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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

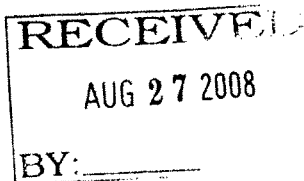
INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



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August 26, 2008

Patrick E. Fuller
Assembly Chief Clerk
17 West Main, Room 401
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 263**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 08-058

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **08-058**, relating to **multiple trip overweight permits for vehicles transporting granular roofing materials**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

Julie A. Johnson
Paralegal

Enclosure

cc: David Schmiedicke, DOA State Budget Director
Bruce Hoesly
Senator Robert Jauch
Rep. Dan LeMahieu
Lynne B. Judd
Supt. David Collins
Carson Frazier

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

CR 08-058

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

**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. 348.27(15), Stats., as created by 2007 Wis. Act 171

Statutory authority: ss. 348.25(3) and (4)(intro.) and 348.27(15)(d), Stats.

Explanation of agency authority: The Department is authorized to administer statutes and administrative rules related to vehicle weights, widths, heights, and lengths. Nonstatutory provisions created in 2007 Wis. Act 171, section 6, require the Department to promulgate rules implementing a newly-created multiple trip permit for transporting granular roofing materials by not later than August 1, 2008.

Related statute or rule: Chapter 348, Stats., and Chapters Trans 250 to 278, Wis. Admin. Code.

Plain language analysis: This proposed rule is required by 2007 Wis. Act 171, section 6. The new law creates a multiple trip permit for certain overweight vehicles or vehicle combinations transporting granular roofing materials. The law establishes certain conditions for the permit and certain limitations on operation.

This proposed rule implements those conditions and limitations:

- The permit allows excess gross weight of 10,000 pounds, but not to exceed 90,000 pounds.
- The permit requires that the motor carrier on whose behalf the load is transported be named in the permit.
- The permit requires a named origin, destination, and designated route of travel.
- The permit requires that any municipality or county whose highways make up any part of the designated route pass a resolution allowing that transport, and requires the permit applicant to submit copies of all resolutions to the department along with the permit application.

The proposed rule defines "granular roofing material" in order to make eligibility for permit and enforcement clear and uniform.

The proposed rule states that the permit is not valid on the interstate highway system, and is valid on not more than 2.5 miles of the state trunk highway system.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: Federal law governs overweight transport on certain federal highways, including general prohibition of divisible overweight loads on the interstate highway system. Pursuant to 23 U.S.C. section 127 and 23 C.F.R. section 658, divisible overweight loads are not allowed on the interstate highway system. 2007 Wis. Act 171 provides that a permit under this law may be issued for up to 2.5 miles on any state trunk highway if such issuance of the permit is consistent with federal law. This proposed rule is consistent with federal law because 2007 Wis. Act 171 authorizes

permits for this type of divisible load and transport is not allowed on the interstate highway system.

Comparison with Rules in Adjacent States:

Michigan: Michigan has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Minnesota: Minnesota has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Illinois: Illinois has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Iowa: Iowa has no rule or statute authorizing overweight loads of granular roofing materials, or similar divisible overweight loads.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: This proposed rule implements a newly-enacted law. The Department's implementation of the law, including policies, procedures, and requirements, is the same as the Department applies to all similar multiple trip permits.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This proposed rule implements 2007 Wis. Act 171. The law will allow all businesses, including small businesses, to transport granular roofing materials at weights exceeding state load limits. This would have a beneficial effect on small businesses. 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 writing to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 255, 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.

PART 2
TEXT OF RULE

SECTION 1. Chapter Trans 263 is created to read:

CHAPTER TRANS 263

**MULTIPLE TRIP OVERWEIGHT PERMITS FOR
VEHICLES TRANSPORTING GRANULAR ROOFING MATERIALS**

Trans 263.01 Purpose. The purpose of this chapter is to establish standards and procedures for the issuance of overweight permits for the transportation of granular roofing materials, pursuant to s. 348.27(15), Stats.

Trans 263.02 Definitions. Unless otherwise stated, the definitions of words and phrases in ss. 340.01 and 348.01(2), Stats., and s. Trans 250.02 apply to this chapter. In this chapter:

(1) "Granular roofing materials" means small grains, pellets, and particles of naturally occurring mineral product transported in bulk from a mine to a processing plant where the product is processed or stored for sale, and to be used solely for the manufacture of roofing materials, including roofing shingles.

(2) "Permit" means multiple trip overweight permits authorized under s. 348.27(15), Stats., which includes permit pages, copies of all written approvals for movement on local highways, a copy of this chapter, a copy of ch. Trans 251, and any other written conditions of movement issued by the department.

Trans 263.03 Overweight permits; general. (1) The department may issue annual or consecutive month permits for the transportation of overweight loads in vehicles meeting the requirements of this chapter.

(2) A permit issued under this chapter is not a guarantee of the sufficiency of any highway or structure for the transporting of the vehicle or load, or both.

Trans 263.04 Permit application. An application for a permit shall be submitted on a department form and shall include all of the following:

(1) The name, address, telephone number, and electronic mail address of the applicant motor carrier on whose behalf the load is to be transported.

(2) The name and address of the applicant's insurer, and the applicant's policy number and policy expiration date.

(3) The date on which the applicant seeks to have the permit first become valid, not more than 60 days later than the date of application.

(4) The gross weight of the vehicle.

(5) An indication of whether the vehicle is a combination vehicle and the type of combination, the make, year, and vehicle identification number for the vehicle.

(6) An affirmation that the owner has insurance in the amounts required by this chapter or such higher amount as may be required by the department and that the person accepts the terms of the issuance of a permit under this chapter.

(7) The location of the origin and the location of the destination of the load, and the designated route over which the load will be transported.

(8) For each local road or county highway permitted under s. Trans 263.06(4) on which the applicant seeks authority to operate, a copy of every resolution adopted by the governing body of each municipality or county having jurisdiction over such streets or highways approving the transportation of the load over that portion of the designated route that is on streets or highways under the jurisdiction of that municipality or county.

Note: Applications are available upon request from the Motor Carrier Services Section Permit Unit of the Wisconsin Department of Transportation, 4802 Sheboygan Avenue, P.O. Box 7980, Madison, WI 53707.

Note: Permit application procedures are specified in s. Trans 250.025. A permit application may be submitted in person or by mail to the Motor Carrier Services Section Permit Unit. The Motor Carrier Services Section Permit Unit of the Wisconsin

Department of Transportation is located at 4802 Sheboygan Avenue, Room 151, P.O. Box 7980, Madison, WI 53707.

Trans 263.05 Eligibility. The department may issue permits for vehicles under this chapter only to applicants that meet all of the following requirements:

(1) STATUTORY REQUIREMENTS. The vehicle and any load satisfy the requirements for a permit under ss. 348.25 and 348.27(15), Stats.

(2) TRANSPORTATION OF SPECIFIC COMMODITY. The application may not seek authority to transport any commodity or goods other than granular roofing materials, as provided in s. 348.27(15), Stats.

(3) MAXIMUM SIZE. The vehicle may not exceed 8 feet 6 inches in width, nor 13 feet 6 inches in height. Semi-tractor and semi-trailer combinations may not exceed 75 feet in overall length. Motor truck and trailer combinations may not exceed 65 feet in overall length. Single vehicles, not operating in combination, may not exceed 40 feet in length. Vehicle combinations consisting of a semi-tractor and semi-trailer exceeding 65 feet in overall length may not travel on state highways identified by the department as limiting operation to 65 feet or less in length, and may travel only on local roads and highways designated as long truck routes in ch. Trans 276.

(4) PNEUMATIC TIRES. The vehicle shall be equipped with pneumatic tires.

(5) MAXIMUM GROSS WEIGHT. The vehicle, including any load, may not exceed the maximum gross weight limitations under s. 348.15(3)(c), Stats., by more than 10,000 pounds, and the vehicle, including any load, may not exceed 90,000 pounds gross weight.

(6) MAXIMUM AXLE WEIGHTS. Axle weights may not exceed those specified in s. Trans 251.06.

(7) BALANCED LOAD. Wheels on one side of the vehicle may not carry more than 60% of the load.

Trans 263.06 Validity. A permit issued under this chapter is valid only if all of the following conditions are met:

(1) PERMITTED VEHICLE ONLY. It is used for the vehicle described in the application and permit.

(2) PERMIT CONDITIONS FOLLOWED. All conditions of the permit are met, including all maximum axle, axle combination, total weight limitations, and restrictions on speed, time or route of travel.

(3) VEHICLE ELIGIBLE FOR PERMIT. The vehicle meets all the requirements of this chapter.

(4) AREA OF OPERATION. The vehicle is operated in Wisconsin on the route designated in the permit.

(5) OPERATION ON INTERSTATE HIGHWAYS PROHIBITED. This permit is not valid on highways designated as part of the national system of interstate and defense highways.

(6) OPERATION ON STATE TRUNK HIGHWAYS RESTRICTED. This permit is valid for operation on not more than 2.5 miles of any state trunk highway.

(7) LAWFUL OPERATION. The driver of the vehicle is obeying all Wisconsin laws contained in chs. 194 and 340 to 349, Stats., and chs. Trans 305 and 325 to 327.

(8) PERMIT CARRIED ON VEHICLE. The driver carries the permit with attached local road approval resolutions in the vehicle and available for inspection by any police officer, representative of the department or any local authority or person in charge of maintaining the highway being used.

(9) OBEY POSTED WEIGHT AND SPEED LIMITS. The vehicle does not exceed any posted weight limit for a bridge or highway or any temporary weight restriction due to construction or seasonal conditions, and does not exceed any posted speed limits.

(10) MINIMUM FOLLOWING DISTANCE MAINTAINED. The driver maintains a distance of 500 feet between the vehicle and any preceding vehicle on the highway, whenever reasonable and practical.

(11) ALLOW PASSING. The driver allows approaching or overtaking traffic to pass.

(12) INSURANCE MAINTAINED. Insurance on the vehicle is maintained in accordance with s. Trans 263.08.

(13) PROPER REGISTRATION. If the vehicle is required to be registered by Wisconsin law, registration shall be at not less than the permit weight or at the maximum available registration weight, whichever is less.

(14) OPERATION ON PAVEMENT SURFACE. The right wheels of the vehicle do not leave the roadway.

(15) ALCOHOL USE PROHIBITED. The driver may not do any of the following:

(a) Consume any alcohol beverage within 4 hours of being on duty time, regardless of alcohol content.

(b) Have an alcohol concentration above 0.0.

(c) Possess an intoxicating beverage, regardless of alcohol content.

Note: Section 346.63(7)(a), Stats., is applicable to all drivers of commercial motor vehicles.

(16) DRIVER PROPERLY LICENSED. The driver holds all required licenses

bearing the proper classes and endorsements needed to operate the vehicle.

(17) ALL OTHER NEEDED PERMITS OBTAINED. All other operational permits required by the department or other agencies having jurisdiction over the highways used by the permittee are obtained.

(18) ADVERSE WEATHER AND ROAD CONDITIONS. A permit is not valid during periods when adverse weather or road conditions, such as fog, smoke, heavy rain, snow or ice, or wind velocity, impair the safety of a movement under the permit.

(19) MOTOR CARRIER AND DESIGNATED ROUTE. As stated in s. 348.27(15)(b), Stats., this permit is valid only for the motor carrier on behalf of which the load is carried; only from the origin and to the destination cited in the permit application; and only on the route designated in the permit application.

Trans 263.065 Times of operation. **(1)** Except as otherwise specified in a permit, a vehicle or load, or both, that is overweight, but not oversize, may operate 24 hours a day, including weekends and holidays.

(2) The department may issue a permit for times other than those specified in sub. (1), under extraordinary circumstances when, in the opinion of the department, public health and welfare is better served, and may impose additional conditions to promote the safe operation of the vehicle and load and to reflect conditions deemed necessary by local officials in view of local conditions.

Trans 263.07 Transfers. In the event of a breakdown or other circumstance requiring a change of the power unit or trailer identified on the permit, the permit holder may transfer the permit to another vehicle, under the control of the permittee, following the completion of a new application and the issuance of a new permit. The words, "This is a transfer from permit #<original permit number>," shall be written on the

bottom of the application.

Trans 263.08 Insurance and liability conditions. (1) A permittee shall do all of the following:

(a) Pay any claim for any bodily injury or property damage resulting from operation under the permit for which the permittee is legally responsible.

(b) Hold the state, its subdivisions, officers, employees and agents harmless from any claim that may arise from operation over public highways under the permit.

(c) Be liable for all damage which any highway or its appurtenances may sustain by reason of any operation under the permit.

(2) The department may waive insurance requirements for permits issued to units of government.

(3) Where a certificate of insurance is required, no insurer may cancel the certificate of insurance without providing the department 10 days advance written notice of the cancellation.

(4) Unless different amounts are required under sub. (5), the permittee shall carry insurance in either of the following minimum amounts:

(a) When the permitted load is not overweight by more than 25%:

Bodily injury liability—each person \$150,000 or \$750,000

Bodily injury liability—each accident \$450,000 combined single

Property damage liability—each accident \$300,000 limit

(b) When the permitted load exceeds the weight limitations in par. (a):

Bodily injury liability—each person \$200,000 or \$1,000,000

Bodily injury liability—each accident \$600,000 combined single

Property damage liability—each accident \$400,000 limit

(5) The department may require a permittee to provide more bodily injury or damage liability coverage than the minimum amounts specified in sub. (4).

(6) A permittee shall certify, and may be required to present satisfactory written evidence, that the amount of insurance coverage required under sub. (4) or (5), or a bond in a form satisfactory to the department, shall be in effect for the vehicle and load designated in the permit while operating on the public highway, unless this requirement is expressly waived by the department.

Trans 263.09 Denial, suspension or revocation of permit. (1) The department may deny, suspend, or revoke a permit for good cause, pursuant to s. 348.25(7), Stats. Grounds for the denial, suspension, or revocation of a permit include the following:

(a) Violation of any condition of a permit.

(b) Preventing an employee of the department or a law enforcement officer from performing his or her official duties, or interfering with the lawful performance of his or her duties.

(c) Physically assaulting an employee of the department or a law enforcement officer while performing his or her official duties.

(d) Making a material misstatement in an application for a permit.

(e) Unauthorized alteration of a permit.

(f) Refusal or failure, without just cause, to produce required records.

(g) Nonpayment of the application fee or payment by a check that is subsequently dishonored by the drawee or bank.

(h) Violation of any other applicable provision under ch. 348, Stats., or this chapter.


(2) A permittee shall immediately return a suspended or revoked permit to the department after receiving notice from the department of the suspension or revocation of the permit.

Note: If a permit is denied, suspended, or revoked, an applicant or permittee may request a hearing before the Department of Administration Division of Hearings and Appeals, s. 348.25(9), Stats.

(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 25th day of August, 2008.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

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 08-058

AN ORDER to create chapter Trans 263, relating to multiple trip overweight permits for vehicles transporting granular roofing materials.

Submitted by **DEPARTMENT OF TRANSPORTATION**

06-11-2008 RECEIVED BY LEGISLATIVE COUNCIL.

07-01-2008 REPORT SENT TO AGENCY.

RNS:LAK

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 RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-058

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 January 2005.]

1. Statutory Authority

The definition of “granular roofing materials” in s. Trans 263.02 (1) is limited to only materials transported “from a mine to a processing plant where the product is processed or stored for sale....” These limitations are not included in s. 348.27 (15), Stats., and would prevent an applicant from transporting granular roofing materials between processing or storage facilities under a permit issued under that subsection. If such a limitation is retained despite its absence from the enabling statute, it should be removed from the definition of “granular roofing materials” and placed in a substantive provision.

2. Form, Style and Placement in Administrative Code

a. In s. Trans 263.04 (intro.) “all of” should be inserted before “the following.” In s. Trans 263.06 (15) (intro.), “may not do any of the following” should replace “does not.” In s. Trans 263.08 (1) (intro.), “do all of the following” should be inserted before the colon.

b. In s. Trans 263.06, should “%” be inserted before the final period?

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

The statutory references in ss. Trans 263.05 (5) and 263.06 (19) should be followed by “, Stats.”

PART 4
CR 08-058

ANALYSIS OF FINAL DRAFT OF TRANS 263

(a) **Basis and Purpose of Rule.** This proposed rule is required by 2007 Wis. Act 171, section 6. The new law creates a multiple trip permit for certain overweight vehicles or vehicle combinations transporting granular roofing materials. The law establishes certain conditions for the permit and certain limitations on operation.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on July 30, 2008. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following individual spoke for information and in favor of the proposed rule:

Jason Bauknecht, Transportation Clerk for Representative Petrowski's office, Madison, WI.

(d) **Summary of Public Comments and Agency Response to those Comments:** There were no written or oral comments relating to this rule, except for a statement of support by Mr. Bauknecht on behalf of Representative Petrowski.

(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 Clearinghouse report contained a few recommendations. All of these recommendations have been incorporated into the proposed rule, except for one. The Rules Clearinghouse suggested that the definition of "granular roofing materials" in s. Trans 263.02(1) should be revised by removing language relating to the transport of these materials "...from a mine to a processing plant where the product is processed or stored for sale..." The Rules Clearinghouse suggested that it would be preferable to move this language to a substantive section of the rule. The Department believes this language to be an integral part of the definition of granular roofing materials and is more appropriately included within the definition. No one has complained about this definition or requested that it be revised, and the Department believes this indicates general acceptance of this definition. Although the definition does contain substantive requirements, it is similar to other oversize/overweight definitions in related statutes and administrative rules. Compare with the definitions of "double-decked bus" in Wis. Stat. s. 348.01(2)(at), and the definition of "raw forest products" in Wis. Stat. s. 348.01(2)(bt); and with the definitions of "recyclable-scrap" in s. Trans 269.02(2)(d) and "self-compactor equipped vehicle" in s. Trans 269.02(2)(f).

(g) **Final Regulatory Flexibility Analysis.** This proposed rule implements 2007 Wis. Act 171. The law will allow all businesses, including small businesses, to transport granular roofing materials at weights exceeding state load limits. This would have a beneficial effect on small businesses.