

Clearinghouse Rule 14-061

**STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY**

The Wisconsin Department of Transportation proposes an order to *Renumber and Amend* Trans 102.15(1) and (3)(b) and (c); to *Amend* Trans 102.15(2)(c) and (3)(a)2., Note and 6., and (6)(intro.); and to *Create* Trans 102.04(4), 102.14(1g) and 102.15(1)(b), (5m)(title) and (b), (3)(d) and (5m)(e)., relating to: Operator's Licenses and Identification Cards.

The scope statement for this rule, SS 080-14, was approved by the Governor on August 19, 2014, and published in Wisconsin Administrative Register No. 704, on August 31, 2014, under § 227.185, Stats. The Department of Transportation ("Department") received the Governor's written approval of the Final Draft Rule on ---

Analysis Prepared by the Department of Transportation

Statutes Interpreted

Statutes Interpreted: 343.14, 343.50

Statutory Authority

Statutory Authority: 85.16(1), 343.02(1), 343.14 and 343.50

Explanation of Statutory Authority

Wis. Stat. §§343.14 and 343.50(4) specify the contents of applications for identification cards and authorizes the Department to require such information as the Department considers appropriate to identify the applicant.

Wis. Stat. § 343.50 requires the Department to issue identification cards.

Wis. Stat. § 343.50(5)(a)3. prohibits the Department from charging a fee for an identification card requested by a qualified applicant who requests it free of charge for purposes of voting.

Wis. Stat. § 343.02(1) authorizes the Department to promulgate such rules concerning ID cards that the Secretary considers necessary.

Wis. Stat. § 85.16(1) authorizes the Secretary of the Department to make rules deemed necessary to the discharge of the powers, duties and functions vested in the department.

Related Statutes and Rules

Wis. Stat. § 343.50 requires the Department to issue identification cards.

Trans 102.15, Wis. Adm. Code, requires proof of identification for issuance, renewal, reissuance, reinstatement or duplicate driver license or identification card, and specifies the acceptable documentary proof. That section also establishes a petition process under which an applicant may request an exception to the documentary proof requirements for name and date of birth.

Plain Language Analysis

Background

The Department of Transportation, Division of Motor Vehicles (“DMV”) has evaluated the holding in Milwaukee Branch of NAACP v. Walker, 2014 WI 98, 851 N.W. 2d 262, and current statutes and has determined that rulemaking is appropriate to harmonize the two. In that case, the Wisconsin Supreme Court upheld this state’s law that requires presentation of specified identification, including identification cards issued by the Department, as a condition of voting (commonly referred to as the “Voter ID law”). The court found that the existing petition process allowed applicants to obtain an identification card required for voting without payment of any fee to a government agency.

This rulemaking is intended to prescribe the manner in which DMV can issue ID cards to individuals requesting them free of charge for voting purposes consistent with the holding in NAACP v. Walker and current statutes. The Department has a petition process that allows identification card applicants to provide secondary proof of name and date of birth in the event a birth certificate is unavailable. But the Department does not currently consider a document that is available upon payment of a fee to a government agency to be ‘unavailable’ for the purpose of using the petition process.

Rule Content

This rule considers any document that is required to be submitted as part of an application for an identification card requested without charge for voting purposes to be considered ‘unavailable’ if the applicant does not have the document and cannot obtain the document without payment of a fee to a government agency. In such cases, the Department will request the applicant provide his or her name, date of birth, place of birth and other birth information. The Department will then verify that birth information with the Wisconsin Department of Health Services and, if confirmed, will issue the identification card. If the birth record information or naturalization information cannot be confirmed, the

Administrator of DMV may approve secondary documentary proof of name, date of birth and U.S. citizenship.

Section 1 specifies that an identification card issued under the petition process must be readily identifiable as non-compliant with the federal REAL-ID law, similar to the treatment of certain driver's licenses by § 343.03(3r), Stats.

Section 2 establishes qualifications for issuance of an identification card without charge for voting purposes, and prohibits the Department from inquiring further about the applicant's qualifications to vote.

Sections 3 and 4 retain the existing definition of "unavailable" documents ordinarily required for issuance of a driver's license or identification card, and creates a definition of "unavailable" that applies only to identification cards issued free of charge for voting purposes consistent with the Wisconsin Supreme Court's decision in NAACP v. Walker, par. 69.

Sections 5 and 6 recognize the petition process under proposed Trans 102.15(5m) creates an exception to the documentary proof requirements that ordinarily apply to identification cards.

Section 7 is amended so that an identification card issued without a birth certificate cannot be used as proof of name and date of birth for a driver's license. The Department believes that without this treatment, unlicensed drivers 17 years of age or older who lack a birth certificate could request an identification card free of charge for voting purposes and immediately exchange it for a driver's license, thereby creating a state burden of birth record verification unrelated to the act of voting.

Section 8 renumbers the existing petition process to a new subsection (5m). The Department intends to retain the existing petition process for driver's licenses and for identification cards that are not requested without charge for purposes of voting.

Section 9 renumbers the authority of the Administrator of the DMV to delegate authority to accept or reject extraordinary proof provided under the petition process, so that delegation will apply to the existing process as well as the petition process to be employed for identification cards requested without charge for voting purposes.

Section 10 creates a title for the petition process.

Section 11 creates the petition process to be employed if an applicant requests an identification card without charge for voting purposes does not have the documentary proof ordinarily required for an identification card. Under the petition process, the applicant must provide information sufficient for the Department of Health Services (DHS) to locate the applicant's birth certificate, in this state or in another state. If DHS can verify the existence of the birth certificate and the birth record information, the Department will issue the

identification card relying on that information as proof of name and date of birth. If the DHS cannot verify that information, the Department will notify the applicant that it cannot confirm a birth certificate match for the information supplied by the applicant, and that the Department cannot issue an identification card unless the applicant can provide some other documentary proof of establishing his or her name and date of birth. Similarly, the petition process will verify a naturalized applicant's name and date of birth by verifying federally issued proof of a U.S. citizen's foreign birth, U.S. citizenship and immigration service number, or U.S. citizenship certificate number if those documents are unavailable and can be obtained only upon payment of a fee to a government agency.

Section 12 creates a process of approving name changes without requiring the applicant to provide a document that may be available only upon payment of a fee to a government agency. The Department will verify the birth record information with the names associated with an individual's records maintained by the federal social security administration. In this way, the Department can verify that an application for an identification card in the name of, for example, John Smith is proper if requested by an applicant who proves only that he was born John Doe.

Section 13 creates a judicial right of review of the petition decision made by the Administrator of DMV, similar to that created by § 343.40, Stats., for driver licensing decisions.

Section 14 corrects a cross-reference to a rule renumbered by this rulemaking.

Section 15 states the effective date of this rule.

Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations

Federal law generally does not regulate the issuance of identification cards by states, however federal law (the "REAL-ID law", P.L. 109-13, section 202 (d) (11)) prohibits the use of state-issued identification cards for purposes of federal identification or any other official federal purpose, such as entering federal buildings or airports, unless the identification card application included federally required documents and the state stored and retained those documents. Federal law requires that identification cards that do not meet those requirements be distinct in appearance from those that do.

There are no federal identification requirements to vote. In general, voting requirements are established by state law.

Comparison with Rules in Adjacent States

Illinois: Illinois requires applicants for an original identification card or driver's license to provide documentary proof of signature, date of birth, social security number and residency. Documents acceptable to prove date of birth are original: Adoption Records; Birth Certificate; Court Order -- Change of Birth Date; Certified Grade/High School/College/University Transcript; U.S. Citizenship and Immigration Services (USCIS) forms; U.S. Visa Military Driver's License -- U.S.; Military Identification Card -- U.S.; Military Service Record -- DD214; Naturalization Certificate; Passport -- Valid with Complete Date of Birth; U.S. Passport Card - Valid with Complete Date of Birth; or Social Security Award Letter (Primary Beneficiary Only). 92 Ill. Adm. Code 1030 App. B.

Illinois issues identification cards for the homeless at no cost. Applicants for a no-fee homeless identification card must provide proof of name, date of birth and social security number ordinarily required, but in lieu of proof of address may submit a 'homeless status certification signed by the homeless applicant before a notary public and attested to by a representative of a homeless service agency that receives public funding; an attorney; a public school homeless liaison or school social worker; a human services provider funded by the State of Illinois; a representative of a religious organization that offers services to the homeless. 92 Ill. Adm. Code 1030.12; 92 Ill. Adm. Code 1030 App. B.

Iowa: An applicant for an original driver's license or identification card must provide proof of identity, date of birth, social security number, Iowa residency and current residential address, and lawful status in the United States. IA ADC 761-601.5(321) To establish identity and date of birth, an applicant must submit at least one of the following documents: A valid, unexpired U.S. passport or U.S. passport card; A certified copy of a birth certificate and, if applicable, a certified amended birth certificate showing a change in name, date of birth, or sex, filed with a state office of vital statistics or equivalent agency in the applicant's state of birth. The birth certificate must be a certified copy and have the stamp or raised seal of the issuing authority. A hospital-issued certificate is not acceptable; A Consular Report of Birth Abroad issued by the U.S. Department of State; A valid, unexpired Permanent Resident Card issued by the U.S. Department of Homeland Security or U.S. Immigration and Naturalization Service; An unexpired employment authorization document issued by the U.S. Department of Homeland Security; An unexpired foreign passport with a U.S. visa affixed, accompanied by the approved 1-94 form documenting the applicant's most recent admittance into the United States; Certificate of Naturalization issued by the U.S. Department of Homeland Security; A Certificate of Citizenship issued by the U.S. Department of Homeland Security; A REAL ID driver's license or identification card issued in compliance with the standards established by 6 CFR Part 37; Such other documents as the U.S. Department of Homeland Security may designate as acceptable proof of identity and date of birth for REAL ID purposes by notice published in the Federal Register; An Inmate Descriptor Inquiry, Client Information Inquiry or Offender Snapshot document issued by the Iowa department of corrections or the United States District Court, Northern and Southern Districts of Iowa. The document must contain the applicant's full legal name and date of birth and be notarized. IA ADC 761-601.5(321).

Michigan: Michigan requirements for state identification cards are set forth in statute, and do not appear to be set addressed in administrative code. In general, residents applying for a state ID card must present documentation of a valid Social Security number, U.S. citizenship or legal presence, identification and Michigan residency. Mich. Comp. Laws Annot. 28.304. Application requirements for a “Standard official state personal identification card” are set forth at Mich. Comp. Laws Annot. 28.291 to 28.300. The following documents are acceptable proof of identity: Out-of-state, U.S. territories, or Canadian driver’s license or ID card, expired for less than one year; Marriage license issued in the U.S.; Divorce decree issued in the U.S.; U.S. court order for a name change; Photo ID card issued by a federal or Michigan government agency; U.S. Customs and Border Protection Trusted Traveler Card ; U.S. military ID card with photo; U.S. military discharge or separation documents; Tribal photo ID card from a federally recognized Native American tribe; Michigan Department of Corrections prisoner ID card (requires verification); Michigan driver education certificate (applicants age 18 and younger); Michigan adoption record; U.S. school records (School ID cards with name and photo, diplomas, transcripts or yearbooks); If the applicant is below age 18 and does not have one of the above, a parent or guardian must present their driver’s license or ID and sign for the teen.

Minnesota: Minnesota requires applicants for original driver’s license or identification card to provide documentary proof of date of birth, full legal name, social security number, photographic identity, and U.S. citizenship. The applicant must present one legible, unaltered, primary document that contains the applicant's full name and date of birth as proof of name, date of birth, and identity, which are described as follows: A copy of the applicant's record of birth certified by the issuing government jurisdiction of the United States or U.S. territory; A certified copy of an adoption certificate with the applicant's full name and date of birth from a United States court of competent jurisdiction ; An unexpired identification card issued to the applicant by the United States Department of Defense for active duty, reserve, or retired personnel; A valid unexpired passport issued to the applicant by the United States Department of State; An applicant or owner may present a valid, unexpired passport issued to the applicant from a jurisdiction other than the United States Department of State with either a United States Department of Justice or United States Department of Homeland Security Arrival and Departure Form I-94 attached or an unexpired I-551 stamp; An applicant or owner may present a Canadian birth certificate or Canadian naturalization certificate with a United States Department of Justice or a United States Department of Homeland Security Arrival and Departure Form I-94 attached, bearing the same name as that on the Canadian birth certificate or Canadian naturalization certificate and containing an unexpired endorsement of the alien's nonimmigrant status or authorized presence; one of the listed documents issued by the United States Department of Justice or the United States Department of Homeland Security including Certificate of Naturalization, Certificate of Citizenship, United States Citizen Identification card, Permanent Resident or Resident Alien card, Northern Mariana card, American Indian card, employment authorization document with a photograph, or unexpired Re-entry Permit/Refugee Travel Document. MN Adm. Code 7410.0400.

Minnesota does grant variances to applicants whose required documentation is not available. MN ADC 7410.0600. If a person is unable to comply with the proof requirements of part 7410.0400, the person may make written application to the commissioner of public safety or a designee for a variance. The applicant must submit written documentation of the reasons why a variance should be granted, including the reasons the required documents are not available. The applicant must provide additional information regarding the applicant's name and identity, such as names of relatives, date and place of birth, place of residence, social security number, military service information, and any arrest information, to aid the commissioner in verifying the applicant's identity. In making a decision to grant or deny the variance, the commissioner or a designee shall consider the following: the availability of the required documents; the degree of hardship placed on the applicant; the effect of granting the variance on the public; the effect of granting the variance on the integrity of the record system; and the trustworthiness of the information supplied by the applicant regarding the applicant's name and identity. The commissioner shall grant the variance if all of the following conditions are present: the documents required by part 7410.0400 are either not reasonably available or do not exist; compliance with part 7410.0400 would cause an undue hardship for the applicant; granting the variance will have no adverse effect on the public; granting the variance will not jeopardize the integrity of the record system; and the applicant has established the applicant's name and identity by trustworthy evidence and documentation. MN Adm. Code 7410.0600.

Minnesota does issue a state identification card at a reduced fee to a qualified applicant with a condition of developmental disability, mental illness, or a physical disability. MN Adm. Code 7410.0700.

Summary of Factual Data and Analytical Methodologies

To develop this rule, the Department reviewed state laws related to issuance of an identification card, its past practice under the existing petition process and the number and facts of exceptions approved to the documentary proof requirements using the petition process. The Department also analyzed the list of documents acceptable to prove name and date of birth and U.S. citizenship under existing Trans 102.15, Wis. Adm. Code, to determine which documents were available without payment of any fee to a government agency, and which of those documents were available to the Department without charge to the applicant, particularly those available using existing electronic means of inter-governmental data exchange.

Analysis and Supporting Documents used to Determine Effect on Small Business

Identification cards are issued only to natural persons. The Department identified no effect on small businesses related to this rule.

Effect on Small Business

The Department anticipates no effect on small businesses as result of this rule. The Department is unaware of any business that provides assistance in obtaining government documents required to support an application for an identification cards that will no longer be required for certain applicants under this rule.

Initial Regulatory Flexibility Analysis

This rule is not expected to have an effect on small businesses.

Economic Impact Analysis

This rule addresses only documentary requirements for individuals wishing to obtain an identification card free of charge for voting purposes. The rule has no direct effect on small businesses, and no discernible indirect effects on small businesses. Accordingly, the Department anticipates no effect on specific businesses, business sectors, public utility ratepayers, local governmental units, or the state's economy as a whole. The Department did not solicit information or advice from businesses, associations representing businesses, local governmental units. The Department also did not solicit information from individuals that may be affected by the proposed rule, as the Department determined the rule had no direct or indirect financial effect on individuals.

DOT Contact

Questions and comments (including hearing comments) related to this rule may be directed to:

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Where Comments May Be Submitted

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PERMANENT RULE

Section 1. Trans 102.04(4) is created to read:

Trans 102.04(4). If any identification card is issued based upon extraordinary proof of name, date of birth or U.S. citizenship under Trans 102.15(5m), the identification card shall, in addition to any other legend or label, be marked in a manner consistent with requirements under applicable federal law and regulations to indicate that the identification card is issued in accordance with P.L. 109-13, section 202 (d) (11), and is not intended to be accepted by any federal agency for federal identification or any other official purpose.

Section 2. Trans 102.14(1g) is created to read:

Trans 102.14 (1g). The department may not issue an identification card without charge for voting purposes to any person who is not a U.S. citizen or is not age 17 or older. The department may not determine whether a person is otherwise eligible to vote.

Section 3. Trans 102.15(1) is renumbered Trans 102.15(1)(a) and amended to read:

Trans 102.15 (1) "UNAVAILABLE" DEFINED. (a) ~~In~~ Except as provided in par. (b), in this section, "unavailable" does not include documents which persons have forgotten to bring with them when applying for a license or identification card, or a lost or destroyed document if a replacement original or a certified copy of the document is available to those persons upon proper request.

Section 4. Trans 102.15(1)(b) is created to read:

Trans 102.15(1)(b). For purposes of a person applying for an identification card who requests that the identification card be provided without charge for voting purposes, "unavailable" means that the applicant does not have the documents required by Trans 102.15 (3)(a) or proof of citizenship under sub. (3m) and would be required to pay a government agency to obtain them, in addition to the meaning given in par. (a).

Section 5. Trans 102.15(2)(c) is amended to read:

Trans 102.15(2)(c) ~~A~~ Except as provided in sub. (5m), a person shall provide proof of the person's name and date of birth under sub. (3), of the person's identity under sub. (4), and of the person's residency under sub. (4m), upon the first application for an original, renewal, reinstatement or duplicate operator's license or identification card following:

Section 6. Trans 102.15(3)(a)2. Note is amended to read:

Trans 102.15(3)(a)2. Note: ~~Neither~~ Except as provided in Trans 102.15(5m)(b)2., neither a hospital birth certificate, a notification of birth registration nor baptismal certificate

satisfies this requirement. Effective November 1, 1986 s. 69.24 (1) (a), Stats., prohibits Wisconsin hospitals from issuing a document which appears to be a birth certificate.

Section 7. Trans 102.15(3)(a)6. Is amended to read:

Trans 102.15(3)(a)6. A Wisconsin identification card issued under s. 343.50, Stats., bearing a photograph of the person, other than an identification card issued under sub. (5m)(b);

Section 8. Trans 102.15(3)(b) is renumbered Trans 102.15(5m)(a) and Trans 102.15(5m)(a) (intro.), as renumbered, is amended to read:

Trans 102.15(5m)(a)(intro.) ~~If~~ Except as provided in par. (b), if a person is unable to provide documentation under ~~par. sub. (3) (a) and (3m),~~ and the documents are unavailable to the person, the person may make a written petition to the administrator ~~of the division of motor vehicles~~ for an exception to the requirements of ~~par. sub. (3) (a) and (3m).~~ The application shall include supporting documentation required by sub. (4) and:

Section 9. Trans 102.15(3)(c) is renumbered Trans 102.15(5m)(c) and amended to read:

Trans 102.15(5m)(c) The administrator may delegate to the administrator's subordinates the authority to accept or reject such extraordinary proof of name ~~and~~ date of birth, or citizenship under this subsection.

Section 10. Trans 102.15(5m)(title) is created to read:

Trans 102.15(5m)(title) EXTRAORDINARY PROOF OF NAME, DATE OF BIRTH, OR U.S. CITIZENSHIP.

Section 11. Trans 102.15(5m)(b) is created to read:

Trans 102.15(5m) (b)1. If a person requests an identification card without charge for the purposes of voting and the person's birth certificate is unavailable, the person may make a written petition to the administrator for an exception to the requirements of proof of name and date of birth under sub. (3) or of proof of citizenship under sub. (3m). The petition shall include: the person's statement under oath or affirmation that the person is unable to provide documentation under sub. (3) or proof of citizenship under sub. (3m); that the documents are unavailable to the person; and his or her name, date of birth, place of birth, and such other birth record information requested by the department, or the person's alien or U.S. citizenship and immigration service number or U.S. citizenship certificate number. Upon receiving a petition, the department shall provide the person's birth record information to the department of health services, for the sole purpose of verification by the department of health services of the person's birth certificate information or the equivalent document from another jurisdiction, other than a province of the Dominion of Canada, or

to a federal agency for the sole purpose of verifying the person's certificate of birth abroad issued by the U.S. department of state, or of verifying the person's alien or U.S. citizenship and immigration service number or U.S. citizenship certificate number. The department may not complete application processing prior to receiving verification under this subdivision, unless the petition is approved under subd. 2.

2. If the department does not receive verification under subd. 1, the department shall notify the person of that failure to verify. The department may thereafter issue an identification card to the person only if the department receives verification under subd. 1, the person provides proof required under sub. (3) or (3m), or the department receives other secondary documentation that is extraordinary proof and deemed acceptable to the administrator to prove name, date of birth or U.S. citizenship, which may include the following:

- a. Baptismal certificate.
- b. Hospital birth certificate.
- c. Delayed birth certificate.
- d. Census record.
- e. Early school record.
- f. Family Bible record
- g. Doctor's record of post-natal care.
- h. Other documentation deemed acceptable to the administrator, within his or her reasonable discretion.

Note: Whoever under oath or affirmation makes or subscribes a false statement which he or she does not believe is true, when such oath, affirmation, or statement is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action, is guilty of a Class H felony, per s. 946.32, Stats.

Section 12. Trans 102.15(3)(d) is created to read:

Trans 102.15(3)(d) The administrator may approve a name change requested by a person who cannot provide documentation of the name change if the administrator receives proof of the name change from the federal social security administration and proof of identity in the new name.

Section 13. Trans 102.15(5m)(e) is created to read:

Trans 102.15(5m)(e) The denial of a petition under par. (b) is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

Section 14. Trans 102.15(6)(intro.) is amended to read:

Trans 102.15(6) TEMPORARY DRIVER RECEIPT. The department may issue a temporary driver receipt for operation of class D or M vehicles to a person who is

temporarily unable to meet the identification requirements of sub. (3). The temporary driver receipt shall state the date of issue, shall be clearly marked "NOT VALID FOR IDENTIFICATION," and shall be validated for the operation of a vehicle for a stated period of up to 60 days from the date issued. The person may complete his or her license application within this period by presenting proof of the person's name and date of birth in accordance with sub. (3) (a). For good cause shown, the department may renew the driving receipt once for an additional period of no more than 60 days. This subsection does not prohibit a person from proceeding under sub. ~~(3) (b)~~ (5m)(a). This subsection applies only to persons who meet all of the following:

SECTION 15. EFFECTIVE DATE: This rule shall take effect on the first day of the month following the Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this 30th day of October 2014.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: _____
Mark Gottlieb, P.E., Secretary