

Report From Agency

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

CR 06-082

The Wisconsin Department of Transportation proposes an order to amend TRANS 102.11(1)(a)2., (b)1. and 2. and (c), 102.16(1), (3m), (5), (6) and (8), and 102.18(1) and (2); and to create TRANS 102.15(2)(bm) and (3m), relating to operator's licenses and identification cards, and affecting small businesses.

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

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

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

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

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

Submitted by:

PAUL NILSEN
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 261-0126

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.14(2)(er), Stats.

Statutory authority: ss. 343.14 (2)(er), 343.17(3), 343.20(1m) and 343.50(5) and (6), Stats.

Explanation of agency authority: 2005 Wisconsin Act 126 requires that a person applying for a driver's license or identification card provide documentary proof of citizenship or legal presence in the United States.

Related statute or rule: ss. 343.06, 343.14 and 343.20, Stats.

Plain language analysis: 2005 Wisconsin Act 126 requires all persons applying for an original, reissue, reinstatement, renewal or duplicate Wisconsin driver's license or identification card on or after April 1, 2007 to show documentary proof of citizenship or legal presence in this country. Currently, applicants for a driver's license or identification card are required to show proof of identity, name and date of birth, and residency. 2005 Wisconsin Act 126 also requires operator's licenses and identification cards to expire on the date the person's legal presence in the United States is no longer authorized. This rule implements these expiration dates.

Summary of, and preliminary comparison with, existing or proposed federal regulation: This proposed rule making moves Wisconsin towards compliance with the legal presence requirements of the federal REAL ID Act, which takes effect May 11, 2008.

Comparison with Rules in Adjacent States:

Michigan: No legal presence requirement.

Minnesota: Legal presence required.

Illinois: Legal presence required.

Iowa: Legal presence required.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Not applicable.

Analysis and supporting documentation used to determine effect on small businesses: Some small businesses may be affected, if their employees who are not U.S. citizens do not have legal presence and consequently lose their driving privileges and require driving privileges to attend or perform their jobs. These costs are indeterminable.

Effect on small business: Indeterminable. 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: Costs incurred by the private sector is indeterminable. This rule does not directly affect business but may affect the work force. 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.

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

PART 2 **TEXT OF PROPOSED RULE**

SECTION 1. Trans 102.11(1)(a)2., (b)1. and 2. and (c) are amended to read:

Trans 102.11(1)(a)2. Round the resulting quotient to the nearest whole dollar amount. The license upgraded for this fee shall expire on the expiration date of the existing license or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner.

(b)1. Pay the prorated fee as determined under par. (a). The license upgraded for this fee shall expire on the expiration date of the existing license or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner.

2. Pay the prorated fee as determined under par. (a) and the statutory fee. The license upgraded for this fee shall expire 8 years from the expiration date of the existing license or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner.

(c) When 90 days or less remain on the existing license, the license holder shall pay the prorated fee as determined under par. (a) and the statutory fee. The license upgraded for this fee shall expire 8 years from the expiration date of the existing license or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner.

SECTION 2. Trans 102.15(2)(bm) and (3m) are created to read:

Trans 102.15(2)(bm)1. Any person applying for an original Wisconsin operator's license or identification card shall submit satisfactory proof of citizenship, legal permanent resident or conditional resident status of the United States, or legal presence in the United States, as specified under sub. (3m).

2. The department may require any person applying for a reissue, reinstatement, renewal or duplicate operator's license or identification card to provide satisfactory proof of citizenship, legal permanent resident or conditional resident status of the United States as specified under sub. (3m) to determine the person's eligibility for the operator's license or identification card.

(3m) PROOF OF CITIZENSHIP, LEGAL PERMANENT RESIDENT STATUS, CONDITIONAL RESIDENT STATUS OR LEGAL PRESENCE. (a) One of the following is satisfactory proof of a person's citizenship, legal permanent resident status, conditional resident status or legal presence in the United States:

1. U.S. state or local government issued certificate of birth.
2. Valid U.S. passport.
3. Valid foreign passport with appropriate immigration documents, which shall include or be accompanied by federal form I-94, arrival and departure record.

NOTE: The appropriate immigration documents determine legal presence, not the passport itself.

4. Certificate of U.S. citizenship (federal form N-560).
5. U.S. Certificate of naturalization (federal form N-550).
6. Valid department of homeland security/U.S. citizenship and immigration services federal form I-551, resident alien registration receipt card, issued since 1997.
7. Valid department of homeland security/U.S. citizenship and immigration services federal form I-688, temporary resident identification card.
8. Valid department of homeland security/U.S. citizenship and immigration services federal form I-688B or I-766, employment authorization document.
9. Valid department of homeland security/U.S. citizenship and immigration services federal form I-571, refugee travel document.
10. Department of homeland security/U.S. citizenship and immigration services federal form I-797, notice of action.
11. Department of homeland security/transportation security administration transportation worker identification credential.
12. U.S. department of state reception and placement program assurance form (refugee version), which shall include or be accompanied by federal form I-94, arrival and departure record.
13. Documentary proof specified in s. 343.14(2)(er), Stats., that is approved by the appropriate federal authority.

SECTION 3. Trans 102.16(1), (3m), (5), (6) and (8) are amended to read:

Trans 102.16(1) ORIGINAL, REINSTATED AND PROBATIONARY LICENSES. Reinstated licenses, probationary licenses, and original licenses other than instruction permits and license endorsements shall expire 2 years from the licensed person's next

birthday, or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner. If the expiration date of a person's probationary license is the date the person's legal presence in the United States is no longer authorized, and the person's legal presence is extended, the department may reissue the probationary license with an expiration date of the latest date determined under this section at the time of initial issuance or the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner. The department may not, as a consequence of expiration dates based on the person's legal presence in the United States, require any person to possess a probationary license beyond the latest date determined under this section at the time of initial issuance.

(3m) LICENSE EXTENSIONS. A regular license issued by the department may be extended by the department for 4 years from the expiration date of the license if the department has selected the license for 4 year extension rather than renewal in order to balance the number of licenses that will expire in future years. The department may not extend an expiration date under this subsection beyond the date that the person's presence in the United States is legally authorized. The department may consider a person's driving history in deciding whether to extend the person's license. Vision examinations may not be required for extensions.

(5) NEW STATE RESIDENTS. Original operator's licenses issued under s. 343.20 (1) (e), Stats., shall expire 3 years after the licensed person's next birthday or on the date that the person's legal presence in the United States is no longer authorized or on the following date, whichever occurs sooner.

(6) SPECIAL RESTRICTED LICENSES. Special restricted license renewals shall be issued to expire as follows on the date that the person's legal presence in the United States is no longer authorized or on the following date, whichever occurs sooner:

(8) EXPIRATION DATE DOES NOT CHANGE WITH CHANGES IN AUTHORITY. The expiration date of a valid license document shall remain the same when subsequent upgrades to classifications or endorsements are applied to the license, except that if the date that the person's legal presence in the United States is no longer authorized occurs sooner, the expiration date shall become the date that the person's legal presence in the United States is no longer authorized.

SECTION 4. Trans 102.18(1) and (2) are amended to read:

Trans 102.18(1) Original and reinstatement identification cards expire 4 years from the identified person's next birthday, or on the date that the person's legal presence in the United States is no longer authorized, whichever occurs sooner.

(2) Renewal identification cards expire on the date that the person's legal presence in the United States is no longer authorized or on the following date, whichever occurs sooner:

(END OF RULE TEXT)

Effective Date. This rule shall take effect on April 1, 2007.

Signed at Madison, Wisconsin, this ____ day of
August, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

ANALYSIS OF FINAL DRAFT OF TRANS 102

(a) **Basis and Purpose of Rule.** 2005 Wisconsin Act 126 requires all persons applying for an original, reissue, reinstatement, renewal or duplicate Wisconsin driver's license or identification card on or after April 1, 2007 to show documentary proof of citizenship or legal presence in this country. Currently, applicants for a driver's license or identification card are required to show proof of identity, name and date of birth, and residency. 2005 Wisconsin Act 126 also requires operator's licenses and identification cards to expire on the date the person's legal presence in the United States is no longer authorized. This rule implements these expiration dates.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on August 3, 2006. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No one registered/appeared at the public hearing. Erik Greenfield of WTDY radio attended only for information. Following the hearing, Mr. Greenfield interviewed Erin Egan (DMV), Gary Guenther (DMV) and Paul Nilsen (Office of General Counsel) about the changes.

(d) **Summary of Public Comments and Agency Response to those Comments:** The written comment period was held open until close of business the day of the hearing. No public comments were received either at the hearing or in writing.

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

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of recommendations and are addressed as follows:

1. & 2a. Statutory Authority and Form, Style and Placement. The rule text made each license and identification card expire on the normal expiration date, or on the date the person's legal presence in this country is no longer authorized "or on the following date" whichever occurs sooner. Legislative Council questioned the legal authority for extending the expiration date beyond the date the person's legal presence in this country is no longer authorized, the date specified in 2005 Wis. Act 89. The Department agrees with this comment and has deleted the language quoted above. Legislative Council also suggested reorganizing the text if the quoted language were retained. Because the language is not retained, it is unnecessary to reorganize the text.

2b. The Legislative Counsel also suggested deleting "(refugee)" from the description of the Reception and Placement Program Assurance Form. The Department has verified the title of this form with the U.S. Department of State and added to it the

necessary supporting document I-94. The remainder of Legislative Council's comments have been adopted.

2c. Adopted.

(g) **Final Regulatory Flexibility Analysis**. Some small businesses may be affected, if their employees who are not U.S. citizens do not have legal presence and consequently lose their driving privileges and require driving privileges to attend or perform their jobs. These costs are indeterminable.