

CR 87-173

CERTIFICATE

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MAR 15 1988

3:15pm  
Revisor of Statutes  
Bureau

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

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records do hereby certify that the rule relating to the alcohol testing, approval and permit program was duly approved and adopted by this department on March 15<sup>th</sup>, 1988.

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 15<sup>th</sup> day of March, 1988.

*Ronald R. Fiedler*  
for RONALD R. FIEDLER, P.E.  
Secretary

## OFFICE OF THE SECRETARY

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IN THE MATTER OF THE CREATION	*	
OF CHAPTER TRANS 311, WISCONSIN	*	
ADMINISTRATIVE CODE, RELATING	*	ORDER ADOPTING
TO THE ALCOHOL TESTING,	*	RULE
APPROVAL AND PERMIT PROGRAM	*	
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Analysis Prepared by the Wisconsin Department of Transportation

General summary of rule. 1987 Wisconsin Act 3 made a significant change in Wisconsin's Breath Alcohol Testing Program. After January 1, 1988, sec. 343.305(6)(c), Stats., requires that a breath test using an infrared testing device shall consist of two samples. This statutory change reflects both a change in the technology and a change in test procedures. The Department of Transportation, Division of State Patrol, administers the state-wide breath testing program through the Chemical Test Section. In the last four years, the Chemical Test Section has replaced the outdated breathalyzers, which used a chemical process to detect alcohol, with intoxilyzers that use an infrared system to detect alcohol. Under prior law, a person was required to provide only one sample of breath to be analyzed. The new law requires that two breath samples be analyzed. The legislative intent in requiring two samples was to increase the reliability of test results as well as the public perception of the instrument's reliability. Improvements in the technology of breath testing instruments mean that this procedure can be done in virtually the same time required to analyze a single sample and with no significant increase in cost. This rule implements these legislatively mandated changes in the breath testing program.

Final regulatory flexibility analysis. This rule will have no impact on small businesses.

Fiscal estimate. The modification of the breath testing program as a result of this rule will not significantly increase any direct or indirect cost in the program.

Contact Person. This analysis was prepared by Jerry L. Hancock, Assistant General Counsel, Office of General Counsel, Wisconsin Department of Transportation. Copies of both the emergency rule and the proposed permanent rule are available upon request from the Office of General Counsel, Wisconsin Department of Transportation, P.O. Box 7910, Room 103-B Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53707, telephone (608) 266-8810.

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Pursuant to the authority vested in the Wisconsin department of transportation by s. 85.16(1), Stats., the Wisconsin department of transportation hereby proposes a rule repealing and recreating ch. Trans 311, Wis. Admin. Code, relating to the breath alcohol testing, approval and permit program as follows:

RULE TEXT

SECTION 1. Trans 311.03(4) and (5) are repealed.

SECTION 2. Trans 311.03(6) is renumbered Trans 311.03(4) and as renumbered is amended to read:

Trans 311.03(4) "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.~~

SECTION 3. Trans 311.03(11) is repealed.

SECTION 4. Trans 311.03(7), (8) and (9) are renumbered Trans 311.03(5), (6) and (7), respectively.

SECTION 5. Trans 311.03(16) is renumbered Trans 311.03(8) and as renumbered is amended to read:

Trans 311.03(8) "System Instrument blank analysis" means a test of a room air sample to insure that the system instrument produces a blank result.

SECTION 6. Trans 311.03(10), (12), (13), (14), (15) and (17) are renumbered Trans 311.03(9), (10), (11), (12), (13) and (14), respectively.

SECTION 7. Trans 311.03(15) is created to read:

Trans 311.03(15) "Test sequence" means one adequate breath analysis, one calibration standard analysis, and a second

adequate breath sample analysis. Each subject test and each calibration standard test shall be preceded and followed by an instrument blank analysis.

SECTION 8. Trans 311.04(1)(c) [Note] is repealed and recreated to read:

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

Breathalyzer, Model 900  
Breathalyzer, Model 900A  
Intoxilyzer Model 5000

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

Alco - Sensor II  
Alco - Sensor III  
Alco - Meter SD-2

SECTION 9. Trans 311.05 [Note] is amended to read:

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

Stephenson Breath Alcohol Simulator	Toxitest, Model ABS 120
Smith & Wesson Mark IIA Simulator	<u>Guth Simulator 34C</u>
Lucky Simulator, Model LS	

SECTION 10. Trans 311.06(3)(b) is repealed and recreated to read:

Trans 311.06(3)(b) Instrument blank analysis.

SECTION 11. Trans 311.06(3)(d) and (e) are created to read:

Trans 311.06(3)(d) Consecutive breath alcohol analysis results in a test sequence within .02 grams of alcohol per 210 liters of breath shall be deemed to be an acceptable agreement. Breath sample analyses failing to meet this criteria shall be deemed deficient.

(e) If the first test sequence is deficient, a second test sequence shall be administered.

SECTION 12. Trans 311.06(4) is renumbered Trans 311.06(5).

SECTION 13. Trans 311.06(5) is renumbered Trans 311.06(4).

SECTION 14. Trans 311.10(1)(b) is amended to read:

Trans 311.10(1)(b) Each test for accuracy shall include but not be limited to ~~a-system~~ an instrument 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.

SECTION 15. Trans 311.10(3) is repealed.

SECTION 16. Trans 311.10(4) is renumbered Trans 311.10(3).

SECTION 17. Trans 311.11(1)(b) is amended to read:

Trans 311.11(1)(b) A permit shall bear the signature, original or facsimile, of the ~~program-director~~ chief of chemical test section. "Chief of chemical test section" means the person assigned the responsibility for the administration and supervision of the breath alcohol testing, approval and permit program of the department.

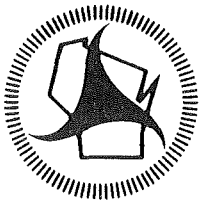
END OF RULE TEXT

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This rule shall take effect upon the first day of the month following publication in accordance with s. 227.22(2), Stats.

Signed at Madison, Wisconsin this  
15<sup>th</sup> day of March, 1988.

*for* Donald R. Fiedler, P.E.  
Secretary  
Wisconsin Department of  
Transportation



Wisconsin Department of Transportation

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OFFICE OF GENERAL COUNSEL  
4802 Sheboygan Avenue  
P.O. Box 7910  
Madison, WI 53707-7910  
Telephone: (608) 266-8810

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March 15, 1988

Revisor of Statutes  
Bureau

Mr. Gary Poulson  
Assistant Revisor of Statutes  
30 West Mifflin Street  
Suite 702  
Madison, Wisconsin 53703

RE: Clearinghouse Rule 87-173  
In the Matter of the Adoption of  
Chapter Trans 311, Wis. Admin. Code,  
Relating to the Alcohol Testing, Approval  
and Permit Program

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of CR 87-173, an administrative rule relating to the alcohol testing, approval and permit program. An additional, uncertified copy of CR 87-173 is enclosed to be used as a printer's copy. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jerry L. Hancock".

Jerry L. Hancock  
Assistant General Counsel

JLH:meh

Enclosure

CC: Tom Walker  
Maynard Schneider  
Jim Van Sistine  
Norbert Anderson  
Al Johnson  
Tom Geske  
Wesley Geringer