

Report From Agency

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

CR 07-081

The Wisconsin Department of Transportation proposes an order to repeal TRANS 101.02(7), 101.04(2), (5) and (6), and 101.05; to renumber TRANS 102.02(5)(v); to renumber and amend TRANS 101.02(8); to amend TRANS 101.01, 101.02(intro.), (1)(b), (3)(i), (4)(c), (5)(m) and (6), 101.03, 101.04(title), (1), (3) and (3m), 101.07(1)(intro.), (a), (b), (2), (3), (5), (9) and (10); to repeal and recreate TRANS 101.02(9), 101.04(4) and 101.07(6) to (8); and to create TRANS 101.01(3), 101.02(2)(j)(note), (5)(mn), 101.02(8) and 101.06, relating to the demerit point system.

**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.

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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.32, Stats.

Statutory authority: ss. 85.16, 343.02(1), 343.32(2)(a) and (5), Stats.

Explanation of agency authority: Section 343.32(2)(a), Stats., permits the Secretary to suspend a person's operating privilege if the person appears by the records of the department to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws, any local ordinance enacted under ch. 349 or any traffic laws enacted by a federally recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or, if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law. The Department has used a demerit point system to accomplish this end since 1958. The statute permits the Secretary to adopt by rule a method of weighing traffic convictions by their seriousness and allows the Secretary to change that weighted scale "as experience or the accident frequency in the state makes necessary or desirable," though much flexibility in the system has been eliminated over the years by statutory amendment mandating specific assignment of demerit points, suspension of operating privileges at specific point levels and doubling of demerit point assessments for probationary drivers.

Section 343.32(5), Stats., provides that the secretary also may provide by rule for a reduction of points if a person shows to the department satisfactory evidence of completion of a course of instruction in traffic safety, defensive driving or similar course or driver improvement counseling approved by the secretary.

Related statute or rule: Section 343.44, Stats. Persons whose operating privileges are suspended under s. 343.32(2), Stats., as a result of demerit point accumulation are subject to prosecution for operating after suspension if they continue to operate motor vehicles.

Plain language analysis: The proposed rule makes the following changes to Wisconsin's demerit point system:

- In general, violations will only be used once to create a point case. In odd situations where court proceedings result in cases being reopened and a demerit point case is then dropped, the violation can be reused.
- No convictions that result in a withdrawal will be used in a point case, except:

- A disqualification under s. 343.315 may be used in a points case;
- A conviction for which a person's operating privileges are suspended for failure to pay may be used in a points case; and
- Convictions leading to habitual traffic offender revocations may be used in points cases.
- An existing point case may be amended, if a driver is still suspended and the violation dates for additional convictions are within one year of each violation that is part of the existing case.
- In situations where a person is subject to both a court-ordered suspension, and a demerit point suspension, the longer suspension period will be imposed.
- References to "revocation" for accumulation of demerit points is removed, because all demerit point withdrawals are suspensions as a result of amendments to the law made by 1997 Wisconsin Act 84.
- Completion of point reduction school may be used to reduce points assessed against a driver's license that has already been suspended.
- Point reduction is allowed every three years.

This rule making will also correct a drafting error from CR 00-057 by clarifying in s. Trans 101.10(2)(a)7. that child safety restraint, seat belt and defective speedometer violations can result in an extension of Graduated Driver Licensing restrictions for a driver. CR 00-057 included two provisions regarding those offenses, but WisDOT attorneys suggest the offenses be specifically listed in s. Trans 101.10(2)(a).

Summary of, and preliminary comparison with, existing or proposed federal regulation: Driver improvement programs are state functions.

Comparison with Rules in the Following States:

Michigan: Michigan has a driver responsibility program. This program assesses a driver responsibility fee for drivers who accumulate seven or more points in a two-year period (Category 1) or are convicted of specific qualifying offenses (Category 2). If a driver fails to pay the driver responsibility fee, their license is suspended.

Under Category 1, offenses such as careless driving, drag racing, speeding, improper turn, following too close, failure to yield, failure to obey signal and improper use of lights result in a point assessment under Category 1. The fees begin at \$100

and increase by \$50 for each additional point above seven points, and are assessed yearly.

A sample of Category 2 offenses and fees are:

- Operating While Intoxicated - \$1000
- Reckless Driving - \$500
- No proof of insurance - \$200
- Operating on Expired License - \$150

Fees are paid directly to the Michigan Department of the Treasury, and are imposed in addition to any fee or forfeiture imposed by the court.

Minnesota: The commissioner of the Minnesota Department of Safety may administratively suspend a driver's license for accumulating traffic violations as follows:

- For 30 days if the person is convicted of:
 - (1) four traffic offenses within a 12-month period; or
 - (2) five traffic offenses within a 24-month period;
- For 90 days, if the person is convicted of:
 - (1) five traffic offenses within a 12-month period; or
 - (2) six traffic offenses within a 24-month period
- For 180 days, if the person is convicted of seven traffic offenses within a 24-month period; or
- One year if the person is convicted of eight or more traffic offenses within a 24-month period.

Section 7409.2200 (HABITUAL VIOLATORS), Minnesota Rules.

Illinois: A driver's license will be suspended for three traffic violations committed within any 12-month period. For drivers under age 21, two traffic violations within any 24-month period will result in a suspension. Drivers under age 18 must successfully complete a driver remedial education course to reinstate driving privileges. The length of the suspension varies according to the seriousness of the traffic offenses.

Iowa: Three countable offenses within 12 months or a speeding violation of 25+ miles per hour over the limit results in driver improvement school. Countable offenses include all moving violations, except for certain speeding offenses less than 10 mph over the limit, parking violations, equipment violations, and failure to appear.

After successful completion of the driver improvement program, a driver is on probation for one year. A driver convicted of a moving violation while on probation, will have their license suspended. Failure to complete the driver improvement program also results in a license suspension.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: In 2006, there were 33,569 driver license suspensions because a person accumulated too many points. Currently, someone that accumulates more than 12 demerit points in a 12-month period, based on the date of violation, will be suspended.

The Department expects the number of driver's license suspensions for points to decrease. This proposed rule making allows someone to receive a 3 demerit point reduction for attending traffic safety school every 3 years, instead of 5 years currently allowed under the existing rule. As such, people will have an additional opportunity to reduce their points that does not exist today.

It is difficult to estimate exactly how many people will take advantage of this proposed change, since people have many reasons to attend traffic safety school. Some are required to attend traffic safety school (Group Dynamics) for an impaired driving conviction, while others attend traffic safety school to learn how to operate a motorcycle (Basic Rider Education). Some judges also require a person to attend traffic safety school for other reasons. As such, we have no clear data that shows how many people attend traffic safety school simply for the point reduction.

Analysis and supporting documentation used to determine effect on small businesses: There should be no detrimental impact on small business. The changes being proposed to ch. Trans 101 will likely cause a slight decrease in the number of persons whose driver's license is administratively suspended for points. As such, there will be more persons with valid driver's licenses available to employers.

Effect on small business: There will be no significant adverse effect on small businesses. 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: Vocational, technical and adult education districts will see a slight increase in tuition paid, as technical colleges offer point reduction school. Under the proposed rule, people will be eligible for point reduction every three years instead of five years. The Department will see a slight decrease in reinstatement and occupational license fees, as the changes will likely cause a slight decrease in the number of persons who are administratively suspended for points.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Copies of proposed rule and agency contact person: Copies of this proposed rule can be obtained, without cost, by writing to Mary Jackson, Department of Transportation, Bureau of Driver Services, Driving Privileges and Withdrawals Unit, Room 305, P.O. Box 7917, Madison, WI 53707-7917. You may also contact Ms. Jackson by phone at (608) 264-7173 or via e-mail: mary.jackson@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 101.01 is amended to read:

Trans 101.01 Purpose and definitions. (1) The purpose of this chapter is to administratively interpret those portions of chs. 343 to 349, Stats., relating to establishing a traffic violation demerit point system, and to administratively interpret provisions of the statutes related to the revocation and suspension of a person's operating privilege.

(2) The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter, except as provided in sub. (3).

SECTION 2. Trans 101.01(3) is created to read:

Trans 101.01(3) In this chapter:

(a) "Federal traffic law" means any federal law that is in strict conformity with a state traffic law.

NOTE: s. 343.32(2)(a), Stats.

(b) "Point case" or "demerit point case" means a suspension of operating privileges imposed upon an individual under s. 343.32(2), Stats., and this chapter, as the result of the accumulation of demerit points. A conviction shall be considered part of a point case if the demerit points assessed for the conviction are used as part of the total in determining whether to suspend a person's operating privilege for accumulation of demerit points.

(c) "Released," when used with reference to a point case, means that the department has vacated a demerit point suspension affecting a driver due to the appeal,

vacation, reversal, or amendment of a conviction that results in the driver not being subject to a suspension for accumulation of demerit points.

(d) "State traffic law" means any law under ch. 194, chs. 340 to 348 and ch. 351, Stats., in which the movement or operation of a motor vehicle is an element of the offense.

(e) "Tribal traffic law" means a law enacted by a federally-recognized American Indian tribe or band in this state that strictly conforms to a provision in chs. 341 to 348, Stats.

NOTE: s. 343.32(2)(a), Stats.

SECTION 3. Trans 101.02(intro.) and (1)(b) are amended to read:

Trans 101.02 Point schedule. (intro.) Pursuant to s. 343.32 (2), Stats., the department has established a this demerit point system to identify habitually reckless or negligent operators or those who have repeatedly violated traffic laws. Upon receipt of a notice of conviction for an offense under the state traffic laws, a local ordinance, a tribal or federal traffic law, a violation of s. UWS 18.04, or a traffic regulation, the department shall assess demerit points against the driver record of the person convicted of the offense in the manner and to the extent required by this section and s. 343.32, Stats.

The following scale lists violations according to the number of demerit points assessed, with higher point values being assessed for more severe offenses:

(1)(b) Fleeing or attempting to elude an officer, or knowingly resisting an officer by failing to stop a vehicle.

SECTION 4. Trans 101.02(2)(j)(note) is created to read:

Trans 101.02(2)(j)(note) Unnecessary acceleration is a valid traffic regulation. *City of Janesville v. Garthwaite*, 83 Wis. 2d 866 (1978).

SECTION 5. Trans 101.02(3)(i), (4)(c) and (5)(m) are amended to read:

Trans 101.02(3)(i) Improper or unlit or missing lamps or lights, including clearance lamps, ~~spot lamps~~ spot lamps, ~~head lamps~~ headlamps, brake lamps, tail lamps and signal lamps, but not including registration plate lamps or failure to use of cycle headlamps during daylight hours ~~or registration plate lamps~~.

(4)(c) Obstructing traffic, or driving excessively ~~slowly~~ slow.

(5)(m) No motorcycle headlamps during daylight hours ~~or no registration plate lamps~~.

SECTION 6. Trans 101.02(5)(mn) is created to read:

Trans 101.02(5)(mn) Improper, unlit or missing registration plate lamps.

SECTION 7. Trans 101.02(5)(v) is renumbered Trans 101.02(2)(k).

SECTION 8. Trans 101.02(6) is amended to read:

Trans 101.02(6)(title) SIMILAR OFFENSES. The point schedule in this section ~~also covers similar ordinance violations and similar~~ violations of state traffic laws, local ordinances, tribal traffic laws, federal traffic laws, traffic regulations, s. UWS 18.04, and department administrative rules which are similar to the violations described in subs. (1) to (5), even though if the language of the law, ordinance, regulation or rule may vary.

SECTION 9. Trans 101.02(7) is repealed.

SECTION 10. Trans 101.02(8) is renumbered Trans 101.02(7) and, as renumbered, Trans 101.02(7)(title), (a) and (note) are amended to read:

Trans 101.02(7)(title) PROBATIONARY LICENSES. (a) ~~The demerit points charged against the record of any~~ Any person who holds an instruction permit or probationary license on the date of ~~the~~ a conviction, or an unlicensed person who would be issued a probationary license or instruction permit if proper application were made and all other requirements for license were met, shall ~~have~~ be assessed double the demerit point value shown for the convictions set forth in subs. (1) to (4) doubled on the second and all subsequent convictions, unless the conviction is for a violation of if the record indicates that the person has been previously convicted of an offense for which demerit points were assessed under s. 343.32, Stats. This paragraph does not apply to a conviction for violation of any offense under ch. 347, Stats.

NOTE: Commercial driver licenses are never issued on a probationary basis. s. 343.085(2)(b), Stats. Chapter 347, Stats., deals with vehicle equipment requirements. DMV is required to double demerit points for most offenses and is prohibited from increasing points assessed to a driver for a vehicle equipment violation by s. 343.32(2)(bc), Stats.

SECTION 11. Trans 101.02(8) is created to read:

Trans 101.02(8) GENERAL RULES FOR POINT CASES. In determining whether a person appears by the records of the department to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws and whether suspension of operating privileges pursuant to s. 343.32(2), Stats., for the accumulation of demerit points is appropriate, the department shall conform to the following rules, which are set forth in their order of priority, and subject to the exceptions set forth in sub. (9), for purposes of initially determining whether to suspend a driver's operating privilege:

(a) *Violations used once.* Demerit points may be used in only one point case, except as provided in pars. (c) and (e), and sub. (9)(c)1.

(b) *Revocations always imposed.* Revocations shall be imposed by the department whenever ordered by a court or required by statute without regard to potential demerit point ramifications.

(c) *Use of conviction resulting in withdrawal action in point case.* Demerit points from an offense that resulted in suspension or revocation of a person's operating privilege under s. 343.30 or 343.31, Stats., may not be used in a point case, except as provided in this paragraph or par. (e). Convictions that result only in disqualification under s. 343.315, Stats., or federal law may be used in a point case. Convictions that result in suspension of a person's operating privilege due to failure to pay the underlying fine or forfeiture resulting from the conviction or that result in revocation of the person's operating privilege as a habitual traffic offender under ch. 351, Stats., may be used in a point case.

(d) *Amendment of point case based on new conviction.* After the department has issued a demerit point suspension order, the department may amend the suspension order upon receipt of reports of conviction for additional offenses that qualify for use in a point case under pars. (a) to (c). The point case may be amended only if the suspension period did not expire prior to the date of conviction for the new offense. The amendment shall incorporate each violation that occurred within one year of all violations that formed the basis of the original suspension order and that remain part of the case. In the event 2 or more violations occurred within one year of all other point case violations, but not

within one year of each other, only the violations occurring within one year of the latest violation that was used in the existing point case shall be used as the basis for the amendment.

(e) *Court-ordered suspensions.* If the department receives notice of conviction and a court-ordered suspension under s. 343.30, Stats., and the person is subject to a demerit point suspension, the department shall act as follows:

1. If the person is not subject to an existing point case and the person's operating privilege would be suspended for a longer period under a point case that includes the conviction as one of the bases for the case, DMV shall suspend the person's operating privilege for that longer period in accordance with s. Trans 101.04(3) or (3m) and need not note the court-ordered suspension on a public abstract of the person's driver record nor send notice to the driver of the court-ordered suspension.

2. If the person is not subject to an existing point case and the person would be subject to a suspension under s. Trans 101.04(3) or (3m) that is equal to, or less than, the court order, then DMV shall suspend the driver's operating privilege in accordance with the court order, notify the driver of the court-ordered suspension, and show the suspension on a public abstract of the driver record. Demerit points from that conviction may not be used in a point case in accordance with par. (c).

3. If the person is subject to an existing point case and the date of the new conviction is on or before the date of the latest conviction used in the existing point case, DMV shall make the same evaluations described in subds. 1. and 2. and determine whether the court-ordered suspension or the demerit point suspension would have

been imposed had the conviction report been made to DOT prior to the suspension order for the existing point case, amend the existing point case in accordance with subd. 1. or notify the driver of the court-ordered suspension in accordance with subd. 2 as required. If the court-ordered suspension is imposed, no change will be made to the existing point case.

4. If the person is subject to an existing point case and the date of the new conviction is later than the date of the latest conviction used in the point case, DMV shall impose the court-ordered suspension and may not amend the point case to include the new conviction.

SECTION 12. Trans 101.02(9) is repealed and recreated to read:

Trans 101.02(9) RULES FOR POINT CASES INVOLVING CHANGED CONVICTIONS. (a) *Scope.* This subsection addresses the effect of a conviction change on a point case.

(b) *Definition.* For purposes of this subsection, a “conviction change” means a conviction that was reported to the department on a previous occasion is reopened, vacated, appealed or amended.

(c) *Amended charges and errors.* Upon receipt of a report that a conviction or revocation or suspension order noted on a driver record has been changed or was reported to the department in error, the department shall note the change or correct the error on the driver record and recalculate any point suspension using the points assessed against the driver record under subs. (1) to (6), except as provided in pars. (d) to (f). If, upon recalculation, the department determines that the release or amendment

of the point case is appropriate, the department shall release or amend the point case. The department shall provide notice to the person of any amendment in the form of an amended demerit point suspension order.

(d) *Convictions considered unused if point case is released.* If a point case is released because of a conviction change or notice that a conviction or revocation or suspension order was reported in error before the suspension period for the point case is complete, all convictions that formed the basis for the released point case shall be considered not to have been used in a point case for purposes of sub. (8)(a). Otherwise, the convictions shall be considered to have been used in a point case.

(e) *Released withdrawal due to amended charge.* If a court reopens a conviction and amends the charge for which the person was convicted, and as a result of that amendment a suspension or revocation order issued under s. 343.30 or 343.31, Stats., is released, demerit points for that conviction may be used in a point case unless the suspension or revocation initially imposed under s. 343.30 or 343.31, Stats., has already been served in its entirety or at least 2 months of the suspension or revocation has been served.

(f) *Released withdrawal without amended charge.* If a court amends a suspension or revocation order, but does not vacate or amend the conviction itself, and the person's operating privilege has been suspended or revoked for the entire period that was earlier ordered by the court or was suspended for 2 months or longer as a result of that earlier order, demerit points resulting from the conviction may not be used in a point case. Otherwise, the demerit points from the conviction may be used in a

point case in the same manner as for a newly reported conviction and no credit for time served shall be granted for time served under the earlier court-ordered suspension or revocation when determining the length of the point suspension.

(g) *Released demerit point case violations reused.* In any case where a changed conviction or notice that a conviction was reported to the department in error results in the department releasing a point case and the affected driver accumulates sufficient demerit points to warrant suspension for accumulation of demerit points from a combination of offenses that were part of the released point case and other convictions, the department shall suspend the driver's operating privilege for accumulation of demerit points. In such a case, the department shall reduce the length of time to be suspended on the second point case by the amount of time served on the released point case if one-half or more of the convictions used in the released point case are used in the second point case. If fewer than one-half of the convictions used in the released point case are used in the second point case, the length of suspension shall be determined according to s. Trans 101.04(3) or (3m) without regard to the released point case.

NOTE: This "credit for time served" applies only between demerit point cases. Time served for other suspensions or revocations may not be credited to a demerit point case. The Department counts the number of convictions, not points attributable to them, in deciding whether to grant this credit.

SECTION 13. Trans 101.03 is amended to read:

Trans 101.03 Warnings. The department may notify any operator of the point value points charged against the person's driver record when the record shows the

person has accumulated 6 or more points to have been accumulated in a 12-month period.

NOTE: Under Graduated Driver Licensing, few drivers receive warning letters before being suspended for demerit points. This is because ch. 343, Stats., has reinstated point doubling. A probationary driver with any prior violation on his or her record who is convicted of a 6-point violation will be assessed 12 points for that offense and be immediately suspended. Similarly, a driver who accumulates two 4-point offenses will be summarily suspended without warning. The first 4-point ticket will not trigger a warning under this rule. The second 4-point ticket will result in an 8-point assessment after doubling, resulting in a total of 12 demerit points and a suspension.

SECTION 14. Trans 101.04(title) and (1) are amended to read:

Trans 101.04 (title) Suspension or revocation of license for accumulation of demerit points. (1) The department shall suspend ~~or revoke~~ the operating privilege of any person whose ~~driving driver~~ record shows that the accumulation of 12 points in 12 months from the date of violation have been accumulated. ~~Any person who has had the operating privilege suspended or revoked under ch. 343, except s. 343.30(6) or 343.345, Stats., shall have the operating privilege revoked. In all other cases the operating privilege shall be suspended~~ for violations committed within any 12-month period.

NOTE: The date offenses were committed is used by the Department to determine point cases. Violation dates are inviolate and may not be changed by a court to subvert the intent of these rules or other statutory requirements. State v. DeBruin, 140 Wis. 2d 631 (Ct. App. 1987); State v. Walczak, 157 Wis. 2d 661 (1990).

SECTION 15. Trans 101.04(2) is repealed.

SECTION 16. Trans 101.04(3) and (3m) are amended to read:

Trans 101.04(3) Except as provided in sub. (3m) with respect to probationary driver licenses, the following demerit point accumulations, calculated from the date of violation, shall result in the following ~~revocation or~~ suspension periods:

Demerit Points Accumulated in a 12-month Period	Length of Revocation or Suspension
12 to 16 points	2 months
17 to 22 points	4 months
23 to 30 points	6 months
More than 30 points	1 year

(3m) Notwithstanding subs. (1) and (3), the following demerit point accumulations, calculated from the date of violation, shall result in the following suspension or ~~revocation~~ periods, if the driver holds an instruction permit or a probationary driver license, or would be issued an instruction permit or probationary driver license upon proper application and meeting other requirements:

Demerit Points Accumulated in a 12-month Period	Length of Revocation or Suspension
12 to 30 points	6 months
More than 30 points	1 year

SECTION 17. Trans 101.04(4) is repealed and recreated to read:

Trans 101.04(4) A suspension order issued by the department under this chapter takes effect on the date of the suspension order.

SECTION 18. Trans 101.04(5) and (6) are repealed.

SECTION 19. Trans 101.05 is repealed.

SECTION 20. Trans 101.06 is created to read:

Trans 101.06 Revocation and suspension of operating privileges. (1) This section is intended to address operating privilege suspension and revocation matters not addressed elsewhere in statute or administrative rules.

(2) The department shall suspend for 2 months the operating privilege of any person convicted of violating s. 343.16(7)(b), Stats.

NOTE: Section 343.16(7)(b), Stats., involves persons taking DMV examinations on behalf of others.

(3) Revocations under s. 343.32(1)(c), Stats., and suspensions under s. 343.32(1s), Stats., shall be effective for 6 months.

NOTE: Section 343.32(1)(c), Stats., revocations result from convictions in another jurisdiction which, if committed in Wisconsin, would have resulted in revocation of the person's operating privilege. Section 343.32(1s), Stats., violations involve altering, unlawful, or fraudulent use of a license or loaning a license.

(4) Except for revocations imposed under ch. 351, Stats., a revocation or suspension imposed by the department as the result of a conviction in another jurisdiction shall be imposed and be effective on the date of conviction in that other jurisdiction.

SECTION 21. Trans 101.07(1)(intro.), (a) and (b), (2), (3) and (5) are amended to read:

Trans 101.07(1)(title) THREE DEMERIT POINT REDUCTION FOR COMPLETION OF QUALIFIED CLASS. (intro.) In accordance with the authority in s. 343.32(5), Stats., and the requirements of this section, the points assessed to a person's point driver record shall be reduced by 3 points or by the number of points accumulated up to 3, upon application for a demerit point reduction and satisfactory completion of ~~one~~ any of the following ~~courses approved, in advance, by the department:~~

(a) A department-approved course of instruction at a traffic safety school;

(b) A department-approved course of instruction in defensive driving or similar course; ~~or,~~

(2)(title) CERTIFICATION OF COURSE COMPLETION. The ~~certified~~ instructor of the ~~traffic safety, motorcycle rider or defensive driving course or the driver improvement analyst of the driver improvement~~ counselor who conducts a course or counseling program under sub. (1)(a) to (d) shall ~~furnish to the department~~ file a certification of course completion of an approved course with the department. A separate certification shall be provided to the department for each individual in the course. The certification shall be on the form prescribed by the department and must be made within 30 days of satisfactory completion of the course in order to qualify for point reduction. A copy of the completed certification form shall be furnished to the student, another copy sent to the court or assessment agency, if either assigned the student ~~was assigned~~ to the school, and one copy shall be retained by the school. The department may approve the use of a reproduction of this form, at the request of a school, including computerized versions. The certification shall be considered proof of course completion and may include an indication of whether the student is requesting a demerit point reduction under this section.

~~NOTE: The multi-part form MV-3304, course completion certificate, is available by mail upon request. Each form produces an original and 3 copies. Send requests to DOT Document Sales, P. O. Box 7713, Madison, Wisconsin 53707-7713.~~

(3)(title) ONE REDUCTION MAXIMUM IN ANY 3-YEAR PERIOD. Each person is ~~limited to~~ may seek only one point reduction under this section in a ~~5-year~~ 3-year period. A point reduction shall be considered to have been sought under this subsection once the department has posted the course completion to the person's driver record, regardless of whether the driver's demerit point total is actually reduced. When

appropriate, the department will apply the point reduction in a manner that permits the department to release a point suspension already in effect, prevents a suspension that would otherwise be imposed under this chapter from taking effect, or reduces points that may have accumulated on the person's driver record prior to the date of course completion due to violations that occurred before the date of course completion.

NOTE: For example, if a driver who is suspended with 13 points completes a course, the driver's point reduction shall be applied to reduce his point total to 10 points and the case will be released. (Potentially making the driver eligible for reinstatement if he/she is otherwise eligible for licensing.) Similarly, a driver who has accumulated 10 points and attends traffic safety school would receive the 3-point reduction to seven points. If he then received a 4-point assessment for a violation, his point total will be 11 points and he will not be subject to suspension. If a driver has 2 or fewer demerit points on his record before attending driver school and accumulates an additional 12 demerit points after course completion, the Department will apply the demerit point reduction only to reduce the 2-point total the driver had before attending the school. [See subs. (1)(intro) and (5)] Thus, upon using the reduction, this driver's demerit point total would be 12 points and the driver would be subject to a demerit point suspension.

(5)(title) DRIVER RECORDS WITH FEWER THAN THREE ASSESSED DEMERIT POINTS. In those instances where the person ~~attends~~ successfully completes an approved course and is otherwise entitled to point reduction and the person's driver record has less than 3 points, the person's record will be reduced by the number of points on the record point value. No credit will be applied toward future point assessments nor shall the opportunity be given to have the point ~~record~~ total reduced again within a ~~5-year~~ 3-year period.

SECTION 22. Trans 101.07(6) to (8) are repealed and recreated to read:

Trans 101.07(6) NOTICE REGARDING POINT REDUCTION. The department may notify individuals of the opportunity for point reduction under this section.

(7) CREDIT APPLIES AS OF THE DATE OF COURSE COMPLETION. Any demerit

point credit granted under this section shall be applied as of the date the instructor certifies the student successfully completed the course.

(8) POINT CASE RELEASE RESULTING FROM POINT REDUCTION. The department shall release a point case suspension of a driver who was suspended for demerit points if application of a point reduction under this section results in the total assessed demerit points on the person's driver record being less than 12 demerit points. **SECTION 23.** Trans 101.07(9) and (10) are amended to read:

Trans 101.07(9)(title) REDUCTION APPLIES ONLY TO POINT ASSESSMENTS BASED ON PRIOR VIOLATIONS. Demerit point reductions under this section shall apply only to demerit points ~~based on~~ assessed as a result of convictions dated for violations that occurred on or before the date of course completion. Demerit point reductions under this section resulting from attending a motorcycle rider course shall apply only to demerit points from convictions for offenses which were committed by the driver while operating a class "M" vehicle on or before the date of course completion. Demerit points for ~~convictions on or~~ violations occurring after the date of course completion shall be added to any current demerit point value and may not be reduced by a credit granted under this section as a result of attending that course.

NOTE: A person who commits violations after course completion may be able to retake the course or take a different course for point reduction, provided the person does not seek more than one reduction in a 3-year period.

(10)(title) FEES. ~~The~~ A person seeking the point reduction under this section shall be responsible for any and all fees charged for ~~the~~ any course the person attends.

SECTION 24. Trans 101.10(2)(a)7. is created to read:

Trans 101.10(2)(a)7. Child safety restraint, seat belt and defective speedometer violations.

(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
March, 2008.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

PART 4
CR 07-081

ANALYSIS OF FINAL DRAFT OF TRANS 101

(a) **Basis and Purpose of Rule.** Section 343.32(2)(a), Stats., permits the Secretary to suspend a person's operating privilege if the person appears by the records of the Department to:

- Be a habitually reckless or negligent operator of a motor vehicle; or
- To have repeatedly violated:
 - any of the state traffic laws,
 - any local ordinance enacted under ch. 349, or
 - any traffic laws enacted by a federally-recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or,
 - if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law.

The Department has used a demerit point system to accomplish this end since 1958. The statute permits the Secretary to adopt by rule a method of weighing traffic convictions by their seriousness and allows the Secretary to change that weighted scale “as experience or the accident frequency in the state makes necessary or desirable,” though much flexibility in the system has been eliminated over the years by statutory amendment mandating specific assignment of demerit points, suspension of operating privileges at specific point levels and doubling of demerit point assessments for probationary drivers.

Section 343.32(5), Stats., provides that the secretary also may provide by rule for a reduction of points if a person shows to the Department satisfactory evidence of completion of a course of instruction in traffic safety, defensive driving or similar course or driver improvement counseling approved by the Secretary.

The proposed rule makes the following changes to Wisconsin’s demerit point system:

- In general, violations will only be used once to create a point case.
- No convictions that result in a withdrawal will be used in a point case, except where the withdrawal is a for a disqualification under s. 343.315, the result of a determination that the driver is a habitual traffic

offender, or where the underlying convictions results in a withdrawal for failure to pay.

- An existing point case may be amended, if a driver is still suspended and the violation dates for the additional convictions are within one year of each of the other convictions in the point case.
- For persons who are subject to a court-ordered suspension, as well as a suspension for a point case, the longer suspension period will apply.
- Revocation language for demerit point cases has been removed, as all point withdrawals are now suspensions due to 1997 Wisconsin Act 84.
- Completion of point reduction school may be used to reduce points assessed against a driver's license that has already been suspended.
- Point reduction is allowed every three years.

This rule making will also correct a drafting error from CR 00-057 by clarifying in s. Trans 101.10(2)(a)7. that child safety restraint, seat belt and defective speedometer violations can result in an extension of Graduated Driver Licensing restrictions for a driver. CR 00-057 included two provisions regarding those offenses, but WisDOT attorneys suggest the offenses be specifically listed in s. Trans 101.10(2)(a).

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on October 1, 2007. No modifications were made as a result of testimony at the hearing; however, DMV made a few modifications to the language of the proposed rule following the hearing to clarify circumstances in which point reduction would be available.

(c) **List of Persons who Appeared or Registered at Public Hearing.** None.

(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 were made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained a number of comments, all of which have been addressed.

(g) **Final Regulatory Flexibility Analysis.** There will be no significant adverse effect on small businesses.