

CR 93-58

CERTIFICATE

RECEIVED
JUN 11 1993
9:30 P
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **Administrative Suspension of Operating Privilege for Operating a Motor Vehicle with a Prohibited Alcohol Concentration**, was duly approved and adopted by this Department on June 9, 1993.

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 9 day of June, 1993.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary

9-1-93

IN THE MATTER OF an **Order Adopting Rule** to AMEND Trans 113(title), 113.01, 113.03(intro.), 113.04(3)(c) and (e), (8), (9)(intro.) and (10)(intro.); and to REPEAL AND RECREATE Trans 113.02, Wisconsin Administrative Code, relating to administrative suspension of operating privilege for operating a motor vehicle with a prohibited alcohol concentration.

ORDER ADOPTING RULE**Analysis Prepared by the Wisconsin Department of Transportation**

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

STATUTES INTERPRETED: ss. 343.305(7) and (8), Stats.

General Summary of Rule. The alcohol concentration level at which a driver is subject to administrative suspension was changed by 1991 Wisconsin Act 277. Therefore, the amendments remove all references to specified alcohol concentration, and replaces the language with statutory "Prohibited" alcohol concentrations.

The statutory definition for "Prohibited Alcohol Concentration" as defined in s. 340.01(46m), Stats., is one of the following:

(a) If the person has one or no prior convictions, suspensions or revocations, as counted under s. 343.307(1), Stats., a blood alcohol concentration of 0.1% or more by weight of alcohol in the person's blood or 0.1 grams or more of alcohol in 210 liters of the person's breath.

(b) If the person has 2 or more prior convictions, suspensions or revocations, as counted under s. 343.307(1), Stats., a blood alcohol concentration of 0.08% or more by weight of alcohol in the person's blood or 0.08 grams or more of alcohol in 210 liters of the person's breath.

Fiscal Impact. No fiscal impact is anticipated from the promulgation of this rule.

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

Contact Persons. The persons to contact for further information about this rule are Mark Cotter, (608) 266-8198 or Wesley Geringer, (608) 266-0614. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 85.16(1), Stats., the department of transportation hereby amends a rule interpreting s. 343.305(7) and (8), Stats., relating to administrative suspension of operating privilege for operating a motor vehicle with a prohibited alcohol concentration.

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
PROHIBITED BLOOD ALCOHOL CONCENTRATION OF 0.1 OR MORE**

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)~~ 343.305(7) and ~~(11)~~ (8), Stats., relating to arrest for operating with an a prohibited alcohol concentration ~~of 0.1% or more~~, administrative suspension of operating privilege and reviews therefor.

NOTE: Prohibited Alcohol Concentration is defined by 340.01(46m), Stats.

SECTION 3. Trans 113.02 is repealed and recreated to read:

Trans 113.02 DEFINITIONS. The words and phrases defined in ss. 340.01 and 343.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "Hearing examiner" means an examiner or officer of either the department or the office of the commissioner of transportation authorized to conduct administrative reviews.

(2) "Law enforcement officer" means any person employed by the state or any political subdivision of the state for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce.

(3) "Office of the commissioner" means the office of the commissioner of transportation.

(4) "Office of the department" means an office of the department that is staffed by personnel of the bureau of field services district 5 days a week, or is the home office location in the assigned district for bureau of field services personnel who regularly travel to other locations.

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

Trans 113.03 LAW ENFORCEMENT OFFICER ACTIONS AND INFORMATION

PROVIDED TO DRIVER. (intro.) If a person is tested for alcohol concentration in accordance with s. 343.305, Stats., and test results indicate ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~, the law enforcement officer shall:

SECTION 5. Trans 113.04(3)(c) and (e), (8), (9)(intro.) and (10)(intro.) are amended to read:

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

(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 ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~.

(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 ~~an~~ the

person did not have a prohibited alcohol concentration ~~of less than 0.1~~, the suspension will be vacated.


(9)(intro.) 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 ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ at the time the offense allegedly occurred:

(10)(intro.) 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 ~~an~~ a prohibited alcohol concentration ~~of 0.1 or more~~ at the time the offense allegedly occurred:

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

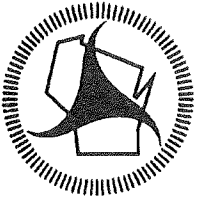
Signed at Madison, Wisconsin, this 9 day of June, 1993.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

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Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

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

June 11, 1993

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Revisor of Statutes
Bureau

Mr. Gary Poulson
Deputy Revisor of Statutes
131 West Wilson Street, Suite 800
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 93-58**

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

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 93-58**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Dorothy Kapke
Jim McDonnell
Roger Cross
Wes Geringer
Al Johnson
Mark Cotter