

CR 87-128

CERTIFICATE

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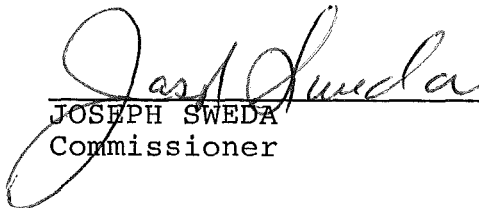
STATE OF WISCONSIN)
) s.s.
COMMISSIONER OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, JOSEPH SWEDA, Commissioner of Transportation and custodian of the official records do hereby certify that the rule relating to administrative suspension of operating privilege for operating a motor vehicle with a blood alcohol concentration of 0.1% or more was duly approved and adopted by this office on November 16th, 1987.

I further certify that this 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 hereunto set my hand and affixed the official seal of the Office of the Commissioner of Transportation at 212 East Washington Avenue, in the City of Madison, this 16th day of November, 1987.



JOSEPH SWEDA
Commissioner

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STATE OF WISCONSIN

NOV 16 1987

OFFICE OF THE COMMISSIONER OF TRANSPORTATION

Division of Statutes
Bureau

IN THE MATTER OF THE CREATION OF *
 CHAPTER OCT 7, WISCONSIN *
 ADMINISTRATIVE CODE, RELATING TO *
 ADMINISTRATIVE SUSPENSION OF * ORDER ADOPTING
 OPERATING PRIVILEGE FOR * RULE
 OPERATING A MOTOR VEHICLE WITH A *
 BLOOD ALCOHOL CONCENTRATION OF *
 0.1% OR MORE *

Analysis Prepared by the
Office of the Commissioner of Transportation

Summary of Rule. The purpose of this rule is to define the procedures for the administrative suspension of drivers who operate motor vehicles with a Blood Alcohol Content (BAC) of .10 or greater. This suspension was authorized by the legislature in 1987 Wis. Act 3 and is codified as sec. 343.305(8), Wis. Stats.

The rule specifically defines the responsibilities of law enforcement officers if a driver has a BAC of .10 or greater. The officer must take possession of the person's driver license, issue a Notice of Intent to Suspend and notify the driver that his or her operating privileges will be suspended at the end of 30 days. The rule specifically allows the officer, if appropriate, to accept the license as bail before it is forwarded to the Department of Transportation (Department).

After giving the driver the Notice of Intent to Suspend the officer shall within 5 days forward to the Department or to the Office of the Commissioner of Transportation (OCT) a copy of the Notice of Intent to Suspend and other reports relating to the incident. In addition, the Division of State Patrol shall send copies of the Intoxilyzer 5000 maintenance reports to the Department or OCT.

After receiving the Notice of Intent to Suspend the driver has 10 days to request an administrative review by either the Department or OCT. If a review is requested it must be completed within 30 days. The OCT will conduct reviews in Madison, Milwaukee and Waukesha. The Department will conduct reviews at the Department's full service (open 5 days a week) facilities or the home office of the Department's travel teams. The reviews will be held at the facility in, or near to, the county where the incident occurred. A map of the State of Wisconsin showing the location of administrative reviews is attached.

If a review is requested, it will be limited to the following issues:

1. Identity of the driver;
2. Whether the person was informed of Wisconsin's implied consent law;
3. Did the person have a BAC of .1% or more at the time the offense occurred;
4. Whether one or more of the tests indicated a BAC of .1% or more;
5. If more than one test was administered, were the results of all tests .1% or greater; and
6. Was there probable cause for the arrest.

The driver may appear at the review and may be represented by counsel. The arresting officer need not appear if the required reports have been submitted. Also, the officer may not be subpoenaed for this review. The results of the review must be in writing and contain notice of the driver's right to judicial review.

If the driver wishes to appeal the suspension, he or she must file a written petition with the clerk of the court having jurisdiction over the underlying citation. If a petition is filed it should be treated as a request for a speedy trial. In most cases the review and the trial will be held at the same time.

Initial Regulatory Flexibility Analysis. This rule will have no impact on small business.

Initial Fiscal Estimate. The Office of the Commissioner of Transportation estimates the cost of completing this program will not exceed the appropriation made as a result of the passage of 1987 Wis. Act 3.

Contact Persons. This rule was prepared by Jerry L. Hancock, Office of General Counsel, Wisconsin Department of Transportation, (608)266-8810 and Wesley R. Geringer, Bureau of Driver Licensing, Wisconsin Department of Transportation, (608)266-0614. At the Office of the Commissioner of Transportation contact Mary Ann Gerrard (608)266-3408.

Pursuant to the authority vested in the Wisconsin office of the commissioner of transportation by s. 189.02(1), Stats., the office of the commissioner of transportation hereby proposes the creation of Chapter OCT 7, Wisconsin Administrative Code, interpreting s. 343.305(8), Stats. as follows:

SECTION 1. Chapter OCT 7 is created to read:

CHAPTER OCT 7

ADMINISTRATIVE SUSPENSION OF OPERATING PRIVILEGE FOR OPERATING A
MOTOR VEHICLE WITH A BLOOD ALCOHOL CONCENTRATION OF 0.1% OR MORE

| | |
|----------------------------|----------------------|
| OCT 7.01 Purpose and Scope | OCT 7.04 Reviews |
| OCT 7.02 Definitions | OCT 7.05 Suspensions |
| OCT 7.03 Notice of Intent | OCT 7.06 Appeals |

OCT 7.01 PURPOSE AND SCOPE. As authorized by s. 189.02(1), Stats., the purpose of this chapter is to establish the department's administrative interpretation of ss. 343.305(8), Stats., relating to arrest for operating with a blood alcohol concentration of 0.1% or more, administrative suspension of operating privilege and reviews therefor.

Note: Forms used in this chapter are MV 3519 notice of intent to suspend operating privilege/temporary driving permit and MV 3517 notice and decision of administrative suspension review. A sample copy of these forms may be obtained, free of charge, from the Wisconsin Department of Transportation, Bureau of Driver Licensing, P. O. Box 7917, Madison, WI 53707-7917.

OCT 7.02 DEFINITIONS. In this chapter:

(1) "Blood alcohol concentration of 0.1% or more" means a blood alcohol concentration of 0.1% or more by weight of alcohol in a person's blood or 0.1 gram or more of alcohol in 210 liters of a person's breath.

(2) "Department" means the Wisconsin department of transportation.

(3) "Hearing examiner" means an examiner or officer of either the department of transportation or the office of the commissioner of transportation authorized to conduct administrative reviews.

(4) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he or she is employed to enforce.

(5) "Office of the commissioner" means the office of the commissioner of transportation.

(6) "Office of the department" means an office of the department of transportation that is staffed by personnel of the bureau of field services district 5 days a week, or is the home office location in the assigned district for bureau of field services personnel who regularly travel to other locations.

OCT 7.03 NOTICE OF INTENT TO SUSPEND OPERATING PRIVILEGE. If a person is tested for blood alcohol concentration in accordance with s. 343.305, Stats., and test results indicate a blood alcohol concentration of 0.1% or more, the law enforcement officer shall:

(1) Take possession of the license issued to the person that was issued under ch. 343, Stats. If the person is operating under a license issued by another jurisdiction, the law enforcement officer shall take possession of that license. The license shall be forwarded to the department. Any valid Wisconsin operators license may be accepted as a deposit pursuant to s. 345.23(2)(c), Stats., prior to being forwarded to the department.

(2) Provide the person with a form that:

(a) Serves as a 30 day temporary operator's license, provided the person has a valid license status.

(b) Notifies the person that his or her operating privilege will be administratively suspended in 30 days.

(c) Notifies the person of the right to obtain administrative and judicial review of the suspension.

(d) Contains a section for the person to use to request an administrative review.

(3) Within 5 days after the date of the notice of intent to suspend operating privilege, forward the license, a copy of the alcoholic influence report; a copy of the form used to inform the accused person of Wisconsin's implied consent law; a copy of the arrest report; a copy of the chemical test result that is the basis of the suspension and, if available, the results of any other chemical tests related to the incident; and a copy of the notice of intent to suspend operating privilege to the nearest division of motor vehicles headquarters or, if the offense occurred in the county of Milwaukee, Waukesha or Dane, to the office of the commissioner.

(4) If the information in (3) is provided, the officer need not appear at the administrative review nor comply with a subpoena to compel his or her appearance.

(5) If a review is requested and the information required in (3) is not received or postmarked within 5 days after the date of the notice of intent to suspend, the suspension shall be vacated.

(6) Upon request, copies of the information in (3) shall be provided to the person or his or her representative.

(7) In addition to the information submitted by the officer, a copy of all intoxilyzer 5000 maintenance reports shall be submitted on a regular basis by the division of state patrol to the location indicated in sub. (3).

OCT 7.04 REVIEWS. (1) Written request for a review must be received or postmarked within 10 days after the date of the notice of intent to suspend operating privilege under s. OCT 7.03.

(2) Reviews shall be conducted:

(a) By the department at the office in the county where the offense allegedly occurred or, if the offense allegedly occurred in a county in which the department does not maintain an office, at the office of the department nearest to the location where the offense allegedly occurred.

(b) By the office of the commissioner of transportation in the county where the offense allegedly occurred, if the offense allegedly occurred in the county of Milwaukee, Waukesha or Dane.

(c) Within the 30 day period after the date of the notice of intent to suspend operating privilege.

(3) The issues the person wishes to contest at the review may be specified with the request for review. At the review, the person may present evidence and may be represented by counsel. The issues shall be limited to any of the following:

(a) The correct identity of the person.

(b) Whether the person was informed of the options regarding tests as required under s. 343.305 (4) Stats.

(c) Whether the person had a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred.

(d) Whether one or more tests were administered in accordance with s. 343.305, Stats.

(e) If one or more tests were administered in accordance with s. 343.305, Stats., whether each of the test results for those tests indicate the person had a blood alcohol concentration of 0.1% or more.

(f) Whether probable cause existed for the arrest.

(4) Upon receipt of a request for review, the examiner shall schedule the time and place and send notice to the person by first class mail at least 5 days prior to the review. The 5 day notice may be replaced by actual notice if a shorter period is necessary in order to hold the review within the 30 day period after the date of the notice to suspend operating privilege.

(5) If the person requests a review but does not appear at the time and place scheduled, the administrative suspension shall take effect as provided in s. OCT 7.05.

(6) The person may submit written arguments limited to the issues in sub. (3) if the written arguments are submitted with the request for review and the person indicates the written arguments are in lieu of a personal appearance.

(7) If at any time the person submits written evidence from a facility certified by the state laboratory of hygiene and meeting the requirements of s. 885.235(1) indicating a blood alcohol concentration of less than 0.1%, the suspension will be vacated.

(8) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria in s. 343.305(8)(b), Stats., for administrative suspension have not been satisfied, or that the person did not have a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred:

(a) The examiner shall notify the person in writing and shall order that the administrative suspension of the person's operating privilege be rescinded; and

(b) The person's license shall be returned without payment of a reinstatement fee under s. 343.21(1)(j), Stats.

(9) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria for administrative suspension have been satisfied and that the person had a blood alcohol concentration of 0.1% or more at the time the offense allegedly occurred:

(a) The examiner shall notify the person in writing; and

(b) The administrative suspension shall take effect as provided in s. OCT 7.05 and s. 343.305(7), Stats.

(10) Examiners shall conduct reviews in an impartial and detached manner. The result of an individual review may not be considered in any personnel action involving the examiner or performance review of the examiner by the department or by the office of the commissioner.

OCT 7.05 SUSPENSIONS. The suspension shall be effective beginning at 12:01 A. M. on the 31st day after the date of the notice of intent to suspend operating privilege under s. OCT 7.03, unless the department is notified by the examiner that the criteria in s. 343.305(8)(b), Stats., for administrative suspension have not been satisfied.

[NOTE: APPEALS. (1) If an aggrieved person petitions for judicial review, the court may treat the petition in the same manner as a request for speedy trial.

(2) The petition for review should be in writing and filed with the clerk of court having jurisdiction over the citation issued to the defendant at the time the notice of intent to suspend was given.

(3) A review may be held at time of trial.

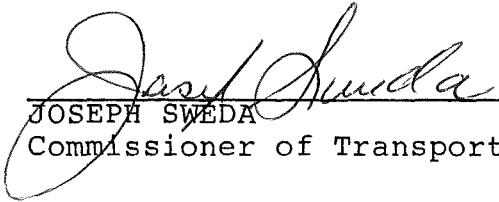
(4) Any review is a de novo review of the issues raised in the petition.

(5) To sustain the suspension, the court must find that there is clear, satisfactory and convincing evidence to satisfy each of the issues identified in s. 343.305(8)(b)2, Stats.]

(END OF RULE TEXT)

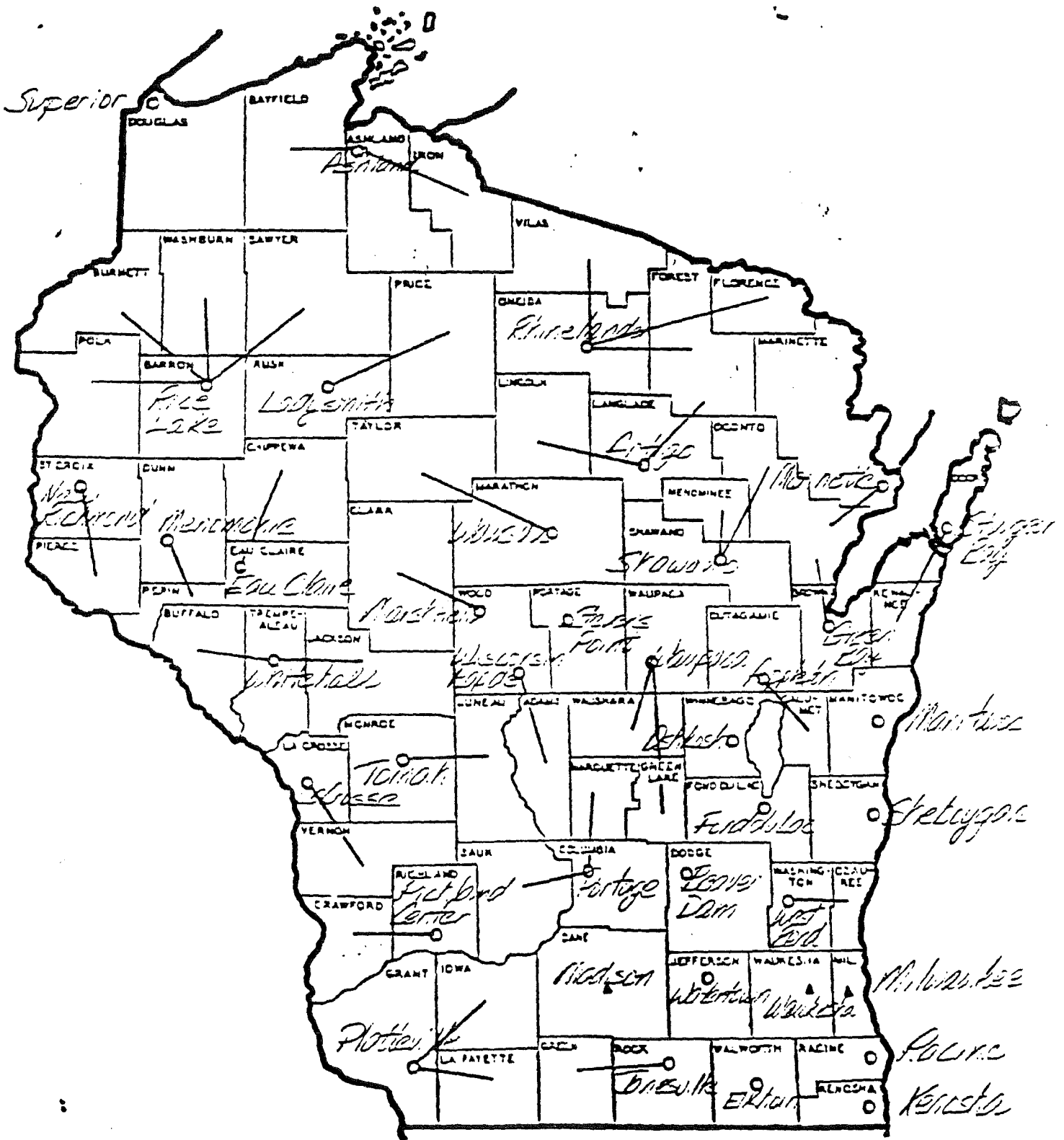
This rule shall take effect upon the first day of the month following publication in accordance with s. 227.22(2), Stats.

Signed at Madison, Wisconsin this
16th day of November, 1987.



JOSEPH SWEDA
Commissioner of Transportation

ADMINISTRATIVE REVIEW LOCATIONS



○ Department of Transportation Facilities
 ▲ Office of the Commissioner of Transportation Facilities