

**The Oregon Administrative Rules contain OARs filed through August 15, 2008**

## **DEPARTMENT OF OREGON STATE POLICE**

### **DIVISION 30**

#### **ALCOHOL BREATH TESTING**

**NOTE:** OAR 257-030-0040 through 257-030-0100 apply to the Intoxilyzer 5000, which will be phased out and replaced. Upon completion of replacement of the Intoxilyzer 5000, OAR 257-030-0040 through 250-030-0100 will be repealed. OAR 257-030-0105 through OAR 257-030-0170 apply to the new instrument, the Intoxilyzer 8000, which are being phased into service in replacement of the Intoxilyzer 5000.

#### **257-030-0040**

##### **Criteria for Approval of Breath Testing Equipment**

Any instrument or equipment to be used for the testing of a person's breath to determine the alcohol content of the blood may be approved by the Oregon State Police if one or more of the following criteria are met:

- (1) Submission by the manufacturer or distributor of the instrument of at least two reports of studies correlating blood analysis and breath tests performed with this instrument, conducted by two separate laboratories of governmental health or law enforcement agencies, or independent organizations, financially unrelated to the manufacturer or distributor of such instruments.
- (2) Provision of a production model of the instrument by the manufacturer or distributor to the Oregon State Police for a sufficient period of time to allow Oregon State Police technician(s) to conduct sufficient investigation and laboratory tests to adequately ascertain accuracy and reproducibility of the breath testing equipment.
- (3) Those instruments which have been found by the National Highway Traffic Safety Administration to conform to the model specifications for evidential breath testing devices, and which are listed on the **Conforming Products List in the Federal Register**.
- (4) Subsequent series of above instruments, so long as the subsequent changes and series do not diminish the instrument's ability to accurately determine blood alcohol content.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813  
Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

## **257-030-0050**

### **Definitions**

As used in these rules, "Chemical Test" and "Chemical Analysis" both mean a quantitative analysis for alcohol by means of direct or indirect measurement of physicochemical technique performed on a sample of breath.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92

## **257-030-0060**

### **Approved Breath Testing Equipment**

The following breath testing equipment is approved under OAR 257-030-0040 for performing chemical analysis of a person's breath: The Intoxilyzer 5000:

- (1) Reports of correlation studies furnished by the manufacturer(s) are maintained by the Oregon State Police.
- (2) Correlation studies performed with the Intoxilyzer 5000 by Oregon State Police technician(s) are incorporated as **Appendix 1: Studies Performed with the Intoxilyzer® 5000**.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 2-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

## **257-030-0070**

### **Approved Methods for Operating the Intoxilyzer 5000**

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 5000:

- (1) Test Identification: A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument.
- (2) Pre-Test Requirement:
  - (a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;
  - (b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit to test the alcoholic

content of blood.

(c) There is no requirement that the subject rinse the mouth or remove dentures.

(3) Test Procedure:

(a) Ensure that the "Power" switch is on and the instrument is out of the "Not Ready" stage;

(b) Push "Start Test" button to initiate testing sequence;

(c) Insert test record card;

(d) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample when "Please Blow" appears on the display;

(e) Remove the test record card with printout of test results.

(4) Testing Sequence: The testing sequence the instrument follows will be:

(a) Diagnostics: The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational parameters are proper, the instrument will proceed to the next step;

(b) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(c) Subject Test: At this time the instrument will display "Please Blow". The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The subject test phase has been completed and will proceed to the next step when:

(A) The instrument has accepted the breath sample and displayed the result; or

(B) The subject test is aborted by action of the operator or by the instrument; or

(C) The three minute request period has lapsed; or

(D) The operator has depressed the Start Test button to indicate a refusal.

(d) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are proper the instrument will print the testing sequence information and display "Test Complete". If the post sample check is improper the instrument will abort the test and an error message will be displayed;

(e) Evidence Card: The final phase of the analysis is the printing of the evidence card. If all parameters and every operational aspect of the instrument were proper, a completed evidence card is received. If at any time there was a malfunction, error or condition that would affect the validity of the test, or any section of the instrument was not in perfect working order, the test would have been aborted and a completed evidence card would not be received.

(5) "Completed" Evidence Card: A "Completed" evidence card is one which indicates a breath test result, a refusal, or the presence of an interfering substance:

(a) An evidence card obtained using the "Reprint" option contains the identical information as would be printed on the original card and may be used in addition to or in place of the original test card;

(b) The operator shall record the following information on the evidence card: Name and date of birth of the subject tested, operator's name and breath test permit number;

(c) If the subject did not provide an adequate breath sample within the three minute request period, the instrument will indicate "Insufficient" and print an asterisk (\*) before the "Subject Test" result, and "\*Insufficient Sample -- Value printed was highest obtained". The value printed is an accurate measurement of the sample provided and is equal to or less than the subject's actual blood alcohol value;

(d) If during the three minute request period the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button to terminate the breath test request phase. The instrument will indicate "Refused" and print "Subject Test Refused". A printed test record card, as described in this subsection, is not required to document the operator's decision to terminate the breath test request phase as "Refused".

(e) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, the message "Interf Detected" will be displayed and the test will be aborted. The printout on the test record will indicate "Invalid Test \*Interferant Detected". This is a completed test and the operator should not restart the testing sequence.

(6) Incomplete Evidence Card: The following conditions will result in an incomplete evidence card:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the breath pressure sensor at any time within the three minute request period, the instrument will indicate "No Sample Given" and print an asterisk (\*) before "Subject Test" and "\*No Sample Given". If the evidence card indicates "\*No Sample Given", the operator should restart the testing sequence and proceed until a completed evidence card is obtained or until the subject refuses;

(b) If the operator receives an error message and print out from the instrument, such as "Invalid Test" (not to include "Invalid Test \*Interferant Detected"), "Residual Alcohol Present", "Inhibited.RFI", "Invalid Mode", "Check Ambient Conditions", etc., the operator should take corrective action as outlined in the Intoxilyzer 5000 Student Manual, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a willful act, to follow the instructions of the operator. A printed test record card, as described in section (5) (d), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (5)(b) of this rule does not invalidate the test result obtained if the procedures were followed.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 2-1993(Temp), f. & cert. ef. 9-23-93; OSP 3-1993, f. & cert. ef. 11-8-93; OSP 1-1996, f. & cert. ef. 3-22-96; OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

**257-030-0080**

**Qualifications of Breath Test Equipment Operators**

(1) No individual shall operate approved breath testing equipment to determine the alcoholic content of the blood of a person in accordance with the provisions of ORS 813.160 unless that individual has been issued a permit to operate such equipment by the Oregon State Police.

(2) To qualify for training and to obtain a permit for the operation of approved breath testing equipment, an individual must be a police officer as defined in ORS 801.395 or a trained technician of the Oregon State Police. The term police officer includes reserve police officer.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

### **257-030-0090**

#### **Training for Operators of Breath Test Equipment**

(1) The Oregon State Police, or instructors approved by the Oregon State Police will provide a course of instruction as provided in ORS 813.160.

(2) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required. Each officer or technician obtaining a passing grade will be issued a permit by the Oregon State Police stating the method and equipment the officer or technician is qualified to operate.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93

### **257-030-0100**

#### **Certification of Accuracy of Breath Test Equipment**

A trained technician of the Oregon State Police will conduct an accuracy test of approved breath testing equipment and shall certify the accuracy of the equipment if accuracy test performance is within a range of 0.010 high to 0.020 low of the expected value. The testing can be performed by either an on site test, or by remote testing via telephone modem utilizing a computer. The computerized testing will utilize a security system to ensure the integrity of the scientific testing of the breath test equipment.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-1992, f. 7-20-92, cert. ef. 9-1-92; OSP 1-1993, f. 1-19-93, cert. ef. 1-20-93; OSP 1-1996, f. & cert. ef. 3-22-96

### **257-030-0105**

#### **Definitions; Severability**

(1) As used in these rules, "Chemical Test" and "Chemical Analysis" of a person's breath both mean the quantitative analysis for alcohol by means of direct or indirect measurement of physicochemical technique. Two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result shall constitute a "Chemical Test" of a person's breath.

(2) A "valid breath sample" means a sample of a person's breath provided in such a manner to be acceptable for

analysis by the instrument.

(3) Severability: If any part or provision of OAR 257-030-0105 to 257-030-0170 or the application thereof is held invalid, the remaining part(s) or provision(s) shall remain in full force and effect.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

## **257-030-0110**

### **Criteria for Approval of Breath Testing Equipment**

Any instrument or equipment to be used for the testing of a person's breath to determine the alcohol content of the blood may be approved by the Oregon State Police if one or more of the following criteria are met:

(1) Submission by the manufacturer or distributor of the instrument of at least two reports of studies correlating blood analysis and breath tests performed with this instrument, conducted by two separate laboratories of governmental health or law enforcement agencies, or independent organizations, financially unrelated to the manufacturer or distributor of such instruments.

(2) Provision of a production model of the instrument by the manufacturer or distributor to the Oregon State Police for a sufficient period of time to allow Oregon State Police technician(s) to conduct sufficient investigation and laboratory tests to adequately ascertain accuracy and reproducibility of the breath testing equipment.

(3) Those instruments which have been found by the National Highway Traffic Safety Administration to conform to the model specifications for evidential breath testing devices, and which are listed on the **Conforming Products List in the Federal Register**.

(4) Subsequent series of above instruments, so long as the subsequent changes and series do not diminish the instrument's ability to accurately determine blood alcohol content.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

## **257-030-0120**

### **Approved Breath Testing Equipment**

The following breath testing equipment is approved under OAR 257-030-0110 for performing chemical analysis of a person's breath: The Intoxilyzer 8000: Correlation studies performed with the Intoxilyzer 8000 by Oregon State Police technician(s) are incorporated as **Appendix 2: Studies Performed with the Intoxilyzer® 8000**.

[ED. NOTE: Appendices referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

## Approved Methods for Operating the Intoxilyzer 8000

The following method of performing Chemical Analysis of a subject's breath is approved for the Intoxilyzer 8000:

(1) **Test Identification:** A check list containing an outline of the approved procedures shall be used and completed by all operators of this instrument. Failure to record information specified in this section does not invalidate the test result obtained if the testing procedures were otherwise followed.

(2) **Pre-Test Requirement:**

(a) The operator is certain that the subject has not taken anything by mouth (drinking, smoking, eating, taking medication, etc.), vomited, or regurgitated liquid from the stomach into mouth, for at least fifteen minutes before taking the test;

(b) There is no requirement that the operator be the person who makes observation of the subject. The person performing the Pre-Test Requirement (observation period) need not possess a permit for the testing of alcoholic content of blood;

(c) The Pre-Test Requirement (observation period) does not require that the subject rinse the mouth or remove dentures prior to providing a breath sample;

(d) The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the Pre-Test Requirement.

(3) **Test Procedure:** The operator shall administer the test (consisting of two valid breath samples, provided within a single testing sequence and culminating in a printed report with a completed test result) as follows:

(a) Ensure that the instrument display indicates "Ready to Start";

(b) Push "Start Test" button to initiate the test sequence;

(c) Once the operator initiates the testing sequence by pressing the "Start Test" button, the testing sequence shall be conducted without interruption until:

(A) The instrument completes the test sequence and the operator obtains a completed test report; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The operator or the instrument aborts the testing sequence.

(d) Using the instrument's bar code scanner and/or keyboard, the operator shall enter sufficient information to:

(A) identify the operator conducting the test; and

(B) establish that the operator possesses a valid operator permit and PIN combination. The operator should also enter sufficient information to link the test report to the test subject. The instrument will start the testing sequence when the operator's permit has been validated and the data entry process is complete;

(e) After instructing the subject on how to give a proper breath sample, have the subject provide a breath sample through the mouthpiece when "Please blow into mouthpiece to activate tone" appears on the display;

(f) Continued Observation Period: The operator shall continue to observe the subject and remain certain that the subject does not take anything by mouth (drink, smoke, eat, take medication(s), etc.), vomit, or regurgitate liquid from the stomach into mouth until the second breath sample request period is completed. The use of a mouthpiece by the subject during the testing sequence does not constitute a violation of the observation period.

(g) When "Please blow into mouthpiece to activate tone" again appears on the display, have the subject provide a second breath sample;

(h) Once the instrument accepts the second breath sample, it will automatically perform an analysis of a gaseous sample containing a known alcohol vapor concentration ("control sample") to test the accuracy and proper working order of the instrument. The operator does not need to take any action with the instrument at this time other than to monitor the progression of the instrument through the remainder of the test sequence. If all parameters are met, the instrument will proceed to the next step;

(i) When the instrument has successfully completed the test sequence, the operator will be afforded an opportunity to enter into and review comments added to the test report. The test report will then be printed with the test result.

(k) If at any time the operator has questions concerning the breath testing procedures or sequence, the operator should consult the **Intoxilyzer 8000 Operator's Guide** located near the instrument.

(4) **Testing Sequence:** The instrument will conduct the test as follows:

(a) Test Authorization: The operator shall enter into the instrument a permit and Personal Identification Number (PIN) information through the bar code scanner and/or keyboard for the purpose of: (1) identifying the operator conducting the test, and (2) establishing that the operator possesses a valid operator permit and PIN combination. Only operators who possess both a valid permit and PIN will be authorized to conduct a test sequence. If all parameters are met, the instrument will proceed to the next step;

(b) Data Entry: The operator should enter information into the instrument through the bar code scanner and/or keyboard for the purposes of linking a breath test document to the test subject. The instrument will proceed to the next step when the data entry process is complete;

(c) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(d) Diagnostics: The instrument will perform a complete diagnostic check on its components and operational standards. If all the operational components and standards are within proper parameters, the instrument will proceed to the next step;

(e) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(f) Breath Sample: At this time the instrument will display "Please blow into mouthpiece to activate tone." The subject is instructed on how to give a proper breath sample. The subject has approximately three minutes to comply with this request. The breath sample collection phase has been completed and will proceed to the next



step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject has refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(g) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(h) Air Blank: In preparation for the next breath sample, the instrument will delay for approximately ninety (90) seconds and then will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(i) Breath Sample: At this time, the instrument will again display "Please blow into mouthpiece to activate tone." The subject has approximately three minutes to comply with this request. The breath sample collection phase is complete and the instrument will proceed to the next step when:

(A) The instrument accepts the breath sample; or

(B) The operator depresses the "Start Test" button or the "R" key on the keyboard to indicate that the subject refused the test; or

(C) The three minute request period lapses; or

(D) The operator or the instrument aborts the testing sequence.

(j) Air Blank: The instrument will draw in outside air to purge the unit of any alcohol or other material which may be present in the sample cell. It is also looking at the operational environment and analyzing for any possible contaminant which may be present in the room air. If all parameters are met, the instrument will proceed to the next step;

(k) Control Sample: The instrument will perform an analysis of a gaseous sample containing a known alcohol vapor concentration, the result of which must be within a range of 0.010 high to 0.020 low of the expected value, to test the accuracy and proper working order of the instrument. If all parameters are met, the instrument will proceed to the next step;

(l) Air Blank: This air blank is to purge the instrument of the collected sample and once again check the operational environment for any possible contaminants. If all parameters are met, the instrument will proceed to the next step;

(m) Comments: The instrument will display three (3) prompts for the operator to enter any observations made during the test sequence. This information will be printed on the test report by the instrument. Entry of comment information is not required and does not preclude the operator from placing handwritten comments on the test report. The instrument will proceed to the next step when the comment entry process is complete.

(n) Test Report: The final phase of the testing sequence is the printing of the test report. If all parameters and every operational aspect of the instrument were proper, a completed test report is produced by the instrument. The test report will be titled "Breath Test Report" with the result of the chemical test printed in the "Test Result" box. If at any time there was a malfunction, event, or condition that would affect the validity of the test, or any section of the instrument was not in correct working order, the instrument would have aborted the test sequence and not produced a completed test report.

(5) **Completed Test Report:** A "Completed" test report is one which indicates a numeric test result, a refusal, or the presence of an interfering substance:

(a) A test report obtained using the "Reprint" option contains the identical information as would be printed on the original report and may be used in addition to or in place of the original test report. A "Reprint" may be performed either locally at the instrument location or remotely by the Oregon State Police;

(b) If during either of the breath sample collection periods, the subject refuses, through some willful act, to follow the instructions to provide an adequate breath sample, the operator may depress the "Start Test" button or the "R" key on the instrument keyboard to terminate the breath testing sequence. The instrument will indicate "Refused" on the display and a test result of "Refused" will be produced. A printed test report, as described in this subsection, is not required to document the operator's decision to terminate the breath test request phase as refused.

(c) If the instrument detects the presence of acetone or other substances which could interfere with the instrument's ability to accurately measure the amount of ethyl alcohol in the breath, it will display the message "Interfering Substance Detected" and abort the testing sequence. The printout on the test report will indicate "Interfering Substance" and "\*Invalid Test -- Interfering Substance Detected". This is a completed test and the operator should not restart the testing sequence.

(6) **Incomplete Test Report:** The following conditions will result in an incomplete test report:

(a) If the subject did not provide a breath sample or blow with sufficient force to activate the minimum breath flow requirements of the instrument at any time within either of the three minute breath sample collection periods, the instrument will indicate "No Sample Given" and print "\*Invalid Test -- No Sample Given". If the test report indicates "No Sample Given", the operator should restart the testing sequence and proceed until a completed test report is obtained;

(b) If the operator receives an exception message and printout from the instrument, such as "\*Invalid Sample -- Residual Alcohol Present", or "\*Invalid Test --" (not to include "\*Invalid Test -- Interfering Substance Detected"), etc., the operator should consult the "Suggested Corrective Action" outlined near the bottom of the test report, take appropriate action, and restart the testing sequence. Nothing in this subsection precludes an operator from terminating the breath testing sequence as "Refused" if the subject refuses, through a willful act, to follow the instructions of the operator. A printed test report, as described in section (5)(b), is not required to document the operator's decision to terminate the breath test sequence as "Refused".

(7) Failure to record information specified in section (1) and subsection (4)(b) of this rule does not invalidate the test result obtained if the testing procedures were otherwise followed.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

**257-030-0140**

## **Determining Agreement of Breath Samples Within a Testing Sequence**

Agreement between two valid breath samples within a testing sequence is established when the subject sample measurements agree within plus or minus ten percent of their mean, inclusive of the upper and lower bounds of the range. If the instrument establishes agreement, the lower breath sample measurement shall be truncated to two decimal places and reported as the chemical test result. If the subject sample measurements do not agree, the instrument will abort the testing sequence and display "Sample Correlation Failure".

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

### **257-030-0150**

## **Qualifications of Breath Test Equipment Operators**

(1) No individual shall operate approved breath testing equipment to determine the alcoholic content of the blood of a person in accordance with the provisions of ORS 813.160 unless that individual has been issued and maintains a valid permit to operate such equipment by the Oregon State Police.

(2) To qualify for training and to obtain a permit for the operation of approved breath testing equipment, an individual must be a police officer as defined in ORS 801.395 or a trained technician of the Oregon State Police. The term police officer includes reserve police officer.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

### **257-030-0160**

## **Training for Operators of Breath Test Equipment**

(1) The Oregon State Police, or instructors approved by the Oregon State Police will provide a course of instruction as provided in ORS 813.160.

(2) Upon completion of the course of instruction, a written examination will be given and a passing grade of 80 percent or above will be required. Each officer or technician obtaining a passing grade will be issued a permit by the Oregon State Police stating the method and equipment the officer or technician is qualified to operate.

(3) Upon issuance of a permit to operate by the Oregon State Police, the operator shall select a Personal Identification Number (PIN) to be used by the Oregon State Police to establish the operator's operator permit and PIN combination. The operator permit number shall be the operator's Department of Public Safety Standards and Training (DPSST) number. The operator's permit and PIN combination shall be unique and kept confidential by both the operator and the Oregon Department of State Police.

(4) Expiration:

(a) Permits shall expire at intervals not to exceed three (3) years from the original date of issue, unless renewed for an additional three (3) year period.

(5) Renewal:

(a) Operators that successfully complete the permit renewal process shall be issued a new expiration date not to

exceed three years from the date of renewal. The issuance of a renewal date shall have the effect of extending the same authorizations granted under the original permit to operate breath testing equipment.

(6) Suspension and Re-instatement of Permits:

(a) Operators that do not successfully complete the permit renewal process before the expiration date assigned to the individual permit shall have their authorization to operate breath testing equipment suspended.

(b) Upon suspension of a permit, an operator shall be granted a "grace period" not to exceed ninety (90) days in which to complete the renewal process without further penalty or reduction in operator status. Upon successful completion of the renewal process, the operator's permit shall be re-instated with the same authorizations issued under the original permit.

(c) Failure to complete the renewal process within the ninety (90) day grace period shall result in termination of the operator's permit.

(7) Termination and Revocation of Permits:

(a) Pursuant to ORS 813.160, operator permits are subject to termination and revocation at the discretion of the Department of Oregon State Police.

(b) Termination of an operator permit shall occur at 12:01 a.m. upon the ninety-first (91st) day after the date of expiration assigned to the permit.

(c) Revocation of an operator permit shall occur for any of the following reasons including, but not limited to:

(A) Disqualification of operator status or eligibility for training under OAR 257-030-0150;

(B) Failure to adhere to approved methods and procedures for operating breath testing equipment under ORS 813.160;

(C) For any other conduct deemed contrary to the Implied Consent Program at the discretion of the Department of State Police.

(d) An operator whose permit has been terminated or revoked by the Department may be eligible for reinstatement of their permit upon successful completion of an approved course of instruction as provided in ORS 813.160.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

**257-030-0170**

**Certification of Accuracy of Breath Test Equipment**

Pursuant to ORS 813.160(b)(C), a trained technician of the Oregon State Police shall conduct an accuracy test of approved breath testing equipment and certify the accuracy of the equipment if accuracy test performance is within a range of 0.010 high to 0.020 low of the expected value. The testing can be performed by either an on site test, or by remote testing via telephone, modem, or Internet connection utilizing a computer. The computerized testing will utilize a security system to ensure the integrity of the scientific testing of the breath test equipment.

Stat. Auth.: ORS 183.335 & 813.160

Stats. Implemented: ORS 813.160

Hist.: OSP 2-2006(Temp), f. 6-30-06, cert. ef. 7-5-06 thru 12-31-06; OSP 3-2006, f. & cert. ef. 11-22-06

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