

Chapter Trans 311

BREATH ALCOHOL TESTING, APPROVAL AND PERMIT PROGRAM

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Note: Chapter MVD 25 as it existed on May 31, 1978 was repealed and a new chapter MVD 25 was created effective June 1, 1978, renumbered to be Trans 311, effective August 1, 1981.

Trans 311.01 Purpose. The purpose of this chapter is to aid the department of transportation in the administration of the breath alcohol testing, approval and permit program as directed and authorized by s. 343.305 (10) (b), Stats.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Trans 311.02 Applicability. The provisions of this chapter are applicable to all law enforcement agencies and personnel engaging in breath alcohol analyses in this state.

History: Cr. Register, July, 1981, No. 307, eff. 8-1-81.

Trans 311.03 Definitions. As used in this chapter:

(1) "Administrator" means the administrator of the division of state patrol in the Wisconsin department of transportation.

(2) "Agency" means a law enforcement agency in the state engaging in breath alcohol testing.

(3) "Agency trained technician" means a person who is approved by the secretary pursuant to the provisions of s. Trans 311.07 (1) and (2), Wis. Adm. Code, and who is authorized to perform the responsibilities set forth in s. Trans 311.06 (3), Wis. Adm. Code.

(3m) "Alcohol" means ethyl alcohol and may include methyl alcohol and isopropyl alcohol.

(4) "Ampoule" means a glass vial which contains a chemical solution compounded specifically for use in the breathalyzer but is not an integral component of the instrument.

(5) "Batch" means the entire quantity of a chemical compound or solution prepared at one time and with which a large quantity of ampoules, identified with the same control number, are filled.

(7) "Breathalyzer Test Report and Operational Check List" means a report identified as form DSP 4036.

(7m) "Calibrating Unit" means a device or devices which are designed to produce a predictable alcohol concentration reading on a breath alcohol test instrument through the use of reference solutions or by mechanical or physical means.

(9) "Certified Instrument Operator" means employes of a law enforcement agency or a health agency providing services to a law enforcement agency who have successfully completed a specialized training program and have been issued a class I or II permit.

(9m) "Department" means the Wisconsin department of transportation.

(10) "Instrument" means an item or combination of items of equipment designed to make a measurement of alcohol concentration, but does not include appurtenances used in conjunction with the instrument.

(11) "Instrument Maintenance and Calibration Report" means that report identified as form DSP 4068.

(11m) "Internal Standard" means an integral component of a breath alcohol test instrument which is designed to continuously monitor the calibration of the instrument.

(12) "Permit, Class I" means a certificate issued to a person authorizing that person to administer qualitative breath alcohol tests.

(13) "Permit, Class II" means a certificate issued to a person authorizing that person to administer qualitative breath alcohol tests.

(14) "Permit, Class III" means a certificate issued to a person authorizing that person to perform the duties of an agency trained technician.

(15) "Program Director" means that person assigned the responsibility for the administration and supervision of the breath alcohol testing, approval and permit program of the department.

(16) "Qualitative breath alcohol analyses" means tests of a person's breath the results of which indicate the presence or absence of alcohol in the person's blood by direct digital readout.

(17) "Quantitative breath alcohol analyses" means chemical tests of a person's breath which yield a specific result in percent blood alcohol by weight.

(18) "Reference Solution" means a solution compounded for use in calibrating units which, when equilibrated with air, yields a predictable result in percent blood alcohol by weight.

(19) "Secretary" means the secretary of the Wisconsin department of transportation.

(20) "System blank analysis" means a chemical test of a specimen which is alcohol free to insure that the system produces a blank result on an alcohol free specimen.

(21) "Technical supervisor" means that person having the civil service title "Chemical Test Coordinator", or title to which that position may be reallocated, assigned the responsibility for the supervision of the breath alcohol testing, approval and permit program in one or more assigned areas of the state.

(22) "Time system operator" means a person employed by a law enforcement agency to receive or transmit messages on the time system communications network in the state.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78; renum. from MVD 25.01 and r. (19), (20), (22), (25) and (26), am. (1), (4), (5), (10), (14) to (18), r. and recr. (3), (7), (9) and (11), renum. (2) to be (3m) and am., renum. (6) to be (7m) and am., renum. (8) to be (9m) and am., cr. (2) and (11m), Register, July, 1981, No. 307, eff. 8-1-81.

Trans 311.04 Breath test instrument approval. (1) All organizations or individuals selling or offering for sale instruments for the determination of the concentration or presence of alcohol in the breath in this state shall register the instruments with the department.

(a) It shall be the responsibility of the organization or individual selling or offering for sale instruments for the determination of the concentration or presence of alcohol in the blood, by analysis of a breath specimen, in this state, to make arrangements with the department to have the instrument evaluated. The organization or individual requesting the evaluation shall provide the department with instruments, related accessories, chemical reagents, complete directions and any other materials needed for the evaluation, and shall provide the program director with technical consultation when necessary during the evaluation.

(b) The department shall not accept for evaluation any instrument which has not met the performance standards set forth in this section.

(2) Instruments for quantitative breath alcohol analyses shall meet the performance standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration identified as, "Performance Standard for Evidential Breath Testers," NHTSA-STD-2001.01, January 1977. 38 Fed. Reg. 30,459 (1973).

Note: This reference is available from the office of the program director, Wisconsin department of transportation, division of state patrol, post office box 7912, Madison, Wisconsin 53707, or from the secretary of state or the revisor of statutes.

(3) Instruments for qualitative breath alcohol analyses shall meet the performance standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration, identified as, "Performance Standards for Screening Breath Alcohol Testers", NHTSA-STD-2003.00, December 1974.

Note: This reference is available from the office of the program director, Wisconsin department of transportation, division of state patrol, post office box 7912, Madison, Wisconsin 53707, or from the secretary of state or the revisor of statutes.

(4) Calibrating units for breath alcohol testers shall have the approval of the program director if manufactured prior to the adoption of federal standards or shall meet the performance standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration identified as, "Performance Standards for Cali-

brating Units for Breath Alcohol Testers" published in the Federal Register. 40 Fed. Reg. 36,167 (1975).

Note: This reference is available from the office of the program director, Wisconsin department of transportation, division of state patrol, post office box 7912, Madison, Wisconsin 53707, or from the secretary of state or the revisor of statutes.

(5) Internal standards for use with breath alcohol test instruments shall be approved by the program director only if they meet the following performance standards:

(a) The internal standard shall be a permanent, integral component of the instrument.

(b) The internal standard shall function to render the breath alcohol test instrument inoperable if the calibration of the breath alcohol test instrument exceeds the standard calibration value by more than 0.01% w/v.

(6) The ability of any instrument or related accessories to meet the standards of performance set forth in this section shall be subject to evaluation by the program director and each type or category of instrument or device shall be approved by the program director prior to use in this state.

(7) The following quantitative breath alcohol test instruments are approved for use in Wisconsin:

(a) Breathalyzer—models 900 and 900A.

(b) Auto-Intoximeter.

(c) Intoxilyzer model 4011AS.

(d) Intoximeter model 3000.

(8) The following qualitative breath alcohol test instruments are approved for use in Wisconsin:

(a) Alco Sensor II.

(b) Alert model J3A.

(9) The following calibrating units are approved for use in Wisconsin:

(a) Stephenson Breath Alcohol Simulator.

(b) Smith and Wesson Mark IIA Simulator.

(c) Luckey Simulator model LS.

(10) The Intoximeter model 3000 internal sample simulator is approved for use as an internal standard in Wisconsin.

(11) Other types or categories of breath alcohol test instruments or calibrating units shall be approved by the program director, as they are evidenced to the satisfaction of the program director, that they meet the performance standards established in this section.

History: Cr. Register, May 1978, No. 269, eff. 6-1-78; renum. MVD 25.02 to be Trans 311.04 (1) and am., renum. MVD 25.03 (1) and (2) (intro.) to be (2) and (3) and am.; r. (2) (a) to (k) and (2m), renum. MVD 25.03 (3) to be (4) and am.; cr. (5), renum. MVD 25.03 (4) to be (6) and am.; renum. MVD 25.04 (1) to (3) to be (7) to (9) and am., cr. (10), renum. MVD 25.04 (4) to be (11) and am., Register, July, 1981, No. 307, eff. 8-1-81.