

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 209, 212, 213, 215

Relating to: Standards for bridge inspection for local bridge program

Rule Type: Emergency/Permanent

1. Finding/nature of emergency (Emergency Rule only):

The welfare and safety of the driving public and local communities in the state of Wisconsin are at risk of harm if ch. Trans 212, relating to local bridge inspection standards, is not updated to be consistent with 23 CFR Part 650 Subpart C Final Rule on National Bridge Inspection Standards, effective May 6, 2022. The outdated language and references in ch. Trans 213, relating to the local bridge program, restrict the eligibility for funding of reconstruction and rehabilitation of bridges that local units of government may submit, and the Wisconsin Department of Transportation (“WisDOT”) may approve.

Further, WisDOT risks federal funds lapsing if these funds are not obligated to specific projects. Per the Bridge Formula Program (BPM) Implementation Guidance memorandum (dated 1/14/22), federal funds from the 2021 Bipartisan Infrastructure Law (BIL) must be obligated and expended as follows:

| Fiscal Year of BFP Funds | Period of Availability for | |
|--------------------------|-----------------------------|------------------------------|
| | Obligation and Expenditure | Expenditure ⁶ |
| 2022 | Lapse on September 30, 2025 | Cancel on September 30, 2030 |
| 2023 | Lapse on September 30, 2026 | Cancel on September 30, 2031 |
| 2024 | Lapse on September 30, 2027 | Cancel on September 30, 2032 |
| 2025 | Lapse on September 30, 2028 | Cancel on September 30, 2033 |
| 2026 | Lapse on September 30, 2029 | Cancel on September 30, 2034 |

Any such amounts not obligated within the period of availability for obligation shall lapse. Once the period of availability for obligation has expired, BFP funds will only remain available for adjusting and liquidating obligations as authorized in accordance with 31 USC 1553. In federal fiscal year 2022, the total annual federal funding in the Local Bridge Improvement Assistance Program was approximately \$69.4 million. Ensuring local units of government are able to evaluate local bridges and identify eligible improvements in accordance with current standards, funding mechanisms and procedures is imperative. Therefore, WisDOT is seeking to undertake emergency rulemaking for chs. Trans 212 and Trans 213 for the overall benefit of safety and operations for the state’s local bridge program.

2. Detailed description of the objective of the proposed rule:

The purpose of this rulemaking is to propose modifications and updates to the references and standards related to the inspection of bridges in ch. Trans 212, and the method of determining

eligibility for funding of local bridges in ch. Trans 213. This rulemaking will bring the rules into conformance with current bridge inspection standards and broaden local bridge eligibility for funding opportunities for local units of government to appropriately identify timely bridge improvement work to preserve or extend the bridge life.

Under s. 84.17 (3), Stats., WisDOT must establish standards for a continuing highway bridge inspection program. Chapter Trans 212 was first adopted in 1982 and revised in 1986, 1992, and 1999. Chapter Trans 213, authorized by s. 84.18, Stats., implements the local bridge reconstruction and rehabilitation program and was first adopted in 1982 and revised in 1992 and 1999.

Though rules have remained static since 1999, there have been several improvements in the bridge inspection standards and procedures and the programming strategies and approaches for recommending infrastructure improvements. WisDOT proposes to update ch. Trans 212 to be consistent with current inspection standards and procedures and clarify the rule by updating obsolete language and terminology. These updates will ensure compliance with 23 CFR Part 650 Subpart C Final Rule on National Bridge Inspection Standards, effective 2022.

WisDOT will also review its processes related to the methodology and criteria for determining local bridge eligibility in ch. Trans 213, which is impacted by subsequent modifications and updates in ch. Trans 212.

The changes to chs. Trans 212 and 213 will also affect provisions in chs. Trans 209 and 215, relating to criteria for evaluating and selecting state trunk highway and bridge improvement (construction) projects, and criteria for determining eligibility for replacing or constructing local high cost bridges, respectively. WisDOT proposes to update chs. Trans 209 and 215 to be consistent with substantive changes in chs. Trans 212 and 213.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Existing Policies

The purpose of ch. Trans 212 is to interpret and implement s. 84.17 (3), Stats. and to provide continuing inspection of bridges in the state. The purpose of ch. Trans 213 is to interpret and implement s. 84.18, Stats., relating to the method of determining eligibility for funding the acceleration of the reconstruction or rehabilitation of seriously deteriorating local bridges. Chapters Trans 212 and 213 work together in identifying and determining the eligibility of local bridges that local governments may apply for in ch. Trans 213. Chapter Trans 212 sets criteria for bridge inventory and inspection, and ch. Trans 213 sets standards for funding improvements. However, the current administrative rules contain outdated language, references, and requirements that restrict local bridge eligibility.

Proposed Policies

The rulemaking will update bridge inspection standards, references, and procedures to conform with current standards and procedures. In this rulemaking, WisDOT will also evaluate methods, criteria, and requirements for determining eligibility of local bridges for funding. WisDOT will consider options that allow local units of government to identify and program local bridge improvements appropriately.

As a result of the proposed changes to chs. Trans 212 and 213, chs. Trans 209 and 215 will be affected. WisDOT will revise obsolete language, references, and terminology in ch. Trans 209, which has criteria for evaluating and selecting state trunk highway and bridge improvement construction projects, and ch. Trans 215, relating to high-cost local bridge projects.

Analysis of Policy Alternatives

A no-action alternative would mean WisDOT would continue to use outdated parameters for evaluating local bridges. This ultimately requires a local bridge to become so deficient that often the only improvement is a bridge replacement. This is a safety concern that could require the closure of some bridges and the load posting of other bridges. Unfortunately, this results in discouraging, or even prohibiting, less-intrusive, more cost-effective rehabilitative bridge treatments that can extend bridge-life before requiring full bridge replacements. There is also a risk that impending federal funds may be lost if projects are not obligated in a timely manner to meet federal fiscal year deadlines requirements and receive highway authorizations under BIL.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Chapter Trans 212 authority: s. 84.17 (3), Stats.

(3) After the initial inspection and inventory under sub. (2) is completed, all highway bridges in the state shall be inspected on a continuing basis as determined by the department. The department shall establish standards for the continuing inspection program. The responsibility for the continuing inspection program shall be as follows:

- (a) The department shall be responsible for inspecting the highway bridges on the state trunk highway system.
- (b) Local authorities and other authorities shall be responsible for inspecting highway bridges on highways under their jurisdictions.

Chapter Trans 213 authority: s. 84.18, Stats.

(1) **Purpose.** The local bridge program is created to accelerate the reconstruction or rehabilitation of seriously deteriorating local bridges.

(2) **Definitions.** In this section:

- (a) "Coordinating agency" means the county which coordinates the submission of applications from eligible applicants within the county to the department.
- (b) "Eligible applicant" means county, city, village, town or combination thereof.
- (c) "Entitlement" means the amount of aids a coordinating agency will be eligible to receive under this section as determined under sub. (5).
- (d) "Local bridge" means a bridge which is not on the state trunk highway system or on marked routes of the state trunk highway system designated as connecting highways.
- (e) "Local bridge project" means a project for the design and construction or rehabilitation of a seriously deteriorating local bridge and minimum approaches.
- (f) "Seriously deteriorating local bridge" means a local bridge exhibiting deficiencies that meet the criteria established by the department.

(3) **Administration.** The department shall administer a local bridge program which provides an entitlement of funds to the coordinating agency for the reconstruction or rehabilitation of seriously deteriorating local bridges. The department shall provide the same percentage of the cost of a local bridge project as the percent established under 23 USC 144 (f).

(4) **Applications.** Any eligible applicant may apply to the coordinating agency for funds under this section. A separate application is required for each local bridge project. The application shall

describe the specific local bridge project for which funds are to be used. The department shall prescribe the form, nature and extent of information to be contained in the application.

(5) Determination of entitlement. The department shall determine the entitlement to the coordinating agency based upon the ratio between the estimated cost of reconstructing or rehabilitating seriously deteriorating local bridges in that county and the estimated cost of reconstructing or rehabilitating the seriously deteriorating local bridges in the state which are eligible under this section, exclusive of any bridge that is programmed for construction under an order by the department under s. 84.11 (4). The estimated cost of reconstructing or rehabilitating the seriously deteriorating local bridges in the state and individual counties shall be based upon those bridges identified in the inventory of bridges made under s. 84.17.

(6) Execution and control of work. Subject to s. 30.2022 and the control exercised by the United States, the construction under this section of any local bridge project shall be wholly under the supervision and control of the department. The secretary shall make and execute all contracts and have complete supervision over all matters pertaining to such construction and shall have the power to suspend or discontinue proceedings or construction relative to any bridge project at any time in the event any county, city, village or town fails to pay the amount required of it for any project eligible for construction under this section, or if the secretary determines that sufficient funds to pay the state's part of the cost of such bridge project are not available. All moneys provided by counties, cities, villages and towns shall be deposited in the state treasury, when required by the secretary, and paid out on order of the secretary. Any of the moneys deposited for a project eligible for construction under this section which remain in the state treasury after the completion of the project shall be repaid to the respective county, city, village or town in proportion to the amount each deposited.

(7) Rules. The department shall adopt rules to implement this section.

(8) Exceptions. Nothing in this section prevents construction or rehabilitation projects under other bridge programs if applicable.

Chapter Trans 209 authority: s. 85.025, Stats.

Highway and bridge projects. The department shall adopt by rule criteria for selecting and evaluating all highway and bridge projects which are constructed from the appropriations under s. 20.395 (3) (bq), (bv), (bx), (cq), (cv) and (cx).

Chapter Trans 215 authority: s. 84.11, Stats.

(1r) Rules. The department shall promulgate rules to implement this [s. 84.11, Stats]. The rules shall include criteria for selecting and evaluating projects which are eligible for construction under this section.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

Approximately 500 hours.

6. List with description of all entities that may be affected by the proposed rule:

- Local units of governments that are bridge owners such as counties, cities, villages, and towns
- Bridge inspectors and consultants
- Other transportation engineering and construction companies
- Persons in Wisconsin who drive on subject bridges.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

23 CFR Part 650 Subpart C Final Rule on National Bridge Inspection Standards sets the national minimum standards for the proper safety inspection and evaluation of all highway bridges in accordance with 23 USC 144 (h) and the requirements for preparing and maintaining an inventory in accordance with 23 USC 144 (b).

Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”), which establishes the Bridge Formula Program (BFP) to replace, rehabilitate, preserve, protect, and construct highway bridges.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have any economic impact on small businesses):

Implementation of the proposed changes is anticipated to have an overall minimal, but positive impact on small businesses and industries in Wisconsin. The proposed rule will potentially impact local units of government that have bridges in their jurisdiction. Allowing increased eligibility of local bridges will result in long-term investments and improvements to bridge condition and infrastructure. WisDOT anticipates these local units of government would see some positive economic impact in the overall safety, efficiency, and reliability of the movement of people, goods, and services over bridges. The proposed rule is expected to have minimal economic impact on WisDOT and taxpayers. This rule would allow opportunities for local bridge projects to consider the most cost-effective treatments and increase the life expectancy of the infrastructure for citizens of the state.

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