

Proposed Rule
LSA Document #10-610

DIGEST

Adds [260 IAC 1.1-4-9](#) to set forth the approved breath analysis method for evidence of alcohol intoxication, in conjunction with the installation of the approved instrument for breath analysis, the Intoximeters EC/IR II. Effective 30 days after filing with the Publisher.

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

[260 IAC 1.1-4-9](#)

SECTION 1. [260 IAC 1.1-4-9](#) IS ADDED TO READ AS FOLLOWS:

[260 IAC 1.1-4-9](#) Intoximeters EC/IR II breath analysis method of testing for alcohol intoxication

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

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

Sec. 9. For purposes of this regulation:

(1) "Operator" means an Indiana breath-test operator, duly certified by the Indiana state department of toxicology.

(2) "Subject" means an individual who is being tested for the presence and concentration of alcohol in the breath.

(3) The following is the approved method for conducting a test of the breath for alcohol intoxication using the Intoximeters EC/IR II:

(A) The person to be tested must:

(i) have had nothing to eat or drink;

(ii) not have put any foreign substance into his or her mouth or respiratory tract; and

(iii) not smoke;

within twenty (20) minutes before the time a breath sample is taken.

(B) Ensure that the observation period of twenty (20) minutes from the time of checking and clearing the subject's mouth and securing the subject for transportation to the approved instrument site, to starting the test sequence on the Intox EC/IR II, has been performed and is in compliance with the testing method.

(i) In the event that some portion of the waiting period described above has not yet elapsed by the time the subject arrives at the certified testing site, the certified instrument will count down the remaining balance of time to completion of the twenty (20) minute waiting period before it activates the prompts and allowing the subject to give a breath sample.

(4) Ensure that the instrument is plugged into an electrical power source and a compatible external printer (supplied) at the approved site.

(5) When the instrument is turned on and warmed up, the display scrolls through, "Intox EC/IR II", "Initializing", and then "Initializing Database", then "Database Usage". The display reads, "Instrument Ready", press "Enter" to begin test sequence.

(6) The instrument prompts the operator to scan their Indiana breath-test program operator card. The instrument displays the breath-test operator's license number, certification beginning date, and certification end date. If the breath-test operator is not currently certified or does not possess a valid Indiana breath-test program operator card, the instrument does not allow a test. The instrument displays, "card invalid", "card expired", or "invalid start date/re-scan new card" and aborts test sequence.

(7) The instrument displays an optional field prompting the operator to enter the departmental unit number or badge number. If the operator desires to leave this field blank, the operator presses the "Enter" key to advance to the next prompt.

(8) The instrument displays a mandatory field prompting the operator to enter the time and date at which observation began. This information shall be entered in the form of hours and minutes expressed as military, twenty-four (24) hour time in "HHmm".

(A) If twenty (20) minutes has not elapsed from the time at which observation began to the time of

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- administering the subject test, the instrument counts down the remaining minutes before the next prompt.
- (B) To cancel the observation countdown and return to the main menu, the operator presses "Escape" (esc) to abort.
- (9) The instrument requires the operator to select using the space bar from a menu, the "county of occurrence", meaning the county in which the driving conduct occurred.
- (A) If no county information is entered, the instrument defaults to reentering the last previous county of occurrence for which the instrument was used.
- (B) To advance to the next field, the operator presses "Enter".
- (10) The instrument requires the operator to enter the reason for test, using the space bar to select from a menu, the operator selects "OVWI", "Probation/Parole", "Underage Alcohol Offenses", or "Other". Press "Enter" to continue.
- (A) If no selection is made, the instrument defaults to operating a vehicle while intoxicated "OVWI".
- (B) If "Other" is selected, press "Enter" and type the comment. The comment may not exceed twenty-four (24) characters. Press "Enter" to continue.
- (11) The instrument then allows the operator to enter the reason for stop of the subject vehicle. Using the space bar to select from a menu, the operator selects "OVWI", "Traffic Violation", "Crash", "OVWI Check-Point", "Equipment Violation", or "Other". Press "Enter" to continue:
- (A) If no selection is made, the instrument defaults to "OVWI".
- (B) If "Other" is selected, press "Enter" and type the comment. The comment may not exceed twenty-four (24) characters. Press "Enter" to continue.
- (12) The instrument prompts the operator to answer whether a crash was involved. This field is not mandatory, and if no selection is made, the instrument defaults to "N".
- (A) If "N" is selected, either by choice or by default, the final printout of the test sequence result is displayed and prints "Crash n/a".
- (B) If "Y" is selected, the space bar may then be used to indicate a selection of "Property Damage", "Personal Injury", "Serious Bodily Injury/Fatality", or "Unknown".
- (13) If the subject's driver's license is available, the operator inserts the license into the card reader. In most cases, the instrument automatically populates the data by auto-filling the information from the subject's license. To continue, press "Enter" for each field:
- (A) The card reader on the instrument reads:
- (i) Driver's license number.
 - (ii) State of issue.
 - (iii) Expiration date of license.
 - (iv) Subject last name.
 - (v) Subject first name.
 - (vi) Subject middle initial.
 - (vii) Subject date of birth, expressed as MM/DD/YYYY.
 - (viii) Subject gender.
- (14) If the subject's driver's license is unavailable, or if the available driver's license does not scan properly in the instrument's card reader, press "Enter" and use the keyboard to manually record each item of subject identity information available to the operator, pressing "Enter" to progress to the next field.
- (A) Each of the items of subject identity information is optional, and information may be omitted at the operator's discretion, or if the information cannot reasonably be obtained within the time required to complete the test.
- (15) If the operator desires at this point to review or edit the data entered before beginning the test sequence, the operator presses "Enter" and may edit previously entered information beginning with "Department Unit Number".
- (16) The instrument displays "Starting test sequence/space = begin, enter = verify". The operator must press the space bar to begin and initiate a subject test sequence as follows:
- (A) Display shows "Diagnostic Check".
- (B) If instrument passes, display shows "Diagnostic Check Passed". If instrument fails, the test is aborted.
- (C) Display shows "Blank Check".
- (D) If instrument passes, display shows "0.000". If instrument fails, it aborts the test.
- (E) Display shows "Calibration Check".
- (F) If instrument passes, display shows "Calibration Check Passed". If instrument fails, it aborts the test and displays "Standard out of Range/Test Aborted".
- (G) Display shows "Blank Check" and begins air blank check sequence.
- (H) Display shows "Please Wait".
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(I) Display shows "Please Blow/Press R for Refusal". Operator presses "R" to confirm refusal. Testing cycle ends and "Test Refused" is shown on printout.

(J) The operator shall place a new mouthpiece into the breath tube and instruct the subject to provide a breath sample.

(K) The graphic display on the instrument depicts subject's progress toward completing a valid breath sample. Using the breath volume graph and the audible tone as guides, the subject is directed to continue blowing into the mouthpiece until the completion level is indicated.

(L) Subject has three (3) minutes or three (3) attempts to supply a valid sample, whichever occurs first.

(M) If minimum flow is not reached within two (2) minutes from the time of the "Please Blow/Press R for Refusal" prompt, the instrument beeps every five (5) seconds for the next fifty (50) seconds, and every second for the last ten (10) seconds of the following minute. If no valid sample is yet obtained, the display shows:

(i) "Refusal? [Y/N]" – Operator presses "Y" to confirm refusal. Testing cycle ends, instrument runs a final blank sequence and displays "Database Update/Complete. Printout reads "Test Refused".

(AA) When refusal is confirmed, the operator may seek to obtain, in accordance with law and regulations, an alternate means of chemical testing for alcohol.

(ii) Operator presses "N" and display reads "Breath Time-out/Test Aborted". The instrument runs a final "Blank Check/Accuracy Check/Blank Sequence" and displays "Breath Time-out/No Sample provided" followed by "Database Update/Complete" and returns to scrolling mode.

(iii) "Insufficient Sample" appears when the subject attempts to provide a sample, but fails to provide a sufficient sample at any time during the three (3) minute period allotted. After three (3) insufficient samples, test will abort, the instrument runs a final blank sequence, and display shows "Database Update" then "Complete". The report prints out as "Breath Timeout/no sample provided".

(AA) When refusal is confirmed, the operator may seek to obtain, in accordance with law and regulations, an alternate means of chemical testing for alcohol.

(N) At any time during the taking of a subject sample, if breath volume fails to reach minimum volume, "Insufficient Sample" appears, then "Purging/Remove Mouthpiece", then returns to "Please Blow/Press R for Refusal".

(O) When a sufficient sample is obtained, display reads "Evaluating Sample". If the sample is sufficient and passes internal control checks, display reads "Valid Sample Complete".

(P) Printing of the report sheet then begins. When the printer stops, remove the report sheet from the printer and check the report for legibility, for the numerical alcohol, subject sample, and the correct date and time.

(Q) If the report notes "Sample Timeout", "Insufficient Sample", "Mouth Alcohol", "Interfering Substance", or "Radio Frequency Interference", the test is not valid and the operator must prompt the instrument to review data. This defaults to all data from the last subject test sequence, allowing the operator to edit preliminary data and to locate and remove the probable source of interference.

The director of the Indiana state department of toxicology, having been granted by statute the authority to promulgate regulations as to the approved method for administering breath tests for the presence of alcohol, finds that the foregoing regulations setting forth a single-sample testing protocol will, if followed, yield accurate results to a reasonable degree of scientific certainty, by methods that are generally accepted within the scientific community. In the event that a dual-testing protocol is preferred, the Intoximeters EC/IR II has been configured to allow for a dual test to be administered. The programming to effectuate such a change may only be modified by a duly trained staff member of the Indiana state department of toxicology having administrative clearance. Once modified, the regulations to be followed by the breath-test operator, and the corresponding steps of the testing process, will repeat the procedures set forth in sections 9(6) through 9(16)(Q).

(State Department of Toxicology; [260 IAC 1.1-4-9](#))

[Notice of Public Hearing](#)

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