| CASE | DATE | SUBJECT'S NAME | | | WYDDG | 12222 | | | | | | |
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| 1.90-245 | 9/9/90 | ¥ | | | Resifica | Shoffen | 55 | AKers | CCCB | , 210 | .203 | .076 |
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| 140-247 | 1 11 1 | | 31/25 | | - | WHOLER | LE. | MCKAY | LA. | .287 | -260 | .025 |
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& No refueal, Mª Awhen took for blood. Device is not out of Service 1-1/1/10 fra

| ASE # | DATE | SUBJECT'S NAME | | | VIDEO OPER. | ARREST- ING OFFICER | PD - | CERTIF- IED OPERATOR | PD | BAC | BAC | CAL |
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INDEPENDENT REGULATORY REVIEW COMMISSION 14th Floor, 333 Market Street Harrisburg, PA 17101

Commissioners Present:

Public Meeting Held December 6, 1989

Irvin G. Zimmerman, Acting Chairman Robert J. Harbison, III Mark D. Schwartz Thomas P. Comerford, Jr.

Department of Transportation and Department of Health Equipment and Training Required for Administering Chemical Tests; Test Procedures and Accuracy Certification for Breath Test Devices Docket No. #18-277

BY ORDER OF THE COMMISSION

On November 8, 1989, the Independent Regulatory Review Commission (Commission) received this proposed regulation from the Departments of Transportation (PennDOT) and Health (Health). This proposal readopts the regulations which delineate the equipment and training required for the administration of chemical breath tests and the accuracy certification for breath test devices as contained in Title 67, Chapter 77, Subchapter B. This regulation was initially adopted under the authority of Sections 1547(c)(1) and 6103 of the Vehicle Code Act of June 17, 1976, P.L. 162, No. 81 (75 Pa. C.S. §§ 1547(c)(1) and 6103). These regulations will become effective upon publication in the Pennsylvania Bulletin, without notice of proposed rulemaking.

PennDCT and Health propose to readopt Chapter 77, Subchapter B as it currently exists prior to the December 22, 1989, sunset date. Readoption of this Chapter is necessary for the continuation of standards governing the training required for those individuals administering breath tests to determine the concentration of ethyl alcohol in a person's blood, the procedure for administering such tests and for certifying the accuracy of devices used to perform such tests. We note that Subchapter A of Chapter 77, entitled "Interim Regulations" will be allowed to expire (Pa.B. 2760 (July 1, 1989)). These regulations were enacted as emergency interim procedures for breath tests and accuracy verification required for the implementation of Act 289 of 1982 (P.L. 1268, No. 289).

A public notice of Transportation's and Health's intention to readopt these regulations was published in the July 1, 1989, Pennsylvania Bulletin (Pa.B. 2774). In response to this notice, comments were received from John B. Mancke, a Barrisburg attorney.

person's blood alcohol level is below 0.15%, the officer administering the test should be required to advise motorists of their right to have a second series of tests within one-half hour after the original test was performed and that this test be performed by the officer instead of requiring the person to seek private testing as required by 75 C.S. § 1547(h). Mr. Mancke suggested that this second series of tests will give some indication of whether a person's blood alcohol level is rising (or falling) and will provide a more accurate estimate of the person's blood alcohol level at the time the driving occurred.

Since PennDOT's regulations only define the appropriate procedure for performing a breath test and do not delineate when tests should be administered, and since the statute (75 Pa. C.S. § 1547) clearly delineates when tests are to be performed and provides for subsequent tests, we feel that any changes pertaining to additional tests should be implemented through a legislative amendment to the statute, not by a change in the regulations.

Mr. Mancke has also recommended that the regulations be amended to provide that all log books that contain, the test records for all breath equipment be made available "for public inspection during the normal course of business operations [at] the station in which the test is being performed." He further suggested that log books contain all breath tests and the results and the reasons for the equipment being taken out of service.

The current regulations only require that a "certificate of accuracy" be completed when accuracy inspection and calibration inspections are successfully completed. Accuracy inspections are required within thirty days of when equipment is used and whenever malfunctioning equipment is returned to service. Calibration tests are required to be performed annually. The regulations make no provision for recording breath test results or the results of the simulator test performed after each "breath test" (i.e. the two consecutive tests). Similarly, there are no requirements as to how these certificates are maintained or made available to persons who have been tested or to their attorneys.

As part of our follow-up investigation, Mr. Mancke explained that the availability of the records for the test equipment varies considerably depending on the position of the local district attorney. Usually, these records are not available until the parties enter into formal discovery. Consequently, persons charged with driving under the influence of alcohol may have to incur unnecessary legal expenses to determine if the breath test equipment was operating properly or if they had been tested properly. Moreover, some cases would not have to proceed beyond the preliminary hearing stage if the information concerning the accuracy of the breath test equipment or testing procedures amade it clear that they did not comply with PennDOT regulations.

Therefore, we feel that in the interest of potentially reducing some of the legal costs incurred by affected persons and by our judicial system, these regulations should be amended to: require that a log book be maintained for each testing device; that the results of all accuracy inspection tests, simulator tests and breath tests be maintained in the log book; and that a copy of the log book be available to persons who have been tested, or their attorneys, during normal business hours. PennDOT should also address the necessity of developing procedures to preserve the confidentiality of individual breath test results.

PennDOT responded to Mr. Mancke's July 11, 1989, comments by letter dated August 30, 1989, which states, inter alia, that it was not their intention to make any substantive changes to the regulations in question. PennDOT further stated that Mr. Mancke's comments would be maintained on file and given consideration in the future should the Departments decide to pursue substantive changes to these regulations. We find that PennDOT's response to Mr. Mancke's comments to be contradictory to the fundamental purpose of the sunset process and to its invitation "to submit written comments, suggestions or objections to the Departments' intentions to readopt these regulations in their present form." (Pa.B. 2775). Since the Departments only received one set of comments on their proposed readoption of these regulations, we are disappointed that PennDOT did not make a more concerted effort to address these comments. We feel that a few minor changes to these regulations are warranted to make these regulations less procedurally burdensome and we urge PennDOT to promptly initiate these changes.

Since it is clearly in the public interest that these regulations remain in effect beyond the sunset deadline of December 22, 1989, and since PennDOT would require some time to conduct the research necessary to formulate a proposed rulemaking to amend these regulations, we feel that these regulations should be readopted in their existing form. However, we strongly recommend that PennDOT initiate a proposed rulemaking to implement the amendments to Chapter 67 discussed above.

THEREFORE IT IS ORDERED THAT:

- 1) IRRC Regulation #18-277, "Equipment and Training Required for Administering Chemical Tests; Test Procedures and Accuracy Certification for Breath Test Devices", submitted by the Departments of Health and Transportation, be approved as submitted to the Commission on November 8, 1989; and
- 2) A copy of this Order be transmitted to the Legislative Reference Bureau.

43A



PENNSYLVANIA

Administrative License Revocation Fact Sheet

In 1990 there were an estimated 735 alcohol-involved fatalities in Pennsylvania, according to Fetal Accident Reporting System data.

A Pennsylvania Administrative License Revocation (ALR) Law would produce the following benefits each year, based on estimates from current research.

Yearly Savings

| 44 to 66 | Lives |
|------------------------|--|
| \$ 5.2 to 7.8 Million | Direct Costs (medical, rehabilitation, etc.) |
| \$29.9 to 44.9 Million | Societal Costs (lost productivity plus direct costs) |

A Pennsylvania ALR law could make the State eligible for Federal incentive grant funds.

\$2.34 Million annual Section 408 Grant, if Pennsylvania meets the basic and all supplemental grant criteria. The funds are available annually for five years.

In addition, a Pennsylvania ALR law would help Pennsylvania qualify for Section 410 grant funds. The 1991 Highway Bill authorized \$25 million annually for all States from 1993 through 1997 for the Section 410 program.

For more information on Administrative License Revocation, contact:

Frank Altobelli, Regional Administrator
National Highway Traffic Safety Administration
Phone: 301-768-7111 Fax: 301-768-7118

- The fatality reduction estimates are based upon a National Highway Traffic Safety Administration-sponsored study of Administrative License Revocation (ALR) law effects on single vehicle nighttime fatal crashes (6% reduction) and an Insurance Institute for Highway Safety study of ALR effects on fatal crashes during periods of high alcohol involvement (9% reduction). If you assume that ALR has a similar effect on all alcohol-involved crashes, the yearly savings estimates in the Fact Sheet are obtained by applying these percentage reductions to the 1990 Fatal Accident Reporting System (FARS) estimates of alcohol-related fatalities in Pennsylvania.
- Cost estimates are based on figures developed for a 1991 Federal Highway
 Administration study, "The Costs of Highway Crashes."
- The direct cost estimate is composed of medical, property damage, legal and court, emergency services, insurance administration, workplace, and travel delay costs.
 Direct costs were \$118,400 per fatality in 1990 dollars. Lost productivity was estimated at \$561,800 per fatality in 1990. The total societal cost per fatality in 1990, both direct costs and lost productivity, was \$680,200.
- Although ALR reduces alcohol-involved injury and property damage crashes as well as
 fatalities, there are no studies that provide conclusive data on these reductions.
 Consequently, the savings estimates do not include any impact on property damage
 and injury crashes.

DL-21 (3-92)

REPORT OF THE CLERK OF COURTS SHOWING THE CONVICTION OR ACQUITTAL OF ANY VIOLATION OF THE VEHICLE CODE

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RESPONSE FROM PENNSYLVANIA BUREAU OF MOTOR VEHICLES

SUN: 21610139. VALIDATED: 060192. EXPIRES: 0696.

DOF: 061867. SEX: M. NAM: REASER, TODD

116 SPRING SARDEN ST

PA. 15444 MOSCOW

RESTRICTIONS:

PUSPENSION: NO

PERATOR CLASS: D = SINGLE VEH <= 26,000

PERATUR TYPE: RESULAR OFERATOR

CLYSER OF DUPLIDATES: 00

INFORMATION OBTAINED FROM PENNDOT FILES AND SHOULD BE VERIFIED

ATTACHMENT B

_DA351-7967 - OLS 10/09/92 11:09:39 - 10/09/92 11:08:34 8D32NUT1683B

RESPONSE FROM PENNSYLVANIA BUREAU OF MOTOR VEHICLES

OLN: 18472792. VALIDATED: 062189. EXPIRES: 0893.

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NUMBER OF DUPLICATES: 00

INFORMATION OBTAINED FROM PENNDOT FILES AND SHOULD BE VERIFIED

ATTACHMENT C

REPEAT DUI OFFENDERS

| DEFENDANTS | # OFFENSE | BLOOD ALCOHOL |
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| Robert Woodbridge | 4 DUI | Refusal |
| Kenneth Pugh | 2 DUI | .157 |
| Costic Laniewski | 2 DUI | Refusal |
| Thomas Perfilio | 2 DUI | Refusal |
| Joel Gurley | 2 DUI | Refusal |
| Paul Kinney | 2 DUI | .18 & .15 |
| John Crawford | 3 DUI | .16 & .20 |
| Bernard Kasulis | 2 DUI | .291 |
| Peter Terzoni | 2 DUI | Refusal |
| marle Mc Dermott | 2 DUI | .222 |
| Jeffrey Manning | 2 DUI | .198 & .163 |
| Daniel O'Brien | 2 DUI | .156 |
| Gary Kane | 2 DUI | Refusal & .21 |
| Gary Lee | 2 DUI | Refusals |
| Deborah Rabiega | 3 DUI | .249 & .27 |
| David Mraz | 2 DUI | Refusal |
| Mark Sargent | 2 DUI | Refusal |
| Marle Sermiale | 2 DUI | .27 |
| John Leonard | 2 DUI | Refusal |
| Brian Durkin | 2 DUI | .172 |
| Fred Cramer | 2 DUI | .223 |
| Pavid Godlewski | 2 DUI | .328 |
| No. of the Control of | | |

| Migrel Ortega | 2 DUI | .126 & Refusal |
|---------------------|--------|--------------------|
| John Harrity | 3 DUI | Refusals |
| Nicholas Nottola | 2 DUI | .20 & .134 |
| Thomas J. Davis | 3 DUI | .219 & .195 & .175 |
| George Troutman | 2 DUI | Refusal |
| Thomas Murphy | 3 DUI | .166 & .27 & .201 |
| Jeff Bielinski | 2 DUI | .123 |
| Patrick O'Brien | 2 DUI | Refusal |
| Victor Olmedo | 3 DUI | Refusals |
| Timothy Sheridan | 2 DUI | Refusal |
| James Kell | 2 DUI | .186 & Refusal |
| Richael Hermanovich | 2 DUI | .180 & .126 |
| Chael Pronkco | 2 DUI | .307 |
| Raymond Ayalo | 2 DUI | Refusal |
| Michael Hansell | 2 DUI | .185 & Refusal |
| George DeHaven | 2 DUI | .356 |
| Witkor Minajew | 2 DUI | .249 |
| Jerry Goyne | -3 DUI | .149 & .16 & .133 |
| Cheryl Mynyle | 2 DUI | .179 |
| David Krokc | 2 DUI | .156 |
| John Fitch | 2 DUI | .216 |
| Neil Sofrandco | 2 DUI | .278 |
| Frank Bomba | 2 DUI | Refusal |
| George Daleunchak | 2 DUI | .190 & Refusal |
| Kevin Donovan | 2 DUI | .16 |
| chard Fanucci | 2 DUI | .16 |
| | | |

| James Buck | 2 DUI | REFUSAL |
|------------------|-------|-------------|
| David Wilga | 2 DUI | .20 & .183 |
| Jeff Marcks | 2 DUI | REFUSAL |
| Bruce Orloski | 2 DUI | .161 |
| Joseph Calabro | 2 DUI | .133 |
| John Memo | 2 DUI | .286 |
| Chris Stachnik | 2 DUI | REFUSAL |
| Joseph Giannetti | 2 DUI | .124 & .131 |
| Thomas Luby | 2 DUI | .107 & .20 |
| Roy Ridgeway | 2 DUI | .17 & .14 |
| Joesph Wagner | 2 DUI | .227 & .279 |
| Leo Hughes | 2 DUI | .307 |
| ry Black | 2 DUI | .203 |
| Joseph Shorter | 2 DUI | .363 |
| Lisa Rubin | 2 DUI | .20 |
| Mary Griffin | 2 DUI | .219 & .28 |
| Michael Lynch | 2 DUI | REFUSAL |
| David Shafer | 2 DUI | .17 |
| James Kapp | 3 DUI | .188 |
| Joanne Brajukea | 2 DUI | REFUSAL |
| Esther Shafer | 2 DUI | .191 |
| Paul Sluck | 2 DUI | .207 |
| David Chichura | 2 DUI | .209 & .263 |
| James Kresly | 2 DUI | REFUSAL |
| Armand Galea | 2 DUI | .155 & .22 |
| ephen Seamon | 2 DUI | REFUSAL |
| | | |

| Vernon Decker | 2 DUI | .154 |
|-------------------|-------|-----------------------|
| Joseph Zrowlea | 2 DUI | .251 & .21 |
| John White | 2 DUI | REFUSAL |
| Joseph Acosta | 2 DUI | .30 |
| Thomas Adamski | 2 DUI | .222 & .226 |
| Bernard Anderjack | 2 DUI | REFUSAL |
| Candy Anderson | 2 DUI | .23 |
| Nick Anzelmi | 2 DUI | .13 |
| Ellis Heckler | 2 DUI | REFUSAL |
| Gerard Moran | 2 DUI | .19 & .331 |
| Fred Dombkowski | 3 DUI | .109 & .18 |
| William Black | 2 DUI | .164 |
| trick O'Brein | 2 DUI | REFUSAL |
| Carole Bentler | 2 DUI | .171 |
| Steven Anderson | 2 DUI | .21 |
| James Becker | 2 DUI | .293 |
| Daniel Bidwell | 2 DUI | .189 |
| John Blanchard | 2 DUI | .14 |
| Robert Christie | 3 DUI | REFUSAL |
| Chris Cooper | 3 DUI | REFUSAL |
| John Finch | 2 DUI | REFUSAL |
| Carl Swingle Jr. | 2 DUI | .227 |
| Joseph O'Shea | 2 DUI | .199 |
| John Bilock | 2 DUI | .28 |
| Scott Allen | 2 DUI | REFUSAL & .23 |
| Cry Ellen Mulally | 4 DUI | .26 & .19 & .29 & .14 |
| | | |

| Edward Prendergast | 2 | .207;.20 |
|--------------------|------|----------------|
| Donald Phillips | 2 | .11 |
| Samuel Pauciello | 2 | Refusal; .21 |
| Michael Murphy | 3 | Ref.;.21; Ref. |
| Lawrence Gardner | 2 | .17 |
| Dale Zawicki | 2 | . 32 |
| Joseph McCarthy | 2 | .18 |
| Eugene Beckage | 2 | .14; .13 |
| Gary Hunsinger | 3or4 | .18 |
| Leroy Metzger | 2 | .24; .21 |
| Edward Miller | 2 | .19; .19 |
| cco Minicozzi | 3or4 | Refusals |
| Ralph Ricino | 4 | Ref.; .21 |
| John Rowlands | 2 | .17; .11 |
| George Sheerer | 3 | Refusals |
| Todd Swoyer | 4 | .23; .21; Ref. |
| Barbara White | 2 | .24; .21 |
| Robert Ward | 3 | .16; .161 |
| Willie Lewis | 3or4 | Ref; .42 |
| Michael Ligorio | 2 | .14 |
| Richard Volovitch | 2 | .142 |
| Daniel Cleveland | 4 | .20 |
| John Mooney | 2 | Refusal |
| | | |

| Eugene Gallagher | 2 DUI | .79 & Refusal |
|------------------|-------|----------------|
| Ellis Heckler | 3 DUI | Refusal & .224 |
| Michael Herbert | 2 DUI | .170 |
| James Rooney | 2 DUI | Refusal |
| Joseph Worobey | 2 DUI | .221 |

| Fred Clark | 2 DUI | .13 & REFUSAL |
|-----------------|-------|----------------|
| Mike Kahanic | 2 DUI | REFUSAL & .132 |
| Joe Surdyrowski | 2 DUI | .14 & .10 |
| Jeff Bielinski | 2 DUI | .16 |