

TITLE 260 STATE DEPARTMENT OF TOXICOLOGY

ARTICLE 1. CHEMICAL TEST OPERATORS AND DEVICES (REPEALED)

(Repealed by State Department of Toxicology; filed Dec 13, 1983, 10:56 am: 7 IR 340) NOTE: 260 IAC 1 is repealed, however any certificates issued under 260 IAC 1 shall be valid until the date they would have expired under 260 IAC 1 and any machine, instrument, chemical, operator, or method certified under 260 IAC 1 shall be deemed certified under 260 IAC 1.1 until said certification would have expired under 260 IAC 1.

ARTICLE 1.1. BREATH TEST OPERATORS AND EQUIPMENT

Rule 1. Selection, Training, and Certification of Breath Test Operators

260 IAC 1.1-1-1 Training applicants' screening examination

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 breath test operators to analyze breath for ethanol.

(b) Such 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 to the director by taking and passing the screening examination.

(d) Any 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)*

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 a course in the theory and operation of test devices approved by the director of the state department of toxicology.

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

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

(1) The pharmacology and toxicology of alcohol.

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

(3) The legal aspects of breath testing for ethanol.

(4) The interpretation of breath test results.

(5) Laboratory training using an approved device to analyze breath for alcohol:

(A) using known ethanol-water or ethanol-gas solutions; and/or

(B) on a human who has consumed a test dose of ethanol.

(d) Examinations shall be as follows:

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

(2) A written final examination shall be given at the completion of the school. The final examination shall be prepared 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)*

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) The director of the state department of toxicology of Indiana University School of Medicine will issue a certificate bearing an expiration date to persons who have successfully passed a breath test for intoxication school approved by the director of the state department of toxicology and meeting the minimum requirements as set out in section 2 of this rule and found to be duly qualified.

(c) 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) Recertification procedure shall be determined by the director of the state department of toxicology of Indiana University School of Medicine.

(e) Any person seeking recertification must demonstrate his or her qualifications to the satisfaction of the director by taking a written examination similar in content to the final examination given at the completion of the school for training breath test operators and successfully completing a practical examination.

(f) Any person failing the first recertification examination or 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 will not be certified again until he or she has successfully completed an approved breath test school (see 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) The director of the state department of toxicology shall issue to all certified 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 on the certificate. (*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*)

Rule 2. Inspection and Certification of Equipment and Chemicals

260 IAC 1.1-2-1 Inspection of equipment; strength and quality of chemicals

Authority: IC 9-30-6-5

Affected: IC 9-30-6-5

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

(b) Such inspection shall include verification that the equipment is in good operating condition and 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.

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

(e) Breath test equipment shall meet the following standards:

(1) 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-breath solution.

(2) Such test results shall not deviate more than minus eight percent (-8%) from the known alcohol content of the ethanol-water or ethanol-gas solution, for example, 0.10% w/v solution of ethanol in water shall test within the range of 0.092% to 0.100%. No test result for the purpose of certification shall exceed the known ethanol content of the test solution.

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

(f) Chemicals (if required) shall be of sufficient strength and quality to allow the breath test device 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*)

260 IAC 1.1-2-2 Certification of equipment and chemicals

Authority: IC 9-30-6-5

Affected: IC 9-30-6-5

Sec. 2. (a) All breath test equipment 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 shall be in writing by the director of the state department of toxicology of Indiana University School of Medicine.

(c) Such 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 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 remain on file in the Indiana University School of Medicine and shall 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*)

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 am: 7 IR 337; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221*)

Rule 3. Operation Standards

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 in use. Such approved method shall be kept on file in the state department of toxicology of Indiana University School of Medicine.

(b) Such 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 approved equipment shall remain in effect from the date of approval until such time as the department shall adopt a rule changing such approved method. (*State Department of Toxicology; 260 IAC 1.1-3-1; filed Dec 13, 1983, 10:56 am: 7 IR 338; readopted filed Aug 6, 2002, 4:55 p.m.: 25 IR 4221*)

Rule 4. Approved Methods

260 IAC 1.1-4-1 Breathalyzer test method (Repealed)

Sec. 1. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

260 IAC 1.1-4-2 Intoximeter 3000 test method (Repealed)

Sec. 2. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

260 IAC 1.1-4-3 Intoxilyzer 4011A and 4011AS test method (Repealed)

Sec. 3. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

260 IAC 1.1-4-4 Intoxilyzer 5000 breath analysis method (Repealed)

Sec. 4. *(Repealed by State Department of Toxicology; filed Apr 24, 2000, 12:51 p.m.: 23 IR 2223)*

260 IAC 1.1-4-5 B.A.C. Verifier test method (Repealed)

Sec. 5. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

260 IAC 1.1-4-6 Intoxilyzer 5000 with keyboard test for alcoholic intoxication (Repealed)

Sec. 6. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

260 IAC 1.1-4-7 B.A.C. Datamaster without keyboard test for alcoholic intoxication (Repealed)

Sec. 7. *(Repealed by State Department of Toxicology; filed Dec 6, 1998, 1:50 p.m.: 22 IR 976)*

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 have had nothing to eat or drink, must not have put any foreign substance in his or her mouth or respiratory tract, and must not smoke within twenty (20) minutes prior to the time a breath sample is taken.

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

(3) Depress the run button, enter the password, and insert the EVIDENCE TICKET.

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

(5) When the PLEASE BLOW appears, place a new mouthpiece in the breath tube; subject must deliver a breath sample.

(6) When the printer stops, remove the EVIDENCE TICKET from the instrument and check the EVIDENCE TICKET for the numerical alcohol SUBJECT SAMPLE and correct date and time.

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

(A) If "INTERFERENT" is printed on the EVIDENCE TICKET, return to step 1 (subdivision (1)) and perform a second breath test. If "INTERFERENT" is printed on the EVIDENCE TICKET of this second breath test, obtain an alternate chemical test for ethanol or perform the breath test on another evidentiary breath test instrument.

(B) If "SUBJECT SAMPLE INVALID" is printed on the EVIDENCE TICKET, return to step 1 (subdivision (1)) and perform a second breath test. If "SUBJECT SAMPLE INVALID" is printed on the EVIDENCE TICKET of this second breath test, obtain an alternate chemical test for ethanol or perform the breath test on another evidentiary breath test instrument.

(C) If "RADIO INTERFERENCE" is printed on the EVIDENCE TICKET, locate and remove the source of RFI and

return to step 2 (subdivision (2)) and perform a second breath test. If "RADIO INTERFERENCE" is printed on the EVIDENCE TICKET of this second breath test, obtain an alternate chemical test for ethanol or perform the breath test on another evidentiary breath test instrument.

(D) If "SUBJECT SAMPLE, INCOMPLETE" is printed on the EVIDENCE TICKET, return to step 2 (subdivision (2)) and perform a second breath test. If "SUBJECT SAMPLE, INCOMPLETE" is printed on the EVIDENCE TICKET of this second breath test, obtain *[sic.]* alternate chemical test for ethanol or 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)

Rule 5. Selection Criteria

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 instruments must be performed in the department's laboratory. 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 instrument must analyze breath samples and the 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 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 able to analyze a known alcohol reference sample within the limits specified by 260 IAC 1.1-2-(e) *[sic., 260 IAC 1.1-2-1(e)]* separate from calibrate *[sic., calibration]* for certification.

(4) The instrument must be 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 list of approved models of breath test instruments shall be distributed as provided by IC 9-30-6-5(b). *(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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