

1997-98 SESSION
COMMITTEE HEARING
RECORDS

Committee Name:

*Joint Committee for
Review of
Administrative Rules
(JCR-AR)*

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR_RCP_pt01a
- 97hrAC-EdR_RCP_pt01b
- 97hrAC-EdR_RCP_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤ 97hr_JCR-AR_ES_pt03b

➤ Hearing Records ... HR

➤

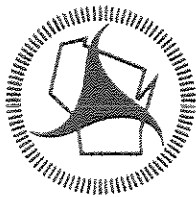
➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

— March 20, 1997 Executive Session —



FEB 20 1997

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

February 19, 1997

The Honorable Richard Grobschmidt
Senate Chairman
Joint Committee for Review
of Administrative Rules
100 North Hamilton, Room 404
Madison, Wisconsin 53707

The Honorable Glenn S. Grothman
Assembly Chairman
Joint Committee for Review
of Administrative Rules
Room 125 West, State Capitol
Madison, Wisconsin 53707

RE: **EMERGENCY RULE EXTENSION**

Gentlemen:

I am writing to request an extension for the Wisconsin Department of Transportation's emergency administrative rule ch. Trans 76, pursuant to § 227.24(2), Stats., and per your January 25, 1996 letter. The information you request is as follows:

Emergency Rule Expiration Date: **March 24, 1997**

Number of Days Extension Requested: **Sixty (60)**

Administrative Rule Number: **TRANS 76**

Relating Clause: **General Transportation Aids**

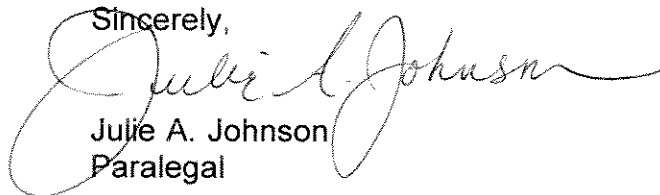
Status of Permanent Rule: The Final Draft of the permanent administrative rule Trans 76 was submitted for legislative committee review on January 7, 1997, and referred to both the Assembly and Senate Transportation committees on January 23, 1997 and January 15, 1997, respectively. Senator Plache posted notice, pursuant to § 227.19(4)(b)1.b., Stats., that the Senate Transportation Committee would hold a hearing on February 18, 1997 to review the proposed rule. This extends the review period another 30 days, thereby expiring on March 13, 1997. On February 19, 1997, the Senate Transportation Committee adopted the following motion:

"The Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s. 227.19(4)(b)2., Stats., recommends that the Department of Transportation modify Clearinghouse Rule 96-179. If the Department of Transportation has not expressed its agreement to modify the rule in written correspondence delivered to the office of the Chairperson of the Senate Committee no later than 5:00 p.m., Monday, February 24, 1997, the Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s. 227.19(4)(d) 1., 3. and 4., Stats., objects to Clearinghouse Rule 96-179 in its entirety."

The extension is necessary due to the lapse between its expiration date and the possible effective date of the permanent rule which, under any circumstances, would not be earlier than June 1, 1997. In particular, sec. 86.30(2)(e), Stats., requires four equal transportation aids payments to be made on the first Monday in January, April, July and October, 1997. The first payments were already made in January based on the emergency rule. The next payment on April 7, 1997 could not be made on the same equal basis if the emergency rule is allowed to expire. Therefore, the Department formally requests its first extension of sixty (60) days for the emergency rule until the permanent rule becomes effective or enabling legislation is enacted. If necessary, a second extension request will be submitted in May for the additional time needed to cover the next equal payment on July 7, 1997. I am enclosing a copy of the emergency rule. Under any circumstances, a permanent rule or enabling legislation will need to be in effect to allow the final equal payment to be made on October 6, 1997.

Please consider this request at your March meeting. A Department representative will attend the meeting. Please contact me at 267-3703 to confirm your schedule. Thank you for your cooperation.

Sincerely,



Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gene Kussart
Dorothy Kapke
Jim McDonnell
Jim Van Sistine
Marcia Traska
Ron Sklansky
Senator Plache
Representative Brandemuehl
Representative Ourada

Order of the Wisconsin Department of Transportation Adopting an Emergency Rule to repeal and recreate ch. Trans 76, relating to general transportation aids.

**ORDER ADOPTING
EMERGENCY RULE**

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: s. 85.16, Stats.

STATUTE INTERPRETED: s. 86.303(5)(f)(intro.) and (i)(intro.), Stats.

General Summary of Emergency Rule. The General Transportation Aids (GTA) Program is a program provided to defray a portion of the costs incurred with constructing and maintaining roads under local jurisdiction. The GTA program is a reimbursement program based on each local government's spending patterns. GTA funds are distributed to all Wisconsin counties and municipalities in amounts determined using a formula which is based on local "eligible costs." Generally, all road or street construction and maintenance expenditures within the right of way are considered eligible costs. A percentage of other expenditures are also considered eligible costs, including law enforcement, street lighting maintenance and construction, and storm sewer construction.

The share of cost rate is determined by the available funding and the six-year average costs reported by each county and municipality. Distribution of GTA payments to local governments are computed and paid on a calendar year basis. Quarterly payments are made on the first Monday of January, April, July and October. The Department obtains cost data from Financial Reports which all local units of government must file annually with the Department of Revenue. The reports are based upon calendar year expenditures and revenues and are submitted each spring and summer.

Late filing of Financial Report forms will result in a reduction of the local government's GTA received in 1996. Failure to submit the Financial Report with the Department of Revenue by the deadline will result in a reduction in GTA payments the following year. The reduction will be equal to 1% for each day late, to a maximum of 10%, as provided in s. 86.303(5)(f) and (i), Stats.

As provided in s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., the Department proposes this rule making to administratively interpret the phrase "each day" to exclude Saturday, Sundays and legal holidays. The Department's long-standing and consistent interpretation of the phrases "within 30 days" and "each day" has been calendar days. The Department has concluded that it would be fairer and more reasonable to continue to interpret the phrase "within 30 days" as calendar days, but to exclude Saturdays, Sundays and legal holidays from the interpretation of the phrase "each day" for the purposes of the one percent reduction for each day that the report is late. The reason

for this revised interpretation is that the 10% penalty cap can still be reached within 30 calendar days. Using this interpretation, timely reports and calculations will still be available for state and local budgeting and planning purposes.

Fiscal Impact. Four local governments will be affected for 1997 GTA payments. These four local governments will receive a total of \$18,061.93 more based on less days of penalties. This does slightly affect the distribution of funds, but not the appropriation amounts.

Initial Regulatory Flexibility Analysis. This proposed rule will have no adverse impact on small businesses.

Copies of Emergency Rule and Contact Person. Copies of this emergency rule are available without cost upon request by writing to the Department's Office of General Counsel, P. O. Box 7910, Room 115-B, Madison, WI 53707-7910, or by calling (608) 267-3703. Alternate formats of the proposed rule will be provided to individuals at their request. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396.

TEXT OF EMERGENCY RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.16, Stats., the department of transportation hereby repeals and recreates ch. Trans 76, Wisconsin Administrative Code, interpreting s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., relating to general transportation aids.

SECTION 1. Chapter Trans 76 is repealed and recreated to read:

GENERAL TRANSPORTATION AIDS

Trans 76.01 PURPOSE. The purpose of this chapter is to establish the department's administrative interpretation of s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., relating to the uniform cost reporting procedure.

Trans 76.02 DEFINITION. In this chapter:

(1) "Department" means the department of transportation.

(2) "Work day" means any day except Saturday, Sunday and holidays designated in s. 230.35(4)(a), Stats.

NOTE: This definition has the same meaning as provided in s. 227.01(14), Stats.

Trans 76.03 PENALTIES. In accordance with the statutory direction of s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., the department shall impose penalties upon those counties or municipalities, or both, who file their financial report forms within 30 calendar days after the applicable date under s. 86.303(5)(c) or (d), and (g), Stats., respectively. Penalties shall be calculated based on each work day after the date required that the report form is actually postmarked or submitted.


(END OF RULE TEXT)

FINDING OF EMERGENCY

The Department of Transportation finds that an emergency exists for the following reason: In Schoolway Transp. Co. v. Division of Motor Vehicles, 72 Wis. 2d 223 (1976), a changed interpretation of a statute was held to be a rule. The interpretation is being administered as law and the Department will rely upon it to make aids payments. This interpretation is in direct contrast to the manner in which the statute was previously administered by the Department. Therefore, the Department must promulgate the changed interpretation as a rule or it is invalid. In order to make the change in time to implement it for aids estimates and payment purposes, the Department must promulgate this as an emergency rule.

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 17 day of October, 1996.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

The Honorable Fred Risser
President, Wisconsin State Senate
Room 102
119 MLK Jr. Blvd.
Madison, Wisconsin 53707

February 20, 1997

The Honorable Ben Brancel
Speaker, Wisconsin State Assembly
Room 211 West, State Capitol
Madison, Wisconsin 53707

FEB 21 1997

RE: Proposed Administrative Rule **TRANS 117**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 96-168

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **96-168**, relating to **occupational driver's license**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,


Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Gary Poulson (Deputy Revisor of Statutes)/Senator Richard Grobschmidt/
Representative Glenn Grothman/Gene Kussart/Roger Cross/Gary Wentz/
Wes Geringer

CR 96-168

The Wisconsin Department of Transportation proposes an order to repeal TRANS 117.04, 117.06 and 117.07(3); renumber TRANS 117.02(2)(a), (am) and (c); renumber and amend TRANS 117.02(2)(b) and (d), 117.05(4) and 117.07(4); amend TRANS 117.01(1) and (2), 117.05(2) and (note), 117.07(title), (1) and (2), 117.08(1)(b) and (c) and (5), 117.09(1), (2)(a) to (c), (3)(a) and (f); repeal and recreate TRANS 117.03(2) and 117.05(3); and create TRANS 117.02(2)(a) and (e), 117.025, 117.03(1)(title) and (3) to (5), 117.05(1)(d) and (e), (4)(a) to (k) and (5), and 117.07(3)(b), relating to occupational driver's license.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

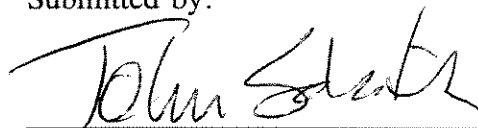
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



JOHN J. SOBOTIK
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 266-8810

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: 343.10, 343.02, Stats.

STATUTES INTERPRETED: 343.10, 343.06, 343.38, 351.025, Stats.

General Summary of Proposed Rule. 1995 Wisconsin Act 269 rewrote the statute governing issuance of occupational driver licenses in Wisconsin. Under prior law, drivers who lost their operating privileges could petition any municipal or circuit judge in the state and request an occupational license. In many instances, the day-to-day task of reviewing applications and issuing licenses was being performed by court staff. 1995 Wis. Act 269 vested responsibility for reviewing applications and issuing licenses in the Department of Transportation instead of judges.

This proposed rule making provides the Department's administrative interpretation of the newly revised statute. In addition, this rule making ties together many of the other laws and regulations affecting driver licensing to present one coherent source of information on the issuance of occupational licenses.

There are two primary sections to this rule making: proposed s. Trans 117.025, which lays out the occupational licensing process, and s. Trans 117.03, which describes the manner in which the Department will decide whether to issue an occupational license and what restrictions will be placed on the license. The proposed amendments to s. Trans 117.03 also clarify which prohibitions or restrictions of occupational licensing may be waived by a court in conducting a review under s. 343.10(4), Stats.

To obtain an occupational license, a person makes an application to the Department at any DMV service center (except the "express service facilities" that are not equipped to handle any matters other than driver license and registration renewals). The application includes a petition for occupational license, proof of financial responsibility for the future, and the original or a certified copy of any required court order for issuance of the license.

The DMV service center will accept the application and conduct an on-the-spot initial screening of the application. If the center detects no obvious defect in the application or reason the person would be ineligible for an occupational license, it will issue the person a 15 day temporary driving receipt and ask the person to return to the DMV service center on the next working day (or, if the center is a "travelling site," the next time the travel team returns to the location.) The application will then be forwarded to the Division of Motor Vehicles Compliance and Restoration Section for formal review.

The Compliance and Restoration Section will carefully review the application for occupational license and make an initial determination regarding the person's eligibility for occupational licensing and what restrictions should be placed on the license. If the person is ineligible for licensing, it will notify the driver by mail that the application was denied and the reasons for denial. If the person is eligible for licensing, the unit will advise the DMV service center to issue the person an occupational license and will set the restrictions to be placed on the license.

A person whose application for occupational license is denied may appeal the decision to deny the license, or the decision to impose certain restrictions on the license, to the circuit court in the county where the person resides. Section 343.10, Stats., requires the driver to provide the court with a copy of his or her driver record. WISDOT will encourage courts to adopt local rules also requiring the driver to provide a copy of DMV's denial letter to the court so that the court can see what prompted DMV's license denial.

The court can review the Department's decision de novo and grant or deny the person an occupational license or change any discretionary restrictions imposed on the licensee by DMV. The court can change any of the discretionary decisions made by the Department in issuing the license. As was the case under prior law, the court may not overstep its statutory powers and order issuance of a license or waiver of a restriction where license denial or imposition of the restriction are mandatory. Upon completion of its review, the person may return to DMV and reapply for an occupational license. The Department will issue the license subject to any restrictions imposed by the court. As was the case under the prior law, the Department will not issue the license if the person is statutorily prohibited from being licensed, and will impose any statutorily required restrictions. If the person paid the \$40 fee to the clerk of courts for hearing the appeal, the department will not charge a second \$40 fee upon license issuance.

Proposed s. Trans 117.03(1) lays out the mandatory qualifications for occupational licensing:

- Wisconsin residency;
- A revoked or suspended license;
- Proof of financial responsibility;
- A completed application;
- Surrender of old licenses;
- Proof of installation of any required ignition interlock device (repeat drunk drivers only);
- Proof of completion of alcohol assessment (repeat drunk drivers only);
- Valid license status in other states (if the person is moving to Wisconsin);
- Having passed their driving tests (primarily new drivers);
- Not being convicted of certain sexual offenses;
- Meeting all physical health requirements;
- Not being revoked more than once in the preceding year; and
- Not having "judge shopped" to more than one circuit court.

All of these mandatory requirements are taken from various statutory provisions within Ch. 343, Stats., and are reiterated in this proposed rule making for clarity.

Proposed s. Trans 117.03(2) details the restrictions which are required for occupational licensing under the statutes:

- The license can't grant any privileges the driver didn't have before his/her license was suspended or revoked;

- The license can't authorize operation of commercial motor vehicles if the driver is disqualified;
- An absolute sobriety requirement if the driver has 2 or more alcohol related convictions;
- The license can't authorize operation of any vehicle for which the person hasn't posted proof of financial responsibility; and
- The license can't authorize operation of a school bus.

Section 343.10, Stats., leaves a number of discretionary decisions in the Department's hands, subject to judicial review. Discretionary determinations to be made by the Department in deciding whether to issue an occupational license to a person include:

- Whether operating a motor vehicle is essential to the driver's livelihood; and
- The number and seriousness of prior offenses.

The Department will rely on drivers' affirmations that they need licenses for their livelihood. In considering the number and seriousness of prior offenses, the Department proposes to preliminarily deny occupational licenses to two types of drivers: those with 24 or more demerit points in the preceding year and those with 3 or more alcohol offenses in a 5 year period.

Drivers in either class will need to apply to a circuit court for license. The Department expects that approximately 1 in 500 occupational license applicants will receive a preliminary denial based on points (44 people statewide per year). The number of drivers with 3 or more alcohol offenses in a 5-year period who will apply for occupational licenses is not known. With both groups of drivers, the Department believes a case-by-case review by a judge of the driver's request for an occupational license is appropriate.

The Department also has discretion regarding whether to impose certain restrictions on a driver. These restrictions include:

- Limitations on the hours or routes of travel to be authorized under the license;
- Whether to impose restrictions on the use of alcohol or controlled substances; and
- Whether to require an ignition interlock as a condition of licensing.

Under this proposed rule, the Department will decide the reasonableness of hours and routes of travel on a case by case basis. The Department will impose an ignition interlock device requirement in instances where courts order or suggest installation of the device or when a driver is required to install the device on a vehicle following a conviction for operating while intoxicated. The Department will restrict the use of alcohol or controlled substances under the proposed rule for drivers convicted of 2 or more alcohol offenses as required by statute.

Any discretionary decision made by the Department may be reviewed by a circuit court upon the driver's request. The Department will implement the court's determinations on these discretionary matters.

This proposed rule making does not affect the Department's longstanding practice of permitting emergency service providers extended operating authority in bona fide emergencies. Clarification is made, however, veterinarians that provide specialized emergency services may qualify for the emergency service provider endorsement.

Fiscal Effect. The fiscal effect of this rule making derives from that of 1995 Wis. Act 269. The Department has issued approximately 22,000 occupational licenses over the past few years and expects to issue approximately the same number in the coming year. This will result in an increase to state revenues of approximately \$440,000 as monies that were paid to courts are directed to the Department.

The Department expects to incur one-time data processing costs of at least \$21,000, and forms development, revision and distribution costs of \$5,000. The Department expects a workload increase of at least 1.2 FTEs at a cost of approximately \$37,500 and ongoing forms costs of approximately \$2,000 annually. {See attached fiscal estimate.}

Preparation and Copies of Proposed Rule. Preparation of this proposed rule was done by Richard Kleist of the Division of Motor Vehicles. Copies of the proposed rule may be obtained upon request, without cost, by writing to Richard Kleist, Department of Transportation, Bureau of Driver Services, Room 301, P. O. Box 7920, Madison, WI 53707-7920, or by calling (608) 266-2261. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. Alternate formats of the proposed rule will be provided to individuals at their request.

PART 2 **TEXT OF PROPOSED RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by s. 343.02, Stats., the department of transportation hereby proposes an order to amend a rule interpreting s. 343.10, 343.06, 343.38, and 351.025, Stats., relating to occupational driver's license.

SECTION 1. Trans 117.01(1) and (2) are amended to read:

Trans 117.01(1) The purpose of this ~~rule~~ chapter is to administratively interpret ss. ~~161.50, 343.10, 343.20, and 351.07~~ and 961.50, Stats., and the interaction of these statutory provisions with the general licensing requirements of ch. 343, Stats. ~~The rule supplements~~ This chapter establishes the ~~statutory~~ procedure for obtaining an ~~order authorizing the issuance of an~~ occupational license ~~and for applying for the issuance of an occupational license.~~ It establishes

department policy regarding the granting issuance of ~~CDL-occupational license petitions~~
occupational licenses.

(2) This chapter applies to any person petitioning a court ~~or the department~~ for an review
of a department order authorizing or denying the issuance of an occupational license and to all
persons applying to the department or a court for the issuance of an occupational license.

Note: Procedure and eligibility requirements for occupational licenses are set forth in ss.
343.10 and 351.07, Stats.

SECTION 2. Trans 117.02(2)(a) and (am) are renumbered 117.02(2)(b) and (c).

SECTION 3. Trans 117.02(2)(a) is created to read:

Trans 117.02(a) "Alcohol offense" means a suspension, revocation or conviction that may
be counted under s. 343.307(1), Stats. Multiple suspensions, revocations or convictions arising
out of the same incident or arrest shall be counted as one alcohol offense.

SECTION 4. Trans 117.02(2)(b) is renumbered 117.02(2)(d) and amended to read:

Trans 117.02(2)(d) "CDL-occupational license" means an occupational license that bears
a notation authorizing the operation of class A, B or C commercial motor vehicles. A CDL-
occupational license may also authorize the operation of class D or class M motor vehicles, or
both.

SECTION 5. Trans 117.02(2)(c) is renumbered 117.02(2)(f).

SECTION 6. Trans 117.02(2)(d) is renumbered 117.02(2)(g) and amended to read:

Trans 117.02(g) "Occupational license" means a an operator's license issued under s.
343.10, Stats.

SECTION 7. Trans 117.02(2)(e) is created to read:

Trans 117.02(2)(e) "DMV service center" means a division of motor vehicles service
center.

SECTION 8. Trans 117.025 is created to read:

Trans 117.025 PROCESS. (1) A person whose license is revoked as a habitual traffic offender under ch. 351, Stats., shall petition a circuit court in the person's county of residence for an order authorizing the person to obtain an occupational license before applying for the license with the department.

(2) A person may apply to the department for an occupational license by submitting an application meeting the requirements of s. Trans 117.05 to any DMV service center, except an express service facility.

(3) The department shall accept the application for an occupational license and may issue a temporary driving receipt to an applicant if it appears to the DMV service center that the person is eligible for an occupational license. The temporary driving receipt shall be valid only until the earliest of the following:

- (a) The date the department issues a photo occupational license to the person.
- (b) The date the department preliminarily denies the person an occupational license.
- (c) 15 days following issuance of the driving receipt.

(4) Following acceptance of the application, the department shall conduct a review of the application to determine eligibility for occupational licensing. After completion of the review, the department shall issue an occupational license to the driver or issue a letter constituting a preliminary denial of occupational license to the driver. A letter of denial shall state the specific reasons for the denial. The applicant may be required to return to a DMV service center, except an express service facility, so that a photo occupational license may be issued.

Note: s. 343.10(3)(b), Stats.

(5) A person may seek review of a preliminary denial of an occupational license by filing a petition for occupational license with a circuit court in the person's county of residence in the manner provided in s. 343.10(4), Stats.

(6) The court shall consider the number and seriousness of prior traffic convictions in determining whether to grant or deny the petition. The court may, in conducting its review, order modification or changes to any prohibitions or restrictions ordered to be imposed on the person under s. Trans 117.03(4) or (5).

(7) If a petition is denied by the court, the department may not issue an occupational license to the person, unless the petition was denied solely because of the person's failure to meet one or more of the criteria of s. Trans 117.03(2), the person has taken action to meet each of those criteria, and the person meets each of those criteria.

Note: For example, a driver whose petition is denied by a court solely for failure to provide proof of financial responsibility for the future would be eligible for licensing upon filing proper proof of financial responsibility for the future, notwithstanding the court's order.

(8) If a petition is granted by the court, the department shall receive the court's order and treat it and the applicant's petition to the court as an application for occupational license. The department shall issue an occupational license to the person, subject to any restrictions ordered by the court, unless issuance of an occupational license to the person is prohibited under s. Trans 117.03(2). If the person is ineligible for a CDL-occupational license but is eligible for a class D or M license, the department may issue a class D or M license to the person, but may not authorize privileges to operate class A, B or C vehicles on the license.

(9) A decision by the department to deny issuance of an occupational license or to deny licensing for certain classes of vehicles based on the criteria in s. Trans 117.03(2) or (3) following circuit court review under s. 343.10(4), Stats., is subject to judicial review in the manner provided in s. 343.40, Stats.

SECTION 9. Trans 117.03(1)(title) is created to read:

Trans 117.03(1)(title) GENERAL.

SECTION 10. Trans 117.03(2) is repealed and recreated to read:

Trans 117.03(2) MANDATORY REQUIREMENTS. The department may not issue an occupational license unless all of the following criteria are met:

(a) The person is a resident of the state of Wisconsin.

Note: s. 343.06(1)(k), Stats.

(b) The person's license is suspended or revoked.

Note: Drivers with cancelled or disqualified licenses are not eligible for occupational licensing.
s. 343.10(1)(a), Stats.

(c) The person has filed proof of financial responsibility for the future covering all vehicles the person seeks permission to operate.

Note: s. 343.10(2)(a)2., Stats.

(d) The person has submitted an application containing all materials and information required under s. Trans 117.05.

(e) The person surrenders all licenses or certifies that all prior licenses are lost.

Note: s. 343.10(2)(a)3., Stats.

(f) The person has installed any ignition interlock devices the person has been ordered to install as a condition of an occupational license or pursuant to a court order under s. 346.65(6), Stats.

(g) The person has completed assessment and is in compliance with the driver safety plan required by the assessment if the person has 2 or more prior alcohol offenses. For purposes of this paragraph, a person shall be presumed to be in compliance with the driver safety plan if the department has not received a report of non-compliance or license denial from the assessment agency or traffic safety school.

Note: s. 343.10(2)(e), Stats.

(h) The person has reinstated all operating privileges in all other states in which the person's operating privilege or license was suspended or revoked if the occupational license will be the first license issued to the person after moving to this state.

Note: s. 343.38(4), Stats.

(i) The person successfully passes any required examinations.

Note: s. 343.06(1)(f), Stats.

(j) The person is not prohibited from holding an operator's license as a result of conviction for a sex-related offense under s. 343.06(1)(i) or 343.30(2d), Stats.

(k) The person has not filed more than one petition with a circuit court for an occupational license since the last date on which the department issued a basic, commercial or occupational license to the person.

Note: s. 343.10(4)(c), Stats.

(L) If the person applies for a CDL occupational license, one of the following conditions is met:

1. The person presents a valid federal medical card meeting the requirements of 49 CFR part 391.

2. The person provides evidence that the person is engaged in an occupation that is exempt from the requirement of obtaining a federal medical card as a condition of licensing under 49 CFR 390.3(f).

3. The person meets state medical standards for issuance of a CDL license under ch. Trans 112 and was issued a CDL license prior to July 29, 1996, which has not been revoked subsequent to that date.

Note: See ss. Trans 327.09(2)(b), Trans 117.03(3)(h),(i), and Trans 112.03(2).

(m) The person's operating privilege has not been suspended or revoked more than once during the one year period preceding application. For purposes of this paragraph, multiple suspensions or revocations arising out of the same incident or occurrence shall count as one suspension or revocation.

Note: s. 343.10(2)(a)1., Stats.

SECTION 11. Trans 117.03(3) to (5) are created to read:

Trans 117.03(3) **MANDATORY RESTRICTIONS.** Occupational licenses shall be restricted as follows:

(a) No occupational license may include a notation authorizing operation of a class of vehicle if the person's license, prior to suspension or revocation, did not bear a notation for that class of vehicle.

Note: s. 343.10(2)(b), Stats.

(b) No occupational license may include an endorsement if the person's license prior to suspension or revocation did not properly bear the endorsement.

Note: s. 343.10(2)(b), Stats.

(c) No occupational license may authorize the operation of commercial motor vehicles if the driver is disqualified.

Note: s. 343.06(2), Stats.

(d) An occupational license shall prohibit a person from operating a motor vehicle with an alcohol concentration of more than 0.0% if the person's driver record contains 2 or more alcohol offenses.

Note: s. 343.10(5)(a)2., Stats.

(e) No occupational license may permit the operation of a motor vehicle for which the person has not provided proof of financial responsibility for the future.

Note: s. 343.10(2)(a)2., Stats.

(f) No occupational license may authorize the operation of a school bus.

(g) No occupational license may authorize operation of a motor vehicle for any purpose other than an occupation or trade, including homemaking, full-time or part-time study, church attendance, or travel necessary to comply with a driver safety plan.

(h) The CDL occupational license of a person who claims an exemption from the requirement of presenting a federal medical card under s. Trans 117.03(2)(L)2 shall be restricted to operation that is exempt from federal motor carrier safety regulations under 49 CFR 390.3(f).

(i) The CDL occupational license of a person who claims to be grandfathered from the requirement of presenting a federal medical card under s. Trans 117.03(2)(L)3 shall be restricted to prohibit operation in interstate commerce.

(4) DISCRETIONARY PROHIBITIONS. The department may not issue an occupational license to any person who does any of the following:

(a) Accumulates 24 or more demerit points in the one year period preceding application.

(b) Accumulates 3 or more alcohol offenses on the person's driver record that were committed in the 5 year period preceding application.

Note: Section 343.10(3)(a), Stats., requires the Department to consider the number and seriousness of offenses in determining whether to issue an occupational license. Circuit courts may order issuance of occupational licenses to drivers whose applications are rejected by the Department under this provision. See s. Trans 117.025(6).

(5) DISCRETIONARY RESTRICTIONS. The department may restrict occupational licenses as follows:

(a) The department shall require installation of an ignition interlock device as a condition of an occupational license for a person in any of the following instances:

1. The person is convicted of an offense for which an ignition interlock is ordered to be imposed on the person's vehicle under s. 346.65(6), Stats.

2. A court orders or recommends the person's operating privilege be restricted to vehicles equipped with an ignition interlock device.

Note: Section 343.10(5)(a)3., Stats., permits the Department to require ignition interlock devices of drivers who have 2 or more prior alcohol offenses. This provision provides that the Department will impose the restriction whenever courts order or recommend it. This discretionary decision may be reviewed on a de novo basis by a circuit court following a petition by the driver. See s. Trans 117.025(6).

(b) An occupational license may be restricted to operation at those certain times of the day or in those certain areas which are necessary for the person to engage in the person's occupation, including homemaking, full-time or part-time study, participation in a driver safety plan ordered under s. 343.30(1q), Stats., or church attendance.

Note: s. 343.10(5)(a), Stats.

SECTION 12. Trans 117.04 is repealed.

SECTION 13. Trans 117.05(1)(d) and (e) are created to read:

Trans 117.05(1)(d) A completed application for occupational license form.

(e) Proof of financial responsibility for the future which shall specify the vehicle or vehicles the person seeks authority to operate.

SECTION 14. Trans 117.05(2) is amended to read:

Trans 117.05(2) The application for a ~~CDL occupational~~ an occupational license of a person whose license is revoked under s. 351.025, Stats., shall include the original or a certified copy of the court order authorizing the issuance of a ~~basic~~ an occupational license to the person and a ~~petition for a CDL occupational license~~.

SECTION 15. Trans 117.05(3) is repealed and recreated to read:

Trans 117.05(3) An application for occupational license submitted following circuit court review of a preliminary denial of occupational license shall include a copy of all findings and orders issued by the reviewing court.

SECTION 16. Trans 117.05(4) is renumbered Trans 117.05(4)(intro.) and amended to read:

Trans 117.05(4)(intro.) All applications, conviction status reports and petitions for occupational license submitted in applying for an occupational license shall be on department forms and shall include all requested information. The completed occupational license application form shall include all of the following information:

SECTION 17. Trans 117.05(4)(a) to (j) and (5) are created to read:

Trans 117.05(4)(a) The person's full name, birth date, driver license number, address, telephone number, if any, and social security number, except as provided in s. Trans 102.15(5)(b) and (c).

(b) The area in which the person seeks authority to operate designated by county or state.

(c) An indication of whether the person seeks authorization to operate for purposes of work, church, homemaker duties, compliance with a driver safety plan, or full-time or part-time study.

(d) An indication of whether the person seeks 24-hour authorization to operate a commercial motor vehicle under s. Trans 117.09(3).

(e) An indication of whether the person seeks emergency service operator privileges under s. Trans 117.09(2).

(f) A description of the person's occupation and the name of the person's employer.

(g) Specification of the hours of operation requested by the driver.

(h) An affirmation by the person that operating a motor vehicle at the times and locations specified in the application is essential to the person's livelihood and necessary to fulfill the duties of the person's occupation.

(i) The person's signature in the format first name, middle name or initial, last name.

(j) Any other requested information.

(5) An application for occupational license submitted by a person who has been ordered to install an ignition interlock device as part of a criminal sentence under s. 346.65(6), Stats., shall include a copy of the order and proof of installation.

SECTION 18. Trans 117.05(note) is amended to read:

Note: Forms MV3001, Application for License, and MV3027, Application/Petition and Order for Occupational Operator License, is are available at motor vehicle service centers. ~~Form MV3435, Conviction Status Report, is issued to eligible drivers by clerks of court. Form MV3027, Petition, Order of Issuance and Temporary Occupational License, is available both at motor vehicle service centers and from clerks of court.~~

SECTION 19. Trans 117.06 is repealed.

SECTION 20. Trans 117.07(title), (1) and (2) are amended to read:

Trans 117.07 (title) APPLICATIONS TO AMEND OR REINSTATE OCCUPATIONAL LICENSES. (1) ~~A petition~~ An application to amend an occupational license or to reinstate a revoked occupational license shall be made in the same manner as an original ~~petition~~ application for an occupational license.

(2) ~~A petition~~ An application seeking to amend an occupational license issued pursuant to an order entered by a court on or after November 1, 1996, shall be presented to and approved or denied by the court which originally ordered issuance of the occupational license, ~~or, if the driver has changed his or her place of residence to a location outside the jurisdiction of the original court, by a court in the person's county of residence.~~

SECTION 21. Trans 117.07(3) is repealed.

SECTION 22. Trans 117.07(4) is renumbered 117.07(3) and amended to read:

Trans 117.07(3) A person applying to reinstate or amend an occupational license shall pay the fee specified in s. 343.10(6), Stats. Fees collected under this subsection shall be distributed in accordance with s. 343.10(6), Stats. No fee shall ~~may~~ be ~~paid~~ required if the application is to amend the license ~~and the application seeks~~ is made only ~~to~~ for any of the following reasons:

(a) To correct a clerical error made by the court or the department in the issuance of the occupational license. ~~Fees collected under this subsection shall be distributed in accordance with s. 343.10(6), Stats.~~

SECTION 23. Trans 117.07(3)(b) is created to read:

Trans 117.07(3)(b) To specify the hours of operation necessary for complying with a driver safety plan if no hours are specified for that purpose on the occupational license previously issued to the person.

SECTION 24. Trans 117.08(1)(b) and (c), and (5) are amended to read:

Trans 117.08(1)(b) One year and 2 working days from the date of revocation if the person's license is revoked under s. 344.14, Stats., and notice of the commencement of a civil action has not been filed with the department.

(c) ~~At~~ Two working days after the end of the longest running revocation or suspension of the person's operating privilege in effect at the time the occupational license is issued if the person's operating privilege is also suspended or revoked for any reason other than under s. 344.14 or 344.25, Stats.

(5) Notwithstanding subs. (1) to (4) or any expiration date stated on the face of an occupational license, an occupational license shall expire ~~immediately upon~~ 2 working days after

the end of all ~~cancellations~~, suspensions, and revocations ~~and disqualifications~~ of the driver's operating privilege in effect at the time the occupational license was issued.

SECTION 25. Trans 117.09(1), (2)(a) to (c), (3)(a) and (f) are amended to read:

Trans 117.09(1) GENERAL. ~~A petition for~~ An occupational license shall specify definite hours of operation by specifying the exact times and days of the week during which the operator ~~requires authority to~~ may operate a motor vehicle to or from church, in connection with a driver safety plan, or in order to perform ~~their~~ the person's occupation, trade, or duties as a homemaker or student.

(2)(a) "Emergency service provider" means a person who is employed by a unit of government, is providing services to a unit of government, or is employed by a public utility or medical services provider, and whose occupation involves providing essential life sustaining emergency services to the public. The term includes, but is not limited to, law enforcement officers, fire fighters, forest rangers, correctional officers, snow plow and emergency vehicle drivers, doctors, veterinarians, emergency medical technicians, certified first responders, paramedics, and electric, telephone and natural or propane gas repair technicians. A person who claims to be an emergency service provider may be required to provide documentation to the department proving the person provides essential life-sustaining emergency services to the public as part of the person's occupation.

(b) In ~~a petition~~ an application for occupational license, an emergency services provider may request authorization to operate a motor vehicle, during an emergency threatening injury to a person or property, outside the specific hours of operation set forth in the ~~petition~~ application. An order authorizing such operation shall authorize only the operation of motor vehicles directly to and from the location of the emergency or the person's place of employment

and shall not authorize operation of a motor vehicle in excess of 12 hours per day or 60 hours per week.

(c) An emergency services provider who has authority to operate a motor vehicle under par. (b) and who is charged with an offense stemming from the person's operating a motor vehicle outside the specified hours of operation set forth in the occupational license shall may not be convicted if the person produces in court or in the office of the arresting officer satisfactory documentation that the person was operating a motor vehicle in response to a bona fide emergency at the time of the citation.

(3)(a) A person who held a CDL prior to the suspension or revocation of the person's regular operator's license and whose essential occupational duties involve the operation of a commercial motor vehicle at any hour of the day or night may ~~request~~ include in ~~their petition~~ an application to the department for a CDL-occupational license a request for 24 hour authorization. The ~~petition~~ application shall also specify specific hours during which the operator seeks authority to operate a class D or class M vehicle.

(f) An operating log shall be kept current at all times. An operator shall transcribe the items set forth in par. (e)1. to 5. in the operating log at the beginning of each trip and shall record the remaining items immediately upon arrival at the person's destination. The person is not required to make entries in the log relating to class D or M vehicle operation.

(END OF RULE TEXT)

FISCAL ESTIMATE

DOA-2048 (R10/92)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject

Issuance of occupational licenses by DOT

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts VTAE Districts

Fund Sources Affected

- GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

20.395(5)(cc)

Assumptions Used in Arriving at Fiscal Estimate

Amending Trans 117, Occupational Driver's License, to implement 95 Act 269.

1. All occupational licenses will be issued by DOT/DMV, except court-ordered habitual traffic offender (HTO) occupationals,
2. The HTO and CDL occupationals will not be affected by this bill.
3. The 30-day temporary occupationals issued by the courts will be eliminated.
4. The occupational petition will be replaced by an application.
5. Persons may apply only once for each revocation/suspension, except to apply for an amended occupational.
6. DMV informs drivers if their application is denied. Upon denial, drivers may petition the circuit court for an occupational order. DMV will be notified of any denials. We estimate court-ordered occupationals after DMV denial to be very low.
7. Applicants must pay a \$40 fee to DOT for the occupational.
8. Repeal of s.343.345 will have no impact on our operations.

For purposes of this estimate assume that:

- 22,000 drivers will apply and be issued an occupational license.
- An additional 15% or 3,300 applicants will be denied because of ineligibility. It is difficult to determine how many drivers who are denied will petition the court for an occupational.
- An additional \$20/occupational fee will increase Transportation Fund revenues by \$440,000. Because occupationals are presently issued in both municipal and circuit courts, it is difficult to determine their revenue loss.
- Forms will need to be developed and revised and Trans 113 will have to be revised

(continued on page 2)

Long-Range Fiscal Implications

Agency/Prepared by: (Name & Phone No.)

Julie A. Clark 266-2239
 Department of Transportation

Authorized Signature/Telephone No.

[Signature]
 266-2233

Date

10/11/96

CONCLUSIONS:

One time data processing costs equal \$20,925.
Ongoing DMV workload increase of 1.2 FTE equals \$37,200.
One time costs for forms development, revision and distribution would be \$5,000.
Ongoing forms costs would be \$2,000 annually.
Revenue into the Transportation Fund will be increased by \$440,000.

BASIS FOR CONCLUSIONS:

The data processing changes will include: elimination of ineligible letter to the courts, modification of program to calculate expiration date beyond suspension/revocation termination date, modification of fee system, changing revocation/suspension order and other system changes.

1.2 FTEs will be required in DMV's Bureau of Field Services to answer questions and assist applicants applying for occupationals. An additional 5 minutes/transaction is estimated. $25,300 \times 5 \text{ min} / 60 / 1725 = 1.2 \text{ FTE (MVSS4)}$

$1.2 \text{ FTE} \times \$31,000 \text{ (salary + FB)} = \$37,200.$

The petition form will be revised into an application form including a section for court denials.

FISCAL ESTIMATE WORKSHEET

1995 SESSION

Detailed Estimate of Annual Fiscal Effect
DOA-2047(R10/92)

ORIGINAL
 CORRECTED

UPDATED
 SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
Trans 117

Amendment No.

Subject

Issuance of occupational licenses by DOT

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):
DP = \$20,925 Forms \$ 5,000

II. Annualized Costs:		Annualized Fiscal Impact on State funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations-Salaries and Fringes		\$37,200	\$ -
(FTE Position Changes)		(1.2 FTE)	(- FTE)
State Operations-Other Costs		2,000	-
Local Assistance			-
Aids to Individuals or Organizations			-
TOTAL State Costs by Category		\$39,200	
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$	\$ -
FED		\$	\$ -
PRO/PRS		\$	\$ -
SEG/SEG-S		\$39,200	\$ -
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S		\$ 440,000	-
TOTAL State Revenues		\$ 440,000	\$ -

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 39,200	Unknown
NET CHANGE IN REVENUES	\$440,000	\$ Unknown

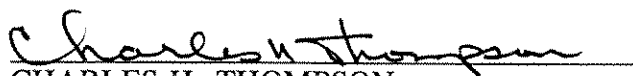
Agency/Prepared by: (Name & Phone No.)
Department of Transportation
Julie Clark/266-2239

Authorized Signature/Telephone No.
266-2233

Date
10/11/96

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 19 day of February, 1997.



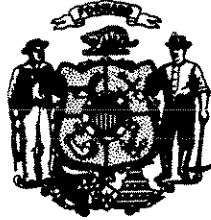
CHARLES H. THOMPSON

Secretary

Wisconsin Department of Transportation

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-168

AN ORDER to repeal Trans 117.04, 117.06 and 117.07 (3); to renumber Trans 117.02 (2) (c); to renumber and amend Trans 117.02 (2) (d) and 117.07 (4); to amend Trans 117.01 (1) and (2), 117.02 (2) (b), 117.05 (2) and (4) (intro.) and Note, 117.07 (title), (1) and (2), 117.08 (1) (b) and (c) and (5) and 117.09 (1), (2) (a) to (c) and (3) (a), (e) 3. and (f); to repeal and recreate Trans 117.03 (2) and 117.05 (3); and to create Trans 117.02 (2) (c), 117.025, 117.03 (1) (title) and (3) to (5), 117.05 (1) (d) and (e), (4) (a) to (k) and (5) and 117.07 (3) (b), relating to occupational driver's license.

Submitted by **DEPARTMENT OF TRANSPORTATION**

10-29-96 RECEIVED BY LEGISLATIVE COUNCIL.
11-26-96 REPORT SENT TO AGENCY.

RNS:AS:kjfjt

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

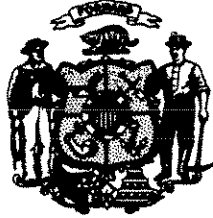
Comment Attached YES NO

WISCONSIN LEGISLATIVE COUNCIL STAFF

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CLEARINGHOUSE RULE 96-168

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 October 1994.]

1. Statutory Authority

It is not clear that there is authority for the department to issue a temporary driving receipt upon a person's application for an occupational license under s. Trans 117.025 (3), Stats.

2. Form, Style and Placement in Administrative Code

a. In s. Trans 117.01 (1), "~~161.50~~" should be inserted after "ss." and "961.50" should be underscored. Also, "961.50" could be moved to the end of the list of citations since it is the highest number.

b. The treatment clause to SECTION 14 should state: "Trans 117.05 (4) is renumbered Trans 117.05 (4) (intro.) and amended to read:".

c. The title of s. Trans 117.09 should not be shown. Also, "Trans" should be inserted before "117.09."

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

a. In s. Trans 117.01 (1), "Ch." should not be capitalized.

b. In the Note to s. Trans 117.03 (2) (e), a period should be inserted after "s. 343.10 (2) (a) 3." This comment applies to notes throughout the proposed order.

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

a. In s. Trans 117.01 (1), it appears that “and applying for the issuance of an occupational license” is repetitive.

b. In s. Trans 117.025 (7), it is not sufficient that a person has taken action to meet the criteria in s. Trans 117.03 (2). The person must have met the criteria.

c. Section Trans 117.025 (8) should also state that the department may not issue an occupational license if the department has information that more than one petition for an occupational license has been filed with the court. [See s. 343.10 (4) (c), Stats.]

d. In s. Trans 117.03 (2) (c), it may be clearer to insert at the end of the sentence “covering all vehicles for which the person seeks permission to operate.”

e. In s. Trans 117.03 (2) (g), because “alcohol offense” is not defined, it may be clearer to replace “the person has 2 or more prior alcohol offenses” with “required under s. 343.10 (2) (e), Stats.”

f. In s. Trans 117.03 (4) (intro.), “may not issue” suggests that the prohibitions listed in the subsection are mandatory. [s. 1.01 (2), Manual.] This phrase should be replaced if it is the intent of the drafter that these are discretionary prohibitions.

g. In the Note to s. Trans 117.03 (4), “s.” at the beginning of the sentence should be replaced with “Section.” This comment also applies to the Note to s. Trans 117.03 (5).

h. In s. Trans 117.05 (3), it appears unnecessary to require an applicant to provide a copy of the court’s findings and order since those are forwarded to the department under s. 343.10 (4) (b), Stats.

i. Section Trans 117.05 (4) (c) appears to be too vague. Section 343.10 (1) (b), Stats., requires a person to identify his or her routes of travel.

j. In s. Trans 117.05 (4) (d), the phrase “student activities” appears to be broader than what may be contemplated in s. 343.10 (1) (a), Stats., which provides that a person may be eligible for an occupational license if he or she is “engaged in an occupation, including . . . full-time or part-time study” Also in that paragraph, it appears that “some other reason” should be deleted because all the reasons for which a person may be granted an occupational license under s. 343.10, Stats., are included in the paragraph.

k. In s. Trans 117.05 (4) (i), it appears that “petition” should be replaced with “application.”

l. In s. Trans 117.09 (2) (a), in the current text, “life sustaining” should be hyphenated.

m. In s. Trans 117.09 (2) (b), it should be clarified whether “which may endanger human life” applies to cases of threatened injury to a person or to property or only in cases of threatened injury to property.

n. Section Trans 117.09 (3) (e) 3. is unclear as amended. The capitalization of "Midnight" should be retained since it is the first word of a sentence.

PART 4
CR 96-168

ANALYSIS OF FINAL DRAFT OF TRANS 117

(a) **Need for Amended Rule.** 1995 Wisconsin Act 269 rewrote the statute governing issuance of occupational driver licenses in Wisconsin. Under prior law, drivers who lost their operating privileges could petition any municipal or circuit judge in the state and request an occupational license. In many instances, the day-to-day task of reviewing applications and issuing licenses was being performed by court staff. 1995 Wis. Act 269 vested responsibility for reviewing applications and issuing licenses in the Department of Transportation instead of judges.

This proposed rule making provides the Department's administrative interpretation of the newly revised statute. In addition, this rule making ties together many of the other laws and regulations affecting driver licensing to present one coherent source of information on the issuance of occupational licenses.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on November 26, 1996. The Department received comments from the persons appearing at the public hearing suggesting that the Department's proposed rule would sharply reduce the number of instances in which ignition interlock devices would be ordered. The commenters suggested that the Department should consider imposing an ignition interlock device requirement on all persons that commit two or more alcohol offenses.

Section 343.10(5)(a)3. permits, but does not require, imposition of an interlock device on second and subsequent offense drunk drivers. Requiring all such repeat offenders to obtain ignition interlock devices as a condition of occupational licensing should, if desired, be accomplished legislatively by making this discretionary decision mandatory. Regardless, academic studies conducted to date have been inconclusive in their findings regarding the benefits of ignition interlock devices in the war on drunk driving. If convincing research eventually suggests that ignition interlock devices are effective in reducing repeat drunk driving, the Department will reconsider whether their use should be expanded in the occupational licensing area.

Nonetheless, the Department did, however, expand the range of situations in which it will order the installation of an ignition interlock device as a condition of occupational licensing in the final rule. In addition to those instances in which the law requires a driver to install an ignition interlock on a vehicle, if use of an interlock device by a driver is ordered or recommended by a court in any case, the Department will impose an interlock requirement on the occupational license applicant.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following persons appeared/registered at the public hearing:

Michael R. Balgord
National Interlock Service (WI) Ltd.
N0151 Tower View Dr. Unit C1
Greenville, WI 54942

Bruce Leete
National Interlock Service
N0151 Tower View Dr. Unit C1
Greenville, WI 54942

(d) **Response to Legislative Council Recommendations.** The following responses correspond by number with comments made by the Legislative Council.

1. The Secretary of the Department of Transportation is granted broad authority to administer Chapter 343, Stats., and to "promulgate for that purpose such rules as the secretary considers necessary." s. 343.02(1), Stats. The Secretary considers issuance of a temporary driving receipt necessary to the administration of s. 343.10, Stats.

Practical administration of the occupational licensing system requires WISDOT to issue temporary operating authority at the time of occupational license issuance. It is currently beyond the Department's technical and staffing capabilities to immediately issue a final occupational license at the time a person first appears at a field station to apply for an occupational license. The Department's computer systems are not capable of making the licensing decisions without human involvement, and the knowledge required to determine eligibility criteria is too complex and specialized for field staff to handle consistently and competently. Accordingly, the Department will issue temporary driving receipts to permit people to drive from the time of application through the time expert staff in the Division of Motor Vehicle's Compliance and Restoration Unit makes a decision on license issuance. Although this is usually no more than a day, the temporary driving receipt is being issued for 15 days because some DMV travel stations are not open on a daily basis, thus making it impossible for some constituents to return to such a processing station the "next day." People applying at travel sites will be instructed to return to the site when it is scheduled to return to that travel site, or to obtain the actual license document from another location.

2a, 2b and 2c. The Council's recommendations were adopted.

4a and 4b. The Council's recommendations were adopted.

5a. and 5b. The Council's recommendations were adopted.

5c. Section Trans 117.025(8) provides that no license shall be issued to a person if issuance is prohibited under s. Trans 117.03(2). Section Trans 117.03(2)(k) prohibits issuance to a person who has made multiple applications to a court. The recommendation is therefore not adopted because it would be needlessly repetitive.

5d. The Council's recommendations were adopted.

5e. The Council's recommendations were adopted; "alcohol offense" is now defined in s. Trans 117.02.

5f. Section 117.03(4)(intro.) is not changed because the language accurately reflects the Department's intentions. The "discretionary prohibitions" described in s. Trans 117.03(4) describes the instances in which the Department will exercise its discretionary ability to deny occupational driver licenses. The instances cited in that section will be followed for every person who makes application to the Department. Because those decisions are discretionary, however, they may be overruled by the circuit court upon appeal under s. 343.10(4), Stats. The Department expects and encourages courts to exercise their own judgment in reviewing such appeals on a de novo basis.

5g. The Council's recommendation was adopted.

5h. The Council's recommendation that the Department rely on paperwork forwarded by clerks of courts for making occupational licensing decisions is not adopted. While clerks of courts do forward such paperwork to the Department, in practice it takes days, weeks or months for the information to reach WISDOT. Because these drivers desire service during the period between the time the court makes a decision and the time the clerk's paperwork reaches the Department, the Department will continue to require the person to submit the court's decision with their application.

5i. The Council commented that the proposed language of s. Trans 117.05(4)(c) appears to be too vague in light of s. 343.10(1)(b), Stats., which requires persons to identify their routes of travel. Section 343.10(5)(a)1. has, for many years, required occupational licenses to identify the "areas or routes of travel which are permitted under the license." Department policy for many years has been to strongly encourage the use of areas of travel rather than specific routes. The designation of specific routes causes administrative problems when road construction, traffic conditions, or other factors require drivers to change their usual routes of travel. Moreover, a large portion of occupational drivers, such as salesmen, taxi drivers, tradesmen, and others, drive to various locations as part of their employment. Prescribing specific routes for such drivers is impossible.

5j. The Council's recommendation was adopted. Section Trans 117.03(3)(g) was added to make clear that acceptable reasons for obtaining an occupational license are those set forth in s. 343.10, Stats: an occupation or trade, including homemaking, full-time or part-time studies, church attendance, or travel necessary to comply with a driver safety plan.

5k and 5l. The Council's recommendations were adopted.

5m. References to "human life" were removed from the rule, and veterinarians were added to the list of persons who may obtain emergency privileges on an occupational license.

5n. The Council's recommendations were adopted.

(e) **Final Regulatory Flexibility Analysis.** This proposed rule is not expected to affect small businesses except those engaged in the provision of interlock services to the public.

In accordance with the requirements of s. 227.19(3)(e), Stats., the Department provides the following analysis of the administrative rule:

1. The methods suggested in s. 227.114(2), Stats., for reducing the impact of a regulation upon a small business will not be useful in this situation. The small businesses affected require the government to supply them with clientele, and this proposed regulation may decrease the number of drivers who are required to obtain ignition interlock devices as a condition of obtaining an occupational license. The potential impact on these businesses results not from cost of compliance with government regulations, but from potential change in demand for their product.

2. Representatives of National Interlock Service suggested at hearing that the Department require all drivers convicted of second or greater offense OWI to obtain IIDs as a condition of occupational licensing. The Department believes s. 343.10(5)(a)3., Stats., grants the Department discretionary authority to impose the requirement on some, but not all such drivers. No other alternatives were suggested. The Department did, however, expand the scope of situations where it would order the use of ignition interlocks by repeat drunk drivers to include all situations in which a court recommends or orders imposition of the requirement.

3. No reports are required of small businesses under this rule.

4. No measures or investments are required of small businesses to comply with this rule.

5. The methods suggested by s. 227.114(2), Stats., are inapplicable in this instance and therefore providing a cost analysis of using those methods is not possible.

6. The methods suggested by s. 227.114(2), Stats., are inapplicable in this instance and therefore providing a public health, safety and welfare impact analysis is not possible.



FEB 25 1997

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF THE SECRETARY
P. O. Box 7910
Madison, WI 53707-7910

February 21, 1997

The Honorable Kimberly Plache, Chairperson
Senate Committee on Labor,
Transportation, and Financial Institutions
P.O. Box 7882
Madison, WI 53707 - 7882

FAXED
2/21/97

Dear Senator Plache:

I am responding to your letter of February 19, 1997 and the following motion of the Committee that was adopted 7 to 0 on February 18, 1997:

The Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s.227.19(4)(b)2., Stats., recommends that the Department of Transportation modify Clearinghouse Rule 96-179. If the Department of Transportation has not expressed its agreement to modify the rule in written correspondence delivered to the office of the Chairperson of the Senate Committee no later than 5:00 P.M., Monday, February 24, 1997, the Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s.227.19(4)(d)1., 3., and 4., Stats., objects to Clearinghouse Rule 96-179 in its entirety.

On February 19, 1997, the Department of Transportation requested the Joint Committee for Review of Administrative Rules to extend the emergency administrative rule ch. Trans 76, pursuant to § 227.24(2), Stats. The present emergency rule expires March 24, 1997. The extension is necessary due to the lapse between its expiration date and the possible effective date of any permanent rule.

Section 86.30(2)(e), Stats., requires four equal transportation aids payments to be made on the first Monday in January, April, July and October, 1997. The first payments were made in January based on the emergency rule. The next payment on April 7, 1997 could not be made on the same equal basis if the emergency rule, as drafted, were allowed to expire. Therefore, the Department formally requested its first extension of sixty (60) days for the emergency rule until the "permanent" rule becomes effective or enabling legislation is enacted. If necessary, a second extension request will be submitted in May for the additional time needed to cover the next equal payment on July 7, 1997.

Under any circumstances, a "permanent" rule or enabling legislation will need to be effective to allow the final equal payment to be made on October 6, 1997, otherwise, as the emergency rule is drafted, the Department will need to reduce the payments to Lincoln County by \$15,413.48, the Village of Aspin by \$254.80, and the Towns of Hawthorne, Springdale, and Lincoln by \$1,273.19, \$736.47, and \$625.35 respectively. If such an adjustment is made, the

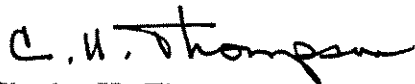
Kimberly Plache
February 21, 1997
Page 2

other 1,917 local units of government could receive minuscule increases in their payments. There is no impact on the total amount paid out by the Department in either case.

As you know from my earlier letter of February 18, 1997, I share your concern regarding interpretation of the phrase "each day" to mean each calendar day, rather than to mean each "working day." **I therefore agree to modify the proposed "permanent" rule as attached so it is a "temporary" rule and applies only to the five late filers in calendar year 1996. It has no effect on any late filers in calendar year 1997 or thereafter.**

Attached is my modification to the proposed rule under sec. 227.19(4)(b)3, Stats., that would apply this "temporary" permanent rule only to late filers in calendar year 1996 and then abolish the rule.

Sincerely,



Charles H. Thompson
Secretary

Attachment

cc: Committee Members
Rep. Ourada
Rep. Brandemuehl
Chairmen, Joint Committee for Review of Administrative Rules
Ronald Sklansky, Legislative Council

CHT/jst

February 21, 1997

TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.16, Stats., the department of transportation hereby proposes to repeal and to recreate ch. Trans 76, Wisconsin Administrative Code, interpreting s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., relating to uniform cost reporting procedure during calendar year 1996 for general transportation aids to be paid in calendar year 1997.

SECTION 1. Chapter Trans 76 is repealed.

SECTION 2. Chapter Trans 76 is recreated to read:

GENERAL TRANSPORTATION AIDS

Trans 76.01 PURPOSE. The purpose of this chapter is to establish the department's administrative application of s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., relating to the uniform cost reporting procedure during calendar year 1996 for general transportation aids.

Trans 76.02 1996 DEFINITION. In this chapter:

- (1) "Department" means the department of transportation.
- (2) "Work day" means any day except Saturday, Sunday and holidays designated in s. 230.35(4)(a), Stats.

NOTE: This definition has the same meaning as provided in s. 227.01(14), Stats.

Trans 76.03 1996 PENALTIES. In accordance with the statutory direction of s. 86.303(5)(f)(intro.) and (i)(intro.), Stats., the department shall impose penalties upon those counties and municipalities who filed their financial report forms within 30 calendar days after the applicable date under s. 86.303(5)(c) or (d), and (g), Stats., respectively

in calendar year 1996. The one percent penalty shall apply to each work day from the due date to the filing date in 1996.

Trans 76.04 1996 APPLICABILITY. This chapter is effective for financial report forms filed in calendar year 1996 only.

SECTION 3. Chapter 76, as recreated by this rule, is repealed effective October 7, 1997.

(END OF RULE TEXT)



RECEIVED
FEB 21 1997

KIMBERLY M. PLACHE

STATE SENATOR • TWENTY FIRST SENATE DISTRICT

February 19, 1997

Charles Thompson
Wisconsin Department of Transportation
P O Box 7910
Madison, WI 53707-7910

Dear Secretary:

On Tuesday, February 18, 1997, the Senate Committee on Labor, Transportation and Financial Institutions, acted on Clearinghouse Rule 96-179. The committee voted 7 to 0 on the following motion:

The Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s.227.19(4)(b)2., Stats., recommends that the Department of Transportation modify Clearinghouse Rule 96-179. If the Department of Transportation has not expressed its agreement to modify the rule in written correspondence delivered to the office of the Chairperson of the Senate Committee no later than 5:00 P.M., Monday, February 24, 1997, the Senate Committee on Labor, Transportation and Financial Institutions, pursuant to s.227.19(4)(d)1., 3. and 4., Stats., objects to Clearinghouse Rule 96-179 in its entirety.

I look forward to your prompt response.

Sincerely,

Kimberly M. Plache, Chairperson
Senate Committee on
Labor, Transportation
and Financial Institutions

cc James Thiel, WisDOT
Committee Members
Legislative Council

KP:ja