

CR 87-76

Wisconsin Department of Transportation

CERTIFICATE

OFFICE OF THE SECRETARY
P.O. Box 7910
Madison, WI. 53707-7910

RECEIVED

State of Wisconsin)
Department of Transportation) ss.

APR 15 1988
3:15 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Ronald R. Fiedler, 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 April, 15, 1988.

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 15th day of April, 1988.

for Donald H. Janssen, Deputy
RONALD R. FIEDLER, P.E.
Secretary
Wisconsin Department of Transportation

6-1-88

CR 87-76

ORDER OF THE
DEPARTMENT OF TRANSPORTATION
AMENDING RULES

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Repeal s. Trans 107.11(3); Renumber Trans 107.08(4), and 107.11(7) and (8); Renumber and Amend s. Trans 107.08(2)(f), 107.08(3) (intro.), 107.08(5), 107.11(4) to (6); Amend Trans 107.01, 107.02(1), (7), and (12), 107.03(6), 107.07(3) and (4), 107.08(1)(j) and (k), 107.08(2) (intro.) and (d), 107.09(1), (4) (intro.), (6), (7) and (8), 107.11(2); create s. Trans 107.02(17), 107.03(10); 107.08(2)(f), Wis. Admin. Code, relating to Driver Licensing of Persons with Chemical Abuse or Dependency.

ANALYSIS BY THE DEPARTMENT OF TRANSPORTATION

This rule amends Trans 107, relating to driver licensing of persons with chemical abuse or dependency problems. It conforms the existing rule with 1987 Wisconsin Act 3. It permits the referral out-of-state for assessments and driver safety plans of nonresidents and Wisconsin residents temporarily residing in another state. It expands Trans 107 to permit assessments by another state's program and referral to traffic safety schools or treatment facilities in other states. It permits the Department of Transportation to base licensing decisions on assessment or compliance reports from facilities in other states.

Subsequent to the completion of review of this rule by the appropriate standing committees, the Joint Committee for Review of Administrative Rules (JCRAR) requested the Department of Transportation to initiate permanent rules that would delete the present 5-year duration of the suspension of operating privileges of persons who have failed to comply with the assessment or driver safety plan requirement following a conviction of operating while intoxicated. In accordance with sec. 227.19(4)(b)4, Stats., the Department of Transportation is modifying this germane rule following the committee review period, and resubmitting it to the presiding officer in each house to expedite the requested change. The correspondence leading to this change is attached for your review.

FISCAL IMPACT

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

REGULATORY FLEXIBILITY ANALYSIS

This amendment has no significant impact on small business.

AUTHORITY FOR RULE

Pursuant to the authority vested in the State of Wisconsin, Department of Transportation by ss. 85.16(1) and 343.305(11), Stats., the Department of Transportation hereby amends the administrative rules interpreting the provisions of ss. 343.30(1q)(c)1. and 343.305(10)(c)1., 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 227.11, and 343.305(11), Stats., the purpose of this chapter is to establish the department's administrative interpretation 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)(10)(c), 343.305(9)(10)(d), 343.305(10)(em), 343.305(9)(10)(f), 343.32(2)(e), 343.40, 346.63(1), ~~(1m)~~ 346.63(2), 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(1) is amended to read:

Trans 107.02(1) "Assessment" means an examination of the person's use of chemicals and development of a rehabilitation or driver safety plan for the person by an approved public treatment facility as defined in s. 51.45(2)(c), Stats., or as defined by a treatment facility in another state.

SECTION 3. Trans 107.02(7) is amended to read:

Trans 107.02(7) "Driver safety plan" means:

(a) an 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.

(b) For offenses or arrests occurring on or after March 1, 1987, for nonresidents or residents temporarily residing in another state, "driver safety plan" means either an individualized plan under par. (a) or a program which satisfies the requirements of the other state.

SECTION 4. Trans 107.02(12) is amended to read:

Trans 107.02(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).

SECTION 5. Trans 107.02 (17) is created to read:

Trans 107.02(17) "Treatment facility in another state" means a facility in another state which provides assessment services or driver safety plan programs for persons who are nonresidents or

residents temporarily residing in another state whose arrest or offense occurred on or after March 1, 1987, and which meets the program or facility requirements of that state.

SECTION 6. Trans 107.03(6) is amended to read:

Trans 107.03(6) Court ordered assessment reports in accordance with s. 343.30(1q) or 343.305 ~~(9)~~, Stats.

SECTION 7. Trans 107.03(10) is created to read:

Trans 107.03(10) Assessment, driver safety plan, and reports from a treatment facility in another state.

SECTION 8. Trans 107.07(3) and (4) are amended to read:

Trans 107.07(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)~~(10)(d), Stats., and, when submitted to the department by the county department with documentation of the reason for changes in assessment findings or recommendations. As provided by ss. 343.30(1q)(d) and 343.305~~(9)~~(10)(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.

(4) If the department does not receive a report of compliance with the order to obtain an assessment within 60 days from the date of OWI conviction or revocation for improper refusal or if the department receives information that the court has not ordered an assessment, the department shall order an assessment under s. 343.30(1q)(f), or 343.305~~(9)~~(10)(f), Stats., and the person shall have 30 days to provide notification of compliance with assessment order or the license shall be canceled, denied or suspended as provided in s. Trans 107.08(1).

SECTION 9. Trans 107.08(1)(j) and (k) are amended to read:

Trans 107.08(1)(j) Under ss. 343.16(2)(a), 343.30(1q)(c) or (d), or s.343.305~~(9)~~(10)(c) or (d), Stats., failure to comply with a court ordered or department ordered assessment, or driver safety plan, or to pay an assessment fee, shall result in a suspension of the operating privilege, including an occupational or limited chauffeur license. An arrest for OWI after an assessment and prior to completion of a rehabilitation or driver safety plan shall be considered as noncompliance by the department. Nonpayment 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 county department, traffic safety school approved under s. 345.60, Stats., a treatment facility in another state, 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.

(k) When the court has ordered an occupational license, but because of requirements in ss. 343.10(1), 343.30(1q)(b), 343.305(9)(10)(b), 343.31(3m), or 343.35(1), Stats., the person is not eligible for licensing, the occupational license shall be denied.

SECTION 10. Trans 107.08(2) (intro.) and (d) are amended to read:

Trans 107.08(2) (intro.) APPROVAL. If all other reasons for license denial, cancellation, revocation, or suspension and related conditions for reinstatement are met, a person may be licensed when any of the following conditions are met:

(d) ~~When the department has received notice that a person has an OWI conviction and the operating privilege is presently suspended or canceled for noncompliance as a result of sub. (1)(d), (e) or (f), the person shall be eligible to reinstate the license upon receipt of a new driver safety plan and if all licensing requirements have been satisfied~~ is received after the person has an OWI conviction that occurs while the person is suspended or canceled for noncompliance as a result of pars. (1)(d), (e) or (f).

SECTION 11 Trans 107.08(2)(f) is renumbered Trans 107.08(3) and amended to read:

Trans 107.08(3) OCCUPATIONAL LICENSE ELIGIBILITY. (a) First OWI conviction. If the person has not had his or her license revoked or suspended under ch. 343 within the one year period immediately preceding the present revocation or suspension, and has a first OWI conviction, the person is eligible for a court issued temporary occupational license immediately and is not subject to the 15 day waiting period in s. 343.10, Stats.

(b) Improper refusal, persons under age 19. If the person has a first conviction of improperly refusing to submit to a test for intoxication for a violation of s. 346.63(2m) or a local ordinance in conformity therewith, the person is eligible for an occupational license under s. 343.10 after the first 15 days of the revocation period. The person shall not be required to comply with any assessment or driver safety plan for the improper refusal.

SECTION 12. Trans 107.08(2)(f) is created to read:

Trans 107.08(2)(f) When a treatment facility in another state submits a report showing the person has completed or is in compliance with an assessment or a program established to meet the requirements of the other state.

SECTION 13. Trans 107.08(3) ~~(intro.)~~ is renumbered
107.08(4) ~~(intro.)~~ and ^{(4)(intro.)} amended to read:

GJP
4/15/88

Trans 107.08(4) (intro.) DEPARTMENT ACTION IN LIEU OF COURT ACTION. As provided under ss. 343.30 (1q)(f) and 343.305~~(9)~~(10) (f), Stats., the department shall order:

SECTION 14. Trans 107.08(4) is renumbered Trans 107.08(5) .

SECTION 15. Trans 107.08(5) is renumbered Trans 107.08(6) and amended to read:

Trans 107.08(6) RECORD RETENTION. ~~Department records of licensing action are maintained for 5 years.~~ Computer records of suspension for noncompliance with assessment or driver safety plan are maintained until the person suspended is in compliance.

SECTION 16. Trans 107.09(1), (4) (intro.), (6), (7) and (8) are amended to read:

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

(4) Within 10 days of the written request for review under ss. 343.30(1q)(d) and 343.305~~(9)~~(10)(d), Stats., the department shall review the assessment or driver safety plan or amended driver safety plan. The driver safety plan shall be considered inappropriate if:

(6) When the driver safety plan is found to be inappropriate or the person is found to be in compliance with the driver safety plan, the suspension shall be released under the provisions of s. 343.39(1)(c) and (2), Stats., and the fee specified in s. 343.21(1)(j), Stats., shall not be charged for reinstatement of the license, under the provisions of s. 343.30(1q)(d) or 343.305~~(9)~~(10)(d), Stats., and

(7) When the driver safety plan is found to be inappropriate the person shall be requested to furnish the department with another assessment and driver safety plan within 30 days under s. 343.30(1q)(d), or 343.305~~(9)~~(10)(d), Stats.

(8) Under s. 343.30(1q)(d) or 343.305~~(9)~~(10)(d), Stats., the department shall grant a delay in the review decision at the written request of the person seeking the review.

SECTION 17. Trans 107.11(2) is amended to read:

Trans 107.11(2) When the ~~violation~~ offense or arrest date is ~~May-17-1982~~ March 1, 1987 or after, persons shall be considered subject to this chapter. ~~Violations~~ Offenses or arrests which

occurred prior to May ~~17~~ ~~1982~~ March 1, 1987 regardless of conviction date, shall be considered subject to provisions in effect prior to May ~~17~~ ~~1982~~ March 1, 1987, unless otherwise ordered by the court.

SECTION 18. Trans 107.11(3) is repealed.

SECTION 19. Trans 107.11(4) to (8) are renumbered Trans 107.11(3) to (7) and as renumbered Trans 107.11(3), (4) and (5) are amended to read:

Trans 107.11(3) For the purpose of counting the number of refusal revocations, OWI convictions, or arrests, all such conviction, refusal revocations, or arrests prior to, on, or after May 1, 1982 shall be counted by the department using the violation date of offense or arrest.

(4) Reductions in periods of revocation or suspension under ss. 343.30(1q)(h) and 343.305~~(9)~~(10)(g) shall be made by the department as provided in ss. 343.30(1q)(f) and 343.305~~(9)~~(10)(f), Stats.

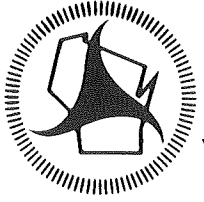
(5) The reinstatement date for suspensions for non-compliance with assessment or a driver safety plan under ss. 343.30(1q)(d) and 343.305~~(9)~~(10)(d), Stats., shall be the date the reinstatement fee is paid or the date the department receives the notice of compliance, whichever is later.

(End of Text)

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 15th day of April,
1988.

Ronald H. Fiedler, Deputy
for Ronald Fiedler, P.E.
Secretary
Wisconsin Department of Transportation



Wisconsin Department of Transportation

April 15, 1988

DIVISION OF MOTOR VEHICLES
4802 Sheboygan Avenue
P.O. Box 7949
Madison, WI 53707-7949

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APR 15 1988

Mr. Gary Poulson
Assistant Revisor of Statutes
30 On The Square
Suite 904
Madison, Wisconsin 53702


Revisor of Statutes
Bureau

Re: Clearinghouse Rule 87-76
Relating to driver licensing of persons with chemical abuse or
dependency problems; Trans 107

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.20, Wis. Stats., is a certified copy of CR 87-76, an administrative rule relating to . An additional, uncertified copy of CR 87-76 is enclosed to be used as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Deborah Jaeger
Program Analyst

Enclosures

cc: Tom Walker
Office of Public Affairs
James Thiel