

Appendix A

Rules of the Georgia Bureau of Investigation

Chapter 92-3 Implied Consent

Rev. September 2012 Proposed Changes

Proposed amendments are underlined.

**RULES OF THE GEORGIA BUREAU OF INVESTIGATION
CHAPTER 92-3
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92-3-.01 Application; Information.

(1) This chapter applies to chemical analysis of a person's blood, breath or urine for the purpose of determining whether such person is under the influence of alcohol or drugs where such tests are required or authorized under the laws of this state. It does not apply to analysis of breath, blood or other bodily substances for other purposes, including, but not limited to, those:

- (a) Performed in conjunction with a postmortem examination;
- (b) Conducted by personnel employed by the Division of Forensic Sciences or by personnel employed by an agency of the United States;
- (c) Performed pursuant to a court order;
- (d) Performed as a condition of probation, parole or pretrial release;
- (e) Performed for the purpose of determining paternity;
- (f) For initial breath alcohol screening;(except where explicitly addressed)
- (g) For the purpose of preliminary testing for alcohol or drugs by law enforcement before submission of samples to a laboratory for confirmatory testing;
- (h) For DNA analysis; or
- (i) For the purpose of medical diagnosis or treatment.

(2) Requests concerning the rules or laws administered by the Georgia Bureau of Investigation, Division of Forensic Sciences relative to the methods approved for breath, blood or urine analysis, pursuant to this Chapter, shall be made in writing to the Director, Division of Forensic Sciences of the Georgia Bureau of Investigation.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Information" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Aug. 31, 1998; eff. Sept. 20, 1998. **Amended:** Rule retitled "Application; Information". F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010.

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92-3-.02 Qualifications. Amended.

- (1) Pursuant to this chapter applicants for a permit to perform chemical analysis of a person's blood for alcohol content and report the results of such analysis as delineated in O.C.G.A. § 40-6-392 shall meet the following requirements:
 - (a) Be employed by an entity that is accredited in the area of forensic blood alcohol analysis by a nationally recognized accrediting body;
 - (b) Have never been convicted of a crime involving moral turpitude;
 - (c) Have completed a baccalaureate or advanced degree in chemistry, toxicology, medicine, pharmacology, or forensic science, including a minimum of 40 semester hours of chemistry related coursework;
 - (d) Have completed a documented training program in the area of blood alcohol analysis that includes the following elements:
 1. Theory of alcohol pharmacology and pharmacokinetics;
 2. Principles and theory of analytical techniques for blood alcohol analysis, e.g., head space gas chromatography and/or enzymatic methods;
 3. Analysis of samples with known blood alcohol content using gas chromatography, enzymatic methods, or other generally accepted techniques;
 4. Successful completion of proficiency test samples from the National Highway Transportation Safety Administration (NHTSA) and/or proficiency test samples from a test provider approved by the entity's accrediting authority described in 92-3.02(1)(a).
 - (e) Be an active participant in an ongoing external proficiency testing program.
- (2) Applicants for a permit to perform chemical analysis of a person's breath pursuant to this Chapter shall meet the following requirements:
 - (a) be a citizen of the United States;
 - (b) be a resident of the State of Georgia or be employed within the State of Georgia;
 - (c) have never been convicted of a crime involving moral turpitude;
 - (d) be over twenty years of age;
 - (e) certified satisfactory completion of a course in breath analysis conducted under the auspices of the Division of Forensic Sciences.
- (3) All peace officers qualified to make arrests on the highways or streets of this State shall be deemed, and are hereby declared, qualified to administer the screening test for alcohol in the breath. Screening tests are not intended to be a quantitative measure of the specific amount of alcohol in a person's breath, but a presumptive test for the presence or absence of alcohol. A list of approved breath alcohol screening devices will be maintained by the Division of Forensic Sciences.
- (4) Pursuant to this chapter, applicants for a permit to perform chemical analysis of a person's blood or urine for drugs and report the results of such analysis as delineated in O.C.G.A. § 40-6-392 shall meet the following requirements:
 - (a) Be employed by an entity that is accredited in the area of toxicology analysis by a nationally recognized accrediting body;
 - (b) Have never been convicted of a crime involving moral turpitude;
 - (c) Have completed a baccalaureate or advanced degree in chemistry, toxicology, medicine, pharmacology, or forensic science, including a minimum of 40 semester hours of chemistry related coursework;

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- (d) Have completed a training program in the area of drug analysis from biological samples that includes the following elements:
 - 1. Theory of drug pharmacology and pharmacokinetics;
 - 2. Principles and theory of analytical techniques for drug analysis, including presumptive (e.g., immunoassay) and confirmatory techniques (e.g., gas chromatography/ mass spectrometry, liquid chromatography/ mass spectrometry/mass spectrometry);
 - 3. Analysis of samples with known drug content using presumptive and confirmatory methods,
 - 4. Successful completion of proficiency test samples from a test provider approved by the accrediting authority described in 92-3.02(4)(a). .
- (e) Be an active participant in an ongoing external proficiency testing program.
- (5) Applicants to perform, under supervision, chemical testing of a person's blood or urine for alcohol shall meet the following requirements:
 - (a) Be under the direct supervision of a person who possesses a valid permit to perform chemical tests as described in 92-3.02(1) and who is responsible for reviewing and reporting the results of all chemical tests performed by the applicant;
 - (b) Be a duly licensed registered nurse, certified medical technologist, or trained laboratory technician;
 - (c) Have completed a training program in the area of blood alcohol analysis that includes the following elements:
 - 1. Principles and theory of analytical techniques for blood alcohol analysis, e.g., head space gas chromatography and/or enzymatic methods;
 - 2. Analysis of samples with known blood alcohol content using gas chromatography, enzymatic methods, or other generally accepted techniques;
 - 3. Successful completion of proficiency test samples provided by the National Highway Transportation Safety Administration (NHTSA) and/or proficiency test samples from a test provider approved by the entity's accrediting authority described in 92-3.02(1)(a).
 - (d) Be an active participant in an ongoing external proficiency testing program.
- (6) Applicants to perform, under supervision, chemical testing of a person's blood or urine for drugs shall meet the following requirements:
 - (a) Be under the direct supervision of a person who possesses a valid permit to perform chemical tests as described in 92-3.02(4) and who is responsible for reviewing and reporting the results of all chemical tests performed by the applicant;
 - (b) Be a duly licensed registered nurse, certified medical technologist, or trained laboratory technician;
 - (c) Have completed a training program in the area of drug analysis from biological samples that includes the following elements:
 - 1. Principles and theory of analytical techniques for drug analysis, including presumptive (e.g., immunoassay) and confirmatory techniques (e.g., gas chromatography/ mass spectrometry, liquid chromatography/ mass spectrometry/mass spectrometry);
 - 2. Analysis of samples with known drug content using presumptive and confirmatory methods;
 - 3. Successful completion of proficiency test samples provided by a recognized test provider approved by the entity's accrediting authority described in 92-3.02(4)(a). .
 - (d) Be an active participant in ongoing external proficiency testing program.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Qualifications" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Aug. 9, 1988; eff. Aug. 29, 1988. **Amended:** F. Nov. 18, 1995; eff. Dec. 8, 1995. **Amended:** F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010.

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92-3-.03 Application, Form of. Amended.

- (1) Applications for permits to perform chemical analyses of a person's blood or breath pursuant to this Chapter shall be on a form prescribed and approved by the Georgia Bureau of Investigation and shall be submitted to the Division of Forensic Sciences, Implied Consent Section.
- (2) Each applicant shall provide as a minimum the following data:
 - (a) the name of the individual seeking the permit;
 - (b) the email address, telephone number, fax number and mailing address of the individual seeking the permit;
 - (c) the name and mailing address of the applicant's employer, or if self-employed, the name and mailing address under and by which the applicant transacts business;
 - (d) place and date of the applicant's birth;
 - (e) the resident address of the applicant;
 - (f) responses to all questions or requests for information in the application;
 - (g) date of the application.
- (3) Where the application is for a permit to perform chemical analyses of a person's blood or urine, the applicant shall provide the documentation necessary to demonstrate that the applicant has met all applicable qualifications.
- (4) Where the application is for a permit to perform chemical analyses of a person's blood or urine the applicant shall identify the specific methods and techniques to be employed in the performance of the analyses.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Application, Form of" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. June 10, 1987; eff. June 30, 1987. **Amended:** F. Nov. 18, 1995; eff. Dec. 8, 1995. **Amended:** F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010.

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92-3-.04 Permits. Amended.

- (1) Permits to perform chemical analyses of a person's blood, urine, or breath pursuant to this Chapter will be issued by the Georgia Bureau of Investigation, Division of Forensic Sciences, Implied Consent Section.
- (2) The Georgia Bureau of Investigation, Division of Forensic Sciences shall withhold the issuance of a permit where the application reveals information that the applicant has not or cannot qualify pursuant to Rule 92-3-.02.
- (3) Separate and distinct permits shall be issued for:
 - (a) analysis and reporting of blood alcohol levels
 - (b) testing and reporting breath alcohol levels;
 - (c) analysis and reporting of drugs in blood and/or urine
 - (d) analysis of blood alcohol under supervision
 - (e) analysis of drugs in blood and/or urine under supervision.
- (4) All permits are subject to revocation as provided by law and Rule 92-3-.08.
- (5) Applications for all permits shall be filed with the Division of Forensic Sciences Implied Consent Section. Permits shall be valid for not more than four years from the date of issuance. Proof of successful completion of annual proficiency tests shall be required to maintain all permits for testing blood or urine for alcohol or drugs.
- (6) Permit renewals to perform chemical analyses on a person's breath shall not be approved unless one refresher course in breath alcohol analysis conducted under the auspices of the Division of Forensic Sciences has been satisfactorily completed. Individuals possessing permits that are more than one year past the expiration date will not be allowed to renew their permits by attending a refresher course unless specifically authorized by the Director of the Division of Forensic Sciences or his or her designee. Additional refresher courses may be required at the discretion of the Director of the Division of Forensic Sciences.
- (7) Existing permit holders may obtain a permit to operate instruments approved pursuant to this rule by the Division of Forensic Sciences for the chemical analysis of a person's breath by successfully completing a transition course in breath alcohol analysis under the auspices of the Division of Forensic Sciences.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Permits" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Nov. 18, 1995; eff. Dec. 8, 1995. **Amended:** F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010

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92-3-.05 Forms of Permit. Amended.

Permits issued by the Division of Forensic Sciences authorizing individuals to perform chemical analyses of a person's blood, urine, or breath pursuant to this Chapter shall be in a form approved by the Division of Forensic Sciences. Permits will indicate the individual approved to perform analysis, an issue and expiration date, and the type of analysis approved to perform, i.e., breath alcohol, blood alcohol, or blood and urine drug testing. In addition the permit will clearly indicate whether testing must be performed under supervision. In the case of breath analysis the type of instrument approved for use will also be indicated.

- (a) Form deleted.
- (b) Form deleted.
- (c) Form deleted.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Forms of Permit" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010

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92-3-.06 Techniques and Methods. Amended.

- (1) Reserved
- (2) All chemical tests on blood and/or urine not performed by Georgia Bureau of Investigation personnel must be performed on instruments approved by the Director of the Division of Forensic Sciences. Requests for approval of instruments to perform chemical testing of blood and urine along with proposed maintenance guidelines will be submitted to the Director of the Division of Forensic Sciences or his or her designee. Approval of such request is at his or her discretion pursuant to O.C.G.A. § 40-6-392. Upon approval of any testing instrument for the analysis of blood and/or urine a certificate of approval shall be issued detailing the agency, the date approved, the instrument serial number, and the date of the approval expiration. Such certificate shall be self authenticating and evidence that the instrument was approved by the Division of Forensic Sciences as required by O.C.G.A. § 40-6-392. Such approval shall not apply when any substantial modification to the instrument's original design has been made such that it no longer has all its parts attached and in working order as prescribed by the manufacturer or when the instrument is not in substantial compliance with the maintenance guidelines submitted. Failure to maintain testing instruments as stated in the guidelines for instrument maintenance may be considered grounds for revocation of the certificate of approval. Factors evaluated in the approval of maintenance guidelines for testing instruments shall include but are not limited to:
 - (a) Documentation of substantial compliance with the manufacturer's recommendations for maintenance;
 - (b) Documentation of all maintenance performed including the date, action taken, the individual performing the maintenance, and the results of the maintenance including acceptable performance of known quality control samples following such maintenance;
 - (c) Documentation that instrument maintenance is performed by individuals sufficiently trained to perform instrument maintenance;
 - (d) Documentation that the instrument has all its parts attached and in good working order as prescribed by the manufacturer;
 - (e) Documentation that the instrument is suitable for the purpose for which it is being used;
 - (f) Documentation of quality control measures to ensure reliable analysis such as positive and negative controls;
 - (g) Documentation that the instrument exhibits the sensitivity, resolution, and specificity necessary for its intended purpose and is evaluated for suitability prior to use.
- (3) Types of instruments considered for confirmatory testing of blood or urine for drug content include gas chromatography mass spectrometry, gas chromatography tandem mass spectrometry, liquid chromatography mass spectrometry, liquid chromatography tandem mass spectrometry, or other comparable structural elucidation technique as determined by the Director of the Division of Forensic Sciences or his or her designee.
- (4) Types of instruments considered for testing of blood for alcohol content include head space gas chromatograph, fluorescence polarization immunoassay, cloned enzyme donor immunoassay, enzyme immunoassay, or other comparable technique as determined by the Director of the Division of Forensic Sciences or his or her designee.
- (5) Breath tests other than the original alcohol-screening test shall be conducted on a breath alcohol analyzer approved by the Director of the Division of Forensic Sciences or his or her designee. Any other type of breath alcohol analyzer not specifically listed in this paragraph must be approved by the Director of the Division of Forensic Sciences or designee prior to its use in the State.
 - (a) The Intoxilyzer Model 5000 manufactured by CMI, Inc. is an approved instrument for breath alcohol tests conducted on or before December 31, 2015;
 - (b) The Intoxilyzer Model 9000 manufactured by CMI, Inc. is an approved instrument for breath alcohol tests conducted on or after January 1, 2013;

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- (6) All breath tests other than the original alcohol-screening test will be performed in accordance with Rule 92-3-.02(2) of these regulations. The operator's permit will be conspicuously displayed in the room and in the immediate vicinity of the place where the test is conducted, or the operator will have on his or her person or immediate possession for display upon request a valid permit in accordance with Rule 92-3-.02(2).
- (7) All blood and urine drug tests will be performed by the Georgia Bureau of Investigation, Division of Forensic Sciences or by entities specifically approved by the Director of the Division of Sciences for this purpose. All entities approved by the Division of Forensic Sciences to perform chemical analyses of blood and urine for drugs shall be accredited by a nationally recognized accrediting body. A list of all entities approved for the purpose of conducting chemical tests for drugs will be kept on file at the Georgia Bureau of Investigation to be made available upon request. Approval of entities to perform chemical tests of blood or urine for drugs shall be at the discretion of the Director of the Division of Forensic Sciences or his or her designee. Such approval shall not apply when any substantial change to the method submitted has been made or when any person executing such method fails to substantially comply with the method as written when submitted for approval. Entities requesting approval to perform chemical tests of blood and/or urine for drugs must submit all methods used for chemical testing under O.C.G.A. § 40-6-392 as well as accompanying calibration procedures and validation documents. All blood and urine drug testing methods submitted to the Division of Forensic Sciences for approval shall be evaluated for the following:
- (a) Whether the method is suitable for the purpose for which it was submitted;
 - (b) Whether the method employs a minimum of two analytical techniques for positive identification of an analyte where at least one of the techniques is structurally elucidating (e.g., gas chromatography/ mass spectrometry, liquid chromatography/ mass spectrometry or liquid chromatography/ mass spectrometry/mass spectrometry);
 - (c) Whether the method includes quality control measures to ensure reliable analysis such as positive and negative controls;
 - (d) Whether the method's accuracy and measurement uncertainty for quantification meet acceptance criteria as determined by the Director of the Division of Forensic Sciences or his or her designee. These acceptance criteria are based on minimum acceptability requirements set forth for the Division of Forensic Sciences and will be made available to the applicant agency on request;
 - (e) Whether the method's working range for quantification includes the relevant pharmacological concentrations for the analytes of interest;
 - (f) Whether the method is specific for the analytes of interest;
 - (g) Whether the method complies with a nationally recognized quality control standard such as ISO/IEC 17025.
- (8) The Director, Division of Forensic Sciences:
- (a) will cause each instrument used in the administration of breath tests to be checked periodically for calibration and operation and a record of the results of all such checks maintained;
 - (b) at his discretion may cause any operator administering breath tests to be checked for operating proficiency. Unsatisfactory operation proficiency checks shall be one of several criteria for permit revocation.
- (9) All blood and/or urine alcohol tests will be performed in accordance with a quantitative Gas Chromatographic technique or any equivalent procedure comparable in accuracy to Gas Chromatography. Any method used by an entity other than the Division of Forensic Sciences will be evaluated for approval by the Director of the Division of Forensic Sciences or his or her designee and such approval shall be at his or her discretion. Upon approval of any testing method a certificate of approval shall be issued detailing the agency, the date approved, and the date of the approval expiration. Such certificate shall be self authenticating and evidence that the method submitted was approved by the Division of Forensic Sciences as required by law. Such approval shall not apply when any substantial change to the method submitted has been made or when any person executing

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such method fails to substantially comply with the method as written when submitted for approval. Entities requesting approval to perform blood and/or urine alcohol tests must submit all methods used for testing under O.C.G.A. § 40-6-392 as well as accompanying calibration procedures and validation documents. Factors evaluated in the approval of testing methods by outside agencies shall include:

- (a) Whether the method is generally accepted in the scientific community for the purpose for which it is being submitted;
 - (b) Whether the method employs replicate analysis;
 - (c) Whether the method includes quality control measures to ensure reliable analysis such as positive and negative controls;
 - (d) Whether the method's accuracy and measurement uncertainty for quantification meet acceptance criteria as determined by the Director of the Division of Forensic Sciences or his or her designee. These acceptance criteria are based on minimum acceptability requirements set forth for the Division of Forensic Sciences and will be made available to the applicant agency on request;
 - (e) Whether the method's working range for quantification includes all alcohol levels between 0.02 and 0.40 g/dL of blood or equivalent;
 - (f) Whether the method is specific for ethanol;
 - (g) Whether the method complies with a nationally recognized quality control standard such as ISO/IEC 17025.
- (10) The Director of the Division of Forensic Sciences, at his discretion, may require any person authorized to perform chemical tests and/or report results of such testing of blood or urine to divide a specimen and after analysis submit it to the Director, with his report of the specimen. Alternatively, the Director may submit a sample of known alcohol or drug content to any person holding a permit to analyze blood or urine or require them to participate in an external proficiency testing program of his or her choice at his or her discretion. The failure to submit a sample or to satisfactorily analyze a specimen on request will be one of several criteria for revocation of a permit.
- (11) Except as forbidden by law, a report of every evidential breath test, excluding initial alcohol-screening tests, shall be made by the individual authorized to issue such reports.
- (12)(a) The methods approved by the Division of Forensic Sciences for conducting an evidential breath alcohol analysis shall consist of the following:
- (1) the analysis shall be conducted on an approved instrument as defined in 92-3-.06 (5).
 - (2) the analysis shall be performed by an individual holding a valid permit, in accordance with Rule 92-3-.02 (2); and
 - (3) the testing instrument shall have been checked periodically for calibration and operation, in accordance with Rule 92-3-.06 (8)(a);
- (b) Administrative, procedural, and/or clerical steps performed in conducting a test shall not constitute a part of the approved method of analysis.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Techniques and Methods" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Sept. 19, 1994; eff. Oct. 9, 1994. **Amended:** F. Nov. 9, 1994; eff. Nov. 29, 1994. **Amended:** F. Nov. 18, 1995; eff. Dec. 8, 1995. **Amended:** F. Nov. 12, 1997; eff. Dec. 2, 1997. **Amended:** F. Feb. 24, 2000; eff. Mar. 15, 2000. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010.

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92-3-.07 Fees and Billing. Amended. The fee charged for the withdrawal of a person's blood pursuant to the O.C.G.A. 40-5-55 and 40-6-392 shall not exceed the reasonable and customary charges for such service in the local medical community. All statements for such services shall be submitted to and paid by the jurisdiction (municipal corporation or political subdivision) in which the arrest or accident giving rise to such a procedure occurred.

Authority O.C.G.A. Sec. 40-6-392. **History.** Original Rule entitled "Fees and Billing" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. May 27, 1993; eff. June 16, 1993.

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92-3-.08 Revocation of Permit.

- (1) The violation of any of the rules and regulations of the Georgia Bureau of Investigation promulgated under the provisions of the Uniform Rules of the Road by a permit holder shall constitute ground upon which the Director of the Division of Forensic Sciences may revoke such permit.
- (2) If the Director of the Division of Forensic Sciences receives a complaint or has reason to believe that a permit holder is violating any provision of the rules and regulations, he shall notify such permit holder that a hearing will be held at a place and time designated by the Director to determine if the alleged infraction has occurred.
- (3) The hearing shall be conducted by the Director of the Division of Forensic Sciences or by someone he shall designate.
- (4) Upon revocation of a permit, the Director of the Division of Forensic Sciences or designee shall notify the permit holder, the permit holder's immediate supervisor and the Court(s) of the county or city where the permit holder is employed and in which the results of any tests performed by the permit holder could have been introduced as evidence.

Authority O.C.G.A. Secs. 6-2-5.1, 27-3-7, 35-3-154, 40-6-392, 52-7-12. **History.** Original Rule entitled "Revocation of Permit" adopted. F. Apr. 11, 1986; eff. May 1, 1986. **Amended:** F. Mar. 26, 2010; eff. Apr. 15, 2010.