

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION**

PROPOSED ORDER AMENDING PERMANENT RULE

The Wisconsin Department of Transportation proposes an order to:
Create ss. Trans 230.01(3)(c)4.

The Statement of Scope for this Permanent Rule, SS 032-21 was approved by the Governor on February 19, 2021, published in Register No. 783A4 on March 22, 2021, and approved by Secretary of the State of Wisconsin Department of Transportation (department) Craig Thompson, as required by s. 227.135(2), Stats, on December 30, 2020. The analysis below was prepared by the department.

ANALYSIS

Statutes Interpreted: s. 348.25(3) and 348.27(3), Stats.

Statutory Authority: ss. 348.25(3), 348.27(3), 85.16, 227.11(2)(a) Stats.

Explanation of Agency Authority:

Section 348.25(3), Stats., grants the department broad rulemaking authority with respect to operation of vehicle above statutory default weight limits: “The department may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways.” Section 348.27(3), Stats. permits a maintaining authority, such as the department or a local unit of government, to “allow loads exceeding the size or weight limitations imposed” by Ch. 348, Stats.

Sections 85.16(1) and 227.11(2)(a), Stats., grant the secretary authority to make rules necessary to the discharge of the powers, duties and functions vested in the department, and to effectuate the purposes of the statutes. Chapters 84 and 85, Stats., contemplate close cooperation between the department and local units of government for the planning, construction, and maintenance of highways in this state. (See, e.g., aa. 84.01(5), (9), (15), and (23), 84.02, 85.02, 85.07, Stats.) These statutes direct the department to coordinate with local units of government to develop and maintain their highway systems as safe transportation networks.

Section 348.25(3), Stats., grants the department broad rulemaking authority to regulate the size and weight of vehicles on highways in this state. It reads:

The department may impose such reasonable conditions prerequisite to the granting of any permit authorized by s. 348.26 or 348.27 and adopt such reasonable rules for the operation of a permittee thereunder as it deems necessary for the safety of travel and protection of the highways.

Section 348.27, Stats, in turn, allows the department to issue permits for the emergency transportation of divisible loads:

348.27(3) General permits. *For good cause in specified instances* for specified construction or maintenance operations *or for a specified period, the officer or agency in charge of maintenance of a highway may allow loads exceeding the size or weight limitations imposed by this chapter to be hauled* on such highway. No such officer or agency shall issue such permits for use of a highway the cost of maintenance of which is paid by a unit of government other than the unit of government which such officer or agency represents. A permit issued by the department under this subsection may authorize transportation of a divisible load on the I-41 corridor but may not authorize transportation of a divisible load on any other interstate highway.[emphasis added]

In addition, ss. 85.16(1) and 227.11(2)(a), Stats., grant the secretary authority to make rules necessary to the discharge of the powers, duties and functions vested in the department, and to effectuate the purposes of the statutes. Section 84.07, Stats., vests the department with responsibility for “all... operations, activities and processes required on a regular, continuing basis

for the preservation of the highways on the state trunk system... and all routine measures deemed necessary to provide adequate traffic service.” This rulemaking is taken to effectuate the purposes of Ch. 348, Stats., and the Department’s responsibility to manage and maintain the state highway system and protect it from damage that can be caused by overweight or oversized vehicles.

Notwithstanding the s. 348.27(3) statutory provision allowing the department to permit hauling of overweight or oversized loads, administrative rule, Ch. Trans 230, did not contain regulations that clearly implemented that statutory authority and s. Trans 230.01(3)(e)1. Wis. Admin. Code might be read to contradict it or limit agency authority. This rulemaking proposes to amend its administrative rule to make clear that the department may exercise its s. 348.27(3), Stats., authority to permit limited shipments of divisible loads in emergency situations.

Section 348.27(3), Stats. also makes clear that the department does not have independent statutory authority to issue permits on local highways under the maintenance jurisdiction of local units of government. In an emergency situation, however, local units of government can be overburdened with responding to the emergency and local government offices’ ability to respond to permit requests may be affected by the emergency situation, such as might occur in a flood. When such situations have arisen in the past, the Department has coordinated with local governments to include local route segments on the Department’s permit if those local units of government have granted the department agency authority to include the route. Close coordination is needed because only the maintaining authority has the records needed to determine whether that maintaining authority’s infrastructure can support oversize or overweight loads. In this rulemaking, the Department proposes to allow local units of government to grant the department agency authority to issue permits over local highways on behalf of the local unit of government to the extent the local unit of government requests emergency assistance.

Related Statute or Rule:

Chapter 348, Stats. regulates the size and weight of vehicles and Chapters Trans 230, 250 through 276, Wis. Admin. Code all relate to support oversize/overweight permitting.

Plain Language Analysis:

Chapter Trans 230, Wis. Admin. Code provides general permitting guidance to vehicle users and law enforcement authorities for safe and lawful operations in conformance with Wisconsin vehicle size, weight and combination laws. However, the current administrative rule does not allow the department flexibility to waive the divisible load requirement and respond quickly to emergency situations nor to coordinate Wisconsin emergency permitting with neighboring state or federal authorities. The department proposes to amend the general permit conditions in Ch. Trans 230 in a manner that would allow the department to issue permits for loads exceeding statutory size or weight restrictions, or both, for vehicles responding to declared emergency situations.

This proposed amendment would not change the general requirements of section Trans 230.01(3)(e)10., Wis. Admin. Code, that permit holders must comply with all state and local ordinances rules and regulations, including vehicle weight limits, unless otherwise provided in the permit. Typically, in non-emergency situations, permits are issued for state highways and permit holders apply to the jurisdiction with maintaining authority over local or county highways if they seek permits to traverse those highways. In extreme situations, such as the 2019 southern Wisconsin flood emergency, the department consults with local jurisdictions as needed if authority for transportation will necessarily impact both state and local routes. Using the department as a single permitting authority assists local jurisdictions already reeling with the demands of

responding to the natural disaster from dealing with a variety of requests for emergency permits to provide emergency transportation to their jurisdiction. The department undertakes this role only in emergencies as agents for local units of government and after extensive consultation with local governments for their direction; the department does not have sufficient information about local streets and highways, their composition, structures, traffic, and other data, nor the staff, necessary to administer local government permitting on a regular basis. The maintaining authority for the highway can revoke its emergency grant of agency authority to the department at any time.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

During periods of national emergency, federal law allows states to issue special permits allowing transportation of emergency relief supplies in overweight vehicles notwithstanding divisibility of the loads. 23 U.S.C. s. 127(i)(1). Permits making use of this provision of federal law must expire not later than 120 days after the date of the national emergency declaration. 23 U.S.C. § 127(i)(2). Transportation of debris is not permitted under the federal law.

Federal law also provides for increased weight limits for “emergency vehicles” that transport personnel and equipment and are supporting fire suppression or mitigation of other hazardous situations. 23 U.S.C. § 127(r).

Federal agencies have waived certain federal requirements for past emergencies, such as responding to Hurricane Katrina. This proposed rulemaking would allow the department to align more quickly with any waivers of federal laws, as well as coordinate with our neighboring states to help provide seamless border transitions for permit users.

Comparison with Rules in Adjacent States:

Illinois.

Illinois Code Section 625 ILCS 5/15-101(b) allows oversize/overweight vehicles to be operated by special permit in excess of generally applicable Illinois weight limits. No emergency declaration is required. State officials advise they issue emergency divisible load special permits to allow overweight transportation in response to emergencies. The permits specify the routes of travel permitted and directs permit holders around size or weight-restricted structures and roadways. Public utility vehicles are simply exempt from weight limits when transporting equipment required for emergency repair of public utility facilities, properties or water wells. 625 ILCS 5/15-111(a)(4).

Iowa.

Iowa generally prohibits transportation of divisible loads in excess of statutory weight limits. IA Stat. s. 321E.2.1. Iowa allows divisible loads to be transported above those weight limits under permits related to disaster relief activities. IA Stat. s. 321E.29. Permits are issued by the authority with jurisdiction over the highway(s) over which operation is allowed.

Iowa officials advise that state practice is to issue permits only if authorized by a Governor's emergency declaration that suspends the regulatory provisions of Iowa Code §§ 321.463(6) (a) and (b) and 321E.29 and Iowa Admin. Code chapter 7 61-511, to the extent those provisions restrict the movement of loads related to disaster relief. The Governor has authority under Iowa Code 29C.6 to issue a proclamation of disaster emergency which lasts 30 days, unless sooner terminated or extended in writing by the governor.

Michigan.

Michigan allows oversize/overweight vehicles to be operated by permit in order to mitigate issues related to public emergencies; however, the law simply requires “a written application and good cause being shown” and is not restricted to emergencies. Michigan Compiled Law Section 257.725(1) states: “Upon receipt of a written application and good cause being shown, a jurisdictional authority may issue a written special permit authorizing an applicant to operate upon or remove from a highway maintained by that jurisdictional authority a vehicle or combination of vehicles that are any of the following: a. Of a size, weight, or load exceeding the maximum specified in this chapter; b. Otherwise not in conformity with this chapter.” An expiration date must be included in the permit. MI Stat. s. 257.725(4).

Minnesota.

Minnesota oversize/overweight permitting is regulated by statute; there is no administrative rule specific to oversize/overweight permits to dictate process/decisions. Minnesota allows oversize/overweight vehicles to be operated by permit during public emergencies. The Minnesota commissioner of transportation has broad oversize/overweight permit issuing authority under Minnesota Statutes section 169.86, including authority to allow divisible loads to be transported in excess of statutory weight limits on highways under state jurisdiction. Local authorities must permit operations on highways under their jurisdiction. Authority is not limited to emergencies, specific materials or commodities and does not limit the commissioner’s authority with respect to permitting operation of divisible loads above statutory weight limits as part of an emergency response. The law simply requires “upon application in

writing and good cause being shown therefore.” The focus is to protect the public from an imminent threat to health and safety.

Summary of the Factual Data and Analytical Methodologies:

The proposed modifications are not based on data analysis. The department’s anecdotal experience in responding to emergency situations has revealed a need for flexibility in responding to the pressing needs associated with natural disasters and other emergencies.

Analysis Regarding Rule’s Effect on Small Businesses:

Implementation of the proposed changes is anticipated to have an overall minimal to no impact to small businesses and industries in Wisconsin. The changes will allow the department to be able to quickly facilitate the movement of essential goods and services and respond to the ongoing needs of industries during emergency situations. Businesses may individually decide whether they need to apply for the emergency permits to meet their business needs. The proposed rule merely provides another option for business and industry to move essential goods and services. Additionally, this proposed rulemaking would allow the department to align more quickly with any waivers of federal laws, as well as coordinate with our neighboring states to help provide seamless border transitions for all permit users, including small businesses.

The agency contact person listed below is also the small business regulatory coordinator for this proposed rule. This proposed rule, fiscal estimate, and other related documents may be viewed at <https://docs.legis.wisconsin.gov/code>.

Agency Contact Person:

Ehren Bittorf
State of Wisconsin Department of Transportation
Division of Transportation Systems Development
4822 Madison Yards Way, 3rd Floor South
Madison, Wisconsin 53705

Phone Number (608) 261-2573
Email address: DOTAdminRules@dot.wi.gov

Place Where Comments Should Be Submitted and Deadline: Comments may be submitted to the agency contact person listed above or through the Legislature's Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF RULE

SECTION 1. Trans 230.01(3)(c)4. is created to read:

Trans 230.01(3)(c)4. Notwithstanding subd. 1. and (3)(e)1., and subject to subd. 2. and 3., if the Governor declares an emergency under Ch. 323, Stats., the department may issue permits for transportation of loads or articles upon state highways which could be reasonably divided at sizes or weights that exceed statutory size or weight limits if the loads or articles being transported are being shipped for the purpose of providing emergency relief goods or services or for removing debris from or restoring property damaged by a weather-related emergency. Permits issued under this subdivision may authorize operation on specified segments of municipal, town or county highways if the maintaining authority for that highway has granted the department agency authority to issue the permits over those segments of its highways during the emergency, which authority may be modified or revoked by the maintaining authority at any time. In authorizing the issuance of permits under this subdivision, the department shall consider the factors involved with the emergency and impacts to the highway infrastructure and safety to decide whether to issue permits under this subdivision, and the maximum length of time, not to exceed six months, for which emergency transportation under this subdivision is permitted. All permits issued under this subdivision are subject to the other conditions of this subsection, except sub. (3)(e)21., and may be cancelled or modified if the department, or maintaining authority in the case of local highways, determines that the need for emergency transportation, or transportation on particular highway segments, no longer exists. Permits issued under this subdivision may not authorize transportation on interstate highways except as allowed under federal law or waivers issued by the U.S. Department of Transportation.

Note: During periods of national emergency, federal law allows states to issue special permits allowing transportation of emergency relief supplies in overweight vehicles notwithstanding divisibility of the loads. 23 U.S.C. s. 127(i)(1). Permits making use of this provision of federal law must expire not later than 120 days after the date of the national emergency declaration. 23 U.S.C. s. 127(i)(2). Transportation of debris is not permitted under the federal law. Federal law also provides for increased weight limits for “emergency vehicles” that transport personnel and equipment and are supporting fire suppression or mitigation of other hazardous situations. 23 U.S.C. s. 127(r).

SECTION 2: 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.

(END OF RULE TEXT)

Signed this ____ day of August, 2021.

Craig Thompson, Secretary
State of Wisconsin Department of Transportation