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# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 22-049

#### 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

The department should examine SECTION 13 of the proposed rule for consistency with statute.

SECTION 13 creates s. Trans 134.04 (2) (dm), which addresses the procedure to be followed when the department receives an objection to an application and then refers that objection to the appropriate standing committees of the Legislature.

Under s. Trans 134.04 (2) (dm), an application is not considered approved unless each standing committee of the Legislature to which the application was referred expressly approves the application. It further provides that an application is denied if the legislative session ends without each such standing committee having approved the application.

Under s. 341.14 (6r) (fm) 1m. d., Stats., express standing committee approvals are required only if a chair timely notifies the department that a committee has scheduled a meeting to review the application. Under the statute, if none of the chairs of the standing committees timely notify the department that a committee has scheduled a meeting to review an application, the application is approved.

In summary, there are situations under current law in which a referred application is approved even if a standing committee does not grant express approval, but s. Trans 134.04 (2) (dm) requires express approval of all referred applications. Furthermore, it is not clear from the statute whether an application must be denied if the legislative session ends without a standing committee having taken any action.

One possible approach that could be taken in SECTION 13 would be to remove the second and third sentences of s. Trans 134.04 (2) (dm). The remaining first sentence would direct the department to follow the required steps set forth in s. 341.14 (6r) (fm), 1m., Stats. Further, to avoid complications that arise if a legislative session ends during a standing committee review period, the department in practice could refrain from referring an application to the Legislature within the

final 14 days of a legislative session and instead refer it at the beginning of the next legislative session.

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

a. In the introductory clause, the grouping of provisions treated should appear in the following order: to repeal; to consolidate, renumber, and amend; to amend; to repeal and recreate; and to create. [s. 1.01 (1) (b), Manual.] In addition, relying on the example appearing in s. 1.01 (1) (c) of the Manual, the use of punctuation and conjunctives could be modified so that the introductory clause reads as follows (but note the additional suggestions in comments 2. e. and 2. f., below):

The Wisconsin Department of Transportation proposes an order to **repeal** ss. Trans 134.03 (1) (b) and (f) and (2) (f), 134.04 (2) (b) and (c), and 134.06 (1) (d) 2. and (2) (b); **to consolidate, renumber, and amend** s. Trans 134.06 (2) (intro.) and (a); to **amend** ss. Trans 134.02 (intro.), 134.03 (2) (a), (b), (c), (d), (e), (g) and (g) (Note), 134.04 (1) (intro.), (2) (a), (e), and (f), and (3) and (3) (Note), 134.05 (2), and 134.06 (4) (d); to **repeal and recreate** s. Trans 134.06 (3) (a) and (a) (Note) and (4) (a) and (c); to **create** ss. Trans 134.02 (3), 134.03 (2) (d) (Note), 134.04 (1) (a) and (b) and (2) (dm) and (dm) (Note), 134.06 (1) (d) 1. (Note) and (4) (a) (Note), relating to authorized special plate groups.

b. In the rule summary's listing of statutes interpreted, the broad reference to chs. 340-349, Stats., should be either removed or narrowed to more precisely identify statutes interpreted by the proposed rule.

c. SECTION 1 of the proposed rule modifies definitions applicable to ch. Trans 134. The department should consider the following two issues regarding these definitions:

- (1) The proposed rule adds a cross-reference to words and phrases defined in s. 341.01, Stats. That statutory section contains two definitions ("former military vehicle" and "owner") that do not appear in current ch. Trans 134 or in ch. Trans 134 as amended by the proposed rule. Is there a reason to cross-reference the s. 341.01, Stats., definitions?
- (2) The proposed rule adds a cross-reference to words and phrases defined in s. 341.14 (6r), Stats. One of those statutory phrases is "authorized special group". That phrase appears in s. 341.14 (6r) (a) 1., Stats., and is defined to mean "a special group enumerated in par. (f) or designated by the department under par. (fm)". Existing s. Trans 134.02 (1) defines "authorized special group" to mean "a special group designated by the department under s. 341.14 (6r) (fm), Stats.". Is there a reason both to add a cross-reference to that definition in proposed s. Trans 134.02 (intro.) and to retain that definition in existing s. Trans 134.02 (1)?

d. The requirement for the department to return an applicant's deposit upon denial of the application is addressed in several places, including ss. Trans 134.03 (2) (a), (d), and (e) and 134.04 (3). The department could consider eliminating some redundancy as well as some inconsistency in language among these provisions. For instance, only one of those provisions addresses whether

the department must credit the relevant appropriation account [s. Trans 134.03 (2) (d)]. In addition, the provisions do not use consistent language with regard to whether the department “returns” or “refunds” a deposit and whether an application is “denied” or “not approved”. The statute requires a “return” if an application is “denied”, so that might provide the best model for the administrative code. [s. 341.14 (6r) (fm) 2. a., Stats.]

e. In SECTION 9 of the proposed rule, the treatment clause should be changed to the following: “Trans 134.04 (1) is renumbered Trans 134.04 (1) (intro.) and amended to read:”. The introductory clause should be modified accordingly.

f. In SECTION 18 of the proposed rule, the designation “(intro.)” should not be added to the newly consolidated sub. (2) of s. Trans 134.06. The introductory clause should be modified accordingly.

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

In SECTION 13 of the proposed rule, references to the plural “objections” should be changed to the singular “objection”. Under the statute, a single objection triggers the legislative passive review period. It might cause confusion if the administrative code was misinterpreted as requiring multiple objections.