

CR 90-145

**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 the **administrative suspension of operating privilege for operating a motor vehicle with an alcohol concentration of 0.1 or more**, was duly approved and adopted by this Department on November 9, 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 9th day of November, 1990.

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

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4:00 pm  
Revisor of Statutes  
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IN THE MATTER OF a rule to amend Chapter Trans 113(title), ss. Trans 113.01, 113.03(title) and (intro.), 113.03(2)(intro.), 113.03(3), 113.03(4), 113.04(1), 113.04(3), 113.04(3)(c), 113.04(3)(e); to repeal and recreate s. Trans 113.02(1); to renumber and amend ss. Trans 113.03(2)(a), (b) and (c), 113.03(2)(d), 113.04(7), (8) and (9); to create ss. Trans 113.02(2), 113.04(3)(g), 113.04(7), 113.04(10)(c), 113.04(12) and 113.06; to renumber ss. Trans 113.02(2), (3), (4), (5) and (6), 113.04(10); to amend the note following s. Trans 113.01; and to repeal the note following the rule, of the Wisconsin Administrative Code, relating to Administrative Suspension of Operating Privilege for Operating a Motor Vehicle with an Alcohol Concentration of 0.1 or more.

**ORDER ADOPTING RULE****RECEIVED**

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STATUTORY AUTHORITY: ss. 85.16(1) and 343.305(11), Stats.

STATUTE INTERPRETED: s. 343.305(8), Stats.

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

Trans 113 was affected by 1989 Wis. Act 7 which provides for a separate administrative review request form, requires the arresting officer to appear at the administrative review if subpoenaed, adds a provision for the examiner to notify the person in writing of the right to a judicial review and stay of the suspension, and which requires the department to vacate the suspension if a judicial review has been requested and the department has not been notified of the results of the judicial review or of a court order entering a stay of the suspension within 60 days.

Trans 113 was also affected by 1989 Wisconsin Act 105 which adds a new review issue and changes "blood alcohol concentration" and "0.1%" references to "alcohol concentration" and "0.1."

This rule amends Chapter Trans 113(title), ss. 113.01, 113.03, 113.04(3)(c), 113.04(3)(e), 113.04(8), (9) and (10) to change "blood alcohol concentration" and "0.1%" references to "alcohol concentration" and "0.1."

The amendment of s. Trans 113.03(2) is to bring the rule into conformity with 1989 Wis. Act 7 which requires the law enforcement officer to issue a separate form for the person to use to request an administrative review.

The amendment of s. Trans 113.03(3) states that the person's license is forwarded to the department only if available.

The amendment of s. Trans 113.03(4) is to compel the officer to appear at the administrative review if subpoenaed.

The amendment of s. Trans 113.04(1) clarifies the number of days within which an administrative review must be requested if the notice of intent to suspend is delivered to the individual by mail.

The amendment of s. Trans 113.04(3) more clearly defines the evidentiary limitations of the administrative review.

The creation of s. Trans 113.04(3)(g) is to add a new review issue as required by 1989 Wis Act 105.

The amendment of s. Trans 113.04(10)(a) requires the hearing examiner to provide the person with a judicial review request form and to notify the person in writing of the administrative review decision and the right to judicial review and stay of the suspension.

The creation of s. Trans 113.04(10)(c) provides for the administrative suspension to be vacated if the person is not notified of the administrative review results within 30 days of being issued a notice of intent to suspend.

Trans 113.04(12) is created to protect the individual's right against self-incrimination in the administrative review process.

Trans 113.06 is created to provide for vacation of the suspension if a judicial review is requested unless the department is notified of the judicial review results or of an order of the court staying the administrative suspension.

Final Regulatory Flexibility Analysis: These rule changes have 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 Mary Jackson, telephone (608) 267-2086. Legal questions about this rule may be addressed to Joe Maassen, Office of General Counsel, Wisconsin Department of Transportation, P.O. Box 7910, Madison, WI 53707, telephone (608) 266-8810.

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**RULE TEXT**

Under the authority vested in the Wisconsin department of transportation by ss. 85.16(1) and 343.305(11), Stats., the department of transportation hereby amends chapter Trans 113, Wis. Admin. Code, interpreting s. 343.305(8), Stats., as follows:

SECTION 1. Chapter Trans 113 (title) is amended to read:

CHAPTER TRANS 113

ADMINISTRATIVE SUSPENSION OF OPERATING

PRIVILEGE FOR OPERATING A MOTOR VEHICLE WITH A

~~BLOOD~~ AN ALCOHOL CONCENTRATION OF 0.1% OR MORE

Trans 113.01 Purpose and scope	Trans 113.04 Reviews
Trans 113.02 Definitions	Trans 113.05 Suspensions
Trans 113.03 <del>Notice of Intent to Suspend</del> <u>Law Enforcement Officer</u> <u>Actions and Information</u> <u>Provided to Driver</u>	<u>Trans 113.06 Department to Vacate</u> <u>Administrative</u> <u>Suspensions</u>

SECTION 2. Trans 113.01 is amended to read:

Trans 113.01 PURPOSE AND SCOPE. As authorized by s. 85.16(1), Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 343.305(8) and (11), Stats., relating to arrest for operating with a ~~blood~~ an alcohol concen-

tration of 0.1% or more, administrative suspension of operating privilege and reviews therefor.

SECTION 3. The Note following s. Trans 113.01 is amended to read:

Note: Forms used in this chapter are MV 3519 notice of intent to suspend operating privilege/temporary driving permit, MV 3517 notice and decision of administrative suspension review, MV 3530 administrative review request and MV 3528 judicial review request. A sample copy of these forms may be obtained, free of charge, from the Wisconsin department of transportation, bureau of driver services, P.O. Box 7917, Madison, WI 53707-7917.

SECTION 4. Trans 113.02(1) is repealed and recreated to read:

Trans 113.02(1) "Alcohol" means any substance containing any form of alcohol including, but not limited to, ethanol, methanol, propanol and isopropanol.

SECTION 5. Trans 113.02(2), (3), (4), (5) and (6) are renumbered (3), (4), (5), (6) and (7).

SECTION 6. Trans 113.02(2) is created to read:

Trans 113.02(2) "Alcohol concentration" means any of the following:

- (a) The number of grams of alcohol per 100 milliliters of a person's blood.
- (b) The number of grams of alcohol per 210 liters of a person's breath.

SECTION 7. Trans 113.03(title) and (intro.) are amended to read:

Trans 113.03 LAW ENFORCEMENT OFFICER ACTIONS AND INFORMATION PROVIDED TO DRIVER. If a person is tested for blood alcohol concentration in accordance with s. 343.305, Stats., and test results indicate a blood an alcohol concentration of 0.1% or more, the law enforcement officer shall:

SECTION 8. Trans 113.03(2)(intro.) is amended to read:

Trans 113.03(2)(intro.) Provide the person with a form that two separate forms as follows:

SECTION 9. Trans 113.03(2)(a), (b) and (c) are renumbered 113.03(2)(a)1, 2 and 3.

SECTION 10. Trans 113.03(2)(a)(intro.) is created to read:

Trans 113.02(2)(a)(intro.) A notice of intent to suspend which does all of the following:

SECTION 11. Trans 113.03(2)(b) is created to read:

Trans 113.03(2)(b) An administrative review request which contains a section for the person to request an administrative review.

SECTION 12. Trans 113.03(2)(d) is repealed.

SECTION 13. Trans 113.03(3) is amended to read:

Trans 113.03(3) Within 5 days after the date of the notice of intent to suspend operating privilege, forward the license, if available, a copy of the alcoholic influence report, a copy of the form used to inform the accused person of Wisconsin's implied consent law, a copy of the arrest report, a copy of the chemical test result that is the basis of the suspension and, if available, the results of any other chemical tests related to the incident, and a copy of the notice of intent to suspend operating privilege to the nearest division of motor vehicles headquarters or, if the offense occurred in the county of Milwaukee, Waukesha, or Dane, to the office of the commissioner.

SECTION 12. Trans 113.03(4) is amended to read:

Trans 113.03(4) If the information in sub. (3) is provided, the officer need not appear at the administrative review ~~nor comply with a subpoena to compel his or her appearance.~~ unless subpoenaed under s. 805.07, Stats.

SECTION 13. Trans 113.04(1) is amended to read:

Trans 113.04 REVIEWS. (1) Written request for a review must be received or postmarked within 10 days after the date of the notice of intent to suspend operating privilege

under s. Trans 113.03- or if notification is by mail, within 13 days, excluding Saturdays, Sundays and holidays, after the date of mailing.

SECTION 14. Trans 113.04(3) is amended to read:

Trans 113.04(3) The issues the person wishes to contest at the review may be specified with the request for review. At the review, the person may present evidence and may be represented by counsel. The examiner shall consider and determine the reliability of all the evidence presented at the time of the review. Statements and reports of law enforcement officers are subject to the same standards of credibility applied to all other evidence presented. The issues shall be limited to any of the following:

SECTION 15. Trans 113.04(3)(c) is amended to read:

Trans 113.04(3)(c) Whether the person had ~~a blood~~ an alcohol concentration of 0.1% or more at the time the offense allegedly occurred.

SECTION 16. Trans 113.04(3)(e) is amended to read:

Trans 113.04(3)(e) If one or more tests were administered in accordance with s. 343.305, Stats., whether each of the test results for those tests indicate the person had a ~~blood~~ an alcohol concentration of 0.1% or more.

SECTION 17. Trans 113.04(3)(g) is created to read:

Trans 113.04(3)(g) Whether the person was driving or operating a commercial motor vehicle when the offense allegedly occurred.

SECTION 18. Trans 113.04(7), (8) and (9) are renumbered (8), (9) and (10) and amended to read:

Trans 113.04(8) If at any time the person submits written evidence from a facility certified by the state laboratory of hygiene and meeting the requirements of s.885.235 (1),

Stats., indicating ~~a blood~~ an alcohol concentration of less than 0.1%, the suspension will be vacated.

Trans 113.04(9) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria in s. 343.305 (8)(b), Stats., for administrative suspension have not been satisfied, or that the person did not have ~~a blood~~ an alcohol concentration of 0.1% or more at the time the offense allegedly occurred:

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

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

Trans 113.04(10) If the examiner finds to a reasonable certainty by evidence that is clear, satisfactory and convincing that the criteria for administrative suspension have been satisfied and that the person had ~~a blood~~ an alcohol concentration of 0.1% or more at the time the offense allegedly occurred:

(a) The examiner shall provide the person with a judicial review request form and notify the person in writing; and of the review decision and right to judicial review and stay of the suspension as provided in s. 343.305(8)(c), Stats.

(b) The administrative suspension shall take effect as provided in s. Trans 113.05 and s. 343.305 (7)(a), Stats.

SECTION 19. Trans 113.04(7) is created to read:

Trans 113.04(7) The examiner may permit testimony by telephone if the site of the administrative review is equipped with telephone facilities to allow multiple party conversations.

SECTION 20. Trans 113.04(10)(c) is created to read:

Trans 113.04(10)(c) The administrative suspension is vacated if the examiner fails to mail the notice to the person within 30 days after the date of the notice of intent to suspend operating privilege under s. Trans 113.03.

SECTION 21. Trans 113.04(10) is renumbered (11).

SECTION 22. Trans 113.04(12) is created to read:

Trans 113.04(12) No testimony given by any witness may be used in any subsequent action or proceeding.

SECTION 23. Trans 113.06 is created to read:

Trans 113.06 DEPARTMENT TO VACATE ADMINISTRATIVE SUSPENSION.

The department shall vacate the administrative suspension unless within 60 days of the date of the request for judicial review of the administrative hearing decision, the department has been notified of the results of the judicial review or of an order of the court entering a stay of the examiner's order continuing the suspension.

SECTION 24. The note following the rule is repealed.

(END OF RULE TEXT)

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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. 277.22(2)(intro.), Wis. Stats.

Signed at Madison, Wisconsin this 9<sup>th</sup> day of November, 1990.

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*Ronald R. Fiedler, Deputy*  
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  
Madison, WI 53707-7910

November 8, 1990

Mr. Gary Poulson  
Assistant Revisor of Statutes  
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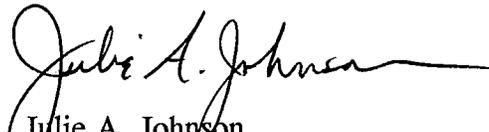
RE: **CLEARINGHOUSE RULE 90-145**

In the Matter of the Adoption of **TRANS 113**, Wisconsin Administrative Code, relating to the administrative suspension of operating privilege for operating a motor vehicle with an alcohol concentration of 0.1 or more

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 90-145**, 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

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