

Report From Agency

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

CR 06-099

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

**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:

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PART 1
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), 343.135(5), 343.16(5), 343.20(1), 343.23(2), 343.237, 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), 343.23(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 substance 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: Michigan will accept a medical report submitted by an APNP, but it must be co-signed by an MD or doctor of osteopathy (“DO”).

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.

Legal counsel was unable to locate and is unaware of any driver-related rules specifically pertaining to amputations, limbs or extremities.

Minnesota: School bus drivers must undergo a criminal history and driver's license records check. If the applicant has resided in Minnesota for less than five years, the criminal history check must include a national criminal history check. Minnesota maintains a list of disqualifying felony offenses, misdemeanors, gross misdemeanors. Like Wisconsin, Minnesota maintains three disqualification periods. Minnesota's disqualification periods are lifetime, ten years and one year. Minnesota may waive certain permanent disqualifications after ten years.

Minnesota rules require the driver of a commercial vehicle to demonstrate, “precision prehension, that is, manipulating knobs and switches, and power grasp prehension, that is, holding and maneuvering the steering wheel, with *each upper limb* separately. This requirement does not apply to an applicant who was granted a waiver, absent a prosthetic device, before April 14, 1986.”

Legal counsel was unable to locate and is unaware of any rules specifically pertaining to whether an advanced practice nurse practitioner may prepare and submit to the driver licensing authority medical reports concerning a driver's fitness.

Illinois: Any nurse practitioner may complete a medical report, but an MD or DO must sign it.

Illinois subjects school bus drivers to Illinois and FBI criminal background checks.

Legal counsel was unable to locate and is unaware of any rules specifically pertaining to driver testing of amputees. Illinois evaluates the severity and/or limitations of the medical condition of a driver on a case-by-case basis and considers any mechanical mechanism being used by, or otherwise available to, the driver. Illinois may restrict driving to use of mechanical devices, and other conditions which the competent medical specialist and the licensing authority deem appropriate, such as requesting follow-up medical reports, depending upon the circumstances of the case.

Illinois imposes a 1-year disqualification for school bus drivers having 2 or more serious traffic offenses. Illinois imposes a 3-year disqualification for reckless driving, driving under the influence of alcohol and/or other drugs, reckless homicide resulting from the operation of a motor vehicle. Illinois imposes a lifetime disqualification for school bus drivers convicted of numerous enumerated offenses. 92 Ill. Adm. Code 1035.15 (2006).

Iowa: Only an MD or DO may complete and submit Iowa DOT medical forms. In Iowa, an applicant with an obvious amputation who possesses an unrestricted license may be required to take road test or wait for completion of a DMV record check.

Iowa does NOT maintain a felonies list of disqualifiers for school bus drivers, but they must not “possess personal or moral habits which would be detrimental to the best interests of the safety and welfare of the children transported.” Iowa does suspend from duties those school bus drivers convicted of a public offense that is relevant to and affects driving ability, or includes sexual involvement with a minor student.

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 effect 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 ralph.sanders@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 copies of proposed rule: Copies of the proposed rule can be obtained, without cost, by writing 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.

PART 2
TEXT OF PROPOSED RULE

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

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.

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
October, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

ANALYSIS OF FINAL DRAFT OF TRANS 112

(a) **Basis and Purpose of Rule.** This rule making proposes three unrelated changes to ch. Trans 112—(1) 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; (2) 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; and (3) 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.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on September 19, 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 appeared/registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments.** No comments were received.

(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 5 comments, all of which have been incorporated into the proposed rule. The proposed rule omits the incorrect statutory reference to s. 343.21(s), Stats., noted by Legislative Council.

(g) **Final Regulatory Flexibility Analysis.** 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.