

Wisconsin Department of Transportation

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00-152

December 22, 2000

Chris LaRowe
Governor's Office
Room 125 South
State Capitol
Madison, WI 53702

John Etzler
Budget Analyst
Department of Administration
10th Floor, 101 East Wilson
Madison, WI 53702

RE: CLEARINGHOUSE RULE 00-152, relating to **outdoor advertising sign annual fees**, Trans 201

Pursuant to the December 9, 1987, memo on executive review of proposed administrative rules by the Department of Administration, I am enclosing a copy of proposed Trans 201.

The proposed rule making implements a provision of the biennial budget, 1999 Wis. Act 9, which requires the Department to charge annual fees for outdoor advertising sign owners. The Act limits revenue raised from the program to \$510,000 during FY 01 and provides appropriation authority for \$510,000 to improve the sign inventory information system.

Our hearing draft proposed to set annual revenues after FY 01 at a rate that covers a larger portion of the program costs through a combination of annual fees, a nonrefundable application fee, and changes to the applicability of the sign company license requirement. This increase is deleted from the Final Draft being submitted to the Legislature.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie A. Johnson".

Julie A. Johnson
Administrative Rules Coordinator

Enclosures

JAJ/dim

cc: Senator Robson/Representative Grothman/Bob Cook /Mike Goetzman/Alice Morehouse/
Deb Bruccaya

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 00-152

The Wisconsin Department of Transportation proposes an order to repeal TRANS 201.13; renumber TRANS 201.02(4); amend TRANS 201.01, 201.07(1), 201.10(2)(intro.) and 201.19(2); and create TRANS 201.02(intro.) and (4) to (12), 201.035, 201.07(3) and 201.075, relating to outdoor advertising sign annual fees.

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

This report is submitted to the presiding officers 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

STATUTORY AUTHORITY: 84.30, Stats.

STATUTES INTERPRETED: 84.30, Stats.

General Summary of Proposed Rule. 1999 Wisconsin Act 9 directed the Department to assess annual fees to the owners of outdoor advertising signs in order to recoup a portion of the costs of the state's regulatory program governing outdoor advertising structures. The state has regulated outdoor advertising since the 1960's in compliance with the requirements of the Federal Highway Beautification and Bonus Acts, the regulations promulgated by the U.S. Department of Transportation interpreting those acts, and the 1961 and 1972 agreements between the State of Wisconsin and U.S. DOT.

This proposed rule making establishes fees for outdoor advertising structures based upon the regulatory burden created by the sign. This rule proposes to create annual fees of \$50 for directional, grandfathered and nonconforming signs and \$35 for nearly all other off-premises advertising signs.

Directional, nonconforming and grandfathered signs are assessed a fee of \$50 per sign regardless of size, because regulating those classes of signs requires significantly more resources than regulating other types of permitted signs.

The proposed rule would define some commonly used terms in ch. Trans 201 and this proposed rule making for clarity.

This rule creates s. Trans 201.075 to replace the substantive provisions of current s. Trans 201.02(3) which is repealed. Current drafting standards call for that provision to be moved from the definition portion of ch. Trans 201.

Finally, this proposed rule spells out what happens if sign permit fees are not timely paid and a process for sign owners to appeal a fee assessment. Nonpayment of a fee for a permitted sign results in the expiration of the permit, subjecting a sign to potential removal. Nonpayment of the fee for a nonconforming or grandfathered sign is considered abandonment subjecting the sign to removal. s. 84.30(10m), Stats.

Persons wishing to appeal the amount of an assessment need to pay the proposed fee and state particularly the facts regarding the appeal. If that does not resolve a dispute, further appeal to the Division of Hearings and Appeals may be sought.

Fiscal Effect. The proposed rule implements a provision of 1999 Wisconsin Act 9, the biennial budget, which requires the Department to charge annual fees for outdoor advertising sign owners. The Act limits revenue raised from the program to \$510,000

during Fiscal Year 2001 and provides appropriation authority for \$510,000 to improve the sign inventory information system.

This proposed rule implements the fee provision of the budget and proposes to set annual revenues after FY01 at a rate that covers a larger portion of the program costs through a combination of annual fees and an increased nonrefundable application fee. The application fee replaces the current one-time refundable fee that has been in effect since 1972.

Under the program, the department expects to recover \$87,500 per calendar year from sign permit application fees, based on an estimated 500 permit applications per year at \$175 per permit. This estimate may be imprecise because fewer applications may be submitted under the new fee structure.

In addition, the Department expects to raise fees from annual permits on an ongoing basis as follows:

CATEGORY	ESTIMATED # IN CATEGORY	FEE	\$ GENERATED
All Signs 8 sq. ft. and less, and Exempt Signs	3,000	\$0	\$0
Directional	1,700	\$50	\$85,000
Nonconforming and Grandfathered	5,000	\$50	\$250,000
All Other Permitted Signs	7,500	\$35	\$262,500
TOTALS			\$597,500

Because the Department expects to first notice sign owners of these fees in May 2001 or later, the Department does not expect to collect more than \$510,000 in fiscal year 2001 from annual permit fees. The Department anticipates collecting no more than \$30,000 in fiscal year 2001 from permit application fees.

Preparation and Copies of Proposed Rule. Preparation of this proposed rule was done by Attorney John Sobotik. Copies of the rule may be obtained upon request, without cost, by writing to Deborah Brucaya, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986, or by calling

(608) 266-3813. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 84.30, Stats., the department hereby proposes to amend a rule interpreting s. 84.30, Stats., relating to outdoor advertising sign annual fees.

SECTION 1. Trans 201.01 is amended to read:

Trans 201.01 General. Pursuant to authority contained in ss. 84.30 and 86.19, Stats., the department of transportation adopts the following rules to apply to signs along and visible from the controlled highways in Wisconsin. Section 84.30, Stats., and these rules apply to the interstate and system, federal aid primary systems or national highway system, and the Great River Road established under 23 USC 148, which are referred to herein as "controlled highways". These rules are so closely associated with the Wisconsin Statutes, and make such extensive reference to s. 84.30, Stats., that it is essential to refer to both these rules and the law in order to apply the controls. This chapter shall be interpreted consistently with the requirements of the 23 U.S.C. s. 131, federal regulations related to outdoor advertising control at 23 CFR Part 750, and the agreements between the state of Wisconsin and the U.S. federal highway administration dated June 9, 1961 and March 28, 1972.

Note: The 1961 Agreement involved application of the Federal Bonus Act (part of the Federal Aid Highway Act of 1958), P.L. 85-381; the 1972 Agreement involves application of the Federal Highway Beautification Act of 1965, P.L. 89-285.

SECTION 2. Trans 201.02(intro.) is created to read:

Trans 201.02 Definitions. (intro.) The words and phrases defined in s. 84.30(2), Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

SECTION 3. Trans 201.02(4) is renumbered Trans 201.02(13).

SECTION 4. Trans 201.02(4) to (12) are created to read:

Trans 201.02(4) "Grandfathered sign" means a sign that lawfully existed in a business area on March 18, 1972, and that does not conform to the size, spacing or lighting restrictions of s. 84.30(4), Stats.

(5) "Illegal sign" means a sign erected after March 18, 1972, without a permit, a sign that is erected or maintained in a manner that violates any requirement of a permit, this chapter, or s. 84.30, Stats., a non-conforming sign that has lost its nonconforming status, or a grandfathered sign that has lost its grandfathered status.

(6) "License" means a license to engage in the business of outdoor advertising.

(7) "Nonconforming sign" means any of the following:

(a) A sign that lawfully existed on March 18, 1972, outside of a business area.

(b) A sign that was lawfully erected after March 18, 1972, that subsequently did or does not conform to the requirements of s. 84.30, Stats., or this chapter.

(8) "Off-premises" or "off-property sign" means a sign that is not an on-premises sign.

(9) "On-premises" or "on-property sign" means a sign at a business location advertising a business that is conducted on the property and that is located in the immediate vicinity of the business. "Immediate vicinity" in this subsection means the

sign is within the area bounded by the buildings, driveways and parking areas in which the activity is conducted or within 50 feet of that area. "Immediate vicinity" does not include any area across a street or road from the area where the business is conducted or any area developed for the purpose of erecting a sign.

(10) "Permit" means a permit issued by the department to erect or maintain a sign at a defined location under a specific paragraph of s. 84.30(3), Stats.

(11) "Primary highway" means any highway, other than an interstate highway, at any time officially designated as a part of the federal-aid primary system or national highway system by the department and approved by the appropriate authority of the federal government.

NOTE: See 23 U.S.C. s. 131(t). The DOT Bureau of Planning, P. O. Box 7913, Madison, WI 53717 maintains a list of highways that are primary highways as defined herein. Information regarding which highways are primary highways under this section may also be obtained from the sign permit coordinator in any DOT district office.

(12) "Visible" means the sign, or any part of the sign structure, can be seen from the main-traveled way of a highway by a person of normal visual acuity, regardless of whether the sign is designed, erected or intended to be read from the main-traveled way.

SECTION 5. Trans 201.035 is created to read:

Trans 201.035 Annual sign fees. (1) SIGN IDENTIFIER. The department shall assign a unique identifier to each off-property sign in the state of Wisconsin. The identifier shall be assigned to a sign upon any of the following occurrences:

(a) Approval of a permit to erect the sign.

(b) First payment of an annual fee for a sign erected before the effective date of this section [revisor insert date].

(c) Addition of the sign to the sign database of signs maintained by the department.

(2) DATABASE OF SIGN OWNERS. The department shall maintain a sign database to track the name and address of the owner of each sign, and such other information related to the sign as the department considers appropriate.

NOTE: The Department shall use the address of record in this database for correspondence with a sign owner.

(3) CHANGE OF SIGN OWNERSHIP. Any person who acquires a sign shall provide the department with a notice containing all of the following information for the sign:

(a) The unique identifier assigned to the sign by the department.

(b) The name, address and telephone number of the person from whom the sign was acquired and the name of the person acquiring the sign.

(c) The location of the sign, listing the name of the primary or interstate highway to which it is adjacent, the county and town in which the sign stands, the section number of the township in which the sign is located, the name, address and telephone number of the person owning the real property upon which the sign is located, and the distance of the sign from the centerline of the nearest crossroad or intersection.

(d) The size of the sign measured in accordance with s. 84.30(4)(a)2., Stats. If the sign shape is not rectangular, a drawing showing the dimensions of the various

triangles, circles, rectangles, and squares encompassing the entire sign shall be provided.

(e) The height above ground level of the bottom edge of the sign face or any border or trim to the sign face.

(4) ANNUAL FEE NOTICE. The department shall mail an annual fee notice to the owner of record with the department of every off-premises sign within the state of Wisconsin that is subject to the requirement of paying a fee under sub. (9). All annual fee notices shall be considered delivered upon mailing to the owner of record indicated in the department's database of sign owners as of the first day of the month in which the notices are mailed. Annual fee notices may include a summary of information related to one or more signs and require owners to update or correct information at the time of paying any required fee. The department may require owners of signs not subject to the fee requirement of sub. (9) to update or correct information from a summary of information with respect to any sign.

(5) DUE DATE. Payment of annual permit fees and responses to information requests are due 60 days from the date of mailing of notices by the department, or on such other date as indicated in the fee notice.

(6) NONCONFORMING SIGNS. Nonconforming signs for which the annual fee is not paid within 60 days of the due date shall be removed as abandoned signs. Payment of an annual fee may not be considered in determining whether a sign is subject to removal under the federal highway beautification act, the regulations promulgated thereunder, or s. Trans 201.10.

NOTE: See s. 84.30(10m), Stats.

(7) **PERMITTED SIGNS.** The permit for a sign shall expire upon the due date for payment unless the annual fee for the sign has been paid. Signs with expired permits are subject to removal 60 days from the due date specified in the notice. The department shall notify a sign owner that a sign is subject to removal under this section in accordance with s. 84.30(11), Stats. The department may not issue a permit within any minimum required spacing limitations under ss. 84.30(4)(c), Stats., s. Trans 201.05(2)(d), or s. Trans 201.06, of a sign with an expired permit until and unless that sign is removed.

(8) **REFUNDS.** Permit fees are non-refundable and may not be prorated.

(9) **FEE SCHEDULE.** Permit fees shall be assessed as follows:

(a) Except as provided in par. (b), no annual fee may be assessed for any of the following:

1. On-premises signs.
2. Official signs and notices as defined in s. Trans 201.05(1)(d).
3. Public utility signs as defined in s. Trans 201.05(1)(e).
4. Public service signs as defined in s. Trans 201.05(1)(g).
5. Political signs as defined in s. Trans 201.16(1), if exempt from permit requirements under s. Trans 201.16(2).
6. Real estate signs as defined in s. Trans 201.17(1) if exempt from permit requirements under s. Trans 201.17(3).
7. Farm signs as defined in s. Trans 201.18(1)(b) if exempt from permit requirements under s. Trans 201.18(2).

8. Agricultural test plot signs as defined in s. Trans 201.18(1)(a) if exempt from permit requirements under s. Trans 201.18(3).

9. Signs of 8 square feet or less in area.

Note: Service club and religious notices are limited to 8 square feet or less by s. Trans 201.05(1)(f).

(b) Nonconforming, grandfathered and directional signs as defined in s. Trans 201.05(1)(c), shall be assessed an annual fee of \$50 per sign.

(c) Except as provided in pars. (a) and (b), all off-property signs shall be assessed an annual fee of \$35 per sign.

(10) APPEAL OF ANNUAL ASSESSMENT FEE. (a) Any person may appeal the assessment of an annual fee under sub. (9) by mailing a notice of appeal to the address provided on the notice of fee assessment within 15 days of the date the assessment is mailed.

(b) A notice of appeal shall particularly state all of the following:

1. The error or mistake alleged by appellant in the fee calculation made by the department.

2. Whether appellant contends the sign is an on-premises sign, official sign or notice, religious notice, service club notice, public utility sign, public service sign, farm sign, agricultural test plot sign, real estate sign, directional sign, nonconforming sign, grandfathered sign or other category of sign.

3. The exact size of the sign, measured in accordance with sub. (3)(d).

(c) Payment in the amount of the annual fee assessed by the department shall be included with a notice of appeal. The department shall hold the payment in trust pending the outcome of the appeal.

(d) Upon receipt of a notice of appeal with the required fee, the department shall investigate the matter and, if appropriate, amend the annual fee assessment for the sign and return any balance due appellant from the fees deposited under par. (c) or impose any additional assessment required.

(e) Appeals of decisions issued under par. (d) may be made to the department of administration, division of hearings and appeals within 15 days of the date the decision is mailed to the appellant.

SECTION 6. Trans 201.07(1) is amended to read:

Trans 201.07(1) Requests may be submitted to the department for permits to erect or maintain specific signs at defined locations in a manner to be visible from a travel lane of a controlled highway. A separate application shall be presented to describe each such sign proposed, ~~to change the classification of the sign, or to add displays to an existing sign,~~ shall be presented on forms furnished by the department, and shall include a \$175 nonrefundable application fee and all information and exhibits which the application form requires. No permit fee may be required to amend or supplement a defective permit application for a particular location for which an application fee was paid, provided the amendment or supplemental materials are provided to the department within 60 days of denial of the permit application or a request for supplemental materials.

SECTION 7. Trans 201.07(3) is created to read:

Trans 201.07(3) This section does not apply to any of the following:

- (a) Official signs and notices as defined in s. Trans 201.05(1)(d).
- (b) Public utility signs as defined in s. Trans 201.05(1)(e).
- (c) Public service signs as defined in s. Trans 201.05(1)(g).
- (d) Political signs as defined in s. Trans 201.16(1), if exempt from permit requirements under s. Trans 201.16(2).
- (e) Real estate signs as defined in s. Trans 201.17(1) if exempt from permit requirements under s. Trans 201.17(3).
- (f) Farm signs as defined in s. Trans 201.18(1)(b) if exempt from permit requirements under s. Trans 201.18(2).
- (g) Agricultural test plot signs as defined in s. Trans 201.18(1)(a) if exempt from permit requirements under s. 201.18(3).
- (h) Service club and religious notice signs as defined in s. Trans 201.05(1)(f).

SECTION 8. Trans 201.075 is created to read:

Trans 201.075 Signs outside the adjacent area. (1) No person may maintain an off-premises sign that was erected after March 18, 1972, or erect an off-premises sign outside the adjacent area if a person with normal visual acuity traveling at the speed limit on that highway can do any of the following:

- (a) Read any message on the sign.
- (b) See and recognize any trademarks, logos, or other symbols associated with a business or business product or service displayed on the sign.

(2) No person may erect an off-premises sign outside the adjacent area for the purpose of being seen or read from the main traveled way of an interstate or primary highway or the Great River Road.

(3) A sign outside the adjacent area that is changed in a manner that creates a violation of sub. (1) is subject to removal.

(4) Notwithstanding sub. (1), any off-premises sign erected after March 18, 1972, and existing on the effective date of this section [revisor insert date] may continue to exist and be maintained so long as the advertisement on the sign remains exactly the same. Any sign in this classification is subject to removal if the advertisement is changed and the sign does not comply with sub. (1).

(5) This section does not apply in urban areas.

NOTE: Signs are considered outside the adjacent area if they are more than 660 feet from the nearest edge of the right-of-way of the Great River Road, an interstate or a primary highway. s. 84.30(2).

SECTION 9. Trans 201.10(2)(intro.) is amended to read:

Trans 201.10(2)(intro.) In order to lawfully maintain and continue a nonconforming sign, or a so-called grandfathered sign under s. 84.30(3)(d), Stats., the following conditions apply:

SECTION 10. Trans 201.13 is repealed.

SECTION 11. Trans 201.19(2) is amended as follows:

Trans 201.19(2)(title) DEFINITION OFF PREMISES ADVERTISING NOT PERMITTED. ~~"On-property An on-property sign" means a sign advertising may advertise only activities conducted on the property on which it is located. This includes a sign which consists solely of, the name of an the establishment and a sign which~~

identifies the establishment's principal product or service offered on the premises. A permit for an off-property sign is required for any sign violating the content restrictions of this subsection.

SECTION 12. Trans 201.19(5) is created to read:

Trans 201.19(5) ON-PREMISES SIGNS PROHIBITED. No on-property sign may be erected in an area across a street or road from the area where the business is conducted or in any area developed for the purpose of erecting a sign.

(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), Stats.

Signed at Madison, Wisconsin, this ____ day of
January, 2000.

TERRENCE D. MULCAHY, P.E.
Secretary
Wisconsin Department of Transportation

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-152

AN ORDER to repeal Trans 201.02 (3) and 201.13; to renumber Trans 201.02 (4); to amend Trans 201.01, 201.07 (1), 201.10 (2) (intro.) and 201.19 (2); and to create Trans 201.02 (intro.) and (3) to (12), 201.035 and 201.075, relating to outdoor advertising sign annual fees.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-31-00 RECEIVED BY LEGISLATIVE COUNCIL.
11-29-00 REPORT SENT TO AGENCY.

RNS:WF;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

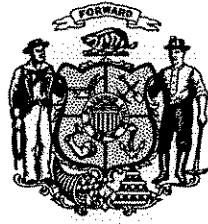
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-152

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 201.01, "This chapter shall" should replace "These rules are intended to." Also, "under those acts" should replace "thereunder." Finally, in this provision and elsewhere, the U.S. Code citation should replace the name of the federal act or the public law number. If the department wishes to use those also, they could be included in a note.

b. In s. Trans 201.035 (4), "the" should replace "such."

c. In s. Trans 201.035 (11) (b) (intro.), "all of the following" should be inserted before the colon.

4. Adequacy of References to Related Statutes, Rules and Forms

The correct reference in s. Trans 201.035 (11) (b) 3. is to sub. (3) (d).

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

a. Section Trans 201.035 (10) (b) should be drafted in a manner that specifies a fee for signs of all sizes. As currently drafted, signs which are greater than eight square feet but less than nine square feet, greater than 32 square feet but less than 33 square feet, etc., do not have a fee specified for them. It is suggested that the rule paragraph be drafted to cover signs of eight

square feet or less, signs that are more than eight square feet and less than or equal to 32 square feet, signs that are greater than 32 square feet and less than or equal to 200 square feet, etc., so that signs of all sizes have a fee specified for them.

b. Section Trans 201.035 (11) (c) would be more clear if drafted in a manner similar to the following: "Payment in the amount of the annual fee assessed by the department shall be included with a notice of appeal. The department shall hold the payment in trust pending the outcome of the appeal."

ANALYSIS OF FINAL DRAFT OF TRANS 201

(a) **Need for Amended Rule.** 1999 Wisconsin Act 9 directed the Department to assess annual fees to the owners of outdoor advertising signs in order to recoup a portion of the costs of the state's regulatory program governing outdoor advertising structures. The state has regulated outdoor advertising since the 1960's in compliance with the requirements of the Federal Highway Beautification and Bonus Acts, the regulations promulgated by the U.S. Department of Transportation interpreting those acts, and the 1961 and 1972 agreements between the State of Wisconsin and U.S. DOT.

(b) **Modifications as a Result of Testimony at Public Hearing.** The hearing was held in Madison on November 30, 2000. The Department received comments from a variety of sources including sign industry lobbyists and companies, individual businesses that use outdoor advertising, members of the public concerned about outdoor advertising, and public interest groups that follow outdoor advertising matters.

Most testimony centered on the fee structure contained in the proposed rule which would have assessed fees as follows:

- Assessed a small initial permit application fee of \$50.
- Assessed an annual fee of \$100 for directional, nonconforming and grandfathered signs.
- Assessed an annual fee from \$5 to \$100 based on the square footage of the sign for all other off-property signs.

This structure was favored by groups and individuals who generally oppose expansion of outdoor advertising or favor reduction in the amount of outdoor advertising allowed by law. In general, these parties felt that assessing higher costs to larger signs, which they contend cause more "visual pollution," is appropriate to discourage such signs and is consistent with the intent of the Federal Highway Beautification Act and s. 84.30, Stats.

The proposed fee structure was opposed by industry groups, who testified that costs for the department to inventory, track and permit signs are the same regardless of the size or type of the sign. The industry also favored higher sign permit application fees, on the grounds that investigating and resolving a permit application is the most costly aspect of permitting signs. Finally, the industry opposed the exemption for official signs and signs smaller than 8 square feet in area in the proposed rule.

The Department chose in this final draft being submitted to the legislature to adopt a different fee schedule than that proposed in the hearing draft. The Department proposes to charge a \$175 application fee for a sign permit, \$50 annual fees for nonconforming, grandfathered and directional signs, and a \$35 annual fee for other off-property signs. No fees will be charged on signs smaller than 8 square feet in area, official signs belonging to other government agencies, or other types of signs that are exempt from many of the requirements of s. 84.30, Stats., such as political and farm signs.

This addresses many of the concerns addressed by the sign industry, by eliminating distinctions based on sign size. It also addresses some concerns of interest groups by imposing additional fees on directional, grandfathered and nonconforming signs, which require more attention by department staff and are located in areas that are not commercial in nature.

The rule that the Department will not assess fees for signs of 8 square feet or less in area will be carried forward from the old system to this fee system in order to encourage construction of smaller, less obtrusive signs. So, too, are the exemptions for other types of signs carried forward, as there is no indication in the legislative history for 1999 Wisconsin Act 9 that the legislature intended the Department to change its practices with regard to those exempt categories of signs.

The increased \$175 permit application fee should more accurately reflect the costs to the Department of reviewing the application, making one or more site visits, adding the sign to the inventory and issuing the permit.

(c) List of Persons who Appeared or Registered at Public Hearing. The following persons registered at the hearing:

Vernie Smith, Citizens for a Scenic Wisconsin, 540 East South Street, Viroqua, WI 54665—spoke in favor of the rule. Mr. Smith also submitted written comments (2 letters).

Paul Gagnon, ARCA Field Manager, Lamar Outdoor Advertising, 2809 South Fifth Court, Milwaukee, WI 53207—spoke in opposition to the rule.

Daniel G. Pomeroy, Real Estate/Public Service Manager, Eller Media, 24600 Silvernail Road, Pewaukee, WI 53072—spoke for information. Mr. Pomeroy also submitted written comments.

Jim Peterson, 4814 South Hill Drive, Madison, WI 53705—registered in favor of the rule.

Janet R. Swandby, Executive Director and Lobbyist, Outdoor Advertising Association of Wisconsin, 44 East Mifflin, Suite 101, Madison, WI 53703—registered in opposition to the rule.

Written comments were also received from the following persons:

Joseph W. Davy, 404-B Gillette Street, La Crosse, WI 54603 (member of the La Crosse Sign Study Committee).

Dennis Myhre, Owner/Old 400 Depot Cafe, 2616 Hills Court, Menomonie, WI 54751.

Michael C. Collins, Collins Outdoor Advertising, Inc., 325 N. 3rd Street, P. O. Box 968, La Crosse, WI 54602-0968.

Jeremy McCune, Northland Signs, 23698 Larson Road, Grantsburg, WI 54840.

Chuck Mitchell, President, Citizens for a Scenic Wisconsin, 7525 Oakhill Avenue, Wauwatosa, WI 53213 (two letters).

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council's suggestions have been incorporated into the proposed rule, except that comments related to the fee structure have been made irrelevant by the changes made in this rule.

(e) **Final Regulatory Flexibility Analysis.** The Department expects that the fee schedule established in this rule revision will have a negligible adverse impact on small businesses that use outdoor advertising as a method of advertising. Small business that own signs will now be required to pay \$35 or \$50 each year for each sign they erect or maintain. Because the majority of small businesses typically own only two to six outdoor advertising signs, the annual impact is expected to be minimal. For those small businesses that are more reliant on outdoor advertising signs, the costs aspects of choosing this advertising medium will not be significantly impacted by the fees, which are relatively modest in relation to the cost of erecting or maintaining a sign or leasing sign space.

The annual sign fees that would be paid under this proposed rule by both small independent sign companies that own approximately 20-75 billboards and large sign companies that own hundreds of signs, are expected to be passed on to the advertisers. This new fee should not significantly affect the monthly lease rental rates charged by these companies for outdoor advertising and is not expected to have an effect on "small businesses" under s. 227.114, Stats.

These fees may have some impact on sign companies that fall within the definition of "small business" under s. 227.114, Stats., to the extent that these companies have entered into long term leases for sign space and are unable to pass through the cost to their customers until the lease is renewed. Industry testimony on this aspect of the rule, however, did not suggest that any sign companies would suffer economic hardship as a result of these fees.

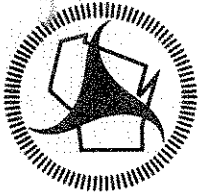
Because the Department does not compile or maintain records reflecting the number of employees or annual income of sign companies, establishing less stringent requirements for sign companies that qualify as small businesses under s. 227.114(1)(a), Stats., is not feasible.

This rule making proposes to exempt signs under 8 square feet in area from an annual fee requirement. Also exempted are public utility, public service, political, real estate, official notice, farm and agricultural test plot signs.

Applicants for sign permits will be generally be required to pay the one-time \$175 sign permit application fee. Exempted from this requirement are public utility, public service, real estate, farm, agricultural test plot, political, service club and religious notice and official signs. The Department has not collected sign permit application fees from these entities historically. The Department does not anticipate that the one-time \$175 application fee structure will adversely affect small businesses.

Because the rule application process and annual fee billing and payment processes are relatively straightforward and simple, because many exemptions from fee requirements exist, and because DOT district sign permit coordinators are available to assist small businesses in completing permit applications and determining whether a proposed sign site is acceptable under s. 84.30, Stats., the Department concluded further simplifying the permit process or creating different deadline dates for small businesses is unwarranted.

JAN 03 2000



Wisconsin Department of Transportation

www.dot.state.wi.us

Tommy G. Thompson
Governor

Terrence D. Mulcahy, P.E.
Secretary

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The Honorable Fred Risser
President, Wisconsin State Senate
Room 220 South, State Capitol
Madison, Wisconsin 53707

January 2, 2001

The Honorable Scott Jensen
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 201**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 00-152

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **00-152**, relating to **outdoor advertising sign annual fees**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson/Senator Judy Robson/Representative Glenn Grothman/
Dave Vieth/Deb Brucaya

CR 00-152

The Wisconsin Department of Transportation proposes an order to repeal TRANS 201.13; renumber TRANS 201.02(4); amend TRANS 201.01, 201.07(1), 201.10(2)(intro.) and 201.19(2); and create TRANS 201.02(intro.) and (4) to (12), 201.035, 201.07(3) and 201.075, relating to outdoor advertising sign annual fees.

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

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

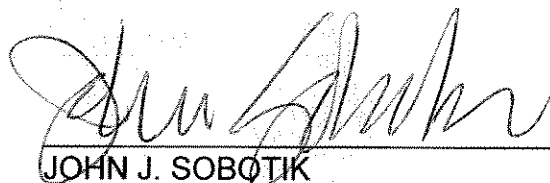
Part 1--Analysis prepared by the Department of Transportation.

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:



JOHN J. SOBOTIK
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: 84.30, Stats.

STATUTES INTERPRETED: 84.30, Stats.

General Summary of Proposed Rule. 1999 Wisconsin Act 9 directed the Department to assess annual fees to the owners of outdoor advertising signs in order to recoup a portion of the costs of the state's regulatory program governing outdoor advertising structures. The state has regulated outdoor advertising since the 1960's in compliance with the requirements of the Federal Highway Beautification and Bonus Acts, the regulations promulgated by the U.S. Department of Transportation interpreting those acts, and the 1961 and 1972 agreements between the State of Wisconsin and U.S. DOT.

This proposed rule making establishes fees for outdoor advertising structures based upon the regulatory burden created by the sign. This rule proposes to create annual fees of \$50 for directional, grandfathered and nonconforming signs and \$35 for nearly all other off-premises advertising signs.

Directional, nonconforming and grandfathered signs are assessed a fee of \$50 per sign regardless of size, because regulating those classes of signs requires significantly more resources than regulating other types of permitted signs.

The proposed rule would define some commonly used terms in ch. Trans 201 and this proposed rule making for clarity.

This rule creates s. Trans 201.075 to replace the substantive provisions of current s. Trans 201.02(3) which is repealed. Current drafting standards call for that provision to be moved from the definition portion of ch. Trans 201.

Finally, this proposed rule spells out what happens if sign permit fees are not timely paid and a process for sign owners to appeal a fee assessment. Nonpayment of a fee for a permitted sign results in the expiration of the permit, subjecting a sign to potential removal. Nonpayment of the fee for a nonconforming or grandfathered sign is considered abandonment subjecting the sign to removal. s. 84.30(10m), Stats.

Persons wishing to appeal the amount of an assessment need to pay the proposed fee and state particularly the facts regarding the appeal. If that does not resolve a dispute, further appeal to the Division of Hearings and Appeals may be sought.

Fiscal Effect. The proposed rule implements a provision of 1999 Wisconsin Act 9, the biennial budget, which requires the Department to charge annual fees for outdoor advertising sign owners. The Act limits revenue raised from the program to \$510,000

during Fiscal Year 2001 and provides appropriation authority for \$510,000 to improve the sign inventory information system.

This proposed rule implements the fee provision of the budget and proposes to set annual revenues after FY01 at a rate that covers a larger portion of the program costs through a combination of annual fees and an increased nonrefundable application fee. The application fee replaces the current one-time refundable fee that has been in effect since 1972.

Under the program, the department expects to recover \$87,500 per calendar year from sign permit application fees, based on an estimated 500 permit applications per year at \$175 per permit. This estimate may be imprecise because fewer applications may be submitted under the new fee structure.

In addition, the Department expects to raise fees from annual permits on an ongoing basis as follows:

CATEGORY	ESTIMATED # IN CATEGORY	FEES	\$ GENERATED
All Signs 8 sq. ft. and less, and Exempt Signs	3,000	\$0	\$0
Directional	1,700	\$50	\$85,000
Nonconforming and Grandfathered	5,000	\$50	\$250,000
All Other Permitted Signs	7,500	\$35	\$262,500
TOTALS			\$597,500

Because the Department expects to first notice sign owners of these fees in May 2001 or later, the Department does not expect to collect more than \$510,000 in fiscal year 2001 from annual permit fees. The Department anticipates collecting no more than \$30,000 in fiscal year 2001 from permit application fees.

Preparation and Copies of Proposed Rule. Preparation of this proposed rule was done by Attorney John Sobotik. Copies of the rule may be obtained upon request, without cost, by writing to Deborah Brucaya, Department of Transportation, Bureau of Highway Operations, Room 501, P. O. Box 7986, Madison, WI 53707-7986, or by calling

(608) 266-3813. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 84.30, Stats., the department hereby proposes to amend a rule interpreting s. 84.30, Stats., relating to outdoor advertising sign annual fees.

SECTION 1. Trans 201.01 is amended to read:

Trans 201.01 General. Pursuant to authority contained in ss. 84.30 and 86.19, Stats., the department of transportation adopts the following rules to apply to signs along and visible from the controlled highways in Wisconsin. Section 84.30, Stats., and these rules apply to the interstate and system, federal aid primary systems or national highway system, and the Great River Road established under 23 USC 148, which are referred to herein as "controlled highways". These rules are so closely associated with the Wisconsin Statutes, and make such extensive reference to s. 84.30, Stats., that it is essential to refer to both these rules and the law in order to apply the controls. This chapter shall be interpreted consistently with the requirements of the 23 U.S.C. s. 131, federal regulations related to outdoor advertising control at 23 CFR Part 750, and the agreements between the state of Wisconsin and the U.S. federal highway administration dated June 9, 1961 and March 28, 1972.

Note: The 1961 Agreement involved application of the Federal Bonus Act (part of the Federal Aid Highway Act of 1958), P.L. 85-381; the 1972 Agreement involves application of the Federal Highway Beautification Act of 1965, P.L. 89-285.

SECTION 2. Trans 201.02(intro.) is created to read:

Trans 201.02 Definitions. (intro.) The words and phrases defined in s. 84.30(2), Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

SECTION 3. Trans 201.02(4) is renumbered Trans 201.02(13).

SECTION 4. Trans 201.02(4) to (12) are created to read:

Trans 201.02(4) "Grandfathered sign" means a sign that lawfully existed in a business area on March 18, 1972, and that does not conform to the size, spacing or lighting restrictions of s. 84.30(4), Stats.

(5) "Illegal sign" means a sign erected after March 18, 1972, without a permit, a sign that is erected or maintained in a manner that violates any requirement of a permit, this chapter, or s. 84.30, Stats., a non-conforming sign that has lost its nonconforming status, or a grandfathered sign that has lost its grandfathered status.

(6) "License" means a license to engage in the business of outdoor advertising.

(7) "Nonconforming sign" means any of the following:

(a) A sign that lawfully existed on March 18, 1972, outside of a business area.

(b) A sign that was lawfully erected after March 18, 1972, that subsequently did or does not conform to the requirements of s. 84.30, Stats., or this chapter.

(8) "Off-premises" or "off-property sign" means a sign that is not an on-premises sign.

(9) "On-premises" or "on-property sign" means a sign at a business location advertising a business that is conducted on the property and that is located in the immediate vicinity of the business. "Immediate vicinity" in this subsection means the

sign is within the area bounded by the buildings, driveways and parking areas in which the activity is conducted or within 50 feet of that area. "Immediate vicinity" does not include any area across a street or road from the area where the business is conducted or any area developed for the purpose of erecting a sign.

(10) "Permit" means a permit issued by the department to erect or maintain a sign at a defined location under a specific paragraph of s. 84.30(3), Stats.

(11) "Primary highway" means any highway, other than an interstate highway, at any time officially designated as a part of the federal-aid primary system or national highway system by the department and approved by the appropriate authority of the federal government.

NOTE: See 23 U.S.C. s. 131(t). The DOT Bureau of Planning, P. O. Box 7913, Madison, WI 53717 maintains a list of highways that are primary highways as defined herein. Information regarding which highways are primary highways under this section may also be obtained from the sign permit coordinator in any DOT district office.

(12) "Visible" means the sign, or any part of the sign structure, can be seen from the main-traveled way of a highway by a person of normal visual acuity, regardless of whether the sign is designed, erected or intended to be read from the main-traveled way.

SECTION 5. Trans 201.035 is created to read:

Trans 201.035 Annual sign fees. (1) SIGN IDENTIFIER. The department shall assign a unique identifier to each off-property sign in the state of Wisconsin. The identifier shall be assigned to a sign upon any of the following occurrences:

(a) Approval of a permit to erect the sign.

(b) First payment of an annual fee for a sign erected before the effective date of this section [revisor insert date].

(c) Addition of the sign to the sign database of signs maintained by the department.

(2) DATABASE OF SIGN OWNERS. The department shall maintain a sign database to track the name and address of the owner of each sign, and such other information related to the sign as the department considers appropriate.

NOTE: The Department shall use the address of record in this database for correspondence with a sign owner.

(3) CHANGE OF SIGN OWNERSHIP. Any person who acquires a sign shall provide the department with a notice containing all of the following information for the sign:

(a) The unique identifier assigned to the sign by the department.

(b) The name, address and telephone number of the person from whom the sign was acquired and the name of the person acquiring the sign.

(c) The location of the sign, listing the name of the primary or interstate highway to which it is adjacent, the county and town in which the sign stands, the section number of the township in which the sign is located, the name, address and telephone number of the person owning the real property upon which the sign is located, and the distance of the sign from the centerline of the nearest crossroad or intersection.

(d) The size of the sign measured in accordance with s. 84.30(4)(a)2., Stats. If the sign shape is not rectangular, a drawing showing the dimensions of the various

triangles, circles, rectangles, and squares encompassing the entire sign shall be provided.

(e) The height above ground level of the bottom edge of the sign face or any border or trim to the sign face.

(4) ANNUAL FEE NOTICE. The department shall mail an annual fee notice to the owner of record with the department of every off-premises sign within the state of Wisconsin that is subject to the requirement of paying a fee under sub. (9). All annual fee notices shall be considered delivered upon mailing to the owner of record indicated in the department's database of sign owners as of the first day of the month in which the notices are mailed. Annual fee notices may include a summary of information related to one or more signs and require owners to update or correct information at the time of paying any required fee. The department may require owners of signs not subject to the fee requirement of sub. (9) to update or correct information from a summary of information with respect to any sign.

(5) DUE DATE. Payment of annual permit fees and responses to information requests are due 60 days from the date of mailing of notices by the department, or on such other date as indicated in the fee notice.

(6) NONCONFORMING SIGNS. Nonconforming signs for which the annual fee is not paid within 60 days of the due date shall be removed as abandoned signs. Payment of an annual fee may not be considered in determining whether a sign is subject to removal under the federal highway beautification act, the regulations promulgated thereunder, or s. Trans 201.10.

NOTE: See s. 84.30(10m), Stats.

(7) **PERMITTED SIGNS.** The permit for a sign shall expire upon the due date for payment unless the annual fee for the sign has been paid. Signs with expired permits are subject to removal 60 days from the due date specified in the notice. The department shall notify a sign owner that a sign is subject to removal under this section in accordance with s. 84.30(11), Stats. The department may not issue a permit within any minimum required spacing limitations under ss. 84.30(4)(c), Stats., s. Trans 201.05(2)(d), or s. Trans 201.06, of a sign with an expired permit until and unless that sign is removed.

(8) **REFUNDS.** Permit fees are non-refundable and may not be prorated.

(9) **FEE SCHEDULE.** Permit fees shall be assessed as follows:

(a) Except as provided in par. (b), no annual fee may be assessed for any of the following:

1. On-premises signs.
2. Official signs and notices as defined in s. Trans 201.05(1)(d).
3. Public utility signs as defined in s. Trans 201.05(1)(e).
4. Public service signs as defined in s. Trans 201.05(1)(g).
5. Political signs as defined in s. Trans 201.16(1), if exempt from permit requirements under s. Trans 201.16(2).
6. Real estate signs as defined in s. Trans 201.17(1) if exempt from permit requirements under s. Trans 201.17(3).
7. Farm signs as defined in s. Trans 201.18(1)(b) if exempt from permit requirements under s. Trans 201.18(2).

8. Agricultural test plot signs as defined in s. Trans 201.18(1)(a) if exempt from permit requirements under s. Trans 201.18(3).

9. Signs of 8 square feet or less in area.

Note: Service club and religious notices are limited to 8 square feet or less by s. Trans 201.05(1)(f).

(b) Nonconforming, grandfathered and directional signs as defined in s. Trans 201.05(1)(c), shall be assessed an annual fee of \$50 per sign.

(c) Except as provided in pars. (a) and (b), all off-property signs shall be assessed an annual fee of \$35 per sign.

(10) APPEAL OF ANNUAL ASSESSMENT FEE. (a) Any person may appeal the assessment of an annual fee under sub. (9) by mailing a notice of appeal to the address provided on the notice of fee assessment within 15 days of the date the assessment is mailed.

(b) A notice of appeal shall particularly state all of the following:

1. The error or mistake alleged by appellant in the fee calculation made by the department.

2. Whether appellant contends the sign is an on-premises sign, official sign or notice, religious notice, service club notice, public utility sign, public service sign, farm sign, agricultural test plot sign, real estate sign, directional sign, nonconforming sign, grandfathered sign or other category of sign.

3. The exact size of the sign, measured in accordance with sub. (3)(d).

(c) Payment in the amount of the annual fee assessed by the department shall be included with a notice of appeal. The department shall hold the payment in trust pending the outcome of the appeal.

(d) Upon receipt of a notice of appeal with the required fee, the department shall investigate the matter and, if appropriate, amend the annual fee assessment for the sign and return any balance due appellant from the fees deposited under par. (c) or impose any additional assessment required.

(e) Appeals of decisions issued under par. (d) may be made to the department of administration, division of hearings and appeals within 15 days of the date the decision is mailed to the appellant.

SECTION 6. Trans 201.07(1) is amended to read:

Trans 201.07(1) Requests may be submitted to the department for permits to erect or maintain specific signs at defined locations in a manner to be visible from a travel lane of a controlled highway. A separate application shall be presented to describe each such sign proposed, ~~to change the classification of the sign, or to add displays to an existing sign,~~ shall be presented on forms furnished by the department, and shall include a \$175 nonrefundable application fee and all information and exhibits which the application form requires. No permit fee may be required to amend or supplement a defective permit application for a particular location for which an application fee was paid, provided the amendment or supplemental materials are provided to the department within 60 days of denial of the permit application or a request for supplemental materials.

SECTION 7. Trans 201.07(3) is created to read:

Trans 201.07(3) This section does not apply to any of the following:

- (a) Official signs and notices as defined in s. Trans 201.05(1)(d).
- (b) Public utility signs as defined in s. Trans 201.05(1)(e).
- (c) Public service signs as defined in s. Trans 201.05(1)(g).
- (d) Political signs as defined in s. Trans 201.16(1), if exempt from permit requirements under s. Trans 201.16(2).
- (e) Real estate signs as defined in s. Trans 201.17(1) if exempt from permit requirements under s. Trans 201.17(3).
- (f) Farm signs as defined in s. Trans 201.18(1)(b) if exempt from permit requirements under s. Trans 201.18(2).
- (g) Agricultural test plot signs as defined in s. Trans 201.18(1)(a) if exempt from permit requirements under s. 201.18(3).
- (h) Service club and religious notice signs as defined in s. Trans 201.05(1)(f).

SECTION 8. Trans 201.075 is created to read:

Trans 201.075 Signs outside the adjacent area. (1) No person may maintain an off-premises sign that was erected after March 18, 1972, or erect an off-premises sign outside the adjacent area if a person with normal visual acuity traveling at the speed limit on that highway can do any of the following:

- (a) Read any message on the sign.
- (b) See and recognize any trademarks, logos, or other symbols associated with a business or business product or service displayed on the sign.

(2) No person may erect an off-premises sign outside the adjacent area for the purpose of being seen or read from the main traveled way of an interstate or primary highway or the Great River Road.

(3) A sign outside the adjacent area that is changed in a manner that creates a violation of sub. (1) is subject to removal.

(4) Notwithstanding sub. (1), any off-premises sign erected after March 18, 1972, and existing on the effective date of this section [revisor insert date] may continue to exist and be maintained so long as the advertisement on the sign remains exactly the same. Any sign in this classification is subject to removal if the advertisement is changed and the sign does not comply with sub. (1).

(5) This section does not apply in urban areas.

NOTE: Signs are considered outside the adjacent area if they are more than 660 feet from the nearest edge of the right-of-way of the Great River Road, an interstate or a primary highway. s. 84.30(2).

SECTION 9. Trans 201.10(2)(intro.) is amended to read:

Trans 201.10(2)(intro.) In order to lawfully maintain and continue a nonconforming sign, or a so-called grandfathered sign under s. 84.30(3)(d), Stats., the following conditions apply:

SECTION 10. Trans 201.13 is repealed.

SECTION 11. Trans 201.19(2) is amended as follows:

Trans 201.19(2)(title) DEFINITION OFF PREMISES ADVERTISING NOT PERMITTED. ~~"On-property An on-property sign" means a sign advertising may advertise only activities conducted on the property on which it is located. This includes a sign which consists solely of, the name of an the establishment and a sign which~~

identifies the establishment's principal product or service offered on the premises. A permit for an off-property sign is required for any sign violating the content restrictions of this subsection.

SECTION 12. Trans 201.19(5) is created to read:

Trans 201.19(5) ON-PREMISES SIGNS PROHIBITED. No on-property sign may be erected in an area across a street or road from the area where the business is conducted or in any area developed for the purpose of erecting a sign.

(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), Stats.

Signed at Madison, Wisconsin, this 2 day of January, 2000.

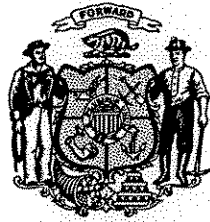

TERRENCE D. MULCAHY, P.E.
Secretary

Wisconsin Department of Transportation

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
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Legislative Council Staff
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One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 00-152

AN ORDER to repeal Trans 201.02 (3) and 201.13; to renumber Trans 201.02 (4); to amend Trans 201.01, 201.07 (1), 201.10 (2) (intro.) and 201.19 (2); and to create Trans 201.02 (intro.) and (3) to (12), 201.035 and 201.075, relating to outdoor advertising sign annual fees.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-31-00 RECEIVED BY LEGISLATIVE COUNCIL.

11-29-00 REPORT SENT TO AGENCY.

RNS:WF;jal;tlu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-152

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 201.01, "This chapter shall" should replace "These rules are intended to." Also, "under those acts" should replace "thereunder." Finally, in this provision and elsewhere, the U.S. Code citation should replace the name of the federal act or the public law number. If the department wishes to use those also, they could be included in a note.

b. In s. Trans 201.035 (4), "the" should replace "such."

c. In s. Trans 201.035 (11) (b) (intro.), "all of the following" should be inserted before the colon.

4. Adequacy of References to Related Statutes, Rules and Forms

The correct reference in s. Trans 201.035 (11) (b) 3. is to sub. (3) (d).

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

a. Section Trans 201.035 (10) (b) should be drafted in a manner that specifies a fee for signs of all sizes. As currently drafted, signs which are greater than eight square feet but less than nine square feet, greater than 32 square feet but less than 33 square feet, etc., do not have a fee specified for them. It is suggested that the rule paragraph be drafted to cover signs of eight

square feet or less, signs that are more than eight square feet and less than or equal to 32 square feet, signs that are greater than 32 square feet and less than or equal to 200 square feet, etc., so that signs of all sizes have a fee specified for them.

b. Section Trans 201.035 (11) (c) would be more clear if drafted in a manner similar to the following: "Payment in the amount of the annual fee assessed by the department shall be included with a notice of appeal. The department shall hold the payment in trust pending the outcome of the appeal."

PART 4
CR 00-152

ANALYSIS OF FINAL DRAFT OF TRANS 201

(a) **Need for Amended Rule.** 1999 Wisconsin Act 9 directed the Department to assess annual fees to the owners of outdoor advertising signs in order to recoup a portion of the costs of the state's regulatory program governing outdoor advertising structures. The state has regulated outdoor advertising since the 1960's in compliance with the requirements of the Federal Highway Beautification and Bonus Acts, the regulations promulgated by the U.S. Department of Transportation interpreting those acts, and the 1961 and 1972 agreements between the State of Wisconsin and U.S. DOT.

(b) **Modifications as a Result of Testimony at Public Hearing.** The hearing was held in Madison on November 30, 2000. The Department received comments from a variety of sources including sign industry lobbyists and companies, individual businesses that use outdoor advertising, members of the public concerned about outdoor advertising, and public interest groups that follow outdoor advertising matters.

Most testimony centered on the fee structure contained in the proposed rule which would have assessed fees as follows:

- Assessed a small initial permit application fee of \$50.
- Assessed an annual fee of \$100 for directional, nonconforming and grandfathered signs.
- Assessed an annual fee from \$5 to \$100 based on the square footage of the sign for all other off-property signs.

This structure was favored by groups and individuals who generally oppose expansion of outdoor advertising or favor reduction in the amount of outdoor advertising allowed by law. In general, these parties felt that assessing higher costs to larger signs, which they contend cause more "visual pollution," is appropriate to discourage such signs and is consistent with the intent of the Federal Highway Beautification Act and s. 84.30, Stats.

The proposed fee structure was opposed by industry groups, who testified that costs for the department to inventory, track and permit signs are the same regardless of the size or type of the sign. The industry also favored higher sign permit application fees, on the grounds that investigating and resolving a permit application is the most costly aspect of permitting signs. Finally, the industry opposed the exemption for official signs and signs smaller than 8 square feet in area in the proposed rule.

The Department chose in this final draft being submitted to the legislature to adopt a different fee schedule than that proposed in the hearing draft. The Department proposes to charge a \$175 application fee for a sign permit, \$50 annual fees for nonconforming, grandfathered and directional signs, and a \$35 annual fee for other off-property signs. No fees will be charged on signs smaller than 8 square feet in area, official signs belonging to other government agencies, or other types of signs that are exempt from many of the requirements of s. 84.30, Stats., such as political and farm signs.

This addresses many of the concerns addressed by the sign industry, by eliminating distinctions based on sign size. It also addresses some concerns of interest groups by imposing additional fees on directional, grandfathered and nonconforming signs, which require more attention by department staff and are located in areas that are not commercial in nature.

The rule that the Department will not assess fees for signs of 8 square feet or less in area will be carried forward from the old system to this fee system in order to encourage construction of smaller, less obtrusive signs. So, too, are the exemptions for other types of signs carried forward, as there is no indication in the legislative history for 1999 Wisconsin Act 9 that the legislature intended the Department to change its practices with regard to those exempt categories of signs.

The increased \$175 permit application fee should more accurately reflect the costs to the Department of reviewing the application, making one or more site visits, adding the sign to the inventory and issuing the permit.

(c) List of Persons who Appeared or Registered at Public Hearing. The following persons registered at the hearing:

Vernie Smith, Citizens for a Scenic Wisconsin, 540 East South Street, Viroqua, WI 54665—spoke in favor of the rule. Mr. Smith also submitted written comments (2 letters).

Paul Gagnon, ARCA Field Manager, Lamar Outdoor Advertising, 2809 South Fifth Court, Milwaukee, WI 53207—spoke in opposition to the rule.

Daniel G. Pomeroy, Real Estate/Public Service Manager, Eller Media, 24600 Silvernail Road, Pewaukee, WI 53072—spoke for information. Mr. Pomeroy also submitted written comments.

Jim Peterson, 4814 South Hill Drive, Madison, WI 53705—registered in favor of the rule.

Janet R. Swandby, Executive Director and Lobbyist, Outdoor Advertising Association of Wisconsin, 44 East Mifflin, Suite 101, Madison, WI 53703—registered in opposition to the rule.

Written comments were also received from the following persons:

Joseph W. Davy, 404-B Gillette Street, La Crosse, WI 54603 (member of the La Crosse Sign Study Committee).

Dennis Myhre, Owner/Old 400 Depot Cafe, 2616 Hills Court, Menomonie, WI 54751.

Michael C. Collins, Collins Outdoor Advertising, Inc., 325 N. 3rd Street, P. O. Box 968, La Crosse, WI 54602-0968.

Jeremy McCune, Northland Signs, 23698 Larson Road, Grantsburg, WI 54840.

Chuck Mitchell, President, Citizens for a Scenic Wisconsin, 7525 Oakhill Avenue, Wauwatosa, WI 53213 (two letters).

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council's suggestions have been incorporated into the proposed rule, except that comments related to the fee structure have been made irrelevant by the changes made in this rule.

(e) **Final Regulatory Flexibility Analysis.** The Department expects that the fee schedule established in this rule revision will have a negligible adverse impact on small businesses that use outdoor advertising as a method of advertising. Small business that own signs will now be required to pay \$35 or \$50 each year for each sign they erect or maintain. Because the majority of small businesses typically own only two to six outdoor advertising signs, the annual impact is expected to be minimal. For those small businesses that are more reliant on outdoor advertising signs, the costs aspects of choosing this advertising medium will not be significantly impacted by the fees, which are relatively modest in relation to the cost of erecting or maintaining a sign or leasing sign space.

The annual sign fees that would be paid under this proposed rule by both small independent sign companies that own approximately 20-75 billboards and large sign companies that own hundreds of signs, are expected to be passed on to the advertisers. This new fee should not significantly affect the monthly lease rental rates charged by these companies for outdoor advertising and is not expected to have an effect on "small businesses" under s. 227.114, Stats.

These fees may have some impact on sign companies that fall within the definition of "small business" under s. 227.114, Stats., to the extent that these companies have entered into long term leases for sign space and are unable to pass through the cost to their customers until the lease is renewed. Industry testimony on this aspect of the rule, however, did not suggest that any sign companies would suffer economic hardship as a result of these fees.

Because the Department does not compile or maintain records reflecting the number of employees or annual income of sign companies, establishing less stringent requirements for sign companies that qualify as small businesses under s. 227.114(1)(a), Stats., is not feasible.

This rule making proposes to exempt signs under 8 square feet in area from an annual fee requirement. Also exempted are public utility, public service, political, real estate, official notice, farm and agricultural test plot signs.

Applicants for sign permits will be generally be required to pay the one-time \$175 sign permit application fee. Exempted from this requirement are public utility, public service, real estate, farm, agricultural test plot, political, service club and religious notice and official signs. The Department has not collected sign permit application fees from these entities historically. The Department does not anticipate that the one-time \$175 application fee structure will adversely affect small businesses.

Because the rule application process and annual fee billing and payment processes are relatively straightforward and simple, because many exemptions from fee requirements exist, and because DOT district sign permit coordinators are available to assist small businesses in completing permit applications and determining whether a proposed sign-site is acceptable under s. 84.30, Stats., the Department concluded further simplifying the permit process or creating different deadline dates for small businesses is unwarranted.

DEC 18 2001



Wisconsin Department of Transportation

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December 14, 2001

Mr. Gary L. Poulson, Deputy Revisor
Revisor of Statutes Bureau
131 West Wilson Street
Suite 800
Madison, Wisconsin 53703

RE: **STATEMENT OF SCOPE OF PROPOSED RULEMAKING, TRANS 201**

Dear Mr. Poulson:

Enclosed is the Statement of Scope for the proposed amendment of ch. Trans 201. Please publish the Scope Statement in accordance with § 227.135(3), Stats., in the Administrative Register.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosures

cc: David Schmiedicke/DOA State Budget Director
Senator Judy Robson, Co-Chair/JCRAR
Representative Glenn Grothman, Co-Chair/JCRAR
Alice Morehouse
Mike Goetzman
Deb Brucaya

STATEMENT OF SCOPE

DESCRIPTION OF THE OBJECTIVE OF THE RULE:

This rule making will amend ch. Trans 201, relating to outdoor advertising sign control, to address the broad range of issues related to signs controlled under the Highway Beautification Act and Wisconsin sign control law. The changes will address topics that have led to confusion and misunderstandings, appeals of Departmental decisions, and concern about the effectiveness of the program to achieve its objectives. The broad based amendment will include a comprehensive view of the rule to deal with the rule structure, inconsistencies and clarity.

DESCRIPTION OF EXISTING POLICIES RELEVANT TO THE RULE AND OF NEW POLICIES PROPOSED TO BE INCLUDED IN THE RULE AND AN ANALYSIS OF POLICY ALTERNATIVES:

The existing rule establishes requirements and limitations for signs to carry out the federal and state law. Criteria established are in need of clarification to aid in the administration of the program. The clarification is needed to assist those that may be seeking a sign to understand the requirements, as well as be useful in reducing the likelihood of appeals based on differing interpretations of the current law or rule. Much of the rule has remained unchanged for nearly 20 years, and changes are needed to reflect experience with the rule and current drafting standards. Policy issues to be addressed include, but are not limited to: directional sign criteria; nonconforming signs; co-location of signs for on-premise activities; seasonal and temporary signs; fees; and electronic signs.

STATUTORY AUTHORITY FOR THE RULE:

ss. 84.30 and 86.19, Stats.

ESTIMATES OF THE AMOUNT OF TIME THAT STATE EMPLOYEES WILL SPEND DEVELOPING THE RULE AND OF OTHER RESOURCES NECESSARY TO DEVELOP THE RULE:

Approximately 1000 hours, which represents the collective time anticipated to be spent by the Outdoor Advertising Program Coordinator, district sign coordinators, the Office of General Counsel, and the Bureau Director of the Highway Operations.

Signed at Madison, Wisconsin, this 14th day of December, 2001.



TERRY MULCAHY, P.E.

Secretary

Wisconsin Department of Transportation