

Report From Agency

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

CR 09-70

The Wisconsin Department of Transportation proposes an order to repeal chs. TRANS 267 and 268, relating to emergency agricultural transportation permits, and emergency energy conservation permits.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 348.17(3) and (5), Stats.

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

Explanation of agency authority: The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights and lengths. Prior to May 2006, the Department issued emergency declarations authorizing overweight loads of agricultural products during the Fall Harvest season. 2005 Wis. Act 364, effective May 4, 2006, eliminated this authority and replaced it with a statutory seasonal overweight allowance for agricultural products. Chapter Trans 267, which implemented emergency agricultural transportation permits is no longer needed. Although the Department has the authority to issue emergency energy conservation permits, it can do so only when the Governor declares an energy emergency pursuant to ss. 340.01(15s) and 348.17(3), Stats. It has been the Department's practice to forego issuing energy emergency permits because it has relied on Emergency Executive Orders issued by the Governor to authorize oversized or overweight loads during energy emergencies. Because energy emergencies are declared by the Governor, pursuant to ss. 340.01(15s) and 348.17(3), Stats., and 49 C.F.R. sections 390.23 and 390.25, and because the Department has not issued separate energy emergency permits, Chapter Trans 268 is not needed.

Related statute or rule: Chapter 348 and s. 166.03(1)(b)1, Stats., Chapters Trans 250 to 278, Wis. Admin. Code, 49 C.F.R. sections 390.23 and 390.25.

Plain language analysis: Chapter Trans 267 governs emergency agricultural transportation permits under s. 348.17(4), Stats. Chapter Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. The scope statement for this rule making stated that the Department proposes to combine ch. Trans 267 into ch. Trans 268 and to incorporate provisions consistent with other overweight rules. However, as the Department has considered such changes, the Department has determined that in fact neither rule is any longer valid, and thus proposes to repeal both rules.

Chapter Trans 267 interprets s. 348.17(4), Stats. 2005 Wis. Act 364 repealed s. 348.17(4), Stats., and instead created s. 348.17(5), Stats., allowing overweight transport of certain crops during certain time periods without requiring a permit. Ch. Trans 267 is no longer valid. Therefore, the Department proposes to repeal ch. Trans 267.

Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. Section 348.17(3), Stats., states that during an energy emergency the Department of Transportation, after consulting with the Department of Administration, may waive the statutory divisible load limitation on overweight loads, and authorize, for up to 30 days, overweight operation within certain limits. An energy emergency is certified by executive order of the Governor.

Section 348.17(3), Stats., does not specifically state that the Department of Transportation may or shall require permits for overweight movement during an energy emergency. In practice, when the Governor has declared an energy emergency, the Department of Transportation has not required permits for overweight transport, but the statutory weight limitations specified in s. 348.17(3), Stats., have been considered the limitations under the gubernatorial emergency declaration. Since s. 348.17(3), Stats., will always govern and the Department has never required permits under ch. Trans 268, the Department proposes to repeal ch. Trans 268.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulation covers the overweight permits addressed in these rules. Like all statutes and administrative rules governing overweight movement, these rules comply with federal law and regulation regarding operation on Interstate highways and other federal-aid highways.

Comparison with Rules in the Following States:

Michigan: Not applicable.

Minnesota: Not applicable.

Illinois: Not applicable.

Iowa: Not applicable.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: These two administrative rules no longer serve a purpose, as both are superseded by statute. Therefore, the Department proposes to repeal these two rules.

Analysis and supporting documentation used to determine effect on small businesses: Not applicable.

Effect on small business: Repeal of these chapters has no effect on small business, since statutory language prevails. 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 copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by contacting Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, 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.

TEXT OF PROPOSED RULE

SECTION 1. Chapters Trans 267 and 268 are repealed.

(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 ____ day of
November, 2009.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 09-70

ANALYSIS OF FINAL DRAFT OF TRANS 267/268

(a) **Basis and Purpose of Rule.** Chapter Trans 267 governs emergency agricultural transportation permits under s. 348.17(4), Stats. Chapter Trans 268 governs emergency energy conservation permits under ss. 340.01(15s) and 348.17(3), Stats. The scope statement for this rule making stated that the Department proposes to combine ch. Trans 267 into ch. Trans 268 and to incorporate provisions consistent with other overweight rules. However, as the Department has considered such changes, the Department has determined that in fact neither rule is any longer valid, and thus proposes to repeal both rules.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 19, 2009. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** None.

(d) **Summary of Public Comments and Agency Response to those Comments.** No public comments were received.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate.** No changes made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained no recommendations.

(g) **Final Regulatory Flexibility Analysis.** Repeal of these chapters has no effect on small business, since statutory language prevails.