



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 02-044

AN ORDER to repeal NR 6.43 (2) and (3) and 6.43 (7) (d); to renumber NR 6.43 (1) and 6.45; to amend NR 6.43 (2) (b) and (e) and (7) (c); to repeal and recreate NR 6.42, 6.43 (4), (5) and (7) (a) and 6.44; and to create NR 6.41 (4) and (5), 6.43 (1) and (3) and 6.45, relating to snowmobile rail crossings.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-08-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-02-02 REPORT SENT TO AGENCY.

RNS:PC:ksm;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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Comments

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

2. Form, Style and Placement in Administrative Code

a. If a provision is renumbered and a portion of it is also amended, this should be done in one SECTION. For example, SECTIONS 4, 6, and 7 should be combined as follows: "SECTION 4. NR 6.43 (1) is renumbered NR 6.43 (2) and NR 6.43 (b) and (e), as renumbered, are amended to read:".

b. In s. NR 6.43 (2) (b), the period at the end of the stricken-through sentence should also be stricken. Also, a space between "4feet" is needed.

Report to
Legislative Council Rules Clearinghouse
NR 6, Wis. Adm. Code
Natural Resources Board Order No. CF-19-02

Wisconsin Statutory Authority

ss. 350.137(1) and 227.11(2)(a), Stats., interpreting ss. 350.137 to 350.139 and 350.1395, Stats.

Federal Authority

N/A

Court Decisions Directly Relevant

None

Analysis of the Rule - Rule Effect - Reason for the Rule

Major changes to the enabling legislation that created the Department's role in regulating snowmobile railroad crossings that are not located on public roads or highways occurred in the spring session of the Legislature. 2001 Wisconsin Act 14 resolved a lawsuit against the Department and the Governor filed in 1999 by the Soo Line Railroad. The resulting legislative changes were the product of negotiations between the Association of Wisconsin Snowmobile Clubs, the Department, the Attorney General's office, the Office of the Commissioner of Rails and railroad company representatives.

The proposed rule changes reflect the major changes in the statute including:

1. Distinctions in the areas of responsibility for construction and maintenance between the snowmobile organization and the rail authority.
2. Repeal major sections on construction materials and their installation.
3. Establish sign specifications and posting distances for signs used at the crossing and prior to the crossing.
4. Describe construction scheduling and supervision responsibilities for both a snowmobile organization and a rail authority.
5. Further clarify the obligations of a snowmobile authority regarding the purchase of liability insurance to indemnify a rail authority.

Agency Procedures for Promulgation

Public hearings, Natural Resources Board final adoption, followed by legislative review.

Description of any Forms (attach copies if available)

None

Name and Telephone Number of Agency Liaisons

Larry Freidig, Bureau of Community Financial Assistance - 266-5897
Marcia Penner, Bureau of Legal Services - 266-2132
Carol Turner, Bureau of Legal Services - 266-1959

Submitted on April 9, 2002

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND
CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to repeal NR 6.43(2) and (3) and 6.43(7)(d), to renumber NR 6.43(1) and 6.45; to amend NR 6.43(2)(b) and (e) and (7)(c); to repeal and recreate NR 6.42, 6.43(4), (5) and (7)(a) and 6.44; and to create NR 6.41(4) and (5), 6.43(1) and (3) and 6.45, relating to snowmobile rail crossings.

CF-19-02

Statutory authority: ss. 350.137(1) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 350.137 to 350.139 and 350.1395, Stats.

2001 Wisconsin Act 14 modified the existing system of regulating snowmobile railroad crossings that are not located on public highways or streets. Continuing from the former law, only a snowmobile organization may construct a crossing and it must have a permit issued by the Department of Natural Resources. Similarly, only a snowmobile organization may maintain a railroad crossing, whether established by a permit or as an established crossing, i.e. used for snowmobiling for at least 5 winters in the last 10 years. The provisions of Act 14 included a number of major changes that:

1. Gave the railroads additional input in the decision making process of granting a permit.
2. Established a process for a contested case hearing where a rail authority was opposed to the issuance of a permit.
3. Established factors that must be addressed by the Department in the decision of whether to grant or deny a permit for a crossing.
4. Allowed only the rail authority or its contractor to construct the crossing on the tracks and that portion of the crossing extending 4 feet outward from each outer rail.
5. Established a one-time fee of \$1,500 to be paid by a snowmobile organization to the rail authority within 30 days of the issuance of a permit for the cost of constructing the crossing and the use of the crossing by snowmobile operators.

The proposed rule changes reflect the major changes in the statute including:

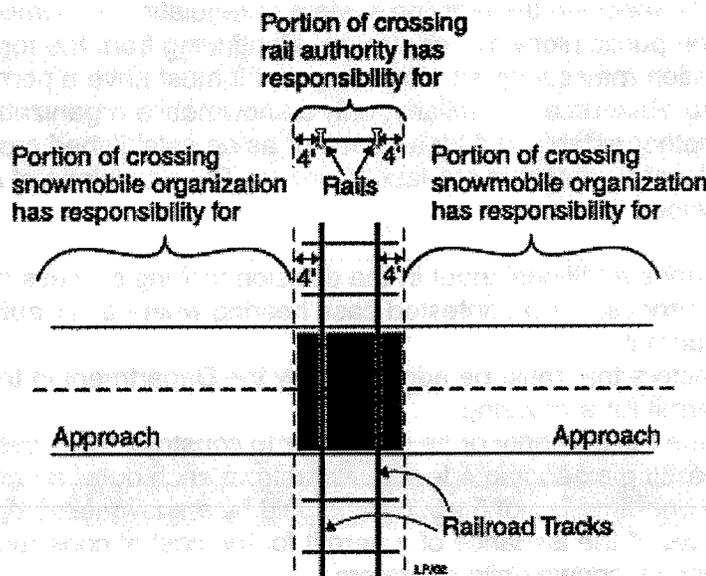
1. Distinctions in the areas of responsibility for construction and maintenance between the snowmobile organization and the rail authority.
2. Repeal major sections on construction materials and their installation.
3. Establish sign specifications and posting distances for signs used at the crossing and prior to the crossing.
4. Describe construction scheduling and supervision responsibilities for both a snowmobile organization and a rail authority.
5. Further clarify the obligations of a snowmobile authority regarding the purchase of liability insurance to indemnify a rail authority.

SECTION 1. NR 6.41 (4) and (5) are created to read:

NR 6.41(4) "The portion of the snowmobile rail crossing for which the rail authority has responsibility" means the area on the track and that portion of the crossing that extends outward 4 feet from each outer rail.

(5) "The portion of the snowmobile rail crossing for which the snowmobile organization has responsibility" means the area of the crossing that is outside of the portion of the crossing that extends outward 4 feet from each outer rail.

Note: The following illustration graphically describes the areas defined in subs. (4) and (5).



SECTION 2. NR 6.42 is repealed and recreated to read:

NR 6.42 Maintenance standards for established snowmobile rail crossing. A snowmobile organization shall assist a rail authority in maintaining an established snowmobile rail crossing in the following manner:

(1) The snowmobile organization shall maintain adequate drainage along the snowmobile trail approaching the rail crossing and along the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility, both in the snowmobile and non-snowmobile season, to prevent the pooling of water or saturation of the track subgrade.

(2) The snowmobile organization shall be responsible for furnishing, installing and maintaining in a legible condition all signs at the crossing including crossbucks, crossing placards and snowmobile STOP signs, and all signs prior to the crossing including an advance railroad crossing caution sign. The snowmobile organization shall comply with the sign specifications and posting requirements described in s. NR 6.43(3).

(3) During the winter season, no snow may be compacted by snowmobile trail grooming machinery on the portion of the snowmobile rail crossing for which the rail authority has responsibility. Any snow deposited on this portion of the rail crossing by the grooming machinery shall be removed manually by the operator of the trail grooming machinery after the machinery is clear of this area of the crossing.

(4) A snowmobile organization may not perform any maintenance work on the portion of the snowmobile rail crossing for which the rail authority has responsibility with the exception of the snow removal work required under sub. (3). The rail authority shall maintain the portion of the snowmobile rail crossing for which the rail authority has responsibility. The snowmobile organization shall maintain the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility.

SECTION 3. NR 6.43(2) and (3) are repealed.

SECTION 4. NR 6.43(1) is renumbered NR 6.43(2). *combine w/ 6 + 7*

SECTION 5. NR 6.43(1) is created to read:

NR 6.43(1) All permitted snowmobile rail crossings shall be constructed in the following manner:

(a) The rail authority or its contractor shall construct the portion of the snowmobile rail crossing for which the rail authority has responsibility.

(b) All other construction of the snowmobile rail crossing shall be performed by the snowmobile organization or its contractor.

SECTION 6. NR 6.43(2)(b), as renumbered, is amended to read:

NR 6.43(2)(b) *Vertical alignment*. ~~The crossing surface shall be in the same plane as the top of the rails for a distance of 2 feet outside the rails.~~ *TRAFFIC PORTION* The surface, without snow, of the snowmobile trail approaching the crossing for a distance of ~~28~~ 26 feet from ~~2~~ 4 feet outside the nearest rail may not be higher than one foot lower than the top of the nearest rail or 1.5 foot lower than the top of the nearest rail. *ASAP*

SECTION 7. NR 6.43(2)(e), as renumbered, is amended to read:

NR 6.43(2)(e) *Sight distances*. The snowmobile rail crossing shall be located so that when stopped on the crossing approach at the crossbuck and posted STOP sign, the snowmobile operator has a sight distance along the tracks in both directions, free of obstructions, to determine whether a train is approaching. The position from which the sight distance is measured is 15 feet outward from the nearest rail. ~~The sight distances for the following maximum allowable train speeds shall be minimum distances that clear vision is available in both directions to determine the approach of a train set forth in Table 1 for the corresponding maximum allowable train speeds shall be available in both directions from this~~

position. Snowmobile rail crossings may not be sited at locations where sight distances are less than specified in Table 1.

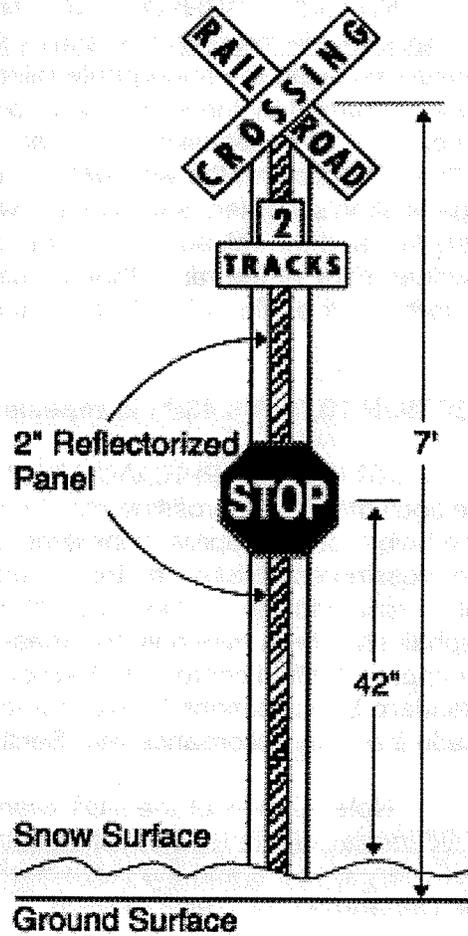
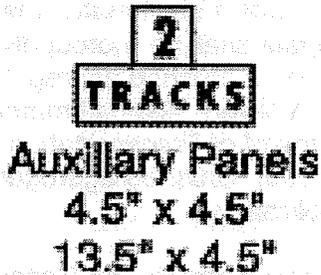
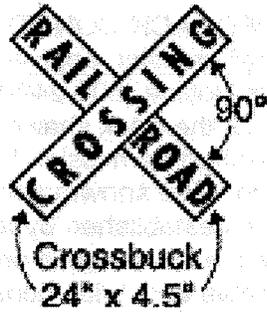
Table 1

Maximum Allowable Train Speed (mph)	19	29	39	49	59	69
Sight Distance Along Railroad from Crossing (feet)	240	480	720	960	1200	1440

SECTION 8. NR 6.43(3) is created to read:

NR 6.43(3) SIGNS. (a) *Responsibility.* The snowmobile organization shall be responsible for furnishing, installing and maintaining in a legible condition all signs identified in this section.

(b) *Signs at the crossing.* A railroad crossing sign, commonly identified as a crossbuck, shall be used to notify the snowmobile operator of the railroad crossing. The crossbuck shall be 2 panels 24" long by 4.5" wide mounted perpendicular to each other at the midpoint of each with the legend RAILROAD and CROSSING, respectively. The sign color shall consist of white reflective background with reflective black lettering. The size of the lettering shall be 2". The sign shall be constructed with commercially manufactured reflective sheeting applied to an aluminum or treated wood backing. Where physically possible, the crossbuck sign shall be located on the right hand side of the trail. Where circumstances do not allow the posting of the crossbuck on the right hand side of both approaches, the crossbucks may be posted back to back. The crossbuck shall be erected 10 feet outward from the nearest rail and no further from the trail edge than 6 feet. The panels of the crossbuck shall be mounted so that the panels cross approximately 7 feet above bare ground on a preservative treated 4" x 6" post with the 6" side parallel to the tracks. The post shall have a 2" reflective white panel on both sides extending from 6" below the intersection of the crossbuck blades to 6" above the anticipated level of snow. A minimum of one crossbuck shall be used on each approach to the crossing. An additional crossbuck may be posted on the left hand side of the trail at a distance of 10 feet outward from the nearest rail. If the number of pairs of tracks is 2 or more, the number of pairs of tracks shall be indicated with 2 auxiliary placards. The first placard shall be 4½" by 4½" square placard placed beneath the crossbuck with the legend indicating the number of tracks. The second placard shall be 13½" by 4½" rectangular placard placed beneath the square placard with the legend TRACKS. Both placards shall have a reflective 2" black number or letters on a reflective white background. A STOP sign that complies with s. NR 50.09(4)(c)3.b. shall be posted beneath the crossbuck at a level approximately 42" above the anticipated level of the snow. An additional STOP sign may be posted on the left hand side of the trail. Please refer to the following illustrations.



(c) *Signs prior to the crossing.* Prior to the snowmobile rail crossing, the snowmobile trail shall be signed with an advance caution railroad crossing sign. This sign shall be a circular sign of minimum 12" diameter. Sign color shall be a reflective yellow background with reflective black letter and legend. The letters shall be 4" upper case and the black legend shall be 2" in width. Please refer to the following illustration. The advance caution railroad crossing sign and an advance caution "Stop Ahead" sign meeting the requirements of s. NR 50.09(4)(c)3.b. shall be placed in a manner to enable a snowmobile operator to come to a safe stop at the crossbuck and STOP sign.



Minimum 12"
Diameter

SECTION 9. NR 6.43(4) is repealed and recreated to read:

NR 6.43(4) SCHEDULING AND SUPERVISION OF APPROACH CONSTRUCTION. The snowmobile organization shall schedule the snowmobile rail crossing approach construction with the appropriate railroad authority and Diggers Hotline (800-242-8511). All work performed by the snowmobile organization within 25 feet of the track shall be under the direct physical supervision of the rail authority or with explicit written permission from the rail authority to perform the work without direct physical supervision. The snowmobile organization's workers shall comply with the safety requirements established by federal and state law and the rail authority. The rail authority shall provide the snowmobile organization with a written copy of the rail authority's safety requirements applicable to outside contractors who perform work on the rail authority's property.

SECTION 10. NR 6.43(5) is repealed and recreated to read:

NR 6.43(5) APPROACH INSTALLATION AND COMPONENTS. (a) The approaches of the snowmobile rail crossing may be all aggregate or a combination of aggregate and asphalt. The height of the approach installed by the snowmobile organization shall match the height of the crossing established by the rail authority. Crushed aggregate shall be thoroughly compacted with a roller vibrator. Where asphalt is used in combination with a crushed aggregate base, the asphalt shall be a minimum thickness of 3", installed in 2 equal layers. Asphalt material used for an approach shall conform to Section 404, Wisconsin Department of Transportation (DOT) Standard Specifications for Road and Bridge Construction, 1996. Crushed aggregate shall be grade 2 or 3 in accordance with Section 304 of the same publication.

Note: Copies of the DOT Standard Specifications for Road and Bridge Construction, 1996, are available for inspection in the offices of the Department of Natural Resources, Secretary of State and the Revisor of Statutes in Madison. Copies may also be purchased from the Department of Transportation.

(b) A snowmobile organization shall properly dispose of all unused materials from the construction of the portion of the crossing for which it is responsible.

(c) A snowmobile organization may contract out the construction of the portion of the crossing for which it is responsible.

SECTION 11. NR 6.43(7)(a) is repealed and recreated:

NR 6.43(7) RAIL CROSSING CONSTRUCTION PERMIT. (a) No person may construct a snowmobile rail crossing that is not located on a railroad crossing of a highway or street unless the person is a snowmobile organization and has a permit issued under this subchapter.

SECTION 12. NR 6.43(7)(c) is amended to read:

NR 6.43(7)(c) A snowmobile organization may contact department ~~district~~ regional offices for prescribed application forms and instructions. ~~The~~ An application submitted under this section shall include adequate descriptions and drawings showing the proposed location of

the snowmobile rail crossing, the proposed design of the rail crossing, a list of materials needed to construct the ~~crossing~~ portion of the crossing for which the snowmobile organization is responsible and the location of snowmobile trails that connect with the snowmobile crossing. The completed application form with necessary attachments ~~may~~ and the \$150 application fee authorized under s. 350.138(5)(a), Stats., shall be submitted to the appropriate department ~~district~~ regional office. Upon receipt, the department shall send a copy of the application to the agent of the applicable rail authority designated under s. 350.138(2m), Stats. The department may reject an application within 15 days after it is submitted if the application is incomplete or is not sufficiently detailed to determine whether to approve or deny the application.

Note: Copies of permit application forms and instructions are available from ~~District~~ Regional Department of Natural Resources Offices located at:

~~Western District~~ West Central Region
1300 W. Clairemont Avenue
~~P.O. Box 4001~~
Eau Claire, WI 54702

~~Southeast District~~ Region
2300 N. Martin Luther King Jr. Dr.
~~P.O. Box 12436~~
Milwaukee, WI 53212

~~Southern District~~ South Central Region
3911 Fish Hatchery Road
Fitchburg, WI 53711

~~Northwest District~~ Northern Region
810 W. Maple Street
~~Hwy 70 W., P.O. Box 309~~
Spooner, WI 54801

~~Lake Michigan District~~ Northeast Region
1125 N. Military Avenue
~~P.O. Box 10448~~
Green Bay, WI 54307

~~North Central District~~ Northern Region
107 Sutliff Avenue, ~~P.O. Box 818~~
Rhineland, WI 54501

SECTION 13. NR 6.43(7)(d) is repealed. *Deck*

SECTION 14. NR 6.44 is repealed and recreated to read:

NR 6.44 Maintenance standards for new rail crossings. A snowmobile rail crossing permitted under this subchapter shall be maintained in the following manner:

(1) A snowmobile organization may not perform any maintenance work on the portion of the snowmobile rail crossing for which the rail authority has responsibility with the exception of the snow removal work required under s. NR 6.44(5). The maintenance of that portion of the snowmobile rail crossing for which the rail authority has responsibility shall be performed by the rail authority.

(2) The snowmobile organization shall maintain adequate drainage along the snowmobile trail approaching the rail crossing and along the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility, both in the snowmobile and non-snowmobile season, to prevent the pooling of water or saturation of the track subgrade.

(3) The snowmobile organization shall maintain the portion of the snowmobile rail crossing for which it has responsibility that becomes worn or damaged as a result of use and

shall repair the wear or damage as soon as practical using the materials and following the installation requirements contained in the permit and this subchapter.

(4) The snowmobile organization shall be responsible for maintaining in a legible condition all signs at the crossing including crossbucks, crossing placards and snowmobile STOP signs, and all signs prior to the crossing including advance caution railroad crossing signs.

(5) During the winter season, no snow may be compacted by snowmobile trail grooming machinery on the portion of the snowmobile rail crossing for which the rail authority has responsibility. Any snow deposited on this portion of the rail crossing by the grooming machinery shall be removed manually by the operator of the trail grooming machinery after the machinery is clear of this area of the crossing

(6) Gates or barriers shall be constructed, erected and maintained by the snowmobile organization to prevent vehicular use of the crossing during non-snow seasons and shall be maintained in working order. Barrier markers specified under s. NR 50.09(4)(c)3.b. shall be affixed to the gates or barrier and maintained in a legible manner.

SECTION 15. NR 6.45 is renumbered NR 6.46. *combine w/17*

SECTION 16. NR 6.45 is created to read:

NR 6.45 Liability insurance for new and established rail crossings. (1) A snowmobile organization shall maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction, maintenance, existence or use of an established snowmobile rail crossing or a snowmobile rail crossing for which a permit has been issued by the department.

(2) The snowmobile organization need not maintain liability insurance to indemnify the rail authority for injuries sustained by a person engaged in a recreational activity if the rail authority would be immune from liability for those injuries under s. 895.52, Stats.

(3) The snowmobile organization shall designate the applicable rail authority as a named insured on the insurance policy. Any liability insurance that is required for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and operators of any railroad using the tracks of the rail transit body.

(4) Regardless of the number of established or permitted rail crossings that a snowmobile organization maintains, the amount of the liability insurance that is required to be maintained shall be at least \$2,000,000 for each snowmobile organization.

(5) A snowmobile organization shall furnish an insurance certification form with an attached proof of insurance to the department and the applicable rail authority annually commencing on December 1, 2001 and by December 1 of each following year.

Note: Copies of the insurance certification form are available at the Regional Department of Natural Resources Offices.

SECTION 17. NR 6.46(note), as renumbered, is repealed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

*A A
SPMB SPMB*

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

**NOTICE TO PRESIDING OFFICERS
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. CF-19-02

Legislative Council Rules Clearinghouse Number 02-044

Subject of Rules Snowmobile rail crossings

Date of Transmittal to Presiding Officers August 28, 2002

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator
DNR Bureau of Legal Services
LS/5, 101 South Webster

Telephone: 266-1959
e-mail: turnec@dnr.state.wi.us

An electronic copy of the proposed rule may be obtained by contacting Ms. Turner

REPORT TO LEGISLATURE

NR 6, Wis. Adm. Code
Snowmobile rail crossings

Board Order No. CF-19-02
Clearinghouse Rule No. 02-044

Statement of Need

In 1993 the Legislature established a system for regulating snowmobile railroad crossings that are not located on public highways or streets. The law directed the Department to establish by rule uniform design, construction and maintenance standards for these crossings. The law also directed the Department to administer a permit process for the construction of new crossings and the monitoring the maintenance of existing established crossings. Two of the significant features of the law were the ability of snowmobile clubs to construct new crossings, even within the confines of the rails, and the lack of any type of payment to the railroad for the use of their property for the crossing.

In 1999, the Department and the Governor's office were sued in the Western District of the United States District Court by the Soo Line Railroad. The suit alleged that the existing law was unconstitutional on 2 different counts: lack of just compensation for the use of railroad property and lack of procedural due process because the law did not permit the railroad authority an opportunity for notice or hearing prior to the issuance of a permit.

In an attempt to resolve the lawsuit prior to its being scheduled for trial, the Association of Wisconsin Snowmobile Clubs initiated negotiations in cooperation with the Department, the Attorney General's Office and railroad company representatives. The successful result of the negotiations was embodied in 2001 Wisconsin Act 14. With the modification of the enabling statute, the lawsuit was dismissed.

Continuing the theme from the former law, only a snowmobile organization may construct a crossing and it must have a permit issued by the Department. Similarly, only a snowmobile organization may maintain a railroad crossing, whether established by a permit or as an established crossing. However, the provisions of Act 14 include a number of major changes that:

1. Give a rail authority additional input in the decision making process of granting a permit.
2. Establishes a process for a contested case hearing where a rail authority is opposed to the issuance of a permit.
3. Establishes factors that must be addressed by the Department in the decision of whether to grant or deny a permit for a crossing.
4. Allows only the rail authority or its contractor to construct the crossing on the tracks and that portion of the crossing extending 4 feet outward from each outer rail.
5. Establishes a one-time fee of \$1,500 to be paid by a snowmobile organization to the rail authority within 30 days of the issuance of a permit for the cost of constructing the crossing and the use of the crossing by snowmobile operators.

The proposed rule changes reflect the major changes in the enabling statute that include:

1. Making explicit distinctions in the physical areas of responsibility for construction and maintenance between the snowmobile organization and the rail authority.
2. Repealing major sections detailing construction materials and their installation.
3. Establishing sign specifications and posting distances for signs used at the crossing and prior to the crossing.
4. Describing construction scheduling and supervision responsibilities for both a snowmobile organization and a rail authority.
5. Further clarifying the obligations of a snowmobile organization regarding the purchase of liability insurance to indemnify a rail authority.

Modifications as a Result of Public Hearing

No modifications were made as a result of public hearing.

Appearances at the Public Hearings and Their Position

May 16, 2002 – Stevens Point

In support:

Dave Marg, Association of Wisconsin Snowmobile Clubs, 808 13th Street, Mosinee, WI 54455

In opposition – none

As interest may appear – none

May 17, 2002 – Madison

In support:

Bill Pfaff, Association of Wis. Snowmobile Clubs, W6909 Frontage Road, New Lisbon, WI 53950
Samuel O. Gratz, CP, CN, VP, BNSF Railroads, 16 N. Carroll St., #920, Madison, WI 53703

In opposition – none

As interest may appear:

Morris Nelson, Association of Wis. Snowmobile Clubs, 10422 N. Wallin Rd., Edgerton, WI 53534
Gary Baehmann, P.O. Box 82, Clyman, WI 53106

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

The proposed rule does not regulate small businesses; therefore, a final regulatory flexibility analysis is not required.

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING AND
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2. Established a process for a contested case hearing where a rail authority was opposed to the issuance of a permit.
3. Established factors that must be addressed by the Department in the decision of whether to grant or deny a permit for a crossing.
4. Allowed only the rail authority or its contractor to construct the crossing on the tracks and that portion of the crossing extending 4 feet outward from each outer rail.
5. Established a one-time fee of \$1,500 to be paid by a snowmobile organization to the rail authority within 30 days of the issuance of a permit for the cost of constructing the crossing and the use of the crossing by snowmobile operators.

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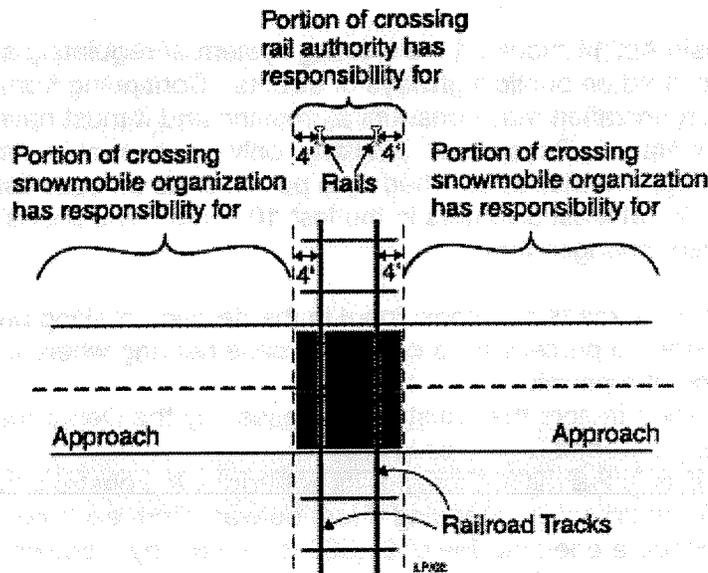
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4. Describe construction scheduling and supervision responsibilities for both a snowmobile organization and a rail authority.
5. Further clarify the obligations of a snowmobile authority regarding the purchase of liability insurance to indemnify a rail authority.

SECTION 1. NR 6.41 (4) and (5) are created to read:

NR 6.41(4) "The portion of the snowmobile rail crossing for which the rail authority has responsibility" means the area on the track and that portion of the crossing that extends outward 4 feet from each outer rail.

(5) "The portion of the snowmobile rail crossing for which the snowmobile organization has responsibility" means the area of the crossing that is outside of the portion of the crossing that extends outward 4 feet from each outer rail.

Note: The following illustration graphically describes the areas defined in subs. (4) and (5).



SECTION 2. NR 6.42 is repealed and recreated to read:

NR 6.42 Maintenance standards for established snowmobile rail crossing. A snowmobile organization shall assist a rail authority in maintaining an established snowmobile rail crossing in the following manner:

(1) The snowmobile organization shall maintain adequate drainage along the snowmobile trail approaching the rail crossing and along the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility, both in the snowmobile and non-snowmobile season, to prevent the pooling of water or saturation of the track subgrade.

(2) The snowmobile organization shall be responsible for furnishing, installing and maintaining in a legible condition all signs at the crossing including crossbucks, crossing placards and snowmobile STOP signs, and all signs prior to the crossing including an advance railroad crossing caution sign. The snowmobile organization shall comply with the sign specifications and posting requirements described in s. NR 6.43(3).

(3) During the winter season, no snow may be compacted by snowmobile trail grooming machinery on the portion of the snowmobile rail crossing for which the rail authority has responsibility. Any snow deposited on this portion of the rail crossing by the grooming machinery shall be removed manually by the operator of the trail grooming machinery after the machinery is clear of this area of the crossing.

(4) A snowmobile organization may not perform any maintenance work on the portion of the snowmobile rail crossing for which the rail authority has responsibility with the exception of the snow removal work required under sub. (3). The rail authority shall maintain the portion of the snowmobile rail crossing for which the rail authority has responsibility. The snowmobile organization shall maintain the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility.

SECTION 3. NR 6.43(2) and (3) are repealed.

SECTION 4. NR 6.43(1) is renumbered NR 6.43(2) and NR 6.43(2)(b) and (e), as renumbered, are amended to read:

NR 6.43(2)(b) *Vertical alignment.* ~~The crossing surface shall be in the same plane as the top of the rails for a distance of 2 feet outside the rails.~~ The surface, without snow, of the snowmobile trail approaching the crossing for a distance of ~~28~~ 26 feet from ~~2~~ 4 feet outside the nearest rail may not be higher than one foot lower than the top of the nearest rail or 1.5 foot lower than the top of the nearest rail.

(e) *Sight distances.* The snowmobile rail crossing shall be located so that when stopped on the crossing approach at the crossbuck and posted STOP sign, the snowmobile operator has a sight distance along the tracks in both directions, free of obstructions, to determine whether a train is approaching. The position from which the sight distance is measured is 15 feet outward from the nearest rail. ~~The sight distances for the following maximum allowable train speeds shall be minimum distances that clear vision is available in both directions to determine the approach of a train; set forth in Table 1 for the corresponding maximum allowable train speeds shall be available in both directions from this position. Snowmobile rail crossings may not be sited at locations where sight distances are less than specified in Table 1.~~

Table 1

Maximum Allowable Train Speed (mph)	19	29	39	49	59	69
Sight Distance Along Railroad from Crossing (feet)	240	480	720	960	1200	1440

SECTION 5. NR 6.43(1) is created to read:

NR 6.43(1) All permitted snowmobile rail crossings shall be constructed in the following manner:

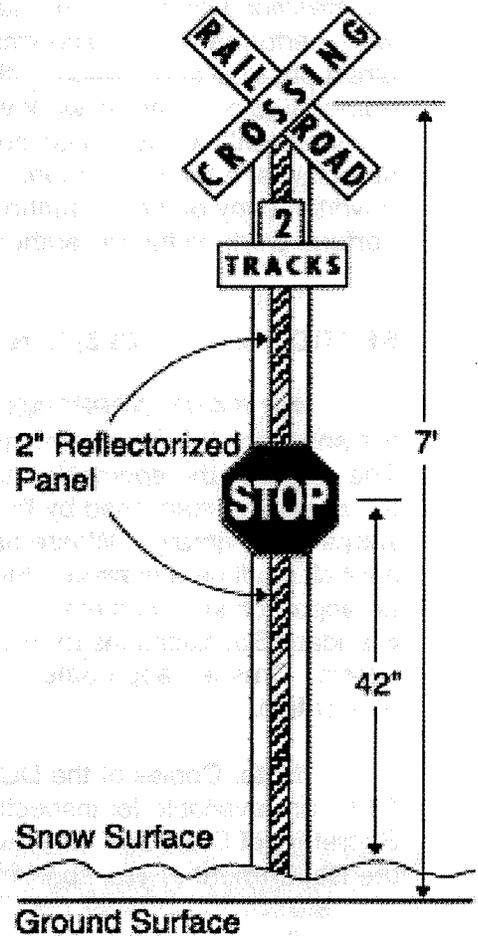
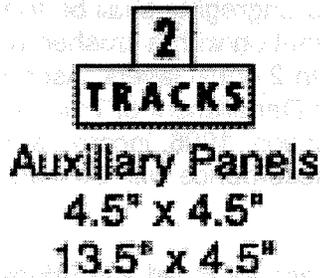
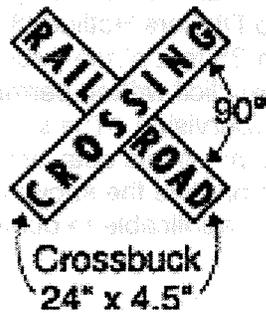
(a) The rail authority or its contractor shall construct the portion of the snowmobile rail crossing for which the rail authority has responsibility.

(b) All other construction of the snowmobile rail crossing shall be performed by the snowmobile organization or its contractor.

SECTION 6. NR 6.43(3) is created to read:

NR 6.43(3) SIGNS. (a) *Responsibility.* The snowmobile organization shall be responsible for furnishing, installing and maintaining in a legible condition all signs identified in this section.

(b) *Signs at the crossing.* A railroad crossing sign, commonly identified as a crossbuck, shall be used to notify the snowmobile operator of the railroad crossing. The crossbuck shall be 2 panels 24" long by 4.5" wide mounted perpendicular to each other at the midpoint of each with the legend RAILROAD and CROSSING, respectively. The sign color shall consist of white reflective background with black lettering. The size of the lettering shall be 2". The sign shall be doubled sided and constructed with commercially manufactured reflective sheeting applied to an aluminum or treated wood backing. Where physically possible, the crossbuck sign shall be located on the right hand side of the trail. Where circumstances do not allow the posting of the crossbuck on the right hand side of both approaches, the crossbucks may be posted on the left. The crossbuck shall be erected 10 feet outward from the nearest rail and no further from the trail edge than 6 feet. The panels of the crossbuck shall be mounted so that the panels cross approximately 7 feet above bare ground on a preservative treated 4" x 6" post with the 6" side parallel to the tracks. The post shall have a 2" reflective white panel on both sides extending from 6" below the intersection of the crossbuck blades to 6" above the anticipated level of snow. A minimum of one crossbuck shall be used on each approach to the crossing. An additional crossbuck may be posted on the left hand side of the trail at a distance of 10 feet outward from the nearest rail. If the number of pairs of tracks is 2 or more, the number of pairs of tracks shall be indicated with 2 auxiliary placards. The first placard shall be 4½" by 4½" square placard placed beneath the crossbuck with the legend indicating the number of tracks. The second placard shall be 13½" by 4½" rectangular placard placed beneath the square placard with the legend TRACKS. Both placards shall have a 2" black number or letters on a reflective white background. A STOP sign that complies with s. NR 50.09(4)(c)3.b. shall be posted beneath the crossbuck at a level approximately 42" above the anticipated level of the snow. An additional STOP sign may be posted on the left hand side of the trail. Please refer to the following illustrations.



(c) *Signs prior to the crossing.* Prior to the snowmobile rail crossing, the snowmobile trail shall be signed with an advance caution railroad crossing sign. This sign shall be a circular sign of minimum 12" diameter. Sign color shall be a reflective yellow background with black letter and legend. The letters shall be 4" upper case and the black legend shall be 2" in width. Please refer to the following illustration. The advance caution railroad crossing sign and an advance caution "Stop Ahead" sign meeting the requirements of s. NR 50.09(4)(c)3.b. shall be placed in a manner to enable a snowmobile operator to come to a safe stop at the crossbuck and STOP sign.



Minimum 12" Diameter

SECTION 7. NR 6.43(4) is repealed and recreated to read:

NR 6.43(4) SCHEDULING AND SUPERVISION OF APPROACH CONSTRUCTION.

The snowmobile organization shall schedule the snowmobile rail crossing approach construction with the appropriate railroad authority and Diggers Hotline (800-242-8511). All work performed by the snowmobile organization within 25 feet of the track shall be under the direct physical supervision of the rail authority or with explicit written permission from the rail authority to perform the work without direct physical supervision. The snowmobile organization's workers shall comply with the safety requirements established by federal and state law and the rail authority. The rail authority shall provide the snowmobile organization with a written copy of the rail authority's safety requirements applicable to outside contractors who perform work on the rail authority's property.

SECTION 8. NR 6.43(5) is repealed and recreated to read:

NR 6.43(5) APPROACH INSTALLATION AND COMPONENTS. (a) The approaches of the snowmobile rail crossing may be all aggregate or a combination of aggregate and asphalt. The height of the approach installed by the snowmobile organization shall match the height of the crossing established by the rail authority. Crushed aggregate shall be thoroughly compacted with a roller vibrator. Where asphalt is used in combination with a crushed aggregate base, the asphalt shall be a minimum thickness of 3", installed in 2 equal layers. Asphalt material used for an approach shall conform to Section 404, Wisconsin Department of Transportation (DOT) Standard Specifications for Road and Bridge Construction, 1996, incorporated by reference herein. Crushed aggregate shall be grade 2 or 3 in accordance with Section 304 of the same publication.

Note: Copies of the DOT Standard Specifications for Road and Bridge Construction, 1996, are available for inspection in the offices of the Department of Natural Resources, Secretary of State and the Revisor of Statutes in Madison. Copies may also be purchased from the Department of Transportation, P.O. Box 7910, Madison, WI 53707-7915.

(b) A snowmobile organization shall properly dispose of all unused materials from the construction of the portion of the crossing for which it is responsible.

(c) A snowmobile organization may contract out the construction of the portion of the crossing for which it is responsible.

SECTION 9. NR 6.43(7)(a) is repealed and recreated:

NR 6.43(7) RAIL CROSSING CONSTRUCTION PERMIT. (a) No person may construct a snowmobile rail crossing that is not located on a railroad crossing of a highway or street unless the person is a snowmobile organization and has a permit issued under this subchapter.

SECTION 10. NR 6.43(7)(c) is amended to read:

NR 6.43(7)(c) A snowmobile organization may contact department ~~district~~ regional offices for prescribed application forms and instructions. The An application submitted under this section shall include adequate descriptions and drawings showing the proposed location of the snowmobile rail crossing, the proposed design of the rail crossing, a list of materials needed to construct the crossing portion of the crossing for which the snowmobile organization is

responsible and the location of snowmobile trails that connect with the snowmobile crossing. The completed application form with necessary attachments ~~may~~ and the \$150 application fee authorized under s. 350.138(5)(a), Stats., shall be submitted to the appropriate department ~~district~~ regional office. Upon receipt, the department shall send a copy of the application to the agent of the applicable rail authority designated under s. 350.138(2m), Stats. The department may reject an application within 15 days after it is submitted if the application is incomplete or is not sufficiently detailed to determine whether to approve or deny the application.

Note: Copies of permit application forms and instructions are available from ~~District~~ Regional Department of Natural Resources Offices located at:

~~Western District~~ West Central Region
1300 W. Clairemont Avenue
P.O. Box 4001
Eau Claire, WI 54702

~~Southeast District~~ Region
2300 N. Martin Luther King Jr. Dr.
P.O. Box 12436
Milwaukee, WI 53212

~~Southern District~~ South Central Region
3911 Fish Hatchery Road
Fitchburg, WI 53711

~~Northwest District~~ Northern Region
810 W. Maple Street
~~Hwy 70 W., P.O. Box 309~~
Spooner, WI 54801

~~Lake Michigan District~~ Northeast Region
1125 N. Military Avenue
P.O. Box 10448
Green Bay, WI 54307

~~North Central District~~ Northern Region
107 Sutliff Avenue, P.O. Box 818
Rhineland, WI 54501

SECTION 11. NR 6.43(7)(d) is repealed.

SECTION 12. NR 6.44 is repealed and recreated to read:

NR 6.44 Maintenance standards for new rail crossings. A snowmobile rail crossing permitted under this subchapter shall be maintained in the following manner:

(1) A snowmobile organization may not perform any maintenance work on the portion of the snowmobile rail crossing for which the rail authority has responsibility with the exception of the snow removal work required under s. NR 6.44(5). The maintenance of that portion of the snowmobile rail crossing for which the rail authority has responsibility shall be performed by the rail authority.

(2) The snowmobile organization shall maintain adequate drainage along the snowmobile trail approaching the rail crossing and along the portion of the snowmobile rail crossing for which the snowmobile organization has responsibility, both in the snowmobile and non-snowmobile season, to prevent the pooling of water or saturation of the track subgrade.

(3) The snowmobile organization shall maintain the portion of the snowmobile rail crossing for which it has responsibility that becomes worn or damaged as a result of use and shall repair the wear or damage as soon as practical using the materials and following the installation requirements contained in the permit and this subchapter.

(4) The snowmobile organization shall be responsible for maintaining in a legible condition all signs at the crossing including crossbucks, crossing placards and snowmobile STOP signs, and all signs prior to the crossing including advance caution railroad crossing signs.

(5) During the winter season, no snow may be compacted by snowmobile trail grooming machinery on the portion of the snowmobile rail crossing for which the rail authority has responsibility. Any snow deposited on this portion of the rail crossing by the grooming machinery shall be removed manually by the operator of the trail grooming machinery after the machinery is clear of this area of the crossing

(6) Gates or barriers shall be constructed, erected and maintained by the snowmobile organization to prevent vehicular use of the crossing during non-snow seasons and shall be maintained in working order. Barrier markers specified under s. NR 50.09(4)(c)3.b. shall be affixed to the gates or barrier and maintained in a legible manner.

SECTION 13. NR 6.45 is renumbered NR 6.46.

SECTION 14. NR 6.45 is created to read:

NR 6.45 Liability insurance for new and established rail crossings. (1) A snowmobile organization shall maintain in effect liability insurance to indemnify the applicable rail authority for damages resulting from the design, construction, maintenance, existence or use of an established snowmobile rail crossing or a snowmobile rail crossing for which a permit has been issued by the department.

(2) The snowmobile organization need not maintain liability insurance to indemnify the rail authority for injuries sustained by a person engaged in a recreational activity if the rail authority would be immune from liability for those injuries under s. 895.52, Stats.

(3) The snowmobile organization shall designate the applicable rail authority as a named insured on the insurance policy. Any liability insurance that is required for the purpose of indemnifying a rail authority that is a rail transit body shall also indemnify the owners and operators of any railroad using the tracks of the rail transit body.

(4) Regardless of the number of established or permitted rail crossings that a snowmobile organization maintains, the amount of the liability insurance that is required to be maintained shall be at least \$2,000,000 for each snowmobile organization.

(5) A snowmobile organization shall furnish an insurance certification form with an attached proof of insurance to the department and the applicable rail authority annually commencing on December 1, 2001 and by December 1 of each following year.

Note: Copies of the insurance certification form are available at the Regional Department of Natural Resources Offices.

SECTION 15. NR 6.46(note), as renumbered, is repealed.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on August 14, 2002.

The rules shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Darrell Bazzell, Secretary

(SEAL)

1. The purpose of this report is to provide a summary of the work done during the period from 1st January to 31st December 1958.

The work has been carried out in accordance with the programme of work approved by the Committee in 1957.

REPORT FOR THE YEAR 1958

REPORT OF THE DIRECTOR
OF THE NATIONAL RESEARCH

BY

DR. J. H. B. PHILLIPS

1959



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

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

CLEARINGHOUSE RULE 02-044

AN ORDER to repeal NR 6.43 (2) and (3) and 6.43 (7) (d); to renumber NR 6.43 (1) and 6.45; to amend NR 6.43 (2) (b) and (e) and (7) (c); to repeal and recreate NR 6.42, 6.43 (4), (5) and (7) (a) and 6.44; and to create NR 6.41 (4) and (5), 6.43 (1) and (3) and 6.45, relating to snowmobile rail crossings.

Submitted by **DEPARTMENT OF NATURAL RESOURCES**

04-08-02 RECEIVED BY LEGISLATIVE COUNCIL.

05-02-02 REPORT SENT TO AGENCY.

RNS:PC:ksm;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



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 02-044

Comments

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

2. Form, Style and Placement in Administrative Code

a. If a provision is renumbered and a portion of it is also amended, this should be done in one SECTION. For example, SECTIONS 4, 6, and 7 should be combined as follows: "SECTION 4. NR 6.43 (1) is renumbered NR 6.43 (2) and NR 6.43 (b) and (e), as renumbered, are amended to read:".

b. In s. NR 6.43 (2) (b), the period at the end of the stricken-through sentence should also be stricken. Also, a space between "4feet" is needed.