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Dear Senator Tomczyk and Representative VanderMeer:

The Wisconsin Department of Transportation (WisDOT) appreciates the opportunity to discuss Clearinghouse Rule 23-042, proposed changes to Administrative Rule Trans 102, about which the department testified at a joint hearing of the Senate and Assembly Transportation Committees on May 30<sup>th</sup>, 2024. Questions from Legislative Council attorney Ethan Lauer regarding modifications to the rule were discussed, as were questions raised by you and members of your respective committees during that hearing. This letter provides a summary of our response to those questions and recommendations contained in the attached "Second Germane modifications".

#### **Comments from Legislative Council**

Legislative council attorney Ethan Lauer provided WisDOT a list of comments regarding WisDOT's drafting of Clearinghouse Rule 23-042 in an email sent on July 31<sup>st</sup>, 2024. Included are those comments and WisDOT's response to them.

(DMV responses in lettered bullets, in blue)

1. On page 7, starting with Section 21 of the explanation, the numbering appears to be off by one number (i.e., the explanation for Section 21 appears to apply to Section 22 of the rule, and so on).
  - a. This was a renumbering error. The numbering of sections was thrown off by the splitting of sections. Sections 21 & 22 were originally one section, as were sections 43 and 44. WisDOT has modified the rule to ensure Section numbers are accurate throughout.
2. On page 28, s. [Trans 102.02\(9\)](#) of the current administrative code defines "reissue." The proposed rule repeals this definition. The term "reissue" is used several times throughout the

proposed rule. It is not defined in statute. How will “reissue” be understood in the absence of a definition?

- a. WisDOT agrees with this comment and has kept the current definition of reissue.
- 3. On page 38, s. Trans 102.14 (8) (f) 2. allows DOT to renew a REAL ID **compliant** product without verifying identification information if DOT had issued the person a product prior to January 1, 2013.

Under s. 343.165 (7) (b), Stats., DOT may forego certain verification processes when renewing licenses or ID cards issued prior to January 1, 2013, but those renewed products must be REAL ID **non-compliant** per 343.165 (7) (a) 1, Stats.

- a. WisDOT agrees with this comment and has struck “2” to reflect that this applies to REAL ID non-compliant products.
- 4. On page 39, s. Trans 102.14 (8) (g) starts with “subject to par. (e),...”

This does not make sense to me. Paragraph (e) is about verifying legal presence and SSN when **renewing** a REAL ID **compliant** product. But par. (g) is about verifying documents and information when **renewing** or **reissuing** a REAL ID **non-complaint** product. In other words, par. (g) is not naturally subject to par. (e) because they address entirely different products and also address partially different actions. If the intent is that the department must verify legal presence and SSN when renewing or reissuing a REAL ID non-compliant product, the modifier “subject to par. (e)” falls short.

- a. WisDOT agrees with this comment and has carried over language from (e) to (g) to make it clear WisDOT must verify legal presence and SSN when renewing or reissuing a REAL ID non-compliant product.
- 5. On page 39, s. Trans 102.15 (2) (a) 3. refers to “Proof of date of birth meeting the requirements of sub. (4) (a).”

Sub. (4) (a) on page 44 is about proof of legal presence; **not** date of birth.

There is not a specific requirement for proof of **date of birth** anywhere in the proposed rule that could be cross-referenced here, but there probably should be given s. 343.165 (1) (b), Stats. Compare the clarity on date of birth offered by s. [Trans 102.15\(3\)\(a\)](#) of the current administrative code.

- a. WisDOT agrees with this comment and has added the requirement for proof of date of birth that can be cross-referenced. Trans 102 is being used to connect “Proof of Date of Birth” (DOB) proof in state statute, from 343.165(1)(b), to “Proof of Identity” as it is defined in 6 CFR 37.11(c).
- 6. On page 40, s. Trans 102.15 (2) (a) 7. refers to “Proof of legal presence in the United States meeting the requirements of sub. (4) (a).”  
Should this also include sub. (4) (b) on page 44 because both (4) (a) and (4) (b) address proof of legal presence for a REAL ID compliant product?
  - a. WisDOT agrees with this comment and has included sub. (4) (b) on page 44 as both address proof of legal presence for a REAL ID compliant product.
- 7. On page 40, s. Trans 102.15 (2) (c) 3. refers to “Proof of date of birth meeting the requirements of sub. (4) (a), (b), or (5m).”  
Sub. (4) (a) and (b) on page 44 are about proof of legal presence; **not** date of birth.

There is not a specific requirement for **date of birth** anywhere in the rule to be cross-referenced (see comment above).

There is no sub. **(5m)**.

- a. WisDOT agrees with this comment. The necessary changes tie back to comment #5. Above, and have been made to keep references consistent and accurate throughout the rule. The reference to sub. (5m) has been struck as it does not exist.

8. On page 41, s. Trans 102.15 (2) (c) 7. refers to “Evidence of lawful legal presence in the United States meeting the requirements of sub. (4) (a), (d), or **(7)**.”

Should this also include sub. (4) **(b)** on page 44 because (4) (b) is also about legal presence?

It should not include **(7)**, because sub. (7) was removed by the germane modification submitted on May 30, 2024.

- a. WisDOT agrees with this comment. Sub. (4) (b) has been added, and sub. (7) has been struck.

9. On page 41, in s. Trans 102.15 (2) (f) 2., should “legal presence in the United States” be added to the list of lawful presence status? Compare the list in subd. 1.

- a. WisDOT agrees that “legal presence in the United States” should be added to “2.” and has made that change. The list of lawful presence in sub. 1 and sub. 2 are accurate and the same.

10. On page 41, s. Trans 102.15 (2) (g) refers to “proof of the person’s name and date of birth under sub. **(3)**, identity under sub. **(4)**...”.

Sub. **(3)** is about **identity**, not name and date of birth.

Sub. **(4)** is about **legal presence**, not identity.

- a. WisDOT agrees with this comment. This again relates to comment #5. Above, and has modified the rule text to read: “proof of identity under sub. (3), legal presence under sub (4)”.

11. On page 44, s. Trans 102.15 (4) (a) does not say that a **U.S.** birth certificate may be used to prove legal presence in the United States.

Should it be included in the list of documents?

- a. WisDOT agrees with this comment. The exclusion of Wisconsin birth certificates as acceptable proof of legal presence was a drafting error. A previous draft of (4)(a)(1) read: “Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual’s place of birth in a U.S. state, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands. Note: 6 C.F.R. § 37.11(c)(1)(ii) and the definition of “State” found at 6 C.F.R. § 37.3 .”, but was later changed to be consistent with the birth certificate language in (3)(a)(b) while unintentionally excluding (3)(a)(2)(a) <page 42 of 54> “For a person born in Wisconsin, a copy of the person’s Wisconsin birth certificate issued and certified in accordance with s. 69.21, Stats. “.
- b. The relevant portion of Section 33, 102.15(4)(a) has been amended to:
  1. Any of the following certified proofs of birth:

- a. For a person born in Wisconsin, a copy of the person's Wisconsin birth certificate issued and certified in accordance with s. 69.21, Stats.
- b. For a person born in another state or the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, a certified copy of the person's birth certificate or the equivalent document from the office or agency of the respective jurisdiction that is charged with issuance of official certificates of birth.

12. On page 44, s. Trans 102.15 (4) (a) refers to “proof of identity meeting the requirements of sub. **(1)** (a).”

The correct cross reference probably should be sub. **(3)** (a).

- a. WisDOT agrees with this comment and has modified the rule to correctly reference (3)(a).

13. On page 44, s. Trans 102.15 (4) (b) refers to “proof of identity meeting the requirements of sub. **(1)** (a).”

The correct cross reference probably should be sub. **(3)** (a).

- a. WisDOT agrees with this comment and has modified the rule to correctly reference (3)(a).

14. On page 47, in s. Trans 102.15 (5) (c), change “ill not” to “will not.”

- a. WisDOT agrees with this comment and has modified the rule to correctly state “will not.”

15. On page 48, in s. Trans 102.15 (6) (a), there is a reference to a “REAL ID.”

It should be clarified whether this is a “REAL ID **compliant** product” or a “REAL ID **noncompliant** product.”

- a. WisDOT agrees with this comment and confirms in the rule that this is referring to Real ID compliant product.

16. On page 50, in s. Trans 102.15 (11) (a), the authority to dispense with the requirement to capture a digital image of documents should probably be narrowed to the circumstances listed in s. 343.165 (7), Stats.; namely, use of pre-2013 practices and procedures or renewal of pre-2013 products. Outside of s. 343.165 (7), a digital image must be captured.

- a. WisDOT agrees with this comment and has added a reference to 343.165(7) to narrow the circumstances in which the requirement to capture a digital image of documents does not apply.

17. On page 50, in s. Trans 102.15 (11) (b), I believe “REAL-ID non-compliant **product** identification card” should be changed to “REAL ID non-compliant identification card.”

- a. WisDOT agrees with this comment and has modified the rule to remove “product”.

18. On page 53, Section 44 of the rule probably should be removed. There is no authority for a minor to have a domestic partner. (The authority to enter new domestic partnerships has been expired for several years, but even when they could be entered, a minor could not.)

- a. WisDOT agrees with the comment in part. The statement “or domestic partner” should be struck as there is no authority for a minor to have a domestic partner; however, the change to (4) should and has been kept as it is needed to correct a cross-reference issue to accurately reference capturing required proof of identification from a sponsor.

### **Questions and Comments from Committee Members**

1. Questions from you and members of your committees regarding domestic partnership language included in Section 43 were raised. WisDOT considered this feedback when analyzing the language pertaining to domestic partnerships in the rule and intends to include the definition of a domestic partner in the rule to account for existing domestic partnerships that were created prior to statutory changes which no longer allow for new domestic partnerships.
2. A question was raised about making changes to Administrative Rule Trans 104 regarding requirements for examining procedures for obtaining an operator's license as part of Clearinghouse Rule 23-042. WisDOT agrees that changes to Trans 104 should be made via a separate rulemaking process and has removed Section 46 from the proposal.
3. Changes in Section 34 also removed the age requirement for proof of residency documents, and members of the committee questioned this change. Questions regarding the age of documents used to provide proof of residency were also raised. DMV intends to remove the "at least 30 days" age requirement for these documents to be in compliance with the current definition of resident in sec. 343.01(2)(g) which states:

"Resident" means an adult whose one home and customary and principal residence, to which the person has the intention of returning whenever he or she is absent, is in the state...."

Current statute does not require a person to be in Wisconsin for at least 30 days to qualify as a resident when applying for driver license or identification (ID) card; therefore, requiring one to provide as proof of residency a document that is at least 30 days old conflicts with the definition of resident in sec. 343.01(2)(g). However, WisDOT recognizes that having some parameters around document age for proof of residency are reasonable and has added language to Section 34 that says documents provided as proof of residency can be no more than one year in age.

Furthermore, all Wisconsin driver license and ID cards are printed at a secure facility and are mailed to customers with "Return Service Requested"; meaning the card will be returned to the Division of Motor Vehicles (DMV) if it cannot be delivered to the address printed on the card. This means cards addressed to people who have moved but have not updated their address with the United States Postal Service (USPS), and individuals using a forwarding service will be returned to DMV. DMV does have some interaction with USPS which is used to validate addresses, and DMV receives address updates through the "National Change of Address" service, but the customer must be registered with USPS as residing at the address provided to DMV. Through this mailing process, DMV uses delivery of the card as additional verification that the applicant is a Wisconsin resident.

In addition, the rulemaking package requires documents used to prove principal residence to be not more than one year old, unless the rule specifically allows it. Changes in section 34 (at proposed ch. Trans 102.15(5)(a)6.) make a rental or lease agreement of any age acceptable as proof of one's principal residency during the initial rental or lease term, even if that initial term is more than one year long. Renewal or extension of a rental or lease agreement that is more than one year old may not be considered as part of that rental or lease agreement and such renewed or extended tenancy beyond the initial term must be proved using different documents.

4. Accompanying this letter please find the sample images of our driver license and ID cards that Representative Maxey had requested.

In addition, this “Second Germane modifications” also includes the following changes proposed in “Germane Modifications” filed on May 30, 2024:

- In the final rule draft, proposed Trans 102.15(7) prescribes a procedure for issuing a driver’s license to an applicant who lacks proof of identity. There is no statutory authority for such a procedure and the department neither does nor intends to issue a driver’s license under such circumstances. The remaining language in that proposed Trans 102.15(7) pertaining to identification cards is redundant of other language in the final draft rule and is deleted for clarity. The modifications delete proposed Trans 102.15(7) shown at page 49 of the final draft rule, and correct cross- references to that deleted subsection.
- The final draft rule contains language allowing an applicant for a regular driver’s license, a motorcycle license or an identification card to refuse to provide a social security number if the applicant has a seriously held religious belief against doing so. There is no statutory authority for this exemption, so it is deleted from the final draft rule. The statutes allow an applicant to refuse to provide a social security number only if the applicant does not have a social security number and is not eligible for one, and provides a written oath or affirmation of those facts.

The following language is substituted in s. Trans 102.15 (6):

“(c) A person who applies for a REAL ID non-compliant product is required to provide a social security number, unless the applicant does not have a social security number and is not eligible for a social security number and submits a statement on a form provided by the department and subscribed under oath or affirmation or witnessed by a division of motor vehicles customer service representative that the applicant does not have a social security number and is not eligible for a social security number.”

WisDOT sincerely welcomes further discussion about these or any other aspects of the proposed changes to Trans 102 included in CR 23-042 that are necessary to bring it into compliance with federal and state law.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristina Boardman", followed by a horizontal line.

Kristina Boardman  
Secretary