

Notices of Proposed Rulemaking

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 4986, November 25, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Director of the Department of Public Safety (DPS) was recently granted authority pursuant to A.R.S. §§ 28-1322, 28-1323, 28-1324, 28-1325 28-1326 and 41-1713 to adopt rules prescribing methods and procedures for the administration of breath tests and the analysis of blood or other bodily substances to determine alcohol concentration. The Legislature transferred this regulatory authority from the Department of Health Services (DHS) to DPS through Ariz. Sess. Laws, 2003, Ch. 213, which directed that rules adopted by DHS continue in effect and shall be administered and enforced by DPS until superseded by rules adopted by DPS. The proposed rulemaking will establish new rules in Title 13, Public Safety, which will supersede current rules for the determination of alcohol concentration in Title 9, Health Services. Adoption of the proposed rules will have the effect of moving rules related to the determination of alcohol concentration from Title 9, Health Services to Title 13, Public Safety and will complete the process of transferring alcohol testing issues to DPS.

The proposed rule is similar in organization and shares many of the Section headings and much of the text with the current regulations; however, there have been a number of changes made to enhance quality assurance in statewide alcohol testing.

The proposed rule includes new definitions for the terms Calibration Check, Concurrent Calibration Check, Concurrent Quality Assurance Procedure, Quality Assurance Procedure, Concurrent Diagnostic Check, Periodic Maintenance, and Operator Permit. Some of the existing definitions have been modified or revised for clarity. The proposed rule eliminates the use of an outdated method no longer in use (enzymatic analysis with qualitative screening) for blood analysis and increases the educational requirements to qualify for an analyst permit. Passing scores for Operator and Quality Assurance Specialist courses have been raised. The licensure period for new Operator and Quality Assurance Specialist permits will be changed from lifetime to five years and will require the successful completion of a recertification course. Under the proposed rules, existing Operator and Quality Assurance Specialist permits will be valid for five years from the effective date of the rules. The passing examination score for a breath testing Instructor has been raised. The proposed rules include an updated list of quantitative breath testing devices previously approved by DHS but will not include outdated devices no longer in use. Exhibits related to outdated devices have been eliminated and new Exhibits for breath testing devices on the updated list have been added.

The Department may add, delete, or modify additional Sections or Exhibits as necessary.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Arizona criminal justice community is well accustomed to operating within the rules adopted by DHS for the determination of alcohol concentration. Through various revisions, these rules have been in effect for over 20 years and the adoption of the proposed rules will allow for this program to continue under DPS. Therefore, economic and consumer impact has already been incurred. The proposed rules maintain the breath testing devices previously approved by DHS, except those which are outdated (i.e. 20+ year-old models) and not in use. Law enforcement agencies will not have to replace breath testing devices as a result of this rulemaking. Under the proposed rules, existing Operator and Quality Assurance Specialist permits shall remain in effect and be valid for five years from the effective date of the rules. Any permits issued after the effective date of the rules shall be valid for five years from the date of issue. Therefore, there will be no immediate training expenses associated with the proposed rulemaking. When permits approach expiration dates, law enforcement agencies will be required to send personnel for recertification training. This will result in minimal travel related costs for some agencies. Most training is provided locally generating no significant travel related costs to agencies. Economic impact to small businesses would be related to those private laboratories conducting blood alcohol analysis. There are no increased costs to small businesses as a result of this proposed rulemaking. As consumers, citizens can have confidence in the continuation of a program which ensures that alcohol testing in the State of Arizona is being conducted in a standardized and scientifically sound manner; thereby consistently removing drunk drivers from the roadways while protecting the citizens of Arizona through the use of appropriate methods and devices.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Same persons listed in item #4

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments must be received by 5:00 p.m., December 27, 2005, at the address indicated in item #4. A public meeting will be subsequently scheduled and a person may request information about the meeting by contacting either of the persons listed in item #4.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

The National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices as set forth in the Notice of Amendment to 62 FR 62091 effective July 14, 2004, is incorporated by reference in Section R13-10-103(F). A copy of this document may be obtained at the National Highway Traffic Safety Administration's web site (www.nhtsa.gov).

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

**CHAPTER 10. ~~RESERVED~~ DEPARTMENT OF PUBLIC SAFETY
ALCOHOL TESTING**

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

Section

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| <u>R13-10-102.</u> | <u>Analyst Methods; Approval of Additional Methods</u> |
| <u>R13-10-103.</u> | <u>Breath-testing Devices</u> |
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| <u>R13-10-105.</u> | <u>Permits and Certificates</u> |
| <u>R13-10-106.</u> | <u>Qualifications</u> |
| <u>R13-10-107.</u> | <u>Application Processes</u> |
| <u>R13-10-108.</u> | <u>Examination and Quality Assurance Requirements for Analysts</u> |
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| <u>Exhibit A.</u> | <u>Application for Blood Alcohol Analyst Permit</u> |

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| <u>Exhibit B.</u> | <u>Application for Breath Alcohol Operator Permit</u> |
| <u>Exhibit C.</u> | <u>Application for Breath Alcohol Quality Assurance Specialist Permit</u> |
| <u>Exhibit D.</u> | <u>Application for Breath Testing Instructor</u> |
| <u>Exhibit E-1.</u> | <u>Standard Operational Procedure Intoxilyzer Model 5000</u> |
| <u>Exhibit E-2.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 5000*</u> |
| <u>Exhibit E-3.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 5000 (Option P)</u> |
| <u>Exhibit E-4.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 5000*</u> |
| <u>Exhibit E-5.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 5000 (Option P)</u> |
| <u>Exhibit E-6.</u> | <u>Standard Operational Procedure Intoxilyzer Model 5000 - Without Vapor Recirculation and Without Keyboard</u> |
| <u>Exhibit F-1.</u> | <u>Standard Operational Procedure Intoxilyzer Model 5000EN</u> |
| <u>Exhibit F-2.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 5000EN</u> |
| <u>Exhibit F-3.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 5000EN (Option P)</u> |
| <u>Exhibit F-4.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 5000EN</u> |
| <u>Exhibit F-5.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 5000EN (Option P)</u> |
| <u>Exhibit G-1.</u> | <u>Standard Operational Procedure Intoxilyzer Model 8000</u> |
| <u>Exhibit G-2.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 8000</u> |
| <u>Exhibit G-3.</u> | <u>Standard Calibration Check Procedure Intoxilyzer Model 8000 (Option P)</u> |
| <u>Exhibit G-4.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 8000</u> |
| <u>Exhibit G-5.</u> | <u>Standard Quality Assurance Procedure Intoxilyzer Model 8000 (Option P)</u> |
| <u>Exhibit G-6.</u> | <u>Standard Operational and Quality Assurance Procedure Intoxilyzer Model 8000</u> |
| <u>Exhibit H-1.</u> | <u>Standard Operational Procedure Alco Sensor RBT AZ</u> |
| <u>Exhibit H-2.</u> | <u>Standard Calibration Check Procedure Alco Sensor RBT AZ</u> |
| <u>Exhibit H-3.</u> | <u>Standard Quality Assurance Procedure Alco Sensor RBT AZ</u> |
| <u>Exhibit H-4.</u> | <u>Standard Calibration Procedure Alco Sensor RBT AZ</u> |

ARTICLE 1. DETERMINATION OF ALCOHOL CONCENTRATION

R13-10-101. Definitions

In this Article, unless the context otherwise requires:

1. “Alcohol concentration” or “AC” means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.
2. “Analyst” means an individual who has been issued an analyst permit by the Department to use approved methods to make alcohol concentration determinations from blood or other bodily substances.
3. “Analyst permit” means a certificate issued by the Department indicating the permit holder has been found qualified to utilize approved methods in the determination of alcohol concentrations.
4. “Analytical procedure” means a series of operations utilized by an analyst when employing an approved method in the determination of alcohol concentration.
5. “Calibration Check” means an operation utilizing a standard alcohol concentration to determine whether a quantitative breath-testing device is accurately measuring alcohol concentrations and must be performed at least every 31 days by a Quality Assurance Specialist or as a Concurrent Calibration Check conducted by an Operator with each breath test.
6. “Concurrent Calibration Check” means an operation utilizing a standard alcohol concentration and performed by an Operator, within a successfully completed duplicate breath test procedure, to determine whether a quantitative breath-testing device is accurately measuring alcohol concentration during a subject test sequence.
7. “Concurrent Quality Assurance Procedure” means operations performed by an Operator, including Concurrent Calibration and Diagnostic Checks performed within a successfully completed duplicate breath test procedure, to determine whether a quantitative breath-testing device is accurately and properly measuring alcohol concentration during a subject test sequence.
8. “Deprivation period” means at least a 15-minute period immediately prior to a quantitative duplicate breath test during which period the subject has not ingested any alcoholic beverages or other fluids, eaten, vomited, smoked or placed any foreign object in the mouth.
9. “Determination” means the analysis of a specimen of blood, breath, or other bodily substance and expressing the results of such analysis in terms of alcohol concentration.
10. “Device” means a breath testing instrument intended for use by an Operator for the purpose of obtaining a determination of alcohol concentration from a specimen of breath.
11. “Duplicate breath test” means two consecutive breath tests that immediately follow at least a 15-minute deprivation period, agree within 0.020 AC of each other, and are conducted at least 5 and no more than 10 minutes apart.

12. “Instructor” means a person approved by the Department to provide breath test training to prospective Operators and Quality Assurance Specialists on approved breath testing devices.
13. “Method” means the analytical technique utilized by an analyst or device to make an alcohol concentration determination (e.g., gas chromatography or infrared spectrophotometry.)
14. “Operator” means a person who has been issued an Operator permit from the Department to operate and perform the associated Quality Assurance Procedures, Concurrent Calibration Check and Diagnostic Checks on a breath testing device for the purpose of determining an alcohol concentration from a specimen of breath and the accurate and proper operation of that breath testing device.
15. “Operator Permit” means a certificate issued by the Department indicating the permit holder has been found qualified to operate and perform related quality assurance procedures on an approved breath testing device.
16. “Periodic Maintenance” means a Quality Assurance Procedure consisting of either of the following, which determines whether a quantitative breath testing device is operating accurately and properly:
 - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure
 - b. Concurrent Calibration Procedure and Concurrent Quality Assurance Procedure performed within a successfully completed duplicate breath test procedure.
17. “Preliminary breath test” means a pre-arrest breath test.
18. “Preliminary breath tester” or “PBT” means any approved breath testing device used prior to an arrest for the purpose of obtaining a determination of alcohol concentration from a specimen of breath. (This includes any device included on the National Highway Traffic Safety Administration’s Conforming Products List of Evidential Breath Measurement Devices as referenced in R13-10-103(F).)
19. “Procedure” means a series of operations used by a breath test Operator or Quality Assurance Specialist when employing an approved device in the determination of alcohol concentration or performance of associated quality assurance testing.
20. “Quality Assurance Procedure” means Periodic Maintenance consisting of either of the following, which determines whether a quantitative breath testing device is operating accurately and properly:
 - a. Standard Calibration Check Procedure and Standard Quality Assurance Procedure
 - b. Concurrent Calibration Procedure and Concurrent Quality Assurance Procedure performed within a successfully completed duplicate breath test procedure.
21. “Quality Assurance Specialist” means a person who has been issued a Quality Assurance Specialist permit from the Department to perform the Standard Calibration Check Procedure and Standard Quality Assurance Procedure to determine the accurate and proper operation of a specific breath testing device.
22. “Quality Assurance Specialist permit” means a certificate issued by the Department indicating the permit holder has been found qualified to perform quality assurance procedures on approved breath-testing devices device (e.g., Standard Calibration Check Procedure and Standard Quality Assurance Procedure.)
23. “Standard Calibration Check Procedure” means operations performed by a Quality Assurance Specialist, at least every 31 days, to determine whether a specific quantitative breath-testing device is accurately measuring alcohol concentration.
24. “Standard Quality Assurance Procedure” means operations performed by a Quality Assurance Specialist every 90 days and maintained as a record of periodic maintenance.

R13-10-102. Analyst Methods: Approval of Additional Methods

- A.** An analyst shall use one of the following methods to analyze blood or other bodily substances to determine a person’s alcohol concentration:
 1. Gas chromatography or
 2. Another method that has been approved by the Director under the procedure in subsections (B) and (C).
- B.** An applicant for an analyst permit may submit, with the permit application, a request that the Director approve additional methods.
- C.** For a method to be approved by the Director, its accuracy and reproducibility shall comply with the following standards:
 1. The test results of samples with a standard alcohol concentration shall agree with the established value within the limits of + 0.01 grams per 100 milliliters of blood or + 10%, whichever is greater.
 2. The accuracy and precision shall be determined on the basis of ten measurements at four alcohol concentrations between 0.020 and 0.350 grams per 100 milliliters of blood, to include at least one value < 0.100 and one value > 0.250.

R13-10-103. Breath-testing Devices

- A.** Devices used to determine alcohol concentration from breath may be approved for use, by the Director, after the Department successfully tests a typical model of the device for compliance with the standards in subsection (B).

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- B.** Devices utilized to determine alcohol concentration from a sample of breath shall meet the following standards of performance:
 - 1. Breath specimens tested shall be essentially alveolar in composition.
 - 2. Breath-testing devices shall be capable of analysis of a solution of known alcohol concentration with an accuracy limit of a systematic error of no more than + 0.005 grams per 210 liters of breath or + 5%, whichever is greater, and a precision limit of an average standard deviation of no more than .0042 grams per 210 liters of breath. The accuracy and precision of the devices being evaluated shall be determined on the basis of 10 consecutive measurements at 4 alcohol vapor concentrations which are between 0.020 and 0.350 grams per 210 liters of breath, to include at least one value < 0.100 and one value > 0.250.
 - 3. The device shall be capable of testing a breath sample which results in alcohol concentrations of less than .01 grams per 210 liters of breath when alcohol-free subjects are tested.
- C.** The Department, upon specific findings that a device, method or breath test procedure is inaccurate, unreliable, or is an unacceptable test for determining alcohol concentration or that its use has been discontinued in the state, shall disapprove further use of the device, method, or procedure.
- D.** The methods approved by the Director for use by breath-testing devices to determine alcohol concentration are infrared spectrophotometry and specific fuel cell detection.
- E.** The following quantitative breath-testing devices are approved by the Director:

| <u>Device/Model</u> | <u>Manufacturer</u> |
|--|--------------------------|
| <u>Intoxilyzer Model 5000 with or without Vapor Recirculation and with or without Keyboard</u> | <u>CMI, Inc.</u> |
| <u>Intoxilyzer Model 5000EN</u> | <u>CMI, Inc.</u> |
| <u>Intoxilyzer Model 8000</u> | <u>CMI, Inc.</u> |
| <u>RBT AZ (Alco Sensor AZ/RBT AZ)</u> | <u>Intoximeter, Inc.</u> |

- F.** Products included on the National Highway Traffic Safety Administration's Conforming Products List of Evidential Breath Measurement Devices set forth in the Notice of Amendment to 62 FR 62091 effective July 14, 2004 (Federal Register), are approved by the Director as preliminary breath testers to determine alcohol concentration. A copy of this document may be obtained from the National Highway Traffic Safety Administration's web site (www.nhtsa.gov).
- G.** Except when a device is used as a PBT, an Operator's permit and approved Operational Procedure are required for the operation of quantitative breath-testing devices listed in subsection (E).
- H.** Quantitative breath-testing devices listed in subsection (E) may be used to administer preliminary breath tests.
- I.** In addition to the quantitative breath testing devices approved in subsection (E), the Director may approve, in writing, a device and related Operator and Quality Assurance Procedures after the device has been successfully tested for compliance with the standards in subsection (B) for use prior to and pending the device being added to subsection (E). The approval shall expire three years after its effective date unless subsection (E) is amended to include the approved device.
- J.** In addition to devices approved as preliminary breath testers in subsection (F), the Director may approve in writing as a PBT a new device placed on subsequent National Highway Traffic Safety Administration's Conforming Products Lists of Evidential Breath Measurement Devices for use pending the new Conforming Products List being added to subsection (F).

R13-10-104. Testing Procedures

- A.** Law enforcement agencies or individuals acting independently of such agencies who conduct alcohol concentration determinations by means of breath-testing devices shall utilize a quality assurance program that is conducted by Quality Assurance Specialists or Operators and generates records of periodic maintenance. This quality assurance program shall include:
 - 1. Criteria for ensuring the accurate and proper operation of devices by the regular performance of Calibration Checks and Quality Assurance Procedures as referenced in subsections (A)(2) and (A)(3).

2. Calibration Checks of breath-testing devices that are performed within 31 days of each other as Standard Calibration Check Procedures or during subject testing as Concurrent Calibration Checks, which are recorded according to the requirements of the appropriate Department Quality Assurance Procedures set forth in Exhibits E-2, E-3, F-2, F-3, G-2, G-3, G-6 and H-2 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of determining the value of a standard alcohol concentration solution with an acceptable accuracy limit of + 0.01 grams per 210 liters of breath or + 10%, whichever is greater.
 3. Quality Assurance Procedure Checks of breath testing devices that are performed within 90 days of each other as Standard Quality Assurance Procedures or during subject testing as Concurrent Quality Assurance Procedures, which are recorded according to the requirement of the Department quality assurance procedures set forth in Exhibits E-4, E-5, F-4, F-5, G-4, G-5, G-6, H-3 and H-4 or as approved by the Director according to R13-10-103(I). These checks shall indicate that the device is capable of proper operation and is functioning as required by Department quality assurance procedures for the device.
 4. Standard alcohol concentration solutions that are National Institute of Standards and Technology (NIST) traceable.
 5. Records of Calibration Checks, Quality Assurance Procedures, and maintenance or repairs for each device in use.
- B.** Operator permit holders shall utilize the Standard Operational Procedure approved by the Department for the device being operated in performing tests for the determination of alcohol concentration, as contained in Exhibits E-1, E-6, F-1, G-1, G-6 and H-1 or as approved by the Director according to R13-10-103(I).
- C.** Duplicate quantitative breath tests shall be administered at intervals of not less than five minutes nor more than 10 minutes. The results of both tests shall be within 0.020 alcohol concentration of each other. If the second test is not within 0.020 alcohol concentration of the first test, additional tests shall be administered until the results of two consecutive tests are within 0.020 alcohol concentration.

R13-10-105. Permits and Certificates

- A.** The Department shall issue Analyst permits to qualified applicants, in accordance with R13-10-106(A), who have satisfactorily demonstrated, through proficiency testing as specified in R13-10-108(A), their proficiency in conducting an alcohol concentration determination by one or more of the methods listed in R13-10-102. The analyst permit shall:
1. State the method of alcohol concentration determination the permit holder is authorized to utilize and the type of specimen the permit holder is approved to analyze (blood or other bodily substances); and
 2. Be valid for a period of one year.
- B.** The holder of an Analyst permit shall employ, in testing for alcohol concentration in matters arising under A.R.S. Title 28, Chapter 4, Article 3, the same analytical procedures as those employed by the analyst for proficiency testing.
- C.** The Department shall issue two categories of device permits.
1. Operator permits shall be issued to applicants who qualify under R13-10-106(B) or (E). This permit authorizes operation and performance of associated Quality Assurance Procedures, including Concurrent Calibration Checks and Concurrent Quality Assurance procedures performed within a successfully completed duplicate breath test procedure on the device specified on the permit. Operator permits issued after the effective date of these rules shall be valid for five years from the date of issue. Operator permits in existence before the effective date of these rules shall remain in effect and be valid for five years after the effective date of these rules.
 2. Quality Assurance Specialist permits shall be issued to applicants who hold a valid Operator permit and who qualify as a Quality Assurance Specialist under R13-10-106(C) or (E). This Quality Assurance Specialist permit authorizes the holder to perform quality assurance procedures, including Standard Calibration Checks and Standard Quality Assurance Procedures on a specific breath testing device. Quality Assurance Specialist permits issued after the effective date of these rules shall be valid for five years from the date of issue. Quality Assurance Specialist permits in existence before the effective date of these rules shall remain in effect and be valid for five years after the effective date of these rules.
 3. Device permits may be renewed by application and successful completion of a recertification course approved by the Department.
 4. Duplicate (replacement) permits may be issued by request and upon verification of qualifications set forth in R13-10-106.
- D.** Law enforcement agencies shall supply the Department, upon request, with a list of valid Operator and Quality Assurance Specialist permit holders and shall update the list as required by the Department, but no more frequently than annually.
- E.** The Department shall issue breath test Instructor certificates to qualified applicants who hold valid Operator and Quality Assurance Specialist permits and who qualify as a breath test Instructor under R13-10-106(D) or (E). The breath test Instructor certificate authorizes the holder to provide breath test training to prospective Operators and Quality Assurance Specialists on a specific approved breath testing device. Instructor Certificates issued after the effective date of these rules shall be valid for five years from the date of issue. Instructor Certificates in existence before the effective date of these rules shall remain in effect and be valid for five years from the effective date of these rules. Instructor Certificates may be renewed by application and successful completion of a recertification course approved by the Department.

R13-10-106. Qualifications

- A.** To qualify for an analyst permit, a person shall hold a degree from a college or university accredited by a regional accrediting body recognized by the United States Department of Education with 20 or more credits of chemistry, including three or more credits of organic chemistry.
- B.** To qualify for an Operator permit, a person shall:
1. Be employed by a law enforcement agency or by a laboratory which has access to a breath testing device for the person's use as set forth in R13-10-103; and
 2. Complete a course approved by the Department, with a score of 80% or better, in the determination of alcohol concentration. The Department shall approve courses taught by an approved breath testing instructor if they contain the following:
 - a. Instruction on the effects of alcohol on the human body;
 - b. Instruction on and demonstration of the operational principles of the selected breath testing device, which shall include a functional description and detailed operational description of the method;
 - c. Instruction on the legal aspects of breath tests in general and of the particular method to be employed;
 - d. Concurrent Calibration Check Procedures (when applicable to the device) approved by the Department;
 - e. Concurrent Quality Assurance Procedures (when applicable to the device) approved by the Department;
 - f. Applicant participation with appropriate breath testing device utilizing reference standards, testing of subjects, or other methods which will indicate the actual response of the device; and
 - g. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in the device.
- C.** To qualify for a Quality Assurance Specialist permit, a person shall possess a valid Operator permit to operate the approved breath testing device and shall comply by completing a course of training approved by the Department, with a score of 80% or better. The Department shall approve courses taught by an approved breath testing instructor if they contain the following:
1. Review of the theory of breath testing and the operation of the particular testing device;
 2. Standard Calibration Check Procedures approved by the Department;
 3. Standard Quality Assurance Procedures approved by the Department;
 4. Applicant participation with appropriate breath testing device utilizing reference standards, testing of subjects, or other methods which will indicate the actual response of the device; and
 5. Written and practical examination of the applicant for the purpose of determining the person's understanding of the course material and proficiency in the device.
- D.** To qualify as a breath testing Instructor, a person shall hold valid Operator and Quality Assurance Specialist permits on the device for which instruction is given. In addition, except as provided in subsection (E), all applicants shall comply by completing a comprehensive instructor examination approved and administered by the Department, with a score of 90% or better. The Department shall approve instructor examinations that include the following:
1. The theory of breath testing and the operation of the particular testing device, and
 2. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.
- E.** If a breath testing device is newly approved and no Operator and Quality Assurance Specialist permits have been issued for the device, a person may qualify to be an Operator, Quality Assurance Specialist and breath testing Instructor for such device by completing a Department administered, manufacturer endorsed, instructor training course and a comprehensive examination with a score of 90% or better. The instructor training course shall include the following:
1. Review of the theory of breath testing,
 2. Instruction on the operation of the testing device, and
 3. Procedures for testing instrument accuracy and proper operation in accordance with Calibration Checks and Quality Assurance Procedures approved by the Department.

R13-10-107. Application Processes

- A.** Application for an initial Analyst permit or the renewal of an existing Analyst permit shall use the form shown as Exhibit A. The application shall be submitted providing the applicant's qualifications for the permit, and submit it to the Department. An application for renewal of an Analyst permit shall be submitted no later than 30 days prior to the date the current permit expires; this deadline may be extended at the discretion of the Department.
- B.** Application for an initial Operator permit or the renewal of an existing Operator permit shall be made on the form shown as Exhibit B. The application shall be submitted providing the applicant's qualifications for the permit, and submitted to the Department. An application for renewal of an Operator permit shall be submitted no later than 30 days prior to the date the current permit expires; this deadline may be extended at the discretion of the Department.
- C.** Application for an initial Quality Assurance Specialist permit or the renewal of an existing Quality Assurance Specialist permit shall be made on a form shown as Exhibit C. The application shall be submitted providing the applicant's qualifications for the permit and submitted to the Department. An application for renewal of a Quality Assurance Specialist per-

mit shall be submitted no later than 30 days prior to the date the current permit expires; this deadline may be extended at the discretion of the Department.

- D.** Application for an initial breath testing Instructor certification or the renewal of an existing Instructor certification shall be made on the form shown as Exhibit D. The application shall be submitted providing the applicant's qualifications for approval. An application for renewal of an Instructor certificate shall be submitted no later than 30 days prior to the date the current permit expires; this deadline may be extended at the discretion of the Department.

R13-10-108. Examination and Quality Assurance Requirements for Analysts

- A.** The Department shall require an Analyst permit applicant to successfully demonstrate the applicant's proficiency in making alcohol concentration determinations from test specimens in accordance with subsection (B). The applicant shall be examined only on the methods which relate to the type of determination for which the applicant desires a permit.
- B.** An applicant shall, before receiving an initial Analyst permit or renewal of an existing Analyst permit, participate in and successfully complete proficiency testing administered by the Department. Successful analysis of samples shall include testing at least three suitable reference standards or control samples with a known alcohol concentration in the range of 0.00 to 0.40 grams per 100 milliliters of blood, the results of which shall agree with the established value within the limits of ± 0.01 grams per 100 milliliters of blood or $\pm 10\%$, whichever is greater. Proficiency testing shall be administered by the Department as follows:
1. An applicant shall correctly analyze all proficiency samples in the set provided by the Department.
 2. When returning the results of analyses to the Department, the applicant shall attach an affidavit attesting that the applicant analyzed the proficiency samples without help or input from any other person.
 3. An applicant failing to correctly analyze all proficiency samples in the set will be provided an opportunity to successfully analyze a second set of samples.
 4. The application of an applicant who declines or fails to correctly analyze the second set of proficiency samples shall be denied and a permit shall not be issued.
 5. An applicant who fails to successfully analyze the second set of proficiency samples and whose application is denied may reapply for an analyst's permit in three months, after the applicant revises the analytical procedure used in order to improve the accuracy of test results.
- C.** A quality assurance program shall be implemented and maintained by analysts who conduct alcohol concentration determinations. This program shall be designed to ensure the validity of test results by providing for the following standards:
1. Chain of custody.
 2. Quality control.
 3. Analytical procedures.
 4. Documentation of test results, and
 5. Participation in proficiency testing.

R13-10-109. Revocation or Suspension of Permits; Appeals

- A.** The Department may suspend or revoke a permit upon any of the following grounds:
1. A false statement on the permit holder's application;
 2. The neglect or refusal to examine and report the results of sample specimens given the Analyst permit holder for proficiency testing purposes;
 3. The failure of an analyst to maintain quality control over equipment or reagents necessary for accuracy in reporting;
 4. Failure to obtain results on proficiency test samples as indicated in R13-10-108(B);
 5. Failure to operate a breath testing device according to approved procedures or the failure to analyze blood or other bodily substances according to approved methods; or
 6. The failure by a permit holder to maintain documentation required by this Article or to make it available to Departmental representatives for inspection for purposes of administering this Article.
- B.** When a permit has been suspended or revoked in one or more of the approved methods and there remain one or more methods for which the permittee is approved and which are not affected by the revocation or suspension, the permit holder shall return the suspended or revoked permit to the Department which shall issue a replacement permit. The replacement permit will show only those approved methods or devices unaffected by the event leading to the suspension or revocation.
- C.** The provisions of A.R.S. Title 41, Chapter 6, Article 6 are applicable to denials, revocations, suspensions and administrative appeals.

Notices of Proposed Rulemaking

EXHIBIT A
APPLICATION FOR BLOOD ALCOHOL ANALYST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY
Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE
IN THIS AREA
Permit #
Date issued
Approved by

Application for Analyst permit to perform analysis of blood or other bodily substances for alcohol content determinations.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY
(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT RENEWAL PERMIT NUMBER

1. Name: (Full legal name) (Last) (First) (Middle) (Maiden)

Name: (As you would like it to appear on permit) (Last) (First) (Middle - optional)

2. Date of Birth: (Month) (Day) (Year)

3. Employer: (Name) (Address) (Phone) (Fax)

4. Email address:

5. Education: I have earned a degree from an accredited college or university with 20 or more credits of college chemistry, including at least 3 credits in organic chemistry. Yes No

College(s) attended (City & State) (Year Graduated) (Degree)

6. Check the analytical method(s) for which you require an Analyst permit: Gas Chromatography Other:

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant) (Date)

Notices of Proposed Rulemaking

EXHIBIT B
APPLICATION FOR BREATH ALCOHOL OPERATOR PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE

IN THIS AREA

Permit # _____

Date issued _____

Approved by _____

Application for an Operator permit to perform alcohol concentration determinations and associated quality assurance procedures on an approved breath testing device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY

(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT _____ RENEWAL _____

DO YOU HAVE AN OPERATOR PERMIT(S)? YES _____ NO _____

OPERATOR DEVICE(S) / PERMIT NUMBER(S) _____

1. Name: _____
(Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: _____
(As you want it to appear on permit) (Last) (First) (Middle - optional)

2. Employer: _____
(Name)

(Address)

(Phone) (Fax)

3. Email address: _____

4. Operator permit requested for what device(s): _____

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant)

Badge #

(Date)

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training: _____

2. Date and Location of Training: _____
(Date) (Location)

3. Arizona Department of Public Safety course approval number: _____

4. Did applicant successfully complete the course? Pass _____ Fail _____

(Signature of Instructor)

(Print Name)

(Date)

Notices of Proposed Rulemaking

EXHIBIT C

APPLICATION FOR BREATH ALCOHOL QUALITY ASSURANCE SPECIALIST PERMIT

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE
IN THIS AREA

Permit #
Date issued
Approved by

Application for a QAS permit to perform quality assurance procedures on an approved breath testing device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY

(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT RENEWAL

DO YOU HAVE AN OPERATOR PERMIT(S)? YES NO

OPERATOR DEVICE(S) / PERMIT NUMBER(S)

1. Name: (Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: (As you want it to appear on permit) (Last) (First) (Middle - optional)

2. Employer: (Name)

(Address)

(Phone) (Fax)

3. Email address:

4. QAS permit requested for what device(s):

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant)

Badge #

(Date)

TO BE COMPLETED BY INSTRUCTOR

1. Agency Conducting Training:

2. Date and Location of Training: (Date) (Location)

3. Arizona Department of Public Safety course approval number:

4. Did applicant successfully complete the course? Pass Fail

(Signature of Instructor)

(Print Name)

(Date)

Notices of Proposed Rulemaking

EXHIBIT D
APPLICATION FOR BREATH TESTING INSTRUCTOR

ARIZONA DEPARTMENT OF PUBLIC SAFETY

Scientific Analysis Bureau
2102 W Encanto Blvd
Phoenix, Arizona 85009
(602) 223-2394

DO NOT WRITE

IN THIS AREA

Certificate #
Date issued
Approved by

Application for a Breath Testing Instructor certificate to provide Operator and QAS training on an approved breath testing device.

TO BE COMPLETED BY APPLICANT - PLEASE PRINT CLEARLY

(ALL ITEMS MUST BE COMPLETED OR APPLICATION WILL NOT BE ACCEPTED)

IS THIS APPLICATION FOR? INITIAL PERMIT RENEWAL

DO YOU HAVE AN OPERATOR PERMIT(S)? YES NO

OPERATOR DEVICE(S) / PERMIT NUMBER(S)?

DO YOU HAVE QAS PERMIT(S)? YES NO

QAS DEVICE(S) / PERMIT NUMBER(S)

1. Name: (Full Legal Name) (Last) (First) (Middle) (Maiden)

Name: (As you want it to appear on certificate) (Last) (First) (Middle-optional)

2. Employer: (Name)

(Address)

(Phone) (Fax)

3. Email address:

4. Instructor certificate requested for what device:

I hereby certify that the information submitted in this application is true and correct.

(Signature of Applicant)

(Date)

TO BE COMPLETED BY REGULATOR

1. Arizona Department of Public Safety examination approval number:

2. Did applicant successfully attain Instructor approval? Pass Fail

(Signature of Regulator)

(Print Name)

(Date)

EXHIBIT E-2

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000*

STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

- () 1. Pour a standard alcohol concentration solution (NIST traceable) into a clean dry simulator jar and assemble the simulator. Ensure that a tight seal has been made. Standard value: 0. _____ AC.
- () 2. Turn on the simulator and allow the temperature to reach 340 C +/- 0.20 C.
- () 3. Set Intoxilyzer mode selection in the ACA mode by switching mode selection switch #9 on or selecting "C" on keyboard menu.
- () 4. Attach simulator to the simulator entrance port on the Intoxilyzer.
- () 5. Intoxilyzer 5000 display reads "READY TO START" or "PUSH BUTTON".
- () 6. Push Start Test button or press enter on keyboard.
- () 7. Insert card in response to display.
- () 8. Air blank completed.
- () 9. Standard Calibration Check completed. Test results 0. _____ AC.
- () 10. Air blank completed.
- () 11. When test complete, remove printed record. Attach the record to the completed checklist.
- () 12. Return mode selection switch #9 to off position after all calibration checks are complete or type Q and enter on keyboard.

SIGNATURE _____

* WITH OR WITHOUT VAPOR RECIRCULATION AND WITH OR WITHOUT KEYBOARD.

DPS Form Exh E-2 (Rev 05-1)

EXHIBIT E-3

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. Ensure simulator is on and contains a standard alcohol concentration solution (NIST traceable) of known value, 0.100 AC, at temperature of 34.0 C +/- 0.20 C.
2. Intoxilyzer display reads "READY TO START" or "PUSH BUTTON".
3. Set Intoxilyzer mode selection in the ACA mode by selecting "C" on the keyboard menu.
4. Press ENTER on keyboard.
5. Air blank completed.
6. Calibration check completed.
7. Confirm Standard Calibration Check reading is in 0.090 to 0.110 range.
8. Air blank completed.
9. Test complete.

Instrument reading is within acceptable accuracy limits. Enter "Y" or "N".

DPS Form Exh E-3 (Rev 05-01)

EXHIBIT E-4

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000*

STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

() 1. Display reads "READY TO START" or "PUSH BUTTON TO START TEST."

DIAGNOSTIC TESTS

- () 1. DVM Test check. Setting should be between .010 and .600. Mode selection switch S2 on, S1 and S3 off or keyboard menu selection "H". Reading is _____.
- () 2. Display Test check. Mode selection switch S1 on and S2 and S3 off or keyboard menu selection "V".
- () 3. Printer Test check. Mode selection switch S1, S2, S3 off or keyboard menu selection "P".
- () 4. Clock time check. Mode selection switch S10 on or keyboard menu selection "E".
- () 5. Date check. Mode selection switch S11 on or keyboard menu selection "E".

OPERATIONAL TESTS

- () 1. Alcohol-free subject Test result 0. _____ AC
- () 2. Error recognition logic system functioning
Invalid test printed
- () 3. Proper sample recognition system
Invalid sample printed
Deficient sample printed
- () 4. Standard Calibration Check standard 0. _____ AC
Results: 0. _____ AC

Instrument operating accurately and properly. YES _____ NO _____

COMMENTS _____

SIGNATURE _____

* WITH OR WITHOUT VAPOR RECIRCULATION AND WITH OR WITHOUT KEYBOARD

DPS Form Exh E-4 (Rev 05-1)

EXHIBIT E-5

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

Display reads "READY TO START" or "PUSH BUTTON TO START TEST."

DIAGNOSTIC TESTS

1. DVM Test check. Value is between .010 and .600. Keyboard menu selection "H".
2. Display Test check. Keyboard menu selection "V".
3. Clock time check. Keyboard menu selection "E".
4. Date check. Keyboard menu selection "E".

OPERATIONAL TESTS

1. Alcohol-free subject Test result 0.000 AC.
2. Error recognition logic system functioning.
Invalid test printed.
3. Proper sample recognition system.
Invalid sample printed.
Deficient sample printed.
4. Calibration standard 0.100 AC.

Instrument operating accurately and properly. Enter "Y" or "N".

DPS Form Exh E-5 (Rev 05-1)

EXHIBIT E-6
OPERATIONAL CHECKLIST

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL PROCEDURE
INTOXILYZER MODEL 5000 - WITHOUT VAPOR RECIRCULATION
AND WITHOUT KEYBOARD

DUPLICATE TEST

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR _____

INSTRUMENT SERIAL # _____ LOCATION _____

TIME OF TEST _____

TEST RESULTS 0. _____ AC _____ TIME _____
0. _____ AC _____ TIME _____
0. _____ AC _____ TIME _____

Immediately preceding administration of the tests, subject underwent a 15-minute deprivation period: _____

From _____ to _____ by _____
(Time) (Time) (Name)

- 1. Display reads "READY TO START" or "PUSH BUTTON TO START TEST". Breath tube is warm to touch.
2. Press Start Test button.
3. If display reads "INSERT CARD", do so.
4. Air blank completed.
5. Insert mouthpiece into breath tube. Have subject blow as long as possible. Record results above.
6. Air blank completed.
7. a. If display reads "WAIT", go to step 8.
OR
b. If display reads "TEST COMPLETE", go to step 9.
8. Repeat steps 1 thru 7.
9. When display reads "TEST COMPLETE", remove test record card. If duplicate tests have not been obtained between 5 and 10 minutes apart with a .020 AC agreement, repeat steps 1 thru 7.

Note: Duplicate tests shall be administered at intervals of not less than 5 nor more than 10 minutes apart and the two consecutive tests shall agree within 0.020 alcohol concentration.

DPS Form Exh E-6 (Rev 05-1)

EXHIBIT F-2
THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN
STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

- () 1. a. Ensure the dry gas tank is attached to the instrument and contains a standard alcohol concentration solution (NIST traceable). _____ AC.

OR

- () b. Pour a standard alcohol concentration solution (NIST traceable) _____ AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal is made. Turn on the simulator and allow temperature to reach 34 C +/- 0.2 C.
- () 2. Intoxilyzer 5000EN display reads "PUSH BUTTON"
- () 3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.
- () 4. Type "C" and press ENTER key on the keyboard.
- () 5. If display reads "INSERT CARD," do so.
- () 6. Air blank completed.
- () 7. Standard Calibration Check completed. Test results 0. _____ AC.
- () 8. Air blank completed.
- () 9. When display reads "TEST COMPLETE," remove printed record. Attach the record to the completed checklist.
- () 10. Type "Q" and press the ENTER key on the keyboard.

SIGNATURE _____

DPS Form Exh F-2 (Rev 05-01)

EXHIBIT F-3

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. a. Ensure the dry gas tank is attached to the instrument and contains a standard alcohol concentration solution (NIST traceable) alcohol standard.

OR

b. Pour a standard alcohol concentration solution (NIST traceable) into a clean dry simulator and assemble the simulator. Ensure that a tight seal is made. Turn on the simulator and allow temperature to reach 34 C +/- 0.2 C.
2. Intoxilyzer 5000EN display reads "PUSH BUTTON...."
3. Ensure Intoxilyzer 5000EN calibration standard is set for "G" for gas or "W" for wetbath.
4. Type "C" and press the ENTER key on the keyboard.
5. Air blank completed.
6. Calibration check completed.
7. Air blank completed.
8. When display reads "TEST COMPLETE," type "Q" and ENTER on the keyboard.

DPS Form Exh F-3 (Rev 05-01)

EXHIBIT F-4

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

1. Display reads "PUSH BUTTON..."

DIAGNOSTIC TESTS

1. Display test check. Keyboard menu selection "V."

2. Clock time check. Keyboard menu selection "E."

3. Date check. Keyboard menu selection "E."

4. Barometric sensor check. Keyboard menu selection "G."

OPERATIONAL TESTS

1. Alcohol-free subject test result 0. _____ AC.

2. Error recognition logic system functioning.
Invalid test printed.

3. Proper sample recognition system.
Invalid test printed.

4. Standard Calibration Check standard 0. _____ AC.
Result 0. _____ AC.

Instrument is operating properly and accurately. Yes _____ No _____

COMMENTS _____

SIGNATURE _____

DPS Form Exh F-4 (Rev 05-01)

EXHIBIT F-5

THIS REPORT PREPARED UNDER DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 5000EN

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

1. Display reads "PUSH BUTTON..."

DIAGNOSTIC TESTS

1. Display test check. Keyboard menu selection "V."
2. Clock time check. Keyboard menu selection "E."
3. Date check. Keyboard menu selection "E."
4. Barometric sensor check. Keyboard menu selection "G."

OPERATIONAL TESTS

1. Alcohol-free subject test result
2. Error recognition logic system functioning.
Invalid test displayed.
3. Proper sample recognition system.
Invalid test displayed.
Deficient sample displayed.
4. Standard alcohol concentration solution (NIST traceable).

Instrument operating properly and accurately. Enter "P" or "F."

DPS Form Exh F-5 (REV 05-01)

EXHIBIT G-2

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES

INTOXILYZER MODEL 8000

STANDARD CALIBRATION CHECK PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

() 1. Ensure that gas tank is attached to instrument and contains a standard alcohol concentration solution (NIST traceable) _____ AC.

OR

Pour a standard alcohol concentration solution (NIST traceable) _____ AC, into a clean dry simulator and assemble the simulator. Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach $34^{\circ}\text{C} \pm 0.2^{\circ}\text{C}$

() 2. Intoxilyzer 8000 display reads "Push Button to Start"

() 3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press enter.

() 4. Air blank completed.

() 5. Calibration check completed. Test results 0. _____ AC.

() 6. Air blank completed.

() 7. Remove printed record. Attach the record to the completed checklist.

SIGNATURE _____

DPS Form Exh G-2 (Rev 05-01)

EXHIBIT G-3

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD CALIBRATION CHECK PROCEDURE
(OPTION P)

1. a. Ensure dry gas tank is attached to instrument and contains a standard alcohol concentration solution (NIST traceable) alcohol standard.

OR

b. Pour a standard alcohol concentration solution (NIST traceable) value into a clean dry simulator and assemble the simulator.

Ensure that a tight seal has been made. Turn on the simulator and allow temperature to reach 34°C ±0.2°C

2. Intoxilyzer 8000 display reads "Push Button to Start"

3. Go to the "Control Testing Menu". Select "D" for dry control test or "W" for wet control test. After selection is made press enter.

4. Air blank completed.

5. Standard Calibration Check completed.

6. Air blank completed.

DPS Form Exh G-3 (Rev 05-01)

EXHIBIT G-4
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000
STANDARD QUALITY ASSURANCE PROCEDURE

QA SPECIALIST _____ AGENCY _____

DATE _____ TIME _____

INTOXILYZER SERIAL # _____ LOCATION _____

1. Display Reads "Push Button to Start"

DIAGNOSTIC TESTS

1. Clock time check.

2. Date check.

OPERATIONAL TESTS

1. Alcohol-free subject test result 0. _____ AC.

2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed

3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed
Deficient sample printed.

4. Standard Calibration Check standard 0. _____ AC. Result 0. _____ AC.

Instrument is operating properly and accurately. YES _____ NO _____

COMMENTS _____

SIGNATURE _____

DPS Form Exh G-4 (Rev 05-01)

EXHIBIT G-5

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

STANDARD QUALITY ASSURANCE PROCEDURE
(OPTION P)

Display Reads "Push Button to Start"

DIAGNOSTIC TESTS

1. Clock time check.
2. Date check.

OPERATIONAL TESTS

1. Alcohol-free subject test result.
2. Error recognition logic system functioning.
Not a Successfully Completed Test Sequence printed or recorded.
3. Proper sample recognition system.
Not a Successfully Completed Test Sequence printed or recorded.
Deficient sample printed.
4. Standard alcohol concentration solution (NIST traceable).

Instrument is operating properly and accurately. YES or NO

DPS Form Exh G-5 (Rev 05-01)

EXHIBIT G-6

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD OPERATIONAL AND QUALITY ASSURANCE PROCEDURES
INTOXILYZER MODEL 8000

DUPLICATE TEST WITH CONCURRENT QUALITY ASSURANCE PROCEDURES

SUBJECT NAME _____ DATE _____

AGENCY _____ OPERATOR _____

INSTRUMENT SERIAL # _____ LOCATION _____

| SUBJECT TESTS | | DIAGNOSTIC CHECKS | | CALIBRATION CHECKS | |
|---------------|---------------|-------------------|-----------|--------------------|----|
| 0. _____ | AC TIME _____ | _____ | PASS FAIL | 0. _____ | AC |
| 0. _____ | AC TIME _____ | _____ | PASS FAIL | 0. _____ | AC |
| 0. _____ | AC TIME _____ | | | | |

Immediately preceding administration of the tests, subject underwent a 15-minute deprivation period: _____

From _____ to _____ by _____
(Time) (Time) (Name)

- () 1. Display reads "Push Button to Start". Ensure breath tube is warm to touch.
- () 2. Push Start Test button.
- () 3. Follow automated instructions on instrument display.
- () 4. If test record reads "Successfully Completed Test Sequence" go to step 5

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will be tested again, remove test record and go to step 1

OR

If test record reads "Not a Successfully Completed Test Sequence", and subject will not be tested again, go to step 5

- () 5. Remove test record.

Note: A Successfully Completed Duplicate Test Sequence includes the following:

- At least a 15-minute deprivation period.
- Successful Concurrent Diagnostic Checks
- Successful Concurrent Calibration Checks
- Duplicate subject tests administered at intervals of not less than 5 minutes nor more than 10 minutes apart and the two consecutive tests agreeing within 0.020 alcohol concentration.

EXHIBIT H-2
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ
STANDARD CALIBRATION CHECK PROCEDURE

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO SENSOR AZ SERIAL # _____

- () 1. Have a standard alcohol concentration solution (NIST traceable) ready.
_____ This may be a simulator (at $34^{\circ}\text{C} \pm 0.2^{\circ}\text{C}$) or a dry gas alcohol standard. Standard value: 0. _____ AC.
- () 2. Depress RBT AZ ON button.
_____ Depress Time button.
_____ Enter PIN #.
_____ Depress zero button.
- () 3. Follow RBT AZ and AS AZ display instructions.
- () 4. Device temperature registers between 10°C and 40°C .
- () 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the
_____ AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
- () 6. Test results 0. _____ AC.
- () 7. Remove test record when printout is complete.
- () 8. Turn off RBT AZ.

COMMENTS _____

SIGNATURE _____

DPS Form Exh H-2 (Rev 05-01)

EXHIBIT H-3

THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY

STANDARD QUALITY ASSURANCE PROCEDURES

ALCO SENSOR RBT AZ

STANDARD QUALITY ASSURANCE PROCEDURE

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

() 1. Have a standard alcohol concentration solution (NIST traceable) ready.
This may be a simulator (at 34°C ± 0.2°C) or a dry gas alcohol standard. Standard value: 0. _____ AC.

() 2. Depress RBT AZ ON button.
Depress Time button.
Enter PIN #.
Depress zero button.

() 3. Follow RBT AZ and AS AZ display instructions.

() 4. Device temperature registers between 10° C and 40° C.

() 5. When AS AZ display reads "CHEK", introduce standard for 7 seconds; depress the MANUAL button on the
AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)

() 6. Test results 0. _____ AC.

() 7. Remove test record when printout is complete.

() 8. Turn off RBT AZ.

() 1. Date and time correct.

() 2. Alcohol-free subject test result 0. _____ AC.

() 3. Proper sample recognition system.

() 4. Fuel cell response time for a standard solution.
Standard value: _____ AC. Time _____ sec.

() 5. Controls, displays, and printer worked correctly during the above quality assurance procedures.

COMMENTS _____

SIGNATURE _____

DPS Form Exh H-3 (Rev 05-01)

EXHIBIT H-4
THIS REPORT PREPARED PURSUANT TO DUTY IMPOSED BY A.A.C. R13-10-104 (A)

ARIZONA DEPARTMENT OF PUBLIC SAFETY
STANDARD QUALITY ASSURANCE PROCEDURES
ALCO SENSOR RBT AZ

CALIBRATION

AGENCY _____ DATE _____

QA SPECIALIST _____ LOCATION _____

RBT AZ SERIAL # _____ ALCO-SENSOR AZ SERIAL # _____

- () 1. Have a standard alcohol concentration solution (NIST traceable) ready.
This may be a simulator (at $34^{\circ}\text{C} \pm 0.2^{\circ}\text{C}$) or a dry gas alcohol standard. Standard value: 0. _____ AC.
- () 2. Depress RBT AZ ON button.
- () 3. Depress Time button, enter PIN #, depress #1 button.
- () 4. Follow RBT AZ and AS AZ display instructions.
- () 5. Device temperature registers between 23°C and 27°C .
- () 6. After a blank reading of 0.000 is displayed and the standard value is displayed, depress F3.
- () 7. When AS AZ display flashes "CAL", introduce standard for 7 seconds; depress the MANUAL button on the AS AZ at 5 seconds (while continuing to introduce the standard for another 2 seconds.)
- () 8. Remove test record when printout is complete.
- () 9. Run a calibration check on the Standard Calibration Check Procedure.
Test results: _____ AC.

COMMENTS _____

SIGNATURE _____

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

[R05-416]

PREAMBLE

1. Sections Affected

Article 7
R17-4-701
R17-4-702
R17-4-703
R17-4-704
R17-4-705
R17-4-706
R17-4-707
R17-4-708
R17-4-709
R17-4-710
R17-4-711

Rulemaking Action

New Article
New Section
New Section

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. § 28-3103

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 1289, April 1, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Janette M. Quiroz

Address: Arizona Department of Transportation
Administrative Rules Unit
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

Please visit the Arizona Department of Transportation (ADOT) web site to track progress of this rule and any other agency rulemaking matters at <http://www.azdot.gov/mvd/mvdrules/rules.asp>

5. An explanation of the rule, including the agency's reasons for initiating the rule:

In accordance with 49 CFR 1572 and A.R.S. § 28-3103, MVD proposes to create rules requiring applicants successfully pass a Security Threat Assessment, conducted by the Transportation Security Administration, before the Division will issue a Hazardous Materials Endorsement (HME).

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

This proposed rulemaking would bring the State of Arizona regulations in-line with the federal government's new regulations mandating all Commercial Driver License holders wishing to transport hazardous materials undergo a

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Security Threat Assessment, to be performed by the Transportation Security Administration, before issuance of an HME.

The new requirement governing the hauling of hazardous materials is an unfunded mandate. Therefore, ADOT incurred all cost associated with implementing the federal regulations.

Both the cost and benefit to ADOT in adopting these rules are substantial.

Arizona has funded all cost associated with implementation to include: System programming, driver notification, public and industry education, and other associated costs.

Arizona would stand to lose federal highway matching funds if the Arizona Legislature did not codify these requirements in statute, and administrative rules are not consequently adopted. Failure to implement the federal regulations could result in the state losing substantial federal funding, grant monies, and the ability to issue, renew, upgrade and transfer any Commercial Driver License.

The cost to commercial drivers wishing to obtain, renew, or transfer an HME is minimal. Drivers will be required to pay an additional \$94 fee for fingerprint and background services obtained through a federal third party, which provides oversight of the collection activities.

These rules enhance the state's ability to identify and deter the shipment and use of hazardous materials by terrorist. Drivers determined to pose a security threat will not be issued a hazardous materials endorsement.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Interested parties may communicate with the agency official listed in item #4 concerning the economic impact statement.

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: January 3, 2006
Time: 1:00 p.m.
Location: 1801 W. Jefferson, Rm. 403
Phoenix, AZ 85007
Nature: Oral Proceeding/Public Hearing

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

49 CFR 1572, November 24, 2004, R17-4-702

13. The full text of the rules follows:

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ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

Section

- R17-4-701. Reeodified Definitions
- R17-4-702. Reeodified Scope
- R17-4-703. Reeodified General Provisions
- R17-4-704. Reeodified Requirements for an HME
- R17-4-705. Reeodified Required Testing
- R17-4-706. Reeodified Fees
- R17-4-707. Reeodified 60-Day Notice to Apply
- R17-4-708. Reeodified Security Threat Assessment
- R17-4-709. Reeodified Determination of Security Threat
- R17-4-710. Reeodified Requests for Administrative Hearing
- R17-4-711. HME on CDL Learner's Permit

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Recodified Definitions

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

1. "Applicant" means an individual who applies to obtain an original, renewal, or transfer HME.
2. "CDL" means Commercial Driver License.
3. "HME" means Hazardous Materials Endorsement
4. "TSA" means the Transportation Security Administration.
5. "Security Threat Assessment" means a check by TSA to include a fingerprint-based criminal history records check, an intelligence-related background check, and final disposition.

R17-4-702. Recodified Scope

This Article applies to commercial drivers who are applying for an original, renewal or transfer HME, in accordance with 49 CFR Part 1572, published November 24, 2004, incorporated by reference and on file with the Arizona Department of Transportation. This incorporation by reference contains no future additions or amendments.

R17-4-703. Recodified General Provisions

A. An applicant for an HME shall comply with the provisions of 49 CFR 1572 and A.R.S. § 28-3103.

B. The Division will not issue or renew an HME unless the Division receives a determination of No Security Threat from TSA.

R17-4-704. Recodified Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid CDL.
2. Be at least 21 years of age.
3. Successfully complete all required testing under Section R17-4-705
4. Pay all applicable fees under R17-4-706.
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat.

R17-4-705. Recodified Required Testing

Original, transfer, and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3103.

R17-4-706. Recodified Fees

Applicants shall pay all applicable fees, as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

R17-4-707. Recodified 60-Day Notice to Apply

A. The Division shall notify an existing HME holder 60 days prior to expiration of a Security Threat Assessment that a new Security Threat Assessment shall be successfully completed to retain HME.

B. Failure to comply with subsection (A) will result in the cancellation of the individual's Arizona Driver License privileges.

R17-4-708. Recodified Security Threat Assessment

A. An applicant for an HME shall successfully complete a Security Threat Assessment every five years.

B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment:

1. Cancellation.
2. Suspension for a period of over one year.
3. Expiration for a period of over one year, and
4. Revocation for a period of over one year.

R17-4-709. Recodified Determination of Security Threat

Upon notification by TSA that an applicant has failed to pass the Security Threat Assessment:

1. The Division will immediately cancel the HME.
2. The Division will notify an HME holder with a Notice of Action that the holder has 15 days from notice date to have HME removed.
3. The applicant shall visit a designated CDL office for removal of HME.
4. Failure to comply with the Division's Notice of Action will result in the cancellation of the applicant's Arizona Driver License privilege.
5. If otherwise qualified an applicant may continue to hold a CDL without an HME

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17-4-710. Recodified Requests for Administrative Hearing

The Division will not accept a request for hearing for failure to qualify for an HME. In the event an applicant has failed to successfully complete the Security Threat Assessment, the applicant shall make appeal directly through TSA.

R17-4-711. HME on CDL Learner's Permit

In accordance with 49 CFR 383.23 the Division shall not issue an HME to an individual in possession of a CDL Learner's Permit.