheim, Division of State Patrol, at 266-0305.

JJ/dim

cc: Gene Kussart
Lyle Walheim

DRAFT

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

Order of the Wisconsin Department of Transportation Adopting an Emergency Rule to amend TRANS 328.03(intro.) and (1), and create TRANS 328.03(6) and 328.04, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

**ORDER ADOPTING
EMERGENCY RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats.
STATUTES INTERPRETED: ss. 110.07, 110,075, 194.38 and 194.43, Stats.

General Summary of Emergency Rule. The Department, by this rule making, is adopting changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades." These exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998, allowing these exceptions.

In addition, Chapter Trans 328 adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials and will include exceptions provided in revised federal rules.

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, technical college district, sewerage district, or any federally-recognized American Indian tribes or bands.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Emergency Rule and Contact Person. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 266-6936. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF EMERGENCY RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., the department of transportation hereby amends ch. Trans 328, Wisconsin Administrative Code, interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

SECTION 1. Trans 328.03(intro.) and (1) are amended to read:

Trans 328.03 FEDERAL RULES ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, ~~1996~~ 1998, 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:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, ~~except 171.1(a)(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2(a) and (b) for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1994~~ general information, regulations and definitions.

SECTION 2. Trans 328.03(6) is created to read:

Trans 328.03(6) 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 North American standard out-of-service criteria.

SECTION 3. Trans 328.04 is created to read:

Trans 328.04 EXCLUSIONS AND EXCEPTIONS. (1) The provisions of s. Trans 328.03(3), (4) and (5) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of

a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(2)(a) The provisions of s. Trans 328.03(2), (3), (5) and (6) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements s. Trans 328.03(2), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.
2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

(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. A statement of the facts constituting the emergency is that new federal hazardous material rules include intrastate transportation. Within the revised rules are exceptions allowed for farm operations, the use of certain nonspecification packages and permanently mounted nonspecification nonbulk metal tanks used to transport flammable liquids in intrastate commerce. The exceptions will only apply if state statutes or regulations are in effect prior to October 1, 1998 allowing those exceptions. Failure to implement the allowed exceptions would have a negative impact on the state agricultural community as well as other businesses who would benefit from them.

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

Signed at Madison, Wisconsin this ____ day of August, 1998.

CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL STAFF

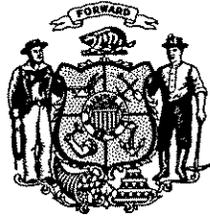
LCRC
FORM 2

Jul 23 1998

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

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 98-105

AN ORDER to renumber Trans 326.07; to amend Trans 325.02 (intro.), 325.05 (1) and (2), 326.01 (intro.) and 328.03 (intro.) and (1); and to create Trans 325.02 (8), 326.01 (8), 326.07 (2) and (3), 328.03 (6) and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials and motor carrier safety requirements for intrastate transportation of hazardous materials.

Submitted by **DEPARTMENT OF TRANSPORTATION**

07-30-98 RECEIVED BY LEGISLATIVE COUNCIL.
08-21-98 REPORT SENT TO AGENCY.

RS:WF:jal;kjf

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 STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
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David J. Stute, Director
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Madison, WI 53701-2536
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CLEARINGHOUSE RULE 98-105

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 October 1994.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. A more specific reference to "the North Americans standard out of service criteria" should be provided in SECTIONS 2, 5 and 9. [See s. 2.08, Manual.]
- b. The word "part" should be substituted for the word "parts" in s. Trans 326.07 (3) (b).

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the third paragraph of the analysis, should the date "January 1, 1998" be replaced by the date "November 1, 1996"?
- b. In SECTIONS 2, 5 and 9, it is suggested that the phrase "employed under the authority of" be substituted for the phrase "as set forth in." Section 110.07, Stats., authorizes the Department of Transportation to employ traffic officers constituting the state traffic patrol and state patrol inspectors. The term "as set forth in" is unnecessarily vague.

The Wisconsin Department of Transportation proposes an order to renumber TRANS 326.07; amend TRANS 325.02(intro.), 325.05(1) and (2), 326.01(intro.) and 328.03(intro.) and (1); and create TRANS 325.02(8), 326.01(8), 326.07(2) and (3), 328.03(6) and 328.04, relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

**NOTICE OF INTENT TO ADOPT RULE
WITHOUT PUBLIC HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to the authority of ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), and 227.11, Stats., and according to the procedure set forth in s. 227.16(2)(e), Stats., the Wisconsin Department of Transportation will adopt the following rule amending chs. Trans 325, 326 and 328 without public hearing unless, within 30 days after publication of this notice [revisor to insert date], the Department of Transportation is petitioned for a public hearing by 25 natural persons who will be affected by the rule; a municipality which will be affected by the rule; or an association which is representative of a farm, labor, business or professional group which will be affected by the rule.

Questions about this rule and any petition for public hearing may be addressed to Lyle Walheim, Division of State Patrol, Room 551, P. O. Box 7912, Madison, Wisconsin 53707-7912, telephone (608) 266-0305.

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats.
STATUTES INTERPRETED: ss. 110.07, 110,075, 194.38 and 194.43, Stats.

General Summary of Proposed Rule. This proposed rule making will amend three existing rules to bring them into compliance with changes to the federal regulations which have gone into effect as of January 1, 1998. These changes are as follows:

Chapter Trans 325 adopted motor carrier safety regulations of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent motor carrier safety regulations. All vehicles operating in interstate commerce are already subject, under federal law, to any changes that have been adopted between November 1, 1996 and August 1, 1998.

Chapter Trans 326 adopted motor carrier safety requirements for transportation of hazardous materials of the United States Department of Transportation in effect on January 1, 1998. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for transportation of hazardous materials. All vehicles operating in interstate commerce are already subject under federal law to any changes that have been adopted between November 1, 1996 and August 1, 1998.

The Department proposes to incorporate changes to federal hazardous material regulations that have been expanded to include intrastate transportation and provides for some agricultural exceptions for farmers, allows for the use of some non-specification packages for intrastate transportation only, and provides exceptions for "materials or trades."

Chapter Trans 328 adopted motor carrier safety requirements for intrastate transportation of hazardous materials of the United States Department of Transportation in effect on November 1, 1996. This proposed amendment changes the date from November 1, 1996 to August 1, 1998. This change allows Wisconsin to enforce the most recent version of the motor carrier safety requirements for intrastate transportation of hazardous materials and will include exceptions provided in revised federal rules.

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, technical college district, sewerage district, or any federally-recognized tribes or bands.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Rule. This proposed rule was prepared by Lyle Walheim, Division of State Patrol. Copies of the rule may be obtained upon request, free of charge, from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, WI 53707-7912, or by calling (608) 266-6936. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., the department of transportation hereby proposes an order to amend a rule interpreting ss. 110.07, 110.075, 194.38 and 194.43, Stats., relating to motor carrier safety regulations, motor carrier safety requirements for transportation of hazardous materials, and motor carrier safety requirements for intrastate transportation of hazardous materials.

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 ~~November~~ August 1, 1996 1998 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(8) is created to read:

(8) Every traffic officer and state patrol inspector as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out-of-service in accordance with the North American standard out of service criteria.

SECTION 3. Trans 325.05(1) and (2) are amended to read:

Trans 325.05(1) The provisions of s. Trans ~~325.04(4)~~ 325.02(4) and (6)(title 49, Code of Federal Regulations, parts 393 and 396) shall be enforced under the provisions of s. 110.075, Stats.

(2) The provisions of s. Trans ~~325.04(2)~~ 325.02(2), (3), (5) and (7), (Title 49, Code of Federal Regulations, parts 391, 392, 395 and 397) shall be enforced under the provisions of ch. 194, Stats.

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 ~~November~~ August 1, ~~1996~~ 1998, 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(8) is created to read:

Trans 326.01(8) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

SECTION 6. Trans 326.07 is renumbered Trans 326.07(1).

SECTION 7. Trans 326.07(2) and (3) are created to read:

Trans 326.07(2) The provisions of s. Trans 326.01(4), (6) and (7) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of

less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(3)(a) The provisions of s. Trans 326.01(3), (4), (6) and (7) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases, over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements in s. Trans 326.01(3), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1 PG III in a bulk packaging.

2. 502 gallons for liquid or gases.

3. 5,070 pounds for solids of any other agricultural product.

SECTION 8. Trans 328.03(intro.) and (1) are amended to read:

Trans 328.03 FEDERAL RULES ADOPTED. The following federal motor carrier safety regulations adopted by the United States department of transportation and in effect on ~~November~~ August 1, ~~1996~~ 1998, 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:

(1) Title 49, Code of Federal Regulations, part 171, hazardous materials regulations, ~~except 171.1(a)(1), 171.4, 171.5, 171.10, 171.12 and 171.12a; and 171.2(a)~~

~~and (b) for cargo and portable tanks used in intrastate commerce and placed in operation prior to November 1, 1994 general information, regulations and definitions.~~

SECTION 9. Trans 328.03(6) is created to read:

Trans 328.03(6) Every traffic officer and state patrol inspector, as set forth in s. 110.07, Stats., is authorized to declare vehicles and drivers out of service in accordance with the North American standard out-of-service criteria.

SECTION 10. Trans 328.04 is created to read:

Trans 328.04 EXCLUSIONS AND EXCEPTIONS. (1) The provisions of s. Trans 328.03(3), (4) and (5) do not apply to a nonspecification, nonbulk metal tank permanently secured to a transport vehicle and protected against leakage or damage in the event of a turnover, having a capacity of less than 119 gallons used by intrastate carriers in intrastate commerce only to transport flammable liquid petroleum products.

(2)(a) The provisions of s. Trans 328.03(2), (3), (5) and (6) do not apply to the transportation of agricultural products other than class 2 materials, or compressed gases over local roads other than the national interstate and defense highway system between fields of the same farm by a farmer who operates as an intrastate private carrier.

(b) The transportation of an agricultural product to or from a farm within 150 miles of the farm is excepted from the requirements s. Trans 328.03(2), 49 CFR parts 172 subpart G, emergency response information, subpart H, training requirements, and from the specific packaging requirements when it is transported by a farmer who is an intrastate private motor carrier and the total amount of agricultural products being transported in a single vehicle does not exceed any of the following:

1. 16,094 pounds of ammonium nitrate fertilizer properly classed as division 5.1

PG III in a bulk packaging.

2. 502 gallons for liquid or gases.
3. 5,070 pounds for solids of any other agricultural product.

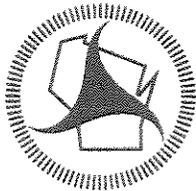
(END OF RULE TEXT)

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 29 day of July, 1998.



for CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation



Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

The Honorable Robert Welch
Senate Chairman
Joint Committee for Review
of Administrative Rules
One East Main, Suite 201
Madison, Wisconsin 53707

August 28, 1998

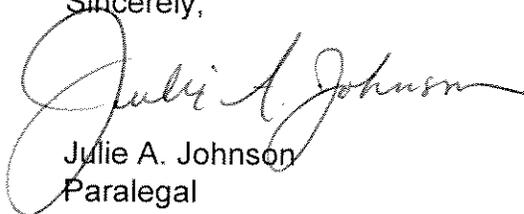
The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 125, State Capitol
Madison, Wisconsin 53707

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **division of land abutting a state trunk highway or connecting highway, Trans 233**

Dear Senator Welch and Representative Grothman:

Enclosed for your information is a Notice of Public Hearing and Text of Proposed Rulemaking relating to the above-entitled matter. These documents have also been filed with the Revisor of Statutes, the Legislative Council, and the Department of Administration in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Gene Kussart
Sandy Beaupre
Mike Goetzman
Jim Gruendler
Bob Bovy
Bonnie Tripoli

The Wisconsin Department of Transportation proposes an order to repeal and recreate ch. TRANS 233; and create TRANS 231.01(9), relating to division of land abutting a state trunk highway or connecting highway.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and 236.13(1)(e) and (3), Stats., and interpreting ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats., the Department of Transportation will hold a public hearing in **Room 421** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **28th** day of **September**, 1998, at **9:00 AM**, to consider the amendment of chs. Trans 231 and 233, Wisconsin Administrative Code, relating to division of land abutting a state trunk highway or connecting highway.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

The public record on this proposed rule making will be held open until close of business October 2, 1998, to permit the submission of written comments from persons unable to attend the public hearing or who wish to supplement testimony offered at the hearing. Any such comments should be submitted to Bonnie Tripoli, Division of Infrastructure Development, Room 651, P. O. Box 7916, Madison, WI 53707-7916.

Parking for persons with disabilities and an accessible entrance are available on the north and south sides of the Hill Farms State Transportation Building.

Analysis Prepared by the Wisconsin Department of Transportation

Statutory Authority: ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and 236.13(1)(e) and (3), Stats.

Statutes Interpreted: ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats.

General Summary of Proposed Rule. The Wisconsin Legislature created s. 236.13(1)(e), Stats., by Chapter 570, Laws of Wisconsin 1955. That law requires that approval of preliminary and final plats be conditioned upon compliance with the Department of Transportation rules relating to the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation of the public interest and investment in such highways. The Department's first rule under this statute became effective in September 1956, then known as Hy 33. This rule was renumbered in August of 1996 to Trans 233. No other change was made in the rule at that time.

This revision of the 1956 rule is necessary for consistency with existing laws, new developments in land use and transportation planning principles, and for clarification and uniformity. The objective is to recognize state and local economic land use goals in the rule, enhance the effectiveness of the rule, provide reasonable flexibility and clarity in setback requirements and criteria for variances that do not jeopardize public investments or safety now or in the future.

In general, due to the changes in laws and practices over the years, it was determined substantive changes to the rule would be needed to truly protect the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and preserve the public interest and investment in such highways. Section 236.45, Stats., allows counties to create subdivision ordinances which are more restrictive than Chapter 236, Stats., and ch. Trans 233. This option allows those plats to be created outside the Department of Administration plat review process. This is important because, unless the county forwards the plat to the Department, the Department has had no knowledge of the plat and therefore no procedure to evaluate its conformance to ch. Trans 233. However, the Department has found that some counties are not enforcing their more restrictive regulations when approving county plats. Therefore, this proposed rule now requires that these plats be reviewed by the Department.

Development around the state has evolved in such a manner that departmental review of subdivisions alone is not providing sufficient protection of state trunk and connecting highways. Section 236.34, Stats., allows for land divisions to occur through the preparation of certified survey maps. Section 703.11, Stats., also allows for the creation of condominium plats. These two statutes, along with the above-mentioned s. 236.45, Stats., create land divisions or developments which occur outside of the Department of Administration subdivision review process, but which have similar impacts upon the state's highways. In the past, the department has not had the opportunity to review these maps or development in terms of the safety of entrance upon and departure from the abutting state trunk highways or connecting highways and for the preservation

of the public interest and investment in such highways. Section 86.07(2), Stats., requires that any person making an alteration in a highway such as constructing or modifying a driveway must obtain a permit. The Department, by revision of this rule, would now require that it review land divisions by any of these methods for compliance with this rule. Any access permit requested for a future land division which does not conform to these requirements will be denied.

This proposed rule also clarifies a number of areas which have proven unclear in the past, to both the Department and to those developing the maps. It now more clearly defines the requirements that developers and surveyors must meet. In the past, the Department's objections to a plat often resulted when the surveyor simply did not understand what exactly was required or failed to approach the Department for help. The rule now more clearly defines conceptual review, vision corners, drainage requirements, highway and driveway separation requirements, setbacks, variance procedures and noise concerns. These clarifications should make it easier for the surveyor and others to understand and comply with the rule rather than being faced with an immediate objection to the design of the plat by the Department. Other changes, such as a clarification of requirements for specific information regarding access and existing conditions that a surveyor must show on the plat, will make it easier for the Department to locate the plat in the field and evaluate areas of possible concern.

The setback provision has always contained language limiting improvements and now these limitations are clarified. Utilities have always used the setback for some of their facilities and that continued use will be allowed. However, utilities will now be required to notify the district and request approval for those facilities if they are to be compensable if the setback area is needed for a future highway project. The Wisconsin Courts have approved such setback provisions relating to utilities imposed by local units of government. **Town of Portland v. WEPCO**, 198 Wis. 2d 775, 543 N.W.2d 559 (1996). Also related to setbacks, when variances for allowing improvements in the setback are requested, the variance procedure established in this rule will allow the department to consider entering into an agreement to allow the variance as long as the owner understands that the improvement and any related damages will not be compensable if the department ever has the need to acquire additional right-of-way within the setback.

Initial Regulatory Flexibility Analysis. Section 236.12(7), Stats., allows the Department to establish by rule reasonable service fees for all or part of the costs of the activities and services provided by the Department under that chapter of the statutes. Thus, this proposed rule also establishes fees to cover the Department's costs for reviewing the documents related to land divisions. Both the district and central offices must invest considerable time in verifying and field reviewing each map. An estimation of the amount of time and costs involved determined that \$110 is the average cost for this review. In the past, the department has always done this review gratis but in this current climate of fiscal responsibility, it is felt that the cost should be borne by those creating the need for the review. This charge will be imposed on those who prepare the documents for review. Surveyors, developers and consultants would normally prepare the documents on behalf of the owners. The \$110 cost would, in all likelihood, be

passed on the owners, some of whom will be small businesses that may recover the costs through the development.

Fiscal Estimate. With the enactment of the fee for the services provided by the Department, the review of land division maps will now be self-supporting and should not have an effect upon any county, city, village, town, school district, vocational, technical and adult education district and sewerage district liability unless they are assuming the role of developer. However, on an annual basis, that situation occurs approximately five to ten times statewide. Thus, approximately five to ten communities per year will be required to pay an additional \$110 for any development they are pursuing which is adjacent to a state trunk or connecting highway. Developers will incur the additional costs of \$110 per submittal, that they had not previously encountered. Surveyors who submit maps for review will pay the fees but those costs should be passed onto the developer.

Several of the Department's transportation districts may use existing personnel to review more land divisions than in the past. Any costs associated with these additional reviews will be offset by the funds received through the new fee. It is estimated that a total of ½ of a person's time per district would be involved in the review. Several of the districts review all these documents now as a courtesy to the county governments so in those districts no additional costs would be incurred. It is expected that some of these costs will be defrayed by the Department delegating the review for some developments of land abutting connecting highways to the local municipality as allowed in s. 236.12(2)(a), Stats. Since, in general, local officials do review these documents now, there would be no additional costs to any reviewing authority.

Preparation and Copies of Rule. This proposed rule was drafted by Paul E. Nilsen, Legislative Attorney. The analysis was prepared by Bonnie Tripoli and James S. Thiel, Wisconsin Department of Transportation, (608) 266-8928. Copies of the proposed rule may be obtained upon request from Bonnie Tripoli, Division of Infrastructure Development, 4802 Sheboygan Avenue, Room 651, P.O. Box 7916, Madison, WI, 53707-7916, or by calling (608) 266-2372.

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 84.25, 84.29, 84.295, 86.07(2), 236.12(2)(a) and (7), and 236.13(1)(e) and (3), Stats., the department of transportation hereby proposes an order to amend and repeal and recreate a rule interpreting ss. 236.12(2)(a), 236.34, 236.45 and 703.11, Stats., relating to division of land abutting a state trunk highway or connecting highway.

SECTION 1. Trans 231.01(9) is created to read:

Trans 231.01(9) No permit may be issued under this chapter for construction of a highway or a private road or driveway that connects directly with a state trunk highway and that provides vehicular access to a land division, as defined in s. Trans 233.015(4), unless the land division was created before the effective date of this section [revisor inserts date] or the department determines that the land division meets the requirements of ch. Trans 233.

SECTION 2. Chapter Trans 233 is repealed and recreated to read:

**CHAPTER TRANS 233
DIVISION OF LAND ABUTTING A STATE TRUNK
HIGHWAY OR CONNECTING HIGHWAY**

Trans 233.01 PURPOSE. This chapter specifies the department's minimum standards for the division of land that abuts a state trunk highway or connecting highway, in order to provide for the safety of entrance upon and departure from those highways and for the preservation of public interest and investment in those highways, as required by s. 236.13(1)(e), Stats.

Trans 233.012 APPLICABILITY. In accordance with ss. 236.12, 236.34 and 236.45, Stats., this chapter applies to all land division maps reviewed by a city, village, town or county, the department of administration and the department of transportation. This chapter applies to any land division that is created by plat or map under s. 236.12 or 236.45, Stats., by certified survey map under s. 236.34, Stats., or by condominium plat under s. 703.11, Stats., and that abuts a state trunk highway, connecting highway or service road.

Trans 233.015 DEFINITIONS. Words and phrases used in this chapter have the meanings given in s. 340.01, Stats., unless a different definition is specifically provided. In this chapter:

(1) "Certified survey map" means a map that complies with the requirements of s. 236.34, Stats.

(2) "Improvement" means any permanent addition to or betterment of real property that involved the expenditure of labor or money designed to make the property more useful or valuable. "Improvement" includes parking lots, driveways, wells, septic systems and drainage facilities. "Improvement" does not include sidewalks, terraces, patios, landscaping and fences.

(3) "Land divider" means the owner of land that is the subject of a land division or such an owner's agent for purposes of creating a land division.

(4) "Land division" means a division under s. 236.12, 236.34, 236.45 or 703.11, Stats., of a lot, parcel or tract of land by the owner or the owner's agent for the purposes of sale or of building development.

(5) "Land division map" means an official map of a land division, including all certificates required as a condition of recording the map.

(6) "Public utility" means any corporation, company, individual or association that furnishes products or services to the public, and that is regulated under ch. 195 or 196, Stats., including railroads, telecommunications or telegraph companies and any company furnishing or producing heat, light, power or water, or a rural electrical cooperative, as described in s. 32.02(10), Stats.

(7) "Unplatted" means not legally described by a plat, land division map, certified survey map or condominium plat.

(8) "Utility facility" means any pipe, pipeline, duct, wire line, conduit, pole, tower, equipment or other structure used for transmission or distribution of electrical power or light or for the transmission, distribution or delivery of heat, water, gas, sewer, telegraph

or telecommunication service, cable television service or broadcast service, as defined in s. 196.01(1m), Stats.

Trans 233.017 OTHER ABUTTALS. For purposes of this chapter, land shall be considered to abut a state trunk highway or connecting highway if the land is any of the following:

(1) Land that contains any portion of a highway that is laid out or dedicated as part of a land division if the highway intersects with a state trunk highway or connecting highway.

(2) Separated from a state trunk highway or connecting highway by only unplatted lands that abut a state trunk highway or connecting highway if the unplatted lands are owned by, leased to or under option, whether formal or informal, or under contract or lease to the owner.

(3) Separated from a state trunk highway or connecting highway by only a service road.

Trans 233.02 BASIC PRINCIPLES. Dividing or developing lands, or both, affects highways by generating traffic, increasing parking requirements, reducing sight distances, increasing the need for driveways and other highway access points and, in general, impairing highway safety and impeding traffic movements. To control these effects and to carry out the purposes of ch. 236, Stats., the department promulgates the following basic requirements:

(1) Local traffic from a land division or development abutting a state trunk highway shall be served by an internal highway system of adequate capacity, intersecting with state trunk highways or connecting highways at the least practicable number of points and in a manner that is safe, convenient and economical.

(2) A land division shall be so laid out that its individual lots or parcels do not require direct vehicular access to a state trunk highway or connecting highway.

(3) The department, in order to integrate and coordinate traffic on a highway or on a private road or driveway with traffic on any affected state trunk highway or connecting highway, shall do both of the following:

(a) Consider, particularly in the absence of a local comprehensive general or master plan, or local land use plan, that plat or map's relationship to the access requirements of adjacent and contiguous land divisions and unplatted lands.

(b) Apply this chapter to all lands that are owned by, or are under option, whether formal or informal, or under contract or lease to the land divider and that are adjacent to or contiguous to the land being subdivided. Contiguous lands include those lands that abut the opposite side of the highway right-of-way.

(4) Setbacks from a state trunk highway or connecting highway shall be provided as specified in this chapter.

(5) A land division map shall include provision for the handling of surface drainage in such a manner as specified in this chapter.

(6) A land division map shall include provisions for the mitigation of noise if the noise level exceeds federal noise standards.

(7) A land division shall provide vision corners at intersections and driveways per department standards.

Trans 233.03 CONCEPTUAL PLAN REVIEW. In accordance with s. 236.12(2)(a), Stats., the department recommends the following procedure:

(1) Before the lots are surveyed and staked out, the land divider should submit a sketch to the department's district office. The sketch should indicate roughly the layout

of lots and the approximate location of streets, and should include other information required in this chapter.

(2) Unless the land divider submits a preliminary plat under s. 236.12(2)(a), Stats., the land divider should have the district office review the sketch described in sub. (1).

Trans 233.04 REQUIRED INFORMATION. The land divider shall show on the face of the preliminary or final land division map or on a separate sketch, at a scale of not more than 1,000 feet to the inch, the approximate distances and relationships between the following, and shall show the information identified below about the following:

(1) The geographical relationship between the proposed land division and of any unplatted lands that abut any state trunk highway or connecting highway and that abut the proposed land division, and the ownership rights in and the land divider's interest, if any, in these unplatted lands.

(2) The locations of all existing and proposed highways within the land division and of all private roads or driveways within the land division that intersect with a state trunk highway or connecting highway.

(3) The location, and identification by type, of each highway and private road or driveway leading to or from the land division.

(4) The principal use, as agricultural, commercial, industrial or residential, of each private road or driveway that leads to or from the land division.

(5) The locations of all easements for accessing real property within the land division.

(6) The location of the highway nearest each side of the land division.

(7) The location of any highway or private road or driveway that connects with a state trunk highway or connecting highway that abuts the land division, if the connection is any of the following:

(a) Within 300 feet of the land division, if any portion of the land division lies within a city or village.

(b) Within 1,000 feet of the land division, if no part of the land division lies within a city or village.

(8) All information required to be shown on a land division map shall be shown in its proper location.

Trans 233.05 DIRECT ACCESS TO STATE TRUNK HIGHWAY. (1) No land divider may divide land in such a manner that a private road or driveway connects with a state trunk highway or connecting highway or any service road lying partially within the right-of-way of a state trunk highway or connecting highway, unless the land divider has the express consent of the department. The following restriction shall be placed on the face of the land division map, or as part of the owner's certificate required under s. 236.21(2)(a), Stats., and shall be executed in the manner specified for a conveyance:

As owner I hereby restrict all lots and blocks so that no owner, possessor, user, licensee or other person may have any right of direct vehicular ingress from or egress to any highway lying within the right-of-way of (U.S.H.)(S.T.H.) _____ or _____ Street, as shown on the land division map; it is expressly intended that this restriction constitute a restriction is for the benefit of the public as provided in s. 236.293, Stats., and shall be enforceable by the department or its assigns.

(2) The department may require a desirable traffic access pattern between a state trunk highway or connecting highway and unplatted lands that abut the proposed land division and that are owned by or under option, whether formal or informal, contract or lease to the owner. The department may require a recordable covenant running with the land with respect to those unplatted lands.

(4) No person may connect a highway or a private road or driveway with a state trunk highway, or with a service road lying partially within the right-of-way of a state trunk highway or connecting highway, without first obtaining a permit under s. 86.07, Stats. The department may not issue a permit authorizing the connection of a highway with a state trunk highway or connecting highway to any person other than a municipality or county. The department may not issue any permit under s. 86.07, Stats., prior to favorable department review of the preliminary or final land division map or, for a subdivision plat, prior the department's certification of no objection.

(5) Whenever the department finds that existing and planned highways provide the land division with reasonable and adequate access to a highway, the department shall prohibit the connection to a state trunk highway or connecting highway of any highway and private road or driveway from within the land division.

(6) Rules governing construction of driveways and other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices.

Trans 233.06 FREQUENCY OF CONNECTIONS WITH A STATE TRUNK HIGHWAY OR CONNECTING HIGHWAY. (1) The land division shall be laid out with the least practicable number of highways and private roads or driveways connecting with abutting state trunk highways.

(2) The department shall determine a minimum allowable distance between connections with the state trunk highway or connecting highway, between any 2 highways within the land division and between a highway within the land division and any existing or planned highway. To the extent practicable, the department shall require a distance of at least 1,000 feet between connections with a state trunk highway or connecting highway.

Trans 233.07 TEMPORARY CONNECTIONS. (1) The department may issue temporary connection permits, which authorize the connection of a highway or a private road or driveway with a state trunk highway or connecting highway. The department may issue temporary connection permits in the case of:

(a) A land division which at the time of review cannot provide direct traffic access complying with the provisions of s. Trans 233.06(2).

(b) A land division layout which might necessitate a point or pattern of traffic access for a future adjacent land division, not in accordance with s. Trans 233.06(2).

(2) The department may require that such temporary connections be altered or closed by the permit holder at a later date in order to achieve a desirable traffic access pattern. The permit may require the permit holder to alter or close the temporary connection by a specified date or upon the completion of a specified activity. The permit holder is responsible for the expense of closing or altering the temporary connection.

(2m) A temporary connection shall be prominently labeled "Temporary Connection" on the land division map, and the following restriction shall be lettered on the land division map:

"The temporary connection(s) shown on this plat shall be used under a temporary connection permit which may be canceled at such time as a feasible alternate means of access to a highway is provided."

(3) When such a temporary connection is granted, the owner shall dedicate a service road or a satisfactory alternative, to provide for a present or future pattern of access that complies with s. Trans 233.06(2).

Trans 233.08 SETBACK REQUIREMENTS AND COMPENSATION RESTRICTIONS. (1) Except as provided in this section or in s. Trans 233.11 or, with respect to connecting highways, as provided in s. 86.16(1), Stats., no person may erect, install or maintain any structure or improvement within a setback area determined under sub. (2) or (3).

(2)(a) Except as provided in par. (b), the setback area is the area within 110 feet of the centerline of a state trunk highway or connecting highway or within 50 feet of the nearer right-of-way line of a state trunk highway or connecting highway, whichever is furthest from the centerline.

(b) If an applicable ordinance allows structures or improvements to be located closer to the right-of-way of a state trunk highway or connecting highway than is provided under par. (a), the setback area is the area between the right-of-way and the more restrictive of the following:

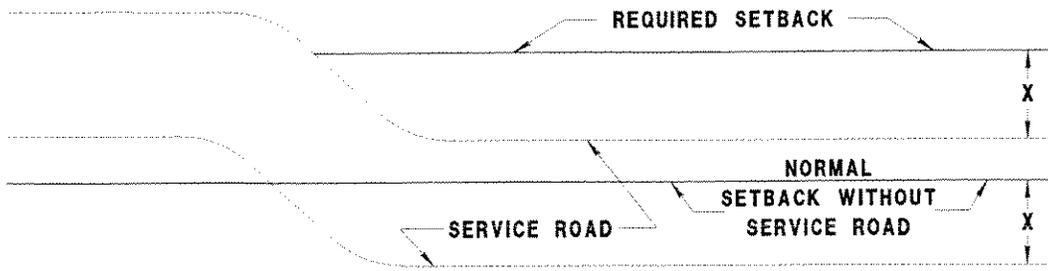
1. The distance allowed under the ordinance.
2. 42 feet from the nearer right-of-way line.
3. 100 feet from the centerline.

(3) If any portion of a service road right-of-way lies within the setback area determined under sub. (2), the setback area shall be increased by the lesser of the following:

(a) The width of the service road right-of-way, if the entire service road right-of-way lies within the setback area. Any increase under this paragraph shall be measured from the boundary of the setback area determined under sub. (2).

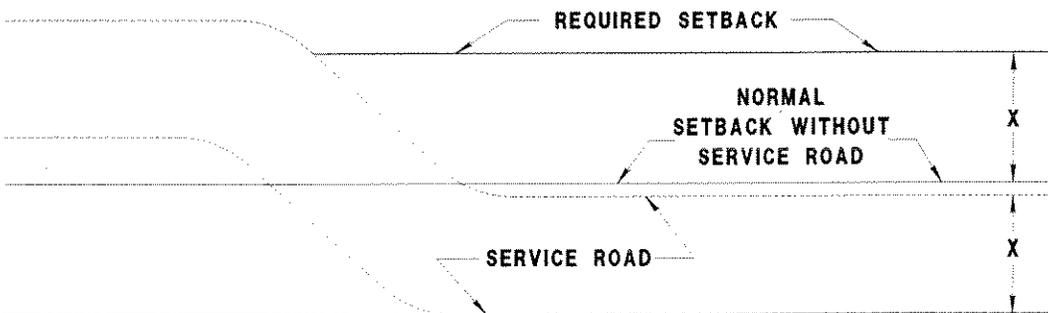
(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.

NOTE: For example, if a service road ROW extends 15 feet (measured perpendicularly to the setback) into the setback determined under sub. (2), and runs for a distance of 100 feet, the setback determined under sub. (2) shall be pushed 15 feet further from the centerline, running for a distance of 100 feet. See Graphic on next page.



STH 1001

**SETBACKS
WHEN SERVICE ROAD ENCROACHES PARTIALLY**



STH 1001

**SETBACKS
WHEN SERVICE ROAD LIES ENTIRELY WITHIN**

(3m)(a) Notwithstanding sub. (1), a public utility may erect, install or maintain a utility facility within a setback area.

(b) If the department acquires land that is within a setback area and on which a utility facility is located, the department is not required to pay compensation or other damages relating to the utility facility, unless the utility facility is any of the following:

1. Erected or installed before the land division map is recorded.
2. Erected or installed after the land division map is recorded but with the prior written approval of the department's appropriate district office.
3. Erected or installed before the land division map is recorded but modified after that date in a manner that increases the cost to remove or relocate the utility facility. In such a case, the department shall pay compensation or other damages related to the utility facility as it existed on the date the land division map was recorded, except that if the modification was made with the prior written approval of the department's appropriate district office the department shall pay compensation or other damages related to the utility facility as modified.

(c) Notwithstanding par. (b), the department may not pay compensation or other damages relating to a utility facility described in par. (b) if the payment by any person of such compensation or other damages is not required for any reason, including a local ordinance under s. 236.45, Stats.

(4) The land division map shall show the boundary of a setback area on the face of the land division map and shall clearly label the boundary as a highway setback line and shall clearly show existing structures and improvements lying within the setback area.

(5) The owner shall place the following restriction upon the same sheet of the land division map that shows the highway setback line: "No improvements or structures are allowed between the right-of-way line and the highway setback line. Improvements and structures include, but are not limited to, signs, parking areas, driveways, wells, septic systems, drainage facilities, buildings and retaining walls. It is expressly intended that this restriction is for the benefit of the public as provided in section 236.293, Wisconsin Statutes, and shall be enforceable by the Wisconsin Department of Transportation or its assigns. Contact the Wisconsin Department of Transportation for more information. The phone number may be obtained by contacting the County Highway Department."

Trans 233.105 NOISE, VISION CORNERS AND DRAINAGE. (1) The land divider is responsible for abating noise from existing state trunk highways or connecting highways, as provided in ch. Trans 405. The owner shall include the following notation on the land division map: "The lots of this land division may experience noise at levels exceeding federal standards. Owners of these lots are responsible for abating noise sufficient to protect these lots."

(2) The department may require the owner to dedicate land or grant an easement for vision corners at the intersection of a highway with a state trunk highway or connecting highway to provide for the unobstructed view of the intersection by approaching vehicles. If the department requires such a dedication or grant, the owner shall include the following notation on the land division map: "No structure or improvement of any kind is permitted within the vision corner. No vegetation within the vision corner may exceed 30 inches in height."

(3) The owner of land that directly or indirectly discharges stormwater upon a state trunk highway or connecting highway shall submit to the department a drainage analysis

and drainage plan that ensures that the anticipated discharge of stormwater upon a state trunk highway or connecting highway following the development of the land is less than or equal to the discharge preceding the development and that the anticipated discharge will not endanger or harm the travelling public, downstream properties or transportation facilities.

Trans 233.11 VARIANCES. (1) No municipality or county may issue a variance from this chapter without the prior written consent of the department.

(2) The department may not authorize variances from this chapter except in appropriate cases in which the literal application of this chapter would result in practical difficulty or unnecessary hardship, or would defeat an orderly overall development plan of a local unit of government. A variance may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and of this chapter. The department may not grant a variance authorizing the erection or installation of any structure or improvement within a setback area unless the owner executes an agreement providing that, should the department need to acquire lands within the setback area, the department is not required to pay compensation, relocation costs or damages relating to any structure or improvement authorized by the variance. The department may require such conditions and safeguards as will, in its judgment, secure substantially the purposes of this chapter.

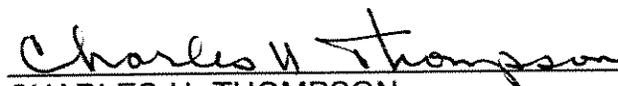
Trans 233.12 PERFORMANCE BOND. The department may, in appropriate cases, require that a performance bond be posted, or that other financial assurance be provided, to ensure the construction of any improvements in connection with the land division which may affect a state trunk highway.

Trans 233.13 FEES. The department shall charge a fee of \$110 for reviewing a land division map that is submitted under s. 236.10, 236.12, 236.34, 236.45 or 703.11, Stats., on or after the first day of the first month beginning after publication [revisor inserts date]. The fee is payable prior to the department's review of the land division map. The department may change the fee each year effective July 1 at the annual rate of inflation, as determined by movement in the consumer price index for all urban consumers (CPI-U), published the preceding January in the CPI detailed report by the U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

(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 27 day of August, 1998.



CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation