



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 01-156

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 the second sentence of s. Trans 100.02 (9), the stricken-through material should immediately precede the inserted underscored material. [See s. 1.06 (1), Manual.] Thus, “~~open~~” should immediately precede “or any part of a load extending”.

b. In the first sentence of s. Trans 100.06 (2) (intro.), “will” should be changed to “may”. [See s. 1.01 (2), Manual.]

c. In the last sentence of s. Trans 100.06 (3), the phrase “form ø” should be changed to “form ~~ø~~”.

d. In s. Trans 100.07 (2) (a), the last sentence should be written in the active voice; i.e., “The department shall mail” Also see s. Trans 100.08 (3).

e. In s. Trans 100.10 (1), “Secretary’s” should not be capitalized. [See s. 1.01 (4) (a), Manual.]

f. Section Trans 100.10 (10) includes provisions relating to a hearing under ch. Trans 100 or “any administrative hearing before the department.” If the Department of Transportation (DOT) intends to apply rules relating to behavior in administrative hearings generally, rather than to behavior in administrative hearings under ch. Trans 100, these provisions should not be buried in ch. Trans 100. Also, in the last sentence, “the” should replace “such”.

g. In s. Trans 100.11 (2) (b) 3., “said payment” should be changed to “the payment”. [See s. 1.01 (9) (c), Manual.]

h. Section Trans 100.12 (2) (c) 4. c. may not be further divided as set forth in the proposed order. [See s. 1.03 (6), Manual.] The last sentence of that subdivision paragraph should be revised to avoid this problem.

i. SECTIONS 67 and 69 include very confusing renumbering. For example, SECTION 67 indicates that s. Trans 100.20 (1) is renumbered s. Trans 100.20 (2) and then SECTION 69 indicates that s. Trans 100.20 (2) is renumbered s. Trans 100.20 (3). It may be useful to not renumber s. Trans 100.19 as s. Trans 100.20.

If the purpose of the proposed renumbering is to ensure that the material in SECTION 71 is inserted in the administrative code immediately preceding the material in current s. Trans 100.19, one approach would be to provide that SECTION 66 would repeal and recreate s. Trans 100.18 and s. Trans 110.18 could include the material in SECTION 71. Another alternative would be to retain SECTION 66 and provide that the material in SECTION 71 is created as s. Trans 100.185. Any pertinent cross-references should be adjusted.

j. Section Trans 100.19 (1) includes two pars. (a). It appears that the first “(a)” should be eliminated as it is actually sub. (1) (intro.).

3. Conflict With or Duplication of Existing Rules

a. Because “motor vehicle” and “vehicle” have different meanings, the proposed order should be carefully reviewed to make sure that each term is properly used. For example, in s. Trans 100.02 (9) [SECTION 5], the reference in the first sentence to “motor vehicle” apparently should be changed to “vehicle” in light of the provision in s. 344.14 (2) (f), Stats., referring to a “vehicle” that is legally parked. The use of the phrase “motor vehicle” also appears to be inaccurate in ss. Trans 100.025 (6) and (7) and 100.03 (1). Again, these are examples only; the entire rule should be carefully reviewed with respect to this issue.

b. In s. Trans 100.06 (2) (intro.), it appears that the phrase “or owner” should be added at the end of the first sentence inasmuch as the beginning of the sentence refers both to owners and operators.

c. Section Trans 100.13 (3) indicates that it is “Notwithstanding s. 344.18 (3), Stats.” It is not clear that s. 344.18 (3), Stats., is being overridden. If a statute is being overridden, the statutory authority for the DOT to make an exception to this statute is unclear.

Would it be more accurate to eliminate the phrase “Notwithstanding s. 344.18 (3), Stats.” and explain in a note that s. 344.18 (3), Stats., is not applicable to instalment agreements if there has been a release from liability?

d. Section Trans 100.12 (5) (c) 2. provides that if DOT is notified that a stay prohibiting action under 11 U.S.C. s. 362 was in effect at the time DOT ordered revocation or suspension of

the debtor's operating privilege or vehicle registration, DOT must release the revocation or suspension and must reinstate the debtor's operating privilege without any reinstatement fee. Was omission of a reference to a waiver of a reinstatement fee for registration intentional? Also, was a reference to the person's registration privilege intentionally omitted from s. Trans 100.15 (3) (d)?

Similarly, was the omission of charging a fee for registration reinstatement under s. Trans 100.19 (4) (a) intentional?

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

a. The notice of hearing, statutes interpreted provision of the analysis, the introductory language on page 6 of "Text of Proposed Rule," and s. Trans 100.01 (1) all indicate that the statutes being interpreted include ss. 344.01 to 344.27, Stats. However, the reference to s. 344.27, Stats., is inaccurate as subsequent provisions of the statutes are also interpreted. It would appear to be more accurate to indicate that the statutes interpreted include ss. 344.01 to 344.48, Stats., or, at a minimum, ss. 344.01 to 344.42, Stats.

b. In s. Trans 100.07 (3) (c) 3., the reference to "excluding those under this paragraph" should be changed to "excluding those under this subdivision". This change would make the provision consistent with s. 344.12, Stats., which refers to damage to property of \$1,000 or more.

c. In s. Trans 100.09 (3), the reference in the last sentence to "this paragraph" should be changed to "this subsection".

d. In s. Trans 100.12 (1), the reference to "s. 343.13, Stats." should be changed to "s. 344.13, Stats."

e. Sections Trans 100.12 (2) (c) 3. and 100.13 (1) (g) both refer to the necessity of a guardian's signature for a minor when the claim exceeds \$5,000. However, s. 344.14 (2) (h), Stats., also provides that, in case of personal injury, a guardian's signature is required if the minor received permanent injury. A clause referring to this statutory requirement should be included in ss. Trans 100.12 (2) (c) 3. and 100.13 (1) (g) (for example, both could include the phrase "exceeds \$5,000 or any personal injury to the minor is permanent"). This would make these provisions complement ss. Trans 100.12 (2) (c) 2. and 100.13 (1) (f).

f. In s. Trans 100.12 (2) (c) 4. c., the reference to "under this paragraph" should be changed to "under this subd. 4. c." [See s. 1.07 (2), Manual.]

g. In s. Trans 100.12 (5) (c) 2., the reference to "under the financial responsibility law" should be changed to cite the statutory provisions or administrative rule provisions. This would especially be useful in light of the fact that the title of ch. Trans 100, ss. Trans 100.12 (5) (title), and 344.22, Stats., refer to the "safety responsibility law."

h. It is not clear why s. Trans 100.03 (4) [SECTION 46] does not also refer to a prohibition against suspending a person's registration privileges inasmuch as registration privileges are also referred to in s. 344.08 (1), Stats.

Similarly, in s. Trans 100.19 (2), it is not clear why there is no reference to suspension of the registration privilege inasmuch as s. 344.25 (5), Stats., includes reference to registration privileges.

i. In s. Trans 100.20 (4), it appears that the reference to "s. Trans 100.19 (1) (a) or (e)" should be changed to "s. Trans 100.19 (1) (a) to (e)".

j. In SECTION 72, it appears that the provision should be creating s. Trans 117.03 (3) (k), rather than s. Trans 117.03 (2) (k). Also, a hyphen should be inserted after "CDL".

k. Sections 344.14 (1m) and 344.185, Stats., refer to possible impoundment of a motor vehicle, in addition to suspension of registration privileges and operating privileges. It is unclear why ch. Trans 100 does not address impoundment. This is especially confusing in light of the fact that s. Trans 100.17 (2) (note) continues to refer to a form "Notice of Suspension and Possible Vehicle Impoundment." Was the failure to address impoundment in ch. Trans 100 intentional? Even if DOT does not intend to use impoundment on a regular basis, should impoundment be referred to in connection with bankruptcy proceedings?

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

a. In the second paragraph of the initial regulatory flexibility analysis, a reference is made to the fact that only 12 companies "currently self-insure with the state." Should this indicate that the companies self-insure *in* the state?

b. In ss. Trans 100.02 (5) and 100.05 (3), "firefighter" is written as one word. In contrast, it is written as two separate words in s. Trans 100.05 (2). A consistent approach should be used, perhaps the approach in s. 102.475 (8) (b), Stats., which uses two separate words.

c. In s. Trans 100.025 (5), the phrase "is not legally parked and unattended in a designated parking area," is not clear. Does "not" modify both "legally parked" and "unattended" or only modify "legally parked"? If the latter, the phrase "is unattended and not legally parked" would be clearer.

d. In s. Trans 100.03 (2m), the first clause could be clarified by adding the phrase "to the department's request for information" following "does not respond."

In the second sentence, the use of the word "its" is unclear in the phrase "its accident reports." Is this intended to refer to the accident reports received by DOT? If so, this should be rephrased. Also, the second use of the word "its" is unclear in the phrase "its authenticity." Does this refer to the authenticity of the accident report? This should be clarified.

In general, the second sentence in s. Trans 100.03 (2m) is ambiguous because the meaning of “all other cases involving the integrity of information on its accident reports” is unclear. Does this phrase refer to when the integrity of information is questioned? If so, by whom?

e. In the second sentence of s. Trans 100.03 (3), should there also be a provision for returning a report to an operator inasmuch as the first sentence provides that operators may submit reports?

f. Section Trans 100.04 (3) (intro.) refers to a “driver.” Other provisions in ch. Trans 100 also refer to a driver. In contrast, most provisions refer to an “operator.” The term “operator” is defined in s. 344.01 (2) (c), Stats., for purposes of ch. Trans 100. Unless the distinction is intentional, it appears that references to “driver” should be changed to “operator”. The entire rule should be reviewed with respect to this issue.

g. Section Trans 100.05 (1) indicates that all “reportable” accidents must be reported on a public abstract of the operator’s driving record with certain exceptions, including if the accident did not meet the criteria requiring reporting. It is contradictory to refer to “reportable” accidents that did not require reporting. Also, use of the word “reported” to refer to the abstract of the driving record is confusing when reporting of the accidents is a separate function.

It appears that s. Trans 100.05 (1) (intro.) would be more understandable if it indicated that all reported accidents shall be recorded on the abstract unless an exception applies. This approach would be consistent with s. Trans 100.05 (1) (b) which indicates that one of the exceptions for recording would be if the accident did not meet criteria requiring reporting.

h. In s. Trans 100.05 (1) (intro.), an introductory clause to pars. (a) and (b) would be useful, such as “except if any of the following apply.”.

i. Section Trans 100.05 (1) (intro.) refers to a “public abstract of the operator’s driving record”; s. Trans 100.05 (2) refers to “public driver record abstract”; and s. Trans 100.05 (3) (intro.) refers to “public abstract of their driving record.” It would be useful if a uniform phrase were used to refer to this document.

j. In s. Trans 100.05 (3) (intro.), “technician-first” should be changed to “technician, first”.

k. In s. Trans 100.06 (2) (e), the reference to the “parties” is unclear. Is this intended to be the parties involved in the accident?

l. Section Trans 100.06 (3) indicates that if DOT determines that there is no reasonable possibility of judgment against a person, DOT “may” rescind the security requirement imposed by DOT. Current rules require that DOT rescind the security requirement in these cases. Under what circumstances would DOT refuse to rescind the security requirement if there is a determination of no reasonable possibility of a judgment?

m. In s. Trans 100.08 (7) (intro.), “are” should be changed to “is” because the subject is “one.”

n. In the first sentence of s. Trans 100.10 (1), “proof of damages have been filed” should be changed to “proof of damages has been filed” because the subject is “proof.” Also in that sentence, was the omission of the vehicle owner in the phrase “uninsured driver exists” intentional?

o. In s. Trans 100.10 (1), it should be made clear that the operating privilege suspension applies to the uninsured operator and the vehicle registration suspension applies to the vehicle owner. [See s. 344.14 (1), Stats.] As currently drafted, the operating privilege and vehicle registration privilege suspension could apply to both the operator and owner, even if they are not the same person.

p. In the first sentence of s. Trans 100.10 (4), it appears that the phrase “uninsured drivers license or vehicle registration status” should be changed to “uninsured operator’s license or vehicle owner’s registration status”.

q. In s. Trans 100.10 (5), it is not clear whether the “8 calendar days of the date of the notice of hearing” begins on the date the notice is sent or the date the notice is received.

r. In s. Trans 100.11 (2) (intro.), “are” should be changed to “is”.

s. In s. Trans 100.11 (3), the phrase “uninsured” is unclear. Should this refer to “an uninsured operator or vehicle owner”?

t. Section Trans 100.12 (1) indicates that DOT may not suspend the license of an owner or operator who has been released from liability if certain conditions are met. Should this also include reference to not suspending the registration privileges of an owner?

Also, if other unrelated reasons exist for suspension of a license (for example, because of a poor driving record), this provision apparently would preclude suspension. Thus, it may be useful to indicate that DOT may not suspend the license (or registration privileges) *under this chapter* if these conditions are met.

u. In s. Trans 100.12 (2) (a), a shorter title which parallels the titles for the other paragraphs could be considered, for example, “*Written release*”.

v. Several provisions, including ss. Trans 100.12 (2) (c) 2. and 3. and 100.13 (1) (f) and (g) refer to \$5,000 or \$5000. A consistent approach to punctuation should be used, preferably by inserting the comma.

w. In s. Trans 100.12 (2) (c) 2., the comma following the phrase “18 years old” should be deleted. This comment also applies to s. Trans 100.13 (1) (f).

x. In s. Trans 100.12 (2) (c) 3., the title should be changed to include reference to incompetent persons for example, by changing it to something such as “Minors with claims exceeding \$5,000 and claims of incompetent persons.”

y. In s. Trans 100.12 (2) (c) 4. a., c., and d., it would be helpful to insert a comma preceding the word “accompanied”.

z. It may be useful to change the title of s. Trans 100.12 (5) to simply refer to “BANKRUPT UNINSURED PERSONS”, especially since the title refers to the safety responsibility law and s. Trans 100.12 (5) (c) 2. refers to the “financial responsibility law.”

aa. In the first sentence of s. Trans 100.12 (5) (c) 4., the phrase “an operating privilege or vehicle registration or operating privilege” should be changed to refer to “an operating privilege or vehicle registration”. Also, in the last sentence, “clerks” should be changed to “clerk’s”.

ab. Should s. Trans 100.12 (5) (c) 5. and 6. also include reference to a debtor vehicle owner?

ac. Section Trans 100.15 (2) (a) and (b) should begin: “If the person’s operating privilege or vehicle registration . . .”.

ad. It appears that the title of s. Trans 100.15 (2) should be changed to “PROOF OF FINANCIAL RESPONSIBILITY REQUIREMENT”, rather than referring to “PROOF OF INSURANCE REQUIREMENT” inasmuch as financial responsibility may be established by means other than insurance.

ae. In the second sentence of s. Trans 100.15 (2) (b), “3 years has” should be changed to “3 years have”.

Also in the last sentence, “proof of responsibility for the future” should be changed to “proof of financial responsibility for the future”.

af. In s. Trans 100.15 (3) (intro.), it appears that “No fee or future proof of insurance” should be changed to “No reinstatement fee or proof of financial responsibility for the future”.

ag. In s. Trans 100.16 (4) (b) 2., the references to an “entity” should be changed to “person” to be consistent with s. Trans 100.16 (4) (a) and (b) 1.

ah. In the note following s. Trans 100.16 (4) (b) 2., should a reference to payment of forfeitures be included?

ai. In the last sentence of s. Trans 100.17 (5), the phrase “for the purpose or with the effect of defeating the purpose of s. 344.46, Stats.” could be changed to “for the purpose or with the effect of defeating s. 344.46, Stats.”

aj. In s. Trans 100.17 (6), the comma should be deleted. Also, the phrase “any and all” should be changed to “any”.

ak. It appears that s. Trans 100.19 (4) (b) and (c) should refer to suspension of the person's vehicle registration and operating privilege, rather than referring to suspension of the person's vehicle registration or operating privilege, or both. This change would make the provisions consistent with s. 344.25, Stats., and s. Trans 100.19 (1).

al. In s. Trans 100.19 (4) (d), a period should be inserted following the reference to "sub".