

CR 90-142

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **demerit point values for traffic violations and revocations and suspensions of operating privileges**, was duly approved and adopted by this Department on October 24th, 1990.

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 Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 24th day of October, 1990.



for Donald H. Jorgensen, Deputy
RONALD R. FIEDLER, P.E.
Secretary

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OCT 24 1990
3:50 pm
Revisor of Statutes
Bureau

1-1-91

IN THE MATTER OF a rule to repeal ss. Trans 101.02(27), 101.05(2) and 101.07(6), to renumber ss. Trans 101.02(23), (25) and (26), 101.05(3) and 101.07(7), (8), (10) and (11); to renumber and amend ss. Trans 101.02(24), 101.04(7) and 101.07(9), to amend ss. Trans 101.02(8)(a) as renumbered and 101.04(1) to (3); to repeal and recreate ss. Trans 101.01(2), 101.02(intro.) and (1) to (22), 101.04(5) and 101.05(1) and to create 101.04(7)(b), Wisconsin Administrative Code, relating to demerit point values for traffic violations and revocations and suspensions of operating privileges.

ORDER ADOPTING RULE**RECEIVED**

OCT 24 1990

Revisor of Statutes
BureauAnalysis Prepared by the Wisconsin Department of TransportationStatutory Authority: ss. 85.16(1), 343.02(1) and 343.32(2), Stats.Statutes Interpreted: s. 343.32, Stats.

General Summary of Rule. The Department of Transportation (Department) has general authority under s. 85.16(1), Stats., to promulgate rules necessary to the discharge of the powers, duties and functions vested in the Department, among them the administration and enforcement of numerous driver licensing provisions. The Department is also authorized under s. 343.02(1), Stats., to promulgate the rules necessary to administer and enforce ch. 343, Stats., the driver licensing chapter, and is specifically authorized under s. 343.32, Stats., to adopt an administrative rule assigning demerit points to traffic convictions according to their seriousness in order to identify individuals who are habitually reckless or negligent drivers or who have repeatedly violated traffic laws and to revoke or suspend their operating privileges.

The enactment of 1989 Wisconsin Act 105 resulted in the creation of new offenses for which demerit points must be assessed and specifies others as nonassessable violations for regular and commercial motor vehicle operators. The Act eliminates the present regular, chauffeur and school bus licenses and adopts a single classified license system that incorporates federal requirements for the regulation of operators of commercial motor vehicles. This rule brings ch. Trans 101, Wis. Admin. Code, into conformity with 1989 Wisconsin Act 105.

The amendments to ss. Trans 101.04(1) and (3), Wis. Admin. Code, bring the rule into conformity with statutory changes relating to point assessment for chauffeur licenses and clarify the Department's policy regarding the revocation and suspension of the chauffeur

license under this rule. The amendment to s. Trans 101.04(2), Wis. Admin. Code, clarifies the Department's policy requiring revocation under this section if there has been a previous withdrawal of operating privileges under ch. 343, Stats., under certain conditions.

The repeal and recreation of s. Trans 101.04(5), Wis. Admin. Code, clarifies the effective date of departmental revocations and suspensions based on license surrender. Section 343.305(7) and (9), Stats., requires surrender of a license in certain cases.

The amendment to s. Trans 101.04(7)(a), Wis. Admin. Code, and the creation of s. Trans 101.04(7)(b), Wis. Admin. Code, clarify the Department's policy under s. 343.30(1), Stats., of honoring court-ordered revocations or suspensions for the same violation that would cause departmental revocation or suspension under the point system.

This rule repeals and recreates s. Trans 101.05(1), Wis. Admin. Code, and repeals s. Trans 101.05(2), Wis. Admin. Code, to combine the information regarding point value upon reinstatement or suspension termination into one subsection. Statutory references to ch. 800 and ss. 161.495 and 343.305(10), Stats., are added to clarify the Department's policy that the provision for reducing total accumulated demerit points when a person's operating privilege is reinstated does not apply in certain cases.

Final Regulatory Flexibility Analysis. This rule has no significant impact on small business.

Final Fiscal Estimate. The Department anticipates no fiscal effect from the promulgation of these rule changes.

Copies of Rule. Copies of this rule are available without cost by calling or writing the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 255, Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin, 53707, telephone (608) 266-2233. Hearing impaired individuals may contact the department using TDD (608) 266-0396.

Contact Persons. Persons with questions about this rule may call Allan Johnson, telephone (608) 266-1483 or Patricia McCallum, telephone (608) 266-8198. Legal questions about this rule may be addressed to the Office of General Counsel, Wisconsin Department of Transportation, P.O. Box 7910, Madison, WI 53707, telephone (608) 266-8810.

RULE TEXT

Under the authority vested in the Wisconsin department of transportation by ss. 85.16(1) and 343.02(1), Stats., the department of transportation hereby proposes to affect chapter Trans 101, Wis. Admin. Code, implementing s. 343.32, Stats., as follows:

SECTION 1. Trans 101.01(2) is repealed and recreated to read:

Trans 101.01(2). The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter.

SECTION 2. Trans 101.02(intro.) and (1) to (22) are repealed and recreated to read:

Trans 101.02 POINT SCHEDULE. Pursuant to s. 343.32(2), Stats., the department has established a demerit point system to identify habitually reckless or negligent operators or those who have repeatedly violated traffic laws. The following scale lists violations according to the number of demerit points assessed, with higher point values being assessed for more severe offenses:

(1) **SIX DEMERIT POINT VIOLATIONS.** The department shall assess 6 demerit points for any of the following violations:

- (a) Failure to perform duty after accident under s. 346.67 or 346.68, Stats.
- (b) Fleeing or attempting to elude an officer.
- (c) Operating after license is revoked or suspended.
- (d) Operating commercial motor vehicle while disqualified.
- (e) Operating commercial motor vehicle with alcohol concentration of 0.04 or more but less than 0.1 and causing injury.
- (f) Operating while intoxicated and causing injury.
- (g) Operating while under influence of intoxicant or controlled substance.
- (h) Racing on public highway or engaging in a contest of speed or endurance.
- (i) Reckless driving.
- (j) Speeding 20 miles per hour or more in excess of lawful or posted speed.
- (k) Violation of occupational license restrictions.

(2) **FOUR DEMERIT POINT VIOLATIONS.** The department shall assess 4 demerit points for any of the following violations:

- (a) Deviating from lane of traffic.
- (b) Driving on wrong side of highway.
- (c) Driving too fast for conditions.
- (d) Failure to have vehicle under control.
- (e) Failure by operator to stop for school bus when red lights are flashing.
- (f) Failure to yield right of way or failure to yield right of way to emergency vehicle.
- (g) Imprudent speed.
- (h) Inattentive driving.
- (i) Speeding more than 10 miles per hour but less than 20 miles per hour in excess of lawful or posted speed.
- (j) Unnecessary acceleration.

(3) **THREE DEMERIT POINT VIOLATIONS.** The department shall assess 3 demerit points for any of the following violations:

- (a) Arterial sign violation.
- (b) Driving against traffic or driving the wrong way on one way street.
- (c) Failure to dim lamps or lights.
- (d) Failure to give appropriate signal.
- (e) Failure to obey traffic sign or signal.
- (f) Following vehicle too closely.
- (g) Illegal turn.
- (h) Improper brakes.

(i) Improper or unlit or missing lamps or lights, including clearance lamps, spotlamps, head lamps, brake lamps, tail lamps and signal lamps, but not including use of cycle headlamps during daylight hours or registration plate lamps.

(j) Operating with multiple licenses.

(k) Operating without having obtained an operator's license or with a license which has expired, and including the following:

1. Operating as a chauffeur without having obtained a chauffeur license.
2. Operating school bus without having obtained a school bus operator's license.
3. Operating Type 1 motorcycle without endorsement or motorcycle license.

(l) Passing illegally.

(m) Possession of intoxicating beverage while operating or being on duty time with respect to a commercial motor vehicle.

(n) Speeding 10 miles per hour or less in excess of lawful or posted speed.

(o) Unlawful commercial motor vehicle license or endorsement.

(p) Violation of license restriction.

(4) TWO DEMERIT POINT VIOLATIONS. The department shall assess 2 demerit points for any of the following violations:

(a) Defective speedometer.

(b) Obstructed view or control, including illegally tinted windows.

(c) Obstructing traffic, or driving excessively slowly.

(d) Parking on highway in traffic lane.

(e) All other moving traffic convictions except as provided in sub. (5).

(5) ZERO DEMERIT POINT VIOLATIONS. The department shall not assess demerit points for any of the following violations:

- (a) Child safety restraint violation.
- (b) Failure to fasten seat belt.
- (c) Failure to report an accident under s. 346.69 or s. 346.70, Stats.
- (d) Failure to transfer certificate of title.
- (e) Failure to wear mandatory protective headgear while operating a type 1 motor cycle.
- (f) Falsified accident report.
- (g) Falsified application for operator's license, identification card or motor vehicle title or registration.
- (h) Improper license plates.
- (i) Improper muffler.
- (j) Intoxicant in vehicle carrying underage person.
- (k) License not in operator's immediate possession.
- (l) Littering on highway.
- (m) No motorcycle headlamps during daylight hours or no registration plate lamps.
- (n) Open intoxicant in vehicle.
- (o) Operating a Type 1 motorcycle with handlebars that exceed the legal height limit.
- (p) Operating a Type 1 motorcycle with rear passenger pegs that are at an illegal height.
- (q) Operating a commercial motor vehicle or being on duty time with respect to a commercial motor vehicle while having any measured alcohol concentration above 0.0 but less than 0.04 or within four hours of having consumed or having been under the influence of an intoxicating beverage, regardless of its alcohol content.

(r) Operating a commercial motor vehicle with an alcohol concentration of 0.04 or more but less than 0.1 and not causing injury.

(s) Operating illegally with studded tires.

(t) Permitting unauthorized person to operate.

(u) Refusal to submit to breath or chemical test for intoxication.

(v) Under age 19, operating motor vehicle with any measured alcohol content.

(w) Unnecessary blowing or sounding of horn.

(x) Unregistered vehicle.

(y) Violation of size, weight or load restriction.

SECTION 3. Trans 101.02(23) is renumbered 101.02(6).

SECTION 4. Trans 101.02(24) is renumbered 101.02(7) and amended to read:

Trans 101.02(7). When restriction, suspension, or revocation of operating privileges is ordered by a court under s. 343.30, Stats., the point value charged against the record of the offender shall be in strict accordance with the charge for which conviction is made as described in subs. (1) ~~through (44)~~ to (5), except as provided in sub. ~~(47)~~ (8)(a).

SECTION 5. Trans 101.02(25) is renumbered 101.02(8), and Trans 101.02(8)(a), as renumbered, is amended to read:

Trans 101.02(8)(a). The demerit points charged against the record of any person who holds a probationary license on the date of the conviction or any unlicensed person who would be issued a probationary license if proper application were made and all other requirements for license were met, shall have the demerit point value shown for the convictions set forth in subs. (1) ~~through (43)~~ to (4) increased by 2 points on the second and all subsequent convictions. ~~Demerit points accumulated while operating as a chauffeur by the holder of a~~

~~probationary license shall be increased by 2 points against the probationary license, but shall not be increased by 2 points when applied against the chauffeur license.~~

SECTION 6. Trans 101.02(26) is renumbered 101.02(9).

SECTION 7. Trans 101.02(27) is repealed.

SECTION 8. Trans 101.04(1) to (3) are amended to read:

Trans 101.04 SUSPENSION OR REVOCATION OF LICENSE. (1) Demerit points accumulated when a person is not operating as a chauffeur shall not be counted against the chauffeur license unless specifically required by law, but demerit points accumulated by a person when operating as a chauffeur, or when the law requires assignment of points against the chauffeur license, shall be counted against both the chauffeur license and all other operator's licenses. This subsection applies to revocation and suspension orders issued prior to January 1, 1991.

(2) The department shall suspend or revoke the operating privilege of any person whose driving record shows that 12 points in 12 months from the date of violation have been accumulated. Any person who has ~~not~~ had the operating privilege suspended or revoked under ch. 343, except s. 343.30(6) or 343.345, Stats., shall have the operating privilege ~~suspended~~ revoked. In all other cases the operating privilege shall be ~~revoked~~ suspended.

(3) The department shall revoke, or suspend if sub. (2) applies, the chauffeur license of any person whose driving record shows an accumulation of 12 points in 12 months for offenses committed while operating as a chauffeur or when the law requires assignment of points against the chauffeur's license. Revocation and suspension orders issued on or after January 1, 1991, shall affect all operating privileges.

SECTION 9. Trans 101.04(5) is repealed and recreated to read:

Trans 101.04(5). The effective date of departmental revocations or suspensions under this chapter shall be determined as follows:

(a) If the license has not been surrendered for a previous action, the effective date shall be the date the order was mailed.

(b) If an unexpired revoked or suspended license has been surrendered for a previous action, the effective date shall be the date of the license surrender, or the date of conviction causing the new revocation or suspension, whichever is later.

(c) If a valid license has been surrendered, the effective date shall be the date of the first subsequent revocation or suspension, or the date of conviction causing the new revocation or suspension, whichever is later. If there has been no subsequent withdrawal after the surrender of a valid license, the effective date shall be the date the order was mailed.

SECTION 10. Trans 101.04(7) is renumbered 101.04(7)(a) and amended to read:

Trans 101.04(7)(a) ~~Any~~ A court ordered revocation for the same violation shall supersede a revocation or suspension under this section, ~~except that the minimum length of any revocation or suspension shall be 2 months.~~

SECTION 11. Trans 101.04(7)(b) is created to read:

Trans 101.04(7)(b) A court ordered suspension for the same violation shall supersede a suspension under this section, except that the following shall apply:

1. The person's point accumulation may not exceed 15 in a one-year period.
2. The minimum length of suspension shall be 2 months.

SECTION 12. Trans 101.05(1) is repealed and recreated to read:

Trans 101.05 DETERMINATION OF POINT VALUE AT REINSTATEMENT.

(1) The department, upon issuing a reinstated operator's license or upon return of a license

which has been suspended, shall reduce the accumulated point value to 6 points. If at the time of reinstatement or suspension termination, the demerit point value in the immediately preceding 12 month period is less than 6, the lesser point value shall be carried forward in the record. Revocations and suspensions under chs. 48, 344, 345, 800, Stats., and ss. 161.495(2), 343.30 (1q)(d), 343.30(6), 343.305(10) and 343.345, Stats., shall not qualify for point reduction under this section.

SECTION 13. Trans 101.05(2) is repealed.

SECTION 14. Trans 101.05(3) is renumbered 101.05(2).

SECTION 15. Trans 101.07(6) is repealed.

SECTION 16. Trans 101.07(7) and (8) are renumbered 101.07(6) and (7).

SECTION 17. Trans 101.07(9) is renumbered 101.07(8) and amended to read:

Trans 101.07(8) No reductions in points under this section ~~will~~ shall be permitted when a person accumulates sufficient demerit points to require suspension or revocation under this chapter.

SECTION 18. Trans 101.07(10) and (11) are renumbered 101.07(9) and (10).

(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.

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Signed at Madison, Wisconsin this 24th
day of October, 1990.

Donald R. Fiedler, P.E.

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



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
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October 24, 1990

Mr. Gary Poulson
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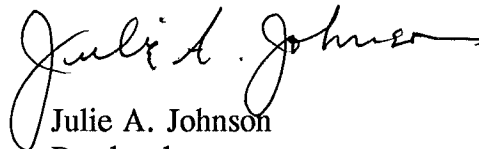
RE: **CLEARINGHOUSE RULE 90-142**

In the Matter of the Adoption of **TRANS 101**, Wisconsin Administrative Code, Relating to Demerit Point Values for Traffic Violations and Revocations and Suspensions of Operating Privileges

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-142**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Joyce Gelderman
Wes Geringer
Al Johnson
Patricia McCallum