

CR 85-13

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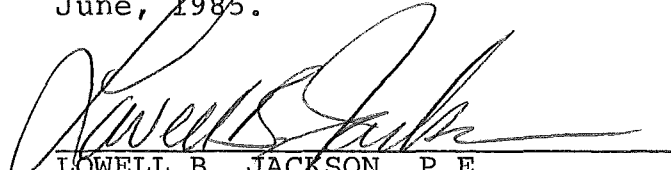
JUN 14 1985
10:20 am
Revisor of Statutes
Bureau

STATE OF WISCONSIN)
) s.s.
DEPARTMENT OF TRANSPORTATION)

I, Lowell B. Jackson, Secretary of the Wisconsin Department of Transportation and custodian of the official records do hereby certify that the annexed rule relating to the breath alcohol testing, approval and permit program, were duly approved and adopted by this department on June 13, 1985.

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, this 13th day of June, 1985.


LOWELL B. JACKSON, P.E.
Secretary



8-1-85

OFFICE OF THE SECRETARY

IN THE MATTER OF THE REPEAL AND	*	
RECREATION OF CHAPTER TRANS 311,	*	ORDER
WISCONSIN ADMINISTRATIVE CODE,	*	ADOPTING
RELATING TO THE APPROVAL AND	*	RULE
PERMIT PROGRAM FOR BREATH	*	
ALCOHOL TESTING.	*	

Analysis Prepared by Wisconsin Department of Transportation

General summary of rule. This rule governs the operation of the breath alcohol testing program for drunk driving in Wisconsin. The department of transportation division of state patrol administers this program in cooperation with local law enforcement agencies throughout the state. It is the department's responsibility to purchase and maintain breath testing equipment and to train and certify local law enforcement officers in the operation of the equipment. Pursuant to sec. 287 of chapter 20, laws of 1981 the division of state patrol was authorized to purchase more modern equipment to replace the breathalyzer which had been the standard breath testing machine used in Wisconsin for the past several years.

After extensive analysis the division of state patrol selected the intoxilyzer 5000 to replace the breathalyzer. The intoxilyzer 5000 uses a more sophisticated infrared method of analysis. A revision of Trans 311 is necessary to incorporate the new equipment.

Trans 311.01 defines the purpose of the rule as aiding the department in administering the breath alcohol testing program.

Trans 311.02 states that the rule is applied to all agencies and personnel involved in breath alcohol testing in Wisconsin.

Trans 311.03 contains the definitions applicable to the program.

Trans 311.04 describes the process for approving test instruments to be used in the program.

Trans 311.05 vests approval of calibrating (verification) units with the department.

Trans 311.06 specifies the techniques and methods that are to be used in performing individual tests.

Trans 311.07 provides that all testing programs must be approved by the division of state patrol.

Trans 311.08 describes the role of the technician who are department of transportation employees who are responsible for training local law enforcement personnel and for maintaining the breath testing equipment.

Trans 311.09 details the content of approved training programs for local law enforcement personnel in the operation of the breath testing equipment.

Trans 311.10 is the procedure for testing and certifying the accuracy of the breath testing equipment.

Trans 311.11 specifies the procedures for issuing and suspending if necessary permits to conduct alcohol breath tests.

Fiscal estimate. See attached form

Final Regulatory Flexibility Analysis: After carefully reviewing the requirements of section 277.016(1) to (5), Wis. Stats., the department has determined that this rule will have no effect on small businesses.

This analysis was prepared by Jerry L. Hancock and John Nied, Wisconsin Department of Transportation, Room 103B Hill Farms State Office Building, P.O. Box 7910, Madison, Wisconsin 53707 (608-266-8810 or 267-9760).

Pursuant to authority vested in the department of transportation by s. 85.16(1), Stats., the department of transportation hereby repeals and recreates chapter Trans 311, Wisconsin Administrative Code, interpreting certain provisions of ss. 343.305(10)(b), Stats., as follows:

RULE TEXT

SECTION 1. Chapter Trans 311 is repealed and created to read:

TRANS 311

BREATH ALCOHOL TESTING, APPROVAL

AND PERMIT PROGRAM

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.

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.

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) "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.

(6) "Calibrating unit" means a device designed to produce a predictable alcohol concentration reading on a breath alcohol test instrument through the use of a reference gas.

(7) "Certified instrument operator" means a person who has successfully completed a specialized training program and has been issued a permit by the department.

(8) "Department" means the Wisconsin department of transportation.

(9) "Instrument" means an item or combination of items of equipment designed to make a measurement of alcohol concentration.

(10) "Permit" means a certificate issued by the department authorizing an individual to perform breath alcohol testing using the instrument or instruments specified thereon.

(11) "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.

(12) "Qualitative breath alcohol analysis" means a test of a person's breath, the results of which indicate the presence or absence of alcohol.

(13) "Quantitative breath alcohol analysis" means a chemical test of a person's breath which yields a specific result in grams of alcohol per 210 liters of breath.

(14) "Reference solution" means a solution compounded for use in a calibrating unit which, when equilibrated with air, yields a predictable concentration.

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

(16) "System blank analysis" means a test of a room air sample to assure that the system produces a blank result.

(17) "Technician" means a person employed by the department, approved by the secretary and assigned the responsibility for the supervision of the breath alcohol testing, approval and permit program in an assigned area of the state.

Trans 311.04 APPROVAL OF BREATH ALCOHOL TEST INSTRUMENTS.

(1) Only instruments approved by the department may be used for the qualitative or quantitative analysis of alcohol in the breath.

(a) All models of breath testing instruments used shall be evaluated by the department.

(b) The procedure for evaluation shall be determined by the department.

(c) Each type or category of instrument shall be approved by the department prior to use in this state.

NOTE: The following quantitative breath alcohol test instruments are approved for use in Wisconsin:

the Breathalyzer, Model 900

the Breathalyzer, Model 900A

the Intoxilyzer Model 5000

The Alco-Sensor II is approved for use in Wisconsin as a qualitative breath alcohol test instrument.

Trans 311.05 APPROVAL OF CALIBRATING UNITS. All calibrating units for breath alcohol test instruments shall have the approval of the department.

Note: The following calibrating units are approved for use in Wisconsin:

the Stephenson Breath Alcohol Simulator

the Smith & Wesson Mark IIA Simulator

the Lucky Simulator, Model LS

the Toxitest, Model ABS 120

Trans 311.06 APPROVED TECHNIQUES AND METHODS OF PERFORMING CHEMICAL ANALYSIS OF THE BREATH.

(1) Only methods approved by the department may be used to perform quantitative analysis of the breath to determine the alcohol content.

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

(3) Procedures for quantitative analysis of the breath shall include the following controls in conjunction with the testing of each subject:

(a) Observation by a law enforcement person or combination of law enforcement 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 may not have ingested alcohol, regurgitated or smoked.

(b) A system blank analysis.

(c) An analysis utilizing a calibrating unit, the results of which analysis shall fall within 0.01 grams of alcohol per 210 liters of gas of the established reference value.

(4) Methods and techniques used in performing qualitative analysis of the breath shall be approved by the department.

(5) The results of an analysis of breath for alcohol shall be expressed in terms of grams of alcohol per 210 liters of breath.

Trans 311.07 APPROVAL OF BREATH ALCOHOL TESTING PROGRAMS. (1) All breath alcohol testing programs in this state shall be certified by the department.

(2) Certification of any breath alcohol testing program shall be contingent upon the law enforcement agency's agreement to conform to and abide by all directives, orders or policies issued or to be issued by the department. These may include the following:

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

(b) Site location and security.

(c) Methods of operation and testing procedures.

(d) Transmission of all program data or information requested.

Trans 311.08 TECHNICIANS. (1) The secretary shall, upon recommendation of the department, approve trained technicians as required by s. 343.305(10)(b)3, Stats.

(2) The issuance of a certificate bearing the signature of the secretary shall establish that the holder of that certificate has been approved by the secretary as a trained technician.

(3) Duties and responsibilities of a technician shall include but are not limited to the following:

(a) Supervise the breath alcohol testing, approval and permit program in an assigned area of the state.

(b) Supervise the breath alcohol test activities of certified instrument operators.

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

(d) Conduct investigations into matters pertaining to the breath alcohol testing, approval and permit program.

(e) Instruct law enforcement agency personnel, utilizing the approved training programs, in the proper operation and use of breath alcohol test instruments and calibrating units.

(f) Evaluate and certify to the department the competency of law enforcement agency personnel to conduct qualitative and quantitative breath alcohol tests.

(g) Assure the continued proficiency and competency of certified instrument operators at intervals established by the department.

(h) Assure compliance with all provisions of this chapter.

(i) Maintain and submit records and reports as required by the department.

(j) Testify in court when required regarding the breath alcohol testing, approval and permit program.

(k) Comply with the procedure for testing and certifying the accuracy of breath alcohol test instruments set forth in this chapter.

(l) Comply with all directives concerning the breath alcohol testing, approval and permit program issued by the department.

Trans 311.09 APPROVED TRAINING PROGRAMS. (1) Training programs for the training of law enforcement agency personnel in the qualitative or quantitative chemical analysis of the breath shall be approved by and under the direction of the department.

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

(a) Applicants shall be high school graduates or the equivalent.

(b) Applicants shall be full time, permanent employees of a law enforcement agency unless granted exception from this requirement by the department.

(c) Applicants shall have the recommendation of the chief administrative officer of the employing agency.

(3) 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 employing agency.

Trans 311.10 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) Each instrument shall be tested and certified for accuracy before regular use and periodically thereafter pursuant to s. 343.305(10)(b)3, Stats.

(b) Each test for accuracy shall include but not be limited to a system blank analysis and an analysis utilizing a calibrating unit, the result of which shall fall within 0.01 grams of alcohol per 210 liters of gas of the established reference value.

(2) Each qualitative breath alcohol test instrument approved for use in this state shall be tested.

(a) The accuracy of the instrument shall be checked by an individual holding a valid permit for the operation thereof.

(b) The tests and accuracy checks shall be conducted at intervals established by the department.

(c) Each accuracy and calibration check shall consist of an analysis utilizing a calibrating unit, the results of which analysis shall fall within tolerances established by the department.

(3) It shall be the responsibility of the manufacturer or distributor of breathalyzer ampoules sold in this state to provide the department with a copy of an assay report.

(a) The report shall verify the amount and composition of the chemicals in a random selection of each batch of ampoules.

(b) The assay shall be performed by an independent analytical laboratory.

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

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

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

(4) Reference solutions for use in calibrating units shall have the approval of the department.

(a) Each reference solution shall be identified with a lot number.

(b) An assay report for each lot of reference solution shall be retained by the department specifying the amount of alcohol per milliliter of solution and the predicted result when used in a calibrating unit with a breath alcohol test instrument.

Trans 311.11 QUALIFICATIONS FOR ISSUANCE AND CAUSE FOR SUSPENSION AND CANCELLATION OF PERMITS. (1) Permits to conduct qualitative or quantitative chemical tests of the breath for the purpose of determining the presence or concentration of alcohol in the breath shall be issued only to those persons who have successfully completed a course of instruction prescribed by the department.

(a) A permit shall identify the instrument that the bearer is qualified to operate.

(b) A permit shall bear the signature, original or facsimile, of the program director.

(c) A permit shall be valid for a period of two years; except that a permit may be extended for cause by the department.

(2) The holder of a valid permit may at any time be required by a technician or the department to demonstrate his or her ability to satisfactorily operate a qualitative or quantitative instrument. Failure to demonstrate satisfactory ability will result in the suspension of the permit.

(3) A permit may be renewed or reinstated only upon successful completion of the procedure prescribed by the department.

(a) Permittees who are unsuccessful in the completion of any procedure required for the renewal of their permits shall have their permits suspended 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.

(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).

(4) A permit which has been expired beyond two years may not be renewed until the holder of that permit again complies with the requirements of sub. (1).

(5) The department or a technician may at any time suspend a permit for failure of the holder to comply with the requirements of this chapter and shall suspend or cancel any permit when suspension or cancellation is made mandatory by this chapter.

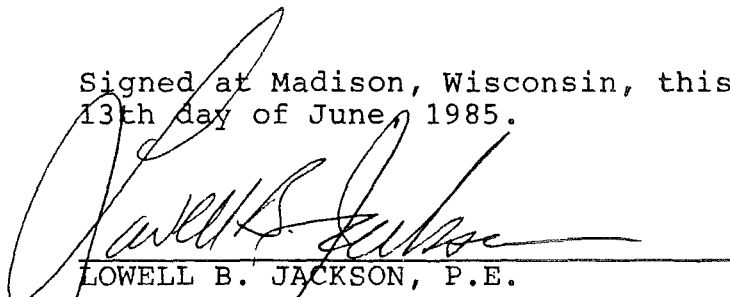
(6) Permits held by persons who are no longer employed by a law enforcement agency shall be cancelled. If the holder of the permit is subsequently employed by another law enforcement agency, the permit may be reinstated upon the written request of the chief administrative officer of the employing agency.

(7) The department, regional supervisors and technicians shall have all authority granted to a permitted operator under this chapter.

(End)

This rule shall take effect upon publication as provided in
s. 227.026(1) (intro.), Stats.

Signed at Madison, Wisconsin, this
13th day of June, 1985.



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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

Subject: Responsibility for the maintenance and calibration of breath alcohol testing instruments

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May Be Possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected
 Towns Villages Cities
 Counties Others _____

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The only potential fiscal effect of this administrative rule stems from the discontinuance of the agency-trained technician program. Currently, some local law enforcement agencies use these technicians (who are local employees) to maintain and calibrate breath alcohol testing instruments. These local technicians are trained in workshops conducted by the Chem Test Coordinators, who are Department of Transportation employees.

When the agency-trained technician program is discontinued, the Chem Test Coordinators will be responsible for the maintenance and calibration of all breath alcohol testing instruments in the state. Prior to discontinuation, the annual cost of the agency-trained technician program was \$8,960; of this, \$5,880 was expended by local law enforcement agencies, and \$3,080 was expended by the Department of Transportation. These costs were entirely supported by a federal grant, so the discontinuance of this program will not reduce state or local costs.

The complete takeover of the breath alcohol testing instrument repair and maintenance program could potentially result in an increase in state-funded travel expenses. In order to determine if this was the case, state-funded travel costs were compared for two 6 month periods. The first period coincided with the final six months of the agency-trained program, and the second period occurred after the program expired. In fact, state-supported travel costs were not significantly different. This suggests that the Chem Test Coordinators have been able to incorporate the repair and maintenance program into their normal schedule.

Long-Range Fiscal Implications

Agency
Daniel McGuire - State Patrol
266-3199

Authorized Signature/Telephone No.
Daniel McGuire 266-3199

Date
12/5/84

FISCAL ESTIMATE WORKSHEET

1981 Session

Detailed Estimate of Annual Fiscal Effect
AD-MBA-22 (Rev. 11/80)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.

Amendment No.

Subject **Responsibility for the maintenance and calibration of breath alcohol testing instruments**

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):

II. Annualized Costs: Note. Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).

A. State Costs by Category	Annualized fiscal impact on State funds from:	
	Increased Costs	Decreased Costs
Salaries and Fringes	\$ -	\$ +
Staff Support Costs	-	+
Other State Costs	-	+
Local Assistance	-	+
Aids to Individuals or Organizations	-	+
TOTAL State Costs by Category	\$ - 0	\$ + 0

B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ -	\$ +
FED	-	+
PRO/PRS	-	+
SEG/SEG S	-	+

C. FTE Position Changes	Increased Pos.	Decreased Pos.
	+ (0)	- (0)

III. State Revenues - Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	Decreased Rev.	Increased Rev.
GPR Taxes	\$ -	\$ +
GPR Earned	-	+
FED	-	+
PRO/PRS	-	+
SEG/SEG-S	-	+
TOTAL State Revenues	\$ - 0	\$ + 0

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ - 0	\$ + 0	Total Costs	\$ - 0	\$ + 0
Total Revenues	+ 0	- 0	Total Revenues	+ 0	- 0
NET Impact on State Funds	\$ (+) 0	or (-) 0	NET Impact on Local Funds	\$ (+) 0	or (-) 0

Agency **Daniel McGuire - State Patrol**

Authorized Signature/Telephone No.

Daniel McGuire 266 3100

Date

266 3100



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

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June 13, 1985

JUN 14 1985

Mr. Gary Poulson
Assistant Revisor of Statutes
411 West, State Capitol
Madison, Wisconsin 53702

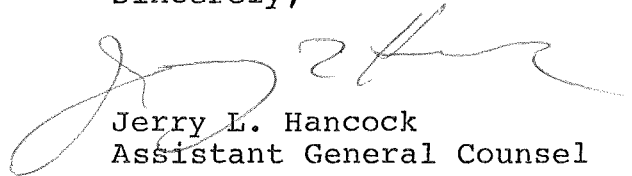
Revisor of Statutes
Bureau

RE: Clearinghouse Rule 85-13;
In the Matter of the Adoption of TRANS 311,
Wisconsin Administrative Code, Relating to
the Approval and Permit Program for Breath
Alcohol Testing

Dear Mr. Poulson:

Enclosed for filing, pursuant to sec. 227.023, Wis. Stats.,
is a certified copy of CR 85-13, an administrative rule relating
to the approval and permit program for breath alcohol testing. An
additional, uncertified copy of CR 85-13 is enclosed to be used as
a printer's copy. This rule is submitted by the Wisconsin
Department of Transportation.

Sincerely,


Jerry L. Hancock
Assistant General Counsel

JLH:dlm

Enclosures

CC: K. Sue Gallagher
Maynard Schneider
James Van Sistine