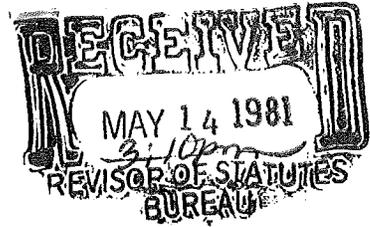


CR 81-4



C E R T I F I C A T E

STATE OF WISCONSIN )  
 )  
DEPARTMENT OF TRANSPORTATION )

TO ALL TO WHOM THESE PRESENTS COME, GREETINGS:

I, Lowell B. Jackson, Secretary of the Department of Transportation and custodian of the official records of the Department, do hereby certify that the annexed rules relating to the breath alcohol testing, approval and permit program, were duly approved and adopted by this Department on May 13, 1981.

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 at the Hill Farms State Office Building in the city of Madison, this 13<sup>th</sup> day of May, 1981.

  
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LOWELL B. JACKSON, P.E.  
Secretary  
Wisconsin Department of Transportation

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IN THE MATTER OF A RULE TO RENUMBER CH.	:	
MVD. 25 TO BECOME CH. TRANS 311 AND TO	:	ORDER
AMEND, REPEAL AND CREATE ADMINISTRATIVE	:	ADOPTING
RULES RELATING TO THE BREATH ALCOHOL	:	RULES
TESTING, APPROVAL AND PERMIT PROGRAM.	:	

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Analysis Prepared by the Department of Transportation

1. Chapter MVD 25, Wisconsin Administrative Code, is re-numbered Chapter TRANS 311, Wisconsin Administrative Code.

2. Section TRANS 311.01 has been created to specify the purpose of the chapter.

3. Section TRANS 311.02 has been created to identify those agencies and individuals to whom the provisions of this chapter apply.

4. Section MVD 25.01, Definitions, has been renumbered as section TRANS 311.03, Definitions. This section has been amended to include the division of state patrol name, include additional words and phrases, and delete other words and phrases which no longer appear in the text of the code. In addition, a number of definitions have been broadened for greater clarity.

5. Sections MVD 25.02, Breath Test Instrument Approval; MVD 25.03, Standards of Performance; and MVD 25.04, Instruments Approved for Use in Wisconsin, have been combined and renumbered as section TRANS 311.04 and retitled, Breath Test Instrument Approval. This section has been amended to include individuals as possible vendors of breath alcohol test instruments. Areas which are matters of routine program policy have been deleted. Standards which had been developed and adopted by the department of transportation relating to qualitative breath alcohol test instruments have been deleted because federal standards have now been published. New automated breath alcohol test instruments and calibrators have been approved and have been included in the new code.

6. Section MVD 25.05, Approved Techniques and Methods of Performing Chemical Analysis of the Breath, has been renumbered as section TRANS 311.05, Approved Techniques and Methods of Performing Chemical Analysis of the Breath. This section has been amended to clarify procedures. Provisions relating to tolerances have been made more specific with total emphasis being in the plus tolerance.

7. Section MVD 25.06, Approval of Breath Alcohol Testing Programs, has been renumbered as section TRANS 311.06, Approval of Breath Alcohol Testing Programs. This section has been amended for clarification and to delete duplication. A change has been incorporated to permit a check of the instrument calibration at intervals shorter than 60 days if this is found necessary.

8. Section MVD 25.07, Technicians Approved by the Secretary, has been renumbered as section TRANS 311.07, Technicians Approved by the Secretary. The section has been amended to provide for facsimile signatures of both the secretary and the program director in preparation for the use of new type permits.

9. Section MVD 25.08, Approved Training Programs, has been renumbered as section TRANS 311.08, Approved Training Programs. This section has been amended to delete those areas which are a matter of routine program policy. A new subsection specifies the qualifications which must be met by applicants to attend operator training programs in the operation of qualitative breath alcohol test instruments.

10. Section MVD 25.09, Quality Control Program; Standards of Procedure for Testing and Certifying the Accuracy of Breath Test Instruments, has been renumbered as section TRANS 311.09 and retitled to read, Procedure for Testing and Certifying the Accuracy of Breath Alcohol Test Instruments. The section has been amended to provide more frequent instrument accuracy checks than that presently required. More frequent accuracy checks would be specified by a technical supervisor if the need arises. Language which is duplicated elsewhere in the code has been eliminated, and areas which are governed by rules of evidence have been deleted. An amendment has been included to provide for the calibration of qualitative breath alcohol test instruments at intervals of not to exceed 60 days, rather than 30 days.

11. Sections MVD 25.10, Qualifications for and Issuance of Permits; MVD 25.11, Renewal of Permits; and MVD 25.12, Revocation, Suspension and Cancellation of Permits, have been combined and renumbered as section TRANS 311.10 and retitled as, Qualifications for Issuance and Cause for Revocation, Suspension and Cancellation of Permits. Numerous changes have been made to clarify the qualifications necessary for the issuance of all classes of permits. The requirement that technical supervisors sign class I and class II permits has been deleted to provide for the use of new type permits. Testing requirements for persons holding class I and class II permits and made mandatory by the existing code have been deleted in favor of a discretionary testing program at the direction of the technical supervisor.

12. Section MVD 25.13, Records and Reports, is renumbered as section TRANS 311.11, Records and Reports. This section has been amended for the purpose of complying with the new report forms now beginning to be used. The provision which specifies certain reports as matters of public record has been deleted.

Authority for rule. Section 343.305(10)(b), Wis. Stats., provides: "The department of transportation shall approve techniques or methods of performing chemical analysis of the breath and shall: 1. Approve training manuals and courses throughout the state for the training of law enforcement officers in the chemical analysis of a person's breath; 2. Certify the qualifications and competence of individuals to conduct the analysis; 3. Have trained technicians, approved by the secretary, test and certify the accuracy of the equipment to be used by traffic officers for chemical analysis of a person's breath under sub. (2)(b) before regular use of the equipment and periodically thereafter at intervals of not more than 60 days; and 4. Issue permits to individuals according to their qualifications."

Summary of fiscal effect. The installation of fourteen new automated breath test instruments that are approved in Chapter TRANS 311, the elimination of the mandatory testing program, an abbreviated training program in the operation of the new automated instruments, and the development of an automated reporting system will result in a savings to the department of approximately \$20,000 per year.

Local law enforcement agencies will benefit from the adoption of TRANS 311. There will be a reduction in time spent on the testing program, the training program and the preparation of reports. This time saved can be used to increase the time available for enforcement patrolling. There will also be a reduction in paperwork and mailing costs to local law enforcement agencies.

This analysis, statement of authority and fiscal estimate has been prepared by Frantz Heise, Division of State Patrol, Wisconsin Department of Transportation (608) 266-0084.

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Pursuant to the authority vested in the Department of Transportation by section 110.06 and 227.014, Wis. Stats., the Department renumbers, repeals, amends and adopts rules interpreting section 343.305, Wis. Stats., as follows:

RULE TEXT

SECTION 1. Section TRANS 311.01 of the Wisconsin Administrative Code is created to read:

Section 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), Wis. Stats.

SECTION 2. Section TRANS 311.02 of the Wisconsin Administrative Code is created to read:

Section 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.

SECTION 3. Section MVD 25.01 of the Wisconsin Administrative Code is renumbered TRANS 311.03.

SECTION 4. TRANS 311.03(1) of the Wisconsin Administrative Code, as renumbered, is amended to read:

Section TRANS 311.03(1) "Administrator" means the administrator of the division of ~~enforcement and inspection~~ state patrol in the Wisconsin department of transportation.

SECTION 5. TRANS 311.03(2) of the Wisconsin Administrative Code, as renumbered, is renumbered TRANS 311.03(3m) and amended to read:

Section TRANS 311.03~~(2)~~(3m) "Alcohol" means ethyl alcohol, ~~that is ethane±,~~ and may include methyl alcohol and isopropyl alcohol.

SECTION 6. TRANS 311.03(2) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.03(2). "Agency" means a law enforcement agency in the state engaging in breath alcohol testing.

SECTION 7. TRANS 311.03(3) of the Wisconsin Administrative Code, as renumbered, is repealed and recreated to read:

Section TRANS 311.03(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), Wisconsin Administrative Code, and who is authorized to perform the responsibilities set forth in s. TRANS 311.06(3), Wisconsin Administrative Code.

SECTION 8. TRANS 311.03(4) and (5) of the Wisconsin Administrative Code, as renumbered, are amended to read:

Section TRANS 311.03(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.

Section TRANS 311.03(5) "Batch" means the entire quantity of a chemical compound or ~~solutions~~ solution prepared at one time and with which a large quantity of ampoules, identified with the same control number, are filled.

SECTION 9. TRANS 311.03(6) of the Wisconsin Administrative Code, is renumbered TRANS 311.03(7m) and amended to read:

Section TRANS 311.03(7m) "Calibrating Unit" ~~or "Simulator"~~ means a device or devices which are designed to ~~contain a refer-~~ ~~ence solution which,~~ when equilibrated with air, will provide a

predictable result on a breath alcohol test instrument; produce a predictable alcohol concentration reading on a breath alcohol test instrument through the use of reference solutions or by mechanical or physical means.

SECTION 10. TRANS 311.03(7) of the Wisconsin Administrative Code, as renumbered, is repealed and recreated to read:

Section TRANS 311.03(7) "Breathalyzer Test Report and Operational Check List" means a report identified as form DSP 4036.

SECTION 11. TRANS 311.03(8) of the Wisconsin Administrative Code, as renumbered, is renumbered TRANS 311.03(9m):

Section TRANS 311.03(9m) "Department" means the Wisconsin department of transportation.

SECTION 12. TRANS 311.03(9) of the Wisconsin Administrative Code, as renumbered, is repealed and recreated to read:

Section TRANS 311.03(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.

SECTION 13. TRANS 311.03(10) of the Wisconsin Administrative Code, as renumbered, is amended to read:

Section TRANS 311.03(10) "Instrument" or "Device" means an item or combination of items of equipment used designed to make a measurement of alcohol concentration, ~~simple and complex devices~~ are included in the meaning; but does not include appurtenances used in conjunction with the instrument.

SECTION 14. TRANS 311.03(11) of the Wisconsin Administrative Code, as renumbered, is repealed and recreated to read:

Section TRANS 311.03(11) "Instrument Maintenance and Calibration Report" means that report identified as form DSP 4068.

SECTION 14m. TRANS 311.03(11m) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.03(11m) "Internal Standard" means an integral component of a breath alcohol test instrument which is designed to continuously monitor the calibration of the instrument.

SECTION 15. TRANS 311.03(14), (15), (16), (17) and (18) of the Wisconsin Administrative Code, as renumbered, are amended to read:

Section TRANS 311.03(14) "Permit, Class III" means a certificate issued to a person authorizing that person to administer qualitative or quantitative breath alcohol tests and to perform the duties of a an agency trained technician.

Section TRANS 311.03(15) "Program Director" means that person charged with assigned the responsibility for the direction administration and supervision of the chemical test breath alcohol testing, approval and permit program of the division of enforcement and inspection department. The program director is responsible for the compliance with the provisions of this chapter by all law enforcement agencies, the certification of all phases of the breath alcohol testing program and the safeguarding of the scientific integrity of the program.

Section TRANS 311.03(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. ~~Qualitative breath alcohol tests indicate a range within which the blood alcohol concentration falls or may indicate the presence of alcohol by direct digital readout.~~

Section TRANS 311.03(17) "Quantitative breath alcohol analyses" means chemical tests of a person's breath which ~~yields~~ yield a specific result in percent blood alcohol by weight.

Section TRANS 311.03(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.

SECTION 16. TRANS 311.03(19) and (20) of the Wisconsin Administrative Code, as renumbered, are repealed.

SECTION 17. TRANS 311.03(21) of the Wisconsin Administrative Code, as renumbered, is renumbered TRANS 311.03(19).

SECTION 18. TRANS 311.03(22) of the Wisconsin Administrative Code, as renumbered, is repealed.

SECTION 19. TRANS 311.03(23) of the Wisconsin Administrative Code, as renumbered, is renumbered TRANS 311.03(20).

SECTION 20. TRANS 311.03(24) of the Wisconsin Administrative Code, as renumbered, is renumbered TRANS 311.03(21) and amended to read:

Section TRANS 311.03(21) "Technical supervisor" means a that person employed having the civil service title "Chemical Test Coordinator", or title to which that position may be reallocated, assigned the responsibility for to supervise the supervision of the breath alcohol testing, approval and permit program in an one or more assigned area areas of the state.

SECTION 21. TRANS 311.03(22) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.03(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.

SECTION 22. TRANS 311.03(25) and (26) of the Wisconsin Administrative Code, as renumbered, are repealed.

SECTION 23. Section MVD 25.02 of the Wisconsin Administrative Code, is renumbered TRANS 311.04 and as renumbered is amended to read:

Section TRANS 311.04 BREATH TEST INSTRUMENT APPROVAL.

(1) All organizations or individuals selling or offering for sale instruments for the determination of the quantity concen-  
tration or presence of alcohol in the breath in this state shall register the instruments with the department. ~~All breath~~  
~~-testinstruments used in the state of Wisconsin shall have the~~  
~~approval of the program director.~~

(a) It shall be the responsibility of the manufacturer of the instrument 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 manufacturer organization or individual requesting the evaluation shall provide the department with instruments, related accessories, chemical reagents, full complete direction directions and any other materials needed for the evaluation, and shall provide the program director with technical consultation when necessary during the evaluation.

(b)-Upon receiving a request from the manufacturer, and providing the provisions of this chapter have been complied with, the department shall evaluate the instrument against the standards of performance set forth in section MVD-25.03, providing budgetary constraints do not prohibit the evaluation.

(c) The department shall report the result of the evaluation of the manufacturer requesting the evaluation and shall have the right to promulgate the results.

(d)(b) The department shall not accept for evaluation any instrument or device, the procedure for which analysis is made esoteric by reason of secrecy, commercial unavailability or incomplete directions, which has not met the performance standards set forth in this section.

(e) The department shall provide, upon request, a list of instruments and related accessories which have been approved for breath alcohol analyses in this state.

MVD-25.03 STANDARDS-OF-PERFORMANCE.

SECTION 24. MVD 25.03(1) of the Wisconsin Administrative Code is renumbered TRANS 311.04(2) and as renumbered is amended to read:

Section TRANS 311.04(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. ~~These standards are identified as, "Standards for Devices to Measure Breath Alcohol" published in the federal register Vol. 38, No. 212 Monday, November 5, 1973. "Performance Standard for Evidential Breath Testers," NHTSA-STD-2001.01, January 1977. 38 Fed. Reg. 30,459 (1973). This reference is available from the program director, the secretary of state, or the revisor of statutes.~~

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.

SECTION 25. MVD 25.03(2) (intro) of the Wisconsin Administrative Code is renumbered TRANS 311.04(3) and as renumbered is amended to read:

Section TRANS 311.04(3) Instruments for qualitative breath alcohol analyses shall meet the performance standards established by the ~~program director, 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. These standards will remain in effect until the adoption of federal standards which have not yet been published. In the interim, these standards are established as follows:

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.

SECTION 26. MVD 25.03(2)(a) through(k) of the Wisconsin Administrative Code is repealed.

SECTION 27. MVD 25.03(2) (Note: This refers to the second subsection (2) which erroneously appears in MVD 25.03.) of the Wisconsin Administrative Code is repealed.

SECTION 28. MVD 25.03(3) of the Wisconsin Administrative Code is renumbered TRANS 311.04(4) and as renumbered is amended to read:

Section TRANS 311.04(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. The performance standards are identified as, "Performance Standards for Calibrating Units for Breath Alcohol Testers" published in the federal register, 40 FR36167 - August-1971 1975 Federal Register. 40 Fed. Reg. 36,167 (1975). This refer-

ence is available from the office of the program director, the secretary of state or the revisor of statutes.

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.

SECTION 29. TRANS 311.04(5) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.04(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.

SECTION 30. MVD 25.03(4) of the Wisconsin Administrative Code is renumbered TRANS 311.04(6) and as renumbered is amended to read:

Section TRANS 311.04(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.

MVD-25.04 INSTRUMENTS APPROVED FOR USE IN WISCONSIN.

SECTION 31. MVD 25.04(1) of the Wisconsin Administrative Code is renumbered TRANS 311.04(7) and as renumbered is amended to read:

Section TRANS 311.04(7) The following quantitative breath alcohol test instruments ~~have been~~ are approved for use in Wisconsin:

(a) Breathalyzer - ~~All models with the exception of Models 300 and 400 (Smith and Wesson/General Ordinance Equipment Company)~~ models 900 and 900A.

~~(b) Alco-Analyser Gas Chromatograph (Lucy Laboratories)~~

(b) Auto-Intoximeter.

(c) Intoxilyzer model 4011AS.

(d) Intoximeter model 3000.

SECTION 32. MVD 25.04(2) of the Wisconsin Administrative Code is renumbered TRANS 311.04(8) and as renumbered is amended to read:

Section TRANS 311.04(8) The following qualitative breath alcohol test instruments ~~have been~~ are approved for use in Wisconsin:

(a) Alco Sensor II. ~~(Intoximeters, Inc.)~~

(b) Alert model J3A. ~~(Alcohol-Countermeasures-Systems)~~

SECTION 33. MVD 25.04(3) of the Wisconsin Administrative Code is renumbered TRANS 311.04(9) and as renumbered is amended to read:

Section TRANS 311.04(9) The following ~~calibrator~~ calibrating units ~~have been~~ are approved for use in Wisconsin:

(a) Stephenson Breath Alcohol Simulator, ~~(Stephenson Corporation)~~

(b) Smith and Wesson Mark II and Mark IIA Simulator, ~~(Smith and Wesson/General Ordinance Equipment Company)~~

(c) Luckey Simulator model LS, ~~(Luckey Laboratories)~~

SECTION 34. TRANS 311.04(10) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.04(10) The Intoximeter model 3000 internal sample simulator is approved for use as an internal standard in Wisconsin.

SECTION 35. MVD 25.04(4) of the Wisconsin Administrative Code is renumbered TRANS 311.04(11) and as renumbered is amended to read:

Section TRANS 311.04(11) Other types or categories of breath alcohol test instruments or calibrating units ~~may~~ shall be approved by ~~letter, the program director,~~ as they are ~~demonstrated~~ evidenced to the satisfaction of the ~~department,~~ program director, that they meet the ~~requisite standards,~~ performance standards established in this section.

SECTION 36. MVD 25.05 of the Wisconsin Administrative Code is renumbered TRANS 311.05 and as renumbered is amended to read:

Section TRANS 311.05 APPROVED TECHNIQUES AND METHODS OF PERFORMING CHEMICAL ANALYSIS OF THE BREATH.

(1) Methods of performing quantitative chemical analysis of the breath to determine the alcohol content of the blood shall be as prescribed on forms approved by the department.

(2) Techniques used in performing quantitative chemical analysis of the breath shall be those which are taught in the classroom and are designed to insure accuracy, detect malfunctions and to safeguard personnel and equipment.

(3) Procedures for quantitative chemical breath analysis of the breath for the determination of the concentration of alcohol in the blood shall include, but are shall not be limited to, the following controls in conjunction with the testing of each subject:

(a) ~~Continuous observation~~ Observation by a responsible person or combination of persons, of the test subject for a minimum of 20 minutes prior to the collection of a breath specimen, during which time the test subject shall not have ingested alcohol, regurgitated, vomited, or smoked.

(b) A system blank analysis.

(c) An Analysis analysis of a suitable reference solution, such as a reference solution of known alcohol content at a known temperature, equilibrated with air, utilizing a calibrating unit or internal standard, the results of which analysis are within tolerances established by the program director, shall not exceed the established value of the calibrating unit by more than 0.01% W/V.

(4) Results of analyses of breath for alcohol shall be expressed in terms of percent blood alcohol by weight, that is, ~~grams~~ milligrams of alcohol per 100 milliliters of blood, and shall be reported to the second decimal place. For example, 0.078% W/V shall be reported as 0.17% W/V or may be reported as 0.17+% W/V.

(5) Methods of performing qualitative chemical analysis of the breath to determine the presence of alcohol in the blood shall be as prescribed by the department.

SECTION 37. MVD 25.06 of the Wisconsin Administrative Code is renumbered TRANS 311.06 and as renumbered is amended to read:

Section TRANS 311.06 APPROVAL OF BREATH ALCOHOL TESTING PROGRAMS.

(1) All breath alcohol testing programs in this state shall have the approval of and be certified by the program director. Approval and certification of agency breath alcohol testing programs will be contingent upon the agencies complying with the provisions of this chapter.

(2) Prior to initiating a chemical breath testing program, an agency shall notify the program director of its intent and shall supply such other information as may be requested. An on site inspection shall be made by the program director or his designated representative to assure compliance with the provisions of this chapter.

~~(3)~~ (2) Approval and certification of any chemical breath alcohol testing program ~~is shall be~~ contingent upon the law enforcement agencies' agreement to conform to and abide by any directives, orders, or policies issued or to be issued by the program director, in regard to any aspect of the program. This shall include, but ~~is shall~~ not be limited to, the following:

(a) Program administration including reports, records and forms.

(b) Site location and security.

(c) Methods of operation and testing techniques.

(d) Supervision of the law enforcement agency breath alcohol test program by a an agency trained technician ~~if that agency is the site of a quantitative breath test instrument.~~ who shall be responsible to a technical supervisor for activities in the program.

(4) Each agency chemical breath alcohol testing program shall be supervised by a trained technician having in his possession a valid class III permit, providing that agency is the site of a quantitative breath test instrument. The trained technician must be approved by the secretary, and shall have the following duties and responsibilities in the agency breath alcohol testing program:

(3) Agency trained technicians shall:

(a) Compliance Comply with the provisions of section MVD-25-09, Quality Control Program, Standards of Procedure for Testing and Certifying the Accuracy of Breath Test Instruments.

procedure for testing and certifying the accuracy of breath alcohol test instruments set forth in this chapter.

(b) ~~Compliance~~ Comply with all directives pertaining to the preventive maintenance schedule for breath alcohol test instruments.

(c) ~~Completion of the Breathalyzer Test Log and forwarding it to the technical supervisor for the area.~~

(d) ~~Forwarding all copies of required reports to the technical supervisor for the area.~~

(e) (c) ~~Checking~~ Check for accuracy and calibrate if necessary, at intervals ~~not to exceed 30 days,~~ established by the program director, but in no instance longer than 60 days, all preliminary breath alcohol test instruments assigned to the agency.

(f) (d) ~~Insuring~~ Insure that an adequate supply of materials and forms required in the breath alcohol testing program are available at all times.

(e) Transmit or cause to be transmitted, all breath alcohol test program related data or information requested by the program director or a technical supervisor.

(g) ~~Consultation with the technical supervisor at all times in matters pertaining to the administration of the breath alcohol testing program.~~

(h) (f) ~~Providing~~ Provide instruction, utilizing the approved training program, in the method of proper operation and techniques use to be followed in the administration of

qualitative breath alcohol test instruments. tests using a preliminary qualitative all personnel in the agency employing that person as a trained technician.

~~(i)~~ (g) ~~Certifying~~ Certify to the a technical supervisor for the area, the ~~competence~~ competency of law enforcement agency personnel to administer preliminary qualitative breath alcohol tests.

~~(j)~~ (h) Testify in court when required regarding the ~~accuracy~~ and maintenance and calibration of breath alcohol test instruments completed in compliance with this chapter.

~~(k)~~ Insure the compliance with all provisions of this chapter by all personnel permitted to engage in breath alcohol tests at that agency, regardless of agency affiliation.

~~(5)~~ Trained Technicians shall meet the following qualifications:

~~(a)~~ Shall be the holder of a class I and II permit as provided in section MVD 25-10.

~~(b)~~ Shall successfully complete all requirements for a class III permit as provided in section MVD 25-10(4)(c).

~~(6)~~ (4) Technical supervisors will shall exercise complete the authority for all aspects of the breath alcohol testing program in the assigned area. Technical supervisors, in addition to the authority and responsibility set forth in this chapter, shall have the following responsibilities and perform the following duties in their assigned areas. granted them by this chapter, and in addition shall:

(a) ~~Supervision~~ Supervise the breath alcohol test activities of agency trained technicians and certified instrument operators.

(b) Complete Field field inspections of the total breath alcohol testing, approval and permit program including reports, records, operations and analyses.

~~(c) Supervision of the maintenance, calibration and certification of breath test instruments by trained technicians.~~

~~(d)~~ (c) Training Train and re-evaluation evaluate of breath alcohol test instrument operators and agency trained technicians and re-evaluate them at intervals established by the program director.

~~(e) Monitoring and evaluation of the quality control program designed to insure the continued proficiency of certified operators and trained technicians.~~

(d) Insure the continued proficiency and competency of agency trained technicians and certified instrument operators.

~~(f)~~ (e) Insure the compliance with all provisions of this chapter. MVD-25.

~~(g)~~ (f) Make inspections and investigations in matters, pertaining to the breath alcohol testing, approval and permit programs program as requested by the program director.

~~(h)~~ (g) Comply with all directives concerning the breath alcohol testing, approval and permit program issued by the program director.

(i) (h) Maintain and submit records and reports as required by the program director.

SECTION 38. MVD 25.07 of the Wisconsin Administrative Code is renumbered TRANS 311.07 and as renumbered is amended to read:

Section TRANS 311.07 ~~TECHNICIANS APPROVED BY THE SECRETARY-~~  
AGENCY TRAINED TECHNICIANS AND TECHNICAL SUPERVISORS.

(1) The secretary shall, upon recommendation of the program director, approve agency trained technicians as required by s. 343.305(10)(b)3, Wis. Stats.

(2) The issuance of a class III permit bearing the ~~signature~~ signatures, original or facsimile, of the secretary and countersigned by the program director, ~~establishes~~ shall establish that the holder of that permit has been approved by the secretary as a an agency trained technician.

(3) Technical supervisors shall be qualified for and hold a valid class III permit.

SECTION 39. MVD 25.08 of the Wisconsin Administrative Code is renumbered TRANS 311.08 and as renumbered is amended to read:

Section TRANS 311.08 APPROVED TRAINING PROGRAMS.

(1) Training programs for the training of law enforcement officers in the qualitative or quantitative chemical analysis of the breath to determine the presence or quantity concentra-

tion of alcohol in the blood shall be approved by and under the direction of the department.

~~(2)~~ Training programs provided for in this section shall be held at locations and in facilities approved by the program director.

(a) Costs incurred for the training will be the responsibility of each respective law enforcement agency.

(b) The department may apply for federal grants, when such grants are available, with which to reimburse local law enforcement agencies for expenses actually incurred, within guidelines established by the office of highway safety coordination.

~~(3)~~ (2) Applicants to attend an approved training program in the quantitative or qualitative chemical analysis of the breath ~~must~~ shall meet the following qualifications:

(a) Applicants ~~must~~ shall be high school graduates or the equivalent, or ~~must~~ shall successfully complete a screening examination developed and administered by the department.

(b) Applicants ~~must~~ shall be full time, permanent employees of a law enforcement agency or a health agency providing services to a local law enforcement agency.

(c) The applicant ~~must~~ shall have the recommendation of the chief administrative officer of the agency wherein employed.

~~(4)~~(3) Applicants to attend an approved training program to qualify as a an agency trained technician ~~must~~ shall meet the following ~~minimum~~ qualifications:

(a) Applicants ~~must~~ shall be the holder of a class I and II permit which are in good standing, ~~and which have not been revoked, after the effective date of this chapter, for failure to comply with the provisions of this chapter.~~

(b) Applicants shall have the recommendation of the chief administrative officer of the agency wherein employed and the ~~recommendations~~ recommendation of the a technical supervisor, ~~responsible for that area.~~

(4) Applicants to attend an approved training program in the qualitative chemical analysis of the breath shall have the recommendation of the chief administrative officer of the agency wherein employed.

SECTION 40. MVD 25.09 of the Wisconsin Administrative Code is renumbered TRANS 311.09 and as renumbered is amended to read:

Section TRANS 311.09 QUALITY CONTROL PROGRAM, STANDARDS OF PROCEDURE FOR TESTING AND CERTIFYING THE ACCURACY OF BREATH ALCOHOL TEST INSTRUMENTS.

(1) All quantitative breath alcohol test instruments approved for use in this state shall be tested and certified for accuracy in accordance with the following standards:

(a) The instrument shall be maintained and the accuracy checked periodically by an individual holding a valid class III

permit, at intervals not to established by a technical supervisor, but in no instance shall this period exceed 60 days. by trained technicians approved by the secretary. Only those persons who are the holder of a class III permit are authorized to complete accuracy checks and certify the instrument.

(b) Quantitative breath alcohol tests which are administered during any period of time in which the breath test instrument has not been certified in accordance with the provisions of this chapter shall be considered invalid for evidentiary purposes.

(c) The procedure to be followed by trained technicians when maintaining and checking the accuracy of the breath test instrument shall be specified by the program director.

(d)(b) Each maintenance and accuracy check shall include, but is shall not be limited to, a system blank analysis and analysis of a reference solution of known alcohol content at a known temperature, equilibrated with air prior to the time any maintenance procedures are completed. The result of this analysis shall fall within not exceed 0.01% W/V of the established reference solution value. tolerances established by the program director. A system blank analysis and an analysis of a reference solution of a known alcohol content and at a known temperature, equilibrated with air shall be completed immediately following the performance of a maintenance procedure. procedures and the test result shall not exceed 0.01% W/V of the established reference solution value.

(c) Reference solutions for use in calibrating units for the purpose of insuring the accuracy of the breath test instrument shall be renewed at intervals established by the technical supervisor for the area in which the instrument is located.

(2) Each qualitative breath alcohol test instrument approved for use in this state shall be tested and the accuracy checked by trained technicians an individual holding a valid class III permit. approved by the secretary, or by an instrument operator holding a class I and II permit, approved by the program director, in those agencies having no quantitative breath test instrument at intervals not to exceed 30 days. (a) The tests and accuracy checks shall be conducted at intervals established by the program director but in no instance shall this period exceed 60 days.

(a)(b) Each accuracy and calibration check shall consist of a test of the instrument employing an analysis of a reference solution of known alcohol content at a known temperature, equilibrated with air, the results of which analysis shall fall within tolerances established by the program director.

(3) It shall be the responsibility of the manufacturer or distributor of ~~Breathalyzer~~ breathalyzer ampoules sold in this state to provide the department with a copy of an assay report which verifies the amount and composition of the chemicals in a random selection of each batch of ampoules.

(a) The assay shall be performed by an independent research laboratory, and shall include a statement, based on their

findings, that the ampoules are or are not suitable for use in the Breathalyzer.

(b) Each ampoule filled from a particular batch shall bear a control number which distinguishes that batch from any other.

(c) The program director may require an independent assay of the ampoule content and composition by any qualified person or agency of his the program director's choice.

(d) Copies of all ampoule assay reports shall be placed on file with the department.

(4) Reference solutions for use in calibrating units shall be prepared by an individual or firm approved by the program director. Solutions compounded shall be identified with a control number and a notice of the predicted result when used with a breath test instrument.

(a) Each lot of reference solutions shall be identified with a control number.

(b) An assay report shall be submitted to the department specifying the amount of alcohol which is contained in each milliliter of solution and the predicted result which shall be obtained when used with a breath alcohol test instrument.

SECTION 41. MVD 25.10 of the Wisconsin Administrative Code is renumbered TRANS 311.10 and as renumbered is amended to read:

Section TRANS 311.10 QUALIFICATIONS FOR ISSUANCE AND CAUSE FOR REVOCATION, SUSPENSION AND CANCELLATION OF PERMITS.

(1) Permits to administer qualitative or quantitative chemical tests of the breath for the purpose of determining the presence or quantity concentration of alcohol in the blood or to perform the duties of an agency trained technician shall be issued only to those persons who have fulfilled the following requirements: successfully completed a course of instruction prescribed by the program director.

(1g) Permit classes are identified as follows:

(a) Class I permits --~~Valid~~ are valid only for the operation of qualitative preliminary breath alcohol test instruments, shall bear the signature, original or facsimile, of the program director and shall be issued for a 5-year period.

1. ~~Satisfactory~~ completion of a training program approved by the program director as evidenced by written recommendation of an approved trained technician and verification of a technical supervisor.

2. Class I permits shall be issued for a period of 5 years and shall be valid for that period of time unless sooner revoked, suspended or cancelled as provided in this chapter.

(b) Class II permits --~~Valid~~ are valid only for the operation of quantitative breath alcohol test instruments, shall bear the signature, original or facsimile, of the program director and shall be valid for a 2-year period.

1. ~~Successful~~ completion of an approved training program as evidenced by the achievement of a minimum grade of 70% on the final written examination and accurate analyses of a reference

solution or solutions, the number to be established by the program director. Analyses shall fall within tolerances, following methods and utilizing techniques taught in the classroom and utilizing techniques taught in the classroom and laboratory.

2. Class II permits shall be issued for a period of 2 years, except that permits may be issued for a shorter or extended period of time to provide for uniform expiration dates in an agency or area.

3. The expiration dates of class II permits may be extended for not more than six months when the holder of the permit is transferred to a new geographical location with the same agency or when the holder of the permit accepts employment in a new law enforcement agency.

4. Class II permits shall bear an expiration date and shall specify the instrument for which it is valid.

5. Class II permits shall be valid for the period of time issued except as provided in sections MVD 25-11 and 25-12.

(c) Class III permits --Issued only to those persons who are the holders of class I and class II permits and have been approved as trained technicians by the secretary. authorize the holder to perform the duties of an agency trained technician and are valid for a period of 2 years.

1. Applicants must successfully complete a training program, approved by the program director, in breath test instrument maintenance and calibration and methods of instruction in the operation of qualitative breath test instruments.

2. Class III permits shall be issued for a period of 2 years and shall be subject to the same requirements as the holders of class II permits.

(1m) Class II and class III permits may be issued for periods of time other than 2 years to permit uniform expiration dates in an agency or may be extended when unusual circumstances exist.

(2) Validation of permits by signature.

(a) Class I permits shall bear the signature (original or facsimile) of the program director and shall bear the signature of the technical supervisor under whose supervision the permittee will operate.

(b) Class II permits shall bear the signature (original or facsimile) of the program director and shall be countersigned by the technical supervisor under whose supervision the permittee will operate.

(c) Class III permits shall bear the signature (original or facsimile) of the secretary and shall be countersigned by the program director.

(2) All classes of permits shall be renewed or reinstated only upon successful completion of the procedure prescribed by the program director.

SECTION 42. MVD 25.11(1) through (7) (intro.) of the Wisconsin Administrative Code is repealed.

SECTION 43. MVD 25.11(7) (a) of the Wisconsin Administrative Code is renumbered TRANS 311.10(2) (a) and as renumbered is amended to read:

Section TRANS 311.10(2)(a) ~~The permits of permittees~~ Per-  
mittees who are unsuccessful in the completion of ~~examinations~~  
any procedure required for the renewal of their permits shall be  
have their permits revoked as of the date on which the failure  
took place; and shall be given one opportunity, at the convenience  
of the department, to repeat the required procedure.

SECTION 44. MVD 25.11(7)(b) of the Wisconsin Administrative Code is repealed.

SECTION 45. TRANS 311.10(2)(b) of the Wisconsin Administrative Code is created to read:

Section TRANS 311.10(2)(b) Permittees who are unsuccessful in a second attempt to renew their permits shall not be issued a permit until they comply with the requirements for the issuance of an original permit as specified in sub. (1).

SECTION 46. MVD 25.11(8) and (9) of the Wisconsin Administrative Code are repealed.

SECTION 47. MVD 25.11(10) of the Wisconsin Administrative Code is renumbered TRANS 311.10(3) and as renumbered is amended to read:

Section TRANS 311.10(3) Class F permits Any class of permit which ~~have~~ has been expired beyond two years shall not be renewed until the permittee holder of that permit fulfills again complies with the requirements ~~provided in section MVD 25.10(1)(a).~~ of sub. (1).

SECTION 48. MVD 25.11(11) and (12) of the Wisconsin Administrative Code are repealed.

SECTION 49. MVD 25.12(1) through (5) of the Wisconsin Administrative Code are repealed.

SECTION 50. MVD 25.12(6) of the Wisconsin Administrative Code is renumbered TRANS 311.10(4) and as renumbered is amended to read:

Section TRANS 311.10(4) The program director or a technical supervisor may at any time suspend a permit for failure of the holder to comply with the requirements of this chapter and shall revoke, suspend, or cancel any permit when ~~such~~ revocation, suspension or cancellation is made mandatory by this chapter.

SECTION 51. MVD 25.12(7) and (8) of the Wisconsin Administrative Code are repealed.

SECTION 52. MVD 25.12(9) of the Wisconsin Administrative Code is renumbered TRANS 311.10(5) and as renumbered is amended to read:

Section TRANS 311.10(5) ~~If the employment of a permittee is terminated by an~~ Permits held by persons who are no longer employed by a law enforcement agency, the permit shall be cancelled and returned to the department. If the ~~person~~ holder of the permit is subsequently employed by another law enforcement agency meeting the qualifications of this chapter, the permit may be reinstated upon the written request of the chief administrative officer of ~~that~~ the employing agency. ~~may request,~~ by ~~letter,~~ that the records of the permittee be transferred to that agency and that the permit be retained in good standing.

SECTION 53. MVD 25.13 of the Wisconsin Administrative Code is renumbered TRANS 311.11 and as renumbered is amended to read:

Section TRANS 311.11 RECORDS AND REPORTS. (1) All law enforcement agencies subject to the provisions of this chapter of the administrative code shall maintain comply with the following records and reports record keeping and reporting procedures: and make them available to the department upon request.

(a) Records and reports of all analyses performed, which shall include chemical analyses of a person's breath and preventative maintenance reports.

(a) Original copies of instrument maintenance and calibration reports shall be forwarded to the office of the program director immediately upon completion.

(b) In those locations at which more than one law enforcement agency utilizes the quantitative breath test instrument, the agency in which the instrument is domiciled shall be responsible for maintaining the records and reports required by this section.

(b) The yellow copy of the breathalyzer test report and operational check list and the notice of result of preliminary breath test shall be forwarded to the office of the program director promptly, or to the time system operator in the agency daily, as directed by the program director.

(2) All law enforcement agencies subject to the provisions of this chapter MVD 25 shall submit copies of the following records and reports to the technical supervisor responsible for the area.

(a) Copies of records and reports of all analyses performed which shall include chemical analyses of a person's breath and records and report of breath test instrument maintenance and calibration completed in conformance with section MVD 25.09(1) and (2).

(b) Copies of reports completed in compliance with the provisions of the implied consent law, s. 343.305, Stats.

(2) A copy of all instrument maintenance and calibration reports shall be forwarded to the technical supervisor for the area immediately upon completion.

(3) The following records and reports shall be considered as matters of public record:

(a) Records and reports of instrument maintenance and calibration.

(b) Records and reports of Breathalyzer ampoule assays.

(c) Records and reports of simulator solution assays.

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The renumbering, repeals, adoptions and amendments contained in this proposed rule shall take effect upon publication as provided in sec. 227.026(1)(intro.), Wis. Stats.

Dated at Madison, Wisconsin, this  
13<sup>th</sup> day of May, 1981.

  
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LOWELL B. JACKSON, Secretary  
Wisconsin Department of  
Transportation



State of Wisconsin \

DEPARTMENT OF TRANSPORTATION



PLEASE REPLY TO:

OFFICE OF GENERAL COUNSEL

4802 Sheboygan Avenue

P. O. Box 7910

Madison, WI 53707

Telephone: (608) 266-8810

OGC 80-380

Mr. Orlan L. Prestegard  
Revisor of Statutes  
Room 411 West, State Capitol  
Madison, Wisconsin 53702

Re: Clearinghouse Rule 81-4

Dear Mr. Prestegard:

Enclosed for filing, pursuant to sec. 227.023, Wis. Stats., please find a certified copy of CR 81-4, an administrative rule relating to the breath alcohol testing, approval and permit program. An additional copy of CR 81-4, not certified, is enclosed to be used for printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Also enclosed for filing pursuant to sec. 227.025, Wis. Stats., please find a copy of the standards incorporated by reference in subs. TRANS 311.04(2), (3) and (4), Wis. Adm. Code. Also enclosed is a copy of the letter communicating permission for the incorporation of the standards. That approval was granted by the Revisor of Statutes and the Attorney General's office.

Sincerely,

Philip Peterson  
Assistant General Counsel

PP:eg

Enclosure

cc: William Harvey  
Major Jerome Lacke  
Frantz Heise