

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 102

Relating to: Operator's Licenses and Identification Cards

Rule Type: Permanent

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

N/A

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

Chapter Trans 102, Wis. Admin. Code, relating to operator's licenses and identification cards, is an existing rule that provides administrative interpretation of Wis. Stat. ch. 343 relating to the issuance of operator's licenses, identification cards, and vehicle titles and registration.

Chapter Trans 102 was initially written in 1982 and significantly revised in 1990, with subsequent incremental changes. Changes made to federal and state laws affecting the issuance of driver's licenses, identification cards, and titles and registration documents in the following years make updating ch. Trans 102 important in order to correlate and track the requirements of state statutory and federal statutory and regulatory requirements. Additionally, the Wisconsin Department of Transportation's Division of Motor Vehicles (DMV) has modified internal policies regarding documentation requirements and transaction methods to reflect current technologies used to further improve the customer's experience. As a result, modifications to the rule are necessary. The anticipated modifications to the existing rule will not change the objective of the rule.

Changes to state and federal laws have tightened security and identification standards for driver licenses and identification cards. Modifications to the language in ch. Trans 102 to reflect these changes will ensure that the DMV is compliant with federal requirements related to "REAL ID" (*Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (6 CFR Part 37)).

Modifications to the rule are necessary to ensure that the DMV is fully compliant with all statutory changes that have occurred since the last Wisconsin Administrative Code rule update and reflect administrative changes that have occurred since 2007.

This rulemaking is intended to rewrite much of the regulation related to driver license issuance in Wisconsin to improve department procedures and processes and to be consistent with state laws and federal laws and regulations.

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:

Driver licensing and identification card application, creation, and issuance processes will all be evaluated and reflected in a revised ch. Trans 102. Many state and federal regulations and statutes must be reconciled as part of this effort. Many of the provisions of the existing regulation in ch. Trans 102 are out of date. Leaving the existing rule in place without amendment is not a viable policy alternative.

Existing state statutes and department policies that need to be updated in the rule:

A. State statute changes regarding acceptable documentation requirements

Wis. Stat. s. 343.165 defines the required documents for initial issuance or renewal of driver's licenses or identification cards that the applicant must present or provide, and that the department must inspect before processing such application subject to exceptions under Wis. Stat. s. 343.14(3m) or 343.50(4g).

B. State statute changes regarding state identification cards

Wis. Stat. s. 343.50(5)(a) defines the valid period and fees associated with issuing state identification cards. Wis. Stat. s. 343.50(5)(a)3. requires the department to issue an applicant a free identification card if the applicant is a U.S. citizen, is at least 18 years of age on the date of the next election, and requests the card be provided without charge for the purpose of voting. Wis. Stat. s. 343.50(5m) defines the card issuance fee structure the department must use when issuing identification cards to eligible applicants. Under this statute, the department may not charge a fee for the issuance of an original, duplicate or reissued identification card, if Wis. Stat. s. 343.50(5) (a) 2. or 3. or (7) apply.

Wis. Stat. s. 343.50(5)(b) requires an identification card to be valid for the succeeding period of 8 years from the applicant's next birthday after the date of issuance.

Wis. Stat. s. 343.165(8) governs applications for identification cards without charge for the purposes of voting and the department's obligations in processing petitions made to the department for exception to Wis. Stat. s. 343.165(1)(a) or (b) requirements.

C. State statute changes regarding religious belief exemption for REAL ID non-compliant credentials

Wis. Stat. ss. 343.14(3m) and 343.50(4g) create a religious belief photograph exemption for REAL ID non-compliant credentials.

D. DMV policy changes regarding acceptable documentation requirements.

Current s. Trans 102.15(4m) allows DMV to require proof that a person is a Wisconsin resident. The Wisconsin Department of Transportation (WisDOT) currently accepts utility bills, pay stubs, bank account statements, and mortgage documents as evidence of residency.

The general public's increased use and reliance on computer technology to manage finances and pay personal bills often makes these documents unavailable on official letterhead. The most many persons can provide is a printout from an online system. DMV will accept print outs from online bill pay systems in lieu of documents produced by a utility or bank, and the department may to modify the rule to make this clear. Changes are expected to include additions to the current acceptable documentation for residency list.

This rulemaking also proposes to update requirements related to electronic documentation, provide standards for acceptance of Wisconsin college/university identification products, and will establish a standard process for persons experiencing homelessness to prove residency for the purpose of obtaining identification.

E. New Federal Policies.

The federal REAL ID Act, Pub. L. 109-13, Section 202, establishes minimum standards for driver's licenses and state issued identification documents used for "official purposes." Two key components of the REAL ID law that are expected to be integrated into ch. Trans 102 include:

- Designation of both compliant and non-compliant credentials
- Recognition of central issuance processes

Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes (6 CFR Part 37).

1. Designation of both compliant and non-compliant credentials

Wis. Stat. ss. 343.03(3r) and 343.165(7) allow DMV, upon the state's implementation of the federal REAL ID Act on January 15, 2013, to process applications for operator's licenses and identification cards that are not compliant with the federal REAL ID Act if the licenses and cards are marked accordingly.

2. Recognition of central issuance processes

Consistent with federal REAL ID requirements, DMV now issues driver's license and identification products centrally rather than printing them in field stations. All driver licenses and identification products are now issued from a secure site through a contracted vendor to ensure Wisconsin's drivers licenses meet the federal REAL ID security standards and secured facility requirements required under the federal law and Wis. Stat. s. 343.17(2). Regulatory provisions inconsistent with central issuance of licenses need to be amended to reflect central issuance.

Policy alternatives

The proposed modifications to existing ch. Trans 102 must be made to ensure that DMV's regulation governing driver licensing and identification cards is consistent with current state and federal laws.

Given that the anticipated rule changes will be done to reflect existing state and federal laws, policy alternatives are limited. The following policy alternatives might be considered (please

note, published statutory requirements were not considered in this analysis of policy alternatives):

- Acceptable documentation

As described above, DMV proposes to clarify that proof of residency could be accomplished with a printed online bill as well as with a bill delivered by U.S. Postal authorities to reflect current technologies and improve the DMV's customer's experience. DMV could refuse online documents and accept only documents delivered to the driver license applicant via U.S. mail as proof of residency. Permitting only use of delivered mail as proof of residency would not account for the individual's reliance on technology to conduct business and would be inconsistent with DMV's customer service improvement efforts.

- REAL ID compliance

Wis. Stat. s. 343.17(2) requires the department to incorporate federal physical security requirements into its driver license issuance process. Wis. Stat. ss. 343.165(2), (3), and (7) task the department with implementing federal laws related to driver license and identification card issuance.

Wisconsin could decide not to pursue being designated as a REAL ID compliant state relative to the issuance of driver's licenses and identification cards. This means Wisconsin residents would not be issued a REAL ID compliant product, thereby limiting their ability to conduct federal official business, such as boarding a commercial aircraft. A decision not to pursue designation as a REAL ID compliant state would be significant and would require changes to state statutes that currently require DMV to comply with REAL ID. Wisconsin has already invested resources into REAL ID compliance and is working to become fully compliant by May 3, 2023, the federal deadline.

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

DMV statutory authority to administer and modify ch. Trans 102 is established in ch. 343 of the Wisconsin State Statutes. Further authority is found in Wis. Stat. s. 85.16(1). More specific authority is found in the following statutes:

Wis. Stat. s. 343.02 defines the department's authority to administer and enforce the issuance of operator licenses and state identification cards. It also specifies that the department has the authority to promulgate rules as the secretary considers necessary.

343.02 Administration of driver license law.

(1) The department shall administer and enforce this chapter and may promulgate for that purpose such rules as the secretary considers necessary. Rules promulgated under this chapter may not conflict with and shall be at least as stringent as standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act.

(2) The state of Wisconsin assents to the provisions of the federal law and regulations specified in sub. (1). The state of Wisconsin declares its purpose and intent to make

provisions to implement and enforce that law and those regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under 23 USC 104 (b) (1), (2), (5) and (6), including all increased and advanced appropriations.

Wis. Stat. s. 343.03(1) establishes the department's requirement to institute a classified driver license system that meets all federal standards.

343.03 Classified driver license system.

(1) COMPLIANCE WITH FEDERAL STANDARDS.

(a) The department shall institute a classified driver license system meeting all federal standards under 49 USC 30304 (e) and 31301 to 31317 and 49 CFR 383 and 384.

(b) The department shall issue operator's licenses in conformity with the Classified driver license system to each licensee upon renewal, initial application, or cancellation under s. 343.26 (1).

Wis. Stat. s. 343.165(5) defines the department's authority to promulgate rules to require applications for the particular licenses identified in statute to meet the requirements established by statute for initial issuance or renewal of operator's licenses and identification cards.

343.165 Processing license and identification card applications.

(5) The department may, by rule, require that applications for reinstatement of operator's licenses or identification cards, issuance of occupational licenses, reissuance of operator's licenses, or issuance of duplicate operator's licenses or identification cards be processed in a manner consistent with the requirements established under this section for applications for initial issuance or renewal of operator's licenses and identification cards.

Wis. Stat. ss. 343.50(1)(a) and (c) defines the department's authority to issue identification cards to every qualified applicant.

343.50 Identification cards.

(1) ISSUANCE.

(a) The department shall issue to every qualified applicant, who has paid all required fees, an identification card as provided in this section.

(c) The department may issue a receipt to any applicant for an identification card, which receipt shall constitute a temporary identification card while the application is being processed and shall be valid for a period not to exceed 60 days.

Wis. Stat. s. 343.14 defines the department's authority to determine the form for applications for a license or identification card and identifies information the department must request and statements the applicant must provide on the form.

Wis. Stat. ss. 343.14(3m) and 343.50(4g) detail the legal standing for a person to request a photograph exemption for driver license or identification cards; applicants must provide an affidavit stating they have a sincerely held religious against being photographed.

343.14(3m) If the application for a license is processed under the exception specified in s. 343.165 (7), the application may be processed and the license issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

343.50 Photograph Requirement; Exception.

(4g) If the application for an identification card is processed under the exception specified in s. 343.165 (7), the application may be processed and the identification card issued or renewed without a photograph being taken of the applicant if the applicant provides to the department an affidavit stating that the applicant has a sincerely held religious belief against being photographed; identifying the religion to which he or she belongs or the tenets of which he or she adheres to; and stating that the tenets of the religion prohibit him or her from being photographed.

Wis. Stat. s. 343.50(5)(a) defines the fee structure the department must use when issuing identification cards to qualified applicants. Wis. Stat. s. 343.50(5)(a)3. prohibits the department from charging an applicant the initial issuance, renewal, or reinstatement fee for an identification card if the applicant is a U.S. citizen, is at least 18 years of age on the date of the next election, and requests the card be provided without charge for the purpose of voting.

343.50(5) Valid Period; Fees

(a)

1. Except as provided in subds. 2. and 3., the fee for an original card, for renewal of a card, and for the reinstatement of an identification card after cancellation under sub. (10) shall be \$18.

2. The department may not charge a fee to an applicant for the initial issuance of an identification card if any of the following apply:

a. The department has canceled the applicant's valid operator's license after a special examination under s. 343.16 (5) and, at the time of cancellation, the expiration date for the canceled license was not less than 6 months after the date of cancellation.

b. The department has accepted the applicant's voluntary surrender of a valid operator's license under s. 343.265 (1) and, at the time the department accepted surrender, the expiration date for the surrendered license was not less than 6 months after the date that the department accepted surrender.

3. The department may not charge a fee to an applicant for the initial issuance, renewal, 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.

Wis. Stat. s. 343.50(5m) defines the fees associated with issuing state identification cards. The card issuance fee does not apply if the applicant meets the requirements defined under Wis. Stat. s. 343.50(5)(a)(3).

343.50 Card Issuance Fee.

(5m) In addition to any other fee under this section, for the issuance of an original identification card or duplicate identification card or for the renewal or reinstatement of an identification card after cancellation under sub. (10), a card issuance fee of \$10 shall be paid to the department. The fee under this subsection does not apply to an applicant if the department may not charge the applicant a fee under sub. (5) (a) 2. or 3. or (7).

Wis. Stat. s. 343.50(7) defines the fee structure for duplicate identification cards. The fees do not apply if an applicant meets the requirements defined under 343.50(5)(a)(3).

343.50 Duplicate.

(7) The fee for a duplicate card is \$6 except that, if the card holder satisfies the requirements for an applicant specified in sub. (5) (a) 3., there is no fee for a duplicate card.

Wis. Stat. s. 85.16(1) defines the department secretary's authority to make "reasonable and uniform orders and rules deemed necessary."

85.16 Department rules and forms.

(1) The secretary may make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. The secretary may also prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions and prescribe the form and manner in which those applications, notices and reports may be filed or submitted.

Wis. Stat. s. 84.015(1) makes clear that the state intends to assent to all federal highway acts and to adopt laws and regulations that will insure receipt by the state of any federal highway aids.

84.015 Federal highway aid accepted.

(1) The state of Wisconsin assents to the provisions of Title 23, USC and all acts of congress amendatory thereof and supplementary thereto. The state of Wisconsin declares its purpose and intent to give assent to all federal highway acts and to make provisions that will insure receipt by this state of any federal highway aids that have been or may be allotted to the state including all increased and advanced appropriations, and insure that such highways and related facilities in this state as may be eligible to be improved or

constructed in accordance with any such federal highway acts may be improved, constructed and maintained in accordance therewith. The good faith of the state is pledged to make available funds sufficient to adequately carry out such construction and maintenance.

REAL ID provisions are scattered throughout ch. 343, Stats. Most of the provisions were adopted as part of the 2007-09 State Budget, 2009 Wis. Act 20.

2011 Wis. Act 23, the “Voter ID” legislation, modified the changes to state law made by 2007 Wis. Act 20 to allow the issuance of identification cards and driver licenses that are not REAL ID compliant. All such licenses must clearly show that they do not comply with REAL ID requirements in accordance with federal law.

The requirements for REAL ID compliant driver licenses and identification cards are defined under 6 CFR Part 37, *Minimum Standards for Driver’s Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes* (also known as REAL ID). The law details the requirements for states to be found fully compliant. In short, federal regulations require states to:

- Collect and keep fully approved identity documentation in a prescribed manner. 6 CFR § 37.11
- Verify documents such as Social Security Numbers, birth certificates, and out-of-state driver licenses and determine whether the person has false identities. 6 CFR § 37.13
- Include required security features to deter forgery and counterfeiting and detection of fraudulent cards in any compliant driver license or identification card. 6 CFR §§ 37.15-37.19
- Issue only temporary or limited-term cards to immigrants who lack permanent status in the U.S. 6 CFR § 37.21
- Establish procedures that verify an applicant’s identity each time a driver license or identification card is issued or renewed. 6 CFR §§ 37.23-37.25
- Ensure that an individual is not issued more than one REAL ID compliant card. This requires close communication with all other states to determine if the applicant currently holds a driver license or REAL ID identification card from another state. 6 CFR § 37.29
- Retain documents for future use or reference in the manner required by federal law. 6 CFR § 37.31
- Maintain its computer database of driver records in a manner that complies with federal requirements. 6 CFR § 37.33
- Develop a security plan that addresses the physical security of the facilities that produce the cards, and the safeguards required to protect the security and confidentiality of the information collected, stored, and maintained in DMV records. 6 CFR §§ 37.41-37.43
- Conduct a background check of each person who is involved in the manufacture or production of REAL ID driver licenses and identification cards, or who has the ability to affect the identity information that appears on the driver license or identification card. 6 CFR § 37.45
- Ensure that non-REAL ID licenses and identification cards issued by the state be clearly different from REAL ID compliant licenses and identification cards. 6 CFR § 37.71

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

Current estimates indicate that modifications to the rule will require about 1040 hours of department staff time. Other resources necessary to develop the rule include: the general public, other impacted state agencies, impacted federal agencies, the Wisconsin Legislature, and the governor's office.

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

General public – This rule may affect all individuals in the State of Wisconsin, their employers, all businesses, and other groups with which those individuals interact.

Airlines – This rule will affect airlines that are required to confirm identity with a REAL ID as a condition of travel.

Other state agencies – This rule will affect any state agency that requires a driver's license or state identification card from an individual, or a state agency that provides the documentation necessary for an individual to meet the requirements to be issued a compliant REAL ID product.

Department of Homeland Security – This rule will affect the U.S. Department of Homeland Security to the extent that it is the federal agency authorized to review and make a determination regarding DMV's compliance with REAL ID and it processes travelers presenting Wisconsin driver licenses and identification cards for travel purposes.

Other federal agencies – The rule will affect other federal agencies that adhere to and enforce federal laws, and that require a REAL ID compliant card in order for an individual to conduct official federal business.

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:

6 CFR Part 37 establishes minimum standards for state-issued driver licenses and identification cards in accordance with the federal REAL ID Act of 2005. These regulations are described in detail in Section 6 above. Pursuant to the Department of Homeland Security's REAL ID regulation, 6 CFR 37.51(a), states were required to be in full compliance with the REAL ID Act of 2005 by January 15, 2013.

Chapter Trans 102 was last amended in 2007. Since that time, changes have been made to federal and state laws affecting the issuance of driver's licenses, identification cards, titles and registration documents. In addition, the DMV believes internal policies regarding acceptable documentation need updating to reflect current technologies. As a result, modifications to the rule are necessary. The anticipated modifications will not change the objective of the rule.

The following is a brief comparison of ch. Trans 102 to the federal REAL ID Act and regulations promulgated under that act. For the purpose of simplicity, the section headers of ch. Trans 102 are used as an organizational tool for review and comparison. References to the "REAL ID laws" are intended as references to both federal statutes and regulations related to the federal REAL ID Act.

Document condition and authenticity

Similar to federal REAL ID laws, ch. Trans 102 describes the review and verification of documentation required by this state when issuing a driver license or identification card. The details of the verification process, definition of any relevant exceptions (allowed under federal law) and the storage of relevant documents required by federal REAL ID laws need to be reviewed and the language updated as necessary for compliance with federal standards.

Photographs (exemptions, specifications, and special photo requirements)

Both federal REAL ID laws and ch. Trans 102 include provisions related to the inclusion of photographs on driver licenses and identification cards. The federal REAL ID laws include specific requirements regarding allowable head coverage and the allowance of eyewear. Chapter Trans 102 includes text regarding retaking of photos, the allowance for head coverings due to religious belief, and the allowance of eyeglasses (excluding sunglasses), depending on the individual's preference. Wis. Stat. ss. 343.14(3m) and 343.50(4g) both allow for exemptions from photograph requirements for religious reasons. These various statutes and regulations need to be compared and reconciled to ensure appropriate consistency with federal statutory and regulatory, and state statutory requirements.

Design of operator's license and identification card

Federal REAL ID laws include descriptions of the required security features for state issued cards to be compliant. The federal law also includes a description of what is required for non-compliant products. Chapter Trans 102 includes a section related to the design of the operator's license and identification card; however, it does not include any specific reference to compliant or non-compliant cards. The administrative code text does not include any references to the federally required integrated security features described in the REAL ID law. This rulemaking proposes to amend the rule to allow for compliant and non-compliant driver licenses and identification cards.

National driver registry and commercial driver license registration system

Chapter Trans 102 includes text regarding the National Driver Registry and commercial driver license (CDL) registration system which requires the DMV to conduct inquiries into the CDL information systems and the National Driver Registry to determine licensing eligibility. It does not, however, reference federal REAL ID laws' requirement that states must check with all other states to determine if an applicant currently holds a driver license or REAL ID identification card in another state. These provisions may need to be amended to comply with federal REAL ID laws.

Prorated fees

The federal REAL ID Act includes no references to fees; chapter Trans 102 references fees authorized by statute.

Issuance

Both federal REAL ID laws and ch. Trans 102 include a defined issuance period for driver license and identification cards. The language in ch. Trans 102 must be updated to maintain consistency with state statutes and federal REAL ID requirements.

Federal REAL ID laws include requirements for regarding the physical security expectations of the facilities involved in the production and manufacturing of driver licenses and identification cards. Chapter Trans 102 includes an outdated reference to central issuance that must be reviewed and updated if necessary.

Proof of identification

The federal REAL ID Act, ch. 343, Stats., and ch. Trans 102 include specific provisions regarding acceptable documentation for proof of identity. The rule and federal laws must be reconciled.

Operator's license, license endorsement and identification card issuance periods

The federal REAL ID Act prescribes the validity periods and deadlines for REAL ID driver licenses and identification cards. Chapter Trans 102 includes more detail related to the issuance of all driver license products. These laws must be reconciled if inconsistent.

Temporary operator's license or driver receipt

The federal REAL ID Act specifies when a state may issue a temporary or limited-term REAL ID card. Chapter Trans 102 describes when DMV may issue a driver license or identification card and when a driver receipt should be issued. These laws must be reconciled if inconsistent.

Instruction permits

The federal REAL ID Act specifies when a state may issue a temporary or limited-term REAL ID card. Chapter Trans 102 provides more detail regarding the issuance, duration, and use of the instruction permit. Chapter Trans 102 also includes detail regarding other types of instruction permits issued, including moped or motorcycle permits. These laws must be reconciled if inconsistent.

Farm service CDLs

Chapter Trans 102 includes the discussion and administration of farm service CDLs; federal REAL ID laws do not.

Copying of driver licenses

Chapter Trans 102 specifies who may make a copy of a driver license to use for the identification of the person to whom the license has been issued, and the person does not sell or transfer the copies to any third person. The federal REAL ID Act makes no reference to copying for this purpose.

Current state statutes prohibit copying of identification cards for legitimate business purposes. Wis. Stat. s. 343.50(12)(e).

Sponsorship of persons under 18 years of age

Chapter Trans 102 defines who can be a sponsor of a minor who is licensed to drive in this state. The federal REAL ID Act does not regulate license sponsors.

Military, firefighting, farmer and emergency government CDL exemptions

Chapter Trans 102 implements federal military, firefighting, farmer, and emergency government CDL exemptions into state law. These provisions are not affected by the federal REAL ID Act but are affected by 49 CFR Parts 383 and 384.

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

At this time, it is anticipated that updates to the existing ch. Trans 102, which are expected to include modifications that reflect existing state and federal law, will have an indeterminate economic impact. Until the rule is actually drafted, determining the economic impact of the rule is difficult.

Nonetheless, it is doubtful that promulgation of changes to ch. Trans 102 will have any effect independent of the effects that have already resulted from the various state and federal statutory and regulatory changes described above.

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Signed this ____ day of _____ 2022

Craig Thompson
Secretary
State of Wisconsin Department of Transportation