

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 95-044**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

Section Trans 103.03 (4) appears to conflict with s. 351.02 (1) (d), Stats. The statutory language provides that if more than one offense counted for purposes of the habitual traffic offender law arises out of the same occurrence, all of those offenses shall be treated as one offense, on the first such occasion if the person charged has no record of prior offenses within the preceding five-year period. Section Trans 103.03 (4) provides that in determining whether to revoke a person’s operating privilege under the habitual traffic offender law, the department will not count a refusal to submit to chemical testing as a separate incident if the refusal arises out of the same incident as a conviction for operating while intoxicated or a similar offense. The language in s. Trans 103.03 (4) does not impose the conditions, provided for under the statute, that the offense be a first offense or that the person charged have no record of prior offenses within the preceding five-year period. The department should explain why there is statutory authority for s. Trans 103.03 (4).

#### **2. Form, Style and Placement in Administrative Code**

- a. Chapter Trans 103 needs a title (e.g., HABITUAL TRAFFIC OFFENDERS).
- b. Section Trans 103.03 (3) should be drafted in the active voice and “may not” should replace “will not.” Therefore, it should begin: “The department may not count....”

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

In the fiscal effect portion of the analysis to Clearinghouse Rule 95-044, the department references 1985 Wisconsin Act 70 as the act providing the department with authority to administratively revoke the operating privilege of habitual traffic offenders. The correct reference is 1985 Wisconsin Act 71.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In s. Trans 103.05 (3), it is suggested that the word “has” be placed after the first occurrence of the word “license.”

b. Section Trans 103.05 (4) provides that if all convictions that form the basis for a habitual traffic offender or repeat habitual traffic offender revocation order occurred in another jurisdiction, the effective date of the habitual traffic offender or repeat habitual traffic offender revocation order shall be the date of the “most recent conviction” in the other jurisdiction. In all of the other subsections of s. Trans 103.05, the term “latest conviction” is used, apparently to have the same meaning as is intended by the phrase “most recent conviction” in sub. (4). Therefore, it is suggested that the term “latest conviction” also be used in sub. (4).

c. Section Trans 103.05 provides rules for determining the effective date of habitual traffic offender and repeat habitual traffic offender revocations under various circumstances. However, it is not clear that the subsections providing for determination of the effective dates of habitual traffic offender or repeat habitual traffic offender revocations are mutually exclusive. Therefore, it appears that different effective dates for revocations could be determined for offenses occurring under identical circumstances. For example, sub. (5) provides that if the order is not issued within six months of the date of the latest conviction that forms the basis for the revocation order, the effective date of the revocation is the date six months after the latest conviction that forms the basis for the revocation. Does this subsection supersede the determination of effective dates as provided under subs. (2), (3) and (4)? If so, sub. (5) should be revised to state that fact explicitly. In addition, s. Trans 103.05 (1) provides the general rule that the effective date of a revocation order shall be the date the order is mailed. Subsection (5) provides that the effective date of a revocation is the date six months after the latest conviction if the revocation order is not issued within six months of the date of the latest conviction. Is the date of issuance the same as the date of mailing? If so, only one term should be used.

d. It is suggested that s. Trans 103.06 be revised to explain what are the consequences that follow when an habitual traffic offender or repeat habitual traffic offender revocation order is “amended.”