

Proposed Rule
LSA Document #20-17

DIGEST

Adds [260 IAC 2.5](#) to add definitions, to establish standards for selection, training, certification, and recertification of breath test operators, to authorize certified breath test operators to make replacements and adjustments to breath test instruments, to preserve breath test operator certifications issued under repealed rule, to establish standards for selection of breath test equipment and inspection and certification of breath test instruments, to preserve breath test instrument certifications issued under repealed rule, to establish standards for selection and certification of chemicals, and to establish approved method for Intox EC/IR II breath analysis. Repeals [260 IAC 2-1](#), [260 IAC 2-2](#), [260 IAC 2-3](#), and [260 IAC 2-4](#). Effective 30 days after filing with the Publisher.

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

[260 IAC 2-1](#); [260 IAC 2-2](#); [260 IAC 2-3](#); [260 IAC 2-4](#); [260 IAC 2.5](#)

SECTION 1. [260 IAC 2.5](#) IS ADDED TO READ AS FOLLOWS:

ARTICLE 2.5. BREATH TEST OPERATORS AND INSTRUMENTS

Rule 1. Definitions

[260 IAC 2.5-1-1](#) 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 2.5-1-1](#))

[260 IAC 2.5-1-2](#) "Breath test instrument" defined

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

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

Sec. 2. "Breath test instrument" means equipment selected by the department for performing evidentiary breath tests for alcohol.

(State Department of Toxicology; [260 IAC 2.5-1-2](#))

[260 IAC 2.5-1-3](#) "Department" defined

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

Affected: [IC 10-20-2-1](#)

Sec. 3. "Department" means the state department of toxicology established by [IC 10-20-2-1](#).

(State Department of Toxicology; [260 IAC 2.5-1-3](#))

[260 IAC 2.5-1-4](#) "Director" defined

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

Affected: [IC 10-20-2-2](#)

Sec. 4. "Director" means the director of the department.

(State Department of Toxicology; [260 IAC 2.5-1-4](#))

[260 IAC 2.5-1-5](#) "Law enforcement agency" defined

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

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

Sec. 5. "Law enforcement agency" means an agency or department with authority to apprehend criminal offenders.

(State Department of Toxicology; [260 IAC 2.5-1-5](#))

[260 IAC 2.5-1-6](#) "Reference material" defined

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

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

Sec. 6. "Reference material" means a traceable material or substance having known properties.

(State Department of Toxicology; [260 IAC 2.5-1-6](#))

Rule 2. Selection, Training, and Certification of Breath Test Operators

[260 IAC 2.5-2-1](#) Selection

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

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

Sec. 1. Only a person employed by a law enforcement agency may be certified as a breath test operator.

(State Department of Toxicology; [260 IAC 2.5-2-1](#))

[260 IAC 2.5-2-2](#) Training

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

Affected: [IC 10-20-2-5](#)

Sec. 2. (a) The breath test operator training course for certification shall consist of training in the following:

- (1) The pharmacology and toxicology of alcohol.
- (2) The legal aspects of breath testing for alcohol.
- (3) The theory, operation, and care of breath test equipment.
- (4) The use of a breath test instrument using reference materials.

(b) To successfully complete the training course, a person must pass all examinations and demonstrate competence in the administration of breath tests on a breath test instrument.

(State Department of Toxicology; [260 IAC 2.5-2-2](#))

[260 IAC 2.5-2-3](#) Certification and recertification of breath test operators

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

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

Sec. 3. (a) A person who:

- (1) is employed by a law enforcement agency; and
- (2) successfully completes the breath test operator training course;

will be certified as a breath test operator.

(b) Any person certified as a breath test operator 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.

(c) Any person seeking recertification as a breath test operator must demonstrate competence in the performance of evidentiary breath tests by passing an examination approved by the department.

(d) Any person who fails the recertification examination may be given a second recertification examination, provided that the previous certification has not been expired for more than thirty (30) days. During the time period between the first and second recertification examinations, the person is not certified as a breath test operator.

(e) The department shall issue identification cards to certified and recertified breath test operators.

(f) The director may suspend or revoke the certification of any breath test operator at any time the director determines such suspension or revocation to be in the best interest of the breath test program.

(State Department of Toxicology; [260 IAC 2.5-2-3](#))

[260 IAC 2.5-2-4](#) Authorization of certified breath test operators

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

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

Sec. 4. Certified and recertified breath test operators are authorized to:

- (1) administer breath tests; and
- (2) make replacements and adjustments to breath test instruments excluding instrument calibration adjustments.

(State Department of Toxicology; [260 IAC 2.5-2-4](#))

[260 IAC 2.5-2-5](#) Breath test operators certified or recertified under repealed rule

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

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

Sec. 5. The certifications of breath test operators who were certified or recertified under [260 IAC 2-2](#) before its repeal shall be valid until the date they would have expired under [260 IAC 2-2](#) before its repeal.

(State Department of Toxicology; [260 IAC 2.5-2-5](#))

Rule 3. Selection, Inspection, and Certification of Breath Test Instruments and Chemicals

[260 IAC 2.5-3-1](#) Selection of breath test equipment

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

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

Sec. 1. (a) The department shall select breath test equipment for use for evidentiary breath testing to ensure the accurate analysis of breath specimens for the determination of breath alcohol concentrations. The department shall select breath test equipment that meets the following criteria:

- (1) The equipment shall analyze breath samples and report a numerical value expressed as grams of alcohol per two hundred ten (210) liters of breath.
- (2) The equipment shall be:
 - (A) capable of calibration for the purpose of certification with a reference material in accord with

section 2 of this rule;

(B) able to analyze a reference material within the limits specified by section 2 of this rule separate from calibration for certification; and

(C) equipped with sufficient features to prevent unauthorized alteration, tampering, or manipulation to safeguard the breath sampling process and alcohol concentration analysis.

(b) The breath test instruments for which approved methods are provided in [260 IAC 2.5-4](#) shall constitute the list of breath test equipment selected by the department.

(State Department of Toxicology; [260 IAC 2.5-3-1](#))

[260 IAC 2.5-3-2](#) Inspection of breath test instruments

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

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

Sec. 2. (a) A person authorized by the department shall inspect each breath test instrument deployed for evidentiary use at the instrument's established location at least once every one hundred eighty (180) days. If the location of a breath test instrument is changed, the instrument must be inspected and certified under this rule prior to use for evidentiary testing.

(b) The inspection shall include at least one (1) test demonstrating that the breath test instrument:

(1) is in good operating condition; and

(2) satisfies the accuracy requirements in subsection (e).

(c) The inspection shall include tests using reference materials certified to contain a specific concentration of ethanol with a measurement uncertainty at a stated level of confidence.

(d) The numerical analytical results of inspection tests shall be expressed to the third decimal place.

(e) The numerical analytical results of Intox EC/IR II breath test instruments shall not deviate more than five percent (5%) or five-thousandths (0.005) grams per two hundred ten (210) liters, whichever is greater, from the value of the reference material or the value of the reference material as adjusted for the ambient barometric pressure.

(State Department of Toxicology; [260 IAC 2.5-3-2](#))

[260 IAC 2.5-3-3](#) Certification of breath test instruments

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

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

Sec. 3. (a) The department shall certify each breath test instrument deployed for evidentiary use as to compliance with the standards in section 2 of this rule at least once every one hundred eighty (180) days.

(b) The certification of breath test instruments shall be in writing by the department.

(c) The certification shall be based on information provided by persons authorized by the department to inspect breath test instruments.

(State Department of Toxicology; [260 IAC 2.5-3-3](#))

[260 IAC 2.5-3-4](#) Breath test instruments certified under repealed rule

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

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

Sec. 4. The certifications of breath test instruments inspected and certified under [260 IAC 2-3](#) before its repeal shall be valid until the date they would have expired under [260 IAC 2-3](#) before its repeal.

(State Department of Toxicology; [260 IAC 2.5-3-4](#))

[260 IAC 2.5-3-5](#) Selection and certification of chemicals

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

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

Sec. 5. Chemicals used as reference materials in the performance of evidentiary breath tests shall be certified to contain a specific concentration of ethanol with a measurement uncertainty at a stated level of confidence.

(State Department of Toxicology; [260 IAC 2.5-3-5](#))

Rule 4. Approved Method for Administering Breath Tests

[260 IAC 2.5-4-1](#) Approved method for Intox EC/IR II breath analysis

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

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

Sec. 1. (a) The approved method that shall be followed in making an analysis of breath for alcohol using the Intox EC/IR II breath test instrument is as follows:

(1) The person to be tested must:

(A) have had nothing to eat or drink;

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

(C) not smoke;

within fifteen (15) minutes before the time the first breath sample is taken or at any time from the taking of the first breath sample until after the taking of the final breath sample.

(2) Use the following STEPS:

STEP ONE: Verify that the instrument is in ready mode, as indicated by the instrument display.

STEP TWO: Press "Enter" key to start subject test.

STEP THREE: Insert identification card into the barcode reader, or press the "Enter" key and use the keyboard to enter the breath test operator information requested by the instrument display.

STEP FOUR: When requested by the instrument display, enter the beginning date and time of the fifteen (15) minute deprivation period described in subdivision (1).

STEP FIVE: When requested by the instrument display, select "Y" or "N" to indicate whether the breath test operator had control of the subject during the fifteen (15) minute deprivation period described in subdivision (1).

STEP SIX: If "N" is selected in STEP FIVE, when requested by the instrument display, enter the information of the officer with control of the subject during the fifteen (15) minute deprivation period described in subdivision (1).

STEP SEVEN: Enter incident information requested by the instrument display.

STEP EIGHT: Enter subject information by:

(A) inserting the subject's driver/operator license or identification card into the barcode reader; or

(B) pressing the "Enter" key and using the keyboard to enter the available subject information requested by the instrument display.

STEP NINE: When "Please blow" appears on the instrument display, place a mouthpiece on the breath tube. Instruct the subject to deliver a breath sample. Remove mouthpiece after delivery of a breath sample or when prompted by the instrument display. Repeat as prompted by the instrument display.

STEP TEN: Print the instrument report and remove it from the printer; verify that there is a numerical value for the subject's breath alcohol concentration reported as the "RESULT" on the instrument report and sign the instrument report where indicated.

(b) If any of the following status messages is printed on the instrument report, proceed as follows:

(1) If "Interfering Substance" or "Mouth Alcohol" is printed on the instrument report:

(A) obtain a blood sample for a chemical test; or

(B) repeat the fifteen (15) minute deprivation period described in subsection (a)(1) and perform an additional breath test, beginning with STEP ONE in subsection (a)(2). If "Interfering Substance" or "Mouth Alcohol" is printed on the instrument report after this additional breath test:

(i) obtain a blood sample for a chemical test; or

(ii) sign all instrument reports where indicated if a numerical value for the subject's breath alcohol concentration is reported as the "RESULT" on any instrument report.

(2) If a status message not listed in this rule, excluding "Test Complete", is printed on the instrument report:

(A) obtain a blood sample for a chemical test; or

(B) perform an additional breath test, beginning with STEP ONE in subsection (a)(2). If a status message not listed in this rule, with the exception of "Test Complete", is printed on the instrument report after this additional breath test:

(i) obtain a blood sample for a chemical test; or

(ii) sign all instrument reports where indicated if a numerical value for the subject's breath alcohol concentration is reported as the "RESULT" on any instrument report.

(c) If a subject refuses a test, the breath test operator should record that the test was refused and sign all reports where indicated.

(State Department of Toxicology; [260 IAC 2.5-4-1](#))

SECTION 2. THE FOLLOWING ARE REPEALED: [260 IAC 2-1](#); [260 IAC 2-2](#); [260 IAC 2-3](#); [260 IAC 2-4](#).

[Notice of Public Hearing](#)

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