

CR 92-152

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to the **breath alcohol testing, approval and permit program**, was duly approved and adopted by this Department on December 9th, 1992.

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, Wisconsin, this 9th day of December, 1992.

Charles H. Thompson

CHARLES H. THOMPSON
Secretary

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2-1-93

IN THE MATTER OF a rule REPEALING Trans 311.11(7); RENUMBERING Trans 311.03(6), (7), (10), (11), (13) and (14); RENUMBERING AND AMENDING Trans 311.03(8), (9), (12) and (15); AMENDING ss. Trans 311.04, 311.05, 311.06(1), (2), (3)(intro.), (3)(a) and (b), (4) and (5), 311.07(2)(intro.) and (d), 311.09(1), (2)(intro.) and (3), 311.10(1)(b), (2) and (3)(intro.), 311.11(1)(intro.), (a) to (c), (2), (5) and (6); and to CREATE Trans 311.03(6) and (10), and 311.10(1)(c), Wisconsin Administrative Code, relating to the breath alcohol testing, approval and permit program.

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STATUTORY AUTHORITY: s. 343.305, Stats.

STATUTE INTERPRETED: s. 343.305, Stats.

General Summary of Rule. This rule is impacted by changes that occur in the fields of science and law as they relate to breath alcohol testing. The amendments to this rule will keep it current with changes in the science of breath testing, clarify responsibilities of the chief of the chemical test section and update the list of equipment approved for use in breath alcohol testing, approval and permit program.

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.

Final Regulatory Flexibility Analysis. This rule will have no significant effect on small businesses.

Copies of Rule. Copies of the rule may be obtained, free of charge, upon request from the Division of State Patrol, P. O. Box 7912, Room 551, Madison, Wisconsin 53707-7912, telephone (608) 267-9760, or the Office of General Counsel, P. O. Box 7910, Room 115-B, Madison, WI 53707-7910, telephone (608) 266-8810.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by s. 343.305(6)(b), Stats., the department of transportation hereby amends a rule interpreting s. 343.305(6)(b), Stats., relating to breath alcohol testing, approval and permit program.

SECTION 1. Trans 311.03(6) is renumbered 311.03(7).

SECTION 2. Trans 311.03(6) is created to read:

Trans 311.03(6) "Chief of the 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.

SECTION 3. Trans 311.03(7) is renumbered 311.03(8).

SECTION 4. Trans 311.03(8) and (9) are renumbered 311.03(9) and (11) and amended to read:

Trans 311.03(9) "Instrument blank analysis" means a test of ~~a room~~ an ambient air sample to insure that the instrument produces a ~~blank~~ zero result.

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

SECTION 5. Trans 311.03(10) is renumbered 311.03(12).

SECTION 6. Trans 311.03(10) is created to read:

Trans 311.03(10) "Lot" means an entire batch of reference solution.

SECTION 7. Trans 311.03(11) is renumbered 311.03(13).

SECTION 8. Trans 311.03(12) is renumbered 311.03(14) and amended to read:

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

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

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

Smith & Wesson Mark II Simulator
Smith & Wesson Mark IIA Simulator
National Draeger Mark IIA Simulator
National Draeger Mark II Simulator
BA-500 Breath/Alcohol Simulator
Toxitest II
Toxitest, Model ABS 120
Guth Simulator Model 34C
Alcohol Vapour Standard

SECTION 12. Trans 311.06(1), (2), (3)(intro.), (3)(a) and (b), (4) and (5) are amended to read:

Trans 311.06(1) Only methods approved by the department may be used to perform quantitative breath alcohol analysis ~~of the breath to determine the alcohol content.~~

(2) Techniques used in performing quantitative breath alcohol 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 breath alcohol 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 did not have ingested ingest alcohol, ~~regurgitated regurgitate, vomit~~ or smoked smoke.

(b) ~~An instrument~~ Instrument blank analysis.

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

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

SECTION 13. Trans 311.07(2)(intro.) and (d) are amended to read:

Trans 311.07(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~~ shall include, but are not limited to, the following:

(d) Transmission of all program data or information requested in a manner and format prescribed by the department.

SECTION 14. Trans 311.09(1), (2)(intro.) and (3) are amended to read:

Trans 311.09(1) Training programs for the training of law enforcement agency personnel in the qualitative or quantitative ~~chemical~~ breath alcohol 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~~ breath alcohol analysis ~~of the breath~~ shall meet the following qualifications:

(3) Applicants to attend an approved training program in ~~the~~ qualitative ~~chemical~~ breath alcohol analysis ~~of the breath~~ shall have the recommendation of the chief administrative officer of the employing agency.

SECTION 15. 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, an instrument blank analysis and an analysis utilizing a calibrating unit, ~~the~~. The result of which the calibrating unit analysis shall fall within 0.01 grams of alcohol per 210 liters of ~~gas~~ of the established reference value.

SECTION 16. Trans 311.10(1)(c) is created to read:

Trans 311.10(1)(c) The original reports of instrument maintenance and certifications shall be forwarded to and retained by the department.

SECTION 17. Trans 311.10(2) and (3)(intro.) are amended to read:

Trans 311.10(2) Each qualitative breath alcohol test instrument approved for use in this state shall be ~~tested~~; checked for accuracy as follows:

(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) Reference solutions for use in calibrating units shall have the approval of the department chief of the chemical test section.

SECTION 18. Trans 311.11(1)(intro.), (a) to (c), (2), (5) and (6) are amended to read:

Trans 311.11(1) Permits to conduct qualitative or quantitative ~~chemical tests of the breath~~ breath alcohol analysis 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. Permits shall:

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 9th day of December, 1992.

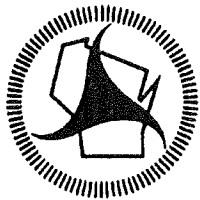


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

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Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Charles H. Thompson
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

December 10, 1992

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Mr. Gary Poulson
Deputy Revisor of Statutes
119 Martin Luther King, Jr. Blvd.
2nd Floor
Madison, Wisconsin 53703

RE: CLEARINGHOUSE RULE 92-152

In the Matter of the Adoption of **TRANS 311**, Wisconsin Administrative Code, relating to the **Breath 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 92-152**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Dorothy Kapke
Jim McDonnell
Ted Meekma
Tom Geske