

RULES AND REGULATIONS
PERTAINING TO PRELIMINARY BREATH TESTING AND
STANDARDS FOR THE DETERMINATION OF THE AMOUNT OF
ALCOHOL AND/OR DRUGS IN A PERSON'S BLOOD BY CHEMICAL
ANALYSIS OF THE BREATH, BLOOD AND/OR URINE OR OTHER
BODILY SUBSTANCES

(R31-27-ALCH)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Health

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INTRODUCTION

These rules and regulations are established pursuant to the authority set forth in Chapter 31-27 of the General Laws of Rhode Island, as amended, and are established for the purpose of adopting approved preliminary breath testing instruments and procedures for testing evidential breath testing instruments, for reliable quantitative determinations and effective administrative practices to protect the safety and welfare of the public.

In accordance with the provisions of section 42-35-3(c) of the General Laws, consideration was given in arriving at the regulations as to: (1) alternative approaches; (2) duplication or overlap with other regulations; and (3) any significant economic impact on small business as defined in Chapter 42-35 of the General Laws. No known alternative approach, duplication or overlap or economic impact was identified, and the regulations are adopted in the best interest of the health, safety and welfare of the public.

These rules and regulations shall supersede any previous rules and regulations pertaining to preliminary breath testing and standards for the determination of the amount of alcohol and/or drugs in a person's blood by chemical analysis of the breath, blood and/or urine or other bodily substances promulgated by the Department of Health and filed with the Secretary of State.

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PART I **DEFINITIONS**
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Section 1.0 **Definitions**

Wherever used in these rules and regulations, the following terms shall be construed to mean:

- 1.1 **"Act"** shall refer to Chapter 31-27 of the General Laws of Rhode Island, as amended, entitled "Motor Vehicle Offenses."
- 1.2 **"Chemical test"** shall refer to the analysis, or test(s) of a person's blood, urine, or other bodily substances or breath for the purpose of determining the chemical content of the body substance or breath using methods of general scientific acceptance in the field of chemistry pursuant to the provisions of section 31-27-2.1 of the Act, and administered in accordance with the requirements of the Act and the rules and regulations herein.
- 1.3 **"Department"** shall refer to the Department of Health, state of Rhode Island.
- 1.4 **"Director"** shall refer to the Director of Health, Department of Health, state of Rhode Island.
- 1.5 **"Medical technician"** shall mean a person employed by a hospital or a private laboratory licensed by the Department of Health, who as a result of training and experience has been authorized by the Director of that laboratory to draw blood. No civil liability shall be incurred by an authorized person drawing blood for the purpose of this Act, or by the agency or institution by which that person is employed, provided that the technique employed followed accepted medical practices.
- 1.6 **"Preliminary breath tests"** shall mean a test for a chemical analysis of the breath administered in accordance with the Act and regulatory requirements herein for the purpose of guiding the law enforcement officer in deciding whether an arrest should be made pursuant to section 31-27-2.3 of the Act.

PART II ***REQUIREMENTS FOR PRELIMINARY BREATH TESTS FOR BLOOD ALCOHOL CONTENT***

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Section 2.0 ***Administration of Preliminary Breath Tests***

- 2.1 Preliminary breath tests shall consist of obtaining, by the use of approved breath testing instruments (see section 3.0 herein), breath samples of deep lung (alveolar) air. Such tests shall be administered:
- a) by individuals certified to carry out such procedure pursuant to section 4.0 herein;
 - b) in accordance with the procedures specified for each type instrument, as prescribed by the manufacturer of each instrument and in accordance with statutory provisions; and
 - c) in a sanitary manner, by utilizing separate disposable mouth pieces for each test administered.

Section 3.0 ***Approval of Preliminary Breath Testing Instruments***

- 3.1 Only those instruments designed for the quantitative determination of the alcohol content of the breath and which have been tested to the satisfaction of the Director and found reliable, preliminary testing instruments shall be given approval by the Director and included in the list of approved instruments.
- 3.2 Based on the provisions of section 2.1 above, the following instruments have been approved for preliminary breath testing:
- a) **Alco-Sensor** (pass-warn-fail) manufactured and/or distributed by Intoximeters, Inc., or their successor;
 - b) **Alco-Sensor II** manufactured and/or distributed by Intoximeters, Inc., or their successor;
 - c) **A.L.E.R.T., Model J3A**, manufactured and/or distributed by ACS, or their successor;
 - d) **A.L.E.R.T., Model J3 Digital**, manufactured and/or distributed by ACS, or their successor;
 - e) **Alco-Check** manufactured and/or distributed by Protection and Security Equipment Corp., or their successor;
 - f) **Alco-Tector Mark X PBT** manufactured and/or distributed by Guth Laboratories, Inc.,

or their successor;

- g) **RepCo, Model BT-2** manufactured and/or distributed by RepCo, or their successor;
- h) **RepCo, Model BT-3** manufactured and/or distributed by RepCo, or their successor;
- i) **A.L.E.R.T., Model J4** manufactured and/or distributed by Alcohol Counter Measure Systems or their successor;
- j) **Sober Meter Jr. Hand Held Unit**, manufactured or distributed by Luckey Laboratories, Inc., or their successor;
- k) **Passive Alcohol Sensor** manufactured or distributed by National Patent Analytical Systems, Inc., or their successor;
- l) **Preliminary Breath Test Device S-D2 and SL-2**, manufactured and/or distributed by CMI, Inc., Owensboro, KY;
- m) **PBA 3000**, Distributed by LIFE-LOC, Inc., Denver, CO;
- n) **Drager Alcotest Model 7410 and Model 7410 Plus** manufactured and/or distributed by American Drager, Inc., Pittsburgh, PA;
- o) **Alco Sensor IV** manufactured and/or distributed by Intoximeter, Inc., St. Louis, MO.

Section 4.0 *Certification of Preliminary Breath Testing Operators*

- 4.1 The Director will consider applications for examination for certification of Preliminary Breath Testing Operators only from those individuals who present evidence of satisfactory completion of a training course for Preliminary Breath Testing Operators approved by the Director.
- 4.2 Certificates shall be issued to those applicants who:
 - a) have satisfactorily completed a training course conducted by the Department determining their competency with one or more types of instruments; or
 - b) hold a current certificate as Breath Testing Operators in accordance with the requirements of PART III of the rules and regulations herein.
- 4.3 Certificates issued to Preliminary Breath Testing Operators may be revoked for just cause by the Director.

Section 5.0 *Monitoring Program*

- 5.1 All approved preliminary breath testing instruments shall be checked by the Department at intervals not exceeding **one hundred eighty (180) days** to determine the accuracy of the instruments. Documented recordings of each check or inspection shall be maintained by the Department.
- 5.2 All standard alcohol solutions used for equilibration or simulation tests either will be prepared by analysts within the Forensic Sciences Section, Division of Laboratories of the Department or purchased. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

PART III ***STANDARDS FOR THE DETERMINATION OF THE AMOUNT OF ALCOHOL AND/OR DRUGS IN A PERSON'S BLOOD BY CHEMICAL ANALYSIS OF THE BREATH, BLOOD AND/OR URINE OR OTHER BODILY SUBSTANCES***

Methods, Techniques and Certifications

Section 6.0 ***Blood, Urine and Other Bodily Substances***

A. ***Collection of Specimens for Chemical Analysis***

1. ***Blood***

- a) The blood specimen(s) for chemical analysis shall be collected by a licensed physician, a registered nurse, a phlebotomist, or a "medical technician" as defined in section 1.5 herein.
- b) Prior to insertion of the needle preparatory to drawing blood, the superficial skin over the vein will be cleaned with a sanitizing agent devoid of alcohol.
- c) The blood specimen(s) shall be collected in a sterile laboratory tube. It is preferable that the tube contain chemical(s) designed to prevent bacterial growth. (Such chemicals are commonly found in tubes with grey stoppers).

2. ***Urine***

- a) A specimen(s) of urine for chemical analysis shall be collected in a manner to preserve the dignity of the individual and to ensure the integrity of the specimen(s). Such specimen(s) may be collected at a hospital, police station, or other location, which will assure these requirements.
- b) Urine will be collected in a previously sealed sterile container.

3. ***Other Bodily Substances***

Bodily substances, other than blood or urine, must be collected under the supervision of a licensed physician.

B. ***Integrity of Specimen(s)***

Responsibility for maintaining the chain-of-custody and for minimizing possible deterioration of the specimen(s), until delivery to the laboratory, will rest with the police.

- 1. In order to identify the individual, the incident and the specimen, the police will maintain

records containing, but not limited to, the following:

- a) name and address of person apprehended;
- b) date of birth of person apprehended;
- c) date and time of occurrence;
- d) type of bodily substance(s) collected;
- e) date and time of collection of specimen(s);
- f) name and place of employment of person collecting the specimen(s);
- g) name of arresting officer;
- h) name of attending officer (if different).

2. In order to minimize the possibility of specimen deterioration the police will:

- a) avoid prolonged exposure of the specimen(s) to temperatures above 90 degrees fahrenheit;
- b) deliver the specimen(s) to the laboratory as soon as practical;
- c) tubes without preservative(s) shall be refrigerated until transported to the laboratory.

C. ***Certification of Individuals as Laboratory Analysts***

- 1. All persons employed in the several classes of Forensic Scientist or Toxicologist within the Forensic Sciences Unit, Division of Laboratories, Department of Health, are certified by the Director of Health to perform analyses of blood, urine or other bodily substance for alcohol or drugs.
- 2. All persons employed in a laboratory within a licensed hospital in Rhode Island are certified by the Director of Health to perform analyses of blood, urine, or other bodily substance for alcohol or drugs, if the Director of the hospital laboratory determines that the qualifications of the person(s) meets at least the minimum requirements set by the Division of Personnel for Forensic Scientist or Toxicologist.

D. ***Methods of Laboratory Analysis***

1. The laboratory will employ evidence handling procedures designed to protect the chain-of-custody of the specimen(s) and to minimize deterioration of the specimen(s).
2. ***Alcohol:*** the analysis of blood, urine or other bodily substance (other than breath) for alcohol must be performed by means of gas chromatography or other technique generally recognized in the scientific community as being at least as accurate. Alcohol detected and identified during analysis will be reported in terms of weight of alcohol (ethanol) per volume of substance analyzed (w/v).
3. ***Drugs (other than alcohol):*** the analysis of blood, urine or other bodily substance for drugs must include confirmation of presumptively positive results by mass spectrometry or other technique generally recognized in the scientific community as being at least as accurate. The presence of specified drugs or their metabolites, which are detected and identified, will be reported in terms of weight of drug or metabolite per volume of substance analyzed (w/v), or weight of drug or metabolite per weight of substance analyzed (w/w).

E. ***Reports of Analysis***

1. Upon completion of analysis, the individual who performed the analysis or the laboratory by whom she/he is employed, will prepare a report of the result of said analysis.
2. The report will be submitted only to the police department requesting the analysis.
3. A copy of all reports of analysis under this law will be retained until the laboratory is informed by the police department or other official agency that judicial action is complete.
4. The confidential nature of all results of analysis will be maintained.

Section 7.0 ***Breath***

A. ***Methods for Sample Collection and Testing***

1. Breath samples which shall consist of deep lung (alveolar) air, will be collected by the use of breath testing instruments approved by, and by operators certified by, the Department.
2. The following procedures will apply:
 - a) A breath test will consist of two breath samples. The first breath sample will be taken when at least **fifteen (15) minutes** have elapsed following the apprehension of the suspected person. The second breath sample will be taken when at least **thirty**

(30) minutes have elapsed following the taking of the first breath sample.

- b) Each breath test will be administered in accordance with the procedures for the particular instrument used as prescribed by the Department for that instrument.
- c) When a law enforcement agency uses any approved breath analysis instrument, as cited in section 7(B)(2) herein, the accuracy of the instrument is tested by the internal detectors of the instrument. The result of the internal test is printed on the record.
- d) Particular care will be taken to ensure that a new and uncontaminated mouth piece is used for each breath test administered.

B. *Approval of Breath-Testing Instruments*

- 1. Only those instruments which have been designed for the purpose of the quantitative determination of the alcohol content of the breath and which have been proved reliable to the satisfaction of the Department.
- 2. The following instruments are approved:
 - a) INTOXILYZER - Model 5000 and Model 5000 EN;
 - b) BAC DATAMASTER;
 - c) Intoximeter Model 3000 (All Designs);
 - d) DRAGER ALCOTEST, MODEL 7110 MKIII;
 - e) INTOX EC/IR by INTOXIMETER;
 - f) ALCODATA by SOUND OFF, INC.

C. *Certification of Operators of Breath-Testing Instruments*

- 1. The Department of Health will consider applications for examinations and certification from only those individuals who present evidence of satisfactory completion of a course of training for Breath Analysis Testing approved by the Department.
- 2. Applicants may be approved and certificates issued upon the satisfactory accomplishment of an examination conducted by the Department of Health. Such examination shall include written and practical demonstration of competence in one or more approved methods.

3. Certificates issued to operators of Breath-Testing Instruments may be revoked for just cause by the Director.

D. ***Monitoring Program***

1. An authorized agent of the Department will check on the accuracy of approved breath-testing instruments as prescribed by law. Instruments must indicate the same alcohol percent as the standard alcohol solution used in the test. Records of recertification dates will be maintained by said Department.

2. ***Recertification***

- a) To obtain recertification, operators of breath-testing instruments shall be qualified by the Department through a written examination and/or practical demonstration of competence within 365 days of the test prescribed in section 31-27-2(5) of the Act. Records of recertification dates will be maintained by said Department.
 - b) Notwithstanding paragraph D.2.(a), operators whose certifications expire beyond 730 days shall satisfactorily complete a course of training for Breath Analysis Testing approved by the Department and the satisfactory accomplishment of an examination as specified in section 7, paragraph C.2.
3. All standard alcohol solutions used for equilibration or simulation tests either will be prepared by analysts within the Forensic Sciences Section, Division of Laboratories of the Department or purchased. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

PART IV ***SEVERABILITY***

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If any provision of the rules and regulations herein or the application thereof to any circumstances shall be held invalid such invalidity shall not affect the provisions or application of the rules and regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.

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