

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION

REPORT FROM AGENCY CLEARINGHOUSE RULE 21-045

In the matter of rulemaking proceedings before the Department of Transportation Wisconsin Administrative Code Ch. Trans 230 relating to: Permits for loads exceeding size, weight, and vehicle combination limits

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

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.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The department conducted a public hearing on July 7, 2021. No one testified or appeared at the hearing, and no written comments were received during the comment period. The department later received a comment from Cooperative Network indicating their support of the corresponding emergency rule (EmR2115) and their interest in seeing it become a permanent rule. The department also reached out to other parties it believed may have interest in this matter and received no substantive comments in response. No modifications were made to the rule in response to public comments.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

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.

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 WisDOT 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 WisDOT to permit hauling of overweight or oversized loads, WisDOT’s administrative rule, Ch. Trans 230, did not contain regulations that clearly implemented that statutory authority and s. Trans 230.01(3)(e)1. 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) 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 issue permits on behalf of those local units of government as well as the State. Such permitting must be closely coordinated 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 manner, WisDOT is granted 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.

There are several related Chapters of the administrative rules, Chapters Trans 230, 250 through 276, Wis. Admin. Code all relate to oversize or overweight vehicle permitting. Chapter 348, Stats. regulates the size and weight of vehicles and provides the basic law being applied and interpreted by the Department.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Department did not receive a statement, suggested changes, or other material from the Small Business Regulatory Review Board.