



Rhode Island Department of Health

NOTICE OF PUBLIC HEARING

The Director of the Rhode Island Department of Health has under consideration proposed amendments to the *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]*, promulgated pursuant to the authority conferred under Chapters 31-27 and 42-35 of the Rhode Island General Laws, as amended. These proposed amendments remove all references to sample handling and analysis of urine and other bodily substances, and specify that drugs and/or their metabolites, that are detected and identified, shall be reported as “present”.

Notice is hereby given in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws, as amended, that the Director will hold a public hearing on the above mentioned matter, in the **AUDITORIUM** of the Rhode Island Department of Health (on the lower level of the Cannon Building), Three Capitol Hill, Providence, Rhode Island on **MONDAY, 15 OCTOBER 2012 AT 11 A.M.** at which time and place all persons interested therein will be heard. The seating capacity of the room will be enforced and therefore the number of persons participating in the hearing may be limited at any given time by the hearing officer, in order to comply with safety and fire codes.

In the development of the rules and regulations, consideration was given to the following: (1) alternative approaches; and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach, duplication, or overlap was identified based upon available information.

For the sake of accuracy, it is requested that statements to be made relative to any aspect of the regulations, including alternative approaches or overlap, be submitted in writing at the time of the hearing or mailed prior to the hearing date to: Michael Fine, M.D., Director, Rhode Island Department of Health, #401 Cannon Building, 3 Capitol Hill, Providence, Rhode Island 02908-5097.

Copies of the regulations are available for public inspection in the Cannon Building, Room #201, Rhode Island Department of Health, 3 Capitol Hill, Providence, Rhode Island, on the Secretary of State's website: <http://www.sos.ri.gov/rules/>, by e-mail to Bill.Dundulis@health.ri.gov or by calling 401-222-7767

The Department of Health is accessible to the handicapped. If communication assistance (readers/ interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-222-7767 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

Signed this 11th day of September 2012

Original signed by Leonard Green for
Michael Fine, M.D., Director of Health

**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,
AND/OR BLOOD AND/OR URINE OR OTHER BODILY SUBSTANCES**

[R31-27-ALCH]



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DEPARTMENT OF HEALTH

January 1974

AS AMENDED:

March 1982	March 1989	January 2002 (re-filing in accordance with the provisions of section 42-35- 4.1 of the Rhode Island General Laws, as amended)
September 1982	March 1989 (E)	May 2003 (E)
February 1983	May 1989	August 2003
March 1983	December 1989	May 2006
June 1983 (E)	April 1991	January 2007 (re-filing in accordance with the provisions of section 42-35- 4.1 of the Rhode Island General Laws, as amended)
August 1983	July 1991 (E)	January 2012 (re-filing in accordance with the provisions of section 42-35- 4.1 of the Rhode Island General Laws, as amended)
February 1984 (E)	November 1991 (E)	
May 1984	February 1992	
July 1984 (E)	February 1992 (E)	
November 1984	December 1992	
November 1984 (E)	March 1995 (E)	
January 1986 (E)	May 1995	
April 1986	October 1996	
January 1988 (E)	May 1998	
March 1988 (E)	December 2000 (E)	
April 1988	April 2001 (E)	
May 1988 (E)	June 2001	
June 1988	July 2001 (E)	
November 1988 (E)	November 2001 (E)	October 2012
March 1989 (E)	November 2001	(Proposed)

COMPILER'S NOTES:

Additions: Underlined

Proposed Deletions: Strikeouts

INTRODUCTION

These amended *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 and/or Blood [R31-27-ALCH]* are ~~established~~ promulgated¹ 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. These current amendments remove all references to sample handling and analysis of urine and other bodily substances, and specify that drugs and/or their metabolites, that are detected and identified, shall be reported as “present”.

Pursuant to ~~In accordance with~~ the provisions of ~~section 42-35-3(e)~~ §§42-35-3(a)(3) and (a)(4) of the General Laws of Rhode Island, as amended, consideration was given ~~in arriving at the regulations~~ as to: (1) alternative approaches to the regulations; ~~and~~ (2) duplication or overlap with other state regulations; ~~and~~ (3) significant economic impact on small business. Based on the available information,. 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~~ amended Regulations shall supersede ~~any all~~ 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 [R31-27-ALCH]* promulgated by the Department of Health and filed with the Secretary of State.

¹ Prior to October 2012, these Regulations were promulgated under the title *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]*. Beginning with the October 2012 edition, the title was changed to *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 and/or Blood [R31-27-ALCH]* to reflect changes in the scope of the Regulations.

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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**" means Chapter 31-27 of the General Laws of Rhode Island, as amended, entitled "*Motor Vehicle Offenses*."
- 1.2 "**Chemical test**" means 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~~ blood 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 these ~~rules and~~ Regulations ~~herein~~.
- 1.3 "**Department**" means the Rhode Island Department of Health.
- 1.4 "**Director**" means the Director of the Rhode Island Department of Health or his/her duly authorized agent.
- 1.5 "**Health care facility**" means any institutional health service provider, facility or institution, place, building, agency, or portion thereof, whether a partnership or corporation, whether public or private, whether organized for profit or not, used, operated, or engaged in providing health care services, including but not limited to hospitals; nursing facilities; home nursing care provider (which shall include skilled nursing services and may also include activities allowed as a home care provider or as a nursing service agency); home care provider (which may include services such as personal care or homemaker services); rehabilitation centers; kidney disease treatment centers; health maintenance organizations; free-standing emergency care facilities, and facilities providing surgical treatment to patients not requiring hospitalization (surgi-centers); hospice care, and physician ambulatory surgery centers and podiatry ambulatory surgery centers providing surgical treatment. The term "health care facility" also includes organized ambulatory care facilities which are not part of a hospital but which are organized and operated to provide health care services to outpatients such as central services facilities serving more than one health care facility or health care provider, treatment centers, diagnostic centers, outpatient clinics, infirmaries and health centers, school based health centers and neighborhood health centers. The term "health care facility" shall not apply to organized ambulatory care facilities owned and operated by professional service corporations as defined in ~~chapter 5.1 of title 7~~ RIGL Chapter 7-51, as amended (the "*Professional Service Corporation Law*"), or to a private practitioner's (physician, dentist, or other health care provider) office or group of the practitioners' offices (whether owned and/or operated by an individual practitioner, alone or as a member of a partnership, professional service corporation, organization, or association).
- 1.6 "**Medical technician**", as used in these Regulations ~~herein~~, means a person employed by a hospital, a clinical laboratory, or other health care facility, who as a result of training and experience has been authorized by the director of that facility 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 employing that person, provided that the technique employed followed accepted medical practices.

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1.7 **“Preliminary breath tests”** means a test for a chemical analysis of the breath administered in accordance with the Act and regulatory requirements herein for the purpose of ~~guiding~~ ~~assisting~~ ~~the~~ law enforcement officers in ~~deciding whether an arrest should be made~~ conducting their investigation pursuant to ~~section~~ §31-27-2.3 of the Act.

1.8 **“RIGL”** means the General Laws of Rhode Island, as amended.

~~1.8~~ 1.9 **“Target value”** means the ethanol concentration that the standard solutions are designed to produce during simulation tests.

1.10 **“These Regulations”** mean all parts of Rhode Island 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 and/or, Blood [R31-27-ALCH].

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 of these Regulations 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 of these Regulations 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 preliminary testing instruments designed for the quantitative determination of the alcohol content of the breath and that have been tested to the satisfaction of the Director and found reliable shall be given approval by the Director and included in the list of approved instruments.

3.2 The list of approved instruments shall be maintained by the Department and shall be available upon request to the public. (See: www.health.ri.gov). Only those instruments that have been approved by the ~~Department~~ Director shall appear on the list.

3.3 Any approved instrument currently being utilized for breath testing purposes may continue to be utilized until such time as it needs to be replaced (“grandfathered”). Any new testing instrument purchased for determining the alcohol content of the breath shall appear on the Department’s list of approved instruments that is in effect on the date of instrument purchase.

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Section 4.0 *Certification of Preliminary Breath Testing Operators*

- 4.1 The Director shall consider applications 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 Applications for certification as a preliminary breath testing operator shall be considered from persons who:
- (a) have satisfactorily completed a training course conducted by the Department determining their competency with one (1) or more types of preliminary breath testing instruments; and
 - (b) hold a current certificate as evidentiary breath testing operators in accordance with the requirements of ~~section §6.4 of these Regulations herein.~~ §6.4 of these Regulations.
- 4.3 To obtain recertification, operators of preliminary breath testing instruments shall be qualified by the ~~Department~~ Director through a written examination and/or practical demonstration of competence within three hundred sixty five (365) days of the test prescribed in ~~section §31-27-2 (5) of the Act.~~ section §31-27-2 (5) of the Act.
- (a) Operators of preliminary breath testing instruments shall be certified for three hundred sixty five (365) days.
 - (b) If a preliminary breath testing operator’s certification lapses, said operator shall not function as an operator of a preliminary breath testing instrument.
 - (c) If re-certification as an operator of a preliminary breath testing instrument has not taken place within seven hundred thirty (730) days from the last certification expiration date, the operator shall complete a course of training for preliminary breath analysis testing as approved by the ~~Department~~ Director for this purpose.
- 4.4 Certificates issued to preliminary breath testing operators may be revoked for just cause as determined by the ~~Department~~ 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.
- 5.2 All standard alcohol solutions used for simulation tests shall be purchased or prepared by analysts within the Forensic Sciences Section of the Department’s Division of Laboratories of the Department. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

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Section 6.0 *Approval of Evidentiary Breath Testing Instruments*

- 6.1 Only those instruments that have been designed for the purpose of the quantitative determination of the alcohol content of the breath and that have been proven reliable to the satisfaction of the ~~Department~~ Director shall be given approval by the Director and included on the list of approved instruments.
- 6.2 The list of approved instruments shall be maintained by the Department and shall be available upon request to the public. (See: www.health.ri.gov). Only those instruments that have been approved by the ~~Department~~ Director shall appear on the list.
- 6.3 Any approved instrument currently being utilized for determining alcohol content of the breath may continue to be utilized until such time as it needs to be replaced (“grandfathered”). Any new testing instrument purchased for determining the alcohol content of the breath shall appear on the ~~Department~~ Director’s list of approved instruments.

Certification of Operators of Breath Testing Instruments

- 6.4 The ~~Department~~ Director shall consider applications for certification from those individuals who present evidence of satisfactory completion of a training course for breath analysis testing approved by the ~~Department~~ Director.
- 6.5 Applicants may be approved and certificates issued upon the satisfactory completion of an examination conducted by the Department. Such examination shall include written and practical demonstration of competence in one (1) or more approved methods.
- 6.6 Certificates issued to operators of breath testing instruments may be revoked for just cause as determined by the Director.

Monitoring Program

- 6.7 An authorized agent of the ~~Department~~ Director shall check the accuracy of approved breath testing instruments as prescribed by law. The instrument shall read within +/- 0.005 or +/- 5% (whichever is greater) of the target value.

6.8 Recertification

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 three hundred sixty five (365) days of the test prescribed in ~~section~~ §31-27-2(5) of the Act.

- (a) Operators of breath testing instruments shall be certified for 365 days.
- (b) If a breath testing operator’s certification lapses, said operator shall not function as a breath testing instrument operator.
- (c) If re-certification as an operator of a breath testing instrument has not taken place within seven hundred thirty (730) days from the last certification expiration date, the operator

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shall complete a course of training for breath analysis testing as approved by the ~~Department~~ Director for this purpose.

- 6.9 All standard alcohol solutions used for equilibration or simulation tests shall be prepared by analysts within the Forensic Sciences Section of the Department's Division of Laboratories ~~of the Department~~ or purchased. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

Methods, Techniques and Certifications

Section 7.0 ~~***Blood, Urine and Other Bodily Substances***~~

Collection of Specimens for Chemical Analysis

7.1 ***Blood***

- (a) The blood specimen(s) for chemical analysis shall be collected by a licensed physician, a registered nurse, or other licensed health care practitioner acting within the scope of his/her practice, or a "medical technician" as defined in ~~section~~ §1.6 of these Regulations ~~herein~~.
- (b) Prior to insertion of the needle preparatory to drawing blood, the superficial skin over the vein shall 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).
- (d) Blood specimens collected voluntarily from an individual for the purpose of determining blood alcohol content and/or drug screening shall be turned over to the requesting law enforcement authority at the time of blood drawing.

7.2 ~~***[REMOVED] 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, provided that these requirements are met.~~
- ~~(b) Urine shall be collected in a previously sealed sterile container.~~
- ~~(c) Urine specimens collected voluntarily from an individual for the purpose of determining blood alcohol content and/or drug screening shall be turned over to the requesting law enforcement authority at the time of collection.~~

Other Bodily Substances

- 7.3 ~~***[REMOVED]*** Bodily substances, other than blood or urine, shall be collected under the supervision of a licensed physician or other licensed health care practitioner acting within the scope of his/her practice.~~

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- ~~(a) Other bodily substances collected voluntarily from an individual shall be turned over to the requesting law enforcement authority at the time of collection.~~

Integrity of Specimen(s)

- 7.4 Maintaining the chain-of-custody and minimizing deterioration of the specimen(s), until delivery to the laboratory, shall be the responsibility of the law enforcement authority requesting same.
- 7.5 In order to identify the individual, the incident and the specimen, the law enforcement authority shall 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).
- 7.6 In order to minimize specimen deterioration the law enforcement authority shall:
- (a) avoid prolonged exposure of the specimen(s) to temperatures above ~~90~~ ninety degrees Fahrenheit (90 °F);
 - (b) deliver the specimen(s) to the laboratory as soon as practical;
 - (c) refrigerate tubes without preservative(s) until transported to the laboratory.

~~Certification~~ Competency of Individuals as Laboratory Analysts

- 7.7 ~~All~~ Persons employed in the several classes of Forensic Scientist ~~or Toxicologist~~ within the Forensic Sciences Unit of the Department's Division of Laboratories Forensic Toxicology Laboratory of the Department shall be ~~certified~~ deemed competent by the Director to perform analyses of blood, ~~urine or other bodily substance~~ for alcohol or drugs.
- 7.8 All persons employed in a licensed hospital laboratory in Rhode Island are ~~certified~~ deemed competent by the Director 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) meet at least the minimum requirements set for Forensic Scientist.

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Methods of Laboratory Analysis

- 7.9 The laboratory shall employ evidence handling procedures designed to protect the chain-of-custody of the specimen(s) and to minimize deterioration of the specimen(s).
- 7.10 **Alcohol:** the analysis of blood, ~~urine or other bodily substance (other than breath)~~ for alcohol shall 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 shall be reported in terms of weight of alcohol (ethanol) per volume of substance analyzed (w/v).
- 7.11 **Drugs (other than alcohol):** the analysis of blood, ~~urine or other bodily substance~~ for drugs shall 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 and/or their metabolites, that are detected and identified, shall be reported as “present” 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).

Reports of Analysis

- 7.12 Upon completion of analysis, the individual who performed the analysis or the laboratory by whom she/he is employed, shall prepare a report of the result of said analysis.
- 7.13 The report shall be submitted only to the law enforcement authority requesting the analysis.
- 7.14 A copy of all reports of analysis under ~~this law~~ the Act shall be retained ~~until the laboratory is informed by the law enforcement authority or other official agency that judicial action is complete~~ in accordance with the Department’s record retention schedule established for this category of document.
- 7.15 The confidential nature of all results of analysis shall be maintained.

Section 8.0 *Breath*

Methods for Sample Collection and Testing

- 8.1 Breath samples shall consist of deep lung (alveolar) air. Samples shall be collected by operators certified by the Director utilizing breath testing instruments approved by the Director.
- 8.2 The following procedures shall apply:
- (a) A complete breath test shall consist of two (2) valid breath samples.
 - (b) The breath samples shall be taken after the suspect has been observed for a minimum of fifteen (15) minutes to ensure that the suspect has not ingested or inserted any substance into his/her mouth, or caused any residual mouth alcohol to occur.

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- (c) The breath samples shall be collected within fifteen (15) minutes of each other and the results reported as the alcohol level based upon grams of alcohol per two hundred ten (210) liters of breath. To be acceptable as a valid breath test, the two (2) results shall be within + or – 0.020 g/210L and taken within fifteen (15) minutes of each other. If the results of the first and second sample are more than + or – 0.020 g/210L apart, a third sample shall be analyzed.
- (d) To be acceptable as a valid breath test, any two (2) of the three (3) results shall be within + or – 0.020 g/210L and taken within fifteen (15) minutes of each other. In the event the person tested fails to provide the required number of valid breath samples, then this event shall constitute a refusal in accordance with ~~section~~ §31-27-2.1 of the Act Rhode Island General Laws, as amended. If this process exceeds the allocated time, a second series may be implemented to satisfy the requirements of obtaining a valid breath test.
- 8.3 Each breath test shall be administered in accordance with the procedures for the particular instrument used as prescribed by the Director for that instrument.
- 8.4 When a law enforcement agency uses any approved breath analysis instrument, the accuracy of the instrument shall be tested by the internal detectors of the instrument. The result of the internal test shall be printed on the record.
- 8.5 Particular care shall be taken to ensure that a new and uncontaminated mouth piece is used for each breath test administered.

Section 9.0 *Severability*

- 9.1 If any provision of ~~these 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 ~~these rules and~~ Regulations which can be given effect, and to this end the provisions of the rules and regulations are declared to be severable.