

Report From Agency
STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
REPORT FROM AGENCY
CLEARINGHOUSE RULE CR 22-049

In the matter of rulemaking proceedings before the Department of Transportation Wisconsin Administrative Code ch. Trans 134, relating to authorized special plate groups.

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:

Chapter Trans 134 establishes procedures for the designation of authorized special groups and the issuance or discontinuation of issuance of special group plates to members of an authorized special group including application procedures, eligibility determination procedures, license plate reservation, and sale procedures and discontinuance of license plate sale procedures for groups desiring to be designated as an authorized special group. The process for obtaining special group plates under this rule is intended to be used by groups interested in sponsoring an authorized special group license plate. These plates provide recognition for the group. A group may also receive contributions from the collection of annual \$25 donations with the issuance of each plate and each subsequent registration renewal. Groups may choose not to accept donations for the plates.

2015 Wisconsin Act 227 established a new process for groups to apply directly to the Division of Motor Vehicles (DMV) for a special group plate under s. 341.14 (6r) (fm), Stats. Groups must pay a \$15,500 fee for development costs and collect signatures from 500 Wisconsin residents who intend to purchase the special plates. If authorized, the group must maintain 500 valid special plate registrations after 3 years, or DMV will discontinue issuing the plates and stickers associated with the plates. This rulemaking

describes the manner in which DMV will administer the plate and sticker discontinuance consistent with statutory requirements

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

A public hearing was held in-person on June 29, 2022 at 4822 Madison Yards Way, Room N134, Madison, WI 53705 at 9:30 a.m. Comments could be submitted at the hearing, by postal mail, or by email to DOTAdminRules@dot.wi.gov. The published deadline for submission of comments was 4:30 p.m. on June 29, 2022. No public comments were received, and no members of the public attended the hearing.

VI. CHANGES TO RULE ANALYSIS AND FISCAL ESTIMATE:

No changes to the Fiscal Estimate and Economic Impact analysis were made.

The Rule analysis was updated to reflect changes made in response to the Legislative Council Rule Clearinghouse Report, as described below.

VII. RESPONSE TO LEGISLATIVE COUNCIL STAFF COMMENTS:

Comment 1.

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.

Agency response: The department amended the rule language, now found in Section 16, to match the statute more closely at the suggestion of the Rules Clearinghouse.

Comment 2a.

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.*

Agency response: The department amended the introductory clause consistent with the suggestions of the Rules Clearinghouse.

Comment 2b.

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.

Agency response: The department amended the listing of statutes interpreted to read “ss. 340.01, s. 341.14 (6r) (fm), and 341.145, Stats.” Section 340.01, Stats., designates the words and phrases used in ch. Trans 134. Section s. 341.14 (6r) (fm), Stats., establishes the purpose of the special plates program. Section 341.145, Stats., grants the department authority to carry out the special plates program.

Comment 2c.

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)?

Agency response: (1) This administrative rule construes ss. 341.14 and 341.145, Stats. Any change to the definitions in s. 341.01, Stats., may impact the meaning of the words and phrases used in those two statutes and consequently will need to be reflected in this rule. Although the words and phrases currently defined in s. 341.01, Stats., are not used in this rulemaking, including that statute in s. Trans 134.02 (intro.) ensures that the meaning of words in ch. Trans 134 and ss. 341.14 and 341.145, Stats., remain consistent, even if any meaning of terms in those statutes is changed by amendment of s. 341.01 in the future.

(2) The department removed the definition in s. Trans 134.02 (1) consistent with the suggestion of the Rules Clearinghouse. A note cross referencing s. 341.14 (6r) (a) 1., Stats., is created for the reader’s convenience in s. Trans 134.02 (Note).

Comment 2d.

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.]

Agency response: Section Trans 134.03 (2) as written in the pre-hearing draft dealt with multiple scenarios that the department encounters. Section Trans 134.03 (2) (a) required that the applicant deposit the statutory \$15,500 by check. If the application was incomplete or otherwise not acceptable, the application and check were returned to the applicant. If the application was accepted for further review, then for accounting security purposes, the check would be deposited in the general fund and monies would be debited to the appropriation in s. 20.395 (5) (cj), Stats. At that point, the check would no longer be available to return to the applicant. If the application was subsequently not approved, because either the department denied the application or the application was withdrawn before a decision was made, then the department would refund the deposit to return the monies to the applicant. The term “return” was used when the payment instrument would be physically returned, and the monies had not been withdrawn

from the applicant's bank. In contrast, "refund" was used when the monies had been deposited in the general fund for safekeeping and would be returned to the applicant.

In response to the Rules Clearinghouse's comments, the department redrafted the provision to provide more flexibility in the future to accommodate potential process improvements with regard to handling the deposit, and providing that the deposit may be returned or refunded. The requirement that the initial fee be deposited by check is amended to reflect that payment is made to the department by check and to allow for alternative payment mechanisms if they are approved by the department in the future.

Comment 2e.

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.

Agency response: The department amended the treatment clause and introductory clause consistent with the suggestion of the Rules Clearinghouse.

Comment 2f.

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.

Agency response: The department amended the designation and introductory clause consistent with the suggestion of the Rules Clearinghouse.

Comment 3.

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.

Agency response: The department altered the language of this provision at the suggestion of the Rules Clearinghouse to clarify that any objection will trigger a report.

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

The Department has not received a report from the Small Business Regulatory Review Board.