

Clearinghouse Rule 06-089

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 105.01(1)(f), 105.035(2), 105.05(5), 105.06(2)(a), (11) and (12), and 105.07(1)(b)1.a. and (5)(d); renumber TRANS 105.02(4) and 105.06(11) and (12); renumber and amend TRANS 105.02(2) and (3), and 105.04(3); amend TRANS 105.01(title), 105.02(1), 105.03(1)(b) and (c), 105.035(1), 105.04(title), (1) and (2), 105.05(2)(a)(intro.), (b), (3) and (4), 105.06(2)(intro.), (b) and (e), (7) and (10), 105.07(1)(b), (b)1.(intro.), (b)3.(intro.), (c), (2)(a), (3) and (5) and 105.09(3)(note); repeal and recreate TRANS 105.06(5) and 105.08; and create TRANS 105.003, 105.007, 105.01(4) to (6), 105.015, 105.02(2) and (3), 105.035(2) to (5), 105.04(3), 105.06(3)(f), 105.07(1)(b)1.L. and (7), 105.10, 105.11 and 105.12, relating to licensing of driver schools and instructors

**NOTICE OF HEARING  
AND  
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to Subchapter VI, Chapter 343, Stats., and interpreting Subchapter VI, Chapter 343, Stats., the Department of Transportation will hold a public hearing in **Room 254** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **14th** day of **August**, 2006, at **1:00 PM**, to consider the amendment of ch. Trans 105, Wisconsin Administrative Code, relating to licensing of driver schools and instructors.

An interpreter for the hearing impaired will be available on request for this hearing.

Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

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### **Analysis Prepared by the Wisconsin Department of Transportation**

**Statutes interpreted:** Subchapter VI, Chapter 343, Stats.

**Statutory authority:** Subchapter VI, Chapter 343, Stats.

**Explanation of agency authority:** The Department licenses driver training schools and instructors that teach driver's education for a fee. High schools or technical colleges that teach driver's education as part of their regular school program and businesses that provide instruction in the operation of motorcycles are excluded.

**Related statute or rule:** ss. 343.60 to 343.72, Stats., and ch. Trans 105

**Plain language analysis:** The purpose of this rule making is to amend ch. Trans 105 to comply with 2005 Wisconsin Act 397. This new law made many substantial changes to the driver schools statutes. Some of the changes include:

- Eliminating the requirement that schools maintain permanently bound books for recordkeeping.
- Implementing a system of progressive enforcement to take action against driver schools or instructors that have violated the law or have compiled multiple substantiated consumer complaints.
- Allowing driver schools to participate in the Cooperative Driver Testing Program, which allows schools to administer the knowledge and signs tests to their own students under the age of 18.
- Requiring driver schools to file a bond with the Department, and maintain a liability insurance policy in the amount established by rule.

**Summary of, and preliminary comparison with, existing or proposed federal regulation:** None.

### **Comparison with Rules in the Following States:**

Michigan, Iowa, Minnesota, and Illinois have rules relating driver schools, driver school instructors and course content for young drivers to complete driver's education prior to licensure. The rules are similar to this proposed rule.

**Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen:** A telephone survey was conducted of a sample of driver schools currently conducting business. Responses were compiled, and are shown below. There are approximately 180 driver training schools statewide.

**Analysis and supporting documentation used to determine effect on small businesses:**

Fiscal impacts:

1. New bonding requirement will cost approximately \$200 per year. Vehicle inspections will increase costs slightly.
2. The new bonding requirement will increase costs, but not substantially. The bond will likely be added to the school's current insurance policy.
3. The new bonding requirement will increase costs. The total amount of the increase is unknown, although the bond will likely be added to an existing insurance policy.

Workload impacts:

1. Some of the changes in ch. Trans 105 will decrease workload, such as removing the requirement that records be kept in a permanently bound book, and lengthening the renewal cycle to two years. The workload reduction will be offset by other changes, such as additional workload required to participate in the Cooperative Driver Testing Program.
2. No workload impact.
3. No change in workload expected. May have a slight decrease.

Other comments:

1. This will make driver schools operated in the State of Wisconsin more professional, and the changes are welcome.
2. Allowing driver schools to participate in the Cooperative Driver Testing Program is a positive for both students and schools. The changes made in the proposed rule are good. Schools that are in compliance that run a quality business will not have a problem.
3. Driver schools must be allowed to operate home-based offices to remain in business. (Note: the proposed rulemaking still allows driver schools to have home-based offices).

**Effect on small business:** Most driver schools are small businesses, and are already regulated by the Department. This rule making changes how the Department regulates driver schools. The Department's Regulatory Review Coordinator may be contacted by e-mail at [andrew.ruiz@dot.state.wi.us](mailto:andrew.ruiz@dot.state.wi.us), or by calling (414) 438-4585.

**Fiscal effect 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. The private sector should not see an increase in costs. Allowing students to take the knowledge and signs test at the driving school, instead of DMV, should decrease travel costs and time away from work for parents.

**Agency contact person and place where comments are to be submitted and deadline for submission:** The public record on this proposed rule making will be held open until close of business August 15, 2006 to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Erin Egan, Department of Transportation, Division of Motor Vehicles, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Egan by phone at (608) 266-1449.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

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## **TEXT OF PROPOSED RULE**

**SECTION 1.** Trans 105.003 is created to read:

**Trans 105.003 Introduction.** (1) **PURPOSE.** This chapter construes subch. VI of ch. 343, Stats., by creating rules for the purpose of regulating the following:

(a) The licensing and regulation of commercial driver schools that provide driver training and testing for minors and training of instructors.

(b) The licensing and regulation of commercial driver school instructors who provide classroom and behind-the-wheel instructions to minors.

(2) **SCOPE.** This chapter applies to all persons operating a commercial driver school for minors or giving instruction in the driving of a motor vehicle to minors except as specifically excluded.

**SECTION 2.** Trans 105.007 is created to read:

**Trans 105.007 Definitions.** In this chapter:

(1) "Authorized medical practitioner" means a physician licensed to practice medicine in any state, an advanced practice nurse licensed to practice nursing in any state, a physician assistant licensed or certified to practice in any state, a chiropractor licensed to practice chiropractic in any state, or a Christian Science practitioner residing in this state, and listed in the Christian Science journal.

(2) "Driver school" is defined in s. 343.60(1), Stats.

(3) "Instructor" is defined in s. 343.50(3), Stats.

(4) "Student" means a person less than 18 years of age who is applying or is enrolled at a driver school for instruction in driving a motor vehicle.

(5) "Vehicle" means a 4-wheeled self-propelled device meeting federal motor vehicle safety standards with a minimum capacity of 4 persons.

**SECTION 3.** Trans 105.01(title) is amended to read:

**Trans 105.01 (title) ~~Application forms for driver~~ Driver school and instructor licenses applications.**

**SECTION 4.** Trans 105.01(1)(f) is repealed.

**SECTION 5.** Trans 105.01(4) to (6) are created to read:

Trans 105.01(4) Applicants for a driver school license may self-certify the condition of its school offices and classrooms to the department on the approved department form submitted with the application unless the office is in a home residence. The self-certification of the facilities shall address all of the following:

(a) Address for office and any classroom being self-certified.

(b) Measurement and configuration of office, including entrances, exits, windows, records storage and number of students.

(c) Adequate lighting and temperature control.

(d) Separate entrance and exits for the office and classroom.

(e) No other driver school business conducted within the office, unless approved by the department.

(f) No other driver business conducted within the driver training office.

(g) Zoning verification if the office is located in a non-traditional business location.

(h) Access to restroom facilities for classrooms.

(i) Authorization from school if public classrooms are used to provide instruction.

(5) Driver school offices in a home residence may be conditionally self-certified if:

(a) Facility is visited and approved by the department prior to filing a school license application.

(b) Minor students are not allowed at the office unless accompanied by a parent or sponsor.

(c) Applicant verifies that local zoning allows the office in a non-traditional business location.

(d) The office is a separate room with direct entrance and exits from the street.

(6) Applicants who will be owners and managers of driver schools shall submit verification that they passed the department's 50-question test on driver school and instructor criteria. Applicants shall get a minimum score of 80% to pass.

**SECTION 6.** Trans 105.015 is created to read:

**Trans 105.015 Cooperative driver testing program.** (1) The department may enter into a cooperative driver testing agreement with the driving school to conduct knowledge tests as permitted by s. 343.16(1)(c), Stats. Driver schools may administer the knowledge and signs test for students who are currently enrolled in driver education. Driver schools that have accumulated 2 or more points in the current licensing period under s. Trans. 105.11 are not eligible to enter into the testing agreement with the department.

(2) The agreement is voluntary and can be terminated by the department.

(3) Schools that are participating in the cooperative driver testing program under s. 343.16(1)(c), Stats., may provide the knowledge and signs test required under s. 343.62(4)(a)1., Stats., to their own instructors.

**SECTION 7.** Trans 105.02(1) is amended to read:

Trans 105.02(1) Each applicant for an instructor's license shall take the road test. The road test shall be scored in the same manner as are tests given for regular operator's licenses and shall also include an actual demonstration of procedures and techniques used instructing drivers. Tests required by s. ~~343.63(1), (2), and (3)~~ 343.63(4), Stats., ~~is~~ are required of all applicants for original instructor's license and applicants whose instructor's licenses have lapsed for one or more years. The department may also require retesting of currently licensed instructors either as a part of a routine retesting program or when it has reasonable cause to doubt the continued competency of any individual instructor. Applicants shall also complete a 20-question test on instructional procedures or

demonstrating teaching skills. This test may be administered orally. Applicants shall get a minimum score of 80% to pass.

**SECTION 8.** Trans 105.02(2) and (3) are renumbered Trans 102.02(4) and (5) and amended to read:

Trans 105.02(4) ~~The~~ Each applicant for an instructor's license shall have a medical statement submitted completed within the prior 24 months by the physician required by s. 343.63(4), Stats., shall be an authorized medical practitioner on a form supplied by the department and submitted to department with the school renewal. If there is a medical condition that impacts safe vehicle operation, the department may request medical documentation more frequently based on ch. Trans 112.

(5) If the information filed by the ~~physician~~ authorized medical practitioner is such as to indicate the person is not physically fit to teach driving, the department may require the applicant to submit to further medical examination or deny the license.

**SECTION 9.** Trans 105.02(2) and (3) are created to read:

Trans 105.02(2) Instructors that have held an instructor license for both behind the wheel and classroom training, but are no longer eligible for a driver license because of a medical condition, can at the request of the school continue to obtain a classroom-only license. This does not apply to instructors whose instructor license has been withdrawn.

(3) Instructors that fail the skills test twice may petition the department for an alternative test method.

**SECTION 10.** Trans 105.02(4) is renumbered Trans 105.02(6).

**SECTION 11.** Trans 105.03(1)(b) and (c) are amended to read:

Trans 105.03(1)(b) Has been involved in 2 or more accidents in a one-year period where the ~~accident~~ crash report indicates that such person may have been causally negligent. If there is no traffic citation resulting in a conviction associated with this crash, the person is not considered negligent.

(c) Has had his or her operator's license revoked, suspended or cancelled for a traffic violation other than a parking violation, at any time during the past 4 years, based on conviction date or effective date of the withdrawal, whichever is earlier.

**SECTION 12.** Trans 105.035(1) is amended to read:

Trans 105.035(1) For the purpose of determining the fitness of a person to hold a driver school license under s. ~~343.64(1)(d)~~ 343.62(4)(a)8. and 9., Stats., the department shall consider all relevant arrests and convictions ~~for the past 5 years~~, and make such further examinations and checks as it determines are necessary.

**SECTION 13.** Trans 105.035(2) is repealed.

**SECTION 14.** Trans 105.035(2) to (5) are created to read:

Trans 105.035(2) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for a lifetime, if any of the following convictions are recorded in the background check:

<b>Statute</b>	<b>Description</b>
940.01	1 <sup>st</sup> degree intentional homicide
940.03	Felony murder
940.05	2 <sup>nd</sup> degree intentional homicide
940.225(1) to (3m)	Sexual assault
940.305	Taking hostages
940.31	Kidnapping
941.32	Administering dangerous or stupefying drug

944.34	Keeping a place of prostitution
946.01	Treason
946.02	Sabotage
946.03	Sedition
948.02(1) and (2)	Sexual assault of a child
948.025	Engaging in repeated acts of sexual assault of the same child
948.03	Physical abuse of a child
948.04	Causing mental harm to a child
948.05	Sexual exploitation of a child
948.055	Causing a child to view or listen to sexual activity
948.06	Incest with a child
948.07	Child enticement
948.075	Use of computer to facilitate a child sex crime
948.08	Soliciting a child for prostitution
948.095	Sexual assault of a student age 16 or older by a school instructional staff person
948.10	Exposing genitals or pubic area to child
948.11(2)(a) or (am)	Exposing a child to harmful material or harmful descriptions or narrations
948.12	Possession of child pornography
948.13(2)	Child sex offender working with children
944.06	Incest
940.22(2)	Sexual exploitation by a therapist

(3) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 10 years if any of the following convictions are recorded in the background check:

<b>Statute</b>	<b>Description</b>
948.21	Abandonment of a child – neglecting a child
948.23	Concealing death of a child (at birth)
948.30	Abduction of another’s child, constructive custody
948.35	Solicitation of a child to commit a felony
961.42(1)	Keep or maintain any place for drug use, manufacture, keeping or delivering
961.41(1)(1) to (1)(j)	Manufacture, distribution or delivery of drugs
961.41 (1m)(a) to (1m)(j)	Possession with intent to manufacture, distribute or deliver drugs

961.41(4)(am)	Distribution or delivery or attempt to deliver or distribute an imitation controlled substance
961.455	Using a child for illegal drug distribution or manufacturing
961.46	Distribution of controlled substances to persons under age 18
944.17	Sexual gratification
944.30	Prostitution
944.31	Patronizing prostitutes
944.32	Soliciting prostitutes
944.33	Pandering
941.21	Disarming a peace officer
943.201	Unauthorized use of an individual's personal identifying information or documents
940.02	1 <sup>st</sup> degree reckless homicide
940.06	2 <sup>nd</sup> degree reckless homicide
940.09	Homicide by intoxicated use of vehicle or firearm
943.32	Robbery
948.09	Sexual intercourse with a child age 16 or older

(4) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 5 years if any of the following convictions are recorded in the background check:

<b>Statute</b>	<b>Description</b>
944.15	Public fornication
944.20	Lewd and lascivious behavior
944.21	Obscene material or performance
944.23	Making lewd, obscene or indecent drawings
944.25	Sending obscene or sexually explicit electronic messages
940.25(1)	Injury by intoxicated use of a vehicle
941.26	Possession of machine guns and other weapons
941.28	Possession of short-barreled shotgun or rifle
941.29	Possession of firearm by felon
941.295	Possession of electric weapon
941.296	Use or possession of a handgun and an armor-piercing bullet during crime
941.298	Firearm silencer
941.30	Reckless endangering safety

941.31	Possession of explosives
941.325	Placing foreign objects in edibles
941.327	Tampering with household products
943.02	Arson of buildings, damage of property by explosives
943.03	Arson of property other than buildings
943.04	Arson with intent to defraud
943.06	Molotov cocktails
944.10	Burglary
943.28	Loan sharking
943.30	Threats to injure or accuse of crime
943.38(1) or (2)	Forgery
946.415	Failure to comply with officer's attempt to take person into custody
946.43	Assaults by prisoners
946.44	Assisting or permitting escape
946.47	Harboring or aiding felons
946.48	Kidnapped or missing persons; false information
946.60	Destruction of documents subject to subpoena
946.65	Obstructing justice
947.015	Bomb scare
961.41(1n)	Possession of piperdine
961.41(3g) (f)	Possession – gamma-hydroxybutyric acid, gamma-butyrolactone, ketamine or flunitrazepam
961.41(1x)	Conspiracy
961.41(2)(a) to (d)	Counterfeit substances
961.41(3g)	Possession
961.43(1) (2)	Acquiring or obtaining possession of controlled substance by fraud or forgery – counterfeit substance or packaging
961.67	Possession or disposal of waste from manufacture of methamphetamine
940.10	Homicide by negligent operation of a vehicle
940.19(2),(4), (5), or (6)	Battery, substantial battery or aggravated battery
940.195	Batter to a pregnant woman or unborn child
940.21	Mayhem
941.38	Criminal gang member solicitation and contact
940.23	Reckless injury
940.285	Abuse of vulnerable adults
940.295	Abuse and neglect of patients and residents
948.40	Contributing to the delinquency of a minor
948.55	Leaving or storing a loaded firearm within reach or

	easy access of child
948.605	Possession of a firearm in school zone

(5) The department shall deny or withdraw the driver school or instructor license issued under s. 343.61, Stats., or s. 343.62, Stats., for 2 years, if any of the following convictions are recorded in the background check:

Statute	Description
Various	Any felony not listed in subs. (3) to (5)
940.12	Assisting suicide
941.01	Negligent operation of a motor vehicle
941.20	Endangering safety by use of a dangerous weapon
941.37	Obstructing emergency or rescue personnel
943.07	Criminal damage to railroads
941.11	Unsafe burning of a building

**SECTION 15.** Trans 105.04(title), (1) and (2) are amended to read:

Trans 105.04 (title) ~~Loss or surrender of license~~ **Driver school administrative procedures.** (1) Application for a duplicate of a lost or destroyed license shall contain the information set forth in s. Trans 105.01(1)(a), (b), and (d) and shall be accompanied by a certified statement that the original was lost or destroyed. The fee for a duplicate license is \$5.

(2) If a school terminates active participation in the business of teaching driver training for a fee, the school shall immediately forward such license to the department for cancellation. All course completion slips shall be returned to the department.

**NOTE: Form MV3192, course completion slips, may be obtained from the Division of Motor Vehicles, P. O. Box 7920, Madison, WI 53707-7920.**

**SECTION 16.** Trans 105.04(3) is renumbered Trans 105.04(5) and amended to read:

Trans 105.04(5) If an instructor is no longer employed with a driver school ~~or is changing employment from one school to another~~, the instructor shall ~~notify the department of that fact and forward~~ surrender his or her license to the ~~department for cancellation~~ driver school. The driver school shall destroy the instructor's license and notify the department in writing for cancellation of the instructor license.

**SECTION 17.** Trans 105.04(3) is created to read:

Trans 105.04(3) If a driver school terminates active participation of teaching driver training for a fee, the student shall:

(a) Begin the driver training over if the school does not provide documentation of what instruction was completed.

(b) Receive credit for the completed hours of driver training instruction when documentation is provided, but shall complete the remaining training with another school to meet required driver education requirement

(c) If the driver school does not refund the fees for the training paid for but not provided, the student or his or her parents or guardians may contact the company that issued the bond required under s. Trans 105.10.

**SECTION 18.** Trans 105.05(2)(a)(intro.), (b), (3) and (4) are amended to read:

Trans 105.05(2)(a)(intro.) The records required by s. 343.71(4) (1m), Stats., shall be ~~contained in a permanently bound book having consecutively numbered pages, on which~~

~~are set forth~~ kept for 4 years in a readily accessible format, and shall include the following information for each person to whom instruction is given:

(b) The information required under par. (a)1. to 4. shall be ~~entered in the book~~ captured within one working day after the making of a contract or agreement between the school and the student.

(c) The information required under par. (a)5. shall be ~~entered in the book~~ captured within one working day after the last instruction or other service has been received by the student.

(3) The records required by s. 343.71(2), Stats., shall be in the form of an individual ~~permanent student record card on~~ for each person listed in the ~~record book~~ records required by s. 343.71(4) ~~(1m)~~, Stats. Such record ~~card~~ shall show the student's name, date of birth, and address, and contract or agreement number, receipt number, ~~permanent register page number~~, dates, types, duration and fees charged ~~for each lesson, lecture, tutoring, period of instruction or other service relating to instructions in the operation of motor vehicles; the name and license number of the instructor having given each lesson or period of instruction or service relating to instruction in the operation of motor vehicles, and identification of the vehicle in which any behind-the-wheel instruction was given, including type of transmission.~~ The information required by this section shall be entered on the student record ~~card~~ within one working day after the completion of each lesson.

(4) To be approved, the agreement form required to be filed by s. 343.71(3) ~~(1m)(b)~~, Stats., shall be consecutively numbered, contain the date of application, name of school, type or types of lessons, lectures, tutoring or instruction to be given, fee to be charged or the

word none if no charge, the statement, "This constitutes the entire agreement between the school and the student and no verbal statement or promises will be recognized," signature of student, address of student, and signature of owner of school or his or her authorized representative.

**SECTION 19.** Trans 105.05(5) is repealed.

**SECTION 20.** Trans 105.06(2)(intro.) is amended to read:

Trans 105.06(2)(intro.) To be approved by the department, a driver school's specific place of business required by s. ~~343.72(5)~~ 343.61(4)(b), Stats., shall:

**SECTION 21.** Trans 105.06(2)(a) is repealed.

**SECTION 22.** Trans 105.06(2)(b) and (e) are amended to read:

Trans 105.06(2)(b) Be in an area zoned to permit this type of business or a variance that authorizes the business function in a residence. The department may require the applicant to furnish written proof thereof from the municipality where the driver school is located.

(e) Not consist solely of a telephone answering service. ~~A telephone used in the driver school business for incoming calls shall be located in the office facility.~~ Each school shall have a listed telephone number for their school.

**SECTION 23.** Trans 105.06(3)(f) is created to read:

Trans 105.06(3)(f) Availability of restroom facilities.

**SECTION 24.** Trans 105.06(5) is repealed and recreated to read:

Trans 105.06(5) Licensees may not solicit business within 1500 feet of any department office where official road tests are given. This section does not apply if:

(a) The department relocates or establishes a new office within 1500 feet of an existing driver school.

(b) The municipality where the department office is located has a population less than 10,000 and the business district is less than 1500 feet long.

(c) The department conducts business at the office less than 3 times per month.

(d) The driver school petitions the department for an exception, and the exception is granted by the department.

**SECTION 25.** Trans 105.06(7) and (10) are amended to read:

Trans 105.06(7) Licensees may advertise only by the school name ~~and specific street address~~ shown on its license.

(10) Approved dual controls required by s. 343.72(12), Stats., include but are not limited to a separate brake for the instructor which is located on the right side of the car so the instructor can safely operate it ~~with the foot normally used to operate the brake and accelerator~~ the controls, and a separate mirror on the right, outside of the car, positioned so the instructor can view traffic to the rear. ~~To assure the safety of students and the public, all driver training cars shall be inspected by the department within 30 days of purchase or lease by the school and, at the department's discretion, may be inspected each year thereafter.~~ An authorized representative of the department may make random inspections to assure compliance with this subsection.

**SECTION 26.** Trans 105.06(11) and (12) are renumbered Trans 105.06(13) and (14).

**SECTION 27.** Trans 105.06(11) and (12) are created to read:

Trans 105.06(11) All vehicles used by licensees to conduct behind-the-wheel training that are more than 3 years old shall:

(a) Be certified to meet all manufacture specifications for the vehicle type, model, and year, within 30 days of being put into service. Certification may be completed by an authorized service facility such as licensed dealer or vehicle repair facility.

(b) Submit to an annual vehicle inspection certification by a service facility. The safety certification shall be on a form defined by the department and at a minimum include the date, name of school, vehicle make, vehicle model, vehicle identification number, and a date and signature certifying the vehicle meets or exceeds safety standards.

(12) If the department deems a vehicle of any age unsafe, the department shall order a vehicle out of service until it is repaired. If the only vehicle in the school fleet is ordered out of service, the school will not be able to perform behind the wheel instruction until the vehicle is certified as safe. Any vehicles used after being ordered out of service shall result in points being assessed as provided in s. Trans 105.11.

**SECTION 28.** Trans 105.07(1)(b) and (b)1.(intro.) are amended to read:

Trans 105.07(1)(b) Requests for initial approval under this section shall be accompanied by a course ~~outline with lesson plans~~ summary. After the course ~~outline with lesson plans~~ summary has been initially approved, the licensee ~~must~~ shall submit to the department for approval any substantial proposed changes prior to their implementation.

(b)1.(intro.) The course ~~outline~~ summary shall specify a minimum of one main topic or more for each hour ~~and be arranged chronologically in the order of presentation~~. The classroom course shall cover, but is not limited to the following:

**SECTION 29.** Trans 105.07(1)(b)1.a. is repealed.

**SECTION 30.** Trans 107.07(1)(b)1.L. is created to read:

Trans 105.07(1)(b)1.L. Instruction required under s. 343.71(5), Stats.

**NOTE:** This includes hazards posed by farm machinery, 30 minutes of instruction on organ and tissue donation, and information on motorcycle, bicycle, and pedestrian awareness.

**SECTION 31.** Trans 105.07(1)(b)3.(intro.), (c), (2)(a), (3) and (5) are amended to read:

Trans 105.07(1)(b)3.(intro.) Each classroom lesson plan shall cover no more than ~~two~~ 2 hours. Each behind-the-wheel lesson plan shall cover no more than one hour. Lesson plans shall be kept on file with the driver school. The lesson plan shall specify the following:

(c) Students ~~under 18 years of age~~ who satisfactorily complete the approved course and complete financial obligations required by their contract with the school shall be given a certificate of completion on a form approved by the department.

(2)(a) In order to be eligible for approval under this section, a classroom phase of instruction shall consist of 30 clock hours in the classroom, extending over a minimum of 3 weeks for each student at no more than 2 clock hours per day. A course is not approved when students begin the class on alternate days. All students must be present for every session except if a student is absent for any legitimate reason, the absence must be marked on the student's record card and the ~~sessions~~ content missed must be made up. ~~The maximum number of hours that may be made up is 4. A student who is absent for more~~

~~than 4 hours cannot continue with that group.~~ Classroom instruction and behind-the-wheel instruction may be given concurrently only if both phases are given by the same school.

(3) ~~Licensees~~ For behind-the-wheel only instruction, licensees may not ~~enroll students for only the~~ begin behind-the-wheel phase training with a new student unless certified proof of completion of an approved classroom phase, ~~on a form provided by the department,~~ is on file with the agreement in the licensee's office. However, this subdivision does not apply if the student is either enrolled in an approved behind-the-wheel phase at a different school or has completed the approved course, and the agreement specifies that the instruction does not qualify the student to apply for a license under s. 343.06(3), Stats.

(5) All applicants for an instructor's license shall have satisfactorily completed ~~400~~ 40 clock hours of classroom instruction in safety and driver education as given by an approved ~~college, university, or technical college,~~ driving school instructor training program as a minimum requirement to teach students ~~under 18 years of age~~ except that:

**SECTION 32.** Trans 105.07(5)(d) is repealed.

**SECTION 33.** Trans 105.07(7) is created to read:

Trans 105.07(7) Applicants for instructor's license renewal shall attend at least one approved traffic safety related workshop or conference per licensing period.

**SECTION 34.** Trans 105.08 is repealed.

**SECTION 35.** Trans 105.09(3)(note) is amended to read:

Trans 105.09(3)(note) NOTE: Applications can be obtained from, and should be returned to: Department of Transportation, Bureau of Driver Licensing Services, Hill Farms

State Office Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702.

**SECTION 36.** Trans 105.10, 105.11 and 105.12 are created to read:

**Trans 105.10 Insurance and bond requirements.** (1) The school shall hold minimum insurance of not less than \$500,000 because of bodily injury to or death of one person in any one accident and, subject to that limit for one person, to a limit of not less than \$500,000 because of bodily injury to or death of 2 or more persons in any one accident and, if the accident has resulted in injury to or destruction of property, to a limit of not less than \$50,000 because of injury to or destruction of property of others in any one accident. These requirements will be adjusted every 5 years by multiplying the requirement amounts by the percentage increase of the consumer price index from January 1, 2007 to January 1 of the next fifth year [2012, 2017] and adding that amount to the above requirement rounded to the nearest \$10,000 increment. The driver school shall also:

- (a) Maintain a standard liability insurance of not less than \$500,000.
  - (b) File certification of insurance with the department.
  - (c) Require the insurance carrier to file notification of cancellation with the department.
- (2) The schools shall file a bond based on size and performance.
- (3) Customer shall apply to bond company if obligations of the training contract cannot be met.
- (4) Points are assessed based on violation frequency and severity. Points are assessed based on the system specified in s. Trans 105.11.

(5) The size of the school and points assessed during past license period are used to calculate the bond amount.

### CALCULATIONS

Number of Points in 24 Months	0	1-2	3-6	7 or More
School size based on signed completion slips for the prior period				
0-300	\$5,000	\$10,000	\$15,000	\$30,000
301-1100	\$10,000	\$15,000	\$20,000	\$45,000
1101 or more	\$15,000	\$20,000	\$25,000	\$60,000

(6) Certification of bond must be filed with the department at renewal of the school license.

**Trans 105.11 Driver school point system.** (1) The department may assess points against a driver school and instructor who has violated any provisions in ss. 343.60 to 343.72, or rules interpreting ss. 343.60 to 343.72, Stats., that constitute grounds for the suspension or revocation of their license. The department may also assess points against a driver school or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or bond. The department shall provide a licensee or applicant written notice of a point assessment. Written notice of a point assessment shall specify the reasons for the point assessment. All points assessed by the department shall remain in effect for the duration of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

(2) The department shall use the points assessed to determine the amount of bond required for the next licensing period.

(3) The department may also take licensing action under the system of progressive enforcement described in s. Trans 105.12, based on the number of points assessed. If applicable, the written notice specified in sub. (1) may include the issuance of a complaint to revoke or suspend a license, a written stipulation to a conditional license, a civil forfeiture complaint, or notice of denial of a license.

(4) Points shall be assessed according to the following scale:

(a) Six points are assessed for the following:

1. School or instructor license withdrawal.
2. Six or more substantiated customer complaints within a license period.
3. Providing false documentation and information to DMV for the school or instructor license or self-certification.
4. Permitting actions that could harm the customer physically or financially.
5. Performing work duties after consuming any substance (alcohol/drug) that impairs ability to drive a motor vehicle.
6. Failure to comply with DMV warning letter.
7. Substantiated complaint from parent/student of inappropriate conduct or actions with the student.
8. Violation of ss. 343.60 to 343.72, Stats., that negatively impact or harm the customer or highway safety.

(b) Four points are assessed for the following:

1. Not complying with renewal criteria within 30 days of written request by DMV/
2. Five substantiated customer complaints in a license period.

3. Continuing to use a vehicle that is out of service for driver training.
4. School insurance and/or bond not filed with the department.
5. Audit violations or discrepancies are not resolved in time specified.
6. Filing complaints about another school that are not substantiated.
7. Soliciting complaints or providing training prior to licensure.
8. Violations of ss. 343.60 to 343.72, Stats., that result in unfair advantage to a school or harms another school.

(c) Two points are assessed for the following:

1. Four substantiated customer complaints within a license period.
2. Required vehicle inspections are not filed with the department.
3. The department is not notified when students are no longer enrolled.
4. Discrepancy in student or business records.
5. Providing students with signed MV3001 document prior to enrollment.
6. Violation of ss. 343.60 to 343.72, Stats., that do not harm the customer or impact highway safety.

(d) One point is assessed for the following:

1. Three or more substantiated customer complaints within a license period.
2. Violations of ss. 343.60 to 343.72, Stats., relating to office location and facility locations.

**Trans 105.12 Progressive enforcement actions.** (1) The department shall:

- (a) Record points assessed to driver schools under s. Trans 105.11.

(b) Record points assessed to instructors, as well as the driver schools the instructor has worked for or owned previously.

(c) Tie accumulated points to instructor, as applicable.

(d) Issue a conditional license when appropriate.

(2) Based on the points assessed to driver schools and instructors under s. Trans 105.11 in the current licensing period, the following enforcement actions shall apply:

(a) Level one enforcement action – one point assessed. An advisory letter may be sent to the driver school or instructor, asking for corrective action.

(b) Level two enforcement action – one to 3 points assessed.

1. The department may conduct an on-site inspection or audit.

2. An advisory letter shall be sent.

3. If a situation is unresolved after time specified in the advisory letter, the department may issued a conditional license under s. 343.61 or 343.62, Stats., restricted to classroom instruction only. Vehicles used by the driver school may also be ordered out of service, if the violation is related to the vehicle inspection. The restricted license may remain in effect until situation is resolved.

(c) Level three enforcement action – 4 to 6 points assessed.

1. A warning letter may be sent.

2. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 90 days.

(d) Level four enforcement action – 6 or more points assessed. The licenses issued under s. 343.61 or 343.62, Stats., shall be revoked, suspended, or denied for 4 months to one year, based on point accumulation.

(3) All administrative licensing suspensions, revocations, denials, or conditional licenses issued can be appealed under ch. 227, Stats.

**(END OF RULE TEXT)**

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**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 July, 2006.

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FRANK J. BUSALACCHI  
Secretary  
Wisconsin Department of Transportation