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☞ Details: Public hearing notices by Department of Transportation.

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Jim Doyle, Governor
Frank J. Busalacchi, Secretary
Internet: www.dot.wisconsin.gov
Telephone: 608-266-8810
Facsimile (FAX): 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

April 11, 2008

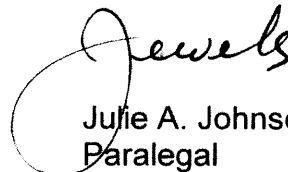
Mr. Bruce Hoesly
Legislative Reference Bureau
One East Main, Suite 200
Madison, Wisconsin 53703

RE: PUBLIC NOTICE

Dear Mr. Hoesly:

Enclosed is a Public Notice for publication. Please publish in accordance with § 85.515(2)(a), Stats., as created by Section 2550m of 2007 Wis. Act 20 in the Administrative Register.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Representative Dan LeMahieu, Co-Chair/JCRAR
Senator Robert Jauch, Co-Chair/JCRAR
Casey Newman
Mike Goetzman
Lynne B. Judd
Pat Fernan
Paul Bernander

PUBLIC NOTICE


State of Wisconsin, Department of Transportation

**Public Notice of effective date for statutes implementing REAL ID
and enumerated in Section 9448(1) of 2007 Wisconsin Act 20**

The Department of Transportation hereby publishes notice as provided in s. 85.515(2)(a), Stats., that it will not be ready to complete full implementation of the provisions of the federal REAL ID Act, as incorporated into 2007 Wisconsin Act 20, by May 11, 2008. 2007 Wisconsin Act 20 made numerous changes to driver licensing and identification card laws in order to comply with the federal REAL ID law. Federal law requires those changes to take effect on May 11, 2008, but the federal government has granted Wisconsin a waiver of that effective date until December 31, 2009. On January 29, 2007, the federal Department of Homeland Security issued federal REAL ID regulations applicable to Wisconsin. Delaying the effective date of the REAL ID provisions of 2007 Wisconsin Act 20 will provide the Department of Transportation time to implement those regulations.

By this public notice, and under the authority of s. 85.515(2)(a), Stats., as created by Section 2550m of 2007 Wisconsin Act 20, Frank J. Busalacchi, Secretary of the Wisconsin Department of Transportation, declares that the Department will not be ready to complete full implementation of the provisions of the federal REAL ID Act by May 11, 2008.

Dated this 10th day of April, 2008.

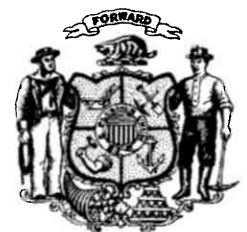


Frank J. Busalacchi
Secretary
Wisconsin Department of Transportation

*For information regarding this notice, contact the REAL ID Project Manager of the
Division of Motor Vehicles, Phone: (608) 266-2481.*



WISCONSIN STATE LEGISLATURE





Office of General Counsel
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Internet: www.dot.wisconsin.gov
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The Honorable Robert Jauch
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 118 South, State Capitol
Madison, Wisconsin 53702

April 11, 2008

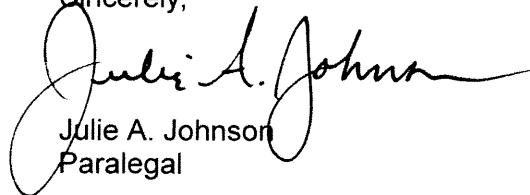
The Honorable Dan LeMahieu
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 17 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **motor vehicle dealer franchise operations, record keeping and trade practices**, Trans 137/138/139

Dear Senator Jauch and Representative LeMahieu:

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

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Chuck Supple
Carson Frazier

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to renumber TRANS 139.02(1); to amend TRANS 137.03(9)(b)3., 138.04(1)(a) and (3), and 139.03(5); and to create TRANS 137.03(8m), 138.02(11m), 139.02(1) and (19m), 139.035, 139.04(6)(a)4m. and 139.05(2)(fm), relating to motor vehicle dealer franchise operations, record keeping and trade practices.

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.15(1), 218.0152 and 227.11, Stats., interpreting Subchapter 1 of Chapter 218, Stats., the Department of Transportation will hold a public hearing on **May 13**, 2008, at the Hill Farms State Transportation Building, **Room 254**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, to consider the amendment of chs. Trans 137, 138 and 139, Wisconsin Administrative Code, relating to motor vehicle dealer franchise operations, record keeping and trade practices.

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.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to renumber TRANS 139.02(1); to amend TRANS 137.03(9)(b)3., 138.04(1)(a) and (3), and 139.03(5); and to create TRANS 137.03(8m), 138.02(11m), 139.02(1) and (19m), 139.035, 139.04(6)(a)4m. and 139.05(2)(fm), relating to motor vehicle dealer franchise operations, record keeping and trade practices.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Subchapter 1 of Chapter 218, Stats.

Statutory authority: ss. 85.16(1), 218.0152 and 227.11, Stats.

Explanation of agency authority: The Wisconsin Department of Transportation is authorized to license and regulate motor vehicle dealers and their trade practices. This rule making controls motor vehicle dealer trade practices, record keeping, and relevant definitions.

Related statute or rule: Chs. 218, 341, 342 and 429, Stats., chs. Trans 137, 138 and 139, Wis. Adm. Code.

Plain language analysis: This rule amendment makes several additions to chs. Trans 137, 138 and 139, regarding motor vehicle dealer requirements under Chapter 218, Wis. Stats. The rule additions clarify several authorized and prohibited actions by dealers, most of which the Department has previously clarified in policy.

1. Explicitly define in chs. Trans 137, 138 and 139 a "title" as a title in s. 342.10, Stats. While common understanding of the term has long prevailed, this will make the meaning clear.

2. Create a definition in ch. Trans 139 of "bird dogging," i.e., referral selling, and explicitly prohibit this practice. While this practice is prohibited in statute, which governs dealer behavior, DOT believes it would be appropriate to repeat the statutory prohibition in rule and elaborate on statutory definition.

3. In ch. Trans 138, clearly allow multi-location dealership records to be kept at a single location, with proper availability for inspection. This is implicit in rule reference to a dealership, and is currently allowed by DMV policy, but it would appropriate to state explicitly, and to clarify what constitutes a single dealership with multiple locations as opposed to separate dealerships.

4. Amend the ch. Trans 137 definition of "used motor vehicle" to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The current definition effectively treats these vehicles as "new" for the purpose of needing a franchise to sell the vehicles.

5. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices.

6. Amend the ch. Trans 138 requirement that dealers have in their possession the title for any vehicles they offer for sale to exclude title of a manufacturer buy-back under the lemon law, instead allowing a dealer to have in its possession a copy of the title. Wis. Stat. 218.0171(2)(d) requires that no manufacturer buy-back may be sold or leased to a new customer unless the manufacturer buy-back condition is fully disclosed to that customer. To protect themselves from liability, manufacturers have developed a disclosure form that they require dealers to submit to them before they will release the title to the dealer. In the meantime, the dealer keeps a copy of the title in its possession. DMV allows this by policy, and DMV wishes to clarify this in rule.

7. Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Wisconsin statutes and rules govern motor vehicle dealer sales practices and recordkeeping. No federal regulations apply to these policies.

Comparison with Rules in the Following States: Most of the proposed provisions are already DOT policy. With regard to the newly proposed provisions:

Michigan:

1. Michigan would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.

2. Michigan does not have regulations on this point, and thus would allow use of pricing guide, similar to what DOT proposes in this rule making.

3. Michigan regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Minnesota:

1. Minnesota would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.

2. Minnesota regulations regarding advertising are unclear to DOT, as the Minnesota Department of Public Safety does not regulate advertising.

3. Minnesota regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Illinois:

1. Illinois would consider a damaged rented or leased vehicle a "new" vehicle, similar to Wisconsin's current rule.

2. Illinois would allow use of pricing guide, similar to what DOT proposes in this rule making.

3. Illinois regulations require documents to comply with specific state law, similar to Wisconsin's current rule.

Iowa:

1. Iowa would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.

2. Iowa Attorney General's office does not review advertising related to car price.

3. Iowa regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Most of the proposed provisions are already DOT policy. The following provisions are newly proposed:

1. Amend the ch. Trans 137 definition of "used motor vehicle" to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The Department has received several inquiries during the past few years from rental and leasing companies that need to dispose of damaged vehicles. The Department has concluded that allowing this exception to the new vehicle definition, for purposes of needing a franchise to sell, will not adversely affect franchised motor vehicle dealers.

2. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices. This has been considered an unfair trade practice because price guides may not sufficiently account for vehicle condition. However, the Department recognizes that these pricing guides are readily accessible on the internet and in print, and consumers often make use of them. The Department proposes to

couple allowing use of price guides with requirements for dealer disclosure of vehicle condition sufficient to protect a customer from making false inference about the vehicle's actual sales price and thus being taken in by false advertising.

3. Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes. The Department recognizes that the vehicle manufacturing industry now offers "manufacturer certified used vehicle programs," which carry certain warranties; and current ch. Trans 139 does not sufficiently accommodate new industry practices. However, the Department proposal retains DOT authority to determine, on a case-by-case basis, an adequate disclosure to the consumer of warranty provisions if they differ from mandatory language in ch. Trans 139.

Analysis and supporting documentation used to determine effect on small businesses: The Department bases the determination of effect on small businesses on comments, questions, and petitions and requests for regulation changes that the Department has received from motor vehicle dealers and their trade association, rental and leasing companies.

Effect on small business: Most provisions are already in Department policy. For those that are not currently in policy, the proposals will ease regulatory requirements and costs on motor vehicle dealers and vehicle rental and leasing companies. The Department enforces statute and rules through periodic auditing of motor vehicle records, inspection of motor vehicle dealership facilities, and investigation of consumer complaints. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 137.03(8m) is created to read:

Trans 137.03(8m) "Title" means certificate of title properly issued by the Wisconsin department of transportation pursuant to ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 2. Trans 137.03(9)(b)3. is amended to read:

Trans 137.03(9)(b)3. Has sustained damage while in-transit and has been acquired by the motor carrier from the motor vehicle manufacturer because of the liability agreement between the manufacturer and carrier, or has sustained damage while being operated under a rental agreement under s. 344.57(5), Stats., or a lease agreement under ch. 429, Stats., or

SECTION 3. Trans 138.02(11m) is created to read:

Trans 138.02(11m) "Title" means certificate of title properly issued by the Wisconsin department of transportation pursuant to ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 4. Trans 138.04(1)(a) and (3) are amended to read:

Trans 138.04(1)(a) *Ownership records.* As evidence of ownership, title for each used vehicle owned and offered for sale and manufacturer's statement of origin, or MSO, for each new vehicle owned and offered for sale. If a manufacturer or lending institution is holding the title or MSO to ensure payment at the time of sale, the dealer shall have for each such vehicle either a factory invoice, a completed dealer

reassignment form, or a purchase contract evidencing trade-in or purchase. If the used vehicle is manufacturer's buy-back under s. 218.0171, Stats., commonly known as the lemon law, and the manufacturer holds title to the vehicle, the dealer may have in its possession of a copy of the title.

(3) RETENTION REQUIREMENTS. The used vehicle information described in sub. (1) (f) shall be maintained for a period of 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 5 years from the date of sale, including copies of factory invoices, dealer reassignment forms, consignment agreements, purchase contracts, MV1 or MV11 Wisconsin title, registration or license plate applications, Wisconsin buyers guides, regular and conforming power of attorney forms, prior owner odometer disclosure statements, dealer's subsequent odometer disclosure statements, lessor's notices to lessees relating to odometer disclosure required at end of lease, and lessee's odometer disclosure statement completed at end of lease. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by a representative of the department during reasonable business hours. Multi-location dealerships may keep records at a single location. If the location is out of state, the dealerships shall reimburse the department for actual and necessary expenses, plus wages pursuant to the appropriate state compensation plan or applicable labor agreement for examining the documents at that location. The actual and necessary expenses charged include the following:

(a) Travel expenses.

(b) Meal expenses.

(c) Lodging expenses.

(d) Telephone expenses.

(e) Copying and data processing expenses.

SECTION 5. Trans 139.02(1) is renumbered Trans 139.02(1m).

SECTION 6. Trans 139.02(1) and (19m) are created to read:

Trans 139.02(1) "Bird dogging" means an arrangement by a dealer or salesperson that provides consideration of any kind to a third party for sales leads, contingent upon a sale of a vehicle, otherwise known as referral selling.

(19m) "Title" means certificate of title properly issued by the Wisconsin department of transportation pursuant to ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 7. Trans 139.03(5) is amended to read:

Trans 139.03(5) USED VEHICLE COMPARATIVE SAVINGS. The use of manufacturer suggested retail prices, wholesale or retail dealer pricing guides, or similar price guides to advertise comparative savings for used vehicles other than demonstrators or executives is an unfair practice and prohibited, except that a motor vehicle pricing guide may be used if the source of the pricing is stated in any required disclosure and the full objective documentation used to set the price is available to the customer.

SECTION 8. Trans 139.035 is created to read:

Trans 139.035 Unfair trade practices. Engaging in bird-dogging is an unfair trade practice and prohibited.

SECTION 9. Trans 139.04(6)(a)4m. is created to read:

Trans 139.04(6)(a)4m. If a motor vehicle dealer proposes to use any language in the buyers guide that differs from that shown in s. Trans 139.04(6)(a)4., the dealer shall submit the proposed language to the department. The department shall respond to the

dealer within 30 days of receiving the proposed language whether the dealer may use the proposed language. The dealer may not modify the language in s. Trans 139.04(6)(a)4. prior to receiving approval from the department to use proposed language.

SECTION 10. Trans 139.05(2)(fm) is created to read:

Trans 139.05(2)(fm) If a motor vehicle dealer proposes to use any language in the purchase contract that differs from that shown in s. Trans 139.05(2)(f), the dealer shall submit the proposed language to the department. The department shall respond to the dealer within 30 days of receiving the proposed language whether the dealer may use the proposed language. The dealer may not modify the language in s. Trans 139.05(2)(f) prior to receiving approval from the department to use proposed language.

(END OF RULE TEXT)

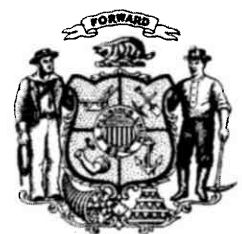
Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this 9th day of April, 2008.


FRANK J. BUSLACCHI
Secretary
Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE





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The Honorable Robert Jauch
Senate Chairman
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May 20, 2008

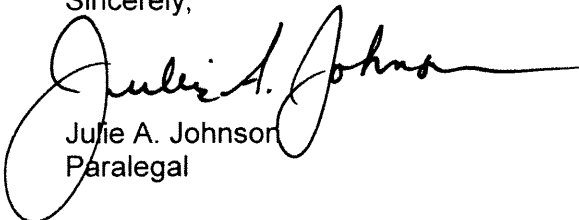
The Honorable Dan LeMahieu
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 17 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **internet and telephone call-in fees**, Trans 250

Dear Senator Jauch and Representative LeMahieu:

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

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Carson Frazier

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to amend TRANS 250.04, relating to internet and telephone call-in fees.

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11(2)(a) and 348.25(3) and (8)(e), Stats., interpreting s. 348.25(8)(e), Stats., the Department of Transportation will hold a public hearing on **July 9, 2008**, at the Hill Farms State Transportation Building, **Room 144-B**, 4802 Sheboygan Avenue, Madison, WI, at **11:00 AM**, to consider the amendment of ch. Trans 250, Wisconsin Administrative Code, relating to internet and telephone call-in fees.

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.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to amend s. TRANS 250.04, relating to internet and telephone call-in fees.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 348.25(8)(e), Stats.

Statutory authority: ss. 85.16(1), 227.11(2)(a) and 348.25(3) and (8)(e), Stats.

Explanation of agency authority: The Department is authorized by s. 348.25(8)(e), Stats., to administer issuance of permits for overweight and over-sized transport, including charging a fee for issuance by internet and telephone call-in.

Related statute or rule: ss. 348.25, 348.26 and 348.27, and ch. Trans 250.

Plain language analysis: Section Trans 250.04 establishes the fee for obtaining an oversize and/or overweight routing permit or permit amendment that is applied for or issued by Internet or telephone call-in procedures. 2003 Wis. Act 33, Section 2604, amended s. 348.25(8)(e), Stats., to provide that the amount of the fee is to be established by the Department by rule, and shall approximate the cost to the Department for providing this service. The current \$5 fee was based on the Department's cost to provide telephone and internet service in 2003. Recently, the Department has determined that the current actual cost per transaction is about \$1.49, but that is subject to change in the future as the Department's annual cost assessment indicates.

This rule making amends s. Trans 250.04 to establish that the Department shall determine the fee annually to approximate the cost to the Department for providing the transaction, not to exceed \$5 per transaction. In determining the fee per transaction for the current year, the Department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors. The current fee shall be published on the Department's internet web site and in communication materials distributed to eligible motor carriers. This approach is modeled on ch. Trans 196 language that was promulgated in 2005 for Internet and phone registration renewal transactions.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulations relate to this fee.

Comparison with Rules in the Following States:

Michigan: Michigan currently accepts credit cards for some transactions, and does not charge a convenience fee. Michigan anticipates expanding credit card acceptance without imposing a convenience fee.

Minnesota: Minnesota accepts credit cards, and does not charge a convenience fee. If customer uses a VitalChek product or interface, the customer pays that company's processing fee directly.

Illinois: Illinois accepts credit cards and does not charge a convenience fee for credit card usage per se, but does charge \$1 fee for transmission of permit via fax, regardless of method of payment.

Iowa: Iowa does not accept credit cards directly, as Iowa by law cannot use tax revenue to pay merchant fee nor create a related service fee. In Iowa, a private third-party vendor has a terminal in the Iowa main office, for use by customers who wish to pay oversized/overweight permit fees using credit cards. The vendor charges a fee based on cost of the transaction; the minimum fee is \$6.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The Department has successfully implemented fee calculation and publication under ch. Trans 196. Under the proposed rule amendment, the convenience fee for oversized/overweight permit applications by internet and telephone call-in procedures will be treated similarly.

The Department has the capability to determine the fee annually to approximate the cost to the Department for providing the transaction, not to exceed \$5 per transaction. In determining the fee per transaction for the current year, the Department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors.

The Department recognizes that if the cost were to exceed the amount that the Legislature has previously approved (\$5 per transaction), the Department must seek Legislative oversight through the rule making process.

Analysis and supporting documentation used to determine effect on small businesses: Small businesses represent most motor carriers that apply for oversized/overweight permits, using the Internet or telephone call-in procedure. In 2007, almost 28,000 oversized/overweight charge-card transactions occurred. The average permit transaction amount was just under \$60, and the average transaction cost to DOT was \$1.49.

Effect on small business: The Department concludes that reduction of the convenience fee will reduce the cost to small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that because it is prohibited from charging fees to any department of a county, town, or municipality or any branch of the United States government, or any foreign government for oversize/overweight permits by s. Trans 250.08, there will be no fiscal impact on the liabilities or revenues of any county, town, municipality, nor any branch of the United States government, nor any foreign government.

Anticipated costs incurred by private sector: The Department estimates that since oversize/overweight permit application by Internet or telephone call-in is a minor portion of state or private sector activity, there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 250.04 is amended to read:

Trans 250.04 Internet fee and telephone call-in fee. In addition to any other applicable fee under this chapter, the department shall charge a \$5 fee for each permit or amendment which is applied for or issued by the internet procedure or the telephone call-in procedure. The fee shall be determined by the department annually to approximate the cost to the department for providing the transaction, not to exceed \$5.00. In determining the fee per transaction for the current year, the department shall review, from the previous year, the total cost of the service, the number of transactions, and other material factors. The current fee shall be published on the department's

internet web site and in communication materials distributed to eligible motor carriers.

Only one internet fee or telephone call-in fee shall be charged when a permit or amendment is applied for and issued by the internet procedure or the telephone call-in procedure.

(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)(intro.), Stats.

Signed at Madison, Wisconsin, this 15th day of
May, 2008.



FRANK J. BUSALACCHI

Secretary

Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE





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E-mail: ogc.exec@dot.state.wi.us

The Honorable Robert Jauch
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 118 South, State Capitol
Madison, Wisconsin 53702

June 11, 2008

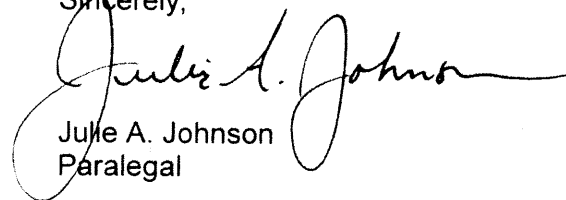
The Honorable Dan LeMahieu
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 17 North, State Capitol
Madison, Wisconsin 53702

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **multiple trip overweight permits for vehicles transporting granular roofing materials**, Trans 263

Dear Senator Jauch and Representative LeMahieu:

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

Sincerely,



Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Supt. David Collins
Mike Goetzman
Casey Newman
Greg Niva
Carson Frazier

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order creating ch. TRANS 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

NOTICE IS HEREBY GIVEN that pursuant to ss. 348.25(3) and (4)(intro.) and 348.27(15)(d), Stats., interpreting s. 348.27(15), Stats., as created by 2007 Wis. Act 171, the Department of Transportation will hold a public hearing on **July 30, 2008** at the Hill Farms State Transportation Building, **Room 144-B**, 4802 Sheboygan Avenue, Madison, WI, at **10:00 AM**, on the creation of ch. Trans 263, Wisconsin Administrative Code, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

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

A copy of the proposed rule may be obtained upon request from Carson Frazier, Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order creating ch. TRANS 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 348.27(15), Stats., as created by 2007 Wis. Act 171

Statutory authority: ss. 348.25(3) and (4)(intro.) and 348.27(15)(d), Stats.

Explanation of agency authority: The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights, and lengths. Nonstatutory provisions created in 2007 Wis. Act 171, section 6, require the Department to promulgate rules implementing a newly-created multiple trip permit for transporting granular roofing materials by not later than August 1, 2008.

Related statute or rule: Chapter 348, Stats., and Chapters Trans 250 to 278, Wis. Admin. Code.

Plain Language Analysis: This proposed rule is required by 2007 Wis. Act 171, section 6. The new law creates a multiple trip permit for certain overweight vehicles or vehicle combinations transporting granular roofing materials. The law establishes certain conditions for the permit and certain limitations on operation.

This proposed rule implements those conditions and limitations:

- The permit allows excess gross weight of 10,000 pounds, but not to exceed 90,000 pounds.
- The permit requires that the motor carrier on whose behalf the load is transported be named in the permit.
- The permit requires a named origin, destination, and designated route of travel.
- The permit requires that any municipality or county whose highways make up any part of the designated route pass a resolution allowing that transport, and requires the permit applicant to submit copies of all resolutions to the department along with the permit application.

The proposed rule defines "granular roofing material" in order to make eligibility for permit and enforcement clear and uniform.

The proposed rule states that the permit is not valid on the interstate highway system, and is valid on not more than 2.5 miles of the state trunk highway system.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: Federal law governs overweight transport on certain federal highways, including general prohibition of divisible overweight loads on the interstate highway system. Pursuant to 23 U.S.C. section 127 and 23 C.F.R. section 658, divisible overweight loads are not allowed on the interstate highway system. 2007 Wis. Act 171 provides that a permit under this law may be issued for up to 2.5 miles on any state trunk highway if such issuance of the permit is consistent with federal law. This proposed rule is consistent with federal law because 2007 Wis. Act 171 authorizes permits for this type of divisible load and transport is not allowed on the interstate highway system.

Comparison with Rules in Adjacent States:

Michigan: Michigan has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Minnesota: Minnesota has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Illinois: Illinois has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Iowa: Iowa has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: This proposed rule implements a newly-enacted law. The Department's implementation of the law, including policies, procedures, and requirements, is the same as the Department applies to all similar multiple trip permits.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This proposed rule implements 2007 Wis. Act 171. The law will allow all businesses, including small businesses, to transport granular roofing materials at weights exceeding state load limits. This would have a beneficial effect on small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

To view the proposed amendments to the proposed rule, view the current rule, or submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF RULE

SECTION 1. Chapter Trans 263 is created to read:

CHAPTER TRANS 263

MULTIPLE TRIP OVERWEIGHT PERMITS FOR VEHICLES TRANSPORTING GRANULAR ROOFING MATERIALS

Trans 263.01 Purpose. The purpose of this chapter is to establish standards and procedures for the issuance of overweight permits for the transportation of granular roofing materials, pursuant to s. 348.27(15), Stats.

Trans 263.02 Definitions. Unless otherwise stated, the definitions of words and phrases in ss. 340.01 and 348.01(2), Stats., and s. Trans 250.02 apply to this chapter. In this chapter:

(1) "Granular roofing materials" means small grains, pellets, and particles of naturally occurring mineral product transported in bulk from a mine to a processing plant where the product is processed or stored for sale, and to be used solely for the manufacture of roofing materials, including roofing shingles.

(2) "Permit" means multiple trip overweight permits authorized under s. 348.27(15), Stats., which includes permit pages, copies of all written approvals for

movement on local highways, a copy of this chapter, a copy of ch. Trans 251, and any other written conditions of movement issued by the department.

Trans 263.03 Overweight permits; general. (1) The department may issue annual or consecutive month permits for the transportation of overweight loads in vehicles meeting the requirements of this chapter.

(2) A permit issued under this chapter is not a guarantee of the sufficiency of any highway or structure for the transporting of the vehicle or load, or both.

Trans 263.04 Permit application. An application for a permit shall be submitted on a department form and shall include the following:

(1) The name, address, telephone number, and electronic mail address of the applicant motor carrier on whose behalf the load is to be transported.

(2) The name and address of the applicant's insurer, and the applicant's policy number and policy expiration date.

(3) The date on which the applicant seeks to have the permit first become valid, not more than 60 days later than the date of application.

(4) The gross weight of the vehicle.

(5) An indication of whether the vehicle is a combination vehicle and the type of combination, the make, year, and vehicle identification number for the vehicle.

(6) An affirmation that the owner has insurance in the amounts required by this chapter or such higher amount as may be required by the department and that the person accepts the terms of the issuance of a permit under this chapter.

(7) The location of the origin and the location of the destination of the load, and the designated route over which the load will be transported.

(8) For each local road or county highway permitted under s. Trans 263.06(4) on

which the applicant seeks authority to operate, a copy of every resolution adopted by the governing body of each municipality or county having jurisdiction over such streets or highways approving the transportation of the load over that portion of the designated route that is on streets or highways under the jurisdiction of that municipality or county.

Note: Applications are available upon request from the Motor Carrier Services Section Permit Unit of the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, P.O. Box 7980, Madison, WI 53707.

Note: Permit application procedures are specified in s. Trans 250.025. A permit application may be submitted in person or by mail to the Motor Carrier Services Section Permit Unit. The Motor Carrier Services Section Permit Unit of the Wisconsin Department of Transportation is located at 4802 Sheboygan Avenue, Room 151, P.O. Box 7980, Madison, WI 53707.

Trans 263.05 Eligibility. The department may issue permits for vehicles under this chapter only to applicants that meet all of the following requirements:

(1) **STATUTORY REQUIREMENTS.** The vehicle and any load satisfy the requirements for a permit under ss. 348.25 and 348.27(15), Stats.

(2) **TRANSPORTATION OF SPECIFIC COMMODITY.** The application may not seek authority to transport any commodity or goods other than granular roofing materials, as provided in s. 348.27(15), Stats.

(3) **MAXIMUM SIZE.** The vehicle may not exceed 8 feet 6 inches in width, nor 13 feet 6 inches in height. Semi-tractor and semi-trailer combinations may not exceed 75 feet in overall length. Motor truck and trailer combinations may not exceed 65 feet in overall length. Single vehicles, not operating in combination, may not exceed 40 feet in length. Vehicle combinations consisting of a semi-tractor and semi-trailer exceeding 65 feet in overall length may not travel on state highways identified by the department as limiting operation to 65 feet or less in length, and may travel only on local roads and highways designated as long truck routes in ch. Trans 276.

(4) PNEUMATIC TIRES. The vehicle shall be equipped with pneumatic tires.

(5) MAXIMUM GROSS WEIGHT. The vehicle, including any load, may not exceed the maximum gross weight limitations under s. 348.15(3)(c) by more than 10,000 pounds, and the vehicle, including any load, may not exceed 90,000 pounds gross weight.

(6) MAXIMUM AXLE WEIGHTS. Axle weights may not exceed those specified in s. Trans 251.06.

(7) BALANCED LOAD. Wheels on one side of the vehicle may not carry more than 60% of the load.

Trans 263.06 Validity. A permit issued under this chapter is valid only if all of the following conditions are met:

(1) PERMITTED VEHICLE ONLY. It is used for the vehicle described in the application and permit.

(2) PERMIT CONDITIONS FOLLOWED. All conditions of the permit are met, including all maximum axle, axle combination, total weight limitations, and restrictions on speed, time or route of travel.

(3) VEHICLE ELIGIBLE FOR PERMIT. The vehicle meets all the requirements of this chapter.

(4) AREA OF OPERATION. The vehicle is operated in Wisconsin on the route designated in the permit.

(5) OPERATION ON INTERSTATE HIGHWAYS PROHIBITED. This permit is not valid on highways designated as part of the national system of interstate and defense highways.

(6) OPERATION ON STATE TRUNK HIGHWAYS RESTRICTED. This permit is

valid for operation on not more than 2.5 miles of any state trunk highway.

(7) LAWFUL OPERATION. The driver of the vehicle is obeying all Wisconsin laws contained in chs. 194 and 340 to 349, Stats., and chs. Trans 305 and 325 to 327.

(8) PERMIT CARRIED ON VEHICLE. The driver carries the permit with attached local road approval resolutions in the vehicle and available for inspection by any police officer, representative of the department or any local authority or person in charge of maintaining the highway being used.

(9) OBEY POSTED WEIGHT AND SPEED LIMITS. The vehicle does not exceed any posted weight limit for a bridge or highway or any temporary weight restriction due to construction or seasonal conditions, and does not exceed any posted speed limits.

(10) MINIMUM FOLLOWING DISTANCE MAINTAINED. The driver maintains a distance of 500 feet between the vehicle and any preceding vehicle on the highway, whenever reasonable and practical.

(11) ALLOW PASSING. The driver allows approaching or overtaking traffic to pass.

(12) INSURANCE MAINTAINED. Insurance on the vehicle is maintained in accordance with s. Trans 263.08.

(13) PROPER REGISTRATION. If the vehicle is required to be registered by Wisconsin law, registration shall be at not less than the permit weight or at the maximum available registration weight, whichever is less.

(14) OPERATION ON PAVEMENT SURFACE. The right wheels of the vehicle do not leave the roadway.

(15) ALCOHOL USE PROHIBITED. The driver does not:

(a) Consume any alcohol beverage within 4 hours of being on duty time, regardless of alcohol content.

(b) Have an alcohol concentration above 0.0.

(c) Possess an intoxicating beverage, regardless of alcohol content.

Note: Section 346.63(7)(a), Stats., is applicable to all drivers of commercial motor vehicles.

(16) DRIVER PROPERLY LICENSED. The driver holds all required licenses bearing the proper classes and endorsements needed to operate the vehicle.

(17) ALL OTHER NEEDED PERMITS OBTAINED. All other operational permits required by the department or other agencies having jurisdiction over the highways used by the permittee are obtained.

(18) ADVERSE WEATHER AND ROAD CONDITIONS. A permit is not valid during periods when adverse weather or road conditions, such as fog, smoke, heavy rain, snow or ice, or wind velocity, impair the safety of a movement under the permit.

(19) MOTOR CARRIER AND DESIGNATED ROUTE. As stated in s. 348.27(15)(b), this permit is valid only for the motor carrier on behalf of which the load is carried; only from the origin and to the destination cited in the permit application; and only on the route designated in the permit application.

Trans 263.065 Times of operation. (1) Except as otherwise specified in a permit, a vehicle or load, or both, that is overweight, but not oversize, may operate 24 hours a day, including weekends and holidays.

(2) The department may issue a permit for times other than those specified in sub. (1), under extraordinary circumstances when, in the opinion of the department, public health and welfare is better served, and may impose additional conditions to

promote the safe operation of the vehicle and load and to reflect conditions deemed necessary by local officials in view of local conditions.

Trans 263.07 Transfers. In the event of a breakdown or other circumstance requiring a change of the power unit or trailer identified on the permit, the permit holder may transfer the permit to another vehicle, under the control of the permittee, following the completion of a new application and the issuance of a new permit. The words, "This is a transfer from permit #<original permit number>," shall be written on the bottom of the application.

Trans 263.08 Insurance and liability conditions. (1) A permittee shall:

(a) Pay any claim for any bodily injury or property damage resulting from operation under the permit for which the permittee is legally responsible.

(b) Hold the state, its subdivisions, officers, employees and agents harmless from any claim that may arise from operation over public highways under the permit.

(c) Be liable for all damage which any highway or its appurtenances may sustain by reason of any operation under the permit.

(2) The department may waive insurance requirements for permits issued to units of government.

(3) Where a certificate of insurance is required, no insurer may cancel the certificate of insurance without providing the department 10 days advance written notice of the cancellation.

(4) Unless different amounts are required under sub. (5), the permittee shall carry insurance in either of the following minimum amounts:

(a) When the permitted load is not overweight by more than 25%:

Bodily injury liability—each person \$150,000 or \$750,000

Bodily injury liability—each accident \$450,000 combined single

Property damage liability—each accident \$300,000 limit

(b) When the permitted load exceeds the weight limitations in par. (a):

Bodily injury liability—each person \$200,000 or \$1,000,000

Bodily injury liability—each accident \$600,000 combined single

Property damage liability—each accident \$400,000 limit

(5) The department may require a permittee to provide more bodily injury or damage liability coverage than the minimum amounts specified in sub. (4).

(6) A permittee shall certify, and may be required to present satisfactory written evidence, that the amount of insurance coverage required under sub. (4) or (5), or a bond in a form satisfactory to the department, shall be in effect for the vehicle and load designated in the permit while operating on the public highway, unless this requirement is expressly waived by the department.

Trans 263.09 Denial, suspension or revocation of permit. (1) The department may deny, suspend, or revoke a permit for good cause, pursuant to s. 348.25(7), Stats. Grounds for the denial, suspension, or revocation of a permit include the following:

(a) Violation of any condition of a permit.

(b) Preventing an employee of the department or a law enforcement officer from performing his or her official duties, or interfering with the lawful performance of his or her duties.

(c) Physically assaulting an employee of the department or a law enforcement officer while performing his or her official duties.

(d) Making a material misstatement in an application for a permit.

(e) Unauthorized alteration of a permit.

(f) Refusal or failure, without just cause, to produce required records.

(g) Nonpayment of the application fee or payment by a check that is subsequently dishonored by the drawee or bank.

(h) Violation of any other applicable provision under ch. 348, Stats., or this chapter.

(2) A permittee shall immediately return a suspended or revoked permit to the department after receiving notice from the department of the suspension or revocation of the permit.

Note: If a permit is denied, suspended, or revoked, an applicant or permittee may request a hearing before the Department of Administration Division of Hearings and Appeals, s. 348.25(9), Stats.

(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)(intro.), Stats.

Signed at Madison, Wisconsin, this 10th day of June, 2008.



FRANK J. BUSALACCHI

Secretary

Wisconsin Department of Transportation





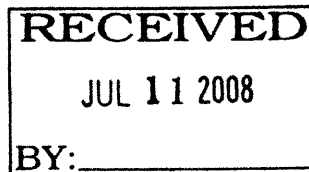
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The Honorable Robert Jauch
Senate Chairman
Joint Committee for Review
of Administrative Rules
Room 118 South, State Capitol
Madison, Wisconsin 53702

July 9, 2008

The Honorable Dan LeMahieu
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 17 North, State Capitol
Madison, Wisconsin 53702




RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to the
occupational licensing program, Trans 117

Dear Senator Jauch and Representative LeMahieu:

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

Sincerely,


Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Rhonda Alley
Rick Kleist

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to create TRANS 117.03(2)(n), relating to the occupational licensing program.

NOTICE IS HEREBY GIVEN that pursuant to ss. 227.11(2)(a), 343.02(1), 343.10, 343.20 and 351.07, Stats., and interpreting ss. 227.11(2)(a), 343.10, 343.20 and 351.07, Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **15th** day of **August**, 2008, at **10:30 AM**, to consider the amendment of ch. Trans 117, Wisconsin Administrative Code, relating to the occupational licensing program.

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.

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to create TRANS 117.03(2)(n), relating to the occupational licensing program.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 227.11(2)(a), 343.10, 343.20 and 351.07, Stats.

Statutory authority: ss. 227.11(2)(a), 343.02(1), 343.10, 343.20 and 351.07, Stats.

Explanation of agency authority: DMV is statutorily charged with responsibility for administering the state's driver licensing system. This rule making is related to the issuance of restricted ("occupational") driver licenses to drivers whose operating privileges are suspended or revoked.

Related statute or rule: ss. 49.857(3)(a)3., 343.30, 343.305, 343.31, 343.32, 346.63, 351.07, 767.73(1)(b), 938.34(14q) and 961.50, Stats.

Plain language analysis: This amendment codifies DMV's longstanding administrative practices related to statutorily required waiting periods following the revocation or suspension of operating privileges.

A recent Waukesha County case involving a repeat drunk driver who sought an occupational license during the minimum mandatory waiting period for a license specified in s. 343.30(1q)(a)4., Stats., made the Department aware of the fact that the current administrative rule does not discuss statutory minimum waiting periods for licensing. The proceeding illustrated a need to explain the Department's procedures with regard to application of the minimum waits for occupational licensing in the administrative rule.

Counsel from the Department of Justice recommended codifying this interpretation with other occupational licensing regulations.

What Are Occupational License Waiting Periods? Generally, drivers whose licenses are suspended or revoked can apply to DOT for a restricted license ("occupational license") that permits limited operation of a motor vehicle for up to 12 hours per day, not to exceed 60 hours per week. The licenses specify the area in which the driver may operate motor vehicles, the times at which they may drive, the purpose for which they may drive, such as work or homemaker duties.

Each revocation or suspension imposed by the Department or a court has an occupational license waiting period associated with it. By default, s. 343.10(2)(a)4., Stats., provides that a person must wait 15 days from the beginning of the revocation period before becoming eligible for an occupational license. But, where a different provision of law provides for a different shorter or longer waiting period, that period applies in lieu of the 15-day default. s. 343.10(2)(a)4., Stats. For example, persons whose licenses are suspended under the administrative suspension law do not have to wait at all. s. 343.305(8)(d), Stats. Persons who refuse chemical testing must wait 30, 90, or 120 days depending on the number of prior alcohol offenses the person committed prior to the refusal. Federal law essentially requires Wisconsin to impose one-year minimum waiting periods on drivers who have committed more than 2 alcohol offenses in a 5-year period. s. 343.31(3)(bm)3., 4. and 5., Stats., 23 U.S.C. s. 164. Convicted drunk drivers who are not subject to the federal requirement face escalating occupational license periods of up to 90 days.

The waiting period for an occupational license begins on the date the revocation or suspension is imposed and ends after the waiting period has elapsed. Where an appeal or other judicial activity, such as the reopening of a conviction, stays a suspension or revocation, any statutorily required waiting period is also stayed. If the conviction is upheld or reinstated, the Department reimposes the suspension or revocation and the waiting period picks up where it stopped. For example, if 10 days passed between the time a suspension was imposed and the time of appeal, upon re-entry of the conviction, DMV would re-impose the suspension or revocation, and impose the remaining portion of the required waiting period.

Sometimes drivers are convicted of multiple offenses at or near the same time. The offenses may or may not have been one incident or occurrence. Regardless, DMV applies the same occupational license waiting period rules. If the revocation or suspension periods begin simultaneously or nearly simultaneously, the waiting periods may run concurrently. If for some reason, however, the revocations or suspensions begin at different times, the driver will be subject to a waiting period for each revocation or suspension.

In some circumstances, DOT shortens a revocation or suspension because the driver has previously been suspended or revoked under different laws regulating the behavior that led to the driver's arrest. For example, a driver might be administratively suspended, revoked for refusing chemical tests, and convicted of operating while intoxicated as a result of one arrest. If the driver had one prior conviction for an alcohol-related offense (an offense countable under s. 343.307(1), Stats.) that occurred more than 5 years prior to his arrest for this second offense. The driver would face a 6-month suspension for the administrative suspension, a 2-year revocation for the refusal, and a 12 to 18 month revocation for the OWI conviction. No waiting period would be imposed for the administrative suspension. s. 343.305(8)(d), Stats. A 60-day wait would be imposed for the OWI conviction. s. 343.31(3)(bm)3., Stats. Finally, a 90-day wait would be imposed for the refusal revocation. s. 343.305(10)(b)3., Stats. If the court convicted the person of the refusal and OWI at the same time, their occupational license waiting periods would run simultaneously. If the convictions occur at different times, however,

the statutorily required waiting period would be imposed for each revocation. While the refusal revocation would be reduced by the "time served" under the OWI revocation in accordance with s. 343.305(10)(g), Stats., the driver would have to wait until "[a]fter the first 90 days of the revocation period" passes to obtain an occupational license. s. 343.305(10)(b)3., Stats. Nothing in s. 343.305 or 343.30(1q), Stats., permits occupational license waiting periods to be reduced by other occupational license waiting periods in the same manner that revocation periods are reduced.

Can a Court Waive or Change an Occupational License Waiting Period?

No. Court involvement in occupational license decision making is administrative not judicial. State v. Marcus, 259 Wis. 543 (1951); State v. Mollet, 67 Wis. 2d 574 (1975). Both WisDOT and the courts are bound to follow the licensing requirements of s. 343.10, Stats., including the mandatory minimum wait requirements for occupational licensing. Courts can waive or change any *discretionary* decision made by DMV in the licensing process under the procedure set forth in s. 343.10(4), Stats., but statutorily mandated requirements may not be set aside by DMV or a court.

Statutory Inconsistency. In the process of drafting this rule making, the Department discovered that an obsolete statutory reference to CDL occupational licenses remains in s. 351.07(1m), Stats. The issuance of CDL occupational licenses is now prohibited by federal law. 49 CFR 383.73(a)(3); 383.71(a)(7); 49 CFR 384.210. Wisconsin law was changed to conform to this federal requirement in 2003 Wis. Act 33. Section 2541 of that Act amended the existing s. 343.10(2)(c) to remove Department authority to issue occupational licenses permitting operation of commercial motor vehicles. At some point, the Department suggests the obsolete and ineffective language of s. 351.07(1m), Stats., be formally repealed.

Summary of, and preliminary comparison with, existing or proposed federal regulation: 23 U.S.C. s. 164 provides for "sanctioning" states that do not adopt certain strict driver licensing statutes affecting drunk drivers. One requirement imposed under this statute is that states may not issue occupational licenses to persons who drive drunk twice in any 5-year period until the person has had their operating privileges completely revoked for a full year. Wisconsin's current statutes have been determined to comply with this requirement.

WisDOT cannot, by administrative rule, change these statutory waiting periods. If the legislature were to change them, the current federal "sanction" for noncompliance would *transfer* an amount equal to 3 percent of the funds apportioned to the State on that date under each of paragraphs (1), (3), and (4) of 23 U.S.C. § 104(b) from various highway programs to highway safety programs. For federal fiscal year 2008, the federal sanction would transfer 3% of 23 USC 104(b)(1) National Highway System funds, 3% of § 104(b)(3) Surface Transportation Program funds, and 3% of § 104(b)(4) Interstate Maintenance funds to 23 U.S.C. § 402 safety funds. Thus, the "sanction" for not complying with the federal repeat intoxicated driver law would be a loss of slightly more than \$15 million from the highway construction and maintenance program and a commensurate increase in highway safety monies.

Comparison with Rules in the Following States:

Michigan: Section 257.319(8) of the Michigan Vehicle Code establishes waiting periods for occupational licenses following OWI convictions in that state as follows:

- No waiting period during a license withdrawal for first offense (within 7 years) "driving while impaired." Under Michigan law, "driving while visibly impaired" is a lesser charge than driving while under the influence of an intoxicant. Michigan Compiled Laws s. 257.319(8)(b).
- No waiting period during a license withdrawal for an underage person convicted of having a BAC between .02 and .08. Michigan Compiled Laws s. 257.319(8)(c). Second offense results in a 90-day suspension with no possibility of an occupational license. Michigan Compiled Laws s. 257.319(8)(d).
- No waiting period for regular vehicle privileges during a withdrawal resulting from a CDL violation involving a BAC between .04 and .08. Michigan Compiled Laws s. 257.319(8)(f).
- 30 days waiting period during a license withdrawal for first offense (within 7 years) operating while under the influence of an intoxicant or operating with any amount of a controlled substance. Michigan Compiled Laws s. 257.319(8)(a)
- 90 days waiting period during a license withdrawal for any of the above-described violations if a minor was in the car. Michigan Compiled Laws s. 257.319(8)(e).

There is a 1-year wait under Michigan law for being involved in various criminal activities, such as issuing a bomb threat under s. 257.319(11) of the Michigan Vehicle Code.

Minnesota: Section 171.30, Minnesota Statutes (2007) prohibits issuance of occupational CDL licenses and imposes the following waiting periods for occupational licenses (called "limited licenses" in that state) as follows:

- 15 days for first offense OWI or refusal Minn. Stat. s. 171.30(subd. 2a.(1))
- 60 day wait for persons whose operating privileges are withdrawn for any felony or hit and run. Minn. Stat. s. 171.30(subd. 2.)
- 90 days for second offense OWI within 10 years or 3rd offense in a lifetime. Minn. Stat. s. 171.30(subd. 2a.(2))
- 180 days for second offense refusal of testing within 10 years or 3rd offense in a lifetime. Minn. Stat. s. 171.30(subd. 2a.(3))
- One year for felony injury and homicide by intoxicated use violations. Minn. Stat. s. 171.30(subd. 2a.(4))

The waiting periods are doubled for persons under age 18 or who commit a violation with a BAC greater than 0.20. Minn. Stat. s. 171.30(subd. 2c)

Illinois: Section 6206 A31 of the Illinois statutes establish waiting periods for occupational licenses following OWI convictions in that state as follows:

- No wait for a first OWI. The occupational license must be approved by the court hearing the OWI case. 625 ILCS 6-206.1(a).
- One year wait for second and subsequent offense OWI. The driver must obtain permission for the occupational license from a review panel. 625 ILCS 6-208.1(a)4., 6-208(b)1.
- 3 year wait following second or subsequent refusals, homicide by intoxicated use and other offenses. 625 ILCS 6-208(a)3., 6-208(b)1. The driver must obtain permission for the occupational license from a review panel.

Illinois also imposes escalating waiting periods on persons under age 21 who violate absolute sobriety requirements. 625 ILCS 6-208.2

Iowa: Iowa Code s. 321.215 on "Temporary restricted licenses" covers occupational licensing in Iowa. There are no waiting periods for occupational licenses under Iowa law, though some offenders, such as persons convicted of drug offenses, may be completely ineligible for occupational licensing.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This proposed rule making would codify longstanding DMV administrative practice with regard to occupational license waiting periods. The promulgation of this regulation does not involve the interpretation of data.

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule making has no effect on small business. The proposed rule simply codifies currently existing WisDOT practice and will not change the law or DMV's application of the law. Accordingly, any effect on small business will be the same before and after adoption of this proposed rule amendment.

Effect on small business: This proposed rule will have no significant effect upon small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments

in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Rhonda Alley, Wisconsin Department of Transportation, Compliance and Restoration Section, 4802 Sheboygan Avenue, Room 301, P. O. Box 7983, Madison, WI 53707-7983. You may also contact Ms. Alley by phone at (608) 264-7002 or via e-mail: rhonda.alley@dot.state.wi.us. A copy of the rule may be obtained upon request from the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 351, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, WI 53707, telephone (608) 266-2237.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 117.03(2)(n) is created to read:

Trans 117.03(2)(n) Any minimum mandatory waiting period required under s. 343.10(2)(a)4., Stats., or specified in any other provision of law has expired. The waiting period commences on the date the suspension or revocation is imposed. Each revocation or suspension imposed has its own waiting period. The waiting periods may run concurrently. Where waiting periods do not run concurrently, no credit may be granted for waiting periods resulting from multiple suspensions or revocations arising out of one incident or occurrence. A reduction in the length of a suspension or revocation does not affect the length of the waiting period for an occupational license. An appeal or other judicial action that stays a suspension or revocation also stays the running of any required waiting period for that suspension or revocation.

NOTE: s. 343.10(2)(a)4., Stats.

(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)(intro.), Stats.

Signed at Madison, Wisconsin, this 8th day of
July, 2008.


FRANK J. BUSLACCHI
Secretary
Wisconsin Department of Transportation