

DEPARTMENT OF STATE POLICE

TRAFFIC SAFETY DIVISION

TESTS FOR BREATH ALCOHOL

(By authority conferred on the department of state police by section 190 of 1945 PA 327, MCL 259.190; and section 625a of 1949 PA 300, MCL 257.625a)

R 325.2651 Definitions.

Rule1. (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 R 325.2658.

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

(g) "Equipment" means evidential and preliminary breath alcohol test instruments, simulator devices, calibration stations, 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; 2018 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 48855 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), 72 FR 71480 et seq., (December 17, 2007) and FR Doc. 2012-14582 (June 14, 2012) are adopted in these rules by reference. A copy of the specifications and a current conforming products list are available from the U.S. Department of Transportation, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, D.C. 20590, or from the Michigan State Police, Training Division, 7150 Harris Drive, P.O. Box 30634, Lansing, MI, 48909.

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

(4) Only equipment approved by the department for evidential and preliminary breath alcohol analysis shall be utilized by operators.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 AACS; 2018 AACS.

R 325.2653 Equipment accuracy.

Rule 3. (1) An appropriate class operator who has been certified in accordance with R 325.2658 shall verify an evidential breath alcohol test instrument for accuracy at least once each calendar week, or more frequently as the department may require. Alternatively, a pre-programmed self-test for accuracy may be initiated by the evidential breath alcohol test instrument and recorded by an appropriate class operator who has been certified in accordance with R 325.2658 if the instrument is so equipped and programmed. The tests for accuracy are not required to be performed within 7 days of each other. The test for accuracy shall be made using an alcohol standard that is approved by the department. For the evidential breath alcohol test instrument to meet the requirements for accuracy, a test result not exceeding +/- 5% shall be obtained when using a controlled device. Controlled devices include both of the following:

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

(b) Compressed alcohol gas device that delivers a test result of .080 grams of alcohol per 210 liters of vapor after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. The correction factor may be applied by the operator or by the evidential breath alcohol test instrument if so pre-programmed.

(2) An appropriate class operator who has been certified in accordance with R 325.2658 shall verify for accuracy a preliminary breath alcohol test instrument at least monthly, or more frequently as the department may require. The test for accuracy shall

be made using an alcohol standard that is approved by the department. For the preliminary breath alcohol test instrument to meet the requirements for accuracy, a test result not exceeding +/- 5% shall be obtained when using a controlled device. 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 a test result of .080 grams of alcohol per 210 liters of vapor after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. The correction factor may be applied by the operator or by the preliminary breath alcohol test instrument calibration station 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 within 120 days of the previous inspection by either an appropriate class operator who has been certified in accordance with R 325.2658 or a manufacturer-trained representatives approved by the department.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 AACS; 2018 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 or the agency using the equipment may arrange to have this service provided either by an appropriate class operator who has been certified in accordance with R 325.2658 or a manufacturer-trained authorized representatives approved by the department.

(2) After repair or service and before being placed in service, evidential and preliminary 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; 2018 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) Except as provided otherwise in these rules, evidential breath alcohol test instruments shall only be operated by appropriate class operators who have been certified in accordance with R 325.2658.

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

(c) Records of operation, analyses, and results shall be maintained at the evidential breath alcohol test instrument location as prescribed by the department, and copies 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 an evidential breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes before collection of the breath sample by at least 1 appropriate class operators who is certified in accordance with R 325.2658. The observation period may be conducted by more than 1 operator working in concert. During the observation 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 evidential breath alcohol analysis. The operator need not stare continuously at the person, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the evidential breath alcohol test instrument, or conduct other reasonable tasks during the observation period provided the person is within the operator's field of vision. Breaks in the observation period lasting only a few seconds do not invalidate the observation provided the operator can reasonably determine that the person did not smoke, regurgitate, or place anything in his or her mouth during the breaks in the observation.

(f) The operator shall request a second evidential breath alcohol from the person being tested and administered, unless the person refuses to give the second breath sample or a substance is found in the person's mouth subsequent to the first evidential breath alcohol analysis that could interfere with the breath sample result. Obtaining the first breath sample result is sufficient to meet the requirements for evidentiary purposes prescribed in section 625c of 1949 PA 300, MCL 257.625c. The purpose of obtaining a second breath sample result is to confirm the result of the first breath sample result. A second breath sample result shall not vary from the first breath sample result by more than the allowable variation listed in Table 1.

Table 1

Breath alcohol allowable variation of second breath sample result range from the first breath sample result

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 in Table 1, the operator shall request a third breath sample from the person being tested and a third breath sample result may be obtained. If the third breath sample result does not conform to the allowable variation in Table 1 of either of the first 2 tests, the person shall be requested to submit a blood or urine sample for analysis in accordance with MCL 257.625a and the procedures established in R 325.2671 to R 325.2677.

(g) The results of an evidential 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 must be approved by the department and shall be in compliance with all of the following provisions:

(a) Except as provided otherwise in these rules, preliminary breath alcohol test instruments shall only be operated by appropriate class operators who have been certified in accordance with R 325.2658

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

(c) Records shall be maintained at the preliminary breath alcohol test 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 result of the evidential or preliminary breath alcohol analysis is 0.35 or more. Failure to request medical assistance does not affect the validity or evidential value of the result of an evidential or preliminary breath alcohol analysis.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 MR AACS; 2003 AACS; 2007 AACS; 2018 AACS.

R 325.2656 Rescinded.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2018 AACS.

R 325.2657 Rescinded.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2018 AACS.

R 325.2658 Operator training and certification.

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

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

(a) A class I operator shall complete a class I training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the operation of a preliminary breath alcohol test instrument to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written

examination or demonstrate the required proficiency must retake the class I training course, successfully pass the written examination, and demonstrate the required proficiency, in order to qualify for class I operator certification.

(b) A class II operator shall complete a class II training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the operation of an evidentiary breath alcohol test instrument to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency must retake the class II training course, successfully pass the written examination, and demonstrate the required proficiency, in order to qualify for class II operator certification.

(c) A class IIIA operator shall be currently certified as a class I operator, complete a class IIIA training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the verification and calibration of a preliminary breath alcohol test instruments to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency shall be required to retake the class IIIA training course, successfully pass the written examination, and demonstrate the required proficiency in order to qualify for class IIIA operator certification.

(d) A class IIIB operator shall be currently certified as a class II operator, complete a class IIIB training course approved by the department, obtain a minimum score of 70% on a written examination administered by the department, and demonstrate proficiency in the limited service of an evidentiary breath alcohol test instruments to the department. The department shall provide a person who fails to pass the written examination or demonstrate the required proficiency a second opportunity to take the written examination or demonstrate the required proficiency. A person who fails on his or her second opportunity to successfully pass the written examination or demonstrate the required proficiency shall be required to retake the class IIIB training course, successfully pass the written examination, and demonstrate the required proficiency in order to qualify for class IIIB operator certification.

(e) A class IVA operator shall be currently certified as a class III operator, complete a class IVA training course approved by the department, and demonstrate proficiency instructing class II and class IIIA operator training courses approved by the department. The department shall provide a person who fails to demonstrate the required proficiency a second opportunity to demonstrate the required proficiency. A person who fails on his or her second opportunity to demonstrate the required proficiency shall be required to retake the class IVA training course and demonstrate the required proficiency in order to qualify for class IVA operator certification.

(f) A class IVB operator shall be currently certified as a class IVA operator that has been designated by the department to administer the breath alcohol testing program for the state of Michigan. Before class IVB designation, the class IVB operator shall receive

additional training in the repair and service of evidential and preliminary breath alcohol test instruments by the manufacturer of such instruments.

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

(4) The primary functions of each class 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.

(5) A person who meets the training requirements and proficiency standards for operator certification in accordance with this rule shall be issued a certification card for the appropriate class by the department. The certification card shall remain the property of the department.

(6) A class I, class I, class IIIA, class IIIB, class IVA, and class IVB operator shall comply with all applicable department rules, policies, and procedures or the department may suspend his or her operator certification. A person whose operator certification has been suspended by the department shall return his or her certification card to the department within 7 days of receiving notice of the suspension. A person shall make a request for reinstatement of operator certification to the department in writing and, upon approval, the department may require the person to complete an operator training, pass a written examination, and/or demonstrate required proficiency.

Table 2

OPERATOR FUNCTION	OPERATOR CLASS					
	II	I IIA	III B	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 using preliminary breath alcohol test instruments approved for use by the department	X	X		X		X
Administer evidentiary breath alcohol analyses using evidential breath alcohol test instruments approved for use by the department	X		X	X		X
Verify for accuracy and calibrate preliminary breath alcohol test instruments approved for use by the department			X	X		X
Verify for accuracy evidential breath alcohol test instruments approved for use by the department	X		X	X		X
Inspect, certify, service, repair, and calibrate evidentiary breath alcohol test instruments approved for use by the department for proper working order						X
Provide service on preliminary breath alcohol test instruments approved for use by the department						X
Conduct inspections for compliance with applicable department rules, policies, and procedures						X
Provide limited service on evidentiary breath alcohol test instruments specified by the department			X			

History: 1979 AC; 1984 AACS; 1992 AACS; 1994 AACS; 2007 AACS; 2018 AACS.

R 325.2659 Rescinded.

History: 1979 AC; 2003 AACS; 2005 AACS.