

Chapter MVD 25
BREATH ALCOHOL TESTING, APPROVAL AND
PERMIT PROGRAM

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Note: Chapter MVD 25 as it existed on May 31, 1978 was repealed and a new chapter MVD 25 was created effective June 1, 1978.

MVD 25.01 Definitions. As used in this chapter:

- (1) "Administrator" means the administrator of the division of enforcement and inspection in the Wisconsin department of transportation.
- (2) "Alcohol" means ethyl alcohol, that is, ethanol.
- (3) "Alveolar" means that portion of expired breath which is in equilibrium with respect to alcohol with the immediately adjacent pulmonary blood in the alveoli or smallest air sacs of the lungs.
- (4) "Ampoule" means a glass vial which contains a chemical solution compounded specifically for use in the Breathalyzer.
- (5) "Batch" means the entire quantity of a chemical compound or solutions prepared at one time and with which a large quantity of ampoules, identified with the same control number are filled.
- (6) "Calibrating Unit" or "Simulator" means a device or devices which are designed to contain a reference solution which, when equilibrated with air, will provide a predictable result on a breath test instrument.
- (7) "Cancellation" means the recall of an unexpired class I, II or III permit when the holder of that permit is no longer employed by a law enforcement agency.
- (8) "Department" means the Wisconsin department of transportation.
- (9) "Equilibrium" means a state of balance which is achieved at the time all the alcohol ingested has been absorbed into the body and has been distributed in direct proportion to the water content of the body.
- (10) "Instrument" or "Device" means any item or combination of items of equipment used to make a measurement of alcohol concentration; simple and complex devices are included in the meaning.

(11) "Method" means the steps followed by a trained person to make a measurement of alcohol concentration.

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

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

(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 trained technician.

(15) "Program Director" means that person charged with the responsibility for the direction and supervision of the chemical test program of the division of enforcement and inspection. 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.

(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.

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

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

(19) "Revocation" means the revocation of any class of permit for failure to successfully complete examinations for the renewal of the permit.

(20) "Sample" or "Specimen" means a representative portion of breath or of an artificially constituted material taken for the purpose of measuring its alcoholic content.

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

(22) "Suspension" means the suspension of any class of permit for failure to comply with the requirements of the quality control program requiring periodic tests to insure continued proficiency and competency.

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

(24) "Technical Supervisor" means a person employed to supervise the breath alcohol testing program in an assigned area of the state.

(25) "Technique" means the manner in which a trained person completes the steps that are performed in administering a chemical test of the breath.

(26) "Trained Technician" means a person who is the holder of a class I and II permit and who has completed specialized training qualifying that person for a class III permit and approval by the secretary.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.02 Breath test instrument approval. (1) All organizations selling or offering for sale instruments for the determination of the quantity or presence of alcohol in the breath in this state shall register the instruments with the department. All breath test instruments used in the state of Wisconsin must have the approval and certification of the program director.

(a) It shall be the responsibility of the manufacturer of the instrument to make arrangements with the department to have the instrument evaluated. The manufacturer requesting the evaluation shall provide the department with instruments, related accessories, chemical reagents, full direction 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 section 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 to the manufacturer requesting the evaluation and shall have the right to promulgate the results.

(d) 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.

(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.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.03 Standards of performance. (1) 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 performance standards are identified as, "Standards for Devices to Measure Breath Alcohol" published in the federal register, Vol. 38, No. 212 - Monday, November 5, 1973. This reference is available from the program director, the secretary of state or the revisor of statutes.

(2) Instruments for qualitative breath alcohol analyses shall meet the performance standards established by the program director. 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:

(a) The operation of the device shall be such that an operator can be trained with a maximum of 4 hours of formal instruction.

(b) The reading of the device shall be ascertainable under reduced levels of illumination.

(c) The accuracy of the device shall remain consistent during a storage life of one year from date of purchase, at storage temperatures of -30° to 120° Fahrenheit.

(d) The device must provide a visual indication to the operator when the power source battery or batteries require replacement.

(e) The device must be capable of being calibrated using a calibrating unit such as the Smith and Wesson Mark II A simulator or equivalent.

(f) When a person with an actual blood alcohol concentration of 0.04% W/V is tested, the device shall not give a warn or fail reading if that device is equipped with bar light configuration.

(g) When a person with an actual blood alcohol concentration of 0.04% W/V is tested the device shall not deviate more than + 0.01% if that device is equipped with digital readout configuration.

(h) When a person with an actual blood alcohol concentration between 0.06% and 0.09% by weight is tested, the device shall not give a fail reading if that device is equipped with bar light configuration.

(i) When a person with an actual blood alcohol concentration between 0.06% and 0.09% by weight is tested, the device shall not deviate more than + 0.02% if that device is equipped with digital readout configuration.

(j) When a person with an actual blood alcohol concentration of 0.13% or more by weight is tested, that device shall not give a pass or warn reading if that device is equipped with bar light configuration.

(k) When a person with an actual alcohol concentration of 0.13% or more by weight is tested, the device shall not deviate more than 20% from the actual blood alcohol concentration of the person being tested if that device is equipped with digital readout configuration.

(2) Qualitative breath test devices, to be considered for use in this state shall be specific for alcohol, that is, the device shall not produce a positive or elevated reading when a person who is a diabetic and has acetone on his or her breath is tested or from the breath of a dieting subject, if that instrument is equipped with digital readout configuration.

(3) Calibrating units for breath alcohol testers shall meet the performance standards established by the U. S. Department of Transportation, National Highway Traffic Administration. These performance standards are identified as, "Performance Standards for Calibrating Units for Breath Alcohol Testers" published in the federal register, 40 FR 36167 - August 19, 1975. This reference is available from the office of the program director, the secretary of state or the revisor of statutes.

(4) 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.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.04 Instruments approved for use in Wisconsin. (1) The following quantitative breath test instruments have been approved for use in Wisconsin:

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

(b) Alco-Analyser Gas Chromatograph (Luckey Laboratories)

(2) The following qualitative breath test instruments have been approved for use in Wisconsin:

(a) Alco-Sensor (Intoximeters, Inc.)

(b) Alert Model J3A (Alcohol Countermeasures Systems)

(3) The following calibrator units have been approved for use in Wisconsin:

(a) Stephenson Breath Alcohol Simulator (Stephenson Corporation)

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

(c) Luckey Simulator Model LS (Luckey Laboratories)

(4) Other instruments may be approved by letter, as they are demonstrated to the satisfaction of the department, that they meet the requisite standards.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.05 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 for the determination of the concentration of alcohol in the blood shall include, but are not limited to, the following controls in conjunction with the testing of each subject:

(a) Continuous observation of the subject for a minimum of 20 minutes prior to the collection of a breath specimen, during which time the subject shall not have ingested alcohol, regurgitated, vomited or smoked.

(b) A system blank analysis.

(c) Analysis of a suitable reference solution, such as a reference solution of known alcohol content at a known temperature, equilibrated with air, the results of which are within tolerances established by the program director.

(4) Results of analyses of breath for alcohol shall be expressed in terms of percent blood alcohol by weight, that is, grams of alcohol per 100 milliliters of blood and shall be reported to the second decimal place. For example, 0.178% 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.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.06 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) Approval and certification of any chemical breath testing program is contingent upon the agencies' agreement to conform 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 not 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 agency program by a trained technician if that agency is the site of a quantitative breath test instrument.

(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:

(a) Compliance with the provisions of section MVD 25.09, Quality Control Program: Standards of Procedure for Testing and Certifying the Accuracy of Breath Test Instruments.

(b) Compliance with all directives pertaining to the preventive maintenance schedule for breath 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) Checking for accuracy and calibrate if necessary, at intervals not to exceed 30 days, all preliminary breath test instruments assigned to the agency.

(f) Insuring that an adequate supply of materials and forms required in the program are available at all times.

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

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(h) Providing instruction in the method of operation and techniques to be followed in the administration of qualitative breath alcohol tests using a preliminary qualitative test instrument approved by the department, for all personnel in the agency employing that person as a trained technician.

(i) Certifying to the technical supervisor for the area, the competence of agency personnel to administer preliminary qualitative breath tests.

(j) Testify in court when required regarding the accuracy and maintenance of 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) Technical supervisors will exercise complete 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:

(a) Supervision of trained technicians and certified operators.

(b) Field inspection of the total breath alcohol testing program including reports, records, operations and analyses.

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

(d) Training and re-evaluation of breath test instrument operators and trained technicians.

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

(f) Insure the compliance with all provisions of chapter MVD 25.

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

(h) Comply with all directives concerning the breath testing program issued by the program director.

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

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.07 Technicians approved by the secretary. (1) The secretary shall, upon recommendation of the program director, approve trained technicians as required by s. 343.305 (10) (b) 3, Stats.

(2) The issuance of a class III permit bearing the signature of the secretary and countersigned by the program director establishes that the holder of that permit has been approved by the secretary as a trained technician.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.08 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 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) Applicants to attend an approved training program in the quantitative or qualitative chemical analysis of the breath must meet the following minimum qualifications:

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

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

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

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

(a) Applicants must 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 of the technical supervisor responsible for that area.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.09 Quality control program; standards of procedure for testing and certifying the accuracy of breath test instruments. (1) All quantitative breath 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 at intervals not to exceed 60 days by trained technicians approved by the secretary. Only those persons who are the holder of a

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class III permit are authorized to complete accuracy checks and certify the instruments.

(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) Each maintenance and accuracy check shall include, but is not 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 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.

(e) 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 of the area in which the instrument is located.

(2) Each qualitative breath test instrument approved for use in this state shall be tested and the accuracy checked by trained technicians 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) 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 analyses shall fall within tolerances established by the program director.

(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 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 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 approved by the program director. Solutions compounded shall be identified with a control number and notice of the predicted result when used with a breath testing instrument.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.10 Qualifications for and issuance of permits. (1) Permits to administer chemical tests of the breath for the purpose of determining the presence or quantity of alcohol in the blood shall be issued only to persons who have fulfilled the following requirements:

(a) **Class I Permits** - Valid only for the operation of qualitative preliminary breath test instruments.

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 only for the operation of quantitative breath test instruments.

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 established tolerances, following methods 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.

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.

(2) Validation of permits by signature.

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(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.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.11 Renewal of permits (1) Permits shall be subject to renewal at expiration or at any time prior to expiration at the convenience of the department.

(2) Renewal of class I permits shall be made only upon:

(a) Demonstration by the permittee of the ability to accurately determine the presence of alcohol in the blood within concentration limits prescribed by the program director.

(b) Recommendation of a trained technician with concurrence by a technical supervisor that the person's class I permit should be renewed.

(3) Renewal of Class II permits shall be made only upon demonstration by the permittee of continuing:

(a) Ability to perform accurate and reliable chemical analyses of the breath and to follow the established methods while utilizing proper techniques.

(b) Ability to satisfactorily explain the method of operation of the instrument currently certified to operate.

(c) Knowledge of this state's chemical test law, implied consent law and the requirements and restrictions imposed by them.

(d) The permittee's ability and knowledge may be ascertained by a laboratory, oral, or written examination, or any combination thereof, as established by the program director.

(4) Renewal of class III permits shall be made only upon:

(a) The permittee fulfilling all the requirements for the renewal of a class I and class II permit as provided in this section.

(b) Demonstration by the permittee of continuing knowledge and ability in the techniques and methods of quantitative breath test instrument maintenance and calibration.

(c) Demonstration by the permittee of continuing knowledge and ability in the techniques and methods of the calibration and checking of qualitative breath test instruments.

(d) The permittee's ability and knowledge may be ascertained by a laboratory, oral, or written examination, or any combination thereof, as established by the program director.

(5) Examinations for the renewal of all classes of permits shall be developed by the director and approved by the administrator and shall be held in regional areas established by the department.

(6) The program director or technical supervisor may at any time examine permittees to determine their continuing ability to perform accurate and reliable chemical analyses of the breath.

(7) Class I permits shall, if the permittee is qualified, be renewed for a period of 5 years. Class II permits shall, if the permittee is qualified, be renewed for a period of 2 years.

(a) The permits of permittees who are unsuccessful in the completion of examinations for the renewal of their permits shall be revoked as of the date on which the failure took place.

(b) Permittees who are unsuccessful in the examination for the renewal of their permits shall not be eligible for a permit until again fulfilling the requirements of section MVD 25.10 (1) (b).

(8) The renewal of all permits, in addition to the requirements of this section, shall be subject to the provisions set forth in section MVD 25.12.

(9) Permits shall become invalid after expiration unless renewed as provided in this section except for those permits revoked, suspended or cancelled as provided in section MVD 25.12.

(10) Class I permits which have been expired beyond 2 years shall not be renewed until the permittee fulfills the requirements provided in section MVD 25.10 (1) (a).

(11) Class II permits which have been expired beyond 2 years shall not be renewed until the permittee fulfills the requirements of section MVD 25.11 (3).

(a) In addition to the requirements for renewal of permits which have been expired beyond 2 years imposed by this section, the applicant shall successfully complete the written examination as provided in section MVD 25.10 (1) (b).

(b) Unsuccessful applicants for the renewal of their class II permits under this section shall not be issued a permit until they again comply with the requirements of section MVD 25.10 (1) (b).

(12) Class III permits which have been expired for more than 2 years shall not be renewed until the permittee again fulfills the requirements of section MVD 25.11 (4).

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.12 Revocation, suspension and cancellation of permits.

(1) If the program director receives unfavorable information regarding the ability of any permittee to conduct accurate and reliable chemical analyses of the breath, he or a designated representative shall examine the permittee for the purpose of either confirming or denying the allegations.

(a) Class I permit holders shall be evaluated on the basis of the provisions established in section MVD 25.11 (2) (a).

(b) Class II permit holders shall be evaluated on the basis of the provisions established in section MVD 25.11 (3) (a).

(c) Class III permit holders shall be evaluated on the basis of the provisions established in section MVD 25.11 (4) (a) and (b).

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(2) Permittees who fail to appear for examination as scheduled shall, in the absence of a valid excuse, have their permits revoked as of that date.

(3) Permittees who appear for the examination and are successful in meeting all the requirements shall retain their permits in good standing.

(4) Permittees who are unsuccessful in the examination shall:

(a) If that person is the holder of a class I permit, have the permit revoked and shall not be eligible for a new permit until that person complies with the provisions of section MVD 25.10 (1) (a).

(b) If that person is the holder of a class II permit, have the permit revoked and shall not be eligible for a new permit until that person complies with the requirements of section MVD 25.11 (3), and upon failure to successfully complete the examination for the second time, shall not be eligible for a permit until fulfilling the requirements of section MVD 25.10 (1) (b).

(c) If that person is the holder of a class III permit, have their permits revoked and shall not be eligible for the issuance of a new permit until they have complied with the requirements of section MVD 25.11 (4), and upon the second failure shall not be issued a permit until complying with the provisions of section MVD 25.10 (1) (c).

(5) Permittees who are the holders of a class II or III permit shall, during the period of time for which their permits are valid, maintain their proficiency and competency in the accurate and reliable quantitative chemical analysis of the breath by complying with the following standards of performance:

(a) Each permittee shall perform a minimum of one chemical analysis of a person's breath or chemical analysis of a reference solution of known or unknown alcohol concentration, at the discretion of the program director, subsequent to the issuance or renewal of the permit.

(b) Permittees who fail to maintain their proficiency and competency as set forth in this section shall, in the absence of a valid excuse, have their permit suspended at the end of any month in which they have failed to meet the minimum performance standards required by this section. Upon the third failure to meet the minimum performance standards set forth in this section, the permit shall be revoked and shall not be reinstated until the permittee again fulfills the requirements set forth in section MVD 25.10 (1) (b) or (c), whichever is applicable.

(c) Permits which have been suspended for failure to maintain proficiency and competency shall remain suspended until such time as the permittee presents him or herself for re-examination as provided in section MVD 25.11 (3) or (4), whichever is applicable.

(6) The program director or technical supervisor may revoke, suspend or cancel any permit when such revocation, suspension or cancellation is made mandatory under this chapter.

(7) Notification of the revocation, suspension or cancellation of a permit shall be made on forms approved by the department, shall bear the signature of the program director or technical supervisor completing the form and shall contain the following information:

(a) Name of permittee, department, class of permit and number.

- (b) The effective date of revocation, suspension or cancellation.
- (c) The administrative code section requiring or authorizing the revocation, suspension or cancellation of the permit and the reason for such action.
- (d) Information informing the permittee of the action to be taken to gain reinstatement of the permit.
- (e) An application for reinstatement for a permit which has been revoked, suspended or cancelled shall be included with each notification.
- (f) Copies of the notice shall be forwarded to the person whose permit is revoked, suspended or cancelled, the chief administrative officer of the agency wherein the person is employed, the office of the program director and the technical supervisor.
- (8) Any person whose permit has been revoked, suspended or cancelled as provided in this chapter shall have the right to appeal to the transportation commission.
- (9) If the employment of a permittee is terminated by an agency, the permit shall be cancelled and returned to the department.

(a) If the person is subsequently employed by another agency meeting the qualifications of this chapter, the chief administrative officer of that 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.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.

MVD 25.13 Records and reports. (1) All law enforcement agencies subject to the provisions of this chapter of the administrative code shall maintain the following records and reports 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.

(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.

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

(a) Copies of records and reports of all analyses performed which shall include chemical analyses of a person's breath and records and reports 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.

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

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

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(b) Records and reports of Breathalyzer ampoule assays.

(c) Records and reports of simulator solution assays.

History: Cr. Register, May, 1978, No. 269, eff. 6-1-78.