



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-045

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. The proposed rule allows the department to issue oversize or overweight permits for loads or articles that could be reasonably divided if the Governor declares a state of emergency under ch. 323, Stats., and the loads or articles are being transported for certain purposes. Section 348.25 (4), Stats., however, provides that permits shall only be issued for loads that cannot be reasonably divided, except as specified by that statute. None of the statutorily enumerated exceptions under which a permit may be issued for a divisible load appear to provide an exception for the circumstances under which the rule allows permits to be issued. [Although s. 348.25 (4) exempts general permits, issued under s. 348.27 (3), Stats.,—which may be issued for “a specified period”—from the indivisible load requirement, general permits may not authorize operation on roads for which the issuer is not the maintaining authority, and the plain language analysis of this rule suggests the department intends the rule to allow it to issue permits that allow operation on local roads. In any event, s. Trans 230.01 (3) (c), Wis. Adm. Code, already exempts general permits from the indivisible load requirement.] The department should explain whether the proposed rule conflicts with s. 348.25 (4), Stats.

b. As authority for this rule, the department cites its general rulemaking authority under ss. 85.16 (1) and 227.11 (2) (a), Stats. For more specific authority, it states that s. 348.25 (3), Stats., “grants the department broad rulemaking authority”, and cites language from that statute that allows the department to “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 and protection of the highways”. This statute appears to allow the department some latitude in imposing “reasonable conditions prerequisite” to granting a permit authorized by s. 348.26 or 348.27, Stats., and in adopting “reasonable rules” for permittees necessary for the safety and protection of highways, s. 348.25 (3), Stats. It is not clear, however, that the statute allows the department to issue permits under circumstances not otherwise authorized by statute. The department should address how, specifically, s. 348.25 (3), Stats., authorizes this proposed rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. It is not clear whether the department intends the rule to simply waive the divisible load requirement for any type of existing permit to which that requirement currently applies if the Governor declares a state of emergency and the application is for a permit to transport emergency or relief goods or services or if the department intends the rule to create a new type of permit that is available under these circumstances. The first paragraph of the plain language analysis suggests the former is the purpose of the rule. If this is the case, the rule would be clearer if it specified the types of permits for which the department may waive the requirement related to divisibility and under what circumstances. [However, see the comment above regarding s. 348.25 (4), Stats.]

b. The plain language analysis of the rule suggests that the rule would establish the department as a “single permitting authority”, which could “assist local jurisdictions” by issuing permits ordinarily issued by those local jurisdictions. The text of the rule, however, does not directly address the applicability of permits issued under the rule to roads not under the jurisdiction of the department.