

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 102

Relating to: Operator's Licenses and Identification Cards

Rule Type: Emergency Rule

1. Finding/nature of emergency (Emergency Rule only):

The emergency rulemaking is necessary to preserve the public welfare by ensuring that those who cannot obtain acceptable photographic identification for voting purposes with reasonable effort will be able to obtain photographic identification before the next scheduled statewide elections in February 2017 and April 2017. An existing emergency rule, EmR 1618, also relates to Operator's Licenses and Identification Cards; however, EmR 1618 expires on December 8, 2016. Given the legislative session schedule, it is not possible to complete the full rulemaking process for the permanent rule. This rulemaking will consider the information required as proof of name and date of birth or proof of citizenship, when other proof is not available and cannot be obtained without payment of a government fee, or cannot be obtained through reasonable effort, following commencement of the existing petition process and a specific time thereafter.

In 2011, Wisconsin enacted a statute requiring voters to present photographic identification, and listed identification cards issued by the Wisconsin Department of Motor Vehicles (the "Department") Division of Motor Vehicles ("DMV") among the types of acceptable photographic identification. The statute also prohibited DMV from charging a fee to an applicant for the initial issuance, renewal, duplication, or reinstatement of an identification card if the applicant is a U.S. citizen who will be at least 18 years of age on the date of the next election and the applicant requests that the identification card be provided without charge for purposes of voting.

DMV amended its administrative rules in 2014 to establish a petition process by which applicants could present extraordinary proof to document their name, date of birth and U.S. citizenship, which DMV verifies through the Wisconsin Department of Health Services or other states or units of government as needed, thereby eliminating the applicant's responsibility to pay government fees for supporting documents.

Because an individual may not be able obtain proof of name, date of birth or citizenship despite the individual's reasonable effort in time for an upcoming election, an emergency rule is necessary to ensure that all eligible voters have an opportunity to obtain the identification needed to vote in an upcoming election.

2. Detailed description of the objective of the proposed rule:

This potential rulemaking is intended to ensure that DMV can issue photographic identification to an individual requesting the photographic identification free of charge for voting purposes, despite that individual's commencement of the petition process and continued inability to obtain acceptable photo identification for voting purposes with reasonable effort. Ultimately, the requester may be issued photographic identification limited to the purpose of voting.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Under current administrative rules, an individual who requests a free identification card for voting purposes must present satisfactory proof of name and date of birth, identity, Wisconsin residency, and U.S. citizenship, or may present extraordinary proof of those facts to the DMV Administrator through a petition process. Even after pursuing the petition process, there may be individuals who may not be able to obtain photographic identification for voting purposes with reasonable effort. This rulemaking will consider accepting an affidavit as proof of name and date of birth or of proof of citizenship, when other proof is not available and cannot be obtained without payment of a government fee, or cannot be obtained through reasonable effort, following commencement of the petition process and a specific time thereafter. Ultimately, the individual may be issued photographic identification limited to the purpose of voting. EmR 1618 expires on December 8, 2016, and will not be effective for the February 2017 and April 2017 statewide elections. Because of the legislative session schedule, the full rulemaking process for the permanent rule will not be complete by December 8, 2016, or upon a 60-day extension to EmR 1618. Therefore, this new emergency rule is necessary.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

- Wis. Stat. ss. 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. s. 343.50 requires the Department to issue identification cards if an applicant meets the requirements for the identification card.
- Wis. Stat. s. 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. s. 343.02 (1) authorizes the Department to promulgate such rules concerning identification cards that the Department Secretary considers necessary.
- Wis. Stat. s. 85.16 (1) authorizes the Department Secretary to make rules deemed necessary to the discharge of the powers, duties and functions vested in the Department.

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

200 hours

6. List with description of all entities that may be affected by the proposed rule:

This rulemaking will affect individuals who request an identification card free of charge for voting purposes but who lack supporting documents that can be obtained only upon payment of a fee to a government agency and who cannot obtain the required documents with reasonable effort following commencement of the petition process and a specific time thereafter.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

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

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The Department anticipates that this rule may reduce the financial requirements upon any person who is interested in obtaining an identification card for purposes of voting and who lacks the necessary supporting documentation despite reasonable effort.

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