



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-043

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. Throughout the rule, the department establishes requirements by reference to requirements established by the curriculum provider, as defined by the rule. [See, for example, SECTION 11 of the proposed rule (“A rider education provider’s license shall be valid for the same period as the school’s authorization to provide instruction issued by the curriculum provider”), and SECTION 23 of the proposed rule (“The person has completed a rider preparation course in this state meeting the requirements of the curriculum provider”), among other provisions.] The rule defines “curriculum provider” as the Motorcycle Safety Foundation, or an organization that provides comparable motorcycle safety instruction in another jurisdiction that qualifies a person for a motorcycle skills test waiver. The department should address whether the rule’s incorporation by reference of such requirements excessively delegates the department’s rulemaking authority, particularly with respect to whether the proposed rule, as drafted, would result in automatic adoption of any prospective changes made to such requirements. [s. 1.14, Manual. See, also, comment 2. a., below.] As another example, the department should also specifically address whether SECTION 30 of the rule, which provides that the department’s evaluation of rider courses may include “Evaluation of the facilities and instruction for compliance with statutory requirements and these rules, and in a manner consistent with the evaluation criteria specified by the curriculum provider”, delegates the department’s authority to regulate course providers to the Motorcycle Safety Foundation or another organization.

b. In SECTION 28 of the proposed rule, the department broadly provides that it may evaluate a rider coach from time to time, may require the coach to participate in a training program if the department determines the coach is in need of training, and cancel the person’s rider coach license if he or she does not complete the required training in a timely manner. The department should address whether the rule should more specifically prescribe the procedures the department intends to use to determine when to evaluate a rider coach, how it will ascertain whether additional training is required, and what time frames will apply to any additional training requirements.

2. Form, Style and Placement in Administrative Code

a. Throughout the proposed rule, the department should ensure that notes do not contain substantive requirements. [See s. 1.12 (1) (c), Manual.] For example, with respect to the note under the definition of “Basic course for experienced riders” in SECTION 3 of the proposed rule, the department should ensure that all of the elements of the definition are in the rule text itself and avoid explaining the definition by reference to a course provided by an extrinsic source, as the content of that course could change in a way that no longer reflects the elements of the definition. See also, for example, the note in SECTION 20 of the proposed rule. A note should not contain a command indicating some requirement, and, as it is not part of the substantive rule, cannot incorporate standards by reference.

b. The department should consider whether s. Trans 129.03 (2), as amended in SECTION 6 of the proposed rule, complies with its intent. Under current law, this provision provides that a person who takes and fails a skills test after completing a rider course is not eligible for the skills test waiver. The proposed rule maintains this prohibition, but then adds new language specifying that the person may nonetheless be eligible for the waiver if he or she successfully completes another basic or experienced rider course. Because the mechanism for obtaining a waiver of the skills test is to successfully complete a basic or experienced rider course, the effect of this change would seem to render the language providing that a person who fails a skills test waiver after taking a rider course is ineligible for a skills test waiver without meaning.

c. Is the note in SECTION 11 regarding grant recipients’ obligation to file activity reports within 30 days of course completion necessary? It appears to restate, without explanation, an obligation imposed by s. Trans 129.10.

d. In s. Trans 129.08 (4) (a) 11., the cross-reference should be updated to “sub. (1) (d), s. Trans 129.13 (1), or s. Trans 129.15 (6)”.

e. Proposed s. Trans 129.09 (4), in SECTION 20 of the rule, provides that instructors “shall teach material developed by the curriculum provider and Wisconsin-specific material approved by the department.” Who does the department anticipate will develop the Wisconsin-specific material? Also in this SECTION, the proposed rule provides that “Testing may accommodate learning disabilities, limited English proficiency, or medical conditions.” Does the department intend accommodations for these reasons to be permissive or mandatory?

f. In s. Trans 129.10 (4) (i), should the department consistently refer to either “3-wheel vehicle” or “3-wheels vehicle”?

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

In SECTION 25 of the proposed rule, the department might consider listing the specific statutory citations of the offenses that, if committed, prevent an instructor’s driving record from being considered satisfactory, and providing that violation of an ordinance adopted in conformity with these offenses or a similar offense under the laws of another jurisdiction also prevent an instructor’s driving record from being considered satisfactory.

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

a. In SECTION 3 of the proposed rule, the definition of “Basic course for experienced riders” should be revised for grammar.

b. In SECTION 3 of the proposed rule, the agency should consider defining “curriculum provider” as an organization that meets certain attributes rather than as one particular organization. The department could include in a note that it currently considers the Motorcycle Safety Foundation to meet these attributes.

c. In SECTION 5 of the proposed rule, “have taken and passed” could be revised to “pass”.

d. SECTION 5 of the proposed rule could be revised to more clearly state the requirements for a person to be eligible for a waiver of the skills test requirement. For example, rather than stating that an applicant must provide a completion card, the department might instead rephrase to require an applicant to provide proof that the person has completed either a basic rider course or a basic course for experienced riders within one year of the date of application.

e. In SECTION 7 of the proposed rule, the phrase “rider course requirement” is imprecise, and might be more completely revised to “the requirement to successfully complete a basic rider course”.

f. In SECTION 11, it may be helpful for the department to provide additional detail regarding what licenses might be required under proposed s. Trans 129.08 (2) (a).

g. The department should revise proposed s. Trans 129.08 (4), in SECTION 11, to the active voice to clarify that the department shall suspend and not renew a license if it finds the licensee has engaged in any of the enumerated circumstances.

h. In SECTION 12 of the proposed rule, the department should consider whether the phrase “sufficient time ... for students to develop skills” is precise enough to adequately appraise course providers of the amount of time the department expects should be allocated to range instruction. This comment also applies to SECTION 16 of the proposed rule.

i. There is a typographical error in the treatment clause in SECTION 21 of the proposed rule.

j. In SECTION 26 of the proposed rule, would “crash”, rather than “accident”, better reflect the department’s current terminology?

k. In SECTION 28 of the proposed rule, the department might consider replacing “cannabis, opioids, and other drugs that cause impairment” with “controlled substances”. Also in this SECTION, are the examples of professional conduct necessary?

l. In SECTION 29 of the proposed rule, the department might consider rephrasing s. Trans 129.10 (7) to specify that it may grant preference to applicants who meet certain requirements rather than exclude applicants.