

CR 90-150

CERTIFICATE

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OCT 18 1990

4:00 pm
Revisor of Statutes
Bureau

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 **commercial motor vehicle alcohol use regulations**, was duly approved and adopted by this Department on October 15, 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 17th day of October, 1990.



Donald H. Jorgensen, Deputy

for RONALD R. FIEDLER, P.E.
Secretary



FILE COPY

Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

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

September 20, 1990

Senator Rodney Moen
Acting Chair
Senate Transportation, Conservation and Mining Committee
Room 36 South, State Capitol
Madison, WI 53703

Representative Cletus Vanderperren
Chair, Assembly Committee on Highways
Room 121 West, State Capitol
Madison, WI 53702

Dear Senator Moen and Representative Vanderperren,

The Joint Committee for Review of Administrative Rules has suggested that we add some language to clarify the fact that employers may not coerce employees to operate a commercial motor vehicle in violation of §346.63(7)(a), Stats., the "not-a-drop" law that applies to commercial motor vehicle operators. It is our belief that the legislature intended this result in adopting §343.245(3)(b)3, Stats., which prevents an employer from allowing a person to operate a commercial motor vehicle if the person is subject to an out of service order in any state.

Accordingly, pursuant to §227.19 (4)(b)3, Stats., the department hereby proposes the following germane provision be added to Chapter Trans 119 (CR 90-150):

Trans 119.03 PERSONS SUBJECT TO OUT OF SERVICE ORDERS.

Under s. 343.245 (3) (b) 3, Stats., a person is subject to an out of service order if the person operates a motor vehicle in violation of s. 346.63 (7) (a), Stats., or in violation of any federal or state law or regulation for which the person could be issued an out of service order.

NOTE: This rule is adopted to clarify the drafters intent that an employer is subject to s. 343.245 sanctions if the employer orders or allows an employee to operate a commercial motor vehicle when the employee would violate Wisconsin's "not-a-drop" law if the employee operated a commercial motor vehicle. It is not intended to limit the scope of s. 343.245(3)(b)3, Stats.

Senator Rodney Moen
Representative Cletus Vanderperren
September 20, 1990
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The purpose of this proposed rule is to protect employees from employers coercing them to work after the employees have been drinking. The rule is intended to clarify that an employer who so acts will be violating section 343.245 (3)(b)3, Stats., and will be subject to the criminal penalties set forth therein. The department believes this sanction would be in addition to any independent right of action the employee might have against the employer under the doctrine established in Brockmeyer v. Dun & Bradstreet, 113 Wis. 2d 561, 335 N.W.2d 834 (1983).

The department would also propose that the title of the chapter be amended to "Commercial Motor Vehicle Alcohol Use Regulations."

Thank you for assistance in this matter.

Sincerely,



Ronald R. Fiedler, P.E.
Secretary

cc: Senator John R. Plewa
Representative John H. Antaramian
Gary L. Paulson, Asst. Revisor of Statutes, Administrative Code

RRF/jjs

IN THE MATTER OF a rule to create ch.
Trans 119 of the Wisconsin Administrative
Code, relating to Commercial Motor
Vehicle Alcohol Use Regulations.

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 343.02, Stats.

STATUTES INTERPRETED: ss. 343.305(7)(b), 343.305(9), 343.315(2)(g), and 346.63(7), Stats.

General Summary of Rule. The purpose of this rule is to establish the procedure by which law enforcement officers issue 24 hour out of service orders to operators of commercial motor vehicles and report those orders to the department.

24 Hour out of service orders are issued to persons who:

- (1) refuse chemical testing;
- (2) submit to chemical tests and have a BAC in excess of 0.00;
- (3) operate a motor vehicle within 4 hours of consuming an intoxicant;
- (4) operate a motor vehicle within 4 hours of being under the influence; or
- (5) possess intoxicants (other than intoxicants which are part of the driver's load).

Persons issued 24 hour out of service orders are prohibited from driving commercial motor vehicles for the 24 hour period immediately following issuance of the order. They are not, however, prohibited from driving non-commercial vehicles. In some instances, driver's licenses are taken from them. Therefore, a temporary receipt is issued to drivers whose licenses are taken. The receipts allow the operator to drive non-commercial vehicles for 24 hours.

Persons whose licenses will be subject to administrative suspension for operating under the influence or refusing chemical tests also will receive notices of intent to suspend or revoke which operate as 30 day temporary licenses authorizing the driver to operate a motor vehicle of the same class as the license taken from the person.

The rule requires officers to supply the department with copies of the temporary driving receipts, chemical test results and 24 hour out of service orders within 5 days after issuance, but allows chemical test results to be submitted at such later date as they become available.

Regulatory Flexibility Analysis. This rule will have no adverse impact on small businesses.

Fiscal Estimate. The Department's preliminary estimate is that the cost of training Department personnel, revising the driver licensing manual, and any necessary data processing changes can be absorbed by existing programs.

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 Office Building, 4802 Sheboygan Avenue, P.O. Box 7910, Madison, WI 53707, (266)-2233. Hearing impaired persons may contact the department using TDD (608) 266-3096.

Contact Person. Persons with questions about this rule may contact Allan Johnson (608) 266-1483 or Mary Jackson (608) 267-2086. 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, (608) 266-8810.

TEXT OF RULE

Under the authority vested in the Wisconsin department of transportation by ss. 85.16 and 343.02, Stats., the department hereby proposes to create Chapter Trans 119 as follows:

SECTION 1. CHAPTER TRANS 119 is created to read:

CHAPTER TRANS 119

COMMERCIAL MOTOR VEHICLE ALCOHOL USE REGULATIONS

Trans 119.01 DEFINITIONS. (1) The words and phrases defined in s. 340.01, s. 343.01, and s. 343.04, Stats., have the same meaning in this chapter unless a different definition is specifically provided in this chapter.

(2) Non-commercial motor vehicle means a motor vehicle that is not a commercial motor vehicle.

Trans 119.02 24 HOUR OUT OF SERVICE ORDERS. (1) If a person refuses to submit to chemical testing under s. 343.305, Stats., or is issued a citation for a violation of s. 346.63(7), Stats., an out of service order shall be issued notifying the operator that commercial motor vehicle operation is prohibited for the 24 hour period following issuance of the out of service order.

(2) If the arresting officer takes possession of the operator's license under s. 343.305(7)(b), Stats., and the operator's driving status is valid, the officer shall issue the

operator a 24 hour temporary driving receipt for the operation of non-commercial vehicles. The driving receipt shall be subject to the same restrictions as the license taken by the officer.

(3) The arresting officer shall forward copies of the out of service order, chemical test results and temporary driving receipt, if any, to the department within 5 days of issuing the out of service order. Chemical test results may be forwarded to the department at the time they become available if they are not available within the 5 days following issuance of the citation and they are not forwarded with the other documents.

NOTE: s. 346.63(7), Stats., is Wisconsin's absolute sobriety statute for commercial motor vehicle operators. An officer is required to take the operator's license if the operator refuses chemical tests under s. 343.305, Stats., or has a BAC in excess of .10 under s. 343.305(7), Stats. The officer may take the operator's license for violation of 346.63(7). Form used: MV3546.

Trans 119.03 PERSONS SUBJECT TO OUT OF SERVICE ORDERS. Under s. 343.245(3)(b)3, Stats., a person is subject to an out of service order if the person operates a motor vehicle in violation of s. 346.63(7)(a), Stats., or in violation of any federal or state law or regulation for which the person could be issued an out of service order.

NOTE: This rule is adopted to clarify the drafters intent that an employer is subject to s. 343.245 sanctions if the employer orders or allows an employee to operate a commercial motor vehicle when the employee would violate Wisconsin's "not-a-drop" law if the employee operated a commercial motor vehicle. It is not intended to limit the scope of s. 343.245(3)(b)3, Stats.

(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 17th day of October, 1990.

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



Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

October 17, 1990

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Revisor of Statutes
Bureau

Mr. Gary Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr. Blvd.
2nd Floor
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 90-150**

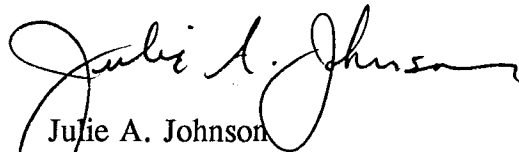
In the Matter of the Adoption of **TRANS 119**, Wisconsin Administrative Code, Relating to Commercial Motor Vehicle Alcohol Use Regulations

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-150**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

JCRAR suggested we add a germane provision to Trans 119 (see enclosed copy of our September 20, 1990, letter). The rule now contains this provision.

Sincerely,


Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Joyce Gelderman
Wes Geringer
Mary Jackson