

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## *RULES CLEARINGHOUSE*

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## CLEARINGHOUSE RULE 95-197

### 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 October 1994.]**

#### 1. Statutory Authority

Section 343.16 (1) (a), Stats., provides in part that an operator’s knowledge test is not intended to be a test for literacy or English language proficiency. Section Trans 104.03 (2) (d) provides in part that, notwithstanding s. 343.16 (1) (a), Stats., the knowledge test for a hazardous materials endorsement must be a written examination in English that may not be administered orally or with the aid of an interpreter. If the department believes that the statutory language is an impediment to requiring that the knowledge test for a hazardous materials endorsement be a written examination in English, then the rule provision is not authorized by the statute and nothing in the rule provision can independently create this authority for the department. On the other hand, the “notwithstanding” clause in the rule simply may be an example of inaccurate drafting; the department may argue that the serious nature of transportation of hazardous materials requires that an operator be familiar with laws, rules and instructions that are written in English and that the rule requirement is not a literacy or language proficiency examination.

#### 2. Form, Style and Placement in Administrative Code

a. In the fifth paragraph of the analysis, it appears that the word “on” contained in the second sentence should be replaced by the word “and.”

b. Section Trans 104.02 (2) (b) makes use of the word “exam.” However, the word “examination” appears frequently throughout the rule. The department should use one term consistently.

c. In s. Trans 104.03 (1) (b), the phrase “in any event of a person seeking” should be replaced by the phrase “if a person is seeking.”

d. Section Trans 104.03 (1) (c) refers to a “class d knowledge test.” The entire rule should be reviewed for the expression of a classification in the form “Class D.” [See, for example, the method of referring to classes of licenses in s. 343.04, Stats., and in the analysis to the rule.]

e. In s. Trans 104.05 (2) (c) 1., the comma should be replaced by a semicolon.

f. It appears that s. Trans 104.05 (3) (d) should be rewritten to read: “The windshield or a front, side or rear window is defective or missing.”

g. In s. Trans 104.05 (5) (intro.), the word “type” should be replaced by the word “Type.” [See, for example, s. 343.04 (1) (e), Stats.]

h. In s. Trans 104.06 (3) (a) 2. and (b) and (4), the Notes appear to be substantive in nature and should be incorporated into the text of the rule or, if these requirements are found elsewhere in the Administrative Code, the Notes should include appropriate cross-references.

i. The acronym “CDL” is used throughout the rule and should be defined.

j. In s. Trans 104.06 (4), the notations “P” and “S” in the title should be expanded to refer to passenger and school bus endorsements.

k. Should the text of s. Trans 104.06 (5) (a) make an exception for the provision in s. Trans 104.03 (1) (b)? [See, also, s. Trans 104.06 (7) (b).]

l. In s. Trans 104.07 (1) (f), the phrase “usually imposed” should be replaced by the phrase “otherwise imposed by the department.”

m. In s. Trans 104.10 (1), the introductory material does not grammatically lead into the following paragraphs. Consequently, the introduction should be renumbered as par. (a) and the following paragraphs should be renumbered accordingly. Also, in sub. (1) (d), should the word “and” before the cross-reference to “104.06 (5) (b)” be replaced by the word “or”? If so, the notation “ss.” should be replaced by the notation “s.”

n. In s. Trans 104.12, the cross-reference should read: “ss. Trans 104.06 (3) and 104.09 (2) and (3).”

o. In the effective date clause, the citation to s. 227.22 (2) (c), Stats., appears to be incorrect. If it is intended that the rule will be in effect on the first day of the month commencing after the date of publication, then the reference should be to s. 227.22 (2) (intro.), Stats. Also note that the notation “as” should be replaced by the notation “ss.”

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

a. In s. Trans 104.03 (3), air-break pre-trip inspection tests are excepted from the “passing score” provision. How is this inspection test scored? This should be clarified.

b. In s. Trans 104.04, the second sentence would be clearer if a comma preceded the phrase “without the prior approval of the examiner.” The addition of the comma clarifies that the clause applies to all of the items preceding it. Is this the intent of the department? In the third sentence, should the term “may” be “shall,” since, under the first sentence, an applicant who commits an infraction “shall fail the test and may not be allowed to retake the knowledge test for 7 days”?

c. In s. Trans 104.05 (2) (f), it appears that the word “a” should precede the word “protective.”

d. In s. Trans 104.06 (9) (b), is the driver required to demonstrate only one of the maneuvers listed? Should the word “or” be replaced by the word “and”?

e. The Note following s. Trans 104.06, and other Notes elsewhere in the rule, list various forms, but do not contain any other information. Is a driver required to use the forms; is the department required to use the forms; and how and where may the forms be obtained?

f. Section Trans 104.07 (1) (c) states that a special examination may be conducted to determine whether a person is able to exercise ordinary and reasonable control of a motor vehicle. How is this standard different from the general skills test under s. Trans 104.06?

g. In s. Trans 104.08 (1), how can skills be evaluated and points be awarded if the skills “are not tested”?

h. In s. Trans 104.10 (1) (e), when do the “2-year intervals” begin? Would the following phrase be appropriate: “intervals following the date of the initial endorsement”? Also, what is being certified under the “medical certification”?