

Clearinghouse Rule 06-099

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

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 ____ day of
August, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation