

CR 81-248

C E R T I F I C A T E

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF TRANSPORTATION )

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OCT 7 1982  
9:40 am  
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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Owen Ayres, 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 Driver Licensing of Persons with Chemical Abuse or Dependency problems and amendments to TRANS 101 relating to Point Values for Traffic Violations, were duly approved and adopted by this department in accordance with s. 227.026(1), Stats.

I further certify that the annexed copies have been compared by me with the originals on file in this department and that the same are true copies thereof, and of the whole of such originals.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation in the City of Madison, Wisconsin, this 4 day of Oct., 1982.

*Mario Schaeffer*

Owen Ayres, P.E. for  
Secretary

12-1-82





State of Wisconsin \ DEPARTMENT OF TRANSPORTATION



OFFICE OF THE SECRETARY  
Room 120B Hill Farms State Office Bldg.  
4802 Sheboygan Avenue  
Madison, Wisconsin 53702  
Telephone 266-1113

The Honorable Fred A. Risser  
President, Wisconsin State Senate  
Room 235 South, State Capitol  
Madison, WI 53702

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The Honorable Edward G. Jackamonis  
Speaker, Wisconsin State Assembly  
Room 211 West, State Capitol  
Madison, WI 53702

RE: CR 81-248, an Order to Create TRANS 107, Wisconsin Administrative Code, Relating to Driver Licensing of Persons with Chemical Abuse or Dependency Problems and amendment of TRANS 101 relating to Point Values for Traffic Violations

Gentlemen:

The above-reference rule is in final draft form and is submitted to you for reference to the appropriate standing committees. I have also enclosed a "Notice of Standing Committee Waiver of Authority" for the convenience of the committee chairpersons.

Sincerely,

*Marvin Schaffer*  
Owen Ayres, Secretary for

MAH:lmb

CC: Gary L. Poulson  
Assistant Revisor of Statutes





State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



Secretary Owen Ayres
Attention: Office of General Counsel
Wisconsin Department of Transportation
P.O. Box 7910
Madison, WI 53707

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OCT 7 1982

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Dear Secretary Ayres:

NOTICE OF STANDING COMMITTEE
WAIVER OF AUTHORITY

CLEARING HOUSE RULE NUMBER 81-248

RULE NUMBER TRANS 107 and TRANS 101

RELATING TO DRIVER LICENSING OF PERSONS WITH CHEMICAL ABUSE OR
DEPENDENCY PROBLEMS

Pursuant to sec. 227.018(4)(c), Stats., notice is given that
this legislative standing committee has reviewed the proposed
rule and grants permission to promulgate the rule as proposed
prior to the expiration date of the committee review period.

Very truly yours,

CHAIRPERSON

Assembly Committee Date

Senate Committee Date



## OFFICE OF THE SECRETARY

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In the matter of the proposed creation	:	
of Trans 101.02(15)(e) and (f), and	:	
amendment of Trans 101.05(1) and (2),	:	
relating to Point Values for Traffic	:	PROPOSED ORDER
Violations, and creation of Chapter	:	ADOPTING RULES
Trans 107, <u>Wis. Adm. Code</u> , relating to	:	
Driver Licensing of Persons with	:	
Chemical Abuse or Dependency Problems.	:	

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## CLEARINGHOUSE RULE 81-248

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A copy of the proposed rule may be obtained upon request from the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 255, Hill Farms State Office Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702. Telephone: (608) 266-2233.

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Analysis by the Department of Transportation

This proposal creates Chapter Trans 107, Wis. Adm. Code, to establish by rule the Department's policies and procedures relating to driver licensing of persons with chemical abuse or dependency related problems. This is a codification of the Department's present policies in this area and new policies required by Chapter 20, Laws of 1981.

1. Trans 101.02(15)(e) and (f) assess six demerit points for convictions for operating after license revocation or suspension and for violation of any restriction on an occupational license. The statutory period of revocation resulting from these convictions has been reduced from one year to six months. The six demerit point assessment will insure that when reinstatement is accomplished after revocation from these convictions, the operating privilege will be reinstated with six points. This would be consistent with other types of revocations. It would also underscore the more serious nature of these violations as compared to operating without having obtained a license, which has a three demerit point value.

2. In Trans 101.05(1) and (2) it is proposed that reinstatements for revocations and suspensions under ss. 343.16(2), 343.30(1q)(b) and (d) or ss. 343.305(9)(b) and (d), and ch. 48 Stats., for non-compliance with assessment or driver safety plan, be added to those presently listed to reflect policy that revocations and suspensions which are not related to moving violations are not eligible for demerit point reduction upon reinstatement.

3. Trans 107.03 identifies the informational sources the department uses for persons who have been involved with chemical abuse or dependency, these include license applications, accident reports, and analyst interviews.

4. Trans 107.04 identifies the types of information considered before taking licensing action, including medical reports, assessment reports, analyst interview documentation, and driving record.

5. Trans 107.05 identifies what medical reports are required, in what situations, and what licensing action the department will take for failure to submit the requested medical reports.

6. Trans 107.06 identifies when an analyst interview will be requested, what the interview process consists of, when a person will be referred for an assessment, and the licensing sanctions for refusal to appear for the interview or assessment referral. The purpose of the driver improvement interview is to obtain information to determine the need for an assessment.

7. Trans 107.08 identifies in what situations a person shall not be considered for any type of licensing and in what situations licensing can be approved.

8. Trans 107.10 identifies when a person may request department review in accordance with s. 343.30(1q)(d) or s. 343.305(9)(d), Stats., and outlines the standards the department will use to determine when a driver safety plan is appropriate or inappropriate.

9. Trans 107.12 includes effective date and transition provisions.

#### FISCAL ESTIMATE

See attached fiscal estimate.

#### AUTHORITY FOR RULE

Secs. 110.06(1) and 227.014, Stats.

#### FORMS

1. MVD 3218, Report of interview - A motor vehicle form used by the department to report interview documentation.

2. MVD 3259, Michigan alcohol screening test - A motor vehicle form with permission to reproduce from Melvin L. Selzer, M.D.. The test is a nationally recognized and validated screening instrument used by the driver improvement analyst during the interview.

3. MVD 3257, Certificate of assessment by competent authority - A motor vehicle form used by the department when making a referral for assessment.

4. MVD 3030, Medical report, general - A motor vehicle form used to obtain any medical information concerning a person's medical treatment of a general nature.

5. MVD 3030M, Medical report, mental - A motor vehicle form used to obtain medical information concerning a person's medical treatment of a mental/emotional nature.

6. MVD 3113, Epilepsy medical report - A motor vehicle form used to obtain information concerning a person's medical treatment for episodes of alteration of consciousness or loss of body control.

7. MVD 3289, Confidential medical/hospital report - A motor vehicle form used when a person has been hospitalized for chemical abuse or dependency.



8. MVD 3294, Traffic safety school report used by an instructor to document need for additional assessment. This form will be eliminated because the reporting of this information will be between the school and the 51.42 board. For compliance or non-compliance reporting to the department, traffic safety school instructors will use form MVD 3304.

9. MVD 3323, Alcohol/drug follow up report - A motor vehicle form used to follow up on a person's progress in a treatment program.

10. MVD 3141, Driver behavior report - A motor vehicle form used by the general public, law enforcement, etc., to report inappropriate driving behavior.

11. MVD 3304, Traffic safety school course completion certificate.

12. MVD 3395, Operator's license receipt. A new form for law enforcement to be used as a 30-day driving receipt when a person's license is picked up as a result of a chemical test refusal.

13. DCS 750, Uniform assessment and recommended rehabilitation plan - A health and social services form used to document assessment findings and recommended rehabilitation plan for persons arrested prior to May 1, 1982, according to Chapter 193, Laws of 1977.

14. DCS 751, Final report on recommended rehabilitation plan - A health and social services form used to report compliance or noncompliance with the recommended rehabilitation plan for persons referred by the department and for persons arrested prior to May 1, 1982, according to Chapter 193, Laws of 1977.

15. DCS 753, Assessment of the problem drinker - A health and social services instrument used to document chemical abuse indicators and determine a rehabilitation plan for persons referred by the department and for persons arrested prior to May 1, 1982, according to Chapter 193, Laws of 1977, and to determine a driver safety plan for persons referred by the department and for persons arrested May 1, 1982, or after, according to Chapter 20, Laws of 1981.

16. DCS 756, Court ordered assessment and driver safety plan report. A health and social services form used to document assessment findings and establish a driver safety plan for persons arrested May 1, 1982, or after, according to Chapter 20, Laws of 1981.

17. DCS 757, Driver safety plan final report. A health and social services form used to report compliance or noncompliance with an established driver safety plan for persons referred by motor vehicles and persons arrested May 1, 1982, or after, according to Chapter 20, Laws of 1981.

Forms listed in items 1 through 12 may be obtained from the Department without charge by writing to the Division of Motor Vehicles, P.O. Box 7917, Madison, WI 53707. Forms listed in items 13 through 17 may be obtained by writing to H&SS, Forms Center, Room B354, 1 West Wilson Street, P.O. Box 7850, Madison, WI 53707.

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Pursuant to authority vested in the Department of Transportation by ss. 110.06, 110.08, 227.014, 227.14, 343.06(4), 343.16(2), 343.25(4) and (7), 343.30(1q)(d), 343.305(9)(d), 343.32(2)(e), and 343.40, Stats., the Department

proposes to amend and adopt rules interpreting sections 227.064, 343.06(4), 343.16(2), 343.25(4), 343.30(1q)(d), 343.305(9)(d), and 343.32(2)(e), 346.63(1) and (2), 940.25 and 940.09, Stats., as follows:

RULE TEXT

SECTION 1. Trans 101.02(15)(e) and (f) are created to read:

(e) Operating after license is revoked or suspended ..... 6

(f) Violation of occupational license restrictions ..... 6

SECTION 2. Trans 101.05(1) is amended to read:

(1) The department, upon issuing a reinstated operator's license, shall reduce the accumulated point value to 6 points. If at the time of such reinstatement the demerit point value in the immediately preceding 12 month period is less than 6, then the lesser point value shall be carried forward in the record. Revocations and reinstatements under 343.305(9)(b), ch. 48 or ch. 344, Stats., do not qualify for a point reduction.

SECTION 3. Trans 101.05(2) is amended to read:

(2) The department, upon return of a license which has been suspended, except under chs. 48, 344, 345, Stats., and ss. 343.16(2)(a), 343.30(1q)(d), 343.30(6), 343.305(9)(d), and 343.345, Stats., shall reduce the accumulated point value to 6 points. If at the time of return the demerit point value in the immediately preceding 12 month period is less than 6, then the lesser point value shall be carried forward in the record.

SECTION 4. Chapter Trans 107 of the Wisconsin Administrative Code is created to read:

## CHAPTER TRANS 107

### DRIVER LICENSING OF PERSONS WITH CHEMICAL ABUSE OR DEPENDENCY PROBLEMS

TRANS 107.01	Purpose and Scope
TRANS 107.02	Definitions
TRANS 107.03	Information Sources
TRANS 107.04	Information to be Considered in Licensing Actions
TRANS 107.05	Medical Reports
TRANS 107.06	Assessment Referrals and Driver Improvement Interviews
TRANS 107.07	Reporting Procedures
TRANS 107.08	Licensing Action
TRANS 107.09	Departmental Review
TRANS 107.10	Review Boards
TRANS 107.11	Effective Dates and Transition Provisions

Trans 107.01 PURPOSE AND SCOPE. (1) STATUTORY AUTHORITY. As authorized by ss. 110.06(1) and 227.014, Stats., the purpose of this chapter is to establish the Department's administrative interpretation of ss. 110.08, 227.064, 227.14, 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)(c), 343.305(9)(d), 343.305(9)(f), 343.32(2)(e) and 343.40, 346.63(1), 346.63(2), 346.635, 940.25 and 940.09., Stats., relating to driver licensing of persons who have chemical abuse or chemical dependency problems.

(2) APPLICABILITY. This chapter applies to anyone operating a motor vehicle and to actions of the department in carrying out its driver licensing responsibilities under Ch. 343, Stats.

Note: Forms used in administering this chapter are department of transportation MVD 3218 report of interview, MVD 3259, Michigan alcohol screening test, MVD 3257 certificate of assessment by competent authority, MVD 3030 medical report, general, MVD 3030M medical report, mental, MVD 3113 medical report, epilepsy, MVD 3289 confidential medical hospital report, MVD 3304 course completion certificate, MVD 3323 alcohol/drug followup report, MVD 3395 operator's license receipt, MVD 3141 driver behavior report, and department of health and social services forms DCS 750, 751, 753, 756, and 757.

Trans 107.02 DEFINITIONS. In this chapter:

- (1) "Analyst" means an employee of the department who interviews persons for the purpose of documenting the degree and effects of chemical usage.
- (2) "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.
- (3) "Assessor" means a person who conducts assessments under s. 51.42, Stats., in a public treatment facility, as defined in s. 51.42(2)(c), Stats., according to the standards and instructions of the department of health and social services.
- (4) "Chemical abuse" means the use of alcohol or other drugs, prescription or non-prescription, which may adversely affect driving ability.
- (5) "Chemical dependency" means dependence on alcohol or addiction to the use of a controlled substance that has attained such a degree that it interferes with a person's physical or mental health or social or economic functioning.
- (6) "Controlled substance" has the same meaning as in s. 161.01(4), Stats.
- (7) "Department" means the Wisconsin department of transportation.
- (8) "Driver safety plan" means 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.
- (9) "Improper refusal" means refusing to submit to chemical testing for alcohol or controlled substances, or any combination, and no request for a court refusal hearing, or an adverse finding in an implied consent hearing under ss. 343.305, Stats.
- (10) "Licensing action" means any action by the department involving the denial, cancellation, revocation, suspension, restriction, or issuance of a license under this chapter.

(11) "Medical condition" means any condition affecting a person's health for which a person is receiving medical treatment, or for which medical treatment is usually prescribed.

(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) or (2), 940.09 or 940.25, Stats., a local ordinance in conformity with s. 346.63(1), Stats., or any similar conviction in another jurisdiction.

(13) "Rehabilitation plan" means an individualized plan based on an assessment referral prior to May 1, 1982, which specifies a traffic safety school as defined under s. 345.60, Stats., or treatment services, or combination, for alleviation of identified chemical abuse or dependency problems.

(14) "Released" means that a revocation, suspension or cancellation license action has been withdrawn because of an appeal, reopening or a vacation of a conviction or a finding that the license action, as ordered by the department or court, was in error or inappropriate.

(15) "Review board" or "board" means any board established by the department to provide advisory review of a licensing decision based on the special examination referred to in s. 343.16(2)(b), Stats.

(16) "Review unit" means the driver improvement review unit in the department's division of motor vehicles.

(17) "51.42 board" means the community services program board established under s. 51.42, Stats., or its approved agency, or the community human services board established under s. 46.23, Stats., that is responsible for each Wisconsin county's provision of services for chemical abuse or dependency under ss. 51.42 and 51.45, Stats.

Trans 107.03 INFORMATION SOURCES. (1) The department shall identify persons who have chemical abuse or dependency problems through:

(a) Any and all operator's license applications,

- (b) Medical information which the department has requested under the provisions of ss. 343.06(4)(b) or 343.16(2)(a), Stats.,
- (c) Reports or information on driver condition or behavior,
- (d) Interviews with analysts,
- (e) Accident reports with chemical involvement,
- (f) Court ordered assessment reports in accordance with ss. 343.30(1q) or 343.305(9), Stats.,
- (g) 51.42 board assessment and final reports,
- (h) Driving records with chemically involved entries, or
- (i) Department ordered assessment reports as a result of arrests in accordance with s. 343.16(2), Stats.

Trans 107.04 INFORMATION TO BE CONSIDERED IN LICENSING ACTIONS. (1) The following information shall be considered in taking administrative licensing action:

- (a) Medical, assessment, driver safety plan, final reports, or combination of, information including:
  - 1. Hospitalization for chemical abuse or dependency.
  - 2. Outpatient treatment for chemical abuse or dependency.
  - 3. Participation in self-help groups for chemical abuse or dependency.
  - 4. Use of control agents, such as antabuse or methadone.
  - 5. Physician treatment for chemical abuse or dependency.
- (b) Analyst interview documenting the effects of chemical use on a person's social or economic functioning in terms of:
  - 1. Employment status.
  - 2. Physical condition.
  - 3. Family situation.
  - 4. Social environment.
  - 5. Chemical use habits.

(c) Driving Record

1. Accidents involving chemical use.
2. Traffic convictions involving chemical use.
3. Arrests for chemically related violations, for example, pending charges for OWI. Once the charge has been disposed of by a court, for example, convicted, dismissed, amended or withdrawn, the arrest information will no longer be considered in taking licensing action under s. Trans 107.08(1)(b),(c), (d), (e), and (f).

4. Evidence of chemically related charges reduced or amended to lesser charges when the department has information, such as a medical or assessment report, on file.

(d) Review board recommendations, if any.

(e) Information from other sources about a person's physical and mental health, as affected by chemical use, and other medical problems which might interfere with reasonable and ordinary control over a motor vehicle.

(2) Some or all of the information described in sub. (1) shall be included in medical, assessment, driver safety plan, final report, or combination of, reports required under this chapter.

(3) Persons may be required to furnish additional medical or assessment reports, or combination of, if the department determines that the information available is not adequate to make a licensing decision.

(4) Persons may be referred for assessment as described in s. Trans 107.06.

Trans 107.05 MEDICAL REPORTS. (1) As authorized by s. 343.06(4), Stats., the department shall require a hospitalization certificate signed by the superintendent of the treatment facility or authorized representative, or attending physician, when there is information that a person has received inpatient treatment for chemical abuse or dependency within the past 2 years.

Note: Form MVD 3289.

(2) All physician medical reports under 343.16(2), Stats., shall be based on an examination by a physician within the previous 3 months.

Note: Forms MVD 3030, 3030M and 3113.

(3) Medical reports under 343.16(2), Stats., shall be submitted within 30 days from license application, or department request, unless an extension has been granted by the department.

(4) Failure to submit the medical examination report as required under s. 343.16, Stats., and this chapter shall result in cancellation of all operating privileges, and denial of all licenses applied for, in accordance with ss. 343.25(7) and 343.06(4), Stats.

Trans 107.06 ASSESSMENT REFERRALS AND DRIVER IMPROVEMENT INTERVIEWS. (1) WHEN INTERVIEW REQUIRED. A driver improvement interview shall be scheduled when:

(a) A person has been identified from one or more sources described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and this is the first time the department has received any information that this person may have a problem, except as provided in s. TRANS 107.08(2)(a), (b) and (c).

(b) There is an OWI revocation and the person is not participating in a rehabilitation or driver safety plan, such as for out-of-state convictions.

(c) When, under s.343.16(2)(a), Stats., a person has 2 arrests for OWI except as provided in sub. (3).

(2) WHEN ASSESSMENT REQUIRED AFTER INTERVIEW. The interview consists of a meeting with an analyst which involves:

(a) Discussion of the five life style categories listed in s. Trans 107.04(1)(b).

(b) Administration of a screening test for alcohol or controlled substance use.

Note: The dependency screening test is form MVD 3259.

(c) Adding the total number of traits identified in the 5 life style categories to the screening test score. Each of the 5 categories have



identifiable traits which are characteristic of persons addicted to excess use of chemicals in varying degrees. The degree can be based upon the length and number of occurrences and whether the condition is gradually becoming worse or improving. Each trait identified as positive has a point value of one. A person whose interview responses indicate a 5 or more point total shall be required to obtain an assessment. The person shall be referred to a 51.42 board for the assessment.

(3) IMMEDIATE ASSESSMENT REFERRAL. A person shall be referred for assessment without the driver improvement interview described in sub. (2) when:

(a) The department has information that a person has had 2 arrests within 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and there is no previous chemically related information on file with the department.

(b) A person has one OWI arrest within the past 12 months and the department has an assessment, final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(c) A person has been identified from one or more sources described in s. Trans 107.03 as possibly having a chemical abuse or dependency problem and the department has an assessment, final report, medical, or combination of, reports that are chemically related on file within the past 2 years.

(d) A person has one OWI arrest within the past 12 months, and the person has had 2 OWI convictions or implied consent revocations within the past 2 years.

(e) The department receives a physician medical report indicating a possible chemical use problem and the physician is not currently treating the person for the chemical use problem.

Trans 107.07 REPORTING PROCEDURES. (1) Assessments and assessment reporting procedures shall be those established by the department of health and social services.

(2) Traffic safety school final report information forms shall be provided to the 51.42 board when documentation by the traffic safety school indicates a need for additional assessment which may require additional treatment not recommended at the time of the original assessment.

(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)(d), Stats., and, when submitted to the department by the 51.42 board, document the reason for changes in assessment findings or recommendations. As provided by ss. 343.30(1q)(d) and 343.305(9)(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)(f), Stats., and the person shall have 30 days to provide notification of compliance with assessment order or the license shall be cancelled, denied or suspended as provided in s. Trans 107.08(1).

(5) When a department ordered assessment under s. Trans 107.06 has not been completed by the date of the OWI conviction, and the court subsequently orders an assessment, the person shall not be required to comply with the department ordered assessment. If a driver safety plan has already been ordered as a result of a department ordered assessment, the person shall complete the first driver safety plan even if the court orders another assessment and driver safety plan.

(6) If convicted of an amended charge, or if the charge is dismissed, prior to completion of department ordered assessment under s. Trans. 107.06, compliance with the assessment order shall not be required. If the person has already completed an assessment and is participating in a driver safety plan, the person shall be required to comply with the plan even if the charges are amended.

(7) Compliance with a court ordered driver safety plan shall not be required when an OWI conviction is appealed or vacated.

(8) A report of noncompliance with a driver safety plan shall include the reason for noncompliance.

Trans 107.08 LICENSING ACTION. (1) DENIAL, CANCELLATION OR SUSPENSION. A person is considered to be subject to the provisions of this chapter:

(a) When a hospitalization certificate shows inpatient treatment for chemical abuse or dependency and the person has not been absolutely or conditionally released from the institution, the operating privilege shall be denied or cancelled until the conditions in sub. (2)(a) have been met.

(b) When a person has 2 OWI arrests in 12 months and there is an assessment, final report, medical report, or combination of, on file with the department within the previous 2 years identifying chemical abuse or dependency and recommending no further involvement with chemicals, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(c) When a person has had 3 OWI arrests in 12 months, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(d) When a person has 2 arrests in 12 months, and has had 2 OWI convictions or implied consent revocations within the past 2 years, the person shall be immediately referred for an assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(e) When a person has 2 arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and the person has had a prior OWI conviction or implied consent revocation within the past 2 years, the person shall be immediately referred for assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) have been met.

(f) When a person has 2 arrests in 12 months with a blood alcohol content of .20 or above in at least one of the arrests, and there is an assessment, final report, medical report, or combination of, reports on file with the department within the past 2 years identifying possible chemical abuse or dependency, the person shall be referred for immediate assessment and the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) or (c) have been met.

(g) When, under s. 343.06(4), Stats., the findings of an assessment, information from a medical report, other information in the file, or a combination of, indicate that the person's chemical use may affect his or her driving ability, the operating privilege shall be denied or canceled until the conditions in sub. (2)(b) or (c) have been met. For purposes of this paragraph, the types of information considered are those described in s. Trans. 107.04.

(h) Under ss. 343.06(4), 343.16(2)(a) or 343.25(7), Stats., failure to meet with an analyst, obtain an assessment as directed by the department, comply with the recommended rehabilitation or driver safety plan, or submit the required medical report shall result in denial or cancellation of all licenses, including occupational license, until the department is notified of compliance.

(i) Under s. 343.25(7), Stats., failure to meet with an analyst scheduled according to s. TRANS 107.06(1) shall result in denial or cancellation of operating privilege.

(j) Under ss. 343.16(2)(a), 343.30(1q)(c) or (d), or s. 343.305(9)(c) or (d), Stats., failure to comply with court-ordered or department-ordered assessment, assessment fee, or driver safety plan, shall result in the suspension of the operating privilege, including occupational license. Non-payment of any treatment fee shall not be grounds for a noncompliance suspension. The suspension shall be ordered upon receipt of noncompliance report from the 51.42 board, or traffic safety school approved under s. 345.60, Stats., and 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. No occupational license shall be issued during a suspension for non-compliance.

(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)(b), 343.31(3m), or 343.35(1), Stats., the person is not eligible for licensing, the occupational license shall be denied.

(2) APPROVAL. If all other reasons for license denial, cancellation, revocation or suspension and related conditions for reinstatement are met, a person may be licensed:

(a) When the person has received inpatient treatment and the hospitalization certificate shows satisfactory release, or there is verification of participation or satisfactory completion in another treatment program approved under s.51.42 or 51.45, Stats., and there is no evidence from a medical report or assessment of chemical abuse since treatment, and there has been no OWI arrest, conviction or improper refusal revocation within the past 2 years.

(b) When the assessment report or compliance report from a 51.42 board shows the person has agreed to participate in a recommended driver safety plan or satisfactorily completed a treatment program, and the person is no longer abusing chemicals.

(c) When the medical report submitted by the personal physician indicates the person is receiving, or has received, adequate treatment for chemical abuse or dependency, has responded favorably to the treatment and is no longer abusing chemicals.

(d) When the department has received notice that a person has an OWI conviction and the operating privilege is presently suspended or cancelled for non-compliance as a result of subs. (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.

(e) When a person, 51.42 board, or traffic safety school under s. 345.60, Stats., submits the report or reports showing compliance with an assessment or driver safety plan after the operating privilege has been suspended as a result of sub. (1)(j) for any noncompliance with assessment or plan.

(f) 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.

(3) DEPARTMENT ACTION IN LIEU OF COURT ACTION. As provided under ss. 343.30(1q)(f) and 343.305(9)(f), Stats., the department shall order:

(a) The minimum revocation or suspension provided under statute when the court fails to order a revocation or suspension.

(b) An assessment when the court fails to order one.

(4) NOTICE OF LICENSING ACTION. (a) Persons affected by any departmental licensing action shall be given written notice, by first class mail, sent to the person's last known address with the department.

(b) A notice of license denial, cancellation, revocation or suspension, shall include the reason for the action. Cancellations and notices of suspension for non-compliance shall include information on any applicable review and appeal procedures.

(5) RECORD RETENTION. Department records of licensing action are maintained for 5 years.

Note: Form MVD 3035.

Trans 107.09 DEPARTMENTAL REVIEW. (1) In accordance with s. 343.30(1q)(d) or 343.305(9)(d), Stats., a person may request in writing within 10 days of license suspension, a review of license suspension for not complying with an

assessment or driver safety plan as a result of a court ordered or department ordered assessment.

(2) The review shall be conducted by the review unit.

(3) The issues of the review shall be limited to:

(a) Whether the person is in compliance with the assessment order or the driver safety plan, and

(b) Whether the driver safety plan is appropriate.

(4) Within 10 days of receipt of the written request for review under ss. 343.30(1q)(d), and 343.305(9)(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:

(a) The diagnostic level of symptoms identified on the assessment report of physiological, behavioral, psychological, attitudinal, or combination of, do not support the assessment findings recommended by the assessor on the forms provided by the department of health and social services as follows:

1. When one or more level 1 indicators of physiological dependency from the major criteria in track I (indicators 32-35) are present, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

2. When one or more level 1 indicators of psychological dependency from the major criteria in track II (indicators 28 and 29) are present along with any 3 or more level 2 indicators, AN ASSESSMENT FINDING OF ALCOHOL DEPENDENCY IS APPROPRIATE, or

3. When 5 or more level 2 indicators of psychological, attitudinal and behavioral indicators from the minor criteria in track II are, present but overall evidence is not conclusive, AN ASSESSMENT FINDING OF SUSPECTED ALCOHOL DEPENDENCY IS APPROPRIATE, or

4. When there is insufficient evidence for a progressive pattern of abusive drinking (that is, in the absence of level 1 indicators, fewer than 5 level 2 indicators, or any number of level 3 indicators) or the only evidence was

a conviction for OWI, AN ASSESSMENT FINDING OF IRRESPONSIBLE USE OF ALCOHOL IS APPROPRIATE.

Note: Department of Health and Social Services form DCS 753.

(b) The diagnostic levels support the findings as described in sub. (1), but the findings do not support the driver safety plan as follows:

1. A finding of irresponsible use does not support in-patient treatment or extensive out-patient treatment.

2. A finding of suspected dependency does not support in-patient treatment.

3. A finding of irresponsible use does support educational program recommendations.

4. A finding of suspected alcohol dependency does support out-patient treatment or combination of education and out-patient treatment.

5. A finding of chemical dependency does support in-patient treatment, extensive outpatient treatment, or combination of treatment.

(c) The noncompliance was based on non-payment of treatment fees.

(5) When the driver safety plan is found to be appropriate, the suspension shall remain in effect until notification from a 51.42 board that the person is complying with the driver safety plan received by the department and the person has paid the reinstatement fee(s) required by s. 343.21(1)(j), Stats.

(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 ss. 343.30(1q)(d) or 343.305 (9)(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)(d), Stats.



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

(9) Driver safety plans recommending treatment in other states are acceptable if approved by the 51.42 board.

Trans 107.10 REVIEW BOARDS. (1) If the decision to deny or cancel operating privileges is based in part on the results of a special examination and a medical report involving chemical abuse or dependency under s. 343.16(2), Stats., a person may request an appearance before a review board, or a review by a board of the information on file with the department.

(2) After receiving the recommendation of a review board, the department shall notify the person of the department's decision within 10 working days after the person's appearance before the review board. The notice shall include the review board's recommendations and department's decision and shall state the reasons for the decision.

Note: The department's decision to cancel, deny, suspend or revoke licenses under this chapter are subject to judicial review, in accordance with s. 343.40., Stats.

Trans 107.11 EFFECTIVE DATES, TRANSITION PROVISIONS, AND MISCELLANEOUS PROVISIONS. (1) The effective date of all departmental suspensions or revocations under this chapter shall be the date the order was mailed, except if the person is currently under suspension or revocation, the effective date shall be the date the license was surrendered for the previous action, or the date of the conviction causing the new suspension or revocation, whichever is later.

(2) When the violation date is May 1, 1982 or after, persons shall be considered subject to this chapter. Violations which occurred prior to May 1, 1982, regardless of conviction date, shall be considered subject to provisions in effect prior to May 1, 1982, unless otherwise ordered by the court.

(3) Persons completing group dynamics as a result of violations prior to May 1, 1982, and for whom the group dynamics instructor documents a need for additional assessment, shall be required to attend a driver improvement interview and, if documentation supports a referral to a 51.42 agency, comply with any additional treatment recommended prior to reinstatement. No driver improvement interviews shall be required for reinstatement if the violation occurred after May 1, 1982.

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

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

(6) 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)(d), Stats., shall be the date the reinstatement fee is paid or the date the department receives the notice of compliance, whichever is later.

(7) Implied consent refusals and OWI convictions from the same incident shall be counted as one.

(8) As authorized by ss. 343.30(1q)(b)1. and 346.63(1)(c), Stats., if two citations are issued for the same arrest incident under ss. 346.63(1)(a) and (b), 346.63(2)(a)1. and 2. or 2 citations or complaints for ss. 940.25(1)(a) and (b) or

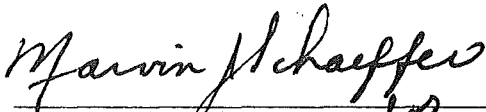
940.09(1)(a) and (b), Stats., they shall be considered as one arrest incident under this chapter.

(End of Text)

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The rules contained in this order shall take effect upon publication as provided in s. 227.026(1), (intro.) Stats.

Signed at Madison, Wisconsin  
this 25 day of June, 1982..

  
\_\_\_\_\_  
Owen Ayres, Secretary *for*  
Wisconsin Department of Transportation

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
Driver Licensing of Persons With Chemical Abuse Problems

**Fiscal Effect**  
State:  No State Fiscal Effect  
Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.  
 Increase Existing Appropriation       Increase Existing Revenues  
 Decrease Existing Appropriation       Decrease Existing Revenues  
 Create New Appropriation  
 Increase Costs — May Be Possible to Absorb Within Agency's Budget       Yes       No  
 Decrease Costs

Local:  No local government costs  
1.  Increase Costs  
     Permissive       Mandatory  
2.  Decrease Costs  
     Permissive       Mandatory  
3.  Increase Revenues  
     Permissive       Mandatory  
4.  Decrease Revenues  
     Permissive       Mandatory  
5. Types of Local Governmental Units Affected:  
     Towns       Villages       Cities  
     Counties       Others \_\_\_\_\_

**Fund Sources Affected**  
 GPR       FED       PRO       PRS       SEG       SEG-S  
**Affected Ch. 20 Appropriations**  
20,395(5)(ch)

**Assumptions Used in Arriving at Fiscal Estimate**

Conclusion:  
This Administrative Rule has no cost associated with it other than the costs of administering the statute upon which it is based. The statute requires the Department of Transportation to review second and subsequent OWI arrests and to decide whether formal assessment is appropriate. In addition all initial assessment orders must be reviewed for appropriateness. It is estimated that the one-time costs associated with this requirement equal \$35,200 and the annualized costs are expected to equal \$172,000. Revenue from a \$150 assessment fee surcharge will be allocated to cover the costs of this program.

Basis for Conclusion:  
1. This proposal requires the Department to review OWI arrests and assessment orders. It is estimated that 40,000 reviews will be conducted annually. Based on current Driver Improvement workload standards, 5,000 review cases requires one man-year of processing effort. Therefore, 8 positions will be required to process the expected annual volume, at an estimated cost of \$172,000.  
2. One-time development and implementation costs are estimated at \$35,200. These costs include capital equipment, files and file supplies, and computer programming.

**Long-Range Fiscal Implications**

**Agency**  
Department of Transportation  
**Authorized Signature/Telephone No.**  
*Bruce M. Baker*  
Bruce M. Baker, 6-2481  
**Date**  
12/24/81

**FISCAL ESTIMATE WORKSHEET**

1981 Session

Detailed Estimate of Annual Fiscal Effect  
AD-MBA-22 (Rev. 11/80)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or BM No./Adm. Rule No.  
TRANS 107

Amendment No.

Subject

Driver Licensing of Persons With Chemical Abuse Problems

**I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):**

Computer programming, capital equipment, files and file supplies = \$35,200

**II. Annualized Costs:** Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).

**Annualized fiscal impact on State funds from:**

A. State Costs by Category	Increased Costs	Decreased Costs
	Salaries and Fringes	\$ - 133,000
Staff Support Costs	- 39,000	+
Other State Costs	-	+
Local Assistance	-	+
Aids to Individuals or Organizations	-	+
<b>TOTAL State Costs by Category</b>	<b>\$ - 172,000</b>	<b>\$ +</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
	GPR	\$ -
FED	-	+
PRO/PRS	- 172,000	+
SEG/SEG-S	-	+
C. FTE Position Changes	Increased Pos.	Decreased Pos.
	+ ( 8 )	- ( )
III. State Revenues	Decreased Rev.	Increased Rev.
	GPR Taxes	\$ -
GPR Earned	-	+
FED	-	+
PRO/PRS Assessment Fee Surcharge	-	+ 172,000
SEG/SEG-S	-	+
<b>TOTAL State Revenues</b>	<b>\$ -</b>	<b>\$ +</b>

**Net Annualized Fiscal Impact on State & Local Funds**

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ - 172,000	\$ +	Total Costs	\$ -	\$ +
Total Revenues	+ 172,000	-	Total Revenues	+	-
<b>NET Impact on State Funds</b>	\$ (+) or (-)	-0-	<b>NET Impact on Local Funds</b>	\$ (+) or (-)	None

Agency

Department of Transportation

Authorized Signature/Telephone No.

*Bruce M. Baker*  
Bruce M. Baker, 6-2481

Date

12/24/81



## SECTION III

### PROCEDURAL ANALYSIS REQUIRED BY SEC. 227.018(3)

#### (A) Statement of Need

Chapter 20, Laws of 1981, published July 31, 1981, included provisions which significantly alter statutes affecting drinking drivers, including ordering of assessment and suspensions or revocations under s. 343.30(lq)(f) and s. 343.305(9)(f), Stats., allowing the Department to consider arrest information under s. 343.16(2)(a), Stats., and establishing noncompliance review procedures under s. 343.30 (lq)(d) and s. 343.305(9)(d), Stats. It was necessary to promulgate rules codifying administrative interpretation of these new statutory provisions. An emergency administrative rule, TRANS 107, was published May 1, 1982 to implement the program.

#### (B) Findings of Fact

TRANS 107 clarifies the Department's policies and procedures relating to driver licensing of persons with chemical abuse or chemical dependency related problems.

Prior to drafting TRANS 107, in February, 1981, the department conducted an OWI Program Survey of the United States and Canada.

Areas codified in TRANS 107, as a result of the survey included:

1. When the Department will take immediate licensing action because of information received on a person's habitual use of alcohol or other drugs.
2. When the Department will refer for an assessment to determine the degree of an individual's alcohol or other drug problem to an alcohol treatment facility.
3. When the Department will take immediate licensing action on a repeat OWI offender after an arrest, but before conviction.

The object of the Department conducted driver improvement analyst interview is to obtain information and document what effect, if any, the person's drinking has on his or her life to determine if it may interfere with driving. The method the analyst uses in establishing the degree of the drinking problem is based on Dr. E. M. Jellinek's "Disease Concept of Alcoholism".

To reinforce the conclusion reached by the driver improvement analyst, the Michigan Alcohol Screening Test (M.A.S.T.) devised by Dr. Selzer, University of Michigan Medical Center, is administered. The M.A.S.T. is a nationally recognized screening instrument, constructed to provide a consistent interviewing tool.

The Department's appropriateness review procedures in TRANS 107.09 are based on criteria included in the form titled "Assessment of the Problem Drinker," department of health and social services DCS-753, which is completed by the assessor.

When the documented criteria supports the driver safety plan being reviewed, the plan will be appropriate as recommended by the assessor. When the documentation does not support the recommended driver safety plan, the plan will be inappropriate, the suspension will be released, and another assessment ordered by the Department.

(C) Modification Made as a Result of Testimony Received at the Public Hearing

In addition to standard publication procedures, the notice of the hearing and proposed rule draft were mailed to over 250 agencies and individuals and notice was published in the Law Enforcement Bulletin.

A public hearing was held on January 27, 1982, 4 persons attended and 2 persons testified. Comments received on the rule draft and the department's responses are summarized below:

Department of Health & Social Services comments on Chapter TRANS 107, Wisconsin Administrative Code.

1. DH&SS Recommendation: Include "in accordance with s. 343.30(1q)(d) and s. 343.305(9)(d), Stats., "since the paragraphs have parallel language.

Department Response: The recommendation was added.

2. DH&SS Recommendation: MVD forms should delete the word treatment.

Department Response: MVD forms will delete the use of the word treatment and use driver safety plan instead.

3. DH&SS Recommendation: TRANS 107.02(3) - Change definition of assessor.

Department Response: The definition was changed as a result of this and later comments.

4. DH&SS Recommendation: TRANS 107.02(5) - Amend chemical abuse definition and delete may.

Department Response: Language stating "which may adversely affect driving ability" is preferable to "which has adversely affected driving" because information received by the Department could indicate a degree of chemical abuse that has not yet affected the driving record, but has the potential to do so.

5. DH&SS Recommendation: TRANS 107.02(11) - Amend OWI definition to include or a local ordinance in conformity therewith.

Department Response: Definition is now TRANS 107.02(12). Added recommended language.



6. DH&SS Recommendation: TRANS 107.02(15) - Amend to include or their approved agency.  
  
Department Response: Definition is now TRANS 107.02(17). Added recommended language.
7. DH&SS Recommendation: TRANS 107.02 - Add definitions for chemically related offense and improper refusal.  
  
Department Response: TRANS 107.02(12) was revised to include the chemically related offenses. TRANS 107.02(9) was added to define improper refusal.
8. DH&SS Recommendation: TRANS 107.03(1) - The traffic safety school final report should be reportable for the Department's review capability.  
  
Department Response: When an instructor has documented the need for additional treatment, the person should be referred back to the assessing agency for a re-assessment and amended driver safety plan, as outlined in TRANS 107.07(2).
9. DH&SS Recommendation: TRANS 107.03(3)(a) - Amend language to include additional offenses.  
  
Department Response: TRANS 107.03(3)(a) has been deleted. TRANS 107.03(1)(h) covers driving records with chemically involved entries.
10. DH&SS Recommendation: TRANS 107.03(3)(b) - Amend language.  
  
Department Response: The language dealing with Department ordered assessment reports as a result of arrests in accordance with s. 343.16(2), Stats., was amended.
11. DH&SS Recommendation: TRANS 107.03(3)(c) - "Arrests" is unclear.  
  
Department Response: TRANS 107.03(1)(i) has been rewritten and includes what arrest information the Department shall consider.
12. DH&SS Recommendation: TRANS 107.04(1) - Include information regarding confidentiality of records.  
  
Department Response: Confidentiality language was not added to rule because the language is already covered by s. 343.16(2)(c)&(d), Stats.
13. DH&SS Recommendation: TRANS 107.04(1)(a)2 - Amend outpatient treatment to include chemical dependency.  
  
Department Response: Outpatient treatment is changed to allow for chemical dependence and chemical abuse.

14. DH&SS Recommendation: TRANS 107.04(1)(a)3 - Allow for participation in self-help groups for chemical abuse or chemical dependency.  
Department Response: Rule was amended per recommendation.
15. DH&SS Recommendation: TRANS 107.04(1)(a)5 - Allow for physician treatment for chemical dependency.  
Department Response: Rule was amended per recommendation.
16. DH&SS Recommendation: TRANS 107.04(1)(d)3 - Allow for chemically-related offenses.  
Department Response: Rule was amended per recommendation.
17. DH&SS Recommendation: TRANS 107.04(1)(d)5 - Amend to improper refusals.  
Department Response: Language was changed per recommendation.
18. DH&SS Recommendation: TRANS 107.04(1) - Same recommendation as in #8.  
Department Response: Same
19. DH&SS Recommendation: TRANS 107.04(2) - Amend to include driver safety plans or any combination of reports.  
Department Response: Rule was amended per recommendation.
20. DH&SS Recommendation: TRANS 107.06(1)(b) - Change statutory reference s. s. 343.305(9)(e) to s. 343.305(9)(d), Stats.  
Department Response: The entire section has been rewritten.
21. DH&SS Recommendation: TRANS 107.06(4) - Include Sections s. 343.30(1q)(c)(d) and/or s. 343.305(9)(c)(d) Stats., since both sections indicate non-compliance results in suspensions.  
Department Response: TRANS 107.06(4) is eliminated from present draft and has been amended per recommendation in TRANS 107.08(1)(j).
22. DH&SS Recommendation: TRANS 107.06 - Reference to alcohol dependency screening test highlights the lack of reference to standards for persons abusing the other drugs.  
Department Response: The screening instrument used by the analyst can be used when identifying other drug usage by substituting or adding to language involving other drugs.

23. DH&SS Recommendation: TRANS 107.07 - Reference to Chapter HSS 62 Wisconsin Administrative Code is still in draft.
- Department Response: Reference to Chapter HSS 62 was deleted.
24. DH&SS Recommendation: TRANS 107.08(1)(d) - Substitute language to clarify and allow for instances where the person refuses chemical testing for intoxication.
- Department Response: The use of refusal language is not appropriate in this section since refusals require a mandatory revocation and assessment.
25. DH&SS Recommendation: TRANS 107.08(1)(e) - Add language recommending no further involvement with chemicals.
- Department Response: The recommended language has been added to TRANS 107.08(1)(b).
26. DH&SS Recommendation: TRANS 107.08(1) - Create a paragraph referencing suspension for failure to pay assessment fee.
- Department Response: TRANS 107.08(1)(j) language was added.
27. DH&SS Recommendation: TRANS 107.08(1) - Create a paragraph referencing suspension for failure to complete any driver safety plan.
- Department Response: Reference is covered in TRANS 107.08(1)(j).
28. DH&SS Recommendation: TRANS 107.08(2) - Add chemical dependency or chemical abuse.
- Department Response: Language was added.
29. DH&SS Recommendation: TRANS 107.08(2)(d) - Amend reporting language showing that the person has satisfactorily completed treatment and is no longer abusing chemicals and eliminate the 1 year period requirement.
- Department Response: TRANS 107.08(2)(b)&(c) was amended per the recommendation and the one year requirement was deleted.
30. DH&SS Recommendation: TRANS 107.08(2)(e) - Eliminate 1 year requirement.
- Department Response: 1 year requirement was eliminated.
31. DH&SS Recommendation: TRANS 107.08 - Require completion of a driver safety plan before allowing reinstatement for a non-compliance suspension.

Department Response: The Department cannot require completion of a driver safety plan before allowing reinstatement because s. 343.30(lq)(d) and s. 343.305(9)(d) mandates the Department to reinstate the person's operating privilege when a person has been determined to be in compliance with the assessment or driver safety plan.

32. DH&SS Recommendation: TRANS 107.10(1) - Include statutory authority for both s. 343.30(lq)(d) and s. 343.305(9)(d), Stats.

Department Response: Reference has been changed to TRANS 107.09(1) and the addition of statutory authority was included.

33. DH&SS Recommendation: TRANS 107.10(5)(b) - Include statutory authority for both s. 343.30(lq)(d) and s. 343.305(9)(d), Stats.

Department Response: Reference has been changed to TRANS 107.09(6) and the addition of statutory authority was included.

34. DH&SS Recommendation: TRANS 101.05(2) - Consider including implied consent refusal .

Department Response: s. 343.305(9)(d), Stats., was added per recommendation.

35. DH&SS Recommendation: TRANS 101.07(6) - Include language or an adverse finding under s. 343.305(8), Stats.

Department Response: TRANS 101.07(6) has been eliminated from the rule because a person may be referred to an approved traffic safety school as part of a driver safety plan. The traffic safety school is no longer in lieu of a license penalty, therefore, the person would be eligible for a point reduction.

Additional Department of Health and Social Services comments made after publication of the emergency rule.

1. DH&SS Recommendation: MVD 3294 definition should delete the word treatment and use the word assessment.

Department Response: MVD 3294 definition deleted the word treatment and substituted the word assessment.

2. DH&SS Recommendation: Use specific language to distinguish between form DCS-750 and DCS-756.

Department Response: The recommendation was added.

3. DH&SS Recommendation: Use specific language to distinguish between form DCS-751 and DCS-757.

Department Response: The recommendation was added.

4. DH&SS Recommendation: Amend DCS-753 definition to read - a health and social services instrument used to document alcohol related chemical abuse indicators and determine a plan.

Department Response: Language was changed in forms definition #15 to read instrument. At this time the Department is not aware of a validated instrument recommended by DH&SS to screen for other drugs. Thus, the assessor apparently modifies the DCS-753 when screening for other drug use. When the DH&SS codifies a screening instrument for other drug identification, the Department will amend our rule and make reference to the new instrument. Meanwhile, the DCS-753 appears to be used by assessors for both alcohol and other drug screening.

5. DH&SS Recommendation: TRANS 107.10(2) - Note: include form MVD 3304.

Department Response: The recommendation was added.

6. DH&SS Recommendation: TRANS 107.02(2) - Add language requiring Department ordered assessments shall be conducted in the person's county of residence.

Department Response: A 5-17-82 proposed draft of DH&SS Administrative Rule HSS 62.02(3) indicates a referral of a person by a court can be made to a facility in the person's county of residence. The use of the word "can" and not "shall" would indicate the court has an option and is not required to refer a person to an agency within their county of residence.

There is apparently no licensing benefit to requiring an assessment in the county of residence and, in fact, it might delay assessment in counties where there are few facilities and long waits. In addition, it appears inconsistent to require persons ordered by the department to obtain an assessment in the county of residence but persons ordered by the court are not required to do so. Perhaps if the concern here is workload problems, assessment agencies which have these problems could handle it by not scheduling assessments for persons from another county.

7. DH&SS Recommendation: TRANS 107.02(3) - Amend "Assessor" definition.

Department Response: The recommendation was added.

8. DH&SS Recommendation: TRANS 107.02(8) - amended language referring to individualized plan or rehabilitation plan.

Department Response: In order to avoid confusion TRANS 107.02(13) a definition of "Rehabilitation Plan" was added.

9. DH&SS Recommendation: TRANS 107.02(3) - Amend language to read "resulting in the reduction of the person's identified chemical abuse or dependency problems".

Department Response: We agree that treatment is a service, not an outcome, and have rewritten this sentence. However, we are concerned about using "reduction" since we are not aware of a measurement to prove reduction.

10. DH&SS Recommendation" TRANS 107.03(f) - delete the specificity of "(c)" reference under s. 343.30(lq) and 343.305(9), Stats.

Department Response: The deletion was made.

11. DH&SS Recommendation: TRANS 107.04(1)(a) - amend language to include final reports and department follow-up.

Department Response: Final report language was added. Given changes in Chapter 20, previous Department policies and procedures regarding followups are no longer being used. If new follow-up procedures are developed, they will be codified.

12. DH&SS Recommendation: TRANS 107.04(1)(d) 3 & 107.07(6) - two or more arrest information is more limiting than the Chapter 20 legislation.

Department Response: There are 2 ways which the department could use arrest information. One is to take license action and require an assessment based on the arrest information regardless of the outcome of the arrest. For example, a dismissal of the OWI charge would not affect the use of the arrest information in taking licensing action. The second way to use arrest information is to consider it only until there is court action on the arrest. Once the court has acted (reduced, amended, dismissed, convicted), then the department considers that action, rather than the arrest, in taking licensing action. We believe it was the intent of legislature to use the arrest information as a means to ensure early intervention prior to the court date and have drafted our rule on that basis. If the legislature intended to use arrest information to take licensing and followup action regardless of court disposition of the arrest, the rule can be modified at the request of the Legislature.

13. DH&SS Recommendation: TRANS 107.04(2) - add final report and Department follow up language.

Department Response: Final report language was added. Refer to response #11 regarding Department follow ups.

14. DH&SS Recommendation: TRANS 107.06(2)(c), (3)(a) & (b), and 107.08(1)(c) - add language requiring assessment referral to county of residence.

Department Response: Refer to #6 for Department response.

15. DH&SS Recommendation: TRANS 107.07(2) - add "traffic safety school final report information forms, shall be provided to the 51.42 board, the Department and the person upon plan complinace or noncompliance ...."

Department Response: The recommendation is covered by s. 343.30 (1q)(d) & 343.305(9)(d), Stats.

16. DH&SS Recommendation: TRANS 107.07(4) - add improper refusal language.

Department Response: Language was added.

17. DH&SS Recommendation: TRANS 107.08(1)(b) - add improper refusal language and include final and Department follow up reports.

Department Response: The addition of improper refusal language is not appropriate since a revocation and assessment referral is mandatory by statute. The final report form was added. The Department follow up report was not added, refer to #6.

18. DH&SS Recommendation: TRANS 107.08(1)(d) - delete the word treatment and substitute with the word plan.

Department Response: TRANS 107.08(1)(d) has been renumbered to TRANS 107.08(1)(d). Recommended change was made.

19. DH&SS Recommendation: TRANS 107.08(2)(b)&(f) - add statutory language, to keep clear the agencies who will be submitting the reports on which the Department takes action.

Department Response: TRANS 107.08(2)(f) has been renumbered to TRANS 107.08(2)(e). Statutory language has been added.

20. DH&SS Recommendation: TRANS 107.09(1) - add not complying with assessment or Department ordered assessment.

Department Response: The recommendation was added.

21. DH&SS Recommendation: TRANS 107.09(4) - add reference to include s. 343.305(9)(d), Stats., and amend language to read "for appropriateness according to the procedures established by the department of health and social services regarding plan development based on assessment findings which are justified by the screening instruments' instructions".

Department Response: Recommended reference was added. The language was not amended because the guidelines and procedures established by DH&SS are not now statutory or codified. Standards used by DOT in making a decision in an appropriateness review should be specific, clear and have legal support by either statute or rule since this is part of due process in a challenged situation. When policies and standards are codified by the department of H&SS we will amend our rule to refer to their rule for purposes of the appropriateness review.

22. DH&SS Recommendation: TRANS 107.09(4)(a) through (b)5. - based on recommendation #21 delete these subsections and paragraphs.

Department Response: See #21 for department response.

23. DH&SS Recommendation: TRANS 107.11(3) - amend language to read "when the group dynamics instructor documents a need for additional assessment . . . ."

Department Response: Language was amended per recommendation.

Other changes made after the hearing as a result of public comments:

1. The department codified what criteria will be used for the appropriateness review. The procedures are based on the criteria in the "Assessment of the Problem Drinker" a DH&SS form (DCS-753), which is completed by the assessor.
2. The department has expanded on when a person may be cancelled and/or immediately referred for assessment based on OWI arrest information combined with past OWI convictions and/or medical/assessment information. See attachment 1 for summary of these situations.
3. For driver improvement analyst interviews, the department defined what traits are assigned points in the life style categories and when the point accumulation would warrant an assessment referral by the driver improvement analyst. The assigned points and establishment of degree of the drinking problem are based on Dr. E.M. Jellinek's "Disease Concept of Alcoholism," and the "Michigan Alcohol Screening Test" devised by Dr. Selzer, University of Michigan Medical Center.



4. The Department received questions about whether nonpayment of treatment fees should be grounds for a non-compliance suspension. The statutes clearly mention non-payment of assessment fees as grounds for suspension (ss. 343.30(1q)(d) and 343.305(9)(d) Stats.), but these sections of the statutes do not include non-payment of treatment fees. It appeared that if it was the intent that the treatment fee also be grounds for suspension it would have been included in the statutes. In response to the questions, TRANS 107(1)(j) and 107.09(4)(c) clarify non-payment of any treatment fee, shall not be grounds for a non-compliance suspension.
5. As provided for under ss. 343.30(1q)(f) and 343.305(9)(f), Stats., the Department has codified in TRANS 107.08(3)(a) what action we will take in lieu of court action. The Department shall order the minimum revocation or suspension provided under statute when the court fails to order a suspension or revocation.
6. Effective dates and transition provisions have been included in TRANS 107.11.

(D) List of Persons Who Appeared or Registered at the Public Hearing.

Theordora A. Christensen, MSWW  
Highway Safety Program Coordinator  
Bureau of Alcohol and Other Drug Abuse  
Division of Community Services  
Department of Health and Social Services  
Madison, WI 53707  
Phone: 608-266-8598

Tom Brookman, Sr.  
Wood County Council of Alcohol & Drugs, Inc.  
2121 Jefferson Street  
P.O. Box 963  
Wisconsin Rapids, WI 54494  
Phone: 715-421-0828

Nick Hassler  
Milwaukee Council on Alcoholism  
2266 N. Prospect Ave.  
Milwaukee, WI 53232

Gail Millard  
Douglas County Chem. Dep.  
Box 58A  
Wentworth, WI 54780

(E) Response to Legislative Council Recommendations.

1. Form, Style and Placement in Administrative Code.
  - a. Suggested change was made.
  - b. Suggested change was made
  - c. Suggested change was made.
  - d. Section was rewritten.
  - e. Suggested change was made.
  - f. Suggested change was made.

2. Adequacy of References to Related Statutes, Rules, and Forms.
  - a. Reference to HSS 62 has been deleted.
  - b. Correct references were made.
  - c. Suggested change was made.
  
3. Clarity, Grammar, Punctuation and Plainness.
  - a. Suggested change was made.
  - b. Suggested change was made.
  - c. Section was deleted.
  - d. Section was deleted.
  - e. Suggested change was made.
  - f. Suggested change was made.
  - g. Suggested change was made.
  - h. Suggested change was made.
  - i. Section has been rewritten and renumbered s. TRANS 107.09(6).
  - j. Suggested change was made.

(F) For Information, Chapter 20 penalty guide -- Attachment 2.

Proposed TRANS 107Driver Improvement AnalystAssessmentLicense Denied or Canceled

1. 2 arrests in 12 months., no previous file and blood alcohol content is under .20  
(107.06(1)(c))
2. Information other than arrest and no previous file  
(107.06(1)(a))
3. Out of state OWI convictions (under revocation)  
(107.06(1)(b))

1. 2 arrests in 12 months with blood alcohol content of .20 in one but no previous file  
(107.06(3)(a))
2. 1 arrest in 12 months, plus within past 2 years,
  - a. 2 OWI or IC, or
  - b. chemically related file  
(107.06(3)(b) & (d))
3. Information other than arrest and previous file  
(107.06(3)(c))
4. Physician medical report indicating possible chemical use problem and physician not treating.  
(107.06(3)(e))

1. 3 or more OWI arrests in 12 months  
(107.08(1)(c))
2. 2 arrests in 12 months, plus in past 2 years,
  - a. 2 OWI or IC, or
  - b. blood alcohol content of .20 in one arrest and previous chemically related file, or
  - c. blood alcohol content of .20 in one arrest and 1 OWI or IC, or
  - d. previous file recommending no further involvement with chemicals  
(107.08(1)(b), (d), (e) or (f))
3. Hospital certificate shows not satisfactorily released  
(107.08(1)(a))
4. When accumulation of information in file indicates drinking/driving problem  
(107.08(1)(g))

Division of Motor Vehicles  
6/10/82

## ATTACHMENT #2

Division of Motor Vehicles  
Bureau of Driver Licensing

## P E N A L T I E S

CONVICTION	FORFEITURE/FINE	JAIL	LOSS OF LICENSE	ASSESSMENT	POINTS	OCCUPATIONAL ELIGIBILITY
1st OWI	\$150-\$300 (plus \$150 surcharge)		3-6 mo. susp..	Yes	6	Immediate eligibility
2nd OWI	\$300-\$1,000 (plus \$150 surcharge)	5 days-6 mo.	6-12 mo. Rev.	Yes	6	After 30 days Rev.
3rd or more OWI	\$600-\$2,000 (plus \$150 surcharge)	30 days-1 yr.	1-2 yrs. Rev.	Yes	6	After 60 days Rev.
1st refusal chem. test			6 mo. Rev.	Yes		After 15 days Rev.
2nd refusal chem. test*			1 yr. Rev.	Yes		After 60 days Rev.
3rd refusal chem. test*			2 yrs. Rev.	Yes		After 90 days Rev.
Causing Injury while OWI	\$300-\$2,000 (plus \$150 surcharge)	30 days-1 yr.	1-2 yrs.	Yes	6	After 60 days Rev.
Causing great bodily harm while OWI	Up to \$10,000 (plus \$150 surcharge)	Up to 2 yrs.	2 yrs.	Yes		After 120 days Rev.
Homicide while OWI	Up to \$10,000 (plus \$150 surcharge)	Up to 5 yrs.	5 yrs.	Yes		After 120 days Rev.
1st driving after rev/susp. for OWI	\$150-\$600	Up to 6 mo.	6 mo.		6	
2nd driving after rev/susp.	\$300-\$1,000	10 days-6mo.	6 mo.		6	
3rd driving after rev/susp.	\$1,000-\$2,000	30 days-9mo.	6 mo.		6	
4th driving after rev/susp.	\$1,500-\$2,000	60 days-1 yr.	6 mo.		6	
5th & Subsequent	\$2,000-\$2,500	6 mo.-1 yr.	6 mo.		6	
1st violation of Occupational License	\$150-\$600 forfeiture		6 mo.		6	
2nd violation of Occupational License	\$300-\$1,000 fine	Up to 6 mo.	6 mo.		6	
Open Container	\$64 (passenger) \$120 (driver)					

\*Applies to 2 or more refusals or combination of OWI and/or refusals

Effective May 1, 1982