

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF TRANSPORTATION OFFICE OF THE SECRETARY

The State of Wisconsin Department of Transportation Proposes an Order to **Repeal** ss. Trans 129.09 (1) (e) and (Note), (g), (2) (f), 129.12 (1), 129.15 (1) (c) 6., 129.19 (2), 129.21 (1) (b); **Renumber and amend** ss. Trans 129.09 (1) (f), 129.10 (1) and (Note), 129.19 (1) **Amend** ss. Trans 129.01 (intro.), (2), and (4), 129.03 (title), (2), 129.05 (intro.) and (2), 129.07 (2) (a), 129.09 (title), (1) (intro.), (a), (b), (d) (intro.), and 3., (2) (b), 129.10 (title), (3) (intro.), (a), and (3) (b), 129.11 (1) (a) and (2), 129.12 (title) and (3), 129.15 (1) (Note), (2) (b) 4., (c) 1., 4., (3) (d), (4) (b) and (Note), (5), and (7), 129.16, 129.17, 129.18, 129.20 (title), (1), (2) (intro.), (3) (intro.), (4) (intro.), and (5) (intro.), 129.21 (1) (intro.), 129.21 (2) (intro.), 129.22; **Repeal and recreate** ss. Trans 129.02 (2), Trans 129.03 (1) (a) and (b), 129.04, 129.08, 129.09 (2) (intro.), (a), and (e), 129.10 (2), (4), and (5), 129.13, 129.21 (3); and to **Create** ss. Trans 129.01 (5), 129.07 (3), 129.09 (2) (g), (4), (5), and (6), 129.10 (3) (am), (c) (Note), Trans 129.10 (6), (7), and (8), 129.11 (1) (c), 129.15 (3) (g), (8), and (Note), 129.21 (4) (Note), and 129.23, relating to motorcycle licensing and courses, and affecting small businesses.

AGENCY REPORT TO LEGISLATURE CLEARINGHOUSE RULE 23-043

I. THE PROPOSED RULE:

The proposed rule revisions and the analysis are attached.

II. REFERENCE TO APPLICABLE FORMS:

No forms are newly required by these rule revisions.

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA are attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

This rulemaking is intended to consolidate and simplify the department's motorcycle instruction program. When the program was first created, ch. 343, subch. VI, Stats., required motorcycle rider schools be licensed by DMV as driving schools and that its instructors be licensed as DMV driving instructors. On top of those licensing requirements, consistent with the motorcycle testing waiver provisions of ss. 343.16 (2) (cm) and 343.32 (4), Stats., motorcycle driving schools and instructors needed to meet additional requirements to qualify courses for skills test waivers or demerit point reduction. Finally, s. 343.66 (1) (b), Stats., as amended by 2005 Wis Act 397, required all driving instructors to meet certain criminal background requirements and required the department to establish criminal background requirements by rule.

To accommodate these varied requirements, ch. Trans 129 evolved to require multiple authorizations and licenses to qualify for the various licenses and authorizations needed to be licensed as a motorcycle instructor or school, or to participate in the demerit point reduction or skills test waiver programs.

This rulemaking is intended to update ch. Trans 129 to reduce the complexity of the program by eliminating separate authorizations for skills test waiver and demerit point reduction programs, and to consolidate all requirements into a single license. The proposed rule would retain the criminal background check requirements for instructors, bring the rule into conformance with the controlling statutory requirements, and reflect changes in curriculum and practices recommended by the Motorcycle Safety Foundation.

V. SUMMARY OF PUBLIC COMMENTS AND THE DEPARTMENT'S RESPONSES, AND EXPLANATION OF ANY RESULTING MODIFICATIONS TO THE PROPOSED RULES:

The State of Wisconsin Department of Transportation held a public hearing on the permanent rule ch. Trans 129 on Friday, January 19, 2024, at 10:30 a.m. at the Wisconsin Department of Transportation, 4822 Madison Yards Way, Room N134; Madison, WI 53705.

Below is a summary of the comments received:

- Support for the proposed rule was expressed by several representatives of ABATE Safe Riders of WI. No changes were recommended.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

1a. 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.

Department response: The Wisconsin Attorney General consented, by letter dated February 19, 2024, to the department's incorporation by reference of the Motorcycle Safety Foundation's *Rider Education and Training System Standards* (2010), which may be located at <https://msf-usa.org/documents/research/msf-standards/>, into the proposed rule. The department amended the rule to incorporate only the 2010 standards, which are available on MSF's website, and which will also be on file at the Wisconsin Legislative Reference Bureau. Any future changes to MSF's standards will not be automatically adopted by the department; rather, such changes would need to be evaluated and adopted through new rulemaking. The department does not have the expertise to independently develop standards for motorcycle training curriculum and facilities. After evaluation of MSF's standards and research methods, the department has determined that incorporation of MSF's 2010 standards by reference is not an improper delegation of authority. Further, recognizing that the Motorcycle Safety Foundation may not always be the primary curriculum provider in this state, and that other jurisdictions may have other common curriculum providers, the department has changed the proposed rule to allow rider education organizations with established standards substantially similar to MSF's 2010 standards, as determined by the department, to also qualify as curriculum providers under the proposed rule. Because the curriculum provider has the appropriate expertise, Section 11 of the proposed rule, basing the validity of a rider education provider's license on the same period as the school's authorization to provide instruction issued by the school's curriculum provider is not an improper delegation of authority, because the curriculum provider is in the best position to determine the length that a school's license should remain valid until reauthorization, and because the department reserves the right to deny, cancel, or suspend licenses prior to expiration.

1b. 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.

Department response: The department has changed the proposed rule to clarify that rider coaches who fail to meet the standards set forth the ch. Trans 129 may be required to participate in training provided by the applicable curriculum provider, and that the time to complete training will be specified by the department. Department staff periodically observe rider training classes to determine compliance with department and curriculum provider standards. Due to the limited resources available to the department's Motorcycle Safety Program, it is not always clear how often these evaluations will take place. Because the amount and type of any required additional training may vary, timeframes for completing any required training shall be determined by the department on a case-by-case basis.

2a. *Throughout the proposed rule, the department should ensure that notes do not contain substantive requirements. [Sees. 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.*

Department response: The department changed Section 20, proposed Trans 129.09 (5), to include a substantive requirement that was in a note. No other notes contain substantive requirements.

2b. *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.*

Department response: The department changed the language in this section to clarify its intent. To obtain a Class "M" privilege, a person is always required to take and successfully complete a motorcycle skills test conducted by the department unless the

person receives a skills test waiver. Successfully taking a skills test conducted by a rider education provider at the conclusion of a rider course qualifies a person for a skills test waiver. If a person fails the skills test at the conclusion of a rider course, then that person can either take a department skills test, or obtain a skills test waiver by receiving additional training as directed by a rider education provider's curriculum provider, and then retaking and successfully completing a skills test conducted by the rider education provider.

2c. *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.*

Department response: The note in section 11 is not necessary, but helpful for grant recipients, so the department opts to leave it in. The obligation to file within 30 days is imposed by s. Trans 129.15 (6).

2d. *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)".*

Department response: The department made the suggested change.

2e. *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?*

Department response: The department has already developed the Wisconsin-specific material, with assistance from rider coach trainers, and incorporates this material in current rider education courses. Testing accommodations for learning disabilities, limited English proficiency, and medical conditions are permissive. Not all rider education providers have the necessary resources to provide such accommodations. Technical schools are typically able to provide such accommodations.

2f. *In s. Trans 129.10 (4) (i), should the department consistently refer to either "3-wheel vehicle" or "3-wheels vehicle"?*

Department response: The department made the suggested change to consistently refer to "3-wheeled vehicles".

4a. *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.*

Department response: The department made the suggested change.

5a. *In SECTION 3 of the proposed rule, the definition of "Basic course for experienced riders" should be revised for grammar.*

Department response: The department made the suggested change.

5b. *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.*

Department response: The department made the suggested change.

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

Department response: The department made the suggested change.

5d. *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.*

Department response: The department made the suggested change.

5e. *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".*

Department response: The department made the suggested change.

5f. *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).*

Department response: Because licensing requirements may change over time, the department has revised this section to require the license applicant to hold all other licenses required by the state in which the applicant is located.

5g. *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.*

Department response: The department made the suggested change.

5h. *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.*

Department response: The department added that sufficient time “as directed by the curriculum provider” shall be dedicated to range instruction. Each student may require different amounts of time dedicated to range instruction, and the curriculum provider has established standards to help the rider coach determine how much time is needed in order for a student to develop the necessary skills.

5i. *There is a typographical error in the treatment clause in SECTION 21 of the proposed rule.*

Department response: The department made the suggested change.

5j. *In SECTION 26 of the proposed rule, would "crash", rather than "accident", better reflect the department's current terminology?*

Department response: The term “accident” is the correct terminology, as it is consistent with language in other state written laws.

5k. *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?*

Department response: The department has replaced “cannabis, opioids, and other drugs that cause impairment” with “intoxicants, controlled substances, and controlled substance analogs as defined in ch. 340, Stats.” The department opts to keep the specific examples of professional conduct in this section, because they put rider coaches on notice as to unacceptable classroom behavior.

5l. *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.*

Department response: The department opts to keep the current proposed language. Applicants who do not meet the background or driver record qualifications are not eligible to be rider coaches and should be excluded. In addition, the department has found that applicants who are not sponsored by a rider education provider more often than not fail to become rider coaches. To make efficient use of limited resources to provide rider coach training, the department has determined that applicants who are not sponsored by a rider education provider should be excluded from consideration.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

The Department did not receive any statement, suggested changes, or other material from the Small Business Regulatory Review Board.

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