

DEPARTMENT OF STATE POLICE

TRAFFIC SAFETY DIVISION

TESTS FOR BREATH ALCOHOL

(By authority conferred on the department of state police by 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625h, and 1994 PA 451, MCL 324.80181 and MCL 324.82137)

R 325.2651 Definitions.

Rule 1. (1) As used in these rules:

(a) "Acts" means 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625a, 1993 PA 354, MCL 462.359, 1994 PA 451, MCL 324.80181, MCL 324.81136, and MCL 324.82137.

(b) "Alcohol standard" means a certified alcohol standard.

(c) "Calendar month" means 12:01 a.m. on the first date of any of the 12 named months of the year to midnight on the last date of the same month.

(d) "Calendar week" means 12:01 a.m. Sunday to midnight Saturday.

(e) "Class" means a classification of operator status as certified by the department, based on training and function as specified in subrule (4) of R 325.2658.

(f) "Department" means the department of state police.

(g) "Equipment" means evidential and preliminary breath test instruments, simulator devices, forms, and any accessories and supplies necessary for compliance with the procedures in these rules or law.

(h) "Evidential breath alcohol analysis" means chemical analysis of an essentially alveolar breath sample that indicates a specific result in grams of alcohol per 210 liters of breath.

(i) "Evidential breath alcohol test instrument" means an evidential breath testing device that indicates a specific result in grams of alcohol per 210 liters of breath.

(j) "Preliminary breath alcohol analysis" means chemical analysis of essentially alveolar breath samples that indicates the presence or absence of alcohol in a person's blood.

(k) "Preliminary breath alcohol test instrument" means a breath alcohol screening device that indicates the presence or absence of alcohol in a person's blood.

(l) "Shall" means that a function is mandatory.

(m) "Should" means that a function is recommended, but not mandatory, with reasonable deviation allowed.

(2) Terms used in the acts have the same meanings when used in these rules.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS.

R 325.2652 Approved equipment.

Rule 2. (1) Evidential and preliminary breath alcohol test instruments shall be tested by, and shall meet the existing model specifications for evidential breath alcohol analysis as established by, the United States department of transportation, national highway traffic safety administration. The specifications, identified as "Model Specifications for Evidential Breath Testing Devices," 49 FR 48854 et seq., (December 14, 1984), as amended by 58 FR 48705 et seq., (September 17, 1993), 62 FR 43416 et seq., (August 13, 1997), 69 FR 42237 et seq., (July 14, 2004), 71 FR 37159 et seq., (June 29, 2006), and 72 FR 71480 et seq., (December 17, 2007) are adopted in these rules by reference. A copy of the specifications and a current conforming products list are available from the Superintendent of Documents, United

States Government Printing Office, Washington, DC 20402, or from the Michigan State Police, Field Operations Division, 714 South Harrison Road, East Lansing, Michigan 48823, at a cost as of the time of adoption of these rules of \$25.00.

(2) If the United States department of transportation discontinues the testing of evidential breath alcohol test instruments or the issuance of model specifications for such testing, only those instruments tested and approved by the department shall be used.

(3) Equipment, including accessories and supplies, for determining evidential or preliminary breath alcohol analysis shall be approved by the department before use.

(4) An application for equipment approval shall be submitted to the department.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 AACS.

R 325.2653 Equipment accuracy.

Rule 3. (1) An evidential breath alcohol test instrument shall be verified for accuracy at least once at any time during each calendar week, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). Alternatively, a pre-programmed self-test may be initiated by the instrument and recorded by an appropriate class operator pursuant to R 325.2658(4) if the instrument is so equipped and programmed. The tests need not be performed within 7 days of each other, but shall be performed less than 14 days apart. The test for accuracy shall be made in a prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor. Controlled devices include both of the following:

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

(b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer.

(2) A preliminary breath alcohol test instrument shall be verified for accuracy at least monthly, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). The test for accuracy shall be made in a

prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor. Controlled devices include both of the following:

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

(b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. Such correction factor may be applied by the operator or by the instrument if so pre-programmed.

(3) Approved evidential breath alcohol test instruments shall be inspected, verified for accuracy, and certified as to their proper working order by either an appropriate class operator pursuant to R 325.2658(4) or the instrument manufacturer's authorized representatives approved by the department within 120 days of the previous inspection.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 AACS.

R 325.2654 Equipment repair and service.

Rule 4. (1) The repair and service of equipment approved by the department for evidential and preliminary breath alcohol analysis shall be at the expense of the agency using the equipment. The department may make arrangements to have this service provided either by an appropriate class operator pursuant to R 325.2658(4) or provided by the instrument manufacturer's authorized representatives approved by the department.

(2) Subsequent to repair or service and before being placed in service, preliminary and evidential breath alcohol test instruments shall be verified for accuracy in accordance with the provisions of R 325.2653 and records of verification shall be kept as required by the department.

History: 1979 AC; 1984 AACS; 1992 AACS; 2007 AACS.

R 325.2655 Techniques and procedures.

Rule 5. (1) A procedure that is used in conjunction with evidential breath alcohol analysis shall be approved by the department and shall be in compliance with all of the following provisions:

(a) Evidential breath alcohol test instruments shall be operated only by appropriate class operators pursuant to R 325.2658(4).

(b) All analyses shall be conducted using the department-approved procedures and report forms as required.

(c) Prescribed records of operation, analyses, and results shall be maintained at the instrument location as prescribed by the department, and copies shall be forwarded to the department as required.

(d) The department shall test samples from each lot of alcohol standards used in the state in conjunction with evidential breath alcohol test instruments. The department shall certify for use those lots of alcohol standards that are found to be proper in chemical composition.

(e) A person may be administered a breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes by 1 or more appropriate class operators pursuant to R 325.2658(4) before collection of the breath sample, during which period the person shall not

have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the test. The observation may be conducted by more than 1 operator working in concert. The operator need not stare continuously at the subject, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator's field of vision. Breaks in the observation lasting only a few seconds do not invalidate the observation if the operator can reasonably determine that the subject did not smoke, regurgitate, or place anything in his or her mouth during the break in the observation.

(f) A second breath alcohol analysis shall be requested from the person being tested and administered, unless the person refuses to give the second sample or a substance is found in the person's mouth subsequent to the first test that could interfere with the test result. Obtaining the first sample is sufficient to meet the requirements for evidentiary purposes prescribed in 1949 PA 300, MCL 257.625c. The purpose of obtaining a second sample result is to confirm the result of the first sample. A second sample result shall not vary from the first sample result by more than the following values:

Table 1

Blood alcohol Allowable variation of second sample concentration result range from the first

0.00 - 0.14	+/- 0.01
0.15 - 0.24	+/- 0.02
0.25 - 0.34	+/- 0.03
0.35 - or more	+/- 0.04

If the variation is more than that allowed, a third breath sample shall be requested from the person being tested and a third result may be obtained. If the third result does not conform to the allowable variation of either of the first 2 tests, as established in table 1, the person shall be requested to submit a blood or urine sample for analysis in accordance with MCL 257.625a(6)(c) and the procedures established in R 325.2671 to R 325.2677.

(g) The results of a breath alcohol analysis of a person's breath shall be expressed in terms of grams of alcohol per 210 liters of breath, truncated to the second decimal place. For example, 0.237 found shall be reported as 0.23.

(2) A procedure that is used in conjunction with preliminary breath alcohol analysis shall be approved by the department and shall be in compliance with all of the following provisions:

(a) Preliminary breath alcohol test instruments shall be operated only by appropriate class operators pursuant to R 325.2658(4).

(b) A person may be administered a breath test on a preliminary breath alcohol test instrument only after it has been determined that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes.

(c) Prescribed records shall be maintained at the instrument location as prescribed by the department and copies shall be forwarded to the department as required.

(3) A person's welfare shall be protected by requesting medical assistance if the person has a body alcohol concentration of 0.35 or more.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 MR AACS; 2003 AACS; 2007 AACS.

R 325.2656 Operator certification.

Rule 6. (1) Evidential breath alcohol test instrument operator certification training courses supervised by the department are offered only to authorized police agency personnel.

(2) Certification on evidential breath testing equipment requires an applicant to successfully complete a course of instruction that is approved by the department.

(3) The operation of a preliminary breath testing instrument requires an applicant to successfully complete a course of instruction as approved by the department.

(4) Evidential breath alcohol test instrument operators shall successfully pass the examinations given by the department to obtain certification as an operator. Upon successful completion of the examinations, a person shall be issued a certification card which shall remain the property of the department. In the case of failure to pass a prescribed examination, a second opportunity to take the examination shall be provided as the department may direct. Failure to successfully complete the examination a second time necessitates repeating the operator course of instruction to qualify for certification.

(5) An operator shall comply with all applicable department rules, policies, and procedures or his or her certification may be suspended and his or her certification card forfeited to the department. Requests for reinstatement of operator certification shall be made to the department in writing and, upon approval, may require attendance at, and the successful completion of, a certification school.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS.

R 325.2657 Rescinded.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS.

R 325.2658 Operator training and certification.

Rule 8. (1) The department shall train and certify selected persons to perform various functions as described in subrule (4) of this rule, and shall designate such persons as class I, class II, class IIIA, class IIIB, class IVA, or class IVB operators according to training and function. An operator may hold multiple and concurrent classifications. Operator certification is non-expiring.

(2) The minimum training requirements and proficiency standards for operator candidates are as follows:

(a) A class I operator shall complete a 2-hour class I departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of a preliminary breath test instrument.

(b) A class II operator shall complete a 6-hour class II departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of an evidentiary breath test instrument.

(c) A class IIIA operator shall be currently certified as both a class I and class II operator, complete a 3-hour class IIIA departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the verification and calibration of preliminary breath alcohol test instruments.

(d) A class IIIB operator shall be a currently certified class II operator, complete a 2-hour class IIIB departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the limited service of evidentiary breath test instruments.

(e) A class IVA operator shall be a currently certified class IIIA operator, complete an 8-hour class IVA departmentally approved instructor training course, and demonstrate proficiency instructing class II and class IIIA operator candidates.

(f) A class IVB operator shall be a currently certified class IVA operator that has been designated by the department to administer the breath testing program for the state of Michigan. Before such designation, the class IVB operator shall receive additional training in the service of preliminary breath test instruments, the repair and service of evidentiary breath test instruments, and certification by the manufacturer(s) of such instruments.

(3) The department shall develop and distribute to each certified operator a training manual for each of the operator's classification(s). Manuals shall specify the functions performed by each classification pursuant to subrule (4) of this rule, as well as the knowledge and skills necessary to perform the appropriate functions.

(4) The primary functions of each classification of operator are described in Table 2. Additional functions not described in Table 2 may be designated by the department and described and explained in the appropriate training manual.

Table 2

Function	Operator Class
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	I	I IIA	I IIB	I VA	I VB
Train and Certify Class I Operators		X		X	X
Train and Certify Class II Operators				X	X
Train and Certify Class IIIA Operators				X	X
Train and Certify Class IIIB Operators					X
Train and Certify Class IVA Operators					X
Administer preliminary breath alcohol analyses on preliminary breath alcohol test instruments specified by the department		X		X	X
Administer evidentiary breath alcohol analyses on evidential breath alcohol test instruments specified by the department		X	X	X	X
Verify for accuracy and calibrate, as required, preliminary breath alcohol test instruments		X		X	X
Verify for accuracy evidentiary breath alcohol test instruments specified by the department		X	X	X	X
Calibrate, as required, evidentiary breath alcohol test instruments specified by the department					X
Provide limited service on evidentiary breath alcohol test instruments specified by the department			X		X
Provide service on preliminary breath alcohol test instruments specified by the department					X
Provide repair and service on evidentiary breath alcohol test instruments specified by the department					X
Inspect and certify evidentiary breath alcohol test instruments for proper working					X

order within 120 days pursuant to R 325.2653(3)						
Conduct inspections for compliance with applicable department rules, policies, and procedures					X	X

History: 1979 AC; 1984 AACS; 1992 AACS; 1994 AACS; 2007 AACS.

R 325.2659 Rescinded.

History: 1979 AC; 2003 AACS; 2005 AACS.