

Report From Agency

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

CR 06-128

The Wisconsin Department of Transportation proposes an order to repeal TRANS 102.15(3)(a)16., 19. and 20., (4)(a)1., 6., 7., 12., 14., 18., 19., 21. and 22., (b), (c)(intro.), 1., 3., 4. and 5., (4m)(a) and (e), and (8); renumber TRANS 102.14(3); renumber and amend TRANS 102.15(4)(c)2.(intro.); amend TRANS 102.15(3)(a)2. and 4., (4)(a)2. and 5.; and create TRANS 102.14(3)(b), and 102.15(3)(a)21., (4)(a)24. and (4m)(f), relating to proof of identity.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:

PAUL NILSEN
Assistant General Counsel
Office of General Counsel
Department of Transportation
Room 115-B, Hill Farms State
Transportation Building
P. O. Box 7910
Madison, WI 53707-7910
(608) 261-0126

PART 1

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 340.01(37) and (40), 343.01(2)(g), 343.05(4)(b) and (c), 343.06(1)(k), 343.14 and 343.50(2), Stats.

Statutory authority: ss. 85.16, 343.02, 343.05(4)(c), 343.06, 343.14 and 343.50, Stats.

Explanation of agency authority: 2005 Wisconsin Act 126 requires that a person applying for a driver's license (DL) or identification card (ID) provide documentary proof of citizenship or legal presence in the United States. Altering the list of documents acceptable as proof of name and date of birth, identity, residency, and Social Security number will serve two purposes:

1. Making documents that could be used by persons without legal presence in this country unacceptable.
2. Conforming the list of acceptable documents to what is used in other states and set forth in the American Association of Motor Vehicle Administrator (AAMVA) standards. The federal government will likely use AAMVA standards to determine state compliance with REAL ID.

Current law also prohibits the Department from issuing a driver's license or identification card to any person who is not a resident. It should be noted that any nonresident of the United States may operate on an international driving permit, and a resident of another state may operate on a license issued by that other state for up to one year, and are exempt from licensing requirements of Chapter 343, Stats.

Related statute or rule: ss. 343.05, 343.06, 343.14 and 343.20, Stats., and ch. Trans 102.

Plain language analysis: This proposed rule making limits the list of acceptable documents for proof of name and date of birth, identity, residency, and Social Security number to be consistent with other states and standards established by the American Association of Motor Vehicle Administrators (AAMVA). The rule making establishes a minimum duration stay for temporary visitors of one year for a driver's license or six months for an identification card and those applicants must have at least six or three months, respectively, of that authorized stay remaining to be eligible; temporary visitors are immediately eligible for those documents if their minimum legal stay is equal to or longer than those minimum durations.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Adopting the AAMVA list of acceptable documents for proof of name and date of birth, identity, residency, and Social Security number moves Wisconsin towards compliance with the federal REAL ID Act (Public Law 109-013). REAL ID also requires that DL/IDs issued to temporary visitors expire on the date their authorized stay ends (i.e., a "temporary license").

Comparison with Rules in Adjacent States: All states will be required to comply with REAL ID by May 11, 2008 or their citizens will not be able to use their driver's license (DL) or identification card (ID) for any federal purpose such as boarding airplanes or entering federal buildings. For temporary visitors, surrounding states have the following requirements for minimum length of stay and temporary licenses:

Michigan: No legal presence required (no minimum length of stay or temporary license requirement). Michigan presumes that any person who obtains employment intends to remain in the state. MCLS 257.51a. Michigan law prohibits issuing a driver's license to a "foreign exchange student." MCLS 257.303(1)(h).

Minnesota: No minimum length of stay required to be eligible for a driver's license. Licenses for temporary visitors are issued for the same amount of time as citizens (i.e., four years), with an end date included on the license for the end of the authorized stay. If a person's authorized stay ends before the regular expiration date of the license, the license is cancelled when the authorized stay ends.

Illinois: Temporary visitor's driver's licenses may be issued to any foreign national authorized to be in the country for at least one year and having at least six months of the authorized stay remaining. 625 ILCS 5/6-105.1, 92 Ill. Adm. Code 1030.11(d).

Iowa: Temporary visitors must be authorized to be in the country for at least 30 days to be eligible for a driver's license. The term of the DL/ID is limited to the length of authorized stay, not to exceed two years. Iowa Code 321.196.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: N/A

Analysis and supporting documentation used to determine effect on small businesses: This is not expected to have any significant impact on small businesses, as the list of acceptable documents for proof of name and date of birth, identity, residency, and Social Security number is being changed to align with the upcoming legal presence requirements. In addition, temporary visitors may operate for up to one year on an International Driving Permit, so the minimum length of stay requirement will not impact drivers licensed in their home countries. Any temporary visitor whose length of stay goes beyond one year would be eligible for a driver's license.

Effect on small business: This rule making will have no 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 and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state revenues or liabilities or any costs incurred by the private sector.

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Gary Guenther, Department of Transportation, Bureau of Field Services, Room 266, P. O. Box 8917, Madison, WI 53708-8917. You may also contact Mr. Guenther by phone at (608) 266-2743 or via e-mail: gary.guenther@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 102.14(3) is renumbered Trans 102.14(3)(a).

SECTION 2. Trans 102.14(3)(b) is created to read:

Trans 102.14(3)(b)1. A person whose legal presence or authorized stay in this country is a period of 12 months or less and ends not more than 6 months after he or she applies for an operator's license is not a resident of this state within the meaning of s. 343.01(2)(g), Stats.

2. A person whose legal presence or authorized stay in this country is a period of 6 months or less and ends not more than 3 months after he or she applies for an identification card is not a resident of this state within the meaning of s. 343.01(2)(g), Stats.

SECTION 3. Trans 102.15(3)(a)2. and 4. are amended to read:

Trans 102.15(3)(a)2. For a person born ~~outside Wisconsin~~ in another jurisdiction, other than a province of the Dominion of Canada, a certified copy of his or her birth certificate or the equivalent document from ~~the state, territory~~ that other jurisdiction or ~~foreign country of birth~~ a certificate of birth abroad issued by the U.S. department of state (federal form FS-545 or DS-1350);

4. A valid, unexpired passport issued by a foreign country with federal I-551 resident alien registration receipt card or federal I-94 arrival and departure record that

bears a photograph of the person and identifies the person's first and last names, and the person's day, month and year of birth;

SECTION 4. Trans 102.15(3)(a)16., 19. and 20. are repealed.

SECTION 5. Trans 102.15(3)(a)21. is created to read:

Trans 102.15(3)(a)21. Department of homeland security/transportation security administration transportation worker identification credential.

SECTION 6. Trans 102.15(4)(a)1. is repealed.

SECTION 7. Trans 102.15(4)(a)2. and 5. are amended to read:

~~An operator's~~ A valid operator's license, including a license from another jurisdiction ~~that is valid or expired 4 years or less, except a province of the Dominion of Canada,~~ bearing a photograph of the person;

NOTE: Temporary driving receipts from other jurisdictions are not acceptable. "Another jurisdiction" is defined at s. 340.01(41m), Stats.

5. A valid photo identification card issued by Wisconsin or another jurisdiction ~~that is valid or is expired 4 years or less, except a province of the Dominion of Canada,~~ bearing a photograph of the person;

SECTION 8. Trans 102.15(4)(a)6., 7., 12., 14., 18., 19., 21. and 22. are repealed.

SECTION 9. Trans 102.15(4)(a)24. is created to read:

Trans 102.15(4)(a)24. Department of homeland security/transportation security administration transportation worker identification credential.

SECTION 10. Trans 102.15(4)(b) is repealed.

SECTION 11. Trans 102.15(4)(c)(intro.) and 1. are repealed.

SECTION 12. Trans 102.15(4)(c)2.(intro.), and a. to c. are renumbered Trans 102.15(4)(c)(intro.) and 1. to 3. and, as amended, Trans 102.15(4)(c)(intro.) is amended to read:

Trans 102.15(4)(c)(intro.) ~~The~~ A person ~~is~~ applying without a personal appearance to reinstate a suspended or revoked license or identification card or to renew a license subject to s. Trans 102.03(2) and (5) or obtain a duplicate license or identification card₁ if all of the following apply:

SECTION 13. Trans 102.15(4)(c)3., 4. and 5. are repealed.

SECTION 14. Trans 102.15(4m)(a) and (e) are repealed.

SECTION 15. Trans 102.15(4m)(f) is created to read:

Trans 102.15(4m)(f) Mortgage documents for a residential real property located in Wisconsin.

SECTION 16. Trans 102.15(8) is repealed.

(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 January, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

ANALYSIS OF FINAL DRAFT OF TRANS 102

(a) **Basis and Purpose of Rule.** This proposed rule making limits the list of acceptable documents for proof of name and date of birth, identity, residency, and Social Security number to be consistent with other states and standards established by the American Association of Motor Vehicle Administrators (AAMVA). The rule making establishes a minimum duration stay for temporary visitors of one year for a driver's license or six months for an identification card and those applicants must have at least six or three months, respectively, of that authorized stay remaining to be eligible; temporary visitors are immediately eligible for those documents if their minimum legal stay is equal to or longer than those minimum durations.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on January 8, 2007. No modifications were made as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No one appeared/registered at the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments:** One written comment was received from the following person:

Fernando Escobar, 1226 North Danz Avenue, Lot 29, Green Bay, WI 54302—wrote in opposition to the proposed rule, generally objecting to the policies that “will deprive non-citizens from obtaining identifications and driver’s licenses.” These comments are criticisms of the policies enacted by the federal REAL ID law, and the Wisconsin Statutes created by 2005 Wis. Act 126 implementing that federal act, and are not germane to the substance of this rule making. Mr. Escobar also requests the state “find a way of allowing non-citizens regardless of their legal status in the U.S. to gain access to Wisconsin driving licenses and identification cards.” This request exceeds the authority of the Department and the scope of this rule making and is better made to the legislature. The Department made no changes to the proposed rule in response to Mr. Escobar’s comment.

(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council Clearinghouse report contained some minor recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** This rule making will have no effect on small businesses.