

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

CR 06-103

The Wisconsin Department of Transportation adopts an order to amend TRANS 200.015(2)(m) and (n)1., 200.06(2) and (7)(c)1., 200.08(2)(e)5.b. and c., (3) and (7)(a); and create TRANS 200.06(2g), (2r) and (12) relating to Specific Information Signs

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 84.02(4)(e) and 86.195, Stats.

Statutory authority: ss. 86.19(2), 86.195(1)(d), 86.195(3), 86.195(4)(b), 86.195(8), and 227.11, Stats.

Explanation of agency authority: Under s. 86.19(2), the Department is authorized and required to prescribe regulations with respect to the erection of signs on public highways that have the full force of law. The Department has the authority to regulate the number and types of Specific Information Sign structures and sign panels near interchanges and intersections. These types of signs are only used on highways statutorily designated in s. 86.195(2)(ag), currently involving 36 highway segments. 2005 Wis. Act 136, effective October 1, 2006, amended s. 86.195, Stats., to add the "Attractions" category to the Specific Information Sign [SIS] program and authorizes the Department to amend ch. Trans 200 to include specific criteria addressing the qualifications of an "Attraction." This allows the Department to add a new category of businesses to this signing program that may not have had the chance to be included in any other directional or guidance signing programs or where those other available signs may not have been as effective or desirable for both motorists and the "Attractions" themselves.

Related statute or rule: The primary significant related statute and complementary rule is the tourist-oriented directional sign [TODS] program under s. 86.196 and Trans 200.08, Wis. Admin. Code. This TODS program allows tourist-oriented attraction signing outside urban areas on any highway, other than those 36 highway segments designated by statute for the SIS program, including county trunk highways and town roads. There is another significant related group of general directional or destination guide signs authorized by the federal Manual on Uniform Traffic Control Devices [MUTCD] including Sections 2H.08 and 2H.09 and some parts of Sections 2D and 2E adopted by the Department pursuant to s. 84.02(4)(e), Stats., with further explanations and guidance provided in the Department's Traffic Guidelines Manual. Section Trans 200.03 is an additional source of direction for guidance signing. For convenience, this group of alternative on-highway signs will be referred to generally as Traffic Generator signs.

Plain language analysis: The current administrative rule allows four types of motorist services to be displayed on a Specific Information Sign structure, i.e., Gas, Food, Lodging, and Camping. This proposal will amend the rule to include the 5th category of “Attractions” within the specific information sign program and will establish criteria that a business must meet to qualify for display as an “Attraction” sign.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Chapter 2F of the federal MUTCD authorizes the “Attractions” category of display on Specific Information Sign structures. It sets the following standards and guidance for “Attractions” in Section 2F.01 and 2F.02:

“The attraction services shall include only facilities which have the primary purpose of providing amusement, historical, cultural, or leisure activities to the public.”

“To qualify for an ATTRACTION logo panel, a facility should have:

1. Regional significance; and
2. Adequate parking accommodations.”

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“In the direction of traffic, successive Specific Service signs shall be for attraction, camping, lodging, food, and gas services, in that order.”

Section 2F.02 of the federal MUTCD continues to limit the total number of Specific Information Sign structures along an approach to an interchange or intersection to a maximum of four, while allowing the new 5th category of “Attractions” to be displayed on one of those sign structures that is farthest away from the interchange or exit. Hence, although there is a new 5th category of “Attractions” that are eligible, the total number of SIS structures on which such signs may be installed remains limited to a maximum of four.

The Wisconsin statute limits these signs to 36 currently designated highway segments and excludes their use in the County of Milwaukee. The federal MUTCD is not as restrictive; it states the signs should be limited to areas primarily rural in character and provides that where an engineering study determines a need, they may be used on any highway.

The Wisconsin statute also limits these signs to those “Attractions” that are within 3 miles of the intersection/exit, or a maximum of 5 miles if no “Attraction” exists within 3 miles. The federal MUTCD is not as restrictive; it states the distances to eligible attractions should not exceed 3 miles in either direction but does provide an option to allow extending the eligible distance when a type of service is not available or chooses not to participate in the 3 mile limit. The distances may be extended in 3-mile increments until one or more facilities for the type of service chooses to participate, or until 15 miles is reached, whichever comes first.

Comparison with Rules in the Following States:

Michigan: No “Attractions” category found in Michigan MUTCD.

Minnesota: Includes “Attractions” in its program, although reported in survey as not extensively allowed.

Illinois: Has initiated an “Attractions” program.

Iowa: Includes “Attractions” in its program. If an “Attraction” is not available within a 3-mile limit, Iowa will consider additional increments of 3 miles, with a maximum limit of 15 miles.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: The federal MUTCD and Wisconsin’s law, s. 86.195(3)(e), Stats., contain identical general criteria for qualification of a facility as an “Attraction” – having (1) a “primary purpose of providing amusement, historical, cultural, or leisure activities to the public,” (2) “regional significance” and (3) “adequate parking accommodations,” but without any further elaboration. The difference is that only the federal “primary purpose” criterion is mandatory, whereas all three criteria are mandatory under Wisconsin law.

Those attending the public hearing on this rule and providing written comments recognized a difference of opinion as to what “Attraction” facilities might be considered as having a primary purpose of providing amusement, historical, cultural or leisure activities to the public. For example, Convention & Visitors Bureau and Wisconsin Department of Tourism leaders felt that a shopping mall, or downtown/business area might be considered as having regional significance, and having a primary purpose of providing leisure activities to the public, but also appeared to acknowledge that such an area might be better identified by a different type of Traffic Generator signing in the absence of a readily recognized primary or dominant attraction or regionally well known identifying logo for the mall or area.

There also was general recognition that what is of “regional significance” in more rural regions of Wisconsin can be quite different than what is considered of “regional significance” in a more densely populated region or a region with many competing tourism attractions. Similarly, a maximum distance of 3 to 5 miles to an “Attraction” in more densely populated regions might be warranted and reasonable, whereas motorists may be more willing to travel further to an “Attraction” in rural regions and would like to be advised by signing before appropriate intersections and exits. “Attractions” are also more likely to be pre-planned ultimate destinations than are such in progress, convenient access and reentry “Gas” and “Food” facilities. Motorists probably are more willing to go further out of their way for an “Attraction” that catches their interest. Moreover, some “Attractions” such as caves, wildlife refuges and other natural features obviously cannot be moved to be within the current maximum statutory distance. The Department is aware that motorists do not like to be led very far away from an intersection or interchange for convenient Gas, Food and other services. The Department knows this concern motivated the present

statutory limitation on maximum distances with supplemental signing showing distances to facilities. Within the constraints of the federal MUTCD and state law, the distance limitations may not fit well with the location of regionally significant attractions.

All concerned recognized the limited opportunities for "Attraction" signing due to physical and legal limitations on the spacing and number of SIS signs on the 36 designated highway segments. All recognized the geographic differences in what may be considered regionally significant or primarily serving one of the eligible primary purposes. In all probability, a single rural amusement park, winery, brewery, gallery, museum or agricultural facility is more likely to meet the eligibility threshold as an "Attraction" in many less dense rural areas than in more densely populated regions with more potentially eligible "Attractions." "Regional significance" indicators such as annual attendance, evidence of geographic market, gross revenue, regional advertising budget, bidding, and increased fees depending on highway traffic and number of competing "Attractions" desiring signs were discussed, but all had practical administrative and uniform applicability and small business impact shortcomings. Accordingly, the consensus was the Department should remove absolute restrictions on "Attraction" eligibility in the rule to the extent possible and substitute more general guidelines to be used by an advisory council that could take these variations into account in making recommendations to the Department. In addition, the Department proposes to allow for future advances in changeable electronic sign technology for the SIS program to the extent permitted by federal laws and regulations that may serve to make the limited number of spaces available to more "Attractions" and other permitted categories.

Analysis and supporting documentation used to determine effect on small businesses: The public hearing was well attended with many positive and constructive verbal and written comments as summarized in Part IV. An advisory group including the AAA and Department of Tourism had helped prepare the initial rule for the hearing. The rule change is being requested by the large and small businesses that sought the enabling legislation and others that may qualify for "Attractions" signing. As there is no statutory limitation or minimum size or annual patronage requirement for what is an eligible "Attraction," this rule could have an adverse or restrictive effect on some smaller "Attractions" businesses if the Department is too restrictive in determining what qualifies as having "regional significance." The Department has elected to make the determination of "regional significance" flexible enough to take into account the geographic and opinion variations that may be accommodated by the proposed advisory council. The advisory council is the same one already in existence for the tourist-oriented directional sign program under Section Trans 200.08(3) with a more flexible opportunity for selection of "Attraction" interest representation on the council.

Effect on small business: The Small Business Ombudsman from the Department of Commerce pointed out that a first come first served basis for granting the limited number of "Attraction" signage available may well have an adverse effect on small businesses, especially if joined with any minimum annual attendance or similar requirement. As an alternative the suggestion was made that priority or first opportunity be given to those "Attractions" closest to the intersection or exit. If an "Attraction" chooses not to participate, the next closest would be given the opportunity or priority. This method

would have a neutral impact and not be adverse to smaller "Attractions." The Department has included language that will permit this type of evaluation where it may be practical to have an application deadline for initial "Attractions" signage or a similar means of concurrent comparison by the proposed advisory council. The Department of Commerce representative will be a member of the advisory council. Other members of the advisory council may balance this small business interest with the need to consider the "regional significance" of the applicant's "Attraction." The consensus was that bumping would not be allowed, i.e., a new "Attraction" applicant closer to the intersection or exit could not bump an existing "Attraction" that had received a sign. The rule does provide additional participation opportunities for small businesses that are "Attractions" that do not presently have that opportunity. Since businesses request that they be identified on state-installed signs, the sign application process will enforce the rule and any costs incurred for the signage are voluntarily incurred. 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 and anticipated costs incurred by private sector: The Department estimates that there will be no net fiscal impact on Department revenues or liabilities. There is a probable positive net impact on private sector revenues to the extent the new signage promotes Wisconsin "Attractions." Added Department administrative costs will be recovered through participant's fees. The private sector presumably will only choose to incur the costs when they anticipate the signs will generate a net benefit to the "Attraction" business. The outdoor advertising industry did not state any opposition to the rule, as the new "Attraction" owner is not required to choose between outdoor advertising and this newly eligible SIS "Attraction" signage. They are complementary.

Contact person and Copies of Rule: Copies of the rule can be obtained, without cost, by writing to John Noll, Department of Transportation System Development, Traffic Engineering Section, Room 501, and P. O. Box 7986, Madison, WI 53707-7986. You may also contact Mr. Noll by phone at (608) 266-0318.

TEXT OF RULE

SECTION 1. Trans 200.015(2)(m) and (n)1 are amended to read:

Trans 200.015(2)(m) "Motorist service sign" means an official traffic sign that includes one or more of the words "GAS," "FOOD," "LODGING" or "CAMPING" or "ATTRACTION" and directional information, but does not identify the business offering the service or the name of the brand of products offered.

(n)1. One or more of the words, "GAS," "FOOD," "LODGING" or "CAMPING" or "ATTRACTION";

SECTION 2. Trans 200.06(2) is amended to read:

Trans 200.06(2) SERVICES PERMITTED. The motorist services for which the department may authorize the erection and maintenance of business signs on specific information signs within a highway are limited to "GAS," "FOOD," "LODGING" and "CAMPING," or "ATTRACTION" in accordance with s. 86.195(3), Stats.

Note: The 36 highway segments currently (2005-06) designated as eligible for these signs are shown on the map in Appendix A.

SECTION 3. Trans 200.06(2g) and (2r) are created to read:

Trans 200.06(2g) GENERAL REQUIREMENTS FOR "ATTRACTION" ELIGIBILITY. To qualify for display on a specific information sign as an "ATTRACTION," a business shall meet the following criteria:

(a) Have the primary purpose of providing amusement, historical, cultural or leisure activities to the public.

(b) Be of regional significance.

(c) Provide adequate parking to accommodate normal traffic volumes for the facility.

(d) Not be identified on any supplemental signing under sub. (1)(f) or guidance sign on the same route as the specific information sign.

(e) Be located within 3 miles of the interchange and have adequate signage to direct motorists to their location after exiting the highway. If no business, facility, or activity in the category of "ATTRACTION" is available or chooses to participate in the specific information sign program within the 3-mile limit, the limit may be extended to a maximum distance of not more than 5 miles from the highway, unless the distance limit for the category of "ATTRACTION" is increased by a statutory enactment of the Wisconsin Legislature that is consistent with federal law.

(f) Comply with laws concerning the provisions of public accommodations without regard to race, religion, color, age, sex, or national origin, and laws concerning the licensing and approval of service facilities.

(g) Have adequate supplemental signage under sub. (1)(f) to direct motorists to their location after exiting the highway.

Note: The 3 to 5-mile distance to services limitation in par. (2g)(e) is required by s. 86.195(5)(a), Stats. (2005-06). The public accommodations requirement in par. (2g)(f) is required by Section 2F.01 of the 2003 Manual on Uniform Traffic Control Devices (Rev. 1 included) that reads: "Eligible service facilities shall comply with laws concerning the provisions of public accommodations without regard to race, religion, color, age, sex, or national origin, and laws concerning the licensing and approval of service facilities."

(2r) ADVISORY COUNCIL. The advisory council appointed by the department under ss. 15.04(1)(c) and 15.09, Stats., for the tourist-oriented directional sign program under s. Trans 200.08(3) shall also serve as the advisory counsel to review applications for the display of business signs on specific information signs in the "ATTRACTION" category. The department shall make the final decision on applications. The department may act on any application not acted upon by the advisory council within 60 days of forwarding of the application to the council. Members of the advisory council will not be compensated for their services or reimbursed for their expenses, except the department may reimburse private citizen members in hardship cases for actual and necessary expenses incurred in the performance of their duties.

(a) *Amusement, historical, cultural or leisure activities.* In making its recommendations regarding whether an applicant's business qualifies as an "ATTRACTION," the advisory council may consider the following non-exclusive list of business facilities that presumptively provide amusement, historical, cultural or leisure activities to the public:

4.1. Agri-tourism businesses such as breweries, gardens, cheese factories, vineyards, and wineries.

2.2. Aquariums, wildlife facilities, wildlife preserves, wildlife sanctuaries, and zoo facilities.

3.3. Cultural, historic or scientific sites, galleries, halls of fame, museums, and performing arts facilities.

4.4. Nature or scenic areas such as beaches, gorges, nature facilities, nature preserves, nature sanctuaries, observation points, observation towers, parks, scenic areas, trails, lakes, waterfalls, waterways, and bluffs.

5.5. Recreation facilities such as amusement parks, casinos, racetracks, speedways, and theme parks.

6.6. Religious sites or shrines. Religious sites or shrines, typically not including cathedrals, churches, chapels, synagogues, temples, or mosques, and only when the site or shrine is readily recognized regionally.

7.7. Scenic rides or sightseeing tours such as balloon, boat, helicopter, lift, airplane, train, and trolley rides are more likely to qualify in more rural less densely populated areas or where there is a large selection of such activities in one place.

8.8. Sport arenas, sport facilities or sport stadiums.

9.9. Shopping mall, or downtown/business area only if it has a readily regionally recognized and dominant attraction and regionally well-known identifying logo for the mall or downtown/business area and is not better identified by alternative directional signing.

(b) *Primary purpose.* In making its recommendations regarding whether an applicant's business qualifies as an "ATTRACTION," the advisory council may consider

the following factors to determine whether a business facility has the primary purpose of providing one or more of the above qualifying activities to the public:

1. Percent of business and land area devoted to the eligible activity.
2. Percent of business gross and net revenue derived from the eligible activity.
3. Focus of any business advertising primarily for the eligible activity.
4. Percent of annual attendance attributable to the eligible activity.

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(c) *Regional significance.* In making its recommendations regarding whether an applicant's business qualifies as an "ATTRACTION," the advisory council may recognize or consider the following in determining whether a business facility has regional significance:

1. Regional significance generally is demonstrated by a market presence or significant public awareness of the attraction beyond the local community. While the concept of regional significance is consistent around the state, the significance of a given attraction should be considered relative to other attractions in the area. Areas of the state that are more heavily tourism oriented and those areas that are more rural and less densely populated may result in different determinations of regional significance.

2. Regionally significant attractions are more likely to be pre-planned ultimate destinations than convenience stops.

3. Annual attendance, typically over 5,000 at minimum, size of geographic market, percent of customers or visitors from beyond 50-mile radius, existence and size of a regional advertising budget, the number of parking spaces, accommodations to handle large groups such as transit or tour bus facilities, the number of seats in performing arts facilities, the percentage of out-of-state plates, the number of hours and days of continuous operations, the availability and number of tours, and the expected contribution

to the success of regional tourism may also be considered indicators of regional significance.

(d) *Changeable electronic signs.* Due to spacing requirements, geographic and other limitations on the number of “ATTRACTION” category sign opportunities that may be available, the department may allow changeable electronic sign technology for the specific information sign program to the extent permitted by federal laws and regulations, and subject to the ability to meet contractual and cost provisions acceptable to the department. Changeable electronic signs may serve to make the limited number of spaces available to more “ATTRACTIONS” and other permitted categories.

(e) *Permissive alternative recommendations when appropriate.* If the advisory council recommends against allowing an “ATTRACTION” category sign to an applicant, the council may recommend:

1. Alternative signing under the tourist-oriented directional sign program under s. 86.196 and s. Trans 200.08 when appropriate on any highway, other than those designated by the state for the specific information sign program.

2. Alternative directional or destination guide signs authorized by the federal Manual on Uniform Traffic Control Devices 2003 Edition, Revision 1, including Sections 2H.08 and 2H.09 and some parts of Sections 2D and 2E as adopted by the department pursuant to s. 84.02(4)(e), Stats., when appropriate, with further explanations and guidance provided in the department’s traffic guidelines manual. Section Trans 200.03 is an additional source of direction for guidance signing.

Note: Appendix B is an illustration of a Specific Information Sign and associated business sign. Appendix C is an illustration of a Tourist-Oriented Directional Sign. Appendix D is an illustration of other directional or guidance signs generally known as Traffic Generator Signs.

SECTION 4. Trans 200.06(7)(c)1. is amended to read:

Trans 200.06(7)(c)1. 'Business sign size.' Each business sign displayed on a "GAS" specific information sign shall be contained within a 48-inch-wide and 36-inch-high rectangular background area, including border. Each business sign displayed on a "FOOD," "LODGING," or "CAMPING" or "ATTRACTION" specific information sign shall be contained within a 60-inch-wide and 36-inch-high rectangular background area, including border. If 2 business signs are displayed for 3 different types of motorist services on one specific information sign, the business sign size shall be contained within a 48-inch-wide and 36-inch-high rectangular background area, including border.

Note: After the effective date of this section ... [revisor inserts date], the Department may require all newly-erected or replacement specific information signs to contain business signs within a 48-inch wide and 36-inch high rectangular background area, including border, in order to accommodate the newly added ATTRACTIONS category of signs.

SECTION 5. Trans 200.06(12) is created to read:

Trans 200.06(12)(a) *Priority*. The department will establish an initial application period for "ATTRACTION" category signs ending the first day of the second month commencing after the effective date of this chapter. If, after review by the advisory committee, there are more eligible applicants than spaces available at any one location, priority will be given to those eligible "ATTRACTIONS" recommended by the advisory committee and closest to the intersection or exit. When there is any eligible attraction within the first 3 miles from the intersection or exit that has applied, no applicants outside the 3-mile distance may be approved. Remaining applications will be retained for consideration when space becomes available for attractions at that location. Following the initial application period when opportunities arise to replace or add an attraction to a

specific information sign, the applications on file for that sign location will be referred to the advisory council for review of current eligibility. The advisory council report will be used by the department in determining which applicant will be approved. The department will select the eligible attraction closest to the intersection or exit. When 2 or more eligible attractions exist at the same distance from the intersection or interchange, the date the application was received may be used as a tiebreaker. After the sign has been erected, attractions cannot be removed from a sign based on distance alone.

(b) *Distance*. If the attraction is greater than 3 miles but less than the 5-mile limit from the highway interchange, the ramp sign shall include the number of miles to that location as part of the business logo. The ramp sign shall also include the number of miles to the location if the distance limit for the category of "ATTRACTION" is increased by a statutory enactment of the Wisconsin Legislature that is consistent with federal law.

(c) *Seasonal attractions*. If the attraction is seasonal, the attraction business sign will be removed or covered with a closed plaque during the off-season. If a waiting list exists, the department may offer the spot temporarily, but the seasonal business will go back on the sign during the next "open" season.

NOTE: A different rate may be necessary to accommodate seasonal businesses due to the increased maintenance necessary.

SECTION 6. Trans 200.08(2)(e)5.b. and c., (3) and (7)(a) are amended to read:

Trans 200.08(2)(e)5.b. Be open a minimum of 8 hours per day, and 5 days per week, if the highway on which the tourist-oriented directional sign is located is a state trunk highway.

c. Be in operation the greater part of 3 consecutive months, if the highway on which the tourist-oriented directional sign is located is a state trunk highway, and

(3) ADVISORY COUNCIL. The department may appoint an advisory council under ss. 15.04 (1) (c) and 15.09, Stats., to review applications for tourist-oriented directional signs on the state trunk highway system in the tourist attraction category and for "ATTRACTION" category signs under s. Trans 200.06. This 7 member council shall include representatives from the tourism industry, department of development-tourism division, department of commerce, and other organizations as determined by the department and shall make recommendations to the department to approve or deny applications. The department shall make the final decision on applications. The department shall furnish to the advisory council minimum criteria and requirements for the uniform evaluation and assessment of applications. The department, in collaboration with the advisory council, may make revisions to the application evaluation criteria if at any time it is apparent that the criteria or implementation process are inequitable to the applicants or that the signing itself creates operational or safety concerns. The advisory council shall meet ~~not less than once each month, unless otherwise directed by the department,~~ as needed to consider and make recommendations on applications received by the department. The department may act on any application not acted upon by the advisory council within 60 days of forwarding of the application to the council. Members of the advisory council ~~shall~~ will not be compensated for their services or reimbursed for their expenses, except the department may reimburse private citizen members in hardship cases for actual and necessary expenses incurred in the performance of their duties.

(7)(a) *Distance to tourist-oriented business, service or activity.* A tourist-oriented business, service or activity may not be located in excess of the 5-mile distance

specified in s. 86.196 (5), Stats. (2005-06), from the highway intersection at which tourist-oriented directional signs are to be located to qualify for a tourist-oriented directional sign, unless the distance limit is increased by a statutory enactment of the Wisconsin Legislature that is consistent with federal law. Distance to a business, service or activity will be measured from the near edge of the main travelled way to the center line extended of the closest business driveway of the business, service or activity.

APPENDIX A

Wisconsin Specific Information Sign Highways

<http://www.dot.wisconsin.gov/business/rules/docs/sis-highways.pdf>

APPENDIX B

Specific Information Sign Structures

http://mutcd.fhwa.dot.gov/HTM/2003r1/part2/fig2f-01_longdesc.htm

<http://www.dot.wisconsin.gov/business/rules/property-signs-directional.htm>

APPENDIX C

Tourist-Oriented Directional Signs

http://mutcd.fhwa.dot.gov/HTM/2003r1/part2/fig2g-01_longdesc.htm

APPENDIX D

General Directional and Other Guidance Signs

http://mutcd.fhwa.dot.gov/HTM/2003r1/part2/fig2h-02_longdesc.htm

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 ____ day of
June, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation