

CR 86-85

CERTIFICATE

State of Wisconsin )  
 ) ss.  
Department of Transportation )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Lowell B. Jackson, P.E. Secretary of the Wisconsin Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rule Trans 107, relating to licensing of persons with chemical abuse or dependency problems was duly approved and adopted by this Department on July 25, 1986.

I further certify that the annexed copy has been compared by me with the original on file in this Department and that the same is a true copy thereof and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereonto set my hand and affixed the official seal of the Department of Transportation, in the City of Madison, Wisconsin, this 25<sup>th</sup> day of July 1986.

*Lowell B. Jackson*  
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Lowell B. Jackson, P.E., Secretary  
Wisconsin Department of Transportation



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ORDER OF THE  
DEPARTMENT OF TRANSPORTATION  
AMENDING RULES

To repeal Trans 107.06(1)(a) to (c) and 107.07(7); to renumber Trans 107.07(8); to renumber and amend Trans 107.02(17); and to amend Trans 107.01(1), 107.02(2), (7), (12) and (16), 107.03(7), 107.04(1)(a) to (c)(intro.) and (c)4., 107.06(1)(intro.), (2)(intro.) and (c) and (3)(b) and (d) to (f), 107.07(1) to (3), (5) and (6), 107.08(1)(d) to (h) and (j), (2)(b) and (e), and (4)(a), 107.09(1), (3)(a), (5), (8) and (9) and 107.11(3) relating to driver licensing of persons with chemical abuse or dependency problems

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ANALYSIS PREPARED BY THE  
WISCONSIN DEPARTMENT OF TRANSPORTATION

This rule requires a person convicted of "operating under the influence" in another state to comply with an approved alcohol/drug assessment and driver safety plan. This person may, as an alternative to compliance with an assessment and driver safety plan in Wisconsin, provide the department with written verification of participation in, or completion of, a similar rehabilitation or driver safety plan in another state.

All previous driver safety plans are waived under this revision when a new department or court ordered assessment has been completed and a driver safety plan developed.

Compliance with department ordered assessment based on OWI arrests is not required when subsequently court ordered upon conviction of the offense.

Compliance with a driver safety plan is required if the assessment finding is suspected chemical dependency, chemical dependency or chemical dependency in remission, even if the OWI charge is subsequently amended or dismissed.

Persons are considered participating in a driver safety plan once a driver safety plan has been developed. A person is considered in noncompliance with a driver safety plan, if he/she has an OWI arrest during the period covered by the driver safety plan.

Other language changes are made to correct statute number references, misspelling and to clarify definitions.

## FISCAL ESTIMATE

No fiscal impact is anticipated from the promulgation of these rule changes.

## REGULATORY FLEXIBILITY ANALYSIS

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 This amendment has no significant impact on small businesses.  
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Pursuant to the authority vested in the Department of Transportation by ss. 85.16(1) and 227.11(2)(a), Stats., the Department of Transportation hereby amends rules interpreting certain provisions of ss. 110.08, 227.42, 227.51, 343.06(4), 343.16(2), 343.25(4) and (7), 343.30(1q)(c), 343.30(1q)(d), 343.30(1q)(f), 343.305(9)(c), 343.305(9)(d), 343.305(9)(f), 343.32(2)(e), 343.40, 346.63(1), (1m), 346.63(2), 346.635, 940.09 and 940.25, Stats., as follows:

## RULE TEXT

SECTION 1. Trans 107.01(1) is amended to read:

Trans 107.01 PURPOSE AND SCOPE. (1) STATUTORY AUTHORITY. As authorized by ss. 85.16(1) and ~~227.014~~ 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 110.08, ~~227.0647-227.147~~ 227.42, 227.51, 343.06(4), 343.16(2), 343.25(4) and (7), 343.30(1q)(c), 343.30(1q)(d), 343.30(1q)(f), 343.305(9)(c), 343.305(9)(d), 343.305(9)(f), 343.32(2)(e), and 343.40, 346.63(1), (1m), 346.63(2), ~~345.635~~ 346.635, 940.09 and 940.25; Stats., relating to driver licensing of persons who have chemical abuse or chemical dependency problems.

SECTION 2. Trans 107.02(2), (7), (12), (16) and (17) are amended to read:

Trans 107.02(2) "Assessor" means a person who conducts assessments under s. 51.42 (5)(b), Stats., in a public treatment facility, as defined in s. ~~51.42~~ 51.45 (2)(c), Stats. according to the standards set forth in ch. HSS 62, and instructions of the department of health and social services.

(7) "Driver safety plan" means an individualized plan based on an assessment referral May 1, 1982 or after which specifies a traffic safety school defined under s. 345.60, Stats., or treatment services, or a combination, for alleviation of identified chemical abuse or dependency problems.

(12) "OWI" means operating a motor vehicle while under the influence of an intoxicant or controlled substance, or both, in violation of ss. 346.63(1), (1m) or (2), 940.09 or 940.25, Stats., or a local ordinance in conformity with s. 346.63(1).

(16) "Review unit" means the driver-improvement alcohol and other drug review unit in the department's division of motor vehicles.

SECTION 3. Trans 107.02(17) is renumbered 107.02(5m) and amended to read:

Trans 107.02(5m) ~~"51-42-board"~~ "County department" means the community services program established under s. 51.42, Stats., or its approved agency, or the community human services board established under s. 46.23, Stats., that is responsible for each Wisconsin county's provision of services for chemical abuse or dependency under ss. 51.42 and 51.45, Stats.

SECTION 4. Trans 107.03(7) is amended to read:

Trans 107.03(7) ~~51-42-board~~ County department assessment and driver safety plan final reports,

SECTION 5. Trans 107.04(1)(a) to (c)(intro.), and (c)4. are amended to read:

Trans 107.04(1)(a) Medical, assessment, driver safety plan, driver safety plan final reports, or combination of, with information ~~including~~ on:

(b) An Interview interview by a department representative documenting the effects of chemical use on a person's social or economic functioning in terms of:

(c) Driving Record records, including reports of:

4. Evidence-of chemically Chemically related charges dis-  
missed, vacated, appealed, reduced or amended to lesser charges  
when the department has information, such as a medical or assess-  
ment report, on file.

SECTION 6. Trans 107.06(1)(intro.) is amended to read:

Trans 107.06 ASSESSMENT REFERRALS AND INTERVIEWS. (1) WHEN INTERVIEW REQUIRED. Except under the circumstances described in s. Trans 107.08(2)(a) to (c), an interview shall be scheduled when a person is identified by a source described in s. Trans 107.03~~(7)~~ as possibly having a chemical abuse or dependency problem and this is the first time the department has received any information that this person may have a problem.

SECTION 7. Trans 107.06(1)(a) to (c) are repealed.

SECTION 8. Trans 107.06(2) (intro.), (2)(c), (3)(b) and (3)(d) to (f) are amended to read:

Trans 107.06(2) WHEN ASSESSMENT REQUIRED AFTER INTERVIEW.  
The interview consists of a meeting with an analyst a department representative which involves:

(c) Adding the total number of traits identified in the 5 life style categories to the screening test score. Each of the 5 categories have been identifiable traits which are characteristic of persons addicted to excess excessive use of chemicals in varying degrees. The degree can be based upon the length and number of occurrences and whether the condition is gradually becoming worse or improving. Each trait identified as positive has a point value of one. A person whose interview responses indicate a 5 or more point total shall be required to obtain an assessment. The person shall be referred to a 51-42-board county department for the assessment.

(3)(b) A person has one OWI arrest within the past 12 months and the department has an assessment, driver safety plan final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(d) A person has one OWI arrest within the past 12 months, and the person had has had 2 OWI convictions or implied consent revocations within the past 2 years.

(e) The department receives a physician medical report indicating a possible chemical use problem and the physician person is not currently treating-the-person being treated for the chemical use problem.

(f) ~~There-is-an-OWI-revocation~~ The department receives notice of an OWI conviction in another jurisdiction for an offense which if committed in this state would have been cause for revocation or suspension under s. 343.30(1g) and the person is-not-or has not participated completed or is not currently participating in a rehabilitation or driver safety plan ~~including a-Wisconsin-driver-convicted~~ or any similar plan in another jurisdiction.

SECTION 9. Trans 107.07(1), (2), (3), (5) and (6) are amended to read:

Trans 107.07 REPORTING PROCEDURES. (1) Assessments and assessment reporting procedures shall be those established by the ~~department-of-health-and-social-services-according-to~~ ch. HSS 62.

(2) Traffic safety school driver safety plan final report information forms shall be provided to the ~~51-42-board~~ county department when documentation by the traffic safety school indicates a need for additional assessment which may require additional treatment not recommended at the time of the original assessment.

(3) Amended driver safety plans shall be accepted by the department within the period established by ss. 343.30(1q)(d) and 343.305(9)(d), Stats., and, when submitted to the department by the ~~51-42-board~~ county department with document documentation of the reason for changes in assessment findings or recommendations. As provided by ss. 343.30(1q)(d) and 343.305(9)(d), Stats., a driver safety plan, including amendments and followup, cannot be for more than one year from the beginning date to the ending date of the plan.

(5) When a department ordered assessment under s. Trans 107.06 has not been completed by the date of the OWI conviction, and the court subsequently orders an assessment, the person shall not be required to comply with the department ordered assessment. ~~If a~~ All previous driver safety plan has already been ordered as a result of a department ordered assessment, the person shall complete the first driver safety plan even if the court orders another assessment and driver safety plan. Plans shall be waived when a new department or court ordered assessment has been completed and a driver safety plan developed.

(6) If convicted of an amended charge, or ~~it~~ the charge is dismissed, appealed or vacated prior to completion of a department or court ordered assessment, under ~~s. Trans 107.06~~ compliance with the assessment order shall not be required. If the person has already completed an assessment, ~~and is participating in a~~ the person shall be required to comply with the driver safety plan even if the charges are amended if the assessment findings meet the criteria for license denial or cancellation under s. Trans 107.08(1)(g).

SECTION 10. Trans 107.07(7) is repealed.

SECTION 11. Trans 107.07(8) is renumbered 107.07(7).

SECTION 12. Trans 107.08(1)(d) to (h), (1)(j), (2)(b), (2)(e) and (4)(a) are amended to read:

(d) When a person has 2 OWI arrests in 12 months, and has had 2 OWI convictions or implied consent revocations within the past 2 years, the person shall be immediately referred for an assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(e) When a person has 2 OWI arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and the person has had a an prior OWI conviction or implied consent revocation within the past 2 years, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(f) When a person has 2 OWI arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and there is an assessment, driver safety plan final report, medical report, or combination of, reports on file with the department within the past 2 years identifying possible chemical abuse or dependency, the person shall be referred for immediate assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) or (c) have been met.



(Note: The following is an illustration of licensing actions in accordance with ss. Trans 107.08(1)(a) to (f).)

Illustration #1: OWI ACTION			LICENSING ACTION				
TRANS 107 SECTION	ARREST	CONVIC &/OR IMPLIED CONSENT (IC), REVOCATIONS	TIME	BAC IN AT LEAST ONE ARREST	HOSPITALIZATION OR OTHER REPORTS DATED WITHIN 2 YEARS	ACTION*	ASSESSMENT REQUIRED
SECTION 107.08(1)(a)	N/A				HOSPITAL CERTIFIES CLIENT TREATMENT INCOMPLETE	D OR C	NO
SECTION 107.08(1)(b)	1		12 MONTHS		IDENTIFYING ABUSE/DEPENDANCY RECOMMENDING NO CHEMICAL USE	D OR C	YES
SECTION 107.08(1)(c)	3		12 MONTHS			D OR C	YES
SECTION 107.08(1)(d)	2	2 OR 2	12 MONTHS-OWI ARREST 24 MONTHS-CONVICTIONS OR IC REVOCATIONS			D OR C	YES
SECTION 107.08(1)(e)	2	1 OR 1	12 MONTHS-OWI ARREST 18 MONTHS-CONVICTIONS OR IC REVOCATIONS	= OR > .20		D OR C	YES
SECTION 107.08(1)(f)	2		12 MONTHS	= OR > .20	IDENTIFYING ABUSE/DEPENDANCY	D OR C	YES

\* D= DENY  
C= CANCEL  
S= SUSPEND

(g) When, under s. 343.06(4), Stats., the findings of an assessment, information from a medical report, or other information in the file, or a combination of, indicate that the person's chemical use may ~~effect~~ affect his or her driving ability, the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) or (c) have been met. For purposes of this paragraph, the types of information considered are those described in s. Trans 107.04.

(h) Under ss. 343.06(4) ~~7~~ or 343.16(2)(a) ~~or-343-25(7)~~, Stats., failure to ~~meet-with-a-department-representative~~, obtain an assessment as directed by the department, comply with the recommended rehabilitation or driver safety plan, or submit the required medical report shall result in denial or cancellation of all licenses, including an occupational or limited chauffeur license, until the department is notified of compliance. An arrest for OWI ~~while-participating-in-a~~ after an assessment and prior to completion of a rehabilitation or driver safety plan shall be considered as noncompliance by the department and shall result in denial, cancellation, or suspension of all licenses.

(j) Under ss. 343.16(2)(a), 343.30(1q)(c) or (d), or s. 343.305(9)(c) or (d), Stats., failure to comply with court ordered or department ordered assessment, ~~fee assessment~~ or driver safety plan, or to pay assessment fee, shall result in the a suspension of the operating privilege, including an occupational or limited chauffeur license. An arrest for OWI ~~while participating-in-a~~ after an assessment and prior to completion of a rehabilitation or driver safety plan shall be considered as noncompliance by the department. Non-payment of any treatment fee shall not be grounds for a noncompliance suspension. The suspension shall be ordered upon receipt of a noncompliance report from the ~~51-42-board~~ county department, traffic safety school approved under s. 345.60, Stats., or an arrest report for OWI. The suspension shall remain in effect during any department review and for the 5 year period that the department maintains records, or until the conditions in sub. (2) have been met. An occupational or limited chauffeur license shall not be issued during a suspension for noncompliance.

(Note: The following is an illustration of other licensing actions in accordance with ss. Trans 107.08(1)(g) to (j).)

Illustration #2: Other Licensing Action

		ACTION*
SECTION 107.08(1)(g)	WHEN THE DEPARTMENT RECEIVES A REPORT INDICATING CHEMICAL ABUSE LIKELY TO AFFECT DRIVING ABILITY	D OR C
SECTION 107.08(1)(h)	WHEN THERE IS AN OWI ARREST WHILE A DRIVER SAFETY PLAN (DSP) IS OPERATIONAL	D, C OR S
SECTION 107.08(1)(h)	FAILURE TO PROVIDE MEDICAL REPORTS	D OR C
SECTION 107.08(1)(h/j)	FAILURE TO COMPLY WITH:  ASSESSMENT; ASSESSMENT FEE; DSP;	D, C OR S D, C OR S D, C OR S
SECTION 107.08(1)(i)	FAILURE TO MEET WITH DEPARTMENT REPRESENTATIVE FOR INTERVIEW	D OR C

\* D= DENY  
C= CANCEL  
S= SUSPEND

(2)(b) When the assessment report or compliance report from a ~~51-42-board~~ county department shows the person has agreed to participate in a recommended driver safety plan or satisfactorily completed a treatment program, and the person is no longer abusing chemicals.

(e) When a person, ~~51-42-board~~ county department, or traffic safety school under s. 345.60, Stats., submits the report or reports showing compliance with an assessment or driver safety plan after the operating privilege has been suspended as a result of sub. (1)(j) for any noncompliance with the assessment or plan.

(4)(a) NOTICE OF LICENSING ACTION. (a) Person Persons affected by any departmental licensing action shall be given written notice, by first class mail, sent to the person's address last known ~~address-with~~ to the department.

SECTION 13. Trans 107.09(1), (3)(a), (5), (8) and (9) are amended to read:

Trans 107.09 DEPARTMENT REVIEW. (1) In accordance with s. 343.30(1g)(d) or 343.305(9)(d), Stats., a person may request in writing within 10 days of license suspension, a review of license suspension for not complying with ~~an-assessment-or~~ a driver safety plan as a result of a court ordered or department ordered assessment.

(3)(a) Whether the person is in compliance with ~~the-assessment-order-or~~ the driver safety plan, and

(5) When the driver safety plan is found to be appropriate, the suspension shall remain in effect until notification from a ~~51-42-board~~ county department that the person is complying with the driver safety plan received by the department and the person has paid the reinstatement fee(s) required by 343.21(1)(j), Stats.

(8) Under s. 343.30(1g)(d) or 343.305(9)(d), Stats., the department shall grant a delay in the appropriateness review decision at the written request of the person seeking the review.

(9) Driver safety plans recommending treatment in other states are acceptable if approved by the ~~51-42-board~~ county department.

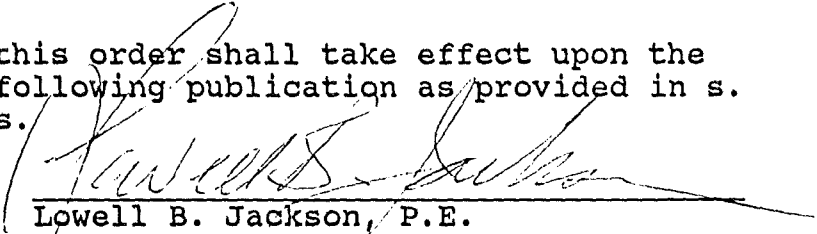
SECTION 14. Trans 107.11(3) is amended to read:

Trans 107.11(3) Persons completing group dynamics as a result of violations prior to May 1, 1982, and for whom the group dynamics instructor documents a need for additional assessment, shall be required to meet for an interview and, if documentation

supports a referral to a 51-42-agency county department, comply with any additional treatment recommended prior to reinstatement. No interviews shall be required for reinstatement if the violation occurred after May 1, 1982.

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The rules contained in this order shall take effect upon the first day of the month following publication as provided in s. 227.22(2)(intro.), Stats.

7/25/86  
Date

  
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Lowell B. Jackson, P.E.  
Secretary  
Wisconsin Department of Transportation