

Proposed Rule
LSA Document #07-253

DIGEST

Adds [260 IAC 1.1-0.5](#) regarding definitions related to breath test operators and instruments. Amends [260 IAC 1.1-1-3](#) to change the practical exam requirement for breath test operator recertification. Readopts [260 IAC 1.1-2-3](#). Makes numerous other changes in the rules concerning certification of breath test operators and instruments. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[260 IAC 1.1-0.5](#); [260 IAC 1.1-1-1](#); [260 IAC 1.1-1-2](#); [260 IAC 1.1-1-3](#); [260 IAC 1.1-2-1](#); [260 IAC 1.1-2-2](#); [260 IAC 1.1-2-3](#); [260 IAC 1.1-3-1](#); [260 IAC 1.1-4-8](#); [260 IAC 1.1-5-1](#)

SECTION 1. [260 IAC 1.1-0.5](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 1.1. BREATH TEST OPERATORS AND INSTRUMENTS

Rule 0.5. Definitions

[260 IAC 1.1-0.5-1](#) Applicability

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 1. The definitions in this rule apply throughout this article.

(State Department of Toxicology; [260 IAC 1.1-0.5-1](#))

[260 IAC 1.1-0.5-2](#) "Breath test instrument" defined

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 2. "Breath test instrument" means an instrument for performing evidentiary breath tests for alcohol, selected and certified by the department.

(State Department of Toxicology; [260 IAC 1.1-0.5-2](#))

[260 IAC 1.1-0.5-3](#) "Breath test operator" defined

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 3. "Breath test operator" means a person certified by the department under this article to perform evidentiary breath tests for alcohol.

(State Department of Toxicology; [260 IAC 1.1-0.5-3](#))

[260 IAC 1.1-0.5-4](#) "Department" defined

Authority: [IC 9-30-6-5](#)

Affected: [IC 21-45-3](#)

Sec. 4. "Department" means the state department of toxicology established within the Indiana University School of Medicine by [IC 21-45-3](#).

(State Department of Toxicology; [260 IAC 1.1-0.5-4](#))

[260 IAC 1.1-0.5-5](#) "Director" defined

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 5. "Director" means the director of the department.

(State Department of Toxicology; [260 IAC 1.1-0.5-5](#))

SECTION 2. [260 IAC 1.1-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-1-1](#) Screening of applicants for training

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 1. (a) ~~An examination shall be authorized by the director of the state department of toxicology of Indiana University School of Medicine for the screening of applicants prior to acceptance in a course for training as breath test operators. to analyze breath for ethanol.~~

(b) ~~Such~~ **The** screening examination shall include ~~problems involving mathematics and such other subjects as~~ are deemed relevant by the director.

(c) Any person selected to attend the training course for breath test operators must have demonstrated ~~his or her qualifications~~ **eligibility** to the director by taking and passing the screening examination.

(d) Any **eligible** person ~~having passed the screening examination and~~ having failed the school may be admitted to a subsequent school without repeating the screening examination.

(State Department of Toxicology; [260 IAC 1.1-1-1](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 335; filed Dec 6, 1998, 1:50 p.m.: 22 IR 973; readopted filed Nov 7, 2005, 2:35 p.m.: 29 IR 896)

SECTION 3. [260 IAC 1.1-1-2](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-1-2](#) Training courses

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 2. (a) Any person to be certified as a breath test operator ~~analyzing breath for ethanol~~ must attend **and complete** a course in the theory and operation of test devices approved by the director. ~~of the state department of toxicology.~~

(b) ~~Such a~~ **The** course shall include a minimum of twelve (12) hours of instruction.

(c) ~~Such~~ **The** instruction shall ~~be devoted to~~ **include** lectures, laboratory training, and demonstrations in accordance with the following:

(1) The pharmacology and toxicology of ~~alcohol~~ **ethanol**.

(2) The theory, operation, and care of ~~the breath test equipment~~ **instruments**.

- (3) The legal aspects of breath testing for ethanol.
- (4) The interpretation of breath test **for ethanol** results.
- (5) Laboratory training using an approved ~~device~~ **instrument** to analyze breath for ~~alcohol~~: **ethanol**:
 - (A) using known ethanol-water or ethanol-gas solutions; ~~and/or~~ **or**
 - (B) on a human who has consumed a test dose of ethanol;**or both.**

(d) Examinations shall be as follows:

(1) ~~An~~ **A written** examination shall be given after six (6) to eight (8) hours of instruction.

(2) A laboratory examination shall be given consisting of, at a minimum, demonstration of proper technique in giving a breath test using a breath test instrument.

~~(2) (3)~~ A written final examination shall be given at the completion of the school. The final examination shall be prepared, **administered**, and graded under the direction of the director. ~~of the state department of toxicology of Indiana University School of Medicine.~~

(e) To successfully complete the approved course, a candidate must have performed satisfactorily in the laboratory and demonstrated his or her qualifications to the satisfaction of the director ~~of the state department of toxicology of Indiana University School of Medicine~~ in all **written** examinations.

(State Department of Toxicology; 260 IAC 1.1-1-2; filed Dec 13, 1983, 10:56 a.m.: 7 IR 336; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1292; errata, 9 IR 2063; filed Dec 6, 1998, 1:50 p.m.: 22 IR 973; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2222; readopted filed Nov 3, 2006, 1:46 p.m.: 20061122-IR-260060047RFA)

SECTION 4. [260 IAC 1.1-1-3](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-1-3](#) Certification and recertification of breath test operators

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

~~Sec. 3. (a) Any person who has successfully completed an approved course in the theory and operation of approved breath test equipment may be certified as a breath test operator by the director of the state department of toxicology of Indiana University School of Medicine.~~

~~(b) (a)~~ The director of the state department of toxicology of Indiana University School of Medicine will issue a certificate bearing an expiration date to **certify** persons who:

(1) have successfully ~~passed~~ **completed** a breath test for intoxication ~~school approved by the director of the state department of toxicology and meeting the minimum requirements~~ **course**, as set out **described** in section 2 of this rule; and ~~found to be duly qualified.~~

(2) are employed by a law enforcement agency. As used in this section, "law enforcement agency" means an agency or a department of any level of government whose principal function is the apprehension of criminal offenders.

~~(c) (b)~~ Any person certified as a breath test operator by the director ~~of the state department of toxicology of Indiana University School of Medicine~~ must be recertified by examination at least every two (2) years from the month of certification or recertification. Reasonable deviations from this schedule may be approved by the director. ~~The director will issue a certificate bearing the expiration date to the persons who are successfully recertified.~~

~~(d) (c)~~ The recertification procedure shall be ~~determined~~ **established** by the director. ~~of the state department of toxicology of Indiana University School of Medicine.~~

~~(e) (d)~~ Any person seeking recertification must demonstrate his or her qualifications to the satisfaction of the director by **doing the following**:

(1) Taking a written examination similar in content to the final examination given at the completion of the ~~school~~ **course** for training breath test operators. ~~and~~

(2) Demonstrating his or her competence in performing an evidentiary breath test by one (1) of the

following methods as prescribed by the director:

(A) Successfully performing one (1) or more breath tests during the certification period prior to recertification. The director shall determine the:

- (i) number of breath tests required to demonstrate competence; and
- (ii) method of documentation of performance of breath tests.

(B) Successfully completing a practical examination at the time of recertification, in circumstances to be defined by the director.

(f) (e) Any person:

- (1) failing the first recertification examination; or
- (2) not appearing to take this examination;

may be given a second recertification examination within sixty (60) days of the first examination. During this time period, the individual is not certified to operate approved evidentiary breath test instruments. If this second examination is failed or missed, the operator **individual** will not be certified again until he or she has successfully completed an approved breath test school (see **course as described in** section 2 of this rule, held after this second recertification examination.

(g) Nothing in this rule shall prevent the director of the state department of toxicology of Indiana University School of Medicine from suspending or revoking the certification of any operator at any time he determines such suspension or revocation to be in the best interest of the breath test for ethanol program.

(h) Any certificate issued under this section shall be valid from the date on the certificate until the expiration date two (2) years from the last day of the month the certificate was dated.

(i) (f) The director of the state department of toxicology shall issue to all certified **and recertified** breath test operators a wallet identification certificate, which certificate shall be valid from the date of issuance to an operator to the last day of the expiration month stated **date printed** on the certificate.

(g) Nothing in this rule shall prevent the director from suspending or revoking the certification of any operator at any time the director determines such suspension or revocation to be in the best interest of the breath test for ethanol program.

(State Department of Toxicology; [260 IAC 1.1-1-3](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 336; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1293; filed Dec 6, 1998, 1:50 p.m.: 22 IR 973; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2222; readopted filed Nov 3, 2006, 1:46 p.m.: [20061122-IR-260060047RFA](#))

SECTION 5. [260 IAC 1.1-2-1](#) IS AMENDED TO READ AS FOLLOWS:

Rule 2. Inspection and Certification of Breath Test Instruments

[260 IAC 1.1-2-1](#) Inspection of breath test instruments

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 1. (a) All **Each** breath test equipment **instrument** approved by the director of the state department of toxicology of Indiana University School of Medicine shall be inspected at least once each on **one** hundred eighty (180) days at their usual **its established** location, **which must be in a building**. If such **the location (building) of the instrument** is changed, the equipment **instrument** must be reinspected before it can be certified for use.

(b) ~~Such~~ **The** inspection shall include verification at least one (1) test demonstrating that the equipment **instrument**:

- (1) is in good operating condition; and
- (2) satisfies the accuracy requirements set out in subsection (e)(2).

(c) Only persons authorized by the director of the state department of toxicology of Indiana University School

~~of Medicine shall inspect approved breath test equipment.~~ **instruments.**

(d) All such authorized inspectors shall report their findings to the director.

(e) **All breath test equipment instruments** shall meet the following standards:

(1) **Certification** tests shall be made using known ethanol-water or ethanol-gas solutions, approved by the director, ~~of the state department of toxicology of Indiana University School of Medicine,~~ to simulate an ethanol ~~a breath solution.~~ **sample.**

(2) ~~Such~~ **The** test results shall not deviate more than minus eight percent (-8%) from the known alcohol content of the ethanol-water or ethanol-gas ~~solution,~~ **vapor. No test result for the purpose of certification shall exceed the known ethanol content of the test vapor.** For example, ~~0.10% w/v~~ a solution of ethanol in water **that produces a vapor having eight-hundredths (0.08) grams of alcohol per two hundred ten (210) liters** shall test within the range of ~~0.092% to 0.100%.~~ **seventy-four thousandths (0.074) to 0.100%. No test result for the purpose of certification shall exceed the known ethanol content of the test solution. eighty-thousandths (0.080) grams per two hundred ten (210) liters.**

(3) For the purpose of inspecting the breath test equipment, **instrument,** the analytical result shall be expressed to the third decimal place.

(4) Other tests that are not part of the inspection may be performed at the time of the inspection.

(f) Chemicals, if required, shall be of sufficient strength and quality to allow the breath test device **instrument** to operate in the manner specified in subsection (e)(2).

(State Department of Toxicology; [260 IAC 1.1-2-1](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1293; filed Dec 6, 1998, 1:50 p.m.: 22 IR 974; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2223; readopted filed Nov 3, 2006, 1:46 p.m.: [20061122-IR-260060047RFA](#))

SECTION 6. [260 IAC 1.1-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-2-2](#) Certification of instruments and chemicals

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 2. (a) All breath test equipment **instruments** shall be certified as to compliance with standards specified in section 1(e) and 1(f) of this rule at least once each one hundred eighty (180) days.

(b) The certification of inspection and compliance of breath test equipment **instruments** shall be in writing by the director. ~~of the state department of toxicology of Indiana University School of Medicine.~~

(c) ~~Such~~ **The** certification shall be based on information provided by authorized inspectors and any other evidence the director, ~~of the state department of toxicology of Indiana University School of Medicine,~~ at his **or her** discretion, may require.

(d) The current certificate of inspection and compliance shall be sent to the clerk of the circuit court in the county in which the instrument is used. All certifications of inspection shall:

- (1)** remain on file in the ~~Indiana University School of Medicine~~ **department;** and shall
- (2)** be made available to anyone for viewing only during regular office hours.

(State Department of Toxicology; [260 IAC 1.1-2-2](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; filed Dec 19, 1985, 3:37 p.m.: 9 IR 1294; filed Dec 6, 1998, 1:50 p.m.: 22 IR 975; readopted filed Nov 7, 2005, 2:35 p.m.: 29 IR 896)

SECTION 7. [260 IAC 1.1-2-3](#) IS READOPTED TO READ AS FOLLOWS:

[260 IAC 1.1-2-3](#) Repair and maintenance

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 3. A certified breath test operator is authorized to make replacements and adjustments not related to the calibration of the instrument.

(State Department of Toxicology; [260 IAC 1.1-2-3](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 337; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221)

SECTION 8. [260 IAC 1.1-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-3-1](#) Approval of methods; checklists

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 1. (a) The director shall approve a method for the administration of a test to analyze breath for ethanol for each approved type of equipment **instrument** in use. ~~Such approved method shall be kept on file in the state department of toxicology of Indiana University School of Medicine.~~

(b) ~~Such~~ **The** approved method shall be followed in making an analysis of breath for ethanol.

(c) The director may approve and distribute a checklist that sets forth in abbreviated form the approved method for the administration of a test to analyze breath for ethanol for each approved type of equipment in use.

(d) A method approved by the director for use with **an** approved equipment **instrument** shall remain in effect from the date of approval until such time as the department shall adopt a rule changing ~~such the~~ approved method.

(State Department of Toxicology; [260 IAC 1.1-3-1](#); filed Dec 13, 1983, 10:56 a.m.: 7 IR 338; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221)

SECTION 9. [260 IAC 1.1-4-8](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-4-8](#) B.A.C. Datamaster with keyboard breath analysis method

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 8. The following is the approved method to conduct a B.A.C. Datamaster with keyboard test for alcohol intoxication:

(1) The person to be tested must:

(A) have had nothing to eat or drink; ~~must~~

(B) not have put any foreign substance **in into** his or her mouth or respiratory tract; and ~~must~~

(C) not smoke;

within twenty (20) minutes ~~prior to~~ **before** the time a breath sample is taken.

(2) The green LED on the instrument display must be ~~lighted~~ **glowing**.

(3) Depress the run button, enter the password, and insert the evidence ticket **or verify that the external printer is ready to use**.

(4) Follow the displayed request for information, and enter **the information** by the keyboard.

(5) When the "please blow" appears **on the display**, place a new mouthpiece in the breath tube. **The** subject must deliver a breath sample.

(6) When the printer stops, remove the evidence ticket **or report sheet** from the ~~instrument~~ **printer** and check the **report printed on the** evidence ticket **or report sheet** for the numerical alcohol subject sample and correct date and time.

(7) If the ~~EVIDENCE TICKET~~ **report** displays one (1) of the following messages, the test is not valid; proceed as instructed:

(A) If "**subject sample** interferent" is printed on the ~~EVIDENCE TICKET~~, **report**, return to step 1 **described in** subdivision (1) and perform a second breath test. If "**subject sample** interferent" is printed on the

~~EVIDENCE TICKET~~ **report** of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
- (ii) perform the breath test on another evidentiary breath test instrument.

(B) If "subject sample invalid" is printed on the ~~EVIDENCE TICKET~~, **report**, return to step 1 **described in** subdivision (1) and perform a second breath test. If "subject sample invalid" is printed on the ~~EVIDENCE TICKET~~ **report** of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
- (ii) perform the breath test on another evidentiary breath test instrument.

(C) If "radio interference" is printed on the ~~EVIDENCE TICKET~~, **report**, locate and remove the source of ~~RFI~~ **the radio interference** and return to step 2 **described in** subdivision (2) and perform a second breath test. If "radio interference" is printed on the ~~EVIDENCE TICKET~~ **report** of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
- (ii) perform the breath test on another evidentiary breath test instrument.

(D) If "subject sample incomplete" is printed on the ~~EVIDENCE TICKET~~, **report**, return to step 2 **described in** subdivision (2) and perform a second breath test. If "subject sample incomplete" is printed on the ~~EVIDENCE TICKET~~ **report** of this second breath test:

- (i) obtain an alternate chemical test for ethanol; or
- (ii) perform the breath test on another evidentiary breath test instrument.

However, if the "subject sample incomplete" was caused by the lack of cooperation by the subject, the breath test operator should record that the test was refused.

(State Department of Toxicology; [260 IAC 1.1-4-8](#); filed Sep 6, 1991, 5:00 p.m.: 15 IR 6; filed Dec 6, 1998, 1:50 p.m.: 22 IR 975; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2223; readopted filed Nov 3, 2006, 1:46 p.m.: [20061122-IR-260060047RFA](#))

SECTION 10. [260 IAC 1.1-5-1](#) IS AMENDED TO READ AS FOLLOWS:

[260 IAC 1.1-5-1](#) Breath test instruments

Authority: [IC 9-30-6-5](#)

Affected: [IC 9-30-6-5](#)

Sec. 1. (a) All breath test instrument models must be selected by the director ~~of the state department of toxicology (department) of the Indiana University School of Medicine~~ prior to their evidentiary use in Indiana. The testing of such ~~the~~ instruments must be performed in the department's ~~laboratory~~ **facility**. The procedure for evaluation of the instruments must be established by the department and designed to ensure the accurate analysis of breath specimens for the determination of breath or blood alcohol concentrations, or both, relative to traffic law enforcement. To achieve selection under [IC 9-30-6-5](#), a breath test instrument must meet, at a minimum, the following criteria:

(1) The:

- (A) instrument must analyze breath samples; and ~~the~~
- (B) numerical value it reports shall be expressed as grams of alcohol per (A) ~~one hundred (100) milliliters of the person's blood; or (B) two hundred ten (210) liters of the person's breath.~~

(2) The instrument must be **as follows**:

- (A) Capable of calibration for the purpose of certification with a known alcohol standard in accord with [260 IAC 1.1-2-1](#) (e) and maintain this calibration during routine breath alcohol testing.
- ~~(3) The instrument must be~~ (B) Able to analyze a known alcohol reference sample within the limits specified by ~~260 IAC 1.1-2~~ (e), [260 IAC 1.1-2-1](#) (e) separate from ~~calibrate~~ **calibration** for certification.
- ~~(4) The instrument must be~~ (C) Equipped with sufficient features to prevent unauthorized alteration, tampering, or manipulation in order to safeguard the breath sampling process and alcohol concentration analysis.

(b) ~~A The instruments for which approved methods are provided in [260 IAC 1.1-4](#) shall constitute the list of approved models of breath test instruments shall be distributed as provided required by [IC 9-30-6-5](#)(b).~~ [IC 9-30-6-5](#).

(State Department of Toxicology; [260 IAC 1.1-5-1](#); filed Aug 30, 1994, 1:10 p.m.: 18 IR 11; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976; filed Jan 26, 2001, 9:31 a.m.: 24 IR 1608)

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