

TITLE 20: CORRECTIONS, CRIMINAL JUSTICE, AND LAW ENFORCEMENT
CHAPTER II: DEPARTMENT OF STATE POLICE

PART 1286
TESTING OF BREATH, BLOOD AND URINE
FOR ALCOHOL, OTHER DRUGS, AND INTOXICATING COMPOUNDS

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AUTHORITY: Authorized by Section 2605-15 of the Civil Administrative Code of Illinois [20 ILCS 2605/2605-15]. Implementing and authorized by Section 6-106.1a of the Illinois Vehicle Code [625 ILCS 5/6-106.1a]. Implementing and authorized by Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2]. Implementing Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5]. Implementing Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6]. Implementing and authorized by Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8]. Implementing Section 5-7.5 of the Snowmobile Registration and Safety Act [625 ILCS 40/5-7.5]. Implementing Section 5-16b of the Boat Registration and Safety Act [625 ILCS 45/5-16b]. Implementing and authorized by Section 6-1 of the Boat Registration and Safety Act [625 ILCS 45/6-1].

SOURCE: Adopted by emergency rulemaking at 25 Ill. Reg. 239, effective January 1, 2001, for a maximum of 150 days; adopted at 25 Ill. Reg. 3023, effective February 1, 2001; amended at 28 Ill. Reg. 10017, effective June 30, 2004; amended at 31 Ill. Reg. 7305, effective May 1, 2007; emergency amendment at 31 Ill. Reg. 10188, effective July 9, 2007, for a maximum of 150 days; amended at 31 Ill. Reg. 15107, effective October 29, 2007; amended at 33 Ill. Reg. 8529, effective June 4, 2009; amended at 35 Ill. Reg. 18897, effective October 31, 2011; amended at 39 Ill. Reg. 11670, effective July 29, 2015.

SUBPART A: GENERAL PROVISIONS

Section 1286.10 Definitions

"Accredited Law Enforcement Training Academy" means a police training organization that is recognized by the Illinois Law Enforcement Training Standards Board and is accredited by Commission on Accreditation for Law Enforcement Agencies (CALEA), 10302 Eaton Place, Suite 100, Fairfax VA 22030-2215.

"Accuracy Check Record" means the data recorded in a logbook or stored in memory when an accuracy check is performed on an approved evidentiary instrument. Accuracy test records will include at least the type of instrument, instrument serial number, test date, reference sample value, and the readings of the two accuracy check tests. Certification check and standard check are synonyms for accuracy check.

"Agency" means a Municipal, Park District, County, State and Federal law enforcement agency or Circuit Court Probation Department involved in the use of approved evidentiary instruments or PBTs.

"Alcohol" means ethanol (commonly referred to as grain alcohol), ethyl alcohol, alcoholic beverage, alcoholic liquor, isopropanol or methanol.

"Alcohol Concentration" means weight in grams of alcohol in a specified volume of blood, breath, or urine.

"Approved Evidentiary Instrument" means an instrument approved for use by the Department to obtain a BrAC pursuant to a breath test as described under Section 6-106.1a of the Illinois Vehicle Code [625 ILCS 5/6-106.1a], Section 11-501 of the Illinois Vehicle Code [625 ILCS 5/11-501], Section 11-501.1 of the Illinois Vehicle Code [625 ILCS 5/11-501.1], Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2], Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6], Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8], and Sections that cross-reference Section 11-501.2 of the Illinois Vehicle Code [625 ILCS 5/11-501.2].

"Approved PBT" means an instrument approved for use by the Department either to obtain a BrAC pursuant to a preliminary breath screening test as described under Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5], Section 5-7.5 of the Snowmobile Registration and Safety Act [625 ILCS 40/5-16b], Section 5-16b of the Boat Registration and Safety Act [625 ILCS 45/5-16b],

and Sections that cross-reference Section 11-501.5 of the Illinois Vehicle Code [625 ILCS 5/11-501.5] or to obtain a BrAC pursuant to a breath test as described under Section 11-501.6 of the Illinois Vehicle Code [625 ILCS 5/11-501.6], and Section 11-501.8 of the Illinois Vehicle Code [625 ILCS 5/11-501.8].

"Blood Alcohol Concentration" or "BAC" means grams of alcohol per 100 milliliters of whole blood (Section 11-501.2(a)(5) of the Illinois Vehicle Code [625 ILCS 5/11-501.2(a)(5)]).

"Breath Alcohol Concentration" or "BrAC" means *grams of alcohol per 210 liters of breath* (Section 11-501.2(a)(5) of the Illinois Vehicle Code [625 ILCS 5/11-501.2(a)(5)]).

"Breakdown" means a malfunction that affects the analytical performance of the instrument or its ability to quantitate a BrAC.

"Breath Analysis Instructor" or "BAI" means an individual who is accredited by the Department to instruct breath analysis instrument operations and to train and administer licensing examinations to BAOs.

"Breath Analysis Operator" or "BAO" means an individual licensed by the Department to operate approved evidentiary instruments and to create subject test records. BAOs can print local reports from an evidential instrument, including accuracy checks, and perform basic maintenance on the instrument, such as replacing the instrument's paper or keyboard.

"Breath Analysis Reading" means the numeric value of the first two digits to the right of the decimal point of a BrAC analysis as displayed, printed, or recorded by an instrument.

"Breath Analysis Technician" or "BAT" means an individual who is authorized by the Department to conduct re-certification classes for BAOs and to administer that examination, to install, examine, certify, repair, maintain, check the accuracy of approved evidentiary instruments, and create accuracy check records and service records.

"Central Repository" means the collection and maintenance by the Department of business records, maintained by an agency in the normal course of business, of subject test records, quick tests, accuracy check records, calibrations, and service records.

"Certified Paramedic" means an individual licensed by the Illinois Department of Public Health as an Emergency Medical Technician (Intermediate) or Emergency

Medical Technician (Paramedic) acting under the direction of a licensed physician as a phlebotomist.

"Department" means the Illinois Department of State Police.

"Director" means the Director of State Police.

"Foreign Substance" means any substance not in the subject's body when a 20-minute observation period is commenced, excluding a substance introduced due to normal breathing.

"Ingested" means eaten, chewed, swallowed or consumed by mouth in any other manner; inhaled, sniffed, snorted, sprayed, or introduced into the breathing passages in any other manner; injected or introduced into the body in any manner.

"Instrument" means any item or combination of items of equipment used to quantitate a breath analysis reading.

"Internal Memory" means the digital storage medium that is part of an approved evidentiary instrument that registers subject test records, accuracy check records, quick tests, and calibrations.

"License" means a permit issued as evidence by the Department to an individual as proof of his or her authority and competence as a BAO, BAT, BAI, or PBT-E.

"Logbook" means a business record, maintained by the agency in the normal course of business, of subject test records and accuracy check records. The logbook does not contain automatic accuracy checks or accuracy checks performed remotely.

"Malfunction" means failure of an instrument to function properly.

"NHTSA's List" means the Conforming Products List of Evidential Breath Measuring Instruments produced by the National Highway Traffic Safety Administration, United States Department of Transportation.

"Passive Sensor" means a unit that monitors ambient air for the presence of alcohol for an investigative purpose.

"Phlebotomist" means a person trained to collect blood from another individual through venipuncture.

"Preliminary Breath Test Device" or "PBT" means a portable device used to

quantitate a breath analysis reading.

"Preliminary Breath Test Examiner" or "PBT-E" means a BAO who is authorized by the Department to perform accuracy checks on preliminary breath test devices.

"Reference Sample" means either a solution for use in a breath simulator, commonly referred to as a wet bath simulator, or a dry gas mixture, commonly referred to as a dry gas evidential standard (DGES), for the purpose of instrument certification, accuracy checks, and/or calibration.

"Service Record" means information concerning an instrument breakdown. Service records will include at least the type of instrument, instrument serial number, date of service, service issue reported, service issue found, probable cause of service issue, corrective action taken, and BAT. Service records do not include information such as a bill for repairs of an approved evidentiary instrument or documentation included with an instrument returned from the manufacturer.

"Subject Test Record" means the data recorded by a BAO in the logbook or printed out or stored by the instrument in memory when a subject is tested with an approved evidentiary instrument. Subject test records will include at least the type of instrument, instrument serial number, name of individual tested, test date, breath analysis reading, and BAO. Subject Test Records do not include information other than that which can be recorded in instrument memory or the central repository.

"Urine Alcohol Concentration" or "UAC" means *the number of grams of alcohol per 67 milliliters of urine* (Section 6-500(2)(C) of the Illinois Vehicle Code [625 ILCS 5/6-500(2)(C)]).

"Whole Blood Equivalent" means the conversion of a blood serum or blood plasma alcohol concentration to an approximate BAC.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.20 Grievances

Aggrieved persons who wish to contest the Department's actions with respect to their BAO license, BAT authorization, PBT-E authorization, BAI accreditation, or laboratory certification shall follow general hearing procedures outlined in 20 Ill. Adm. Code 1200.

(Source: Amended at 28 Ill. Reg. 10017, effective June 30, 2004)

Section 1286.30 Additional Testing

Should a subject choose to undergo additional chemical analysis, *the person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his/her own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer* (Section 11-501.2(a)3 of the Illinois Vehicle Code).

- a) The additional tests must be conducted in a manner as close as practicable to the procedures in this Part.
- b) Persons wishing to have additional tests administered shall make their own arrangements for such tests.
- c) Any additional testing conducted pursuant to this Section shall be at the subject's expense and subsequent to the posting of bond.

Section 1286.40 Conversion of a Blood Serum or Blood Plasma Alcohol Concentration to a Whole Blood Equivalent

The blood serum or blood plasma alcohol concentration result will be divided by 1.18 to obtain a whole blood equivalent.

Section 1286.50 Passive Sensors

Passive sensors are not regulated by the Department.

Section 1286.60 Department Notification

- a) Notification by an Agency
 - 1) Agencies shall notify the Department if an approved evidentiary instrument needs service.
 - 2) Agencies shall notify the Department if the agency receives an approved evidentiary instrument or PBT from an entity other than the manufacturer.
 - 3) If an agency returns the evidentiary instrument to the manufacturer for repairs, the service report shall be submitted to the Department.
 - 4) Agencies shall designate a Breath Analysis Operator to monitor the evidential instrument in their department each month on a day of their choice between the 1st and 10th of the month. This monitoring shall include the review of any error messages displayed and ensuring sufficient mouthpieces and paper are available.
- b) BAOs shall notify the Department:
 - 1) If the BAO leaves the employment of the agency that employed the BAO.
 - 2) If the BAO changes his or her name.
- c) Certified laboratories (see Section 1286.170) shall notify the Department of any change in accreditation status, as well as when a laboratory technician leaves the employment of the laboratory or when a new laboratory technician is hired to quantitate alcohol and/or other drugs in human biological fluids.
- d) Any manufacturer who sells an approved evidentiary instrument or a PBT to an agency in Illinois shall notify the Department of all such sales, listing the name of the agency, the date, the make, and serial number of the instrument.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.70 Maintenance of Records for Approved Evidentiary Instruments

Subject test records, accuracy check records, and service records will be maintained for and/or by each approved evidentiary instrument.

- a) Subject test records and accuracy check records may be maintained in a logbook and/or the instrument's memory.
- b) Logbook entries will be made in the logbook as contemporaneous as reasonably practicable to the time the procedure was performed.
- c) Service records will be maintained by the Alcohol and Substance Testing Section or may be maintained in the instrument's memory. Malfunctions that are not breakdowns (non-analytical failures such as battery expiration, incorrect time/date, printer problems, keyboard replacement, breath hose replacement, etc.) will not be documented.
- d) Only instruments equipped with sufficient internal memory to store 100 subject test records and that can download stored information to the central repository may keep the test records in the memory of the instrument.
- e) All records removed from the internal memory of an instrument shall be erased and downloaded if possible and practicable, to the central repository.
- f) The central repository will maintain instrument records for not less than five years from the date downloaded.

(Source: Amended at 31 Ill. Reg. 7305, effective May 1, 2007)

Section 1286.75 Subpoena Procedure for Evidentiary Instruments

- a) Subpoena requests for accuracy checks, subject tests, quick tests, calibrations, and maintenance/repair records will be responded to as quickly as possible. If the response cannot be provided within the timeframe requested, the requesting party shall be notified by telephone. If further information is needed to determine the material requested, the requesting party shall be contacted by telephone to obtain this information and the subpoena response completed.
- b) The timeframe for the information provided in response to a subpoena request for accuracy checks, subject tests, quick tests, calibrations, and maintenance/repair records shall be from 62 days prior to the subject's arrest date through 62 days following the arrest date.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.80 Installation of Approved Stationary Evidentiary Instruments, Ethernet Connectivity, and Logbook and Portable Evidentiary Instrument Availability

- a) Beginning January 1, 2012, any law enforcement agency that purchases an approved stationary evidentiary instrument shall be required to connect the instrument to the Illinois State Police network, using the LEADS network and/or through a Virtual Private Network (VPN). The installation of a Tibbo DS-203 or similar device in a manner acceptable to the Department, prior to the instrument being placed into service by a BAT, will also be required. Any and all costs associated with a LAN (Ethernet) connection to State network will be the responsibility of that law enforcement agency. Any law enforcement agency that utilizes an approved stationary evidentiary instrument on January 1, 2012 shall be required to provide Ethernet connectivity via a DS-203 or similar device in a manner acceptable to the Department by January 1, 2013, or the instrument may be placed out of service by a BAT immediately following that date. All agencies must repair any problems with a LAN (Ethernet) connection that impact connectivity to the State network.
- b) All agencies shall have their approved evidentiary instruments available for examination by a BAT.
- c) All agencies shall have the logbooks for their approved evidentiary instruments available for examination by a BAT.
- d) Agencies with portable evidentiary instruments may be required to transport the instrument to a specific location for its accuracy check.

(Source: Amended at 35 Ill. Reg. 18897, effective October 31, 2011)

Section 1286.90 Reporting Laboratory Results

- a) Laboratories shall return the original analysis report of the blood or urine sample to the submitting agency only.
- b) Laboratories shall retain a duplicate copy of the analysis report in the testing laboratory for two years.

(Source: Amended at 28 Ill. Reg. 10017, effective June 30, 2004)

SUBPART B: APPROVAL PROCEDURES FOR PERSONS AND
LABORATORIES TO PERFORM SPECIFIC FUNCTIONS

Section 1286.100 Licensing BAOs

The Director or his/her designee is authorized to license persons to be BAOs subject to the requirements of this Section. BAOs are licensed to perform all appropriate BAO functions described in this Part. Only licensed BAOs may operate evidential breath testing instruments.

- a) To be eligible to be a BAO, the individual must be employed by an agency or an accredited law enforcement training academy. BAO candidates, including those who have previously been licensed as a BAO in another state, must successfully attend the course and pass the written and proficiency examination or successfully complete a computer-based training (CBT) course.
- b) Under the direction and control of a BAI, BAO candidates must:
 - 1) Complete a training curriculum approved by the Department that includes a minimum of 16 hours of instruction, which includes the following:
 - A) Presentation and discussion of the psychological, physiological, and pharmacological effects of alcohol in the human body;
 - B) Demonstration and discussion of instruments and the analytical processes used to measure BrAC;
 - C) Practical application and demonstration in the use of an approved evidentiary instrument; and
 - D) Discussion of current DUI issues, the administrative rules, and case law.
 - 2) Pass the following:
 - A) The standardized written examination for Breath Analysis Operator provided by the Department with a minimum score of 70 percent.
 - B) A proficiency examination in which the candidate operates approved evidentiary instruments.
- c) A license shall be valid for a period of three years after the printed date of

issuance. If the license is not renewed as provided for in Section 1286.110, it shall expire three years after the printed date of issuance.

- d) Licensing classes will be held in locations approved by the Department based upon appropriate lighting, space, heating, and air conditioning conditions. A minimum of 12 students must be in attendance to start and conduct the class.
- e) When the Department approves a new evidentiary instrument (see Section 1286.210) after the BAO's initial licensure, the Department will provide training on the new instrument.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.110 Renewal of BAO License

The Director or his/her designee is authorized to renew BAO licenses subject to the requirements of this Section. An individual with a renewed BAO license is a BAO. A renewed BAO license shall be subject to the same terms and conditions as an original BAO license.

- a) BAO license renewal candidates must either successfully attend the renewal course and pass the written renewal examination or successfully complete the computer-based training course.
 - 1) Under the direction and control of a BAT, BAO renewal candidates attending the renewal course must:
 - A) Complete a training curriculum approved by the Department that includes the following:
 - i) Review of theory and practice with an approved evidentiary instrument;
 - ii) Review of administrative rules as contained in this Part; and
 - iii) Review of current and related problems in the field.
 - B) Pass the standardized written examination for Breath Analysis Operator provided by the Department with a minimum score of 70 percent.
 - 2) The computer-based BAO license renewal course will:
 - A) Review subject matter similar to the BAO classroom instruction; and
 - B) Provide an objective examination that the BAO license renewal candidate must pass with a minimum score of 70 percent.
- b) A BAO license that has either been revoked or been expired for more than one year cannot be renewed. To become licensed again, the individual must complete the initial licensure course. Appeals from this decision may be pursued in accordance with Section 1286.20.
- c) The Department will designate sites and dates for renewal courses.

- d) Renewal courses will be held in locations approved by the Department based upon appropriate lighting, space, heating, and air conditioning conditions.
- e) When the Department approves a new evidentiary instrument (see Section 1286.210) after the BAO's licensure renewal, the Department will provide training on the new instrument.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.120 Revocation and Denial of BAO License

The Director or his/her designee may revoke a BAO license or deny BAO licensing. Grounds for BAO license revocation and denial can be, but are not limited to:

- a) Misuse of an instrument by the BAO in such a way that he or she violated State law or this Part.
- b) Unauthorized testing of the analytical system of an instrument.
- c) Unauthorized attempts to access instrument memory.
- d) Failure to comply with Section 1286.100.
- e) Failure to notify the Department the BAO has changed his or her name from what it was when the license was issued.
- f) Failure to notify the Department the BAO is no longer employed by the agency that employed the BAO.
- g) Failure to comply with Department direction with regard to correcting the BAO license information subsequent to a change in employment or name.
- h) Relocating approved evidentiary instruments without Department approval.
- i) Anything deemed by the Director or his/her designee not in the best interest of the program.

Section 1286.130 Authorization of BATs

The Director or his/her designee is authorized to license persons employed by the Department to be BATs subject to the requirements of this Section. BATs are authorized to perform all appropriate BAT functions described in this Part.

- a) BATs must be BAOs and meet all BAO licensing requirements.
- b) The candidate must display knowledge and understanding through specialized training in all of the following areas:
 - 1) Psychological, physiological, and pharmacological effects of alcohol in the human body;
 - 2) Proficiency on all approved evidentiary instruments and the analytical processes used to measure BrAC;
 - 3) Maintenance, calibration, and repair procedures on all approved evidentiary instruments; and
 - 4) Knowledge of current DUI issues, the administrative rules, and case law.
- c) Under the direction and control of the Director or his/her designee, BAT candidates must pass a proficiency examination for each approved evidentiary instrument.
- d) A BAT's authorization period coincides with his or her BAO license term. The Director or his/her designee will evaluate the appropriateness of renewing the BAT authorization when the BAO license is renewed. Other than keeping their BAO license current, BATs are not required to retake the examination in subsection (c) of this Section to retain their authorization as a BAT.
- e) The Department will maintain a list of authorized BATs.

(Source: Amended at 28 Ill. Reg. 10017, effective June 30, 2004)

Section 1286.140 Revocation and Denial of BAT Authorization

The Director or his/her designee may revoke or deny authorization to a BAT. Grounds for revocation or denial of BAT authorization can be, but are not limited to:

- a) Any grounds for revocation set forth in Section 1286.120.
- b) Failure to comply with Section 1286.130.
- c) Anything deemed by the Director or designee not in the best interest of the program.

Section 1286.150 Accrediting BAIs

The Director or his/her designee is authorized to accredit persons to be BAIs subject to the requirements of this Section. BAIs are accredited to perform all appropriate BAI functions described in this Part.

- a) The BAIs must be BAOs and meet all BAO licensing requirements.
- b) The candidate must display knowledge and understanding through specialized training in all of the following areas:
 - 1) Psychological, physiological, and pharmacological effects of alcohol in the human body;
 - 2) Proficiency on all approved evidentiary instruments and the analytical processes used to measure BrAC;
 - 3) Maintenance, calibration, and repair procedures on all approved evidentiary instruments; and
 - 4) Knowledge of current DUI issues, the administrative rules, and case law.
- c) Under the direction and control of the Director or his/her designee, BAI candidates must pass the following:
 - 1) The written breath analysis operator's examination with a minimum score of 100 percent;
 - 2) The written breath analysis instructor's examination with a minimum score of 90 percent; and
 - 3) A proficiency examination for each approved evidentiary instrument.
- d) The Director or his/her designee will evaluate the appropriateness of maintaining an individual's BAI accreditation. Other than keeping their BAO license current, BAIs are not required to retake the examinations in subsection (c) to retain their accreditation.
- e) The Department will maintain a list of accredited BAIs.

(Source: Amended at 28 Ill. Reg. 10017, effective June 30, 2004)

Section 1286.160 Revocation and Denial of BAI Accreditation

The Director or his/her designee may revoke or deny accreditation to a BAI. Grounds for revocation or denial of BAI accrediting can be, but are not limited to:

- a) Any grounds for revocation set forth in Section 1286.120.
- b) Failure to comply with Section 1286.150.
- c) Anything deemed by the Director or designee not in the best interest of the program.

Section 1286.170 Certification of Laboratories and Laboratory Technicians

The Director or his/her designee is authorized to certify laboratories and laboratory technicians subject to the requirements of this Section.

- a) Only laboratories that employ technicians who work under the supervision of a pathologist, toxicologist, or other person who has at least five years experience in the specialty of analytical chemistry may be deemed qualified to detect and/or quantitate alcohol and/or other drugs in human biological fluids will be certified by the Department. The Laboratory Director shall be responsible for the accuracy of all laboratory testing performed in the laboratory. The following conditions must be met by laboratories:
 - 1) Prior to initial laboratory certification, and at least biannually thereafter, the Department shall request the demonstration of proficiency in the performance of the tests by the laboratory through the satisfactory examination of specimens by participation in a program of proficiency testing conducted by an agency or agencies approved by the Department.
 - A) The Laboratory Director will advise the Department of the proficiency testing program in which it is participating.
 - B) The laboratory will direct the proficiency testing agency to forward a copy of the laboratory's testing results and evaluations to the Department after each testing cycle.
 - 2) A candidate for certification under this Part shall furnish evidence of competent supervision by a person who meets the qualifications set forth in this Section.
- b) Upon evidence that a laboratory has complied with this Section, a letter of certification listing those technicians certified to perform appropriate tests shall be issued, and such certification shall be valid for three calendar years. It may be renewed upon submission by the holder of the certification of evidence that the laboratory continues to perform analyses for alcohol concentration and/or other drug content on human biological fluids under the supervision of a person meeting the qualifications set forth in this Section and upon the Department's determination that the laboratory is complying with subsection (a)(1) of this Section.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.180 Revocation and Denial of Laboratory Certification

The Director or his/her designee may revoke or deny certification of a laboratory or a laboratory technician. Grounds for revocation or denial of certification can be, but are not limited to:

- a) Change in laboratory accreditation status.
- b) Failure to comply with Section 1286.170.
- c) Anything deemed by the Director or his/her designee not in the best interest of the program.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

SUBPART C: EQUIPMENT

Section 1286.200 Equipment Approval and Accuracy

The procedures contained in this Subpart are the only procedures for establishing the accuracy of breath testing instruments. A rebuttable presumption exists that an instrument was accurate at the particular time a subject test was performed when the following four conditions are met.

- a) The instrument was approved under this Subpart at the time of the subject test.
- b) The performance of the instrument was within the accuracy tolerance described in this Subpart according to the last accuracy check prior to the subject test.
- c) No accuracy check has been performed subsequent to the subject test or the next accuracy check after the subject test was within the accuracy tolerance described in this Subpart.
- d) Accuracy checks have been done in a timely manner, meaning not more than 62 days have passed since the last accuracy check prior to the subject test.

(Source: Amended at 33 Ill. Reg. 8529, effective June 4, 2009)

Section 1286.210 Evidentiary Instrument Approval

Approved evidentiary instruments shall print and display a breath analysis reading. Approved evidentiary instruments can print and display two or three digits to the right of the decimal point. Whether the approved evidentiary instrument prints and displays two or three digits to the right of the decimal point, the breath analysis reading consists of the first two digits to the right of the decimal point.

- a) The Department shall only approve evidentiary instruments enumerated in NHTSA's list. The Department approves the following instruments for obtaining breath analysis readings:
 - 1) Intoximeters EC/IR, manufactured by Intoximeters, Inc.
 - 2) RBT IV, in conjunction with a printer, manufactured by Intoximeters, Inc.
 - 3) Intoximeters EC/IR II, manufactured by Intoximeters, Inc.
 - 4) Intoxilyzer 8000, manufactured by CMI, Inc.
 - 5) Intoximeters EC/IR II, with serial numbers 10001 and above, manufactured by Intoximeters, Inc.
 - 6) Alco-Sensor VXL, in conjunction with a printer, manufactured by Intoximeters, Inc.
- b) Should an instrument in subsection (a) be removed from NHTSA's list, the instrument will remain an approved evidentiary instrument under this Part for a period of 18 months subsequent to removal or until this Section is amended.
- c) The Department may temporarily approve additional evidential instrumentation from NHTSA's list after conducting a program suitability evaluation. The Department shall maintain a list of evidentiary instruments temporarily approved for breath testing in addition to those provided in subsection (a). Evidentiary instruments may be temporarily approved for a maximum period of 18 months. The list of temporarily approved evidentiary instruments, if any, shall be available to the public upon request to the Alcohol and Substance Testing Section.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.220 Checking Approved Evidentiary Instruments for Accuracy

The accuracy of all approved evidentiary instruments used to obtain a breath analysis reading from a subject shall be checked by a BAT.

- a) Accuracy checks are required:
 - 1) Prior to being placed in operation;
 - 2) After a breakdown has been repaired; and/or
 - 3) When an approved evidentiary instrument fails to quantitate the two required accuracy check tests within 10 percent of the reference sample's value, as adjusted for environmental factors.
- b) Approved evidentiary instruments must quantitate the reference sample within 10 percent of the reference sample's value, as adjusted for environmental factors, to be certified accurate.
- c) Approved evidentiary instruments shall be adjusted by a BAT when necessary to cause the instruments to quantitate the reference sample within 10 percent of the reference sample's value, as adjusted for environmental factors.
- d) The accuracy check results shall be recorded in the instrument's logbook or internal memory, or in the central repository. The automatic accuracy checks or accuracy checks performed remotely will not be entered in the instrument logbook. If the accuracy check was performed by a BAT at the instrument location, the accuracy check results shall be recorded in the instrument's logbook.

(Source: Amended at 35 Ill. Reg. 18897, effective October 31, 2011)

Section 1286.230 Checking Approved Evidentiary Instruments for Continued Accuracy

To ensure the continued accuracy of approved evidentiary instruments, a BAT or automated system shall perform accuracy checks.

- a) Checks shall be performed at least once every 62 days.
- b) Checks shall consist of at least two tests of the instrument in which the instrument quantitates a reference sample.
- c) Approved evidentiary instruments must quantitate a reference sample within 10 percent of the reference sample's value, as adjusted for environmental factors.
- d) The accuracy check results shall be recorded in the instrument's logbook or internal memory, or in the central repository. The automatic accuracy checks or accuracy checks performed remotely will not be entered in the logbook. If the accuracy check was performed by a BAT at the instrument location, the accuracy check results shall be recorded in the instrument's logbook.

(Source: Amended at 35 Ill. Reg. 18897, effective October 31, 2011)

Section 1286.240 PBT Approval

PBTs shall display a breath analysis reading. PBTs can display two or three digits to the right of the decimal point. Whether the PBT displays two or three digits to the right of the decimal point, the breath analysis reading consists of the first two digits to the right of the decimal point.

- a) The Department shall only approve PBTs enumerated in NHTSA's list. The Department approves the following PBTs for obtaining breath analysis readings:
 - 1) S-D2, manufactured by CMI, Inc.
 - 2) Alcosensor III, manufactured by Intoximeters, Inc.
 - 3) Alcosensor III (Enhanced with serial numbers above 1,200,000), manufactured by Intoximeters, Inc.
 - 4) Alcosensor IV, manufactured by Intoximeters, Inc.
 - 5) S-D5, manufactured by CMI, Inc., until March 31, 2016, at which time the S-D5 will no longer be approved for use in Illinois.
 - 6) Alcosensor FST, manufactured by Intoximeters, Inc.
 - 7) Alco-Sensor VXL, manufactured by Intoximeters, Inc.
 - 8) Intoxilyzer 500, manufactured by CMI, Inc.
- b) The Department may temporarily approve additional PBTs from NHTSA's list after conducting a program suitability evaluation. The Department shall maintain a list of PBTs temporarily approved for screening instrument testing in addition to those provided in subsection (a). PBTs may be temporarily approved for a maximum period of 18 months. The list of temporarily approved PBTs, if any, shall be available to the public upon request to the Alcohol and Substance Testing Section.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.250 Checking Approved PBTs for Accuracy

PBTs shall be checked for accuracy by a BAT or an individual specially trained to perform PBT accuracy checks at least once every 93 days. To be accurate, the PBT must quantitate a reference sample within 10 percent of the reference sample's value, as adjusted for environmental factors.

(Source: Amended at 35 Ill. Reg. 18897, effective October 31, 2011)

Section 1286.260 Operation of PBTs

The following procedures shall be used to obtain a breath sample to determine a subject's BrAC with an approved PBT:

- a) Each test shall be performed according to an operational procedure programmed into the instrument.
- b) A test shall consist of only one breath analysis reading, based on the PBT's internal operational calculations.
 - 1) A complete and valid breath analysis reading is denoted by at least one air blank, one subject breath test reading, and no breakdown message.
 - 2) Messages such as "No Go", "Void", etc., are not breakdowns or malfunctions. These messages indicate the subject's failure to adequately complete the test.
- c) A subject who submits an insufficient sample or otherwise fails to adequately complete the test or tests may be asked to submit to an additional test or tests.

(Source: Amended at 31 Ill. Reg. 7305, effective May 1, 2007)

SUBPART D: SAMPLING PROCEDURES

Section 1286.300 General Sampling Protocol

The arresting officer has discretion to determine whether a subject will be required to submit a breath, blood, and/or urine sample for testing.

- a) If the subject has been in a vehicle crash and must be treated or is currently being treated by a physician licensed to practice medicine for injuries sustained in the crash, the arresting officer will consult with the treating physician to determine when best to test the subject without unreasonably jeopardizing the subject's treatment.
- b) The arresting officer or BAO shall deem a subject who fails to submit to a requested test or additional testing to have refused testing. If a subject refuses a breath test, no 20-minute observation period is required, but rather the refusal of the test may be noted and the refusal ticket printed immediately.
- c) When a subject has submitted an insufficient sample or otherwise failed to adequately complete a requested test or tests, the arresting officer or BAO has discretion to determine if the subject:
 - 1) has refused testing; or
 - 2) will be required to undergo additional testing.
- d) The procedures contained in this Subpart are the only procedures required to obtain a valid breath, blood, and/or urine sample. There are no additional sampling procedures.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.310 Approved Evidentiary Instrument Operation

The following procedures shall be used to obtain a breath sample to determine a subject's BrAC with an approved evidentiary instrument:

- a) Prior to obtaining a breath analysis reading from a subject, the BAO or another agency employee shall continuously observe the subject for at least 20 minutes.
 - 1) During the 20 minute observation period the subject shall be deprived of alcohol and foreign substances and shall not have vomited.
 - 2) If the subject vomits during the observation (deprivation) period, the process shall be started over by having the individual rinse the oral cavity with water.
 - 3) If the individual continues to vomit, alternate testing shall be considered.
- b) After starting the instrument's breath test sequence, the BAO will obey instrument prompts. When prompted by the instrument, the BAO shall direct the subject to blow into the instrument. The subject shall be directed to keep blowing into the instrument until he or she has submitted an adequate breath sample. Once an adequate breath sample is collected, the instrument shall complete the test cycle and print and display the breath analysis reading.
- c) A breath test shall consist of only one breath analysis reading, based on the instrument's internal operational calculations.
 - 1) A complete and valid breath analysis reading is denoted by at least one air blank, one subject breath test reading, and no breakdown message.
 - 2) Messages such as "refusal", "insufficient sample", "inadequate sample", etc., are not breakdowns or malfunctions. These messages indicate the subject's failure to adequately complete a requested test or tests.

(Source: Amended at 28 Ill. Reg. 10017, effective June 30, 2004)

Section 1286.320 Blood Collection for Determining the Presence of Alcohol, Other Drugs or Intoxicating Compounds

The following procedures shall be used to obtain a blood sample from a subject to determine the alcohol concentration, or presence of other drugs or intoxicating compounds:

- a) The blood sample shall be collected in the presence of the arresting officer, another law enforcement officer, or an agency employee who can authenticate the sample.
- b) For samples collected in Illinois, *the blood sample shall be collected by a licensed physician, physician assistant, licensed advanced practice nurse, registered nurse, trained phlebotomist, or certified paramedic. When a blood test of a person who has been taken to an adjoining state for medical treatment is requested by an Illinois law enforcement officer, the blood may be withdrawn only by a physician authorized to practice medicine in the adjoining state, physician assistant, licensed advanced practice nurse, registered nurse, trained phlebotomist acting under the direction of the physician, or certified paramedic.* (Section 11-501.2(a) of the Illinois Vehicle Code)
- c) The blood sample should be drawn using proper medical technique.
- d) Officers shall use DUI kits provided by the Department, if possible. If kits are not available, officers may submit two standard grey top vacuum tubes. (Pursuant to generally accepted industry standards, grey top vacuum tubes contain an anticoagulant and preservative.)
- e) The individual tubes shall be labeled with the name of the subject and the date of the withdrawal and treated as biohazard evidence.
- f) The blood samples shall be delivered as soon as practicable to a laboratory certified by the Department (see Section 1286.170).
- g) The testing laboratory shall maintain any remaining sample for a period of six months after testing unless otherwise directed by the submitting agency or the appropriate prosecuting authority.

(Source: Amended at 39 Ill. Reg. 11670, effective July 29, 2015)

Section 1286.330 Urine Collection for Determining the Presence of Alcohol, Other Drugs or Intoxicating Compounds

UAC testing is not a preferred method of determining the amount of alcohol in a subject and the feasibility of other testing procedures should be explored before deciding UAC testing for alcohol concentration. Urine is the preferred method for drug confirmation. The following procedures shall be used to obtain a urine sample from a subject to determine the presence of alcohol, other drugs or intoxicating compounds:

- a) A sample of urine shall be collected in a manner to preserve the dignity of the individual and to ensure the integrity of the sample.
- b) A urine sample may be collected by the arresting officer, another law enforcement officer, an agency employee, or a hospital nurse who can authenticate the sample. The officer, agency employee, or nurse shall be of the same sex as the subject undergoing testing.
- c) A urine sample of approximately 60 ml should be collected.
- d) Urine sample shall be collected in clean, dry containers.
- e) No preservatives shall be used. The containers shall be closed.
- f) The containers shall be labeled with the name of the subject and the date of the collection.
- g) The urine samples shall be delivered as soon as practicable to a laboratory certified by the Department.
- h) The testing laboratory shall maintain any remaining sample for a period of six months after testing unless otherwise directed by the submitting agency or the appropriate prosecuting authority.

(Source: Amended at 31 Ill. Reg. 7305, effective May 1, 2007)

**Section 1286.340 Urine Collection for Determining the Concentration of Urine Alcohol
(Repealed)**

(Source: Repealed at 28 Ill. Reg. 10017, effective June 30, 2004)

Section 1286.350 Operation of PBTs (Repealed)

(Source: Repealed at 28 Ill. Reg. 10017, effective June 30, 2004)