

Report From Agency

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

CR 07-064

The Wisconsin Department of Transportation proposes an order to repeal TRANS 195.06(2) to (4); renumber TRANS 195.06(5); amend TRANS 195.02(12), 195.03(1), 195.04(1), 195.05(2), 195.09(1) and (3), and 195.10(1), (2)(intro.), (a) to (d), (4) and (6); repeal and recreate TRANS 195.09(9) and (10), and create TRANS 195.02(7m), (12g), (12r), (13e), (13m), (13s), (15g) and (15r), and 195.11, relating to fees and procedures for searches and documentation of division of motor vehicle records.

**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:

CHARLES M. KERNATS
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) 267-7940

PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 19.35, 85.105, 341.17, 342.09 and 343.24, Stats.

Statutory authority: s. 227.11, Stats.

Explanation of agency authority: This is addressed in the next section, related statute or rule.

Related statute or rule: DMV may charge reasonable copy and search fees. These fees may not exceed DMV's actual, necessary and direct costs. Wis. Stat. s. 19.35(3). DMV is currently authorized to charge a search fee for driver and vehicle title and registration records. DMV can charge \$5 for conducting a file search of vehicle registration records. Wis. Stat. s. 341.17(8) and ss. Trans 195.04 and 195.09. DMV can charge \$5 for conducting a file search of vehicle title records. Wis. Stat. s. 342.09(3) and ss. Trans 195.04 and 195.09. DMV can charge \$5 for conducting a file search of vehicle operator records. Wis. Stat. s. 343.24(2) and (2m). DMV shall charge a copy fee of \$5 for each file of uniform traffic citations or motor vehicle accidents. Wis. Stat. s. 343.24(2m). The Wisconsin Supreme Court has ruled that custodians can charge requesters for the cost of separating confidential from public information (redaction). Osborn v. Board of Regents, 2002 WI 83, 254 Wis. 2d 266, 299-305 (2002).

DMV may contract with businesses to periodically provide information in an electronic medium from motor vehicle accidents and uniform traffic citations. Wis. Stat. ss. 85.105 and 343.24(2m).

The Federal Drivers' Privacy Protection Act 18 U.S.C. sections 2721-2725 prohibits motor vehicle departments from disclosing personal information about any individual derived from motor vehicle records. 18 U.S.C. section 2721(a).

Information in motor vehicle and driver records protected from disclosure under Wisconsin law includes:

- Medical records, Wis. Stat. s. 343.16(5)
- Juvenile records, Wis. Stat. ss. 343.24(3), 343.30(5) and (6), 938.396(3)
- Driver license photograph, Wis. Stat. s. 343.237(2)
- Identification card information, Wis. Stat. s. 343.50(8)
- Fingerprints, Wis. Stat. s. 343.237(2)
- Signatures, Wis. Stat. s. 343.027

DMV may not disclose personal identifiers relating to driver licenses and identification cards in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 343.14(2m), 343.235 and 343.51(1m).

DMV may not disclose personal identifiers relating to vehicle registrations in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 341.08(1m), and 341.17(9).

DMV may not disclose personal identifiers relating to vehicle titles in requests for 10 or more persons, if a person requests that this information not be disclosed. Personal identifiers may be disclosed to a law enforcement agency, state authority, or federal government agency to perform a legally authorized function; or to an insurer for insurance purposes. Wis. Stat. ss. 85.103, 342.06(1)(i) and 341.17(9).

Section ADM 12.05(3) requires agencies to restrict and limit access to confidential records maintained in an electronic format.

Plain language analysis: Ch. Trans 195 establishes fees for searches of vehicle and driver records. The provisions cover both single (individual) driver and vehicle records, and also large volumes of data that include many records, of multiple drivers or vehicles.

The amendment defines “records in bulk” to refer to more than 10 individual vehicle or driver records that are provided at one time, and distinguishes records in bulk from individual vehicle or driver license records. The amendment defines several terms relating to personal information that may not be disclosed under federal law or provisions of state law, and defines “redaction” as separating that personal information from records.

The amendment clarifies the procedure for a request to search vehicle and driver license records, eliminating obsolete, contradictory, and redundant provisions. The amendment clarifies what the fee is for search of individual vehicle or driver record, as distinct from the fee for records in bulk, which is a compilation of multiple individual records. The amendment establishes the fee for redaction or records.

The amendment adds a provision to reflect current technological ability to offer direct access to vehicle and driver license records. The provision allows DOT to provide direct access to vehicle and driver license records, under a contract developed by DOT. With certain exceptions, any person who enters such a contract must obtain a criminal history background check for any person who will have direct access to vehicle or driver license records.

Summary of, and preliminary comparison with, existing or proposed federal regulation: The federal Drivers Privacy Protection Act governs all State DMVs’ authority to release certain personal information. This rule complies with DPPA.

Comparison with Rules in the Following States:

Michigan: Michigan charges for individual record search \$7; and \$16/1,000 for records in bulk that are routinely generated, and \$64/1000 that are custom-prepared. Charge is based on preparation plus market-based price. Michigan has statutory authority to sell records.

Minnesota: Minnesota charges for individual record search \$9 if provided in paper and \$5 if electronic; and \$5,000 plus \$850 weekly for records in bulk routinely generated. Charge is based on a reasonable fee in addition to costs of preparation. Minnesota has statutory authority to sell records.

Illinois: Illinois charges for individual record search \$5 per record; and \$50/1,000 for records in bulk that are routinely generated. Charge is based on costs of preparation or \$50/1000, whichever is greater. Illinois has statutory authority to sell records.

Iowa: Iowa charges for individual driver record for \$5.50 if provided in certified (paper) and \$8.50 if electronic, and fee based on staff time and copy cost for vehicle records; and \$12.09 per computer minute for certain records in bulk or \$8.50 per record for certain other records in bulk. Iowa has statutory authority to sell records.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This rule making clarifies current DMV policies. No new regulatory approach is created.

Analysis and supporting documentation used to determine effect on small businesses: This amendment clarifies current DMV policies on fee calculation, and current contract requirement for any person who enters a contract with DOT for direct access to vehicle or driver license records. Fees are not changed by this rule making. A redaction fee would seldom be needed for record requests made by small businesses.

Effect on small business: This amendment will have minimal increased cost on small business. The rule requires that a business obtain a criminal background check from the Wisconsin Department of Justice for all persons who will have direct access to vehicle or driver license records. The Department of Justice currently charges a fee of \$13 (request by internet) or \$18 (request by mail or fax) for each criminal background check. For example, if a small business has 25 employees and 10 of those employees are proposed to have direct access to vehicle or driver license records, the small business would need to pay the Department of Justice up to \$180 for criminal background checks. 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: 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.

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

Agency contact person and copies of proposed rule: Copies of the proposed rule may be obtained, without cost, by writing to Carson Frazier, Department of Transportation, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857 or via e-mail: carson.frazier@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 195.02(7m) is created to read:

Trans 195.02(7m) “Confidential information” means information that is restricted or prohibited from disclosure by state or federal law.

SECTION 2. Trans 195.02(12) is amended to read:

Trans 195.02(12) “File” means ~~the same as “record” as defined in s. 19.32 (2),~~
Stats an individual vehicle or driver license record.

SECTION 3. Trans 195.02(12g), (12r), (13e), (13m), (13s), (15g) and (15r) are created to read:

Trans 195.02(12g) “Highly restricted personal information” has the same meaning as defined in 18 USC s. 2725(4).

(12r) “Individual vehicle or driver license record” means computer-stored data relating to a single individual, a single non-individual customer, or a single vehicle, and includes information such as driver license incidents, name changes, prior vehicle ownership, and similar information.

(13e) “Personal identifier” has the same meaning as defined in s. 85.103(1),
Stats.

(13m) “Personal information” has the same meaning as defined in 18 USC s. 2725(3).

(13s) “Personally identifiable information” has the same meaning as defined in s. 19.62(5), Stats.

(15g) “Records in bulk” means compilation of more than 10 individual vehicle or driver license records provided at one time.

(15r) “Redaction” means separating and restricting access to personal identifiers, personally identifiable information, personal information, highly restricted personal information, and confidential information from records.

SECTION 4. Trans 195.03(1) is amended to read:

Trans 195.03(1) A ~~single~~ single request for a search of a an individual driver record may be made from the following information provided by the requester or with a contractual account established under s. Trans 195.10:

SECTION 5. Trans 195.04(1) is amended to read:

Trans 195.04(1) A ~~single~~ single request for a search of an individual vehicle title and registration ~~records~~ records may be made from the following information provided by the requester in person, in writing, or by telephone with a contractual account established under s. Trans 195.10:

SECTION 6. Trans 195.05(2) is amended to read:

Trans 195.05(2) Fees for other division records or data such as notices, ~~files,~~ files uniform traffic citations, motor vehicle accidents, records in bulk, transcripts, orders, or applications shall be established under s. Trans 195.09.

SECTION 7. Trans 195.06(2) to (4) are repealed.

SECTION 8. Trans 195.06(5) is renumbered Trans 195.06(2).

SECTION 9. Trans 195.09(1) and (3) are amended to read:

Trans 195.09(1) The fee for the search of each ~~single~~ file or single individual record identified in ss. Trans 195.04 and 195.05 shall be \$5.00.

(3) The fee for each page of a copy, photocopy, or duplicate of an original record shall be \$.25.

SECTION 10. Trans 195.09(9) and 10) are repealed and recreated to read:

Trans 195.09(9) The fee for redaction of records will be computed by adding the central processing unit and staff time to separate personal identifiers, personally identifiable information, personal information, highly restricted personal information, and confidential information from records. Redaction fees may be charged only for records in bulk, and only if they exceed \$50.

~~(10) The fee for acquisition of records from a department computer, computer network, or computer system under s. Trans 195.06 (4), where fees are not determined at a per record cost under this section, shall be determined by the necessary reproduction and transcription costs to reduce records to usable form, and all postage and handling~~

(10) The fee for records in bulk will be computed by multiplying \$5 by the number of files or individual records provided. The department may charge a lesser fee. The amount of the fee and frequency of delivery may be confirmed in a contract with the department, as described in Trans 195.10.

SECTION 11. Trans 195.10(1), (2)(intro.), (a) to (d), (4) and (6) are amended to read:

Trans 195.10(1) A requester may pay fees required under s. Trans 195.09 on a monthly basis if the ~~requester~~ department establishes a contractual account with the ~~department~~ requester.

(2)(intro.) The ~~requester~~ department may establish a contractual account by ~~submitting a~~ upon request by the requester to the department for the search or documentation of departmental records including, but not limited to:

(a) ~~Driver~~ Individual d~~river~~ records ~~files~~ files by telephone.

(b) Driver records ~~files~~ files in volume in volume bulk.

(c) ~~Vehicle~~ Individual v~~ehicle~~ registration and title records by telephone.

(d) Vehicle registration and title records in ~~volume~~ volume bulk.

(4) ~~The~~ If a contractual account is requested, ~~the~~ department shall require a signed contractual agreement from the requester with a contractual account to pay the fees requested under s. Trans 195.09.

(6) When making a request for a file file record search under this section, the requester shall provide the account number and name of the requesting person or agency.

SECTION 12. Trans 195.11 is created to read:

Trans 195.11 Direct access to DMV databases. (1) The department may provide direct access to its vehicle or driver license records to a person under a contract developed by the department.

(2) Except for agents authorized under ch. Trans 141 or ch. Trans 156, any person who enters a contract with the department for direct access to vehicle or driver

license records shall obtain a criminal history background check from the Wisconsin department of justice for all persons who will have direct access to vehicle or driver license records. If the person with access to vehicle or driver license records does not reside in Wisconsin, the person who enters the contract with the department shall perform a nationwide criminal history background check through a private vendor or through their state's equivalent of the Wisconsin department of justice, and shall provide documentation to the department as to the results for each person who will have direct access to vehicle or driver license records. The department may conduct a criminal history background check of any person who will have direct access to vehicle or driver license records for audit purposes.

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 **August**, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation

ANALYSIS OF FINAL DRAFT OF TRANS 195

(a) **Basis and Purpose of Rule.** Trans 195 establishes fees for searches of vehicle and driver records and is derived from ss. 19.35, 341.17, 342.09 and 343.24, Stats. The statutory and rule provisions cover both single (individual) driver and vehicle records, and also large volumes of data that include many records, of multiple drivers or vehicles. The rule, however, is not clear in distinguishing between single records and large volumes of records. This rule making will clarify the distinction and clarify how fees will be charged for the different types of information sales.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on August 2, 2007. No modifications were made to the proposed rule as a result of testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** No persons attended the hearing.

(d) **Summary of Public Comments and Agency Response to those Comments:** There were no public comments submitted.

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

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained only one comment, which has been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** This amendment will have minimal increased cost on small business. The rule requires that a business obtain a criminal background check from the Wisconsin Department of Justice for all persons who will have direct access to vehicle or driver license records. The Department of Justice currently charges a fee of \$13 (request by internet) or \$18 (request by mail or fax) for each criminal background check. For example, if a small business has 25 employees and 10 of those employees are proposed to have direct access to vehicle or driver license records, the small business would need to pay the Department of Justice up to \$180 for criminal background checks.