



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-042

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. The following comments relate to the recitation of statutory authority in the rule summary:

- (1) Should the reference to “343.14 (2) (i) 1. and 2.” be changed to “343.14 (2) (im) 1m. a. and b.”? The former provisions do not exist.
- (2) The comma after “343.07 (4) (b) and (c)” should be changed to a semicolon.
- (3) In the reference to “343.15 (1) (a), (4) (a),”, change the first comma to “and” and the second comma to a semicolon.
- (1) In the reference to “343.16 (1) (a), (2) (a), (c), and (d)”, change the first comma to “and”.

2. Form, Style and Placement in Administrative Code

a. In the introductory clause for the proposed rule, make the following changes:

- (1) In the recitation of provisions renumbered and amended, in the list of subunits of s. Trans 102.09, move “and” to between “(3)” and “(5)”.
- (2) In the recitation of provisions created, change “102.21 (1) (am), (2am)” to “102.21 (1) (am) and (2) (am)”.
- (3) Update the recitations to reflect any changes made in response to these comments.

b. In the summary for the proposed rule, an entry should be inserted to describe the analysis and supporting documents used to determine the effect on small business and in preparation of the economic impact analysis.

c. Throughout the proposed rule, the department should carefully examine terminology for precision and consistency. Consider the following examples:

- (1) The proposed rule refers to the authorization to operate a motor vehicle interchangeably as a “license,” a “driver license,” or an “operator’s license”. None of those terms are defined in ch. Trans 102. SECTION 7 creates a definition for “product”, which itself uses the term “operator’s license”. “Operator’s license” there is described in broad terms as including “a driving receipt, instruction permit, occupational license, a license extended by an extension card, or other authorization to operate a motor vehicle, issued by the department”. Given that, would it make sense to separately define “operator’s license” in ch. Trans 102 and then use that term consistently throughout the chapter instead of using the terms “license” or “driver license”?
- (2) In SECTION 7 of the proposed rule, the definition of “REAL ID non-compliant product” in s. Trans 102.02 (7v) refers to a product that is not a “REAL ID”. But “REAL ID” is not by itself a defined term. Should the definition of “REAL ID non-compliant product” instead refer to a product that is not a “REAL ID compliant product”, which is a defined term? See also SECTION 33, where s. Trans 102.15 (6) (a) refers to a “REAL ID”.
- (3) In SECTION 18, s. Trans 102.03 uses the words “person” and “applicant” interchangeably. A uniform approach should be utilized unless the circumstances require one word or the other.
- (4) In SECTION 19, s. Trans 102.04 refers to both “REAL ID non-compliant identification card” and “REAL ID driver licenses and identification cards”. Neither of those terms is defined for purposes of ch. Trans 102. This section should either define those terms or use terms already defined in s. Trans 102.02.
- (5) In SECTION 19, s. Trans 102.04 (6) reads as follows: “Products shall identify Wisconsin as the state that issued the license”. Should “license” be changed to “product”? Or is the intent that this subsection apply only to a license and not to any other type of product? If so, that should be made clear.
- (6) In SECTION 33, terminology within s. Trans 102.15 (11) should be made uniform. Paragraph (a) uses the term “REAL ID non-compliant ‘Class D’ or ‘M’ license”, and par. (b) uses the term “Class D or M REAL ID non-compliant driver license”. Do these refer to different products? Note that SECTION 19 uses a similar term “REAL ID non-compliant identification card or ‘Class D’ or ‘M’ license”.
- (7) In SECTION 33, s. Trans 102.15 (4) (b) 3. refers to a “REAL ID product”. This should be changed to either “REAL ID compliant product” or “REAL ID non-compliant product”, whichever of those defined terms is correct in this instance.
- (8) In SECTION 33, s. Trans 102.15 (6) (a) and (b) each refer to a “REAL ID applicant”. That is not a defined term. Does the department mean “applicant for a REAL ID compliant product”?

d. Throughout the proposed rule, the department should endeavor to use the singular form of a word and use the plural only when specifically referring to multiples of the word used. [s. 1.05 (c), Manual.] As one example, in SECTION 18, s. Trans 102.03 uses the plural “persons” in several places where “a person” or “the person” would be preferable. As another example, in SECTION 19,

s. Trans 102.04 (7) uses the singular “a REAL ID compliant product”, but s. Trans 102.04 (8) uses the plural “Real ID compliant products”.

e. Throughout the proposed rule, the department should consider the following issues relating to definitions:

- (1) In SECTION 6, the definition of “name” in s. Trans 102.02 (6r) states that it can include “middle name or initial”. However, in the rule summary’s plain language analysis, the first paragraph describing SECTION 6 states that the rule requires the **entire** middle name rather than only a middle initial. Thus, the plain language analysis and rule text do not align.
- (2) In SECTION 7, the definition of “product” in s. Trans 102.02 (7p) concludes with the following sentence: “An extension card as defined in s. Trans 102.02 (4s) is not a product”. This sentence could be rephrased as part of the definition, along the following lines: “‘Product’ does not include an extension card”. Also, because “extension card” is a defined term for purposes of ch. Trans 102, there is no need to include the cross-reference to s. Trans 102.02 (4s).
- (3) SECTION 10 defines the term “verify”. The second sentence, however, uses a different term, “data verification”. The department should replace those words with “verify”.
- (4) Substantive provisions should not be incorporated as part of a definition. [s. 1.07 (1) (d), Manual.] The following provisions appear to be substantive:
 - (a) In SECTION 6, in the definition of “name” in s. Trans 102.02 (6r): “Generational suffixes are permitted”. This sentence could be combined with the previous sentence along the following lines: “‘Name’ includes generational suffixes, but does not include other name suffixes, nicknames, titles of respect, or additional information of any type.”. Alternatively, this sentence could be moved to a substantive provision.
 - (b) In SECTION 9, in the definition of “resident” in s. Trans 102.02 (9): “A child under 18 years of age may qualify as a resident if the child meets the requirements for resident status set forth in s. 343.01 (2) (g), Stats.”. This sentence could be rephrased as part of the definition, along the following lines: “‘Resident’ includes a child under 18 years of age if the child meets the requirements for resident status set forth in s. 343.01 (2) (g), Stats.”.
 - (c) In SECTION 9, in the definition of “social security number” in s. Trans 102.02 (10): “The department may not accept a partial social security number for identification purposes under this chapter.”. This sentence could be rephrased as part of the definition, along the following lines: “‘Social security number’ does not include a partial social security number.”. Alternatively, this sentence could be moved to a substantive provision.

f. Throughout the proposed rule, the department should address the usage of titles in rule units. If titles are used for any subsection, paragraph, or subdivision, titles should be utilized consistently within the rule unit. [s. 1.10 (2) (a) 2., Manual.] Note the following examples:

- (1) In SECTION 18, neither subs. (1) nor (2) of s. Trans 102.03 has a title, but the other subsections do.
- (2) In SECTION 19, some subsections of s. Trans 102.04 have titles but others do not.
- (3) In SECTION 32, only sub. (1) of s. Trans 102.145 has a title.
- (4) In SECTION 33, with regard to s. Trans 102.15:
 - (a) Sub. (1) does not have a title.
 - (b) Sub. (2) (a), (c), and (e) do have titles, but other paragraphs do not.
 - (c) Sub. (6) (c) and (d) do have titles, but other paragraphs do not.

g. The treatment clause for SECTION 7 of the proposed rule should include “and (Note)” following “(7v)”. The department should review the proposed rule for other instances when treatment of a note should be identified in a SECTION’s treatment clause. See, for example, SECTION 12 of the proposed rule.

h. SECTION 9 of the proposed rule repeals two definitions (“reissue” and “special restrictions card”), in s. Trans 102.02 (9) and (10), and recreates them as entirely new words (“resident” and “social security number”). Repealing and recreating provisions should be used only when major changes are made within the context of an existing provision. Changing the subject matter of a provision that is repealed and recreated impairs the ability to trace a provision’s history and may result in ambiguity and error. Instead, consider repealing the definitions that are no longer needed and creating new subsections, such as “(9m)” and “(10m)”, for the newly created terms.

i. In SECTION 12 of the proposed rule, the title for s. Trans 102.025 (1m) is “REAL ID COMPLIANT ATTESTATION REQUIRED”. However, it is not apparent that the text of that subsection is limited to REAL ID compliant products. If the department intends to limit this paragraph to applications for REAL ID compliant products, language so limiting it should be added. The title is not part of the substance of the rule itself and should not be relied upon to limit the application of a rule provision. [s. 1.10 (2) (a) 1., Manual.]

j. In SECTION 13 of the proposed rule, s. Trans 102.025 (2) is expanded to include matters relating to vehicle titles and vehicle registrations. Is it advisable to include those matters in a chapter of the administrative code that is otherwise confined to operator’s licenses and identification cards? A user of the administrative code would not expect to find title and registration provisions here.

k. In SECTION 18 of the proposed rule, s. Trans 102.03 (2) (b) is structured as an introduction followed by two subdivisions. This paragraph should be restructured so that each of the three provisions is a subdivision of par. (b). Cross-references to subdivisions will need to be updated.

l. In SECTION 18 of the proposed rule, s. Trans 102.03 (2) (f) contains an introduction and one subdivision. An introduction should generally not be followed by a single subunit. This paragraph should be restructured to either move the sentence about light sensitive glasses into a second subdivision, or the material in the single subdivision should be incorporated into the paragraph. [s. 1.11 (4), Manual.]

m. In SECTION 18 of the proposed rule, s. Trans 102.03 (3) (a) creates an exemption from the requirement of sub. (1) rather than from the requirement of sub. (3) (intro.). It should be moved to sub. (1).

n. In SECTION 18 of the proposed rule, s. Trans 102.03 (3) (b), (c), and (d) each state that a certain person is “exempt from using a photograph taken within 8 years”. This phrasing makes it sound as though the person is **not allowed** to use a photograph taken within 8 years, which does not seem to be the department’s intent. This phrase could be changed to something like “exempt from the requirement that a product photograph must have been taken within 8 years”, for added clarity. Alternatively, sub. (3) could be reorganized as follows, to also include an introductory statement for the exemptions:

(3) EIGHT YEAR PHOTOGRAPH REQUIREMENTS AND EXCEPTIONS. Product photographs must have been taken within 8 years of the date of product issuance. This requirement does not apply to any of the following:

(a) *Duplicate and renewal products.* A person who obtains a duplicate or renewal product online, if the department has a photograph of the person on file that is not more than 16-years-old and the department’s computer system will accommodate processing the application online.

(c) *Online product issuance.* A person who obtains an identification card online, if the department has a photograph of the person on file that will not be more than 16-years-old when the product is expected to expire.

(d) *Persons in military service.* A person in military service or foreign service stationed outside this state who applies to renew a driver license, if the department has a photograph of the person on file that is not more than 16-years-old.

o. In SECTION 19 of the proposed rule, the phrase “do all of the following” should be inserted in s. Trans 102.04 (1) (intro.).

p. In SECTION 20 of the proposed rule, the repeal of s. Trans 102.07 (intro.) should be moved to its own SECTION.

q. In SECTION 21 of the proposed rule, s. Trans 102.07 (3) (intro.) should include language indicating that there are forthcoming exceptions to the otherwise blanket prohibition contained there. For example, it could begin with something like “Except as provided in pars. (a) to (d),...”.

r. In SECTION 22 of the proposed rule, the treatment clause should indicate that renumbered s. Trans 102.03 (7) has a title, rather than an introduction.

s. In SECTION 22 of the proposed rule, in s. Trans 102.03 (7) (a), the comma after “incomplete” should not be shown with underscoring because it is in the current administrative code, and the word “or” after “incomplete” in the current administrative code should be shown with a strike-through. Also, the department should not insert the word “or” after “no longer exists,”.

t. In SECTION 22 of the proposed rule, in s. Trans 102.03 (7) (c), change “~~in~~ under s. ss.” to “~~in~~ s. under ss.”.

u. In SECTION 27 of the proposed rule, insert “(title)” after “(intro.)” in the treatment clause and do not show the rule text for both introductions that are not being amended. The SECTION appears to be amending only the titles. [s. 1.10 (2) (c) 1. and 3., Manual.]

v. In SECTION 30 of the proposed rule, the department should consider whether the note following s. Trans 102.11 (3) is necessary. It states that products damaged by abuse are not eligible for issuance without a fee. Although that may be true, does it create the false impression that a product damaged by some other action (e.g., normal wear and tear) **is** eligible for issuance without a fee? Also, if the note is retained, should “issuance” be changed to “reissuance”?

w. In SECTION 31 of the proposed rule, is there duplication between s. Trans 102.14 (8) (f) 2. and (g)? In other words, does par. (g) address any situations not also addressed by par. (f) 2.?

x. In SECTION 33 of the proposed rule, in s. Trans 102.15 (2) (b) 4., the department must cancel and remove an “H” endorsement if a federal agency notifies the department that a person “does not meet the standards for a security threat assessment under 49 CFR 1572.5”. Is that phrase correct? It suggests that the federal agency determined that the person was **not** a threat. Would it be more accurate to remove the word “not” from that phrase? Alternatively, would it be preferable to state that the federal agency determined that the person “poses a security threat under 49 CFR 1572.5”? [See 49 C.F.R. s. 1572.5 (a) (intro.).]

y. In SECTION 33 of the proposed rule, in s. Trans 102.15 (6) (b), change “except for commercial driver license” to “except an applicant for a commercial driver license”.

z. In SECTION 33 of the proposed rule, s. Trans 102.15 (6) (c) should be reorganized. The requirement for a Social Security number is commingled with exceptions. It would be clearer if the requirement alone was in par. (c) (intro.) and then both exceptions were in subdivisions below par. (c).

aa. In SECTION 33 of the proposed rule, consider the following two issues regarding s. Trans 102.15 (6) (e):

- (1) This paragraph allows the issuance of an instruction permit to a person who does not have a Social Security number, but then requires the person to provide a Social Security number in a subsequent application. How will a person without a Social Security number do that?
- (2) The paragraph requires a person to provide a Social Security number on any subsequent application following the original issuance of the instruction permit. How does this requirement interact with par. (c), which authorizes the issuance of certain documents without requiring an applicant to provide a Social Security number?

bb. In SECTION 33 of the proposed rule, the title of s. Trans 102.15 (7) indicates that it applies to REAL ID non-compliant products, but the text is ambiguous in that regard. A title is not part of the substance of the rule itself. [s. 1.10 (2) (a), Manual.] As such, the department should clarify within the text whether this subsection is limited to an applicant for a REAL ID non-compliant product.

cc. In SECTION 33 of the proposed rule, s. Trans 102.15 (10) appears to duplicate s. Trans 102.14 (1) (b) and (g), as recreated by SECTION 31 of the proposed rule. Is there a difference between these provisions?

dd. In SECTION 34 of the proposed rule, in s. Trans 102.16 (4), the subsection title should be shown before the designation for par. (a). The same issue occurs in SECTION 37 of the proposed rule, for s. Trans 102.19 (3).

ee. In SECTION 34 of the proposed rule, in s. Trans 102.16 (6), do not underscore any text.

ff. In SECTION 45 of the proposed rule, the treatment clause should indicate that the title of s. Trans 104.06 (3) (a) (intro.) is being amended.

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

a. In SECTION 30 of the proposed rule, s. Trans 102.11 (5) requires a fee to issue a new license to remove an endorsement. It cites s. 343.21 (1) (L) and (m), Stats. However, s. 343.21 (1) (m) requires a fee for the reinstatement of an endorsement, not the removal of an endorsement. Should the reference to s. 343.21 (1) (m) be changed to s. 343.21 (1) (n)? That provision requires, among other things, a fee whenever any license is issued. Presumably, that would include issuing a license in order to remove an endorsement.

b. In SECTION 30 of the proposed rule, in the note following s. Trans 102.11 (6), add “, Stats.,” after “343.21”.

c. In SECTION 31 of the proposed rule, in the note following s. Trans 102.14 (7) (a) 3., add “s.” before “343.14”.

d. In SECTION 32 of the proposed rule, the second sentence of the note following s. Trans 102.145 (1) is not clear. It refers to a 60-day rule under sub. (2), but sub. (2) does not mention such a rule.

e. In SECTION 33 of the proposed rule, in s. Trans 102.15 (2) (h) (intro.), the reference to “sub. (2) (a) 1. to 6. or (c) 1. to. 6.” can be changed to “par. (a) 1. to 6. or (c) 1. to. 6.” because this reference is within sub. (2).

f. In SECTION 34 of the proposed rule, in s. Trans 102.16 (1), change “sub. (2) to (8)” to “subs. (2) to (8)”.

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

a. In the rule summary’s plain language analysis, in the second paragraph describing SECTION 12, a word is missing between “subject” and “prosecution”.

b. In the rule summary’s plain language analysis, in the second paragraph describing SECTION 13, change “compliment” to “complement”.

c. In the rule summary’s plain language analysis, in the first paragraph describing SECTION 21, in the first bullet, change “, under” to “, or under” and insert “if” after “jurisdiction,”.

d. In the rule summary’s plain language analysis, in the first paragraph describing SECTION 31, change “overtime” to “over time”, and in the second paragraph describing that section, fix the typographical error “modern licensing systems requires”.

e. In the rule summary’s plain language analysis, in the description of SECTION 38, correct the name of the Department of Agriculture, Trade and Consumer Protection.

f. In SECTION 4 of the proposed rule, do not capitalize the word “change” in the defined term “Material Change”.

g. In SECTION 13 of the proposed rule, a portion of s. Trans 102.025 (2) (intro.), as renumbered, that is not amended by the proposed rule contains a phrase that could be clarified. The existing code allows the department to decline to accept a document if the department has reason to “suspect the authenticity” of the document. This means that the department suspects that the document is authentic, which is probably not the intent of the rule. It might be clearer if that phrase was changed to “suspect the inauthenticity” or “doubt the authenticity”, or a similar formulation.

h. In SECTION 18 of the proposed rule, the department should examine the first sentence of s. Trans 102.03 (6) for clarity. Would the following capture the department’s intent: “Subsection (2) shall be interpreted and applied in a manner consistent with federal requirements for the issuance of federal REAL ID compliant documents even if an applicant applies for a REAL ID non-compliant product.”?

i. In SECTION 19 of the proposed rule, in s. Trans 102.04 (5), there may be a word missing between “opposite” and “photograph”.

j. In SECTION 19 of the proposed rule, in s. Trans 102.04 (8), replace “Real” with “REAL”.

k. In SECTION 19 of the proposed rule, s. Trans 102.04 (9) uses the term “apparent products”. This term is not used in ch. 343, Stats., or defined in ch. Trans 102. Its meaning is not clear. Should it be defined?

l. In SECTION 19 of the proposed rule, s. Trans 102.04 (10) allows a judge to list a courthouse address upon request. Language should be added to clarify that the courthouse address may be used “in lieu of” (as opposed to “in addition to”) the judge’s physical mailing address. See the language in s. Trans 102.04 (11) for a possible model.

m. In SECTION 19 of the proposed rule, the department should consider whether the title of s. Trans 102.04 (11)—VICTIMS OF DOMESTIC VIOLENCE—is misleading. The safe at home program under s. 165.68, Stats., is not limited to victims of domestic violence. For instance, it may be utilized by a victim of stalking. As such, the title does not fully capture the content of this subsection. Consider a more accurate title, such as “Safe at Home Participants”.

n. In SECTION 31 of the proposed rule, the second sentence of s. Trans 102.14 (3) reads as follows: “The product shall be a temporary product until the product is delivered by mail or the person is determined to be ineligible for the product”. This sentence is confusing. Does the department mean that a temporary product is valid only until either a regular product is delivered by mail to replace it or until the holder is no longer eligible for the temporary product?

o. In SECTION 31 of the proposed rule, par. (a) (intro.) of s. Trans 102.14 (6) refers to a person “under the age of 18” and par. (b) of that subsection refers to a person “under 18-years-old”. These should be standardized. Also, review other places in the proposed rule for consistency, such as s. Trans 102.19 (2) and (3) (a), as recreated by SECTION 37.

p. In SECTION 33 of the proposed rule, in s. Trans 102.15 (2) (e) and (f) 2., should “reissue” be changed to either “reissuance” or “reissued” in each instance? The verb “reissue” does not fit grammatically.

q. In SECTION 33 of the proposed rule, in s. Trans 102.15 (3) (a) 3., add a closing period after “service” and remove the stray letter “e” between “service” and “4.”.

r. In SECTION 33 of the proposed rule, in s. Trans 102.15 (4) (c) 1., do not capitalize “Passport”.

s. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5) (a) 3., 4., and 5., what is meant by “printed electronic copies”? Does this refer to a situation where a document was sent to the person only in electronic form and the person brings to the DMV a printed copy of the electronic document? If so, perhaps it would be clearer to use a formulation like “The department may accept a printed copy of an electronic [utility bill/paycheck/stub/statement]”.

t. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5) (a) 8., should “village” and “town” be added to the list of governmental bodies?

u. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5) (a) 9., remove the comma after “license” to clarify both that the concealed carry permit must be a Wisconsin concealed carry permit and that the hunting or fishing license must be one that was issued to the applicant. Also, specify whether such a license or permit must be current.

v. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5) (b), insert “product” after “non-compliant”.

w. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5), “Postal Service” is capitalized in par. (d) (intro.) but not in par. (c) or par. (d) 1. Usage should be standardized.

x. In SECTION 33 of the proposed rule, in s. Trans 102.15 (5) (d) 2., what length of time is meant by “a period of time”?

y. In SECTION 33 of the proposed rule, in s. Trans 102.15 (6) (c) 1., change “persons” to “person’s”.

z. In SECTION 33 of the proposed rule, in s. Trans 102.15 (6) (d) 2., “Social Security Administration” is capitalized. It is not capitalized elsewhere in the proposed rule and should not be capitalized in this instance. [s. 1.06 (2), Manual.]

aa. In SECTION 33 of the proposed rule, in s. Trans 102.15 (6) (d) 5. d., fix the following typographical errors:

(1) “by the by a”.

(2) “to has been used”.

(3) “to has been assigned”.

bb. In SECTION 33 of the proposed rule, in s. Trans 102.15 (7), punctuation is missing at the end of subs. 1. and 2.

cc. In SECTION 33 of the proposed rule, the title of s. Trans 102.15 (10) is “VERIFICATION OF DOCUMENTS AND DATE OF BIRTH”. Is “date of birth” necessary? That subsection is about verification of information in general, which could include date of birth, but also many other matters.

dd. In SECTION 33 of the proposed rule, in s. Trans 102.15 (11), par. (a) refers to Class D or M with quotation marks, but par. (b) omits the quotation marks. Usage here and elsewhere in the proposed rule should be standardized.

ee. In SECTION 33 of the proposed rule, in s. Trans 102.15 (11) (b), delete “of” after “for whom the department has records”.

ff. In SECTION 34 of the proposed rule, in s. Trans 102.16 (3), punctuation is missing at the end of pars. (a) and (b).

gg. In SECTION 34 of the proposed rule, in s. Trans 102.16 (6), what does it mean for a license to be “withdrawn”? Is this the same as a revocation? If so, use the established term, or identify the circumstances of a withdrawn license.