

CR 10-040

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

The Wisconsin Department of Transportation adopts an order to repeal TRANS 101.02(4)(d); amend 101.02(5)(sm), (8)(a) and (c), and 101.10(1)(b) and (2)(b)2.; and create TRANS 101.02(8)(f), 101.10(2)(b)7. and (c)(note), relating to demerit point system and graduated driver license restriction extensions.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: s. 343.32, Stats.

Statutory authority: Amendment #1: Section 343.085(2m)(b)1.a., Stats.
Amendment #2: Section 343.32(2), Stats.

Explanation of agency authority: Section 343.32(2)(a), Stats., permits the Secretary to suspend a person's operating privilege if the person appears by the records of the Department to be a habitually reckless or negligent operator of a motor vehicle or to have repeatedly violated any of the state traffic laws, any local ordinance enacted under ch. 349 or any traffic laws enacted by a federally recognized American Indian tribe or band in this state if the tribal traffic laws violated strictly conform to provisions in chs. 341 to 348 or, if the offense occurred on a federal military installation located in this state, any federal law which is in strict conformity with a state traffic law. The Department has used a demerit point system to accomplish this end since 1958. The statute permits the Secretary adopt by rule a method of weighing traffic convictions by their seriousness and allows the Secretary to change that weighted scale "as experience or the accident frequency in the state makes necessary or desirable," though much flexibility in the system has been eliminated over the years by statutory amendment mandating specific assignment of demerit points, suspension of operating privileges at specific point levels and doubling of demerit point assessments for probationary drivers.

Related statute or rule: s. 343.085(2m)(b)1.a., Stats. Only moving violations affect GDL restrictions.

Plain language analysis: The rule makes the following changes to Wisconsin's demerit point system:

- For consistency with GDL restrictions and for administrative efficiency, amend ch. Trans 101 to eliminate demerit point repercussions for all parking offenses. Currently, DMV attempts to distinguish between parking offenses committed on and off highway roadways. Because the traffic code does not

make such distinctions, DMV wastes resources trying to figure this out from extraneous information sources. Moreover, savvy defendants convince prosecutors and courts to “change the facts” in exchange for plea agreements.

In addition, GDL restrictions cannot be extended for parking violations; Wis. Stat. s. 343.085(2m)(b)1.a. permits GDL extension only for “moving violations.” Because DMV generally extends GDL restrictions for any offense that generates demerit points, the few parking offenses for which DMV assesses demerit points at present should be changed to non-point offenses.

- Permit demerit points assessed for serious traffic offenses that trigger suspensions of occupational licenses to be used in demerit point cases and potentially trigger a demerit point suspension in addition to the occupational license suspension.

In general, DMV’s rule currently attempts to use a violation in only one suspension or revocation case affecting the driver’s operating privilege. Persons who commit serious traffic offenses on an occupational license can have their temporary occupational license suspended. Often, the occupational license is only valid for a short period of time, so any suspension or revocation of that temporary license is of negligible deterrent value. This rule proposes to allow the demerit point repercussions from committing an offense that results in an occupational license suspension or revocation to carry over and affect the person’s regular operating privilege demerit point total.

- Section 5 of the rule clarifies that illegal riding of a moped or motorcycle cannot be used to deny a GDL or to extend GDL restrictions because “riding” is not a moving violation. Similarly, Section 6 makes clear that illegal acceleration, the offense municipal officers write for tire squealing, cannot be used to deny or extend GDL restrictions.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Driver improvement programs are state functions. There is no federal regulation in this area.

Comparison with Rules in the Following States:

Michigan: Michigan does not assess demerit points for parking violations. Six or more unpaid parking tickets have zero demerit points. Michigan does not appear to distinguish between parking on and off of a highway.

Minnesota: Minnesota law permits the state DOT to mask parking violations committed by CMV operators.

171.163 COMMERCIAL DRIVER'S LICENSE RECORD KEEPING.

An agency, court, or public official in Minnesota shall not mask, defer imposition of judgment for, or allow an individual to enter into a diversion program that would prevent a conviction for a violation of a state or local traffic control law, **except a parking violation**, from appearing on the driving record of a holder of a commercial driver's license, when the violation is committed in any type of motor vehicle, or on the driving record of an individual who committed the violation in a commercial motor vehicle.

Under the Minnesota GDL law, parking is not a “moving violation,”

171.04 PERSONS NOT ELIGIBLE FOR DRIVERS' LICENSES.

Subdivision 1. Persons not eligible. The department shall not issue a driver's license:

(1) to any person under 18 years unless:

(i) the applicant is 16 or 17 years of age and has...not more than one conviction for a moving violation that is not crash related. **"Moving violation"** means a violation of a traffic regulation **but does not include a parking violation**, ... [emphasis added];

Parking violations are not reported to the Minnesota DOT:

171.16 COURT MAY RECOMMEND SUSPENSION.

Subdivision 1. Court to report to commissioner. Every court ... shall forward to the department, within ten days, a record of the conviction of any person in the court for a violation of any laws or ordinances, **except parking violations** ... [emphasis added].

Illinois: Demerit points are not assessed to parking violations and are not considered a moving violation. Parking violations do not appear on the driving record.

Iowa: Parking violations are not countable offenses for demerit points. Improper parking on highway is not considered a moving violation (321.354(2)).

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: This rule simply brings DOT's administrative rule into compliance with statutory requirements and increases administrative efficiency. The analytical methodology consisted of reviewing the statutes described and DOT's current administrative rule, noting inconsistencies, and drafting the rule to conform to statutory requirements while improving efficiency in DMV processes.

Analysis and supporting documentation used to determine effect on small businesses: This rule regulates individual behavior, not small businesses, and brings

DOT's existing regulations into conformity with existing statutes. Accordingly, there was no analysis or supporting documentation used. Staff simply noted that this proposal affects individual drivers and not businesses.

Effect on small business: The demerit point rule affects individual drivers and does not create or impose any regulation upon business. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@wisconsin.gov, 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 expects that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and copies of rule: Copies of the rule can be obtained, without cost, by writing to Reed McGinn, Department of Transportation, Division of Motor Vehicles, Citations and Withdrawal Section, Room 305, P. O. Box 7917, Madison, WI 53707-7917. You may also contact Mr. McGinn by phone at (608) 267-9811 or via e-mail: reed.mcginn@wisconsin.gov.

TEXT OF RULE

SECTION 1. Trans 101.02(4)(d) is repealed.

SECTION 2. Trans 101.02(5)(sm) and (8)(a) and (c) are amended to read:

Trans 101.02(5)(sm) Parking on a highway ~~but off the roadway~~.

(8)(a) *Violations used once.* Demerit points may be used in only one point case, except as provided in pars. (c) ~~and~~, (e) and (f), and sub. (9)(c).

(c) *Use of conviction resulting in withdrawal action in point case.* Demerit points from an offense that resulted in suspension or revocation of a person's operating privilege under s. 343.30 or 343.31, Stats., may not be used in a point case, except as provided in this paragraph or par. (e) or (f). Convictions that result only in disqualification under s. 343.315, Stats., or federal law may be used in a point case. Convictions that result in suspension of a person's operating privilege due to failure to pay the underlying fine or

forfeiture resulting from the conviction or that result in revocation of the person's operating privilege as a habitual traffic offender under ch. 351, Stats., may be used in a point case.

SECTION 3. Trans 101.02(8)(f) is created to read:

Trans 101.02(8)(f) *Serious traffic offenses committed by occupational license holders.* Serious traffic offenses, as enumerated in s. 343.31(2u), Stats., committed by a person who holds an occupational license may be used in a points case regardless of any suspension of the person's occupational license resulting from the conviction.

NOTE: A person whose occupational license is canceled will be shown in a suspended or revoked status as though no occupational license had been issued.

SECTION 4. Trans 101.10(1)(b) and (2)(b)2. are amended to read:

Trans 101.10(1)(b) Illegal riding of a moped or motorcycle.

(2)(b)2. Illegal riding of a moped or motorcycle.

NOTE: These offenses are specified in ss. 346.595 and 347.487, Stats.

SECTION 5. Trans 101.10(2)(b)7. and (2)(c)(note) are created to read:

Trans 101.10(2)(b)7. Unnecessary acceleration.

(2)(c)(note) **NOTE:** Unnecessary acceleration is not a violation of ch. 110, 194, 341 to 349, or 351, Stats., but is an ordinance violation. Because s. 343.085(2)(b)1.a. provides that GDL restrictions can only be extended for "moving violations" and ordinance violations for ordinances not conforming to chs. 110, 194, 341 to 349, or 351 are not "moving violations," as that term is defined in s. 343.01(1)(cg), GDL restrictions cannot be extended for unnecessary acceleration or squealing tire violations.

(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 **27th** day of **July**, 2010.

_____/s/_____
FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation