

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_pt03

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

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



Wisconsin Department of Transportation



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September 2, 1998

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SEP 03 1998

RE: PROPOSED AMENDMENT, relating to **division of land abutting a state trunk highway or connecting highway**, Trans 233

Pursuant to the December 9, 1987, memo on executive review of proposed emergency and permanent administrative rules by former Department of Administration Secretary James R. Klauser, I am enclosing a copy of the proposed amendment to ch. Trans 233.

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 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, as referenced in s. Trans 233.13. 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. For a more complete analysis of the rule's fiscal estimate, refer to pages 2-4 of the proposed rule.

Therefore, this proposed rule making appears to satisfy the criteria specified by former Secretary Klauser for executive review. Unless you feel the Department should again notify you prior to formal submittal to the Legislature, as per the 12-9-87 memo mentioned above, I will assume this notification will satisfy the requirements of that memo.

Sincerely,

James S. Thiel
General Counsel

AL/JAJ/dim

Enclosures

cc: Senator Welch/Representative Grothman/Gene Kussart/Mike Goetzman/Sandy Beaupre/
Jim Gruendler/Bob Bovy/Bonnie Tripoli/Jewels Johnson



WISCONSIN DEPARTMENT OF TRANSPORTATION

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The Wisconsin Department of Transportation proposes an order to repeal TRANS 233.05(3) and 233.10; renumber and amend TRANS 233.06(3), 233.09, and 233.11; amend ch. TRANS 233(title), 233.05(1), (2) and (4), 233.06(title), (1) and (2), 233.07 and 233.12; repeal and recreate TRANS 233.01, 233.02, 233.03, 233.04 and 233.08; and create TRANS 231.01(9), 233.012, 233.015, 233.017, 233.105, 233.11(1) and 233.13, 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 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(title) is amended to read:

~~LAND SUBDIVISION PLATS~~ DIVISION OF LAND ABUTTING A STATE TRUNK HIGHWAYS AND HIGHWAY OR CONNECTING STREETS HIGHWAY

SECTION 3. Trans 233.01 is repealed and recreated to read:

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.

SECTION 4. Trans 233.012, 233.015 and 233.017 are created to read:

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.

SECTION 5. Trans 233.02, 233.03 and 233.04 are repealed and recreated to read:

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.

SECTION 6. Trans 233.05(1) and (2) are amended to read:

Trans 233.05(1) ~~There shall be no direct vehicular access between the~~ 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, and the individual lots or

~~parcels in the subdivision without~~ unless the land divider has the express consent of the
~~commission~~ department. The following restriction shall be ~~appropriately~~ placed on the
face of the ~~plat~~ land division map, or as part of the owner's certificate required under s.
236.21(2)(a), Stats., and shall be executed as in the manner specified for a conveyance
~~is executed.~~ ~~(It may be made a part of the owner's certificate required by s.~~
~~236.21(2)(a), Stats.);:~~

As owner I hereby restrict all lots and blocks (~~except Lot _____, Block _____~~);
~~in so~~ that no owner, possessor, user, ~~nor~~ licensee, ~~nor~~ or other person
~~shall~~ may have any right of direct vehicular ingress from or egress with to
any highway lying within the right-of-way of (U.S.H.)(S.T.H.) _____
or _____ Street, as shown on the ~~plat~~ land division map; ~~it being is~~
expressly intended that this restriction ~~shall constitute a restriction is~~ is for the
benefit of the public ~~according to~~ as provided in s. 236.293, Stats., and
shall be enforceable by the ~~state highway commission~~ department or its
assigns.

~~(2) In accordance with the objectives and purposes of these rules and regulations,~~
~~the commission~~ The department may require a desirable traffic access ~~pattern of access~~
between a state trunk highway or connecting highway and abutting unplatted lands which
~~are contiguous to and adjoin that abut~~ the proposed subdivision and which land division
and that are owned by or under option, whether (formal or informal), contract or lease
to the ~~subdivider.~~ A owner. The department may require a recordable covenant running
with the land ~~may be required with respect thereto~~ to those unplatted lands.

SECTION 7. Trans 233.05(3) is repealed.

SECTION 8. Trans 233.05(4) is amended to read:

~~Trans 233.05(4) Before street connections to state trunk highways, as indicated on an approved plat can be constructed, 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 must be obtained as required under s. 86.07, Stats. These permits for street connections will be issued only to the local unit of government and will not be issued 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 commission department review of the preliminary or final plat land division map or, for a subdivision plat, prior to the department's certification of no objection.~~

SECTION 9. Trans 233.06(title), (1) and (2) are amended to read:

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

(2) ~~Dependent upon the character of the state trunk highway abutting the subdivision, the commission will~~ The department shall determine a minimum allowable distance between connections with the state trunk highway, ~~2 subdivision streets or between a subdivision street and an existing or planned street or road. In general, 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 will be required between connections with a state trunk highway or connecting highway.

SECTION 10. Trans 233.06(3) is renumbered Trans 233.05(5) and amended to read:

Trans 233.05(5) ~~In appropriate cases where~~ Whenever the department finds that existing streets and planned highways provide the land division with reasonable and adequate access to the state trunk a highway deemed reasonable and adequate by the commission, the streets in the subdivision shall not be opened directly into, 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.

SECTION 11. Trans 233.07 is amended to read:

Trans 233.07 (title) TEMPORARY CONNECTIONS. (1) ~~The commission department~~ may issue temporary street connection permits for street connections, 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 ~~subdivision~~ 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 ~~subdivision~~ land division layout which might necessitate a point or pattern of traffic access for a future adjacent ~~subdivision~~ land division, not in accordance with s. Trans 233.06(2).

(2) ~~The commission~~ department may require that such temporary street connections be altered or closed by the ~~appropriate parties or authorities~~ permit holder at a later date in order to achieve a desirable traffic access pattern. ~~The street~~ 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 Street Connection" on the plat land division map, and the following restriction shall be lettered on the plat land division map:

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

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

SECTION 12. Trans 233.08 is repealed and recreated to read:

Trans 233.08 SETBACK REQUIREMENTS. (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:

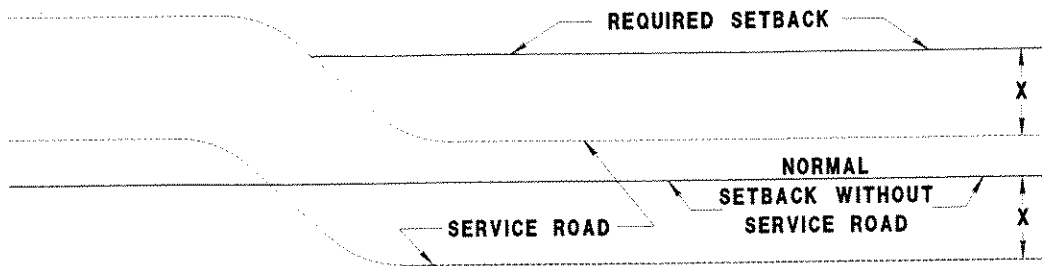
1. The distance allowed under the ordinance.
2. 42 feet from the nearer right-of-way line.
3. 100 feet from the centerline.

(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).

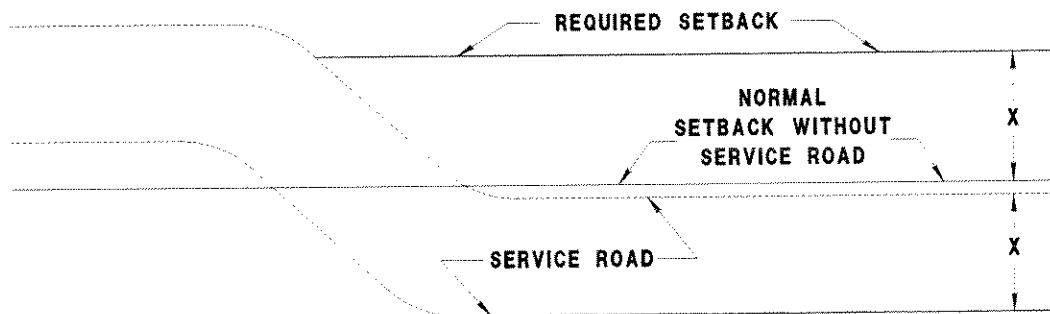
(b) The distance by which the service road right-of-way lies within the setback area, if the entire service road right-of-way does not lie within the setback area. Any increase under this paragraph shall be measured from the nearer right-of-way line of the service road.

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)



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."

SECTION 13. Trans 233.09 is renumbered Trans 233.05(6) and amended to read:

Trans 233.05(6) ~~PHYSICAL REQUIREMENTS OF ACCESS.~~ Rules governing construction requirements of driveways and street openings will be other connections with a state trunk highway are found in ch. Trans 231. Detailed specifications may be obtained at the department's district offices ~~of the commission.~~

SECTION 14. Trans 233.10 is repealed.

SECTION 15. Trans 233.105 is created to read:

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.

SECTION 16. Trans 233.11 is renumbered 233.11(2) and amended to read:

Trans 233.11(2) ~~The commission~~ department may, ~~in appropriate cases and subject to appropriate conditions and safeguards,~~ not authorize variances ~~to the terms of these rules and regulations in special~~ from this chapter ~~except in appropriate cases where in which~~ the literal application of ~~these rules and regulations will~~ this chapter would result in practical difficulty or unnecessary hardship, or ~~will~~ would defeat an orderly overall development plan of a local unit of government; ~~provided that such.~~ A variance shall may not be contrary to the public interest and shall be in harmony with the general purposes and intent of ch. 236, Stats., and ~~these rules and regulations~~ 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.

SECTION 17. Trans 233.11(1) is created to read:

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

SECTION 18. Trans 233.12 is amended to read:

Trans 233.12 PERFORMANCE BOND. The ~~commission~~ 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 ~~subdivision~~ land division which may affect a state trunk highway.

SECTION 19. Trans 233.13 is created to read:

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

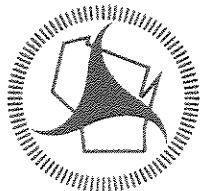
U.S. department of labor's bureau of labor statistics, rounded down to the nearest multiple of \$5.

(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 ____ day of August, 1998.

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

September 8, 1998

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

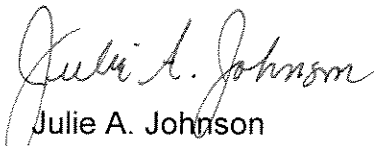
The Honorable Glenn Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
125 West, State Capitol
Madison, Wisconsin 53702

RE: ORDER ADOPTING EMERGENCY RULE ON TRANS 328, relating to motor carrier safety requirements for intrastate transportation of hazardous materials

Gentlemen:

Enclosed is a copy of the above-referenced emergency rule for your information. Pursuant to sec. 227.24(1)(c), Stats., the rule will take effect upon publication in the Wisconsin State Journal, scheduled for September 15, 1998.

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

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

The Wisconsin Department of Transportation proposes an order 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.

**NOTICE OF EMERGENCY
RULE HEARING**

NOTICE

NOTICE IS HEREBY GIVEN that pursuant to ss. 110.075(6), 194.38(2), 194.43 and 346.45(4), Stats., interpreting ss. 110.07, 110,075, 194.38 and 194.43, Stats., the Department of Transportation will hold a public hearing on the **5th day of October, 1998**, at the Hill Farms State Transportation Building, **Room 551**, 4802 Sheboygan Avenue, Madison, WI, at **1:30 PM**, to consider the amendment of chapter Trans 328, Wisconsin Administrative Code, relating to motor carrier safety requirements for intrastate transportation of hazardous materials.

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.

Parking for persons with disabilities and an accessible entrance are available.

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 2 day of
September, 1998.



CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation