

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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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 ethanol, selected and certified by the department. (*State Department of Toxicology; 260 IAC 1.1-0.5-2; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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 ethanol. (*State Department of Toxicology; 260 IAC 1.1-0.5-3; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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department of toxicology established within the Indiana University School of Medicine by IC 21-45-3 [*IC 21-45-3 was repealed by P.L.158-2011, SECTION 5, effective July 1, 2011.*]. (*State Department of Toxicology; 260 IAC 1.1-0.5-4; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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

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 for the screening of applicants for training as breath test operators.

(b) The screening examination shall include such subjects as are deemed relevant by the director.

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

(d) Any eligible person 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)

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 must attend and complete a course in the theory and operation of test devices approved by the director.

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

(c) The instruction shall include lectures, laboratory training, and demonstrations in accordance with the following:

(1) The pharmacology and toxicology of ethanol.

(2) The theory, operation, and care of breath test 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 instrument to analyze breath for ethanol:

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

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

or both.

(d) Examinations shall be as follows:

(1) 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.

(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.

(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 in all 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

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) The director will certify persons who:

(1) have successfully completed a breath test for intoxication course, as described in section 2 of this rule; and

(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.

(b) Any person certified as a breath test operator by the director 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) The recertification procedure shall be established by the director.

(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 course for training breath test operators.

(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.

(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 individual will not be certified again until he or she has successfully completed an approved breath test course as described in section 2 of this rule, held after this second recertification examination.

(f) The director shall issue to all certified and recertified breath test operators a wallet identification certificate, which shall be valid from the date of issuance to the expiration 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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) Each breath test instrument approved by the director shall be inspected at least once every one hundred eighty (180) days at its established location, which must be in a building. If the location of the instrument is changed, the instrument must be reinspected before it can be certified for use.

(b) The inspection shall include at least one (1) test demonstrating that the 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 shall inspect approved breath test instruments.
- (d) All such authorized inspectors shall report their findings to the director.
- (e) All breath test instruments shall meet the following standards:

(1) Certification tests shall be made using known ethanol-water or ethanol-gas solutions, approved by the director, to simulate a breath sample.

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

(3) For the purpose of inspecting the breath test 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 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA*)

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 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 instruments shall be in writing by the director.

(c) The certification shall be based on information provided by authorized inspectors and any other evidence the director, 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 department; and

(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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)

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; readopted filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

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 instrument in use.

(b) 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 instrument in use.

(d) A method approved by the director for use with an approved instrument shall remain in effect from the date of approval until such time as the department shall adopt a rule changing 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

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 ethanol intoxication:

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

(2) The green LED on the instrument display must be 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 "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 printer and check the report printed on the evidence ticket or report sheet for the numerical ethanol subject sample and correct date and time.

(7) If the 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 report, return to step 1 described in subdivision (1) and perform a second breath test beginning with a twenty (20) minute period. If "subject sample interferent" is printed on the 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 report, return to step 1 described in subdivision (1) and perform a second breath test beginning with a twenty (20) minute period. If "subject sample invalid" is printed on the 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 report, locate and remove the source of 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 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 report, return to step 2 described in subdivision (2) and perform a second breath test. If "subject sample incomplete" is printed on the 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; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)

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 prior to their evidentiary use in Indiana. The testing of the instruments must be performed in the department's 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 ethanol 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

(B) numerical value reported shall be expressed as grams of ethanol per 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 ethanol standard in accord with 260 IAC 1.1-2-1(e) and maintain this calibration during routine breath ethanol testing.

(B) Able to analyze a known ethanol reference sample within the limits specified by 260 IAC 1.1-2-1(e) separate from calibration for certification.

(C) Equipped with sufficient features to prevent unauthorized alteration, tampering, or manipulation in order to safeguard the breath sampling process and ethanol concentration analysis.

(b) The instruments for which approved methods are provided in 260 IAC 1.1-4 shall constitute the list of approved models required by 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; readopted filed Oct 9, 2007, 2:37 p.m.: 20071031-IR-260070544RFA; filed Dec 3, 2007, 3:37 p.m.: 20080102-IR-260070253FRA)*

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