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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-101

#### 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

What is the department’s authority to assess a monetary “penalty” under s. Trans 141.07? Or, is the amount assessed better characterized as an additional fee? See s. 218.0161, Stats.

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

a. The department might consider mentioning parenthetically, under “statutes interpreted,” that the rule also interprets SECS. 9148 (1) and 9448 (3) of 2005 Wisconsin Act 25.

b. While the rule analysis clearly need not replicate the entire rule, it gives no indication of the substance of the rule. Fundamentally, it fails to indicate that the rule requires “electronic” processing of title and registration applications. The analysis should provide a simple explanation of the process by which a motor vehicle purchaser will receive a title and license plates.

c. In the department’s analysis under “Summary of factual data and analytical methodologies used...”, there is no indication what the acronym APPS means.

d. In the definitions in s. Trans 141.02 (2) and (3), should “motor” modify “vehicle”?

e. Consideration should be given to whether there is any need to retain the definition of “exempt” in s. Trans 141.02 (6). Section Trans 141.06 describes how a motor vehicle dealer is exempted from the processing requirement.

f. In s. Trans 141.02 (8), the phrase “required and authorized” should be deleted.

g. Section Trans 141.03 (1) and (3) can be combined to read along the following lines: “Unless exempt under s. Trans...[or not authorized under s. Trans...], a licensed motor vehicle dealer shall process certificates of title and registration for motor vehicles sold by the dealer. A licensed motor vehicle dealer may satisfy this requirement by contracting with the DMV under s. Trans...or by using the e-MV11 Internet-based web application under s. Trans.... A licensed motor vehicle dealer shall begin processing title and registration applications within 30 days after the department approves the dealer’s initial Wisconsin motor vehicle license.” (Regarding the last sentence, see the comment under “5. b.,” below.)

h. In s. Trans 141.03 (2), “apply” should be substituted for “make application.” The form mentioned in that provision should be referenced in a note. [See s. 1.09 (2), Manual.]

i. It is suggested that the department consider substituting language with more specificity for “or other similar situations” in s. Trans 141.03 (4). This comment applies throughout the rule. Subsection (4) might be redrafted along the following lines: “In addition to the bond required for licensing as a motor vehicle dealer under s. Trans..., the department may require a supplemental bond if either of the following applies:

(a) The department determines the dealer has insufficient funds to timely pay departmental registration and titling fees or [ ].

(b) The department determines the dealer has a history of errors in processing certificates of title and registration, has a history of not timely processing certificates of title and registrations, or [ ].”

j. Section Trans 141.03 (1) refers to “licensed motor vehicle dealers” and “licensed Wisconsin motor vehicle dealer.” The entire rule should be reviewed for the consistent use of the term referring to a motor vehicle dealer.

k. In s. Trans 141.04 (1) (intro.), the second sentence should be placed in a note.

l. It is suggested that s. Trans 141.04 (1) (c) be redrafted as follows:

(c) The motor vehicle dealer shall, if required by the department, furnish a supplemental bond in addition to the bond required for licensing as a motor vehicle dealer under s. Trans....

What standard will the department apply to determine if a supplemental bond is required?

m. In s. Trans 141.04 (1) (f), the last clause could be redrafted as follows: “... and the timely submission to DMV of reports and documentation of registration and titling transactions.”

n. Section Trans 141.04 (2) and (3) should be combined into one subsection. It appears that reference to “contract” should be modified by “under sub. (1) (a).” Should the provision on fees be included in proposed s. Trans 141.07?

o. If the title of s. Trans 141.05 is retained, consideration should be given to inserting “and Nonrenewal” following “Termination.”

p. Section Trans 141.05 (1) (intro.) should be stated as follows: “DMV may terminate or refuse to renew an APPS dealer contract on any of the following grounds:”.

q. The department may wish to reconsider the use of “reasonable cause to doubt” in s. Trans 141.05 (1) (b) and elsewhere in the rule. It is recognized that the phrase is used in current department rules but it does not appear to be standard drafting style. Typically, a phrase such as “reasonable cause to believe” or “reasonable cause to conclude” is used.

r. In s. Trans 141.05 (1) (c), it appears that “if” should be substituted for “where.”

s. In s. Trans 141.05 (2), reference to “but is not limited to” may be deleted. [See s. 1.01 (7) (c), Manual. Reference to “but is not limited to” appears elsewhere in the rule, as well.]

t. Section Trans 141.05 (3) is awkward. Is it necessary? The department already has authority under sub. (1) to terminate or nonrenew a contract. If the provision is retained, is the reference to a contract between DMV and the agent or vendor correct? In this case, is the agent actually the dealer? If so, the language of sub. (3) simply should refer to a contract between DMV and a dealer. Finally, the last sentence of the subsection should read: “If the dealer is terminated, the dealer may not process certificates of title and registration.”

u. In s. Trans 141.06 (1) (b) (intro.), the phrase “any of” should be inserted before the phrase “the following reasons.”

v. It is suggested that consideration be given to placing s. Trans 141.06 (1) (b) and (c) in a separate section. Subsections (1) (a) and (2) deal with exempt dealers and exempt certificates. Subsection (1) (b) and (c), in contrast, deals with dealers denied the authority to process certificates of title and registration, which may occur whether the dealer is exempt or not exempt.

w. In s. Trans 141.06 (1) (b) 1. to 4., reference to “a” motor vehicle should be changed to “the” motor vehicle dealer.

x. In s. Trans 141.07 (1), is the department to determine the fee on a case-by-case basis, or will a uniform fee be established? If the latter, the fee could be determined by rule.

y. In s. Trans 141.07 (2) (a), use of “exempt” in the first sentence is redundant.

z. In s. Trans 141.07 (2), the sentence “The fee shall be \$15 per transaction” should be replaced by the sentence “The fee is \$15 per transaction.”

aa. In s. Trans 141.07 (2) (b) 1. b., “to the dealer, in the amount” can be deleted. [See, also, sub. (2) (c) 1. b.]

bb. In s. Trans 141.08 (1) (intro.), the phrase “all of” should be inserted after the word “transaction.”

cc. In s. Trans 156.01 (3), it is suggested that the second underscored sentence begin with “Those.”

dd. The language stricken from s. Trans 156.04 (1) (c) is not mentioned in the department's analysis. Is the change technical or substantive? If the latter, it should be mentioned.

ee. Is a delayed effective date desirable to permit compliance with the rule? See, also, the comment under "5. b.," below.

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

a. There are many statutory cross-references in the rule that could, instead, be a cross-reference to a rule. The rule should be reviewed in its entirety and, where a rule dealing with a subject matter exists, the cross-reference should be made to the rule, rather than the statute.

b. In s. Trans 141.01, the word "and" should be inserted before the reference "342.16 (1) (a)."

c. In s. Trans 141.03 (4) (intro.), the notation ", Stats." should be inserted after the statutory cross-reference.

d. In s. Trans 141.05 (1) (c) and (2), can the references to the "rules interpreting" the specified statutes be made more specific? This comment applies elsewhere in the rule, as well.

e. In s. Trans 141.07 (1), the citation to the rule does not include the correct paragraph citation.

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

a. The title to ch. Trans 141 leads the reader to believe that a motor vehicle dealer will in all cases issue titles and license plates. If this is not accurate, the title should be amended.

b. In s. Trans 141.03 (2), the word "the" should be inserted before the word "federal."

c. In s. Trans 141.03 (c) (i.e., sub. (3)) is the reference to "initial" license correct? What about existing dealers? As drafted, it appears that the electronic processing requirement will only apply to new dealers.

d. In s. Trans 141.06 (2), the last sentence would be clearer if the phrase "under this subsection" were inserted after the word "applications."

e. In s. Trans 141.08 (2), to what does the phrase "all records required to be kept" refer?