

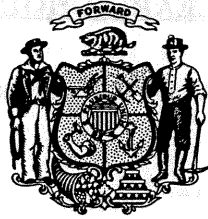
OCT 09 2000

LCRC  
FORM 2

WISCONSIN LEGISLATIVE COUNCIL STAFF

**RULES CLEARINGHOUSE**

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**CLEARINGHOUSE REPORT TO AGENCY**

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

**CLEARINGHOUSE RULE 00-132**

AN ORDER to amend Comm 2.21; and to repeal and recreate Chapter Comm 33, relating to tramways, lifts and tows.

Submitted by **DEPARTMENT OF COMMERCE**

09-08-00 RECEIVED BY LEGISLATIVE COUNCIL.

10-05-00 REPORT SENT TO AGENCY.

RNS:MCP;jal;tlu

**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)]

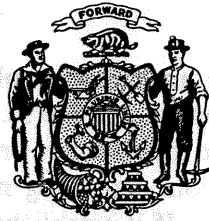
Comment Attached YES  NO

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## CLEARINGHOUSE RULE 00-132

### Comments

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

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

a. Section Comm 33.02 uses "locations" to state the scope of the rules. It would appear to be more accurate to state that the rules apply to passenger ropeways rather than to the locations where passenger ropeways are found.

b. The rules use "installations" and "proposed installations" to describe the objects and actions that are subject to regulation. [See s. Comm 33.03 (1) (title) and 33.10.] This term appears to be used as a synonym for "passenger ropeway" although the use of a different term in legal drafting always raises the question of whether a different meaning is intended. The department should carefully consider whether these terms are merely a substitute for "passenger ropeways" and should use the latter term consistently if that is the intent.

c. The rule uses a variety of terms to describe the actions that are subject to regulation. The rule includes at least the following: installed, constructed, altered, added to, erected and relocated. There appears to be considerable overlap among these terms and the terms do not appear to have a precise meaning. The department should carefully consider how these terms are used and whether a simpler and clearer statement of rule applicability can be drafted. For example, the difference between "alteration and addition to" is unclear: these terms could have the same meaning. The same observation can be made for "installed" and "constructed."

d. In s. Comm 33.05, should “nonstatutory” be inserted before “provision”? Presumably, the department would not be granting variances from any statutory requirements that are repeated or referenced in the rule.

e. The rule uses “applicable” in a number of places to describe the requirements that apply to a particular type of passenger ropeway. [See ss. Comm 33.03 (3), 33.10 (1) (c) (intro.) and 33.13 (2).] If it is clear under the rule which provisions apply to a particular type of passenger ropeway (for example, provisions regarding new ropeways do not apply to existing ropeways), then this term is unnecessary. If it establishes a substantive requirement (that is, it dictates that some but not all provisions of the rule apply), this term does not provide enough information to determine which provisions apply and which do not. Either this term should be eliminated or it should be clarified.

f. Section Comm 33.10 (1) (b) requires copies of “plans” to be submitted to the department but “prints” is used in the note. Should these terms be the same?

g. The use of “conditional” regarding the approval under s. Comm 33.10 (2) is confusing. Normally, a conditional approval is expected to be followed by a final approval. However, this is not the case in the rule. Either “conditional” should be deleted as surplusage, or the conditions of the approval should be stated.

h. The last sentence of s. Comm 33.10 (2) (a) relates to the department’s legal liability for its actions. Why does this provision appear only in connection with the plan approval and not with other actions of the department under the rule? Can this provision be placed in a separate section?

i. Section Comm 33.10 (2) (a) and (b) relate to plans for a “proposed” passenger ropeway, suggesting that this applies only to new passenger ropeways. However, s. Comm 33.10 (1) applies also to additions to existing passenger ropeways. [See also, s. Comm 33.10 (3) (a), which requires plans only for a “new” passenger ropeway to be kept at the installation site.]

j. In s. 33.10 (4), “the requirements of” is unnecessary.

k. Section Comm 33.11 requires “complete information” regarding certain alterations to be made available. Is this different from plans and specifications? Should this also apply to relocations?

l. Section Comm 33.11 also requires that the information be “available” to the department or a third-party independent inspector. It is not clear what this means. Who is required to make this information available and where is it required to be kept?

m. Section Comm 33.12 establishes two time periods as calendar days while other provisions of the rule refer to business days. Is there a reason for the difference?

n. Section Comm 33.12 (1) (c) provides that the department “may” issue a temporary permit. However, the department is required to complete the inspection within 14 days. Should

this provision be redrafted to require the department to issue a temporary permit if the inspection is not completed within 14 days after installation, or is some other meaning intended?

o. Section Comm 33.12 (2) (a) and a number of other provisions in the rule allow inspections by third-party independent inspectors. However, the rule does not establish any requirements for qualifications of third-party inspectors. Is this omission intentional?

p. The note after s. Comm 33.12 (2) (a) refers to standards that existed prior to July 1, 1984. This note is useful, but could be improved by stating what requirements were applicable between July 1, 1984 and the effective date of this proposed rule.

q. Section Comm 33.15 requires bodily injury that results from malfunctions of ropeways to be reported to the department. Fatalities must be reported, but are not limited to fatalities caused by malfunctions of a ropeway. Is this difference intended? Does this provision mean that an accident resulting in bodily injury that is not the result of malfunction does not have to be reported to the department? If so, will the operator determine whether or not it was a malfunction that caused the injury?

PROPOSED RULES

Chapter Comm 33

Rule No.

Ropeways, Lifts and Tows

Relating to



State of Wisconsin \ Department of Commerce

# HEARING DRAFT of PROPOSED RULES

**Rule No.:** Chapter Comm 33

**Relating to:** Tramways, Lifts and Tows

The Department of Commerce proposes an order to amend section Comm 2.21; and to repeal and recreate chapter Comm 33, relating to tramways, lifts and tows.

\*\*\*\*\*

Analysis of Proposed Rules

Statutory Authority: Sections 101.02 (1) and 101.17, Stats.

Statutes Interpreted: Sections 101.02 (1) and 101.17, Stats.

The Division of Safety and Buildings within the Department of Commerce is responsible for protecting the health, safety and welfare of the public by establishing reasonable and effective safety standards for the construction, repair and maintenance of public buildings and places of employment. Chapter Comm 33 contains minimum safety standards for the design, construction, installation, operation and inspection of tramways, lifts and tows.

The proposed rules consist of a complete revision of chapter Comm 33 in order to bring the chapter up to date with current technology and nationally recognized standards. The current chapter Comm 33 consists of the incorporation by reference of the 1992 edition of the American National Standards Institute (ANSI) Safety Requirements for Passenger Tramways, ANSI B77.1, with several modifications to that standard. The proposed rules incorporate the 1999 edition of the ANSI B77.1 standard, Safety Requirements for Passenger Ropeways.

In addition to the change in terminology to passenger ropeways, the proposed rules include several technical revisions in the current code. Most of the Department modifications to the ANSI standard in the current code are being removed, such as the requirements for additional signs. The current code requirements for inspections are being revised by requiring compliance with the acceptance inspections and load tests requirements in the ANSI standard. The inspection requirements are also being revised to allow periodic inspections to be performed by third party independent inspectors. The proposed rules also include new requirements for a permit to operate.

The proposed rules have been developed with the assistance of the Tramways, Lifts and Tows Code Advisory Council. The members of that citizen advisory council are as follows:

<u>Name</u>	<u>Representing</u>
Jim Engel	Wisconsin Ski Industries Association
Jim Hubing	National Ski Patrol System
Don McKay	Wisconsin Ski Industries Association
Ted Motschman	Wisconsin Ski Industries Association
Dennis Schulz	Ski Industry at Large
Chris Stoddard	Insurance Industry
Rob Walz	Wisconsin Ski Industries Association

\*\*\*\*\*

SECTION 1. Comm 2.21 is amended to read:

**Comm 2.21 ~~Tramways, lifts and towing devices~~ Passenger ropeways (1) PLAN EXAMINATION FEE.** Fees for the examination of plans for ~~tramways, lifts and towing devices~~ passenger ropeways shall be determined in accordance with Table 2.21-1.

**Table 2.21-1  
Plan Examination Fees for  
~~Tramways, Lifts and Towing Devices~~  
Passenger Ropeways**

<u>Type of Lift or Device</u> <u>Passenger Ropeway</u>	<u>Fee Per Plan</u>
Gondola lifts and rides . . . . .	\$780.00
Chair lifts and rides . . . . .	\$580.00
Surface tows, except fiber and wire rope tows . . . . .	\$390.00
Fiber and wire rope tows, and conveyors . . . . .	\$260.00

**Note:** See ch. Comm 34 for definition of the term "Amusement Ride" as it applies to ~~tramways, lifts and towing devices~~ passenger ropeways used as amusement rides.

**Note:** Surface tows include T-bar, platter and similar devices.

(2) INSPECTION FEES. Fees for the inspection of new installations, annual inspections and other inspections of passenger ropeways shall be determined in accordance with Table 2.21-2.

**Table 2.21-2  
Inspection Fees for  
~~Tramways, Lifts and Towing Devices~~  
Passenger Ropeways**

<u>Type of Lift or Device</u> <u>Passenger Ropeway</u>	<u>Inspection Fee Per Installation</u>
Gondola lifts and rides . . . . .	\$530.00
Chair lifts and rides . . . . .	\$530.00
Surface tows, except fiber and wire rope tows . . . . .	\$350.00
Fiber and wire rope tows, and conveyors . . . . .	\$210.00

**Note:** See ch. Comm 34 for definition of the term "Amusement Ride" as it applies to ~~tramways, lifts and towing devices~~ passenger ropeways used as amusement rides.

**Note:** Surface tows include T-bar, platter and similar devices.

(3) LOAD TEST FEE. The fee for certifying a load test of a passenger ropeway shall be \$350.00 per load test.

(4) PERMIT TO OPERATE. The fee for the issuance of a permit to operate for each ~~tramway, lift or towing device~~ passenger ropeway shall be \$35.00.

SECTION 2. Chapter Comm 33 is repealed and recreated to read:



**Chapter Comm 33**

**PASSENGER ROPEWAYS**

**Subchapter I – Administration and Enforcement**

**Comm 33.01 Purpose.** Pursuant to ss. 101.02 (1) and 101.17, Stats., the purpose of this chapter is to protect the health, safety and welfare of the public and employees by establishing minimum design, construction, installation, operation and inspection standards for passenger ropeways.

**Note:** See ANSI B77.1 as adopted in s. Comm 33.17 for the definition of "passenger ropeway".

**Comm 33.02 Scope.** This chapter applies to all locations where passenger ropeways are installed, constructed, altered or operated.

**Comm 33.03 Application.** (1) **NEW INSTALLATIONS.** This chapter applies to all passenger ropeways installed or constructed on or after [the effective date of these rules...Revisor to insert date].

(2) **ALTERATIONS.** This chapter applies to all alterations of and additions to passenger ropeways which affect the passenger ropeway's design, structural strength or operation or which replace any piece of major equipment on the passenger ropeway. This chapter does not apply to minor repairs necessary for a passenger ropeway's maintenance.

(3) **EXISTING INSTALLATIONS.** The applicable operation and maintenance requirements of this chapter apply to passenger ropeways installed or constructed prior to [the effective date of these rules...Revisor to insert date].

**Comm 33.05 Petition for variance.** The department shall consider and may grant a variance to a provision of this chapter in accordance with ch. Comm 3. The petition for variance shall include, where applicable, a position statement from the fire department having jurisdiction.

**Note:** Chapter Comm 3 requires the submittal of a petition for variance form (SBD-9890) and a fee, and that an equivalency is established in the petition for variance that meets the intent of the rule being petitioned. Chapter Comm 3 also requires the department to process regular petitions within 30 business days and priority petitions within 10 business days.

**Note:** Form SBD-9890 is available at no charge from the department at the Safety and Buildings Division, P.O. Box 2509, Madison WI 53701-2509, telephone 608/266-1818.

**Comm 33.06 Fees.** Fees for the plan examination, permit to operate, load test and inspection of passenger ropeways shall be submitted to the department as specified in ch. Comm 2.

**Comm 33.07 Penalties.** Penalties for violations of this chapter shall be assessed in accordance with s. 101.02 (12) and (13)(a), Stats.

**Note:** Section 101.02 (12), Stats., indicates that every day during which any person, persons, corporation or any officer, agent or employe thereof, fails to observe and comply with an order of the department will constitute a separate and distinct violation of such order.

**Note:** Section 101.02 (13) (a), Stats., indicates that if any employer, employee, owner, or other person violates ss. 101.01 to 101.25, Stats., or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, Stats., for each such violation, failure or refusal, such employer, employee, owner or other person shall forfeit and pay into the state treasury a sum not less than \$10 or more than \$100 for each such offense.

**Comm 33.08 Appeals. (1) APPEAL OF DEPARTMENT ORDER.** Pursuant to s. 101.02 (6)(e), Stats., any person who owns or occupies a property that is affected by an order of the department may petition the department for a hearing on the reasonableness of the order.

**(2) APPEAL OF LOCAL ORDER.** Pursuant to s. 101.02 (7)(b), Stats., any person affected by a local order that is in conflict with an order of the department may petition the department for a hearing on the local order.

**(3) PETITION OF ADMINISTRATIVE RULE.** Pursuant to s. 227.12, Stats., any municipality, corporation or any 5 or more persons having an interest in an administrative rule may petition the department requesting the adoption, amendment or repeal of the rule.

## Subchapter II – General Requirements

**Comm 33.10 Department review. (1) PLANS AND SPECIFICATIONS.** (a) Before commencing the construction, erection or relocation of or addition to a passenger ropeway, plans and specifications for the proposed installation shall be submitted to the department for review and approval.

**Note:** Plans and specifications are to be submitted to the department at the Safety and Buildings Division, Plan Review Section, P.O. Box 7162, Madison, Wisconsin 53707-7162.

(b) At least 3 clear, legible and permanent copies of the plans and one copy of the specifications shall be submitted to the department.

**Note:** Original drawings are not considered a substitute for permanent prints.

(c) Plans shall include all of the following applicable information:

1. Name of the owner and the location of the passenger ropeway.
2. Name and address of the passenger ropeway's designer.
3. Site plan and profile map showing location of towers, power units, counterweights and pits.
4. Clearances of towers, path and counterweights.

5. Details of tower construction mountings, foundations and supports, sheave assemblies and carriages.

(d) The specifications shall be coordinated with the plans and describe the quality of the materials.

(e) All plans submitted for review shall be accompanied by sufficient data and information for the department to determine if the design of the passenger ropeway, the capacity of the equipment, and the performance of the passenger ropeway will conform to the requirements of this chapter.

(2) PLAN APPROVAL. (a) If the department determines that the plans and the specifications for the proposed passenger ropeway substantially conform to the requirements of this chapter, a written conditional approval shall be granted. All conditions not in compliance with this chapter, which are identified in the conditional approval, shall be corrected before or during construction or erection. A conditional approval issued under this subsection shall not impose any responsibility or liability upon the department for the design or construction of the passenger ropeway.

(b) If the department determines that the plans or the specifications for the proposed passenger ropeway do not substantially conform to the requirements of this chapter, the application for conditional approval shall be denied in writing.

(3) EVIDENCE OF PLAN APPROVAL. (a) At least one set of plans bearing the department's stamp of conditional approval and a copy of the specifications for a new passenger ropeway shall be kept at the installation site. The plans and specifications shall be open to inspection by the department or a third party independent inspector.

(b) At least one set of approved plans of the new passenger ropeway shall be retained at the installation area for at least 3 years after installation. The plans shall be open to inspection by the department or a third party independent inspector.

(4) REVOCATION OF APPROVAL. The department may revoke any approval, issued under the requirements of this chapter, for any false statements or misrepresentation of facts on which the approval was based.

(5) PLAN REVIEW PROCESSING TIME. The department shall review and make a determination on an application for plan review within 15 business days of receiving the required information and fees.

**Comm 33.11 Ropeway alterations.** Complete information regarding an alteration which affects the design, structural strength or operation of a passenger ropeway or which replaces any piece of major equipment of a passenger ropeway shall be available to the department or a third party independent inspector.

**Note:** Examples of alterations include the ropeway modifications listed in ANSI B77.1 section 1.2.4.4.

*perhaps? this is another "final" approval - what other condition*

*→ how'd they get by release?*

*→ why not? in the section 39.2.2.1. 10/10/10*

*See 33.10 (1) is one in existence*

*See 33.10 (1) addition requires specs & mitigate*

*Plans / spec*

*relocation*

*had been the same? introduced it*

**Comm 33.12 Inspections and tests. (1) ACCEPTANCE INSPECTIONS.** (a) The acceptance inspections specified in the ANSI B77.1 standard adopted in s. Comm 33.17 shall be performed by the department.

*why are there days - not business days?*  
*10 weeks prior 5 days before "ready"*  
*why? de paint is it need to be ready + Dept has 14 days -*

(b) Notice shall be given to the department at least 10 days prior to the time the installation will be ready for inspection.

(c) The department shall complete its inspection within 14 days after the installation is ready for inspection, or the department may issue a temporary permit to operate until an inspection is completed and the installation is approved or disapproved.

**(2) PERIODIC INSPECTIONS.** (a) All passenger ropeways, including existing passenger ropeways erected or constructed prior to [the effective date of these rules...Revisor to insert date], shall be inspected at least once every 12 months by the department or a third party independent inspector. The inspections shall ascertain whether the passenger ropeways meet the requirements of this chapter and, for applicable existing passenger ropeways, the appropriate requirements in effect prior to [the effective date of these rules...Revisor to insert date].

*handle what conditions - 10" the if you are in 14 days*  
*how to determine?*

**Note:** Prior to July 1, 1984, administrative rules for aerial tramways, aerial lifts, surface lifts and rope tows were specified in ch. Ind 46.

*what is the scope of the inspection?*

*what about 1984 to 2000?*

(b) By October 1 of each year, the passenger ropeway owner shall notify the department in writing if the next required periodic inspection is to be performed by a third party independent inspector. If the notification is not made by October 1, the department may perform the next required periodic inspection and charge the owner the applicable fee specified in ch. Comm 2.

(c) Where the inspection required under par. (a) is performed by a third party independent inspector, the inspection report shall be filed with the department at least 10 business days prior to the expiration date on the permit to operate. If the report is not filed within the required time frame, the department may perform the next required periodic inspection and charge the owner the applicable fee specified in ch. Comm 2.

**(3) LOAD TESTS.** The acceptance tests specified in the ANSI B77.1 standard adopted in s. Comm 33.17 shall be witnessed by the department.

**(4) ADDITIONAL DATA.** When requested, additional data pertaining to the design, construction, materials or equipment of a passenger ropeway shall be submitted to the department for approval or to substantiate compliance with this chapter.

**Comm 33.13 Permit to operate. (1) RESPONSIBILITY.** No passenger ropeway may be operated without a valid permit to operate. The owner of a passenger ropeway shall be responsible for obtaining and maintaining a valid permit to operate. The permit to operate shall be kept on the premise.

**(2) ISSUANCE.** After each initial or periodic inspection, a permit to operate shall be issued by the department upon determination that the passenger ropeway meets the applicable requirements of this chapter. The department shall issue a permit to operate within 10 business days from receipt of an inspection report showing compliance with this chapter.

*e if they don't get they have apply*

(3) EXPIRATION. The permit to operate shall be valid for no longer than 12 months. The expiration date shall be printed on the permit to operate.

**Comm 33.14 Owner's responsibility.** No owner may construct or alter any passenger ropeway or portion of a passenger ropeway, or permit any passenger ropeway to be constructed or altered except in compliance with this chapter. Compliance with this chapter does not relieve the owner from compliance with other administrative rules or statutes.

**Comm 33.15 Accident reporting.** An accident resulting in bodily injury as a result of a passenger ropeway malfunction shall be reported to the department within 2 business days of the injury. Fatalities shall be reported within 24 hours of occurrence.

**Note:** Accidents are to be reported to the department at the Safety and Buildings Division, Field Operations Bureau, P.O. Box 2538, Madison, Wisconsin 53701-2538. Forms for reporting accidents may be obtained from the department at the same address.

**Note:** The department can be contacted at 608/266-3151 during normal business hours. The State Division of Emergency Government can be contacted at 608/266-3232 during nonbusiness hours.

**Comm 33.16 Construction and operation.** All passenger ropeways shall be designed, installed, maintained and operated in accordance with the ANSI B77.1 standard incorporated by reference in s. Comm 33.17, subject to those changes, additions and omissions specified in subch. III.

**Comm 33.17 Incorporation of standards by reference.** The American National Standard for Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements, ANSI B77.1-1999, subject to the changes, additions and omissions specified in subch. III, is hereby incorporated by reference into this chapter.

**Note:** Copies of the ANSI B77.1 standard can be purchased from Global Engineering Documents, Customer Support A105, 15 Inverness Way, Englewood, CO 80112, telephone 800/624-3974, or from the National Ski Areas Association, 133 South Van Gordon Street, Suite 300, Lakewood, CO 80228.

**Note:** Copies of standards incorporated by reference are on file in the offices of the department, the secretary of state, and the revisor of statutes.

### Subchapter III – Changes or Additions to or Omissions from Adopted Standards

**Comm 33.20 Changes or additions to or omissions from ANSI B77.1.** Changes or additions to or omissions from the ANSI B77.1 standard are specified in this subchapter and are rules of the department and are not requirements of the ANSI B77.1 standard.

**Note:** The referenced B77.1 rule number, located in brackets, follows the Comm designation and section title and precedes the text of the rule.

**Comm 33.21 Scope and purpose [B77.1 1.1, 1.2 and 1.3].** The requirements of B77.1 section 1.1 - Scope, section 1.2 - Purpose, and section 1.3 - Reference to Other Codes and Standards are not included as part of this chapter.

**Comm 33.22 Definitions [B77.1 1.4]. (1) ADDITIONS.** The following are department definitions in addition to the definitions in B77.1 section 1.4:

- (a) "Department" means the department of commerce.
- (b) "Evacuation" means an emergency unloading procedure to remove passengers at other than designated unloading areas.
- (c) "Path" means that area of a surface lift system or rope tow system traversed by a user which extends between the loading area and the point beyond the stop gate for the unloading area where a passenger would disembark if the stop gate was actuated.

**(2) SUBSTITUTIONS.** The following department definitions are substitutions for the respective definitions in B77.1 section 1.4:

- (a) "Approved" means acceptable to the department.
- (b) "Authority having jurisdiction" means the department.

**(END)**

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**EFFECTIVE DATE**

Pursuant to s. 227.22 (2)(intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

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RA:h:\RuleDrafts\Comm33PubHrg