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☛ **Details: Department of Transportation Notice of Public Hearing and Text of Proposed Rules**

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Senate

(Assembly, Senate or Joint)

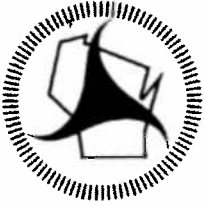
Committee on Natural Resources and Transportation...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**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

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Governor

Frank J. Busalacchi
Secretary

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The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South, State Capitol
Madison, Wisconsin 53702

June 22, 2006

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
contractual service procurement, Trans 515

Dear Senator Kedzie and Representative Ainsworth:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Revisor of Statutes and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Mark Wolfgram
Randy Knoche

The Wisconsin Department of Transportation proposes an order to create ch. TRANS 515, relating to contractual service procurement

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to s. 84.01(13), amended by 2005 Wis. Act 89, Stats., and interpreting s. 84.01(13), Stats., the Department of Transportation will hold a public hearing in **Room 951** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **8th** day of **August**, 2006, at **10:00 AM**, to consider the creation of ch. Trans 515, Wisconsin Administrative Code, relating to contractual service procurement.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance is available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 16.70(3g) and 84.01(13), Stats.

Statutory authority: ss. 16.70(3g) and 84.01(13), Stats.

Explanation of agency authority: The Department of Transportation is authorized to execute contracts for engineering and other services under s. 84.01(13), Stats. That statute also requires the Department to conduct a cost-benefit comparison of having that work performed by state employees, if the contract will cost \$25,000 or more. In addition to promulgating permanent rules, Act 89 requires the Department to promulgate emergency rules on this subject not later than July 1, 2006, and requires the Department to conduct this comparison for all contractual services solicited on or after July 1, 2006.

Related statute or rule: ss. 16.70(3g), 84.01(13) and 84.06(1m), Stats.

Plain language analysis: The proposed rule requires a cost benefit analysis before procuring engineering or other specialized services under s. 84.01(13), Stats., in excess of \$25,000 when those services are normally performed by state employees. The required analysis includes a comparison between the costs of contracting out and performing the services with state employees. The analysis also considers other subjective factors such as timeliness, quality and technical expertise.

Summary of, and preliminary comparison with, existing or proposed federal regulation: N/A

Comparison with Rules in Adjacent States:

Michigan: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Minnesota: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Illinois: Department legal counsel is unaware of and was unable to locate any rules in this state pertaining to this subject.

Iowa: Iowa Code sec. 23A.2 (2205) prohibits the state from offering to the public any supply or service that is also offered by private enterprise. This prohibition does not apply to supplies or services to be used or consumed solely by the state. There appears to be no requirement that the state compare costs and benefits of obtaining services by state employees or private enterprise.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: 2005 Wisconsin Act 89 requires the Department to promulgate this rule.

Analysis and supporting documentation used to determine effect on small businesses: The proposed rule does not affect the amount or quality of engineering or specialized services procured from private enterprise and therefore is expected to have no effect on small businesses.

Effect on small business: The requirements of the rule will be implemented by Department employees and will have no effect on external parties including small business. 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 compliance with 2005 Wisconsin Act 89 will cost it \$217,000 per year. No similar costs will be borne by the private sector.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held

open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Randy Knoche, Department of Transportation, Bureau of State Highway Programs, Room 951, P. O. Box 7913, Madison, WI 53707-7913. You may also contact Mr. Knoche by phone at (608) 266-1824.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Ch. Trans 515 is created to read:

CHAPTER TRANS 515 CONTRACTUAL SERVICE PROCUREMENT

Trans 515.01 Purpose and scope. (1) The purpose of this chapter is to create standards and procedures for conducting a cost-benefit analysis before contracting out for any service performed by state employees and involving an estimated expenditure of more than \$25,000, as required under s. 84.01(13), Stats.

(2) This chapter applies to all procurements of services executed under the authority of s. 84.01(13), Stats., that involve an estimated expenditure of more than \$25,000, except contracts for any service that is not a service performed by state employees.

Trans 515.02 Definitions. In this chapter:

(1) "Contract" means any contract or work order executed under s. 84.01(13), Stats., that is likely to result in an encumbrance, including any master contract having a well-defined scope of services.

(2) "Cost-benefit analysis" means a comprehensive written study to identify and compare the total cost, quality, technical expertise, and timeliness of a service performed by state employees and resources with the total cost, quality, technical

expertise, and timeliness of the same service obtained by means of a contract for contractual services.

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

(4) "Direct costs" means any cost that can be identified specifically with one particular cost objective, including the cost of salaries, limited term employees, fringe benefits and supplies.

(5) "Indirect costs" means the cost, allocable on a pro rata basis, of any general management or administrative cost that is incurred for a purpose benefiting more than one cost objective.

(6) "Master contract" means a contract under which no contractual obligation exists but that permits multiple purchases of goods or services by executing a work order that defines a specific scope of services and price.

(7) "Period contract" means a contract in which the contract scope of services is defined as services performed over a specified period of time.

(8) "Project contract" means a contract in which the contract scope of services is defined by the completion of the project or phase of a project.

(9) "Proposed engagement" means any execution of a contract, any renewal or extension of a contract, and any amendment of a contract that modifies the contract's scope of services. Any amendment to a contract that does not modify the contract's scope of services is not a proposed engagement.

(10) "Service performed by state employees" means engineering, consulting, surveying or other specialized work on department projects that is within the scope, expertise and ordinary duties of department employees. It does not include work performed for cities, villages, towns, or counties under ss. 84.01(5) or 84.03, Stats.

(11) "Solicitation of interest date" means the date on which the department advertises its intent to contract for services and solicits notice of interest, statement of qualification or proposal from persons wishing to perform those services. For contracts not requiring a public advertisement, it means the date the department first contacts any person regarding their interest in performing those services.

(12) "Total cost" means direct costs plus allocable indirect costs.

Trans 515.03 Cost benefit analysis. (1) Before the solicitation of interest date, the department shall conduct a cost-benefit analysis of each contract for a service performed by state employees and that involves an estimated expenditure of more than \$25,000.

(2) The cost-benefit analysis shall divide the work into functional tasks and shall show the total number of hours estimated to complete each task, unless the department states in its analysis why the specific proposed work justifies using another method. The cost-benefit analysis shall assume that state employees and contractors will require the same hours to complete a task. The department shall determine cost rates per task using historical data, wherever sufficient historical data exists. The cost-benefit analysis shall include all of the following:

(a) An estimate of the total cost of having state employees perform the services, including:

1. Estimated direct cost of wages.
2. Estimated direct cost of expenses.
3. Allocated fringe benefits.
4. Allocated time off with pay.
5. Allocated indirect costs.

(b) An estimate of the total cost to the department of the proposed engagement of services, including:

1. Estimated contract price.
2. Estimated cost per hour for each task, including salary, expenses, overhead and profit.
3. Estimated costs incurred by department to execute and administer contract cost, including the allocable cost, if any, of the contractor's use of state facilities, equipment or state employees.

(c) An evaluation of other factors affecting the decision to engage services under s. 84.01(13), Stats., including:

1. Quality.
2. Technical expertise.
3. Timeliness of service.

(3) This section does not apply to any of the following:

(a) Any master contract in which the scope of services is not defined until a work order is negotiated and executed.

(b) Any work order under a master contract for which a cost-benefit analysis was performed.

Trans 515.04 Contract renewals. The department shall complete a cost-benefit analysis in accordance with s. Trans 515.03(2) before renewing or extending a period contract or authorizing subsequent phases of any project contract, if the value of the renewal or authorization involves an estimated additional expenditure of \$25,000 or more.

Trans 515.05 Access to cost-benefit analyses. Any person may inspect or copy a cost-benefit analysis completed under this chapter, if any of the following applies:

(1) The contract or work order for the service has been executed.

(2) No contract or work order for the service has been executed, unless the department makes a specific demonstration that there is a need to restrict public access to the cost-benefit analysis at the time that the request to inspect or copy the cost-benefit is made. Pursuant to ss. 19.35 and 19.85, Stats., the department may prohibit any person from inspecting or copying a cost-benefit analysis if the demonstration shows that the department is deliberating or negotiating the purchasing of services, or that competitive or bargaining reasons require the department to withhold the cost-benefit analysis.

Trans 515.06 Effective date. The requirements of this rule apply to all contracts for which the solicitation of interest date is after June 30, 2006.

(END OF RULE TEXT)

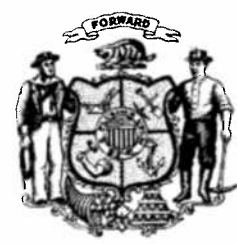
Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

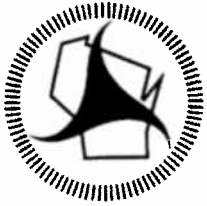
Signed at Madison, Wisconsin, this 22nd day of June, 2006.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE





Wisconsin Department of Transportation

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The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South, State Capitol
Madison, Wisconsin 53702

July 12, 2006

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to
licensing of driver schools and instructors, Trans 105

Dear Senator Kedzie and Representative Ainsworth:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Revisor of Statutes and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Karen Schwartz
Erin Egan

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) and (3), 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

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to Subchapter VI, Chapter 343, Stats., and interpreting Subchapter VI, Chapter 343, Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **14th** day of **August**, 2006, at **1:00 PM**, to consider the amendment of ch. Trans 105, Wisconsin Administrative Code, relating to licensing of driver schools and instructors.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

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. 343.60 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 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 rulemaking 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 place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business August 15, 2006 to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted 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.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 105.003 is created to read:

Trans 105.003 Introduction. (1) **PURPOSE.** This chapter construes subch. VI of ch. 343, Stats., by creating rules for the purpose of regulating the following:

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

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

(2) **SCOPE.** This chapter applies to all persons operating a commercial driver school for minors or giving instruction in the driving of a motor vehicle to minors 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" is defined in s. 343.60(1), Stats.

(3) "Instructor" is defined in s. 343.50(3), Stats.

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

(5) "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 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) Applicants 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 facilities shall address all of the following:

(a) Address for office and any classroom being self-certified.

(b) Measurement and configuration of office, including entrances, exits, windows, records storage and number of students.

(c) Adequate lighting and temperature control.

(d) Separate entrance and exits for the office and classroom.

(e) No other driver school business conducted within the office, unless approved by the department.

(f) No other driver business conducted within the driver training office.

(g) Zoning verification if the office is located in a non-traditional business location.

(h) Access to restroom facilities for classrooms.

(i) Authorization from school if public classrooms are used to provide instruction.

(5) Driver school offices in a home residence may be conditionally self-certified if:

(a) Facility is visited and approved by the department prior to filing a school license application.

(b) Minor students are not allowed at the office unless accompanied by a parent or sponsor.

(c) Applicant verifies that local zoning allows the office in a non-traditional business location.

(d) The office is a separate room with direct entrance and exits from the street.

(6) Applicants who will be owners and managers of driver schools shall submit verification that they passed the department's 50-question test on driver school and instructor criteria. Applicants shall get a minimum score of 80% to pass.

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 signs test for students who are currently enrolled in driver education. Driver schools that have accumulated 2 or more points in the current licensing period under s. Trans. 105.11 are not eligible to enter into the testing agreement with the department.

(2) The agreement is voluntary and can be terminated by the department.

(3) Schools that are participating in the cooperative driver testing program under s. 343.16(1)(c), Stats., may provide the knowledge and signs test required under s. 343.62(4)(a)1., Stats., to their 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. 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. Applicants shall also complete a 20-question test on instructional procedures or demonstrating teaching skills. This test may be administered orally. Applicants shall get a minimum score of 80% to pass.

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~~ Each applicant for an instructor's license shall have a medical statement submitted completed within the prior 24 months 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 department with the school renewal. If there is 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) and (3) are created to read:

Trans 105.02(2) Instructors that have held an instructor license for both behind the wheel and classroom training, but are no longer eligible for a driver license because of a medical condition, can at the request of the school continue to obtain a classroom-only license. This does not apply to instructors whose instructor license has been withdrawn.

(3) Instructors that fail the skills test twice may petition the department for an alternative test method.

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 this 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 conviction date or effective date of the withdrawal, 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 shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for a lifetime, if any of the following convictions are recorded in the background check:

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 shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 10 years if any of the following convictions are recorded in the background check:

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 shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 5 years if any of the following convictions are recorded in the background check:

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 use 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	Reckless 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
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 shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 2 years, if any of the following convictions are recorded in the background check:

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 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 for cancellation of the instructor license.

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

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

(a) Begin the driver training over if the school does not provide documentation of what instruction was completed.

(b) Receive credit for the completed hours of driver training instruction when documentation is provided, but shall complete the remaining training with another school to meet required driver education requirement

(c) If the driver school does not refund the fees for the training paid for but not provided, the student or his or her parents or guardians may contact the company that issued the bond required under s. Trans 105.10.

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~~ captured within one working day after the making 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~~ captured within one working day 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~~. The information required by this section shall be entered on the student record ~~card~~ within one working 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 and no verbal statement or promises will be recognized," signature of student, address of student, 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 function in a residence. 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 their school.

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) Licensees may not solicit business within 1500 feet of any department office where official road tests are given. This section does not apply if:

(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 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 exception is granted by the department.

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) All vehicles used by licensees to conduct behind-the-wheel training that are more than 3 years old shall:

(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 an authorized service facility such as licensed dealer or vehicle repair facility.

(b) Submit to an annual vehicle inspection certification by a service facility. The safety certification shall be on a form defined by the department and at a minimum include the date, name of school, vehicle make, vehicle model, vehicle identification number, and a date and signature certifying the vehicle meets or exceeds safety standards.

(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 will not be able to perform behind the wheel instruction until the vehicle is certified as safe. Any vehicles used after being ordered out of service shall result in points being assessed as provided in 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 107.07(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) Students ~~under 18 years of age~~ who satisfactorily complete the approved course and complete financial obligations required by their 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~~ content 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, licensees may not 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 ~~100~~ 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) Applicants for 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) The school shall 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. These requirements will be adjusted 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 above requirement rounded to the nearest \$10,000 increment. The driver school shall also:

- (a) Maintain a standard liability insurance of not less than \$500,000.
- (b) File certification of insurance with the department.
- (c) Require the insurance carrier to file notification of cancellation with the department.
- (2) The schools shall file a bond based on size and performance.
- (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) The size of the school and points assessed during past license period are 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

(6) Certification of 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 and instructor who has violated any provisions 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 may also assess points against a driver school or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or bond. 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 of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

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

(3) The department may also 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 the following:

1. School or instructor license withdrawal.

2. Six or more substantiated customer complaints within a license period.
3. Providing false documentation and information to DMV for the school or instructor license or self-certification.
4. Permitting actions that could harm the customer physically or financially.
5. Performing work duties after consuming any substance (alcohol/drug) that impairs ability to drive a motor vehicle.
6. Failure to comply with DMV warning letter.
7. Substantiated complaint from parent/student of inappropriate conduct or actions with the student.
8. Violation of ss. 343.60 to 343.72, Stats., that negatively impact or harm the customer or highway safety.

(b) Four points are assessed for the following:

1. Not complying with renewal criteria within 30 days of written request by DMV/
2. Five substantiated customer complaints in a license period.
3. Continuing to use a vehicle that is out of service for driver training.
4. School insurance and/or bond not filed with the department.
5. Audit violations or discrepancies are not resolved in time specified.
6. Filing complaints about another school that are not substantiated.
7. Soliciting complaints or providing training prior to licensure.
8. Violations of 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 the following:

1. Four substantiated customer complaints within a license period.

2. Required vehicle inspections are not filed with the department.
3. The department is not notified when students are no longer enrolled.
4. Discrepancy in student or business records.
5. Providing students with signed MV3001 document prior to enrollment.
6. Violation of ss. 343.60 to 343.72, Stats., that do not harm the customer or impact highway safety.

(d) One point is assessed for the following:

1. Three or more substantiated customer complaints within a license period.
2. Violations of ss. 343.60 to 343.72, Stats., relating to office location and facility locations.

Trans 105.12 Progressive enforcement actions. (1) The department shall:

- (a) Record points assessed to driver schools under s. Trans 105.11.
 - (b) Record points assessed to instructors, as well as the driver schools the instructor has worked for or owned previously.
 - (c) Tie accumulated points to instructor, as applicable.
 - (d) Issue a conditional license when appropriate.
- (2) Based on the points assessed to driver schools and instructors under s. Trans 105.11 in the current licensing period, 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.
 1. The department may conduct an on-site inspection or audit.
 2. An advisory letter shall be sent.

3. If a situation is unresolved after time specified in the advisory letter, the department may issued 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.

1. A warning letter may be sent.

2. 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 can be appealed under ch. 227, Stats.

(END OF RULE TEXT)

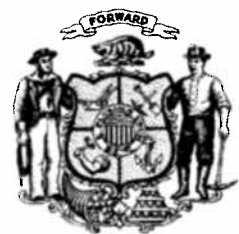
Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

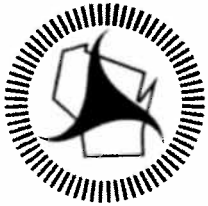
Signed at Madison, Wisconsin, this 11th day of July, 2006.


FRANK J. BUSLACCHI
Secretary
Wisconsin Department of Transportation



WISCONSIN STATE LEGISLATURE





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The Honorable Senator Neal Kedzie
Chairman, Senate Transportation Committee
Room 313 South, State Capitol
Madison, Wisconsin 53702

August 15, 2006

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

RE: **NOTICE OF PUBLIC HEARING** and Text of Proposed Rule, relating to **medical standards for driver licensing and general standards for school bus endorsements**, Trans 112

Dear Senator Kedzie and Representative Ainsworth:

In accordance with the Department of Transportation's practice of notifying the Legislative Transportation Committees concerning rulemaking actions, I submit the enclosed documents for your information. These documents have also been filed with the Revisor of Statutes and with the Legislative Council, with copy to the Department of Administration, in accordance with the requirements of §§ 227.15 and 227.17, Stats.

Sincerely,

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

Julie A. Johnson
Paralegal

Enclosure

cc: Casey Newman
Mike Goetzman
Lynne B. Judd
Jill Reeve

The Wisconsin Department of Transportation proposes an order to renumber TRANS 112.02(1); renumber and amend TRANS 112.15(5) and 112.18; amend TRANS 112.03(6), 112.04(1)(e) to (g), 112.045(1) and (2), 112.05(2)(a)5. and (3)(c), 112.06(3)(b)1. and (c)1., 3. and 6., 112.07(3)(b)1. and 5 and (c)2., 112.08(3)(b)1. and 4., 112.10(3)(b)4.c. and (c)3., 112.12(3)(b)2. and (c)3. to 5., 112.13(3)(b)5. and (c)2., 112.16(1)(a) and (4), and 112.17; and create TRANS 112.02(1), 112.15(5)(a), and 112.18(2), relating to medical standards for driver licensing and general standards for school bus endorsements

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 50.01(1b), 121.555(3)(c) and (4)(a), 146.82(3), 343.12(2), 343.16(5), 343.20(1), 343.21(s), 343.23(2), 343.237, 441.16(2), Stats., and interpreting ss. 50.01(1b), 121.555(3)(c) and (4)(a), 146.82(3), 343.12(2), 343.20(1), 343.21(s), 343.23(2), 343.237, 343.16(5), 441.16(2), Stats., the Department of Transportation will hold a public hearing in **Room 394** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **19th** day of **September**, 2006, at **10:00 AM**, to consider the amendment of ch. Trans 112, Wisconsin Administrative Code, relating to medical standards for driver licensing and general standards for school bus endorsements.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 50.01(1b), 121.555(3)(c), 121.555(4)(a), 146.82(3), 343.12(2), 343.20(1), 343.21(s), 343.23(2), 343.237, 343.16(5), 441.16(2), Stats.

Statutory authority: ss. 50.01(1b), 121.555(3)(c) and (4)(a), 146.82(3), 343.12(2), 343.16(5), 343.20(1), 343.21(s), 343.23(2), 343.237, 441.16(2), Stats.

Explanation of agency authority: The Wisconsin Department of Transportation is responsible for licensing drivers to operate school buses. Current law requires the Department of Transportation to complete background and criminal history checks of school bus drivers and to disqualify drivers with certain criminal convictions. Current law also authorizes Advanced Practice Nurse Prescribers ("APNP") to take certain medically related actions, including reporting drivers the APNP believes are medically, physically or mentally incapable of exercising reasonable control over a motor vehicle. Current law prohibits the Department from issuing a school bus driver's license to any person who lacks sufficient use of both hands and the foot normally employed to operate the foot brake and foot accelerator correctly and efficiently, or who does not meet physical standards established by the Department. Upon receiving such reports from qualified medical practitioners, the Department may investigate and require medical re-examination to determine the reported person's ability to drive safely.

Related statute or rule: Section 343.12, Stats., and ch. Trans 112, Wis. Admin. Code.

Plain language analysis: This rule making proposes three unrelated changes to ch. Trans 112. First, 2005 Wisconsin Act 187 requires the Department of Transportation to accept reports prepared by an Advanced Practice Nurse Prescriber ("APNP") of a driver's ability or capacity to operate a motor vehicle. Upon receiving such a report from an APNP, the Department must determine whether to require the reported driver to submit to a special examination intended to determine whether the person suffers from incompetence, physical or mental disability, disease or other condition which might prevent the person from exercising reasonable and ordinary control over a motor vehicle. Prior to 2005 Wisconsin Act 187, The Department could not consider reports submitted by APNP, but could consider only reports submitted by medical doctors, doctors of osteopathy and optometrists.

Next, the proposed rule specifies that the Department may require a driving evaluation of any person having a significant limb defect or limitation, including full or partial amputation that could affect a person's ability to drive safely. The Department has long required such re-examinations, but does so under its general authority to re-examine drivers having functional ability deficits. The Federal government currently requires this re-examination for operators of commercial motor vehicles and Wisconsin adopted these Federal Standards in 1996 in order to maintain Federal Highway Funding.

Last, the proposed rule clarifies that the conviction of any disqualifying crime (the conviction for which disqualifies a person from operating a school bus) that carries an obsolete or renumbered statutory reference, will be considered a conviction under the current statute number if the offenses are substantially similar. For example, a 1997

conviction under s. 161.46, Stats., for distributing a controlled substances to persons under age 18, will be considered a conviction under s. 961.46, Stats., because of statute renumbering done by 1995 Wisconsin Act 448. Chapter Trans 112 currently specifies that conviction under s. 961.46, Stats., disqualifies a person from operating a school bus, but does not mention earlier statutory citations for that same offense.

Summary of, and preliminary comparison with, existing or proposed federal regulation: 49 C.F.R. Part 390.5, federal motor carrier safety regulations, defines "medical examiner" to include an Advanced Practice Nurse. 49 C.F.R Part 391.41 prohibits any person having any impairment of an arm, foot, leg or hand or finger used for grasping that might interfere with normal tasks associated with the safe operation of a commercial motor vehicle from driving a commercial motor vehicle unless they have been granted a skill performance evaluation certificate, which is a series of tests conducted by the federal motor carrier safety administration ("FMCSA").

Comparison with Rules in Adjacent States:

Michigan: Per John Gregurich, Driver Analyst, Driver Assessment Division of the Michigan Dept. of State: The Department of State Administrative Rules requires that a licensed doctor certify the medical documentation submitted on a driver's behalf. On additional questioning, John clarified that although Michigan will accept an APNP report, it must be co-signed by an MD or doctor of osteopathy ("DO").

Per the director of the Michigan Nurses Association, Advanced Practice Nurses were just awarded the right to have authority for medical reports related to driving March 2006. Michigan differs from Wisconsin in that they do not have a large pool of NPs who are not APNPs. Michigan did not do grandfathering when they accepted national credentialing standards. Virtually all NPs in Michigan are APNPs (Master's prepared, board certified).

The Department of State will test drivers who have had leg amputations or an impairment of a limb when requested by a rehabilitation agency, doctor, or other interested party that indicates the loss or impairment may affect the person's ability to drive safely.

The Michigan Motor Vehicle Code, section 257.312f, prohibits the Department of State from issuing a CDL license to a person whose license was suspended in the preceding 36 months unless due to a medical or failure to appear at driver re-exam; the driver was convicted of a 6 point violation in 24 months preceding application (257.625); the driver already has had his/her application for a CDL license suspended, revoked, canceled or denied; the driver would have been suspended for a mandatory licensing action; or the driver's license is already suspended, revoked, denied within 36 months of application.

Minnesota: Online survey of the Minnesota statutes yielded answers. Background:(**Website**) From Minnesota statutes:

171.321 Qualifications of school bus driver.

Subd. 3. **Records check of applicant.** (a) Before issuing or renewing a school bus endorsement, the commissioner shall conduct a criminal history and driver's license records check of the applicant. The commissioner may also conduct the check at any time while a person is so licensed. The check must consist of a criminal history check of the state criminal records repository and a check of the driver's license records system. If the applicant has resided in Minnesota for less than five years, the check must also include a national criminal history check. The commissioner shall accept the national criminal history check request and the fingerprints of the applicant and is authorized to exchange fingerprints with the Federal Bureau of Investigation and request the Federal Bureau of Investigation to conduct a criminal history check. The applicant's failure to cooperate with the commissioner in conducting the records check is reasonable cause to deny an application or cancel a school bus endorsement. The commissioner may not release the results of the records check to any person except the applicant or the applicant's designee in writing.

(b) The commissioner may issue to an otherwise qualified applicant a temporary school bus endorsement, effective for no more than 180 days, upon presentation of (1) an affidavit by the applicant that the applicant has not been convicted of a disqualifying offense and (2) a criminal history check from each state of residence for the previous five years. The criminal history check may be conducted and prepared by any public or private source acceptable to the commissioner. The commissioner may reissue the temporary endorsement if the national criminal records repository check is timely submitted but not completed within the 180-day period.

Also:

171.3215 Canceling bus endorsement for certain offenses.

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given them.

(b) "School bus driver" means a person possessing a school bus driver's endorsement on a valid Minnesota driver's license or a person possessing a valid Minnesota driver's license who drives a vehicle with a seating capacity of ten or less persons used as a school bus.

(c) "Disqualifying offense" includes (1) any felony offense, (2) any misdemeanor, gross misdemeanor, or felony violation of chapter 152, (3) any violation under section 609.3451, 609.746, subdivision 1, 617.23, 617.246, 617.247, or 617.293, or (4) while driving, operating, or being in physical control of a school bus or a Head Start bus, a violation of section 169A.20 or a similar statute or ordinance from another state.

(d) "Head Start bus driver" means a person possessing a valid Minnesota driver's license:

- (1) with a passenger endorsement, who drives a Head Start bus;
- (2) with a school bus driver's endorsement, who drives a Head Start bus;
or
- (3) who drives a vehicle with a seating capacity of ten or fewer persons used as a Head Start bus.

Subd. 2. **Cancellation for disqualifying and other offenses.** Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a disqualifying offense, the commissioner shall permanently cancel the school bus driver's endorsement on the offender's driver's license and in the case of a nonresident, the driver's privilege to operate a school bus in Minnesota. A school bus driver whose endorsement or privilege to operate a school bus in Minnesota has been permanently canceled may not apply for reinstatement. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a violation of section 169A.20, or a similar statute or ordinance from another state, and within ten days of revoking a school bus driver's license under section 169A.52, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota for five years. After five years, a school bus driver may apply to the commissioner for reinstatement. Even after five years, cancellation of a school bus driver's endorsement or a nonresident's privilege to operate a school bus in Minnesota for a violation under section 169A.20, sections 169A.50 to 169A.53, or a similar statute or ordinance from another state, shall remain in effect until the driver provides proof of successful completion of an alcohol or controlled substance treatment program. For a first offense, proof of completion is required only if treatment was ordered as part of a chemical use assessment. Within ten days of receiving notice under section 631.40, subdivision 1a, or otherwise receiving notice for a nonresident driver, that a school bus driver has been convicted of a fourth moving violation in the last three years, the commissioner shall cancel the school bus driver's endorsement on the offender's driver's license or the nonresident's privilege to operate a school bus in Minnesota until one year has elapsed since the last conviction. A school bus driver who has no new convictions after one year may apply for reinstatement. Upon canceling the offender's school bus driver's endorsement, the commissioner shall immediately notify the licensed offender of the cancellation in writing, by depositing in the United States post office a notice addressed to the licensed offender at the licensed offender's last known address, with postage prepaid thereon.

Subd. 2a. **Cancellation for crime against minor.** Within ten days of receiving notice that a Head Start bus driver has committed a crime against a minor, the commissioner shall permanently cancel the passenger endorsement on the offender's driver's license. Upon canceling the offender's passenger endorsement, the commissioner shall immediately notify the licensed offender of the cancellation in writing, by depositing in the United States post office a notice addressed to the licensed offender at the licensed offender's last known address, with postage prepaid thereon. For purposes of this subdivision, "crime against a minor" means an act committed against a minor victim that constitutes a violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.21, subdivision 1, 609.221, 609.222, 609.223, 609.342, 609.343, 609.344, 609.345, 609.352, or a felony violation of section 609.322, 609.324, or 609.377.

Subd. 3. **Background check.** Before issuing or renewing a driver's license with a school bus driver's endorsement, the commissioner shall conduct an investigation to determine if the applicant has been convicted of committing a disqualifying offense, four moving violations in the previous three years, a violation of section 169A.20 or a similar statute or ordinance from another state, a gross misdemeanor, or if the applicant's driver's license has been revoked under section 169A.52. The commissioner shall not issue a new bus driver's endorsement and shall not renew an existing bus driver's endorsement if the applicant has been convicted of committing a disqualifying offense. The commissioner shall not issue a new bus driver's endorsement and shall not renew an existing bus driver's endorsement if, within the previous five years, the applicant has been convicted of committing a violation of section 169A.20, or a similar statute or ordinance from another state, a gross misdemeanor, or if the applicant's driver's license has been revoked under section 169A.52, or if, within the previous three years, the applicant has been convicted of four moving violations. An applicant who has been convicted of violating section 169A.20, or a similar statute or ordinance from another state, or who has had a license revocation under section 169A.52 within the previous ten years must show proof of successful completion of an alcohol or controlled substance treatment program in order to receive a bus driver's endorsement. For a first offense, proof of completion is required only if treatment was ordered as part of a chemical use assessment. A school district or contractor that employs a nonresident school bus driver must conduct a background check of the employee's driving record and criminal history in both Minnesota and the driver's state of residence. Convictions for disqualifying offenses, gross misdemeanors, a fourth moving violation within the previous three years, or violations of section 169A.20, or a similar statute or ordinance in another state, must be reported to the Department of Public Safety.

Subd. 4. **Waiver of permanent cancellation.** (a) The commissioner of public safety or the commissioner's designee, in consultation with the Division of Driver and Vehicle Services, may waive the permanent

cancellation requirement of this section for a person convicted of a misdemeanor, a gross misdemeanor, a nonfelony violation of chapter 152, or a felony that is not a violent crime under section 609.1095.

(b) After notice to the requesting school district and contract provider of school bus transportation, the commissioner may waive the permanent cancellation requirement after ten years have elapsed since the person was convicted of a violation of section 609.582, subdivision 2, 3, or 4.

Illinois: Only an MD/DO can complete medical reports. Any nurse practitioner may fill out the form but an MD/DO must sign it (Medical Review). Illinois DMV does no functional assessment of drivers at the DMV counters.

From the Illinois Secretary of State's web site re: school bus licensees, available at http://www.cyberdriveillinois.com/departments/drivers/drivers_license/schoolbus.html:

- Possess a valid driver's license for three years immediately prior to the date of your application, which has not been revoked, suspended, cancelled or disqualified;
- Affirm under penalty of perjury that you have not made a false statement or knowingly concealed a material fact in any application for a permit;
- You have not been convicted of two or more serious traffic violations within the previous twelve-month period of the date of your application;
- You have not been convicted of reckless driving, DUI or reckless homicide resulting while operating a motor vehicle within three years of the date of your application;
- Submit to and successfully pass both an Illinois specific and FBI criminal background check. Fingerprint results are valid for one year;
- You have not been repeatedly involved as a driver in motor vehicle accidents or repeatedly convicted of offenses, which indicates disrespect for traffic laws;
- You have not caused a fatal accident as the result of the unlawful operation of a motor vehicle; and
- Within the last five years, you have not been found to be afflicted with or suffering from any mental disability or disease.

Iowa: According to Dave Stutz at Iowa DOT, an APNP cannot submit medical forms to Iowa DOT, only an MD or DO (a physician) may complete and submit Iowa DOT medical forms. In Iowa, an applicant must answer a yes or no health impairment question on renewal. If they have an obvious amputation with an unrestricted license they will be asked if they have road tested before since the amputation. If they say no, they are given the option of a road test or waiting on a DMV record check (apparently paper files). It is a counter staff decision. See multiple responses...Iowa does NOT maintain a felonies list of disqualifiers per Max Christensen, Iowa Department of Education.

From Dave Stutz, Iowa DOT re: S endorsement:

- b. Be physically and mentally competent.

c. Not possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.

d. Possess a current certificate of qualification for operation of a commercial motor vehicle issued by a physician licensed pursuant to chapter 148 or 150A, physician's assistant, advanced registered nurse practitioner, or chiropractor or any other person identified by federal and state law as authorized to perform physical examinations.

2. Any of the following shall constitute grounds for a school bus driver's immediate suspension from duties, pending a termination hearing by the board of directors of a public school district or the authorities in charge in a nonpublic school if the bus driver is under contract, pending confirmation of the grounds by the school district or accredited nonpublic school if the bus driver is a part-time or substitute bus driver who is not under contract, or pending confirmation of the grounds by the employer of the school bus driver if the employer is not a school district or accredited nonpublic school by the board:

a. Use of nonprescription controlled substances or alcoholic beverages during working hours.

b. Operating a school bus while under the influence of nonprescription controlled substances or alcoholic beverages.

c. Fraud in the procurement or renewal of a school bus driver's authorization to operate a school bus.

d. The commission of or conviction for a public offense as defined by the Iowa criminal code, if the offense is relevant to and affects driving ability, or if the offense includes sexual involvement with a minor student with the intent to commit acts and practices proscribed under sections 709.2 through 709.4, section 709.8, and sections 725.1 through 725.3, or is a violation of the rules of the department of education adopted to implement section 280.17.

e. A change in circumstances indicating that the driver is no longer physically or mentally competent. Failing to maintain or falsifying the required reports.

From Max Christensen, Executive Officer Iowa Dept of Education

IAC 43.24 refers to both IAC 43.12 and IC 321.375(2). All three are enclosed below:

281-43.24(321) Authorization denials and revocations. A person who believes that a school bus driver who holds an authorization issued by the department of education or who seeks a school bus authorization has committed acts in violation of Iowa Code subsection 321.375(2) or rule 43.12(285) may file a complaint with the department against the driver or applicant. The department shall notify the driver or applicant that a complaint has been filed and shall provide the driver or applicant with a copy of the complaint. A hearing shall be set for the purpose of determining whether the bus

driver's authorization shall be denied or revoked. Hearing procedures in 281-Chapter 6 shall be applicable to authorization revocation or denial proceedings.

281-43.12(285) Driver qualifications. General character and emotional stability are qualities which must be given careful consideration by boards of education in the selection of school bus drivers. Elements that should be considered in setting a character standard are:

1. Reliability or dependability.
2. Initiative, self-reliance, and leadership.
3. Ability to get along with others.
4. Freedom from use of undesirable language.
5. Personal habits of cleanliness.
6. Moral conduct above reproach.
7. Honesty.
8. Freedom from addiction to narcotics or habit-forming drugs.
9. Freedom from addiction to alcoholic beverages or liquors.

281-43.13(285) Stability factors. Factors to be considered in determining emotional stability are:

- 43.13(1) Patience.
- 43.13(2) Considerateness.
- 43.13(3) Even temperament.
- 43.13(4) Calmness under stress.

281-43.14(285) Driver age. School bus drivers must be at least 18 years of age on or before August 1 preceding the opening of the school year for which a school bus driver's authorization is required.

281-43.15(285) Physical fitness. Except for insulin-dependent diabetics, an applicant for a school bus driver's authorization must undergo a biennial physical examination by a licensed physician or surgeon, osteopathic physician or surgeon, osteopath, qualified doctor of chiropractic, licensed physician assistant, or advanced registered nurse practitioner. The applicant must submit annually to the applicant's employer the signed medical examiner's certificate (pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49), indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury, and freedom from any communicable disease, such as tuberculosis. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This rule is promulgated in response to legislation and does not rest on factual data or analytical methodologies.

Analysis and supporting documentation used to determine effect on small businesses: This proposed rule does not directly affect small businesses, as defined under s. 227.114(1), Stats. Accordingly, the Department is exempt from performing an analysis of the affect on small businesses by operation of s. 227.114(8)(b), Stats.

Effect on small business: The proposed rule may affect small businesses indirectly, but will not have a significant economic impact on a substantial number of small businesses. The rule may have a favorable effect on some small businesses by enlarging the categories of persons eligible to submit medical reports to the Department. 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 of the rule 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 or on the private sector.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing, to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Jill Reeve, Department of Transportation, Bureau of Driver Services, Room 806, P. O. Box 7918, Madison, WI 53707-7918. You may also contact Jill Reeve by phone at (608) 264-7393.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website:
<http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Trans 112.02(1) is renumbered Trans 112.02(1)(g).

SECTION 2. Trans 112.02(1) is created to read:

Trans 112.02(1) "Advanced practice nurse prescriber" or "APNP" means an advanced practice nurse who is certified under s. 441.16(2), Stats., to issue prescription orders.

SECTION 3. Trans 112.03(6) is amended to read:

Trans 112.03(6) EVALUATION. A license issued to a person under this chapter may be restricted on the basis of a recommendation of a physician, a vision specialist, an APNP, a review board, or on the results of a driving examination or evaluation.

SECTION 4. Trans 112.04(1)(e) to (g) are amended to read:

Trans 112.04(1)(e) Physician's or APNP's medical report.

(f) Physician's or APNP's recommendations with regard to functional impairment.

(g) Physician's or APNP's identification of risk factors.

SECTION 5. Trans 112.045(1) and (2) are amended to read:

Trans 112.045(1) Effects or side effects of medication interfere with safe driving, unless the physician or APNP indicates the situation is temporary and not likely to recur.

(2) Complications of a condition interfere with safe driving as assessed by a physician or APNP or as determined by a driving evaluation.

SECTION 6. Trans 112.05(2)(a)5. and (3)(c) are amended to read:

Trans 112.05(2)(a)5. Physician or APNP treatment of the person for chemical abuse or dependency.

(3)(c) No person may hold any classification of operator's license if the person is diagnosed as suffering from uncontrolled chemical abuse or dependency, as assessed by a physician, APNP or approved public treatment facility.

SECTION 7. Trans 112.06(3)(b)1. and (c)1., 3. and 6. are amended to read:

Trans 112.06(3)(b)1. The person shows no evidence of exercise-induced ischemia, arrhythmias or hypotension as evidenced by appropriate cardiac testing which has been prescribed and reviewed by a physician or APNP.

(c)1. There are no current symptoms of coronary artery disease, such as unstable angina, dyspnea, or pain at rest, which interfere with safe driving, as assessed by a physician or APNP.

3. There is no congestive heart failure that limits functional ability and is assessed by a physician or APNP as interfering with safe driving.

6. There is no valvular heart disease or malfunction of prosthetic valves that is assessed by a physician or APNP as interfering with safe driving.

SECTION 8. Trans 112.07(3)(b)1. and 5. and (c)2. are amended to read:

Trans 112.07(3)(b)1. Physician or APNP certifies that the person is reliable in following the person's prescribed treatment program.

5. There is no impaired reasoning or judgment, as assessed by a physician or APNP.

(c)2. There is no impairment of reasoning or judgment preventing safe operation of a vehicle, as assessed by a physician or APNP.

SECTION 9. Trans 112.08(3)(b)1. and 4. are amended to read:

Trans 112.08(3)(b)1. The person is in a treatment program certified by a physician or APNP as appropriate for adequate control of the condition.

4. The person monitors his or her blood sugar levels as advised by a physician or APNP, and is knowledgeable about the condition.

SECTION 10. Trans 112.10(3)(b)4.c. and (c)3. are amended to read:

Trans 112.10(3)(b)4.c. Narcolepsy has been diagnosed as the cause of the episode, there have been no episodes of loss of consciousness for the past 2 years and the person's physician or APNP indicates treatment has been successful.

(c)3. Fatigue, weakness, muscle spasm, pain or tremor at rest does not impair safe driving, as assessed by a physician or APNP or determined through a driving evaluation.

SECTION 11. Trans 112.12(3)(b)2. and (c)3. to 5. are amended to read:

Trans 112.12(3)(b)2. There is no behavior disorder that interferes with safe driving, as assessed by a physician or APNP.

(c)3. Any delusional system does not interfere with safe driving, as assessed by a physician or APNP.

4. There is no impairment of judgment that interferes with safe driving as assessed by a physician or APNP.

5. There is no active psychosis that interferes with safe driving, as assessed by a physician or APNP.

SECTION 12. Trans 112.13(3)(b)5. and (c)2. are amended to read:

Trans 112.13(3)(b)5. There is no diagnosis of sleep apnea unless the physician or APNP indicates treatment has been successful and the condition will not impair ability to safely operate a commercial vehicle.

(c)2. There is no dyspnea that interferes with safe driving, as assessed by a physician or APNP or determined through a driving evaluation.

SECTION 13. Trans 112.15(5) is renumbered Trans 112.15(5)(b) and amended to read:

Trans 112.15(5)(b) The department shall consider the law of another jurisdiction or federal law or law of a federally recognized American Indian tribe or band in this state to be in substantial conformity with an offense listed under sub. (1), (2) or (3) if ~~the same~~ substantially similar elements of the offense listed under sub. (1), (2) or (3) must be proven under the law of another jurisdiction or under federal law or under a law of a federally-recognized American Indian tribe or band in this state.

SECTION 14. Trans 112.15(5)(a) is created to read:

Trans 112.15(5)(a) The department shall consider a conviction under a Wisconsin statute to be in substantial conformity with an offense listed under sub. (1),

(2) or (3) if substantially similar elements of the offense listed under sub. (1), (2) or (3) must be proven.

NOTE: Statute numbers in this section refer to the 2003 Wisconsin Statutes.

SECTION 15. Trans 112.16(1)(a) and (4) are amended to read:

Trans 112.16(1)(a) A recommendation of a physician, APNP or vision specialist.

(4) License restrictions may only be removed by the physician medical professional who recommended them, or by the department following the department's evaluation of the person's ability to drive.

SECTION 16. Trans 112.17 is amended to read:

Trans 112.17 Periodic reports. The department may require a person who has a progressive, recurring or debilitating condition to submit to follow-up examinations and reports by a physician, APNP or vision specialist as a condition of licensure.

SECTION 17. Trans 112.18 is renumbered Trans 112.18(1) and amended to read:

Trans 112.18(1) If a physician, APNP or vision specialist recommends that the person complete a test of driving ability, and the department deems that person eligible, the driving evaluation or examination shall be in a vehicle representative of the highest licensing classification the person holds or for which the person is applying. A driving evaluation may consist of a knowledge and sign identification test and an on-road test of driving ability.

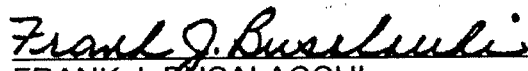
SECTION 18. Trans 112.18(2) is created to read:

Trans 112.18(2) The department may require a driving evaluation of any person having any significant limb, hand or foot defect or limitation, including full or partial amputations.

(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 14th day of **August**, 2006.


FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation