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**Wisconsin Department of Transportation**

**EmR1421**

The scope statement for this rule, SS 080-14, was approved by the Governor on August 19, 2014, and published in Wisconsin Administrative Register No. 704, on August 31, 2014 and approved by the Secretary of Transportation on September 10, 2014.

This emergency rule was approved by the Governor on September 11, 2014.

The Wisconsin Department of Transportation proposes an order to amend Chapter 102 of the Wisconsin Administrative Code, relating to Operator's licenses and Identification cards.

**Analysis Prepared by the Department of Transportation**

***Statutes Interpreted***

Statutes Interpreted: 343.14, 343.50

***Statutory Authority***

Statutory Authority: 85.16(1), 343.02(1), 343.14 and 343.50

***Explanation of Statutory Authority***

Wis. Stat. §§343.14 and 343.50(4) specify the contents of applications for identification cards and authorizes the Department of Transportation to require such information as the Department considers appropriate to identify the applicant.

Wis. Stat. § 343.50 requires the Department of Transportation to issue identification cards.

Wis. Stat. § 343.50(5)(a)3. prohibits the Department of Transportation 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. § 343.02(1) authorizes the Department of Transportation to promulgate such rules concerning ID cards that the Secretary considers necessary.

Wis. Stat. § 85.16(1) authorizes the Secretary of Transportation to make rules deemed necessary to the discharge of the powers, duties and functions vested in the department.

### ***Related Statutes and Rules***

Wis. Stat. § 343.50 requires the Department of Transportation to issue identification cards.

Trans 102.15, Wis. Adm. Code, requires proof of identification for issuance, renewal, reissuance, reinstatement or duplicated driver license or identification card, and specifies the acceptable documentary proof. That section also establishes a petition process under which an applicant may request an exception to the documentary proof requirements for name and date of birth.

### ***Plain Language Analysis***

#### **Background**

The DMV has evaluated the holding in NAACP v. Walker and current statutes and has determined that rulemaking is appropriate to harmonize those laws. In that case, the Wisconsin Supreme Court upheld this state's law that requires presentation of specified identification, including identification cards issued by the Department of Transportation, as a condition of voting (commonly referred to as the "Voter ID law"). The court found that although department rules required documentary proof of an applicant's name and date of birth that was available only upon payment of a fee to a government agency, the existing petition process under which the Administrator of the Division of Motor Vehicles may approve an exception to that documentary requirement allowed applicants to obtain an identification card required for voting without payment of any fee to a government agency, neither for the identification card nor for the supporting documentation required for an application. The court cautioned the Administrator to exercise his or her discretion in a constitutional manner by approving exceptions for identification cards without requiring supporting documents that are available only upon payment of a fee to a government agency.

This rulemaking is intended to ensure that DMV can issue ID cards to individuals requesting them free of charge for voting purposes consistent with the holding in NAACP v. Walker and current statutes. While the department has a petition process that allows identification card applicants to provide secondary proof of name and date of birth in the event a birth certificate is unavailable, the department had not considered a document that is available upon payment of a fee to a government agency to be considered 'unavailable'.

## Rule Content

This rule considers any document that is required to be submitted as part of an application for an identification card requested without charge for voting purposes to be considered 'unavailable' if the applicant does not have the document and cannot obtain the document without payment of a fee to a government agency. In such cases, the department will request the applicant provide his or her name, date of birth, place of birth and other birth information. The department will then verify that birth information with the Wisconsin Department of Health Services and, if confirmed, will issue the identification card. If the birth record information or naturalization information cannot be confirmed, the Administrator of DMV may approve additional documentary proof of name, date of birth and U.S. citizenship.

Section 1 specifies that an identification card issued under the petition process must be readily identifiable as non-compliant with the federal REAL-ID law, similar to the treatment of certain driver's licenses by s. 343.03(3r), Stats.

Section 2 establishes qualifications for issuance of an identification card without charge for voting purposes, and prohibits the department from inquiring further about the applicant's qualifications to vote.

Sections 3 and 4 retain the existing definition of "unavailable" documents ordinarily required for issuance of a driver's license or identification card, and creates a definition of "unavailable" that applies only to identification cards issued free of charge for voting purposes consistent with the Wisconsin Supreme Court's decision in NAACP v. Walker, par. 69.

Sections 5 and 6 recognizes the petition process under proposed Trans 102.15(5m) creates an exception to the documentary proof requirements that ordinarily apply to identification cards.

Section 7 is amended so that an identification card issued without a birth certificate cannot be used as proof of name and date of birth for a driver's license. The Department believes that without this treatment, unlicensed drivers 17 years of age or older who lack a birth certificate could request an identification card free of charge for voting purposes and immediately exchange it for a driver's license, thereby creating a state burden of birth record verification unrelated to the act of voting.

Section 8 rennumbers the existing petition process to a new subsection (5m). The Department intends to retain the existing petition process for driver's licenses and for identification cards that are not requested without charge for purposes of voting.

Section 9 rennumbers the authority of the Administrator of the DMV to delegate authority to accept or reject extraordinary proof provided under the petition process, so

that delegation will apply to the existing process as well as the petition process to be employed for identification cards requested without charge for voting purposes.

Section 10 creates a title for the petition process.

Section 11 creates the petition process to be employed if an applicant requests an identification card without charge for voting purposes does not have the documentary proof ordinarily required for an identification card. Under the process, the applicant must provide information sufficient for the department of health services to locate the applicant's birth certificate, in this state or in another state. If the department of health services can verify the existence of the birth certificate and the birth record information, the Department of Transportation will issue the identification card religion that information as proof of name and date of birth. If the Department of Health Services cannot verify that information, the Department will notify the applicant that it cannot confirm a birth certificate match for the information supplied by the applicant, and that the Department cannot issue an identification card unless the applicant can provide some other documentary proof of establishing his or her name and date of birth. Similarly, the petition process will verify a naturalized applicant's name and date of birth by verifying federally issued proof of a U.S. citizen's foreign birth, U.S. citizenship and immigration service number, or U.S. citizenship certificate number if those documents are unavailable and can be obtained only upon payment of a fee.

Section 12 creates a process of approving name changes without requiring the applicant to provide a document that may be available only upon payment of a fee to a government agency. The department will verify the birth record information with the names associated with an individual's records maintained by the federal social security administration. In this way, the Department can verify that an application for an identification card in the name of, for example, John Smith is proper if requested by an applicant who proves only that he was born John Doe.

Section 13 creates a judicial right of review of the petition decision made by the Administrator of DMV, similar to that created by s. 343.40, Stats., for driver licensing decisions.

Section 14 corrects a cross-reference to a rule renumbered by this rulemaking.

Section 15 states the general effective date and duration of emergency rules.

### ***Summary of and Comparison with Existing or Proposed Federal Statutes and Regulations***

Federal law generally does not regulate the issuance of identification cards by states, however federal law (the "REAL-ID law", P.L. 109-13, section 202 (d) (11)) prohibits the use of state-issued identification cards for purposes of federal identification or any

other official federal purpose, such as entering federal buildings or airports, unless the identification card application included federally required documents and the state stored and retained those documents. Federal law requires that identification cards that do not meet those requirements be distinct in appearance from those that do.

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

### ***Summary of Factual Data and Analytical Methodologies***

To develop this rule, the Department reviewed state laws related to issuance of an identification card, its past practice under the existing petition process and the number and facts of exceptions approved to the documentary proof requirements using the petition process. The Department also analyzed the list of documents acceptable to prove name and date of birth and U.S. citizenship under existing Trans 102.15, Wis. Adm. Code, to determine which documents were available without payment of any fee to a government agency, and which of those documents were available to the Department without charge to the applicant, particularly those available using existing electronic means of inter-governmental data exchange.

### ***Analysis and Supporting Documents used to Determine Effect on Small Business***

Identification cards are issued only to natural persons. The Department identified no effect on small businesses related to this rule.

### ***Effect on Small Business***

The Department anticipates no effect on small businesses as result of this rule. The Department is unaware of any business that provides assistance in obtaining government documents required to support an application for an identification cards that will no longer be required for certain applicants under this rule.

### ***DOT Contact***

**Questions and comments (including hearing comments) related to this rule may be directed to:**

Patrick Fernan, Administrator  
Division of Motor Vehicles  
4802 Sheboygan Ave. Rm. 225  
Madison, WI 53707  
(608) 261-8605  
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### ***Where Comments May Be Submitted***

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### ***Finding of Emergency***

On July 31, 2014, the Wisconsin Supreme Court upheld 2011 Wisconsin Act 23, which requires certain identification in order to vote at a polling place or obtain an absentee ballot.

NACCP v. Walker, 2014 WI 98. The Department of Transportation's Division of Motor Vehicles ("DMV") is required by 2011 Wisconsin Act 23 to issue an identification ("ID") card free of charge to any U.S. citizen who will be at least 18 years of age on the date of the next election and who requests the ID card free of charge for voting purposes, provided they meet statutory requirements.

This emergency rule may be necessary to preserve public welfare by ensuring that DMV will implement the requirements of 2011 Wisconsin Act 23 in a manner consistent with the requirements of NACCP v Walker, should the federal injunction against that act be lifted.

### ***EMERGENCY RULE***

#### **Section 1. Trans 102.04(4) is created to read:**

Trans 102.04(4). If any identification card is issued based upon extraordinary proof of name, date of birth or U.S. citizenship under Trans 102.15(5m), the identification card shall, in addition to any other legend or label, be marked in a manner consistent with requirements under applicable federal law and regulations to indicate that the identification card is issued in accordance with P.L. 109-13, section 202 (d) (11), and is not intended to be accepted by any federal agency for federal identification or any other official purpose.

#### **Section 2. Trans 102.14(1g) is created to read:**

Trans 102.14 (1g). The department may not issue an identification card without charge for voting purposes to any person who is not a U.S. citizen or is not age 17 or older. The department may not determine whether a person is otherwise eligible to vote.

**Section 3. Trans 102.15(1) is renumbered Trans 102.15(1)(a) and amended to read:**

Trans 102.15 (1) "UNAVAILABLE" DEFINED. (a) ~~¶~~ Except as provided in par. (b), in this section, "unavailable" does not include documents which persons have forgotten to bring with them when applying for a license or identification card, or a lost or destroyed document if a replacement original or a certified copy of the document is available to those persons upon proper request.

**Section 4. Trans 102.15(1)(b) is created to read:**

Trans 102.15(1)(b). For purposes of a person applying for an identification card who requests that the identification card be provided without charge for voting purposes, "unavailable" means that the applicant does not have the documents required by Trans 102.15 (3)(a) or proof of citizenship under sub. (3m) and would be required to pay a government agency to obtain them, in addition to the meaning given in par. (a).

**Section 5. Trans 102.15(2)(c) is amended to read:**

Trans 102.15(2)(c) ~~A~~ Except as provided in sub. (5m), a person shall provide proof of the person's name and date of birth under sub. (3), of the person's identity under sub. (4), and of the person's residency under sub. (4m), upon the first application for an original, renewal, reinstatement or duplicate operator's license or identification card following:

**Section 6. Trans 102.15(3)(a)2. Note is amended to read:**

Trans 102.15(3)(a)2. Note: ~~Neither~~ Except as provided in Trans 102.15(5m)(b)2., neither a hospital birth certificate, a notification of birth registration nor baptismal certificate satisfies this requirement. Effective November 1, 1986 s. 69.24 (1) (a), Stats., prohibits Wisconsin hospitals from issuing a document which appears to be a birth certificate.

**Section 7. Trans 102.15(3)(a)6. Is amended to read:**

Trans 102.15(3)(a)6. A Wisconsin identification card issued under s. 343.50, Stats., bearing a photograph of the person, other than an identification card issued under sub. (5m)(b);

**Section 8. Trans 102.15(3)(b) is renumbered Trans 102.15(5m)(a) and Trans 102.15(5m)(a) (intro.), as renumbered, is amended to read:**

Trans 102.15(5m)(a)(intro.) ~~¶~~ Except as provided in par. (b), if a person is unable to provide documentation under ~~par. sub. (3) (a) and (3m)~~, and the documents are

unavailable to the person, the person may make a written petition to the administrator ~~of the division of motor vehicles~~ for an exception to the requirements of ~~par. sub. (3) (a) and (3m)~~. The application shall include supporting documentation required by sub. (4) and:

**Section 9. Trans 102.15(3)(c) is renumbered Trans 102.15(5m)(c) and amended to read:**

Trans 102.15(5m)(c) The administrator may delegate to the administrator's subordinates the authority to accept or reject such extraordinary proof of name ~~and~~, date of birth, or citizenship under this subsection.

**Section 10. Trans 102.15(5m)(title) is created to read:**

Trans 102.15(5m)(title) EXTRAORDINARY PROOF OF NAME, DATE OF BIRTH, OR U.S. CITIZENSHIP.

**Section 11. Trans 102.15(5m)(b) is created to read:**

Trans 102.15(5m) (b)1. If a person requests an identification card without charge for the purposes of voting and the person's birth certificate is unavailable, the person may make a written petition to the administrator for an exception to the requirements of proof of name and date of birth under sub. (3) or of proof of citizenship under sub. (3m). The petition shall include: the person's statement under oath or affirmation that the person is unable to provide documentation under sub. (3) or proof of citizenship under sub. (3m); that the documents are unavailable to the person; and his or her name, date of birth, place of birth, and such other birth record information requested by the department, or the person's alien or U.S. citizenship and immigration service number or U.S. citizenship certificate number. Upon receiving a petition, the department shall provide the person's birth record information to the department of health services, for the sole purpose of verification by the department of health services of the person's birth certificate information or the equivalent document from another jurisdiction, other than a province of the Dominion of Canada, or to a federal agency for the sole purpose of verifying the person's certificate of birth abroad issued by the U.S. department of state, or of verifying the person's alien or U.S. citizenship and immigration service number or U.S. citizenship certificate number. The department may not complete application processing prior to receiving verification under this subdivision, unless the petition is approved under subd. 2.

2. If the department does not receive verification under subd. 1, the department shall notify the person of that failure to verify. The department may thereafter issue an identification card to the person only if the department receives verification under subd. 1, the person provides proof required under sub. (3) or (3m), or the department receives other supporting documentation deemed acceptable to the



administrator to prove name, date of birth or U.S. citizenship, which may include the following:

- a. Baptismal certificate.
- b. Hospital birth certificate.
- c. Delayed birth certificate.
- d. Census record.
- e. Early school record.
- f. Family Bible record
- g. Doctor's record of post-natal care.
- h. Other documentation deemed acceptable to the administrator, within his or her reasonable discretion.

Note: Whoever under oath or affirmation makes or subscribes a false statement which he or she does not believe is true, when such oath, affirmation, or statement is authorized or required by law or is required by any public officer or governmental agency as a prerequisite to such officer or agency taking some official action, is guilty of a Class H felony, per s. 946.32, Stats.

**Section 12. Trans 102.15(3)(d) is created to read:**

Trans 102.15(3)(d) The administrator may approve a name change requested by a person who cannot provide documentation of the name change if the administrator receives proof of the name change from the federal social security administration and proof of identity in the new name.

**Section 13. Trans 102.15(5m)(e) is created to read:**

Trans 102.15(5m)(e) The denial of a petition under par. (b) is subject to judicial review in the manner provided in ch. 227 for the review of administrative decisions.

**Section 14. Trans 102.15(6)(intro.) is amended to read:**

Trans 102.15(6) TEMPORARY DRIVER RECEIPT. The department may issue a temporary driver receipt for operation of class D or M vehicles to a person who is temporarily unable to meet the identification requirements of sub. (3). The temporary driver receipt shall state the date of issue, shall be clearly marked "NOT VALID FOR IDENTIFICATION," and shall be validated for the operation of a vehicle for a stated period of up to 60 days from the date issued. The person may complete his or her license application within this period by presenting proof of the person's name and date of birth in accordance with sub. (3) (a). For good cause shown, the department may renew the driving receipt once for an additional period of no more than 60 days. This subsection does not prohibit a person from proceeding under

sub. ~~(3) (b)~~ (5m)(a). This subsection applies only to persons who meet all of the following:

**SECTION 15. EFFECTIVE DATE:** This emergency rule takes effect upon publication, and remains in effect for 150 days. The department may seek to extend this emergency rule as provided in s. 227.24, Stats.

Dated this \_\_\_\_\_ day of September, 2014.

WISCONSIN DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
Mark Gottlieb, Secretary