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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 06-089

#### 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.]**

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

a. Section Trans 105.003 (1) (intro.) should read: “This chapter interprets subch. VI of ch. 343, Stats., by creating rules relating to:”. In sub. (1) (a) and (b) and (2), the term “minors” is used. This term should be replaced by the term “students” since student is defined in s. Trans 105.007 (4) as a driver who is under 18 years of age. The entire rule should be checked to substitute “student” for “minor”.

b. Section Trans 105.007 (2) should read: “‘Driver school’ or ‘school’ has the meaning given in s. 343.60 (1), Stats.” The term “school” appears frequently in the rule in place of “driver school”. An alternative approach would be to define “driver school” and then substitute “driver school” for “school” wherever the term appears in the rule. In sub. (3), substitute “has the meaning given” for “is defined in”.

c. In s. Trans 105.01 (4) (intro.), substitute “An applicant” for “Applicants”. The second sentence should read: “The self-certification of the school offices and classrooms shall certify all of the following:”. In par. (a), substitute “The address of any office” for “Address for office”. In par. (b), substitute “The measurement” for “Measurement” and insert “any” before “office.” In par. (d), substitute “any office and any classroom” for “the office and classroom”. In pars. (e) and (f), insert “is being, or will be” before “conducted”. In par. (i), it appears that the first “school” should be “a public school”. In sub. (5) (intro.), substitute “A driver school office” for “Driver school offices”. In par. (a), substitute “The office” for “Facility”. In par. (b) (and elsewhere in the rule where this appears), substitute “Students” for “Minor students”. In par. (c),

substitute “The applicant” for “Applicant”. Redraft sub. (6) to read: “An applicant who will be an owner or manager of a driver school shall submit verification that he or she has passed the department’s test on driver school and instructor criteria. The applicant must receive a minimum score of 80% to pass the test.” It is unclear why the number of questions on the test is contained in this subsection; the department should have the option of increasing or decreasing the number of test questions. This same redrafting and comment applies to s. Trans 105.02 (1), last two sentences (also, in the first sentence, delete “also”).

d. In s. Trans 105.015, in the second sentence, the word “for” should be replaced by the word “to.” The third sentence should be rewritten to read: “A driver school that has accumulated two or more points in the current licensing period under s. Trans 105.11 may not enter into the testing agreement with the department.”. In sub. (2), the phrase “under sub. (1),” should be inserted after the word “agreement.”. Finally, sub. (3) should be rewritten to read: “A school that is participating...to its own instructors.”.

e. In renumbered s. Trans 105.02 (4), first sentence, substitute “An” for “Each”, delete “prior” and insert “prior to the application date” after “24 months”. In the last sentence, substitute “If the applicant has” for “If there is”.

f. Section Trans 105.02 (2) should be redrafted to read: “An instructor who has held an instructor’s license for both behind-the-wheel and classroom training, but is no longer eligible for an operator’s license because of a medical condition, may, upon request to the department by the school, obtain a classroom-only license. This subsection does not apply to an instructor whose instructor’s license has been withdrawn.”. The entire rule should be reviewed to make sure that “instructor’s license” is used instead of “instructor license”. Subsection (3) should be redrafted to read: “An instructor who fails the skills test twice may petition the department for an alternative test method, as determined by the department.”.

g. In s. 105.03 (1) (b), second sentence, substitute “the” for “this”. In par. (c), the new language should read: “based on the conviction date or the effective date of the withdrawal (Note: withdrawal of what?—this should be specified), whichever is earlier.”.

h. In s. Trans 105.035 (2), the department should consider whether there is a way to include new crimes that are created by the Legislature instead of having to revise the list each time a new crime that should be included is enacted into law. Otherwise, sub. (5), which provides for the two-year license withdrawal or denial for “Any felony not listed in subs. (3) to (5)” would apply. There are several listings of “serious criminal offenses” (or a similar term) in the statutes which would be amended to include new serious crimes. Perhaps reference to such a provision could be used at least for the most serious lifetime provision under sub. (2). In subs. (3) (intro.), (4) (intro.), and (5) (intro.), 10 years after what date? Five years after what date? Two years after what date?

i. In s. Trans 105.04 (5), second sentence, the last part should read: “in writing to cancel the license”. In sub. (3) (intro.), substitute “in” for “of”. In par. (b), “documentation” from where and “provided” to whom? This should be specified. Also, insert “the” before

“required”. In par. (c) “parents or guardians” should be “parent or legal guardian”. Also, specify for what purpose the parent or legal guardian is contacting the company.

j. In s. Trans 105.06 (2) (b), insert “to” before “function”. In par. (b), second sentence, substitute “the” for “their”. In sub. (5) (intro.), substitute “A licensee” for “Licensees”. Also, the introduction should conclude with the phrase “in any of the following circumstances”. [Introductory material should clearly alert the reader to whether all of the following subunits must be complied with or if it is only necessary to meet one of the requirements in the following subunits. See the introductions in ss. Trans 105.01 (5), 105.04 (3), 105.06 (11), 105.11 (4) (a), (b), (c), and (d), and 105.12 (1).] In par. (b), insert “in which the office is located” after “district”.

k. Section Trans 105.06 (11) (intro.) should read: “a licensee using a vehicle that is more than three years old to conduct behind-the-wheel training shall ensure all of the following with respect to the vehicle:”. In sub. (11) (a), what is “an authorized service facility”? Authorized by whom? This should be clarified. In par. (b), insert “an authorized” before “service”. In the second sentence, insert “of the certification” after the first “date”. What date does the second “date” refer to? This should be clarified. In sub. (12), second sentence, substitute “may not” for “will not be able to”. In the third sentence, substitute “Use of a vehicle” for “Any vehicle used” and “under” for “as provided in”.

l. In s. Trans 105.07 (1) (c), substitute “A student” for “Students”, “completes” for “complete”, and “satisfies all financial obligations required by his or her contract” for “complete financial obligations required by their contract”.

m. In s. Trans 105.07 (3), the word “licensees” should be replaced by the phrase “a licensee”.

n. In s. Trans 105.07 (7), the sentence should begin with the phrase “An applicant for an instructor’s license renewal”.

o. Section Trans 105.10 (10) should be restructured and redrafted as follows:

(1) A driver school shall do all of the following:

(a) Hold minimum insurance...one accident.

(b) Adjust the insurance amounts under par. (a) every 5 years...and adding that amount to the amounts in par. (a) rounded to the nearest...increment.

(c) Maintain a standard...\$500,000.

(d) File certification....

(e) Require the insurance carrier....

In sub. (3) and elsewhere in the rule, who does the term “customer” refer to? The student? If so, use “student” wherever “customer” appears. If it refers to some other person or entity, this should be clarified. In sub. (5), substitute “the last previous license period shall be”

for “past license period are”. In sub. (6) insert “the” before “bond”. Also, should “at the renewal” be “on the date of the renewal”?

p. In s. Trans 105.11 (1), first sentence, “driver school and instructor who has violated any provision” should be “driver school or instructor that has violated any provision”. In the second sentence, delete “also”. Also, in that sentence, “reasonable cause to doubt the licensee or applicant’s financial responsibility or bond” is: (1) not very clearly drafted; and (2) does not seem to be a very clear standard for assessing points. A cross-reference to the point system should be provided. Also, in that sentence, “licensee” should be “licensee’s”. In sub. (3), first sentence, delete “also”. The items under sub. (4) (a) should be drafted with consistent language. For example:

1. Having one’s school or instructor license withdrawn.
2. Having six or more....
3. Providing false documentation....
4. Permitting actions....
5. Performing work duties....
6. Failing to comply....
8. Violating ss. 343.60....

The same comment applies with reference to the lists in pars. (b) and (c).

In subd. 5., substitute “alcohol or controlled substance or other drug” for “substance (alcohol/drug)”. In subd. 7., “parent/student” should be “a parent or student”. In item 8., who determines which violations of these statutory provisions “negatively impact or harm the customer or highway safety” and how is this determination made? This should be clarified. A similar comment applies to “unfair advantage to a school or harms a school” in subd. 8. and to par. (c) 6. (“harm the customer or impact highway safety”). Should there be a requirement for a written finding relating to violation of these “standards”? In par. (c), does “Discrepancy” apply to any kind of discrepancy or is this intended to refer to, for example, a significant discrepancy? This should be clarified since it is the basis for points being assessed. In subd. 5, “students” should be “a student” and “a” should be inserted before “signed”. In subd. 6, can the department cite specific provisions in these statutes that relate to office location and facility locations? If so, these should be listed.

q. In s. 105.12 (1) (b), substitute “including points assessed by a driver school” for “as well as the driver schools”. In sub. (3), “can” should be “may”.

r. In s. Trans 105.12 (2), the subunits in pars. (b) and (c) do not follow grammatically from an introduction. The material in the subdivisions simply should be combined by removing the subdivision designations.

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

a. Sections Trans 105.01 (4) and 105.06 (11) (b) refer to forms. The requirements of s. 227.14 (3), Stats., should be met.

b. In s. Trans 105.035 (2), the correct citation form is “s. 343.61 or 343.62, Stats.” This should be corrected throughout s. Trans 105.035.

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

a. In s. Trans 105.007 (4), the word “to” should be inserted after the word “applying.”

b. In s. Trans 105.035 (4), in the description of s. 941.30, Stats., the word “Reckless” should be replaced by the word “Recklessly.”

c. Section Trans 105.04 (3) (c) does not follow grammatically from the introduction. This paragraph should be a separate subsection.

d. In s. Trans 105.06 (5) (d), under what basis will the department grant an exception?

e. In s. Trans 105.10, subs. (2) and (5) should be combined.