

216-RICR-60-05-1

TITLE 216 - DEPARTMENT OF HEALTH

CHAPTER 60 - LABORATORIES AND MEDICAL EXAMINER

SUBCHAPTER 05 - STATE LABORATORIES

PART 1 - Determination of the Amount of Alcohol and/or Drugs in a Person's Blood by Chemical Analysis of the Breath and/or Blood

1.1 Authority

These Regulations are promulgated pursuant to the authority set forth in R.I. Gen. Laws §§ 31-27-2(g) and 31-27-2.1(a) for the purpose of establishing procedures for administering tests of breath testing instruments, approving testing instruments, certifying and re-certifying operators, and describing the instrument monitoring program. These Regulations also establish blood testing collection and specimen handling requirements for alcohol and chemical analysis and describe the requirements for the competency of laboratory analysts, the methods of laboratory analysis, and reporting.

1.2 Definitions

A. Wherever used in this Part, the following terms shall be construed to mean:

1. "Act" means R.I. Gen. Laws Chapter 31-27, entitled "Motor Vehicle Offenses."
2. "Chemical test" means the analysis, or test(s) of a person's blood or breath for determining the chemical content of the blood or breath using methods of general scientific acceptance in the field of chemistry pursuant to the provisions of R.I. Gen. Laws § 31-27-2.1, and administered in accordance with the requirements of the Act and this Part.
3. "Department" means the Rhode Island Department of Health.
4. "Director" means the Director of the Rhode Island Department of Health or his/her duly authorized agent.
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 R.I. Gen. Laws Chapter 7-51 (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).

6. "Medical technician" means a person employed by a hospital, a clinical laboratory, or other health care facility, who 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 this Act, or by the agency or institution employing that person, if the technique followed accepted medical practices.
7. "Preliminary breath tests" means a test for a chemical analysis of the breath administered in accordance with the Act and regulatory requirements of this Part for assisting law enforcement officers in conducting their investigation pursuant to R.I. Gen. Laws § 31-27-2.3.
8. "R.I. Gen. Laws" means the Rhode Island General Laws.
9. "Target value" means the ethanol concentration that the standard solutions are designed to produce during simulation tests.
10. "This Part" mean all parts of the rules and regulations regarding Determination of the Amount of Alcohol and/or Drugs in a Person's Blood by Chemical Analysis of the Breath and/or Blood [216-RICR-60-05-1].

1.3 Breath Testing

1.3.1 Preliminary Breath Testing

A. Approval of Breath Testing Instruments

1. Only 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. The Department shall maintain the list of approved instruments and shall be available upon request.
2. 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.

B. Certification of Breath Testing Operators

1. The Director shall consider applications for certification as a preliminary breath testing operator 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 § 1.3.2(B) of this Part.
2. Operators shall be certified for three hundred sixty-five (365) days. If an operator's certification lapses, said operator shall not function as an operator of a preliminary breath testing instrument.
3. Certificates may be revoked for just cause as determined by the Director.

C. Recertification

1. To obtain recertification, operators shall be qualified by the Director through a written examination and/or practical demonstration of competence within three hundred sixty-five (365) days of the test prescribed in R.I Gen. Laws § 31-27-2(5).
2. If re-certification as an operator 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 Director for this purpose.
3. If an operator's certification lapses, said operator shall not function as an operator of a preliminary breath testing instrument.

D. Instrument Monitoring Program

1. The Department shall check all approved preliminary breath testing instruments at intervals not exceeding one hundred eighty (180) days to determine the accuracy of the instruments.
2. 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, or purchased. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

E. Administration of Breath Tests

1. Preliminary breath tests shall consist of obtaining, by using approved breath testing instruments (see § 1.3.1(A) of this Part), breath samples of deep lung (alveolar) air. Such tests shall be administered:
 - a. by individuals certified to carry out such procedure pursuant to § 1.3.1(B) of this Part;
 - b. in accordance with the procedures specified for each type of 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.

1.3.2 Evidentiary Breath Testing

A. Approval of Breath Testing Instruments

1. Only evidentiary 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. The list of approved instruments shall be maintained by the Department and shall be available upon request.
2. 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.

B. Certification of Breath Testing Operators

1. The 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 Director.
2. 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.
3. Operators shall be certified for three hundred sixty-five (365) days. If an operator's certification lapses, said operator shall not function as an operator of an evidentiary breath testing instrument.
4. Certificates may be revoked for just cause as determined by the Director.

C. Recertification

1. To obtain recertification, the Department shall qualify operators through a written examination and/or practical demonstration of competence within three hundred sixty-five (365) days of the test prescribed in R.I. Gen. Laws § 31-27-2(5).
2. If re-certification 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 breath analysis testing as approved by the Director.
3. If an operator's certification lapses, said operator shall not function as an operator of an evidentiary breath testing instrument.

D. Instrument Monitoring Program

1. An authorized agent of the Director shall check the accuracy of approved breath testing instruments as prescribed by R.I. Gen. Laws Chapter 31-27. The instrument shall read within +/- 0.005 or +/- 5% (whichever is greater) of the target value.
2. 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, or purchased. If purchased, the vendor shall supply a certificate of analysis for every lot of solution supplied.

E. Administration of Breath Tests

1. Evidentiary breath samples shall be obtained, by using approved breath testing instruments (see § 1.3.2(A) of this Part). Breath samples shall be collected from deep lung (alveolar) air. Collection shall be administered by

individuals certified to carry out such procedure pursuant to § 1.3.2(B) of this Part.

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. This observation period does not require the officer or person administering the test to stare continuously at the suspect.
 - 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 +/- 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 +/- 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 +/- 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 R.I Gen. Laws § 31-27-2.1. If this process exceeds the allocated time, a second series may be implemented to satisfy the requirements of obtaining a valid breath test.
 - e. Each breath test shall be administered in accordance with the procedures for the instrument used, as prescribed by the Director.
 - f. 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.
 - g. Care shall be taken to ensure that a new and uncontaminated mouth piece is used for each breath test administered.

1.4 Blood Testing

A. Collection

1. 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 § 1.2(A)(6) of this Part.

2. Prior to insertion of the needle preparatory to drawing blood, clean the superficial skin over the vein with a sanitizing agent devoid of alcohol.
3. Collect the blood specimen(s) in a sterile laboratory tube. It is preferable that the tube contains chemical(s) designed to prevent bacterial growth. (Such chemicals are commonly found in tubes with grey stoppers).
4. Blood specimens collected voluntarily from an individual for determining blood alcohol content and/or drug screening shall be turned over to the requesting law enforcement authority at the time of blood drawing.

B. Integrity of Specimen(s)

1. Maintaining the chain-of-custody and minimizing deterioration of the specimen(s), until delivery to the laboratory, shall be the responsibility of the requesting law enforcement authority.
2. 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, and
 - h. name of attending officer (if different).
3. To minimize specimen deterioration, the law enforcement authority shall:
 - a. avoid prolonged exposure of the specimen(s) to temperatures above ninety degrees Fahrenheit (90 °F),
 - b. deliver the specimen(s) to the laboratory as soon as practical, and
 - c. refrigerate tubes without preservative(s) until transported to the laboratory.

C. Competency of Laboratory Analysts

1. Persons employed in the several classes of Forensic Scientist within the Forensic Toxicology Laboratory of the Department's Division of Laboratories shall be deemed competent by the Director to perform analyses of blood for alcohol or drugs.
2. All persons employed in a licensed hospital laboratory in Rhode Island are deemed competent by the Director to perform analyses of blood 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.

D. Methods of Analysis

1. 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).
2. The analysis of blood 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).
3. The analysis of blood 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. Specified drugs and/or their metabolites, that are detected and identified, shall be reported as "present".

E. Reports of Analysis

1. 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.
2. The report shall be submitted only to the law enforcement authority requesting the analysis.
3. A copy of all reports of analysis under the Act shall be retained in accordance with the Department's record retention schedule established for this category of document.
4. The confidential nature of all results of analysis shall be maintained.