

## Chapter Trans 113

### ADMINISTRATIVE SUSPENSION OF OPERATING PRIVILEGE

#### FOR OPERATING A MOTOR VEHICLE WITH A PROHIBITED ALCOHOL CONCENTRATION

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**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 (7) and (8), Stats., relating to arrest for operating with a prohibited alcohol concentration, administrative suspension of operating privilege and reviews therefor.

**Note:** Prohibited alcohol concentration is defined by s. 340.01 (46m), Stats.

**History:** Cr. Register, December, 1987, No. 384, eff. 1-1-88; am. Register, January, 1991, No. 421, eff. 2-1-91; am. Register, August, 1993, No. 452, eff. 9-1-93.

**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 the department 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 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.

**History:** Cr. Register, December, 1987, No. 384, eff. 1-1-88; r. and recr. (1), renum. (2) to (6) to be (3) to (7), cr. (2), Register, January, 1991, No. 421, eff. 2-1-91; r. and recr., Register, August, 1993, No. 452, eff. 9-1-93; am. (1), r. (3), renum. (4) to be (3), Register, July, 1995, No. 475, eff. 8-1-95.

**Trans 113.03 Law enforcement officer actions and information provided to driver.** If a person is tested for alcohol concentration in accordance with s. 343.305, Stats., and test results indicate a prohibited alcohol concentration, the law enforcement officer shall:

(1) Take possession of the license issued to the person that was issued under ch. 343, Stats. If the person is operating under a license issued by another jurisdiction, the law enforcement officer shall take possession of that license. The license shall be forwarded to the department. Any valid Wisconsin operator's license may be accepted as a deposit pursuant to s. 345.23 (2) (c), Stats., prior to being forwarded to the department.

(2) Provide the person with 2 separate forms as follows:

(a) A notice of intent to suspend which does all of the following:

1. Serves as a 30 day temporary operator's license, provided the person has a valid license status.

2. Notifies the person that his or her operating privilege will be administratively suspended in 30 days.

3. Notifies the person of the right to obtain administrative and judicial review of the suspension.

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

(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 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 Milwaukee, Waukesha or Dane county, to district one motor vehicle headquarters.

(4) If the information in sub. (3) is provided, the officer need not appear at the administrative review unless subpoenaed under s. 805.07, Stats.

(5) If a review is requested and the information required in sub. (3) is not received or postmarked within 5 days after the date of the notice of intent to suspend, the suspension shall be vacated.

(6) Upon request, copies of the information in sub. (3) shall be provided to the person or his or her representative.

(7) In addition to the information submitted by the officer, a copy of all intoxilyzer 5000 maintenance reports shall be submitted on a regular basis by the division of state patrol to the location indicated in sub. (3).

**History:** Cr. Register, December, 1987, No. 384, eff. 1-1-88; emerg. am. (4), cr. (4) (b) and (c), eff. 12-30-88; am. (intro.) and (2) (intro.) (3) and (4), renum. (2) (a), (b) and (c) to be (2) (a) 1. to 3., r. (2) (d), cr., (2) (a) (intro.) and (b), Register, January, 1991, No. 421, eff. 2-1-91; am. (intro.), Register, August, 1993, No. 452, eff. 9-1-93; am. (3), Register, July, 1995, No. 475, eff. 8-1-95.

**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.

(2) Reviews shall be conducted:

(a) By the department at the office in the county where the offense allegedly occurred or, if the offense allegedly occurred in a county in which the department does not maintain an office, at the office of the department nearest to the location where the offense allegedly occurred.

(b) Within the 30 day period after the date of the notice of intent to suspend operating privilege.

(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:

(a) The correct identity of the person.

(b) Whether the person was informed of the options regarding tests as required under s. 343.305 (4), Stats.

(c) Whether the person had a prohibited alcohol concentration at the time the offense allegedly occurred.

(d) Whether one or more tests were administered in accordance with s. 343.305, Stats.

(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 prohibited alcohol concentration.

(f) Whether probable cause existed for the arrest.

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

(4) Upon receipt of a request for review, the examiner shall schedule the time and place and send notice to the person by first class mail at least 5 days prior to the review. The 5 day notice may be replaced by actual notice if a shorter period is necessary in order to hold the review within the 30 day period after the date of the notice to suspend operating privilege.

(5) If the person requests a review but does not appear at the time and place scheduled, the administrative suspension shall take effect as provided in s. Trans 113.05.

(6) The person may submit written arguments limited to the issues in sub. (3) if the written arguments are submitted with the request for review and the person indicates the written arguments are in lieu of a personal appearance.

(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.

(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 the person did not have a prohibited alcohol concentration, the suspension will be vacated.

(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 prohibited alcohol concentration 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.

(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 prohibited alcohol concentration 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 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.

(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.

(11) Examiners shall conduct reviews in an impartial and detached manner. The result of an individual review may not be considered in any personnel action involving the examiner or performance review of the examiner by the department.

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

**History:** Cr. Register, December, 1987, No. 384, eff. 1-1-88; emerg. cr. (7g), (7m) and (7s), am. (9) (a) eff. 12-30-88; am. (1), (3) (intro.), (c) and (e), renum. (7) to (10) to be (8) to (11) and am., cr. (3) (g), (7), (10) (c) and (12), Register, January, 1991, No. 421, eff. 2-1-91; am. (3) (c), (e), (8), (9) (intro.) and (10) (intro.), Register, August, 1993, No. 452, eff. 9-1-93; r. (2) (b), renum. (2) (c) to be (2) (b), am. (11), Register, July, 1995, No. 475, eff. 8-1-95.

**Trans 113.05 Suspensions.** The suspension shall be effective beginning at 12:01 A.M. on the 31st day after the date of the notice of intent to suspend operating privilege under s. Trans 113.03, unless the department is notified by the examiner that the criteria in s. 343.305 (8) (b), Stats., for administrative suspension have not been satisfied.

**History:** Cr. Register, December, 1987, No. 384, eff. 1-1-88.

**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.

**History:** Emerg. cr. eff. 12-30-88; cr. Register, January, 1991, No. 421, eff. 2-1-91.