



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

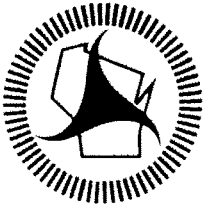
**Committee on Natural Resources and
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INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



Wisconsin Department of Transportation

www.dot.wisconsin.gov

Jim Doyle
Governor

Frank J. Busalacchi
Secretary

Office of General Counsel
4802 Sheboygan Ave., Rm. 115B
P O Box 7910
Madison, WI 53707-7910

Telephone: 608-266-8810
FAX: 608-267-6734
E-mail: ogc.exec@dot.state.wi.us

The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South
State Capitol
Madison, Wisconsin 53707

August 28, 2006

The Honorable Representative John Ainsworth
Chairman, Assembly Transportation Committee
Room 309 North, State Capitol
Madison, Wisconsin 53702

RE: Proposed Administrative Rule **TRANS 105**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 06-089

Dear Senator Kedzie and Representative Ainsworth:

In accordance with the Department of Transportation's efforts to keep you informed of its ongoing rule making actions, enclosed is a courtesy copy of Final Draft rule **Trans 105**, relating to **licensing of driver schools and instructors**, which is being submitted to the Legislature for committee review.

Sincerely,

A handwritten signature in black ink that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: Lynne B. Judd
Karen Schwartz
Erin Egan

CR 06-089

The Wisconsin Department of Transportation proposes an order to repeal TRANS 105.01(1)(f), 105.035(2), 105.05(5), 105.06(2)(a), (11) and (12), and 105.07(1)(b)1.a. and (5)(d); renumber TRANS 105.02(4) and 105.06(11) and (12); renumber and amend TRANS 105.02(2) and (3), and 105.04(3); amend TRANS 105.01(title), 105.02(1), 105.03(1)(b) and (c), 105.035(1), 105.04(title), (1) and (2), 105.05(2)(a)(intro.), (b), (3) and (4), 105.06(2)(intro.), (b) and (e), (7) and (10), 105.07(1)(b), (b)1.(intro.), (b)3.(intro.), (c), (2)(a), (3) and (5) and 105.09(3)(note); repeal and recreate TRANS 105.06(5) and 105.08; and create TRANS 105.003, 105.007, 105.01(4) to (6), 105.015, 105.02(2), 105.035(2) to (5), 105.04(3), 105.06(3)(f), 105.07(1)(b)1.L. and (7), 105.10, 105.11 and 105.12, relating to licensing of driver schools and instructors

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

This report is submitted to the chief clerks 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:



ALLYN LEPEŠKA
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) 266-0253

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Subchapter VI, Chapter 343, Stats.

Statutory authority: Subchapter VI, Chapter 343, Stats.

Explanation of agency authority: The Department licenses driver training schools and instructors that teach driver's education for a fee. High schools or technical colleges that teach driver's education as part of their regular school program and businesses that provide instruction in the operation of motorcycles are excluded.

Related statute or rule: ss. 343.06(1)(c), 343.60 to 343.72, Stats., and ch. Trans 105.

Plain language analysis: The purpose of this rule making is to amend ch. Trans 105 to comply with 2005 Wisconsin Act 397. This new law made many substantial changes to the driver schools statutes. Some of the changes include:

- Eliminating the requirement that schools maintain permanently bound books for recordkeeping.
- Implementing a system of progressive enforcement to take action against driver schools or instructors that have violated the law or have compiled multiple substantiated consumer complaints.
- Allowing driver schools to participate in the Cooperative Driver Testing Program, which allows schools to administer the knowledge and signs tests to their own students under the age of 18.
- Requiring driver schools to file a bond with the Department, and maintain a liability insurance policy in the amount established by rule.

Summary of, and preliminary comparison with, existing or proposed federal regulation: None.

Comparison with Rules in the Following States:

Michigan, Iowa, Minnesota, and Illinois have rules relating to driver schools, driver school instructors and course content for young drivers to complete driver's education prior to licensure. The rules are similar to this proposed rule.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: A telephone survey was conducted of a sample of driver schools currently conducting business. Responses were compiled, and are shown below. There are approximately 180 driver training schools statewide.

Analysis and supporting documentation used to determine effect on small businesses:

Fiscal impacts:

1. New bonding requirement will cost approximately \$200 per year. Vehicle inspections will increase costs slightly.
2. The new bonding requirement will increase costs, but not substantially. The bond will likely be added to the school's current insurance policy.
3. The new bonding requirement will increase costs. The total amount of the increase is unknown, although the bond will likely be added to an existing insurance policy.

Workload impacts:

1. Some of the changes in ch. Trans 105 will decrease workload, such as removing the requirement that records be kept in a permanently bound book, and lengthening the renewal cycle to two years. The workload reduction will be offset by other changes, such as additional workload required to participate in the Cooperative Driver Testing Program.
2. No workload impact.
3. No change in workload expected. May have a slight decrease.

Other comments:

1. This will make driver schools operated in the State of Wisconsin more professional, and the changes are welcome.
2. Allowing driver schools to participate in the Cooperative Driver Testing Program is a positive for both students and schools. The changes made in the proposed rule are good. Schools that are in compliance that run a quality business will not have a problem.
3. Driver schools must be allowed to operate home-based offices to remain in business. (Note: the proposed rule making still allows driver schools to have home-based offices).

Effect on small business: Most driver schools are small businesses, and are already regulated by the Department. This rule making changes how the Department regulates driver schools. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities. The private sector should not see an increase in costs. Allowing students to take the knowledge and signs test at the driving school, instead of DMV, should decrease travel costs and time away from work for parents.

Agency contact person and copies of proposed rule: Copies of the proposed rule can be obtained, without cost, by writing to Erin Egan, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 105.003 is created to read:

Trans 105.003 Introduction. (1) **PURPOSE.** This chapter interprets subch. VI of ch. 343, Stats., by creating rules relating to:

(a) The licensing and regulation of commercial driver schools that provide driver training and testing for students and training of instructors.

(b) The licensing and regulation of commercial driver school instructors who provide classroom and behind-the-wheel instructions to customers.

(2) **SCOPE.** This chapter applies to all persons operating a commercial driver school for customers or giving instruction in the driving of a motor vehicle to customers except as specifically excluded.

SECTION 2. Trans 105.007 is created to read:

Trans 105.007 Definitions. In this chapter:

(1) "Authorized medical practitioner" means a physician licensed to practice medicine in any state, an advanced practice nurse licensed to practice nursing in any state, a physician assistant licensed or certified to practice in any state, a chiropractor

licensed to practice chiropractic in any state, or a Christian Science practitioner residing in this state, and listed in the Christian Science journal.

(2) "Driver school" or "school" has the meaning given in s. 343.60(1), Stats.

(3) "Instructor" has the meaning given in s. 343.50(3), Stats.

(4) "Student" means a customer less than 18 years of age who is applying to or is enrolled at a driver school for instruction in driving a motor vehicle.

(5) "Substantiated" in reference to a complaint means that the complaint is written, was submitted to the school or instructor at issue, was not resolved within 10 business days by the school or instructor, and directly involves a matter regulated by subch. VI of ch. 343, Stats., or this chapter, with probable cause to believe that a violation occurred.

(6) "Vehicle" means a 4-wheeled self-propelled device meeting federal motor vehicle safety standards with a minimum capacity of 4 persons.

SECTION 3. Trans 105.01(title) is amended to read:

Trans 105.01 (title) ~~Application forms for driver~~ Driver school and instructor licenses license applications.

SECTION 4. Trans 105.01(1)(f) is repealed.

SECTION 5. Trans 105.01(4) to (6) are created to read:

Trans 105.01(4) An applicant for a driver school license may self-certify the condition of its school offices and classrooms to the department on the approved department form submitted with the application unless the office is in a home residence. The self-certification of the school offices and classrooms shall certify all of the following:

- (a) The address of any office and any classroom being self-certified.
- (b) The measurement and configuration of any office and classroom, including entrances, exits, windows, and records storage.
- (c) Adequate lighting and temperature control.
- (d) No business other than driver school business may be conducted in the driver school office, unless approved by the department.
- (e) Two or more licensed driver schools cannot operate out of the same office.
- (f) Zoning verification if the office is located in a non-traditional business location.
- (g) Access to restroom facilities for classrooms.
- (h) Authorization from a public school if public classrooms are used to provide instruction.

NOTE: Form MV3110 can be obtained by writing to the Division of Motor Vehicles, Bureau of Driver Services, P. O. Box 7920, Madison, WI 53707-7920, or by calling (608) 264-7495.

(5) A driver school office in a home residence may be conditionally self-certified if the office is visited and approved by the department prior to filing a school license application, and all of the following requirements apply:

- (a) Students are not allowed at the office unless accompanied by a parent or sponsor.
- (b) The applicant verifies that local zoning allows the office in a non-traditional business location.
- (c) The office is a separate room with direct entrance from outside of the residence. Driver schools licensed prior to January 1, 2007 are exempt from this requirement.

(6) An applicant who will be an owner or manager of a driver school shall pass the test, administered by the department, on driver school and instructor criteria. The applicant must receive a minimum score of 80% to pass the test.

SECTION 6. Trans 105.015 is created to read:

Trans 105.015 Cooperative driver testing program. (1) The department may enter into a cooperative driver testing agreement with the driving school to conduct knowledge tests as permitted by s. 343.16(1)(c), Stats. Driver schools may administer the knowledge and highway signs tests to students who are currently enrolled in driver education. A driver school that has accumulated 2 or more points in the past 24 months under s. Trans. 105.11 may not enter into the testing agreement with the department.

(2) The agreement under sub. (1) is voluntary and can be terminated by either the department or the driver school.

(3) A school that is participating in the cooperative driver testing program under s. 343.16(1)(c), Stats., may provide the knowledge and highway signs tests required under s. 343.62(4)(a)1., Stats., to its own instructors.

SECTION 7. Trans 105.02(1) is amended to read:

Trans 105.02(1) Each applicant for an instructor's license shall take the road test administered by the department. The road test shall be scored in the same manner as are tests given for regular operator's licenses and shall also include an actual demonstration of procedures and techniques used instructing drivers. Tests required by s. ~~343.63(1), (2), and (3)~~ 343.63(4), Stats., is ~~are~~ required of all applicants for original instructor's license and applicants whose instructor's licenses have lapsed for one or

more years. The department may also require retesting of currently licensed instructors either as a part of a routine retesting program or when it has reasonable cause to doubt the continued competency of any individual instructor. An applicant shall complete a test on instructional procedures or demonstrating teaching skills administered by the department. This test may be administered orally. An applicant must receive a minimum score of 80% to pass the test.

SECTION 8. Trans 105.02(2) and (3) are renumbered Trans 102.02(4) and (5) and amended to read:

Trans 105.02(4) ~~The~~ An applicant for an instructor's license shall have a medical statement submitted completed within the 24 months prior to the application date by the physician required by s. 343.63(4), Stats., shall be an authorized medical practitioner on a form supplied by the department and submitted to the department with the school renewal. If the applicant has a medical condition that impacts safe vehicle operation, the department may request medical documentation more frequently based on ch. Trans 112.

(5) If the information filed by the ~~physician~~ authorized medical practitioner is such as to indicate the person is not physically fit to teach driving, the department may require the applicant to submit to further medical examination or deny the license.

SECTION 9. Trans 105.02(2) is created to read:

Trans 105.02(2) An instructor who has held an instructor's license for both behind-the-wheel and classroom training, but is no longer eligible for an operator's license because of a medical condition, may upon request to the department by the school, obtain a classroom-only license.

SECTION 10. Trans 105.02(4) is renumbered Trans 105.02(6).

SECTION 11. Trans 105.03(1)(b) and (c) are amended to read:

Trans 105.03(1)(b) Has been involved in 2 or more accidents in a one-year period where the ~~accident~~ crash report indicates that such person may have been causally negligent. If there is no traffic citation resulting in a conviction associated with the crash, the person is not considered negligent.

(c) Has had his or her operator's license revoked, suspended or cancelled for a traffic violation other than a parking violation, at any time during the past 4 years, based on the conviction date or upon the effective date of the withdrawal of operating privileges, whichever is earlier.

SECTION 12. Trans 105.035(1) is amended to read:

Trans 105.035(1) For the purpose of determining the fitness of a person to hold a driver school license under s. ~~343.64(1)(d)~~ 343.62(4)(a)8. and 9., Stats., the department shall consider all relevant arrests and convictions ~~for the past 5 years~~, and make such further examinations and checks as it determines are necessary.

SECTION 13. Trans 105.035(2) is repealed.

SECTION 14. Trans 105.035(2) to (5) are created to read:

Trans 105.035(2) The department may not issue or renew a driver school or instructor's license issued under s. 343.61 or s. 343.62, Stats., to any person who, during their lifetime was convicted of any of the following state laws or any local ordinance in conformity with any of the following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had

committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
940.01	1 st degree intentional homicide
940.03	Felony murder
940.05	2 nd degree intentional homicide
940.225(1) to (3m)	Sexual assault
940.305	Taking hostages
940.31	Kidnapping
941.32	Administering dangerous or stupefying drug
944.34	Keeping a place of prostitution
946.01	Treason
946.02	Sabotage
946.03	Sedition
948.02(1) and (2)	Sexual assault of a child
948.025	Engaging in repeated acts of sexual assault of the same child
948.03	Physical abuse of a child
948.04	Causing mental harm to a child
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.075	Use of computer to facilitate a child sex crime
948.08	Soliciting a child for prostitution
948.095	Sexual assault of a student age 16 or older by a school instructional staff person
948.10	Exposing genitals or pubic area to child
948.11(2)(a) or (am)	Exposing a child to harmful material or harmful descriptions or narrations
948.12	Possession of child pornography
948.13(2)	Child sex offender working with children
944.06	Incest
940.22(2)	Sexual exploitation by a therapist

(3) The department may not issue or renew a driver school or instructor's license issued under s. 343.61 or s. 343.62, Stats., to any person who within the past 10 years immediately preceding the date of application was convicted of any of the following state laws or any local ordinance in conformity with any of the following state laws or any

federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
948.21	Abandonment of a child – neglecting a child
948.23	Concealing death of a child (at birth)
948.30	Abduction of another's child, constructive custody
948.35	Solicitation of a child to commit a felony
961.42(1)	Keep or maintain any place for drug use, manufacture, keeping or delivering
961.41(1)(1) to (1)(j)	Manufacture, distribution or delivery of drugs
961.41 (1m)(a) to (1m)(j)	Possession with intent to manufacture, distribute or deliver drugs
961.41(4)(am)	Distribution or delivery or attempt to deliver or distribute an imitation controlled substance
961.455	Using a child for illegal drug distribution or manufacturing
961.46	Distribution of controlled substances to persons under age 18
944.17	Sexual gratification
944.30	Prostitution
944.31	Patronizing prostitutes
944.32	Soliciting prostitutes
944.33	Pandering
941.21	Disarming a peace officer
943.201	Unauthorized use of an individual's personal identifying information or documents
940.02	1 st degree reckless homicide
940.06	2 nd degree reckless homicide
940.09	Homicide by intoxicated use of vehicle or firearm
943.32	Robbery
948.09	Sexual intercourse with a child age 16 or older

(4) The department may not issue or renew a driver school or instructor's license issued under s. 343.61 or s. 343.62, Stats., to any person who within the past 5 years immediately preceding the date of application was convicted of any of the following state

laws or any local ordinance in conformity with any of the following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
944.15	Public fornication
944.20	Lewd and lascivious behavior
944.21	Obscene material or performance
944.23	Making lewd, obscene or indecent drawings
944.25	Sending obscene or sexually explicit electronic messages
940.25(1)	Injury by intoxicated us of a vehicle
941.26	Possession of machine guns and other weapons
941.28	Possession of short-barreled shotgun or rifle
941.29	Possession of firearm by felon
941.295	Possession of electric weapon
941.296	Use or possession of a handgun and an armor-piercing bullet during crime
941.298	Firearm silencer
941.30	Recklessly endangering safety
941.31	Possession of explosives
941.325	Placing foreign objects in edibles
941.327	Tampering with household products
943.02	Arson of buildings, damage of property by explosives
943.03	Arson of property other than buildings
943.04	Arson with intent to defraud
943.06	Molotov cocktails
944.10	Burglary
943.28	Loan sharking
943.30	Threats to injure or accuse of crime
943.38(1) or (2)	Forgery
946.415	Failure to comply with officer's attempt to take person into custody
946.43	Assaults by prisoners
946.44	Assisting or permitting escape
946.47	Harboring or aiding felons
946.48	Kidnapped or missing persons; false information
946.60	Destruction of documents subject to subpoena

946.65	Obstructing justice
947.015	Bomb scare
961.41(1n)	Possession of piperidine
961.41(3g) (f)	Possession – gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam
961.41(1x)	Conspiracy
961.41(2)(a) to (d)	Counterfeit substances
961.41(3g)	Possession of controlled substance
961.43(1) (2)	Acquiring or obtaining possession of controlled substance by fraud or forgery – counterfeit substance or packaging
961.67	Possession or disposal of waste from manufacture of methamphetamine
940.10	Homicide by negligent operation of a vehicle
940.19(2),(4), (5), or (6)	Battery, substantial battery or aggravated battery
940.195	Batter to a pregnant woman or unborn child
940.21	Mayhem
941.38	Criminal gang member solicitation and contact
940.23	Reckless injury
940.285	Abuse of vulnerable adults
940.295	Abuse and neglect of patients and residents
948.40	Contributing to the delinquency of a minor
948.55	Leaving or storing a loaded firearm within reach or easy access of child
948.605	Possession of a firearm in school zone

(5) The department may not issue or renew a driver school or instructor's license issued under s. 343.61 or s. 343.62, Stats., to any person who within the past 2 years immediately preceding the date of application was convicted of any of the following state laws or any local ordinance in conformity with any of the following state laws or any federal law or law of a federally recognized American Indian tribe or band in this state or law of another jurisdiction that would be a violation of any of the following state laws if the person had committed the offense in this state and been convicted of the offense under the laws of this state:

Statute	Description
Various	Any felony not listed in subs. (3) to (5)
940.12	Assisting suicide
941.01	Negligent operation of a motor vehicle
941.20	Endangering safety by use of a dangerous weapon
941.37	Obstructing emergency or rescue personnel
943.07	Criminal damage to railroads
941.11	Unsafe burning of a building

SECTION 15. Trans 105.04(title), (1) and (2) are amended to read:

Trans 105.04 (title) ~~Loss or surrender of license~~ **Driver school administrative procedures.** (1) Application for a duplicate of a lost or destroyed license shall contain the information set forth in s. Trans 105.01(1)(a), (b), and (d) and shall be accompanied by a certified statement that the original was lost or destroyed. The fee for a duplicate license is \$5.

(2) If a school terminates active participation in the business of teaching driver training for a fee, the school shall immediately forward such license to the department for cancellation. All unissued course completion slips shall be returned to the department.

NOTE: Form MV3192, course completion slips, may be obtained from the Division of Motor Vehicles, P. O. Box 7920, Madison, WI 53707-7920.

SECTION 16. Trans 105.04(3) is renumbered Trans 105.04(5) and amended to read:

Trans 105.04(5) If an instructor is no longer employed with a driver school ~~or is changing employment from one school to another~~, the instructor shall ~~notify the department of that fact and forward~~ surrender his or her license to the department for

~~cancellation driver school.~~ The driver school shall destroy the instructor's license and notify the department in writing to cancel the license.

SECTION 17. Trans 105.04(3) is created to read:

Trans 105.04(3)(a) If a driver school terminates active participation in teaching driver training for a fee, the student shall do either of the following:

1. Begin the driver training over at a new school if the terminating school does not provide documentation to the new school of what instruction was completed.

2. Receive credit for the completed hours of driver training instruction when documentation of instruction is provided by the terminating school to the new school, but shall complete the remaining training with another school to meet the required driver education requirement

(b) If the driver school does not refund the fees for the training paid for but not provided, the customer or his or her parent or legal guardian may contact the entity that provided the bond requirements under s. Trans 105.10 for a refund of the fees.

SECTION 18. Trans 105.05(2)(a)(intro.), (b), (3) and (4) are amended to read:

Trans 105.05(2)(a)(intro.) The records required by s. 343.71(4) ~~(1m)~~, Stats., shall be contained in a permanently bound book having consecutively numbered pages, on which are set forth kept for 4 years in a readily accessible format, and shall include the following information for each person to whom instruction is given:

(b) The information required under par. (a)1. to 4. shall be ~~entered in the book within one working day~~ recorded within 3 business days after the ~~making~~ signing of a contract or agreement between the school and the student.

(c) The information required under par. (a)5. shall be entered ~~in the book recorded~~ within ~~one working day~~ 3 business days after the last instruction or other service has been received by the student.

(3) The records required by s. 343.71(2), Stats., shall be in the form of an individual ~~permanent student record card on~~ for each person listed in the ~~record book records~~ required by s. 343.71(4) (1m), Stats. Such record ~~card~~ shall show the student's name, date of birth, and address, and contract or agreement number, ~~receipt number,~~ ~~permanent register page number,~~ dates, types, duration and fees charged for each lesson, lecture, tutoring, period of instruction or other service relating to instructions in the operation of motor vehicles; the name and license number of the instructor having given each lesson or period of instruction or service relating to instruction in the operation of motor vehicles, and identification of the vehicle in which any behind-the-wheel instruction was given, ~~including type of transmission.~~ Schools participating in the cooperative driver testing program under s. Trans 105.015 shall also record the knowledge and highway signs scores for all tests attempted in the student record. The information required by this section shall be entered on the student record ~~card~~ within one ~~working~~ business day after the completion of each lesson.

(4) To be approved, the agreement form required to be filed by s. 343.71(3) (1m)(b), Stats., shall be consecutively numbered, contain the date of application, name of school, type or types of lessons, lectures, tutoring or instruction to be given, fee to be charged or the word none if no charge, the statement, "This constitutes the entire agreement between the school and the student customer and no verbal statement or promises will be recognized," signature of ~~student~~ customer, signature of student's

parent or guardian for customers under the age of 18, address of student customer,
and signature of owner of school or his or her authorized representative.

SECTION 19. Trans 105.05(5) is repealed.

SECTION 20. Trans 105.06(2)(intro.) is amended to read:

Trans 105.06(2)(intro.) To be approved by the department, a driver school's specific place of business required by s. ~~343.72(5)~~ 343.61(4)(b), Stats., shall:

SECTION 21. Trans 105.06(2)(a) is repealed.

SECTION 22. Trans 105.06(2)(b) and (e) are amended to read:

Trans 105.06(2)(b) Be in an area zoned to permit this type of business or a variance that authorizes the business to operate at this address. The department may require the applicant to furnish written proof thereof from the municipality where the driver school is located.

(e) ~~Not consist solely of a telephone answering service. A telephone used in the driver school business for incoming calls shall be located in the office facility. Each school shall have a listed telephone number for the driver training school, in the school's name.~~

SECTION 23. Trans 105.06(3)(f) is created to read:

Trans 105.06(3)(f) Availability of restroom facilities.

SECTION 24. Trans 105.06(5) is repealed and recreated to read:

Trans 105.06(5) A licensee may not solicit business within 1500 feet of any department office where official road tests are given. This section does not apply in any of the following circumstances:

(a) The department relocates or establishes a new office within 1500 feet of an existing driver school.

(b) The municipality where the department office is located has a population less than 10,000 and the business district in which the office is located is less than 1500 feet long.

(c) The department conducts business at the office less than 3 times per month.

(d) The driver school petitions the department for an exception, and the department, after researching customer needs, location, population, zoning and access, grants an exception.

SECTION 25. Trans 105.06(7) and (10) are amended to read:

Trans 105.06(7) Licensees may advertise only by the school name ~~and specific street address~~ shown on its license.

(10) Approved dual controls required by s. 343.72(12), Stats., include but are not limited to a separate brake for the instructor which is located on the right side of the car so the instructor can safely operate it ~~with the foot normally used to operate the brake and accelerator~~ the controls, and a separate mirror on the right, outside of the car, positioned so the instructor can view traffic to the rear. ~~To assure the safety of students and the public, all driver training cars shall be inspected by the department within 30 days of purchase or lease by the school and, at the department's discretion, may be inspected each year thereafter.~~ An authorized representative of the department may make random inspections to assure compliance with this subsection.

SECTION 26. Trans 105.06(11) and (12) are renumbered Trans 105.06(13) and (14).

SECTION 27. Trans 105.06(11) and (12) are created to read:

Trans 105.06(11) A licensee using a vehicle that is more than 3 years old or whose odometer reading is greater than 100,000 miles to conduct behind-the-wheel training shall ensure all of the following with respect to the vehicle:

(a) Be certified to meet all manufacture specifications for the vehicle type, model, and year, within 30 days of being put into service. Certification may be completed by a motor vehicle repair shop. For purposes of this paragraph, a "motor vehicle repair shop" means a natural person, corporation, partnership or other business association or entity engaged in the motor vehicle repair business, but does not include a shop that repairs motor vehicles for a single business entity or for 2 or more entities subject to common control.

(b) Submit to an annual vehicle inspection certification by an authorized service facility. The inspection shall be done before the annual anniversary date of the certification that the vehicle was put into service. If a vehicle was less than 3 years old, the inspection should be done before the vehicle is 3 years old or before the vehicle's odometer reading is greater than 100,000 miles. The safety certification shall be on a form defined by the department and at a minimum include the name of school, vehicle make, vehicle model, vehicle identification number, and a date and signature certifying the vehicle meets or exceeds safety standards.

NOTE: Form MV3264 can be obtained by writing to the Division of Motor Vehicles, Bureau of Driver Services, P. O. Box 7920, Madison, WI 53707-7920, or by calling (608) 264-7095.

(12) If the department deems a vehicle of any age unsafe, the department shall order a vehicle out of service until it is repaired. If the only vehicle in the school fleet is ordered out of service, the school may not perform behind the wheel instruction until the

vehicle is certified as safe. Use of a vehicle after being ordered out of service shall result in points being assessed under s. Trans 105.11.

SECTION 28. Trans 105.07(1)(b) and (b)1.(intro.) are amended to read:

Trans 105.07(1)(b) Requests for initial approval under this section shall be accompanied by a course ~~outline with lesson plans~~ summary. After the course ~~outline with lesson plans~~ summary has been initially approved, the licensee ~~must~~ shall submit to the department for approval any substantial proposed changes prior to their implementation.

(b)1.(intro.) The course ~~outline~~ summary shall specify a minimum of one main topic or more for each hour ~~and be arranged chronologically in the order of presentation~~. The classroom course shall cover, but is not limited to the following:

SECTION 29. Trans 105.07(1)(b)1.a. is repealed.

SECTION 30. Trans 105.07(1)(b)1.L. is created to read:

Trans 105.07(1)(b)1.L. Instruction required under s. 343.71(5), Stats.

NOTE: This includes hazards posed by farm machinery, 30 minutes of instruction on organ and tissue donation, and information on motorcycle, bicycle, and pedestrian awareness.

SECTION 31. Trans 105.07(1)(b)3.(intro.), (c), (2)(a), (3) and (5) are amended to read:

Trans 105.07(1)(b)3.(intro.) Each classroom lesson plan shall cover no more than ~~two~~ 2 hours. Each behind-the-wheel lesson plan shall cover no more than one hour. Lesson plans shall be kept on file with the driver school. The lesson plan shall specify the following:

(c) ~~A student~~ Students under 18 years of age who satisfactorily ~~complete~~ completes the approved course and satisfies all financial obligations required by his or her contract with the school shall be given a certificate of completion on a form approved by the department.

(2)(a) In order to be eligible for approval under this section, a classroom phase of instruction shall consist of 30 clock hours in the classroom, extending over a minimum of 3 weeks for each student at no more than 2 clock hours per day. A course is not approved when students begin the class on alternate days. All students must be present for every session except if a student is absent for any legitimate reason, the absence must be marked on the student's record ~~card~~ and the ~~sessions~~ lessons missed must be made up. ~~The maximum number of hours that may be made up is 4. A student who is absent for more than 4 hours cannot continue with that group.~~ Classroom instruction and behind-the-wheel instruction may be given concurrently only if both phases are given by the same school.

(3) ~~Licensees~~ For behind-the-wheel only instruction, a licensee may not ~~enroll~~ enroll ~~students for only the~~ begin behind-the-wheel phase training with a new student unless certified proof of completion of an approved classroom phase, ~~on a form provided by the department,~~ is on file with the agreement in the licensee's office. However, this subdivision does not apply if the student is either enrolled in an approved behind-the-wheel phase at a different school or has completed the approved course, and the agreement specifies that the instruction does not qualify the student to apply for a license under s. 343.06(3), Stats.

(5) All applicants for an instructor's license shall have satisfactorily completed ~~400~~ 40 clock hours of classroom instruction in safety and driver education as given by an approved ~~college, university, or technical college,~~ driving school instructor training program as a minimum requirement to teach students ~~under 18 years of age~~ except that:

SECTION 32. Trans 105.07(5)(d) is repealed.

SECTION 33. Trans 105.07(7) is created to read:

Trans 105.07(7) An applicant for an instructor's license renewal shall attend at least one approved traffic safety related workshop or conference per licensing period.

SECTION 34. Trans 105.08 is repealed.

SECTION 35. Trans 105.09(3)(note) is amended to read:

Trans 105.09(3)(note) NOTE: Applications can be obtained from, and should be returned to: Department of Transportation, Bureau of Driver Licensing Services, Hill Farms State Office Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702.

SECTION 36. Trans 105.10, 105.11 and 105.12 are created to read:

Trans 105.10 Insurance and bond requirements. (1) A driver school shall do all of the following:

(a) Hold minimum insurance of not less than \$500,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$500,000 because of bodily injury to or death of 2 or more persons in any one accident and, if the accident has resulted in injury to or destruction

of property, to a limit of not less than \$50,000 because of injury to or destruction of property of others in any one accident.

(b) Adjust the insurance amounts under par. (a) every 5 years by multiplying the requirement amounts by the percentage increase of the consumer price index from January 1, 2007 to January 1 of the next fifth year [2012, 2017] and adding that amount to the amounts in par. (a) rounded to the nearest \$10,000 increment.

(c) Maintain a standard liability insurance of not less than \$500,000.

(d) File certification of insurance with the department.

(e) Require the insurance carrier to file notification of cancellation with the department within 10 days of cancellation.

(2) The schools shall file a bond or acceptable alternative based on size and performance. The size of the school and points assessed during the last previous license period shall be used to calculate the bond amount.

CALCULATIONS

Number of Points in 24 Months	0	1-2	3-6	7 or More
School size based on signed completion slips for the prior period				
0-300	\$5,000	\$10,000	\$15,000	\$30,000
301-1100	\$10,000	\$15,000	\$20,000	\$45,000
1101 or more	\$15,000	\$20,000	\$25,000	\$60,000

(3) Customer shall apply to bond company if obligations of the training contract cannot be met.

(4) Points are assessed based on violation frequency and severity. Points are assessed based on the system specified in s. Trans 105.11.

(5) Certification of the bond must be filed with the department at renewal of the school license.

Trans 105.11 Driver school point system. (1) The department may assess points against a driver school or instructor that has violated any provision in ss. 343.60 to 343.72, or rules interpreting ss. 343.60 to 343.72, Stats., that constitute grounds for the suspension or revocation of their license. The department shall provide a licensee or applicant written notice of a point assessment. Written notice of a point assessment shall specify the reasons for the point assessment. All points assessed by the department shall remain in effect for the duration for the next 24 months, and any new point assessments shall be added to the existing point total for that licensee throughout the next 24 months.

(2) The department shall use the points assessed to determine the amount of bond required for the next licensing period.

(3) The department may take licensing action under the system of progressive enforcement described in s. Trans 105.12, based on the number of points assessed. If applicable, the written notice specified in sub. (1) may include the issuance of a complaint to revoke or suspend a license, a written stipulation to a conditional license, a civil forfeiture complaint, or notice of denial of a license.

(4) Points shall be assessed according to the following scale:

(a) Six points are assessed for any of the following:

1. Having one's school or instructor license withdrawn.
2. Having 6 or more substantiated customer complaints within a license period.

3. Providing documentation or information to the department on any matter regulated by subch. VI of ch. 343, Stats., or this chapter which contains a false statement as to any material matter.

4. Permitting actions that could harm the customer physically or financially.

5. Performing work duties after consuming any alcohol or controlled substance or other drug that impairs ability to drive a motor vehicle.

6. Failing to comply with DMV warning letter.

7. Substantiated complaint from a parent, legal guardian or customer of inappropriate conduct or actions with the customer.

8. Violating ss. 343.60 to 343.72, Stats., that significantly harm highway safety.

9. Instructing at a driver training school without the proper license.

(b) Four points are assessed for any of the following:

1. Not complying with renewal criteria within 30 days of written request by DMV.

2. Having 5 substantiated customer complaints in a license period.

3. Continuing to use a vehicle that is out of service for driver training.

4. Having not filed school insurance and/or bond with the department.

5. Failing to resolve audit violations or discrepancies in time specified.

6. Filing complaints about another school that are not substantiated.

7. Soliciting complaints or providing training prior to licensure.

8. Insolvency or bankruptcy.

9. Failing to timely pay debts owed the state.

10. Violating ss. 343.60 to 343.72, Stats., that result in unfair advantage to a school or harms another school.

(c) Two points are assessed for any of the following:

1. Having 4 substantiated customer complaints within a license period.
2. Not filing required vehicle inspections with the department.
3. Not notifying the department when students are no longer enrolled.
4. Having a significant discrepancy in business records.
5. Providing a student with a signed MV3001 document prior to receipt of a signed contract or agreement.
6. Violating ss. 343.60 to 343.72, Stats., that do not harm the customer or impact highway safety.

(d) One point is assessed for either of the following:

1. Three substantiated customer complaints within a license period.
2. Violation of s. 343.61(4)(d), Stats., relating to office location and facility locations.

Trans 105.12 Progressive enforcement actions. (1) Before recording points, the department shall notify the school or the instructor of the reason for the proposed action. The school or instructor may respond within 10 days. Upon due consideration the department shall act. The department may:

- (a) Record points assessed to driver schools under s. Trans 105.11.
- (b) Record points assessed to instructors, including points assessed by a driver school the instructor has worked for or owned previously. Points assessed to instructor may also be assessed to a school.
- (c) Issue a conditional license when appropriate.
- (d) Record less than the assessed points.

(2) Based on the points assessed to driver schools and instructors under s. Trans 105.11 in the past 24 months, the following enforcement actions shall apply:

(a) Level one enforcement action – one point assessed. An advisory letter may be sent to the driver school or instructor, asking for corrective action.

(b) Level two enforcement action – one to 3 points assessed. The department may conduct an on-site inspection or audit. An advisory letter shall be sent. If a situation is unresolved after time specified in the advisory letter, the department may issue a conditional license under s. 343.61 or 343.62, Stats., restricted to classroom instruction only. Vehicles used by the driver school may also be ordered out of service, if the violation is related to the vehicle inspection. The restricted license may remain in effect until situation is resolved.

(c) Level three enforcement action – 4 to 6 points assessed. A warning letter may be sent. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 90 days.

(d) Level four enforcement action – 6 or more points assessed. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 4 months to one year, based on point accumulation.

(3) All administrative licensing suspensions, revocations, denials, or conditional licenses issued may be appealed under ch. 227, Stats.

(END OF RULE TEXT)

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)(intro.), Stats.

Signed at Madison, Wisconsin, this 24th day of August, 2006.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



**WISCONSIN LEGISLATIVE COUNCIL
RULES CLEARINGHOUSE**

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

**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 06-089

AN ORDER to ..., relating to licensing of driver schools and instructors.

Submitted by **DEPARTMENT OF TRANSPORTATION**

07-12-2006 RECEIVED BY LEGISLATIVE COUNCIL.

08-03-2006 REPORT SENT TO AGENCY.

RS:DLS

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 RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-089

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

o. Section Trans 105.10 (1) should be restructured and redrafted as follows:

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

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

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

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

(d) File certification....

(e) Require the insurance carrier....

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 4
CR 06-089

ANALYSIS OF FINAL DRAFT OF TRANS 105

(a) **Basis and Purpose of Rule.** The purpose of this rule making is to amend ch. Trans 105 to comply with 2005 Wisconsin Act 397. This new law made many substantial changes to the driver schools statutes. Some of the changes include eliminating the requirement that schools maintain permanently bound books for recordkeeping; implementing a system of progressive enforcement to take action against driver schools or instructors that have violated the law or have compiled multiple substantiated consumer complaints; allowing driver schools to participate in the Cooperative Driver Testing Program, which allows schools to administer the knowledge and signs tests to their own students under the age of 18; and requiring driver schools to file a bond with the Department, and maintain a liability insurance policy in the amount established by rule.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on August 14, 2006. Modifications made as a result of testimony at the hearing are as follows:

- A definition of “substantiated” was added for complaints.
- A mileage requirement of 100,000 was added for vehicle inspections.
- The separate entrance/exit was clarified so that it was specific to offices in residences.
- The length of time to record changes in records was lengthened from 1 business day to 3.
- The point assessment system was changed to increase notification from the Department to the schools, and also allow the schools to respond.
- Language was added to the disqualifying offenses, specifying how far back in an applicant’s history that the Department would go, based on the offense. Out-of-state offenses were added as well.
- The designated alternative method for an applicant that fails a skills test twice was stricken.
- Minor language changes were made for clarification.

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

Michele S. Kahle, Owner and President of Cruisers Driving School & Wisconsin Professional Driving School Association, P. O. Box 8, 105 West Wisconsin Avenue, Tomahawk, WI 54487—spoke in favor of the rule and provided written comments.

Kris Engebretson, Owner, Advanced Driver Training, 1136 West Mason Street, #01, Green Bay, WI 54303—registered in favor of the rule. Written comments also provided.

Bernie Reinhard, Driving School Association of America/Easy Method, 6031 West Center Street, Milwaukee, WI 53210—spoke both in opposition to the rule and for information. Written testimony was also provided.

Paul Witmer, Instructor, Knight Driver School, 340 West Grand, Beloit, WI 53511—spoke in opposition to the rule and provided written testimony.

Benjamin Grawe, Attorney, Knight Discount Driving School, Janesville, WI—spoke in opposition to the rule on behalf of Knight Discount Driving School. Written testimony was also provided.

Judy A. Hudson, G.M.V.P., 4-Lakes Driver Training School, Inc., 5003 University Avenue, Madison, WI 53705—registered for information.

Miles H. Barker, President, 4-Lakes Driver Training School, 5003 University Avenue, Madison, WI 53705—registered for information.

Marv DeGarmo, Owner, DeGarmo's Drivers Ed School, S958 Schultz Lane, Chaseburg, WI 54621—registered in favor of the rule.

Leo J. Kelly, President/Owner of Kelly Driving School, Inc., W6124 N. Cty. Rd. A, Elkhart Lake, WI 53020—registered in favor of the rule.

Steven Thompson, Instructor/Manager, DeGarmo's Drivers Ed., S958 Schultz Lane, Chaseburg, WI 54621—registered for information.

Tom LaPlante, Owner, AABC Driving School, 1623 Main Street, Green Bay, WI 54302—registered for information.

John Dolney, President, Arcade Drivers School, 8511 West Lincoln Avenue, West Allis, WI 53227—registered for information.

Melissa Dolney, Arcade Drivers School, 8511 West Lincoln Avenue, West Allis, WI 53227—registered for information.

Jay Frohwirth, General Manager, Easy Method Driving School, 6031 West Center, Milwaukee, WI 53210—registered for information.

Janice Witmer, Knight Driving School, 1015 Oakland Avenue, Janesville, WI 53545—registered in opposition to the rule.

Kelly Hill, MJM Hill Driving School, 931 8th Street, Monroe, WI 53566—registered for information.

David M. Ogrizovich, Vice President, Assurance Driving School, 7704 West Burleigh, Milwaukee, WI 53222—registered in favor of the rule.

Peggy J. Hardy, Instructor, Family Driving School, 2509 West Capital Drive, Milwaukee, WI 53206—registered for information.

(d) **Summary of Public Comments and Agency Response to those Comments:** Below are the summaries of public hearing comments and written comments received:

Michele S. Kahle, Owner and President of Cruisers Driving School & Wisconsin Professional Driving School Association:

1. Separate entrances and exits for office and classroom should be deleted, unless the driving school office is located in a home. Driver school offices in a home should have an entrance separate to the home entrance, so students do not have to go through the home.

2. The phrase “no other driver school business conducted within the office, unless approved by the department” is confusing, and should be rewritten. Suggested: “No business other than driver school business may be conducted in the driver school office unless approved by the department”. Comment applies to both Section 5 (e) & (f).

3. Allow schools to terminate CDTP agreement (as well as department).

4. Should sexual intercourse with a child 16 or older be a lifetime offense?

5. Clarification needed that unissued course completion slips shall be returned.

6. Should we use the word "recorded" instead of "captured"?

7. Signature of parent is required for minors.

8. Add "in the school's name" for listed telephone number.

9. The phrase “under 18 years of age” shouldn’t be stricken.

10. Change "enrollment" to "receipt of a properly executed service agreement".

11. Other grammatical changes were suggested as well.

Agency Response: All suggested changes were incorporated, except:

4. Sexual assault, exploitation, sexual assault with a student 16 or older by an instructional staff person are lifetime offenses. Sexual intercourse with a child 16 or older is not as serious as these lifetime offenses.

Kris Engebretson, Owner, Advanced Driver Training. Kris also submitted comments on behalf of the Wisconsin Professional Driving School Association. Those comments are included above.

Agency Response: See responses to Michele Kahle, Wisconsin Professional Driving Schools Association above.

Bernie Reinhard, Driving School Association of America/Easy Method:

1. Vehicle capacity should not be set at a 4-person minimum to allow for future use to 2 passenger vehicles.

2. Participation in the Cooperative Driver Testing Program should not be tied to the point system.

3. Records required by s. 343.71, Stats., should be required within 3 business days, not one working day.

4. Vehicle inspection should be clarified, as to whether certification is required annually or 12 months after each vehicle was put in service.

5. "Content missed must be made up" is ambiguous, vague, and will lead to confusion, and is unworkable classroom policy.

6. Point system should be weighted to allow for greater number of complaints for larger driver schools.

7. Point system should prohibit complainant from filing a formal complaint until the complainant has given the school or instructor a written notice of the complaint within 48 hours of the event, and given the instructor or school a reasonable opportunity to address the complaint issued.

8. Point system should be bifurcated to deal with driving school separate from instructors.

9. Point system fails to incorporate a due process hearing at which the school or instructor is given the opportunity to confront the complainant and present evidence.

10. The terms employed in the point assessment are vague, ambiguous, and confusing.

11. Minimum bond for all driving schools should be \$25,000.
12. Point system should define "substantiated" complaint.

Agency Response: Most changes made, except:

1. Vehicle capacity can be revisited in future rule makings.
2. A school that has problems that result in points being assessed should be allowed to participate in the Cooperative Driver Testing Program.
8. Schools are ultimately responsible for their instructors, and instructors are licensed to teach at that specific school.
11. The bond size should be relative to the size of the school, as smaller schools have less outstanding service to be covered by the bond.

Paul Witmer, Instructor, Knight Driver School:

1. Requirement that offices have separate entrances and exits serves no purpose and should be eliminated. Offices should be permitted in the back of the classroom.
2. CDTP will foster polarity between competing schools, empower cheating, and is of no advantage to the student, since they have to go to DMV anyway for their instruction permit.
3. Will a disorderly conduct conviction prevent someone from being licensed?
4. Can churches be used for classroom and offices?
5. A definition of "legitimate absence" is needed.
6. Proposed rules for progressive enforcement do not have due process. Many complaints are from students who have been disciplined in the classroom.
7. No other agency determines bonding requirements by business volume and the number of complaints.
8. Department staff should not be coaching complainants, and should have teen classroom teaching experience. The Department also should not view the driver school - student relationship as a retail, customer service satisfaction experience.

Agency Response: Changes made, except:

2. 2005 Wisconsin Act 397 allows driver schools to administer the knowledge test.

3. No, this is not a felony conviction listed in the proposed rule. Convictions were modeled after felony convictions used in background checks for school bus drivers.

4. Yes, as long as they meet qualifications for offices under other provisions of the proposed rule.

5. This should be left up to the school in their agreement with their customer.

7. Motor vehicle dealers are required to post a bond based on the number of vehicles sold in the prior year, as well as the number of points assessed for violating motor vehicle dealer laws.

Benjamin Grawe, Attorney, Knight Discount Driving School:

1. Provisions that require the Department to deny or withdraw driver school or instructor licenses for various convictions in the background check do not specify how far back the Department may look in the background check. A reasonable limitation should be added for some, if not all, of the convictions in the proposed rule.

2. An appeal process is needed for disputing the assessment of points against a license.

3. Will formal administrative hearing take place? Chapter 227 appeal process is not enough.

4. Procedure for administering and evaluating consumer complaints should include intake, investigation, legal action, and hearing.

5. The Department should take care to address situations in which one driver school files a complaint against a competitor.

6. Only complaints that result in disciplinary action should be a part of the public record.

7. Rule fails to address how the Department will process consumer complaints. Will formal administrative hearing take place? Chapter 227 appeal process is not enough.

Agency Response: Changes made, except:

6. This is not permitted under Wisconsin's open records law.

The written comment period was held open until close of business August 15, 2006. Written comments were submitted from the following individuals:

Art Godleski, Driver Education Coordinator, Fond du Lac Public Schools (via internet website)—Mr. Godleski states:

1. Rules are becoming too lenient. Driver education instructors in public schools are required to have a bachelor's degree, and must take an additional 6 credits every 5 years. Commercial schools are paraprofessionals and shouldn't be given the same benefits.
2. Commercial schools also shouldn't be allowed to administer the knowledge test.
3. Two-hour class period should be retained.

Agency Response:

1. Instructors in driver schools are not required to have a bachelor's degree under Wisconsin law.
2. 2005 Wisconsin Act 397 allows driver schools to administer the knowledge test to students under the age of 18. The Department still administers the behind the wheel skills test.
3. No change was made to the two-hour class period.

Duane Apel, Driver Education Instructor (via internet website)—Mr. Apel states that private driver schools seem to have little government accountability, and the proposed changes are off base. Driver school requirements should be upgraded to improve the quality of instruction.

Agency Response: Driver schools are regulated under Chapter 343 of the Wisconsin Statutes.

Anne Abel, private citizen (via internet website)—Ms. Abel states:

1. Private driving schools are in a different category than those run by the Public School System. In the Public School System, teachers are certified by the Department of Public Instruction after numerous graduate classes. Additionally, every five years, re-certification is required. That means additional classes, workshops, etc. Public School teachers are in the business of testing and hold high ethical standards in administering tests. I believe that a business whose bread and butter is based on students passing a test may not have the ethical standards that should exist. Therefore, I believe the DMV should be doing the testing for private schools.

2. In regard to classroom instruction time, it is difficult enough for many students to attend all the classes currently required with two and one half hours of instruction each time. Students and parents are very busy people. To extend the number of

sessions would be a disservice to them. My experience is that two and one half hours is very workable and productive for students.

Agency Response:

1. 2005 Wisconsin Act 397 allows driver schools to administer the knowledge test to students under the age of 18. The Department still administers the behind the wheel skills test.

2. No change was made to the two-hour class period.

Terry Grinde, Owner/Instructor, Common Sense Driving School (via e-mail). Mr. Grinde states that driver schools must be allowed to continue to operate in home-based offices. Requiring schools to maintain a separate storefront office would be costly, and may force schools out of business.

Agency Response: Home-based offices are still allowed under the proposed rule making.

Joe Ries, Ries Driving School (via e-mail). Mr. Ries supports the proposed rule as corrected by WPDSA.

Agency Response: None.

Dale Lutze, First Class Driving School, Menomonee Falls, WI (via e-mail). Mr. Lutze states:

1. Are other vehicles used in state regulated businesses required to be inspected? May be an unnecessary expense for schools.

2. Why is bond needed? Do other small businesses also have to purchase a bond to safeguard clients?

Agency Response:

1. Yes - many vehicles, such as ambulances, school buses, day care vehicles, etc., are required to be inspected.

2. Bond is needed to reimburse customers for pre-paid services if the driver school goes out of business. Other small businesses, such as motor vehicle dealers, are required to post a bond.

Bob Savitski, Owner of Driver's Education of the Fox Cities (via e-mail). Mr. Savitski supports the recommendations made by the Wisconsin Professional Driving School Association.

Agency Response: None.

Fred Stair, F.C. Stair School of Driving, Inc., 1100 Kane Street, La Crosse, WI (via e-mail)--Mr. Stair states that our school supports the changes to Trans 105 Licensing of Driver Schools and Instructors. We support progressive enforcement and cooperative driver testing, along with all of the other rule changes.

Agency Response: None.

Alan Musilek, Owner/Instructor, Defensive Driving Specialists, LLC (via e-mail). Mr. Musilek states:

1. Some office requirements are out of date. Why is a separate outside door needed?
2. Supports striking reference to permanent register page number; also would like to strike reference to receipt number, as less than 1% of parents want a receipt.
3. Would also like to remove 105.06 (2)(f).
4. Why are driving school instructors required to have a physical and renew their license every year, while school bus drivers are required to have a physical every two years?

Agency Response: Changes made, except:

2. Receipt number needed to provide proof of payment to parents, and also to report income.
3. Home-based offices are still allowed under current law.
4. 2005 Wisconsin Act 397 changed this requirement, so driver school instructors will be required to have a physical every 2 years.

Christine Trapman, President/CEO, Assurance Driving School, 7704 West Burleigh Street, Milwaukee, WI 53222. Ms. Trapman states:

1. Instructors should surrender their license if they leave a school, and may not instruct at a competing school for one year.
2. Instructors should not be permitted to use their license for another school. Penalties should be assessed against the instructor and the school.
3. Another school may not use vehicles owned by a driver training school, unless removed from service and sold to the other driving school.

4. Public schools with Driver's Education must take bids from driver training schools, to give everyone equal opportunity.

Agency Response: Changes made, except:

1. The Department has no authority to regulate this under Chapter 343 of the Wisconsin Statutes.

3. The Department has no authority to regulate this under Chapter 343 of the Wisconsin Statutes. The Department may only regulate vehicle inspection and insurance, not ownership.

4. The Department has no authority to regulate this under Chapter 343 of the Wisconsin Statutes. The Department of Public Instruction regulates driver's education in public schools.

Charles R. Rabideau, Bay City Driving School, Inc., 1345 West Mason Street, Green Bay, WI 54303. Mr. Rabideau states:

1. The inspection requirement for vehicles over 3 years of age should be based on the mileage of the vehicle, instead of the age of the vehicle.

2. Schools with a long history of "clean" operating should be grandfathered from bonding requirements, unless future problems arise.

3. Additional costs incurred from changes to Trans 105 will be passed on the student.

4. Supports reducing paperwork / permanently bound book.

Agency Response: Changes made, except:

1. Mileage requirements imposed on vehicles less than 3 years of age.

2. Costs for schools with a long history of financial stability should be considerably lower than new schools, so financial obligation will be less.

3. Additional costs will be offset by other savings such as eliminating permanently bound book and reducing paperwork.

Terry Ewing, Division of Motor Vehicles, Technical and Training Section. Mr. Ewing states:

1. Refers to "minors" under 105.003(1)(a), (b) and (2)--does this prevent the commercial driving school from instructing adults?

2. Makes reference to a test for commercial driving school owners and managers, but does not specify "who" conducts the test?

3. Do we need to specify who can conduct the road test? Also, correct the reference to s. 343.6(4). Do we need to specify who conducts the 20 question oral test?

4. Classroom only licenses--are they issued only to those individuals who are no longer eligible for a driver license?

5. What is the designated alternative method?

6. How will a background check be completed for someone moving to Wisconsin from another jurisdiction who may have been denied an instructors license in their previous state of residence? CIB check is Wisconsin specific.

7. Instead of using the word "making" should the term be "signing"?

8. The record should also reflect the test scores (knowledge and highway signs) of the student.

9. How many days does the insurance carrier have to notify the Department of insurance cancellation?

10. Other grammatical changes suggested.

Agency Response: Changes made.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained numerous recommendations, all of which have been incorporated into the proposed rule and some explained as follows:

2. Form, Style and Placement

2.h. We have expanded the list of crimes to include crimes committed of other jurisdictions. We do not anticipate the creation of any of new serious crimes and, if new serious crimes are created, the Department would have two years to have the rule amended. Section 105.035(3)(intro.), (4)(intro.) and (5)(intro.) have been rewritten to refer to the conviction.

2.o. The term customer refers to anyone who is entitled to claim a refund from the entity providing the bond requirements under s. Trans 105.10.

2.p. The second sentence of s. Trans 105.11(1) has been deleted and a cross-reference to the point system has been provided. In response to who determines which violations of these statutory provisions "negatively impact or harm the customer or highway safety" and how is the determination made, the Department makes the determination. Reasons will be provided before the points are assessed. See s. Trans 105.12.

5.d. The Department would review customer needs, location, population and access.

(g) **Final Regulatory Flexibility Analysis.** Most driver schools are small businesses, and are already regulated by the Department. This rule making changes how the Department regulates driver schools.