

ALABAMA BREATH ALCOHOL TESTING PROGRAM

OPERATOR MANUAL Draeger Alcotest 7110 MK IIIC

REVISION 08/06/99

Permit # _____

OPERATOR

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Preface

The following manual is intended to provide the Breath-Testing Operator with the necessary information to operate the Draeger Alcotest 7110 MKIII instrument. The Draeger Alcotest 7110 MKIII is driven by software which does not provide the operator the ability to deviate from the required testing sequence. The rules promulgated by the Department of Forensic Sciences that pertain to the instrument operation are filed through the Alabama Administrative Procedures office. The Code of Alabama provides the context for instrument use in law enforcement. From time to time changes will be made in the instrument software, promulgated rules, and state statutes. In the event that the content of this manual deviates from the previously referenced information, the embedded instrument software, promulgated rules, and current state statutes supercede.

Introduction

The use of breath testing extends beyond the usual traffic enforcement to include such areas as boating, juvenile, and workplace monitoring. The Alabama Department of Forensic Sciences, deriving its authority from § 32-5A-194 of the Code of Alabama, is responsible for the administration of the Alabama Chemical Test for Intoxication Program. As part of its responsibility, the Alabama Department of Forensic Sciences (ADFS) promulgates and ensures forensically defensible quality controls and operational standards for the use of breath testing instruments in Alabama. The ADFS provides the following services:

- **training and licensure of breath testing operators**
- **equipment and supplies through the chemical test trust fund**
- **laboratory and expert testimonial services to law enforcement agencies**
- **onsite inspection, repair, and certification of breath testing instruments**

Nationally and here in Alabama the science of breath testing has evolved tremendously over the years. Early breath testing procedures included the use of balloons to trap the breath. In the 1950's Dr. Borkenstein introduced the now classic Breathalyzer 900, a chemical oxidation instrument. The infrared instruments came to the forefront of breath testing technology during the 1980's. In the 1990's and moving into the new millennium, the focus is on dual sensor technology and enhanced microprocessing applications. Companies have recently made dual sensor instruments available. Both Intoximeter and Draeger have introduced instruments that combine IR and an electrochemical fuel cell. Microprocessors enhance data entry, collection, and allow statistical analyses previously unavailable to the breath-testing industry. Today many attorneys specialize in alcohol related traffic offenses and frequently focus on the procedural aspects of a breath-testing program. As a licensed operator, your knowledge of the principles of breath testing and strict adherence to mandated operational procedures establish a solid foundation for the successful prosecution of alcohol related violations.

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Role of the Operator

The reliability of chemical breath testing devices, even in the hands of competent operators and in the face of comprehensive and repeated field trials, is regularly challenged. None of the breath testing instruments being used can be better than the individuals who operate them. The success of the entire chemical test for intoxication program must depend on the competency of the operators not only to perform the tests correctly, but to successfully back this competency under cross-examination in the court room. The responsibilities of a certified breath testing operator are:

- To understand the rules and regulations covering the chemical test for intoxication program, including relevant state statutes.
- To ensure the required 20-minute deprivation period is observed.
- To check that the dry gas cylinder gauges are in the operating range and that the printer is stocked with paper.
- To completely collect and enter all demographic and other required information.
- To recognize error codes given by the instrument and to know the proper response.
- To testify to the testing procedure in court.
- To maintain instrument operator certification.
- To know your limitations

Role of the ADFS

The Alabama Department of Forensic Sciences is responsible for the administration of the Alabama Chemical Test for Intoxication Program. Statute § 32-5A-194 of the Code of Alabama authorizes the ADFS to approve "satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation." In following the responsibilities as set forth in this statute, the ADFS will:

- Ensure forensically defensible quality controls and operational standards.
- Train and license breath-testing operators.
- Furnish equipment and supplies through the chemical test trust fund.
- Provide laboratory services.
- Provide expert testimony.
- Perform onsite inspection, repair, and certification of breath testing instruments.

Instrument Specifications: DraegerAlcotest 7110 MK IIIC

Range of Measurement: 0.00% to 0.63 %
Resolution: 0.001% BAC
Operational temperature range: 32° to 104° F
Warm-up time: approximately 12 minutes at room temperature

Electrical Characteristics:

Operating Voltages: 90-260 V, 50-80 Hz
10.5 V DC to 15 V DC car battery supply
Power Consumption: During warm-up time approx. 73 W
During test approx. 33 W
In Standby mode approx. 18 W

Dimensions:

W x H x D: 15.8" x 5.1" x 10.4"

Weight: Approximately 16.5 lbs

Choice of Location:

The Draeger 71 10 UK IIIC should be placed on a level and solid surface free of obstructions. Excessive vibrations and drafts should be avoided. Be sure not to obstruct gas release port at the rear of the instrument. The room the instrument is contained should be well ventilated in order to reduce the possibility of instrument error due to ethanol vapor in the room air. Mobile applications can be utilized upon authorization of the Department of Forensic Sciences.

Stationary Use:

Plug the power cord into the multi outlet surge protector.
Switch on the 7110 MK IIIC using the main switch located at the rear of the instrument.

Mobile Use:

Connect the 12 VDC power cable to the 7110 MK IIIC and to the vehicle's electrical system.

NOTE: The on/off switch is deactivated when connected to a vehicle's electrical system. To turn off the instrument, disconnect from the power source.

NOTE: The vehicle's system must be capable of continuously delivering a minimum of 10.5 V to the instrument.

Instrument components

Heated Breath Hose

The breath hose is a 46 inch long piece of flexible tubing that allows the breath sample to be introduced into the cuvette. The hose is heated to $45 \pm 3^{\circ}\text{C}$ to prevent condensation.

Mouthpiece

The plastic mouthpiece is disposable and fits at the end of the breath hose. The mouthpiece is intended to provide a sanitary means by which the subject introduces a breath sample to the instrument, as well as to prevent unwanted substances, such as spit or food particles from entering the instrument.

Digital Display

A 24 character alphanumeric readout that prompts the operator for information, displays operations the instrument is performing, and informs the operator of actions that must be taken.

Start Test Button

This orange button initiates a breath test when pushed.

Keyboard

The keyboard is a standard computer keyboard that allows the operator to enter data and other information into the instrument.

Dry Gas Calibration Standard Cylinders

The dry gas cylinders provide the calibration check samples to the instrument. The purpose of these cylinders is to provide the instrument with reference samples of a known ethanol concentration, thereby verifying the calibration of the instrument. The instrument uses two dry gas cylinders, each of which contains ethanol gas at a different concentration. One tank provides a 0.02 g/210 L sample, and the other provides a 0.08 g/210 L sample, to the instrument.

Gas Gauges

The gas gauges are attached to the dry gas cylinders and allow the operator to monitor the pressure of the gas that remains in the cylinder. The gas gauges must be checked prior to each test run on the instrument as they provide the operator with information necessary to run the instrument. When the gas pressure is below 75 psi, tests may still be run; however it is imperative that ADFS, or a designee, be notified so the tank can be changed. The instrument will continue to allow tests to be run until the gas cylinders no longer provide the instrument with the appropriate values.

Gas Valve

The gas valve controls the pressure of gas being delivered to the instrument.

Power Switch

The power switch provides power to the instrument.

Power Jack

The power cord is connected to the instrument at this point.

Keyboard Connector

The keyboard is connected to the instrument at this point.

Printer Connector

The external printer is connected to the instrument at this point.

Modem Connector

This is the point that allows the instrument to communicate with the host computer.

Infrared Cuvette

The infrared, or IR, cuvette is one of the two ethanol detection systems contained in the instrument. The cuvette is heated to $41 \pm 1^\circ\text{C}$ to avoid condensation. Energy from the IR source passes through the cuvette to the detector, where a difference in absorbance can be measured.

Electrochemical Fuel Cell

The electrochemical cell, or EC cell, is the other of the two ethanol detection systems contained in the instrument. Electrical current is produced in the fuel cell, and the voltage of this current can be measured and quantified to determine the ethanol concentration of the breath sample. An increase in the observed voltage corresponds to an increase in the breath alcohol level.

Computer

The computer is the "brain" of the instrument. The microprocessor continuously checks the important components of the instrument to ensure the instrument is functioning properly. The computer collects incoming signals, provides a means of communication between different components of the instrument and the user, stores data, and allows for communication between the instrument and the main frame computer.

Printer

The instrument uses both an internal dot matrix printer, and an external laser-jet printer. The laser-jet printer will be used to provide the operator with a hard copy of the Certificate of Breath Alcohol Analysis.

Standard Breath Test Sequence

The following describes the instrument's operations during a typical breath test.

Purging

The internal pump flushes the cuvette and breath hose with ambient air to ensure alcohol and other absorbing compounds are not present in the environment.

Ambient Air Check

Following the purging cycle, the instrument draws an air sample from the cuvette into the EC sensor for analysis to ensure the air in the cuvette is free of absorbing substances.

Air Blank Check

After purging, the intensity of the IR energy is analyzed and stored as a zero reference.

Accuracy Check

The 0.02 g/210 L level calibration standard is used to check the accuracy of the system.

Purging

Air Blank Check

Breath Test

The subject's breath is introduced into the cuvette. After breath flow stops, a pause allows the pressure in the cuvette to reach equilibrium with ambient air pressure. Once equilibrium is achieved, the infrared absorbance is determined. Immediately following IR analysis, a 1cc sample of breath is pulled from the cuvette for EC analysis.

Mouth Alcohol Detection

Presence of mouth alcohol in a breath sample is determined by a sharp increase in the ethanol concentration at the beginning of a subject's sample followed by a decrease in concentration at the end of the sample. When mouth alcohol is detected, the instrument displays a reference message and the test is aborted.

Profile Analysis

Several criteria must be met before the Alcotest 7110 MK IIIC will accept a breath sample. The following must be achieved before the profile analysis is activated:

- Minimum flow rate: 2.5 L/min
- Minimum duration: 4.5 sec
- Minimum volume: 1.5 L

A valid breath test is characterized by reaching a plateau in the ethanol concentration vs. time curve at the end of a breath sample. The plateau is reached when the concentration doesn't increase by more than 1% per $\frac{1}{4}$ second at a concentration above 0.04 g/210 L, or 0.001 g/210 L BAC below 0.04 g/210 L.

Purging

Air Blank Check

Second breath sample

Purging

Calibration Check

The 0.08 g/21 0 L level calibration standard is used to check the accuracy of the system.

Purging

Air Blank Check

Purging

Printout of Certificate of Breath Alcohol Analysis

Operating the Instrument

The instrument should remain powered at all times. If the instrument is devoid of power for some reason (power failure, etc.), after repowering the Draeger Alcotest 7110 MK IIIC, the instrument will perform a self-test. Each test will be displayed on the instrument's LCD as Performed. Then the following information will be alternately displayed until the Alcotest 7110 MK IIIC reaches the "Ready" mode.

WARMING UP

NOT READ

When the instrument is ready for measurement an audible signal (one beep) will be heard and the following will be displayed:

YOUR LOCATION

ALCOTEST 7110 MK IIIC

SERIAL NO. ABCD-1234

MM/DD/YYYY

PRESS BUTTON TO START SUBJECT TEST

If a test is not run within a period of time, the instrument will enter a standby mode. In the standby mode, the same information will be flashed across the screen with the exception of the final statement. When in standby, this will read:

PRESS BUTTON TO START WARM-UP

Pressing the orange button at this point will begin a warm up period.

Once the instrument is warmed up, the operator may begin testing. The test is begun by pressing the ORANGE button located on the front of the instrument. The display on the instrument will prompt the operator for answers to a set of questions about the subject, case, arresting officer, and operator.

*****NOTE: The subject must have completed the 20 minute deprivation period prior to initiation of the breath test!*****

Data Entry (Version 3.14)

The request for specified data from the operator will appear on the display screen in the following format. The instrument provides a verification feature for the data entry portion of the test. Each time an entry is completed, the operator must press the "Enter" key on the keyboard. At this time, the instrument will display the entry. The operator should then verify that the information entered is correct. If the information is correct, then "Enter" is hit again to accept the entry. If the information must be changed, retype the data and hit "Enter" to check the entry. If correct, hit the "Enter" key. This process may be continued until the entry is correct.

PERMIT NO.

The operator's permit number is entered here.

<1> DUI <2> ADMIN <3> DEMO

Press "1" for a normal breath test. See the sections entitled "ADMIN TEST" for information concerning selection "2" or "DEMO TEST" for information concerning selection "3".

ENTER DRY GAS STND #1 PRESSURE

Read and enter the pressure of the gas gauge on bottle #1.

ENTER DRY GAS STND #2 PRESSURE

Read and enter the pressure of the gas gauge on bottle #2.

20 MIN DEPRIVATION PERIOD REALIZED

Press "Y" if the 20 minute deprivation period has been observed.

ARRESTING OFFICER SAME AS OPERATOR

Enter "Y" if the operator was also the arresting officer. If another officer was the arresting officer, additional information regarding the arresting officer will be requested. See the section entitled "IF THE OPERATOR WAS NOT THE ARRESTING OFFICER" at the end of this section for a description of the data entries required if "N" is selected.

TIME OF OFFENSE MM/DD/YYYY HH:MM

Enter the date of the offense with a backslash character between month, day, and year. The year must be entered in the four digit format as shown. Enter a space, then enter the time of the offense.

*****If the difference in time between the time Of offense and the time on the instruments clock is shorter than 20 minutes, the test will be aborted!*****

COUNTY OF OFFENSE

Enter the **NUMBER** designation for the county where the offense occurred.

SUBJECT UTC NO.

Enter the UTC number off of the DUI arrest ticket. The UTC # must begin with a letter. Seven numeric digits then follow the letter.

SUBJECT LAST NAME

Enter the subject's last name. 24 character maximum. Hyphens and apostrophes are allowed.

SUBJECT FIRST NAME

Enter the subject's first name. 24 character maximum.

SUBJECT MIDDLE INIT.

Enter the middle initial of the subject.

SUBJECT STREET ADDRESS

Enter the subjects street address including house and/or apartment number.

SUBJECT TOWN/CITY

Enter the name of the city or town where the subject resides.

SUBJECT STATE

Enter the two letter abbreviation of the state in Which the subject resides.

SUBJECT DL# OR SS#

Enter the subject's driver's license number, social security number, or file number. If the identification is not issued by Alabama, enter the two letter state abbreviation after the DL #. A state ID number may also be entered here.

SUBJECT <M/F>

Type "M" if the subject is male or type "F" if the subject is female.

DOB <MM/DD/YYYY>

Enter the subject's date of birth. If the DOB is not known, enter 01/01/1900. This entry concludes the data entry portion of the test.

Following the data entry portion of the test, the measuring system will be purged and the following will be displayed:

PURGING

AMBIENT AIR CHECK

AIR BLANK CHECK

ACCURACY CHECK

PURGING

AIR BLANK CHECK

INSERT MOUTHPIECE PRESS BUTTON

Insert a new mouthpiece into the breath hose and press the orange button.

PLEASE WAIT

PLEASE BLOW

Instruct the subject to blow a continuous stream of breath into the instrument. The instrument will not recognize a breath sample until the minimum pressure, 2.5 L/min, is met.

As the subject blows into the instrument, a series of asterisks will appear on the display.

PLEASE BLOW

Instruct the subject to continue blowing into the instrument as long as they can, or until the instrument display reads "STOP"

The three previously stated criteria: 1.5 L minimum sample, 2.5 L/min pressure, and 4.5 seconds of blowing time must be fulfilled for the instrument to recognize a sufficient sample.

*****If the subject stops blowing at any point during delivery of the sample and starts blowing again, the sample will not be allowed and an additional sample must be given.*****

Once the subject has supplied a sufficient sample and has ceased blowing, the following is displayed:

STOP

Followed by:

REMOVE MOUTHPIECE

Remove the mouthpiece from the breath hose.

The instrument will proceed to the two minute waiting period, then repeat the first sequence:

**PURGING • AIR BLANK CHECK • INSERT IMOUTHPIECE, PRESS BUTTON •
PLEASE WAIT**

Followed by:

PLEASE BLOW

REMOVE MOUTHPIECE

The instrument will then go through a second calibration check at a different concentration.

*****The instrument will print a Certificate of Analysis. Only the lowest result will be printed on the Certificate of Analysis.*****

*****If at any time the Operator determines that a test should be aborted, this may be accomplished by holding down the orange button for two seconds.*****

If the subject stops blowing before the minimum requirements are met, or if the rate of breath flow falls below the minimum rate, the instrument will consider the sample to be deficient and the following will be displayed:

BLOWING TIME TOO SHORT

Or

MINIMUM VOLUME NOT ACHIEVED

The test will then be aborted.

Following the "**PLEASE BLOW >**" prompt, the subject has three minutes to deliver an acceptable breath sample. If the subject does not provide a sample within those three minutes, the following will be displayed:

<1> REFUSAL <2> UNABLE <RESTART TEST>

This message can also be obtained by pressing the "**R**" key on the keyboard. If "1" or "2" is pressed, the instrument display will print out a certificate of breath analysis indicating the refusal or inability to provide a sample. If the "3" is Pressed, the instrument will repeat the preparation cycle and prompt for a sample and the test will proceed as outlined above.

Admin Test

An administrative test is done for release purposes (to make sure the subject is no longer intoxicated), for tests done without a DUI arrest (employee tests, etc.), or for any other test where a certificate of analysis is not required. An admin test requires the operator to enter the subject's last name, first name, middle initial, driver's license number, and the reason for the test. The results will be printed on the internal printer and a certificate of analysis will not be printed.

Demo Test

A demo test can be run to show an outside party how the instrument works. An operator enters a valid permit number to initiate the test. The instrument will then initiate a complete test sequence without prompting for data. Following the test, the instrument will print a Certificate of Analysis containing predetermined information.

If the operator was not the arresting officer

If the arresting officer is not the same as the operator, additional information will be required and the following questions asked:

ARRESTING OFFICERS LAST NAME

Enter the arresting officer's last name.

ARRESTING OFFICERS FIRST NAME

Enter the arresting officer's first name.

ARRESTING OFFICERS MIDDLE INIT.

Enter the arresting officer's middle initial.

ARRESTING OFFICERS ID NUMBER

Enter the arresting officer's badge number.

ARRESTING OFFICERS AGENCY

Enter the arresting officer's agency name.

The data entry portion will then continue as outlined.

Instrument Error Messages/Maintenance

Fault message on the display	Probable cause	Remedy
<MOUTH ALCOHOL>	Residual mouth alcohol detected. Either observation period was insufficient or subject may have vomited or belched prior to test	The instrument will lock for 20 minutes. Repeat test after specified waiting time.
<MINIMUM VOLUME NOT ACHIEVED>	The provided breath volume is less than the minimum required volume (1.5 liters).	Repeat the breath test. The instrument will ask for another breath sample.
<PLATEAU NOT REACHED>	The provided breath sample has not reached a plateau (equilibrium).	Repeat the breath test. The instrument will ask for another breath sample.
<BLOWING TIME TOO SHORT>	The blowing duration was less than the minimum required time (4.5 seconds).	Repeat the breath test. The instrument will ask for another breath sample.
<BLOWING NOT ALLOWED>	Blowing without being prompted to do so.	Repeat test.
<READINESS TO BLOW EXPIRED>	The maximum allowable time to deliver a breath sample has expired (3 minutes)	Repeat test.
<OUT OF MEASURING RANGE>	The breath test result is higher than the acceptable measuring range: (0.00 to 0.45% BAC).	Subject should be examined by a physician immediately.
<ERROR STORING DATA>	Data storage is either uninitialized or completely full.	Upload data (if any), initialize memory data.
<STND-CHECK FAILED>	The STND-CHECK result was outside the set tolerance.	Use new cylinder, check cylinder pressure, and check cylinder valve.
<KEYBOARD ERROR>	Keyboard entry error by operator	Repeat function. If necessary, disconnect keyboard and reconnect.
<AMBIENT AIR CHECK FAILED>	Fuel cell detected alcohol in the IR cuvette.	Ensure that the ambient air is free of alcohol vapors.
<INTERFERENCE>	Interfering substance detected.	Repeat the test. If breath test cannot be completed, refer to the state regulatory options.
<PURGING ERROR>	No air, or not enough air, was detected to purge the system.	Make sure that neither the breath hose nor the cuvette exhaust port is obstructed.
<MEMORY NEARLY FULL>	Data storage area nearly full.	Upload data.
<MODEM ERROR>	Faulty modem/connection	Attempt to reinitialize modem.
<BREATH TEMP. INVALID>	Subject breath temperature out of range.	Repeat the test.
<TIME OVER FOR 2 SAMPLES>	Too much time elapsed between subject tests.	Repeat the test.
<TEST OUTSIDE \pm TOL.>	Test results are out of \pm tolerance.	Repeat the test.

The Alcotest 7110 MK IIIC is equipped with analysis features to detect several systematic problems. If a systematic error occurs, the display and the printer will indicate the error condition, for example:

ERROR [081] INTERFACE-SYS

*****If one of these error messages appears on the display, contact ADFS immediately! The instrument will no longer allow tests to be run.*****

Function Keys Available to Operators

A number of functions are available to operators. The following is a list of the available commands and their associated results. To access command functions on the Draeger Alcotest 7110 IIIC, press the "Esc" key on the keyboard. Commands may then be accessed by typing in the required word or phrase.

FUNCTION/COMMAND	EXPLANATION
DATE	Displays the date.
TIME	Displays the time.
COPY	<1> LAST TEST : Reprints the last test. <2> BY TEST NUMBER : Reprints the test designated by the test number entered.
CALL	The instrument sends stored data to the host computer.
MESSAGE	ENTER STRING, PRESS ENTER, ESC TO STOP Type a message to send to the host computer.
GAS	PERMIT NO : Requires the operator to enter a permit number to enter the lot number and expiration date of new gas cylinders. This function is available only to those operators trained to change gas cylinders.

Possible Interferences

Mouth Alcohol

The instrument will give an excessively high reading if the mouth contains raw alcohol at the time of the reading. This is the reason behind the 20 minute deprivation period. If the subject has been deprived of alcohol for at least 20 minutes prior to delivering a breath sample, mouth alcohol will have dissipated. Burping or regurgitation of stomach contents can result in mouth alcohol. For this reason, if the subject burps or vomits during this 20 minute deprivation period, the 20 minutes must be reinitiated.

Methyl Alcohol

Methyl alcohol is another alcohol that could interfere with the infrared breath testing device. Methanol, however, is significantly more toxic (approximately ten times more toxic) than ethanol. For this reason, a person intoxicated with methanol will exhibit much stronger effects than a person intoxicated with the same amount of ethanol. A subject intoxicated with methanol may also complain of vision problems.

Acetone

Acetone is present in the breath of all individuals, but not at levels significant to breath- testing. There are some conditions where the body will produce acetone in significant levels. This usually occurs in individuals with untreated diabetes, or people on fasting diets. The wavelength used by this instrument, 9.5 μm , the absorption of acetone is insignificant.

Other Miscellaneous Volatiles

Although other volatile substances may interfere with the infrared portion of the analysis, the fuel cell is designed to recognize alcohols. . In addition, the fuel cell can distinguish between ethanol and other alcohols. Any significant discrepancy between the values obtained by the two systems will cause the instrument to print an "INTERFERENCE" message.

RFI- Radio Frequency Interference

The instrument is designed to shield high level radio frequencies.

The Dry Gas Calibration Check

The dry gas cylinders provide the instrument with a sample of ethanol designed to produce a predetermined reading, or ethanol concentration, when introduced into the instrument. This instrument uses two different dry gas cylinders, one designed to produce a 0.02 g/210 L reading and one to produce a 0.08 g/210 L reading, providing the instrument with two different known concentrations of ethanol. The instrument will take read from each of these cylinders during each breath test sequence.

The purpose of these dry gas calibration checks is to provide the instrument with references which it then uses to check itself. If the instrument doesn't find the value it is expecting, it will abort the test sequence.

Appendix I

Rules and Regulations

Effective June 11, 1999

RULES
OF
THE ALABAMA DEPARTMENT OF FORENSIC SCIENCES
CHAPTER 370-1-1
CHEMICAL TEST FOR INTOXICATION
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370-1-1-.01	Evidential Breath Alcohol Testing	370-1-1-.03	Blood, Urine, and Other Bodily Substances
370-1-1-.02	Evidential Breath Alcohol Testing Equipment Inspections	370-1-1-.04	Field Sobriety Screening Devices
		370-1-1-.05	Field Sobriety

370-1-1- .01 Evidential Breath Alcohol Testing

(1) Qualifications. Applicant must have satisfactorily completed the course in the theory and operational procedures of the breath alcohol testing instrument and be an employee for one of the agencies listed in Section 32-5A-194 Code of Alabama, 1975 as amended.

2) Certification Permits.

(a) Permits to perform chemical analysis of a person's breath pursuant to the Alabama Chemical Test for Intoxication Act will be issued by the Director of the Department of Forensic Sciences and certified by the Technical Director of the Department of Forensic Sciences.

1 (b) All permits outstanding will automatically expire at 12.01 a.m. on the date indicated on the permit. Permits will be issued for a period not to exceed two (2) years following the year of issuance.

(c) A person certified as an operator shall satisfactorily complete a continuing education session each calendar year and be an employee for one of the agencies listed in Section 32-5A- 1 94, Code of Alabama, 1975, as amended.

(d) The violation of any of the rules of the Alabama Department of Forensic Sciences promulgated under the provisions of Section 32-5A-194, Code of Alabama, 1975 as amended shall constitute grounds upon which the Director may revoke such permit.

(e) If the Director receives a complaint or has reason to believe that a permittee is violating or has violated any of the rules, he shall notify such permittee that a hearing will be held at a place and time designated by the Director to determine if the alleged infraction has occurred.

(f) The hearing shall be conducted by the Director or by someone he shall designate.

(g) Upon revocation of a permit, the Director shall notify the permittee, the permittee's immediate superior and the Commander, Implied Consent Unit, Alabama Department of Public Safety.

(3) Approved Evidential Breath Alcohol Testing Instrument List.

(a) The following Evidential Breath Alcohol Testing Instruments are approved.

1. Intoxilyzer 5000, CMI, Inc., Owensboro, KY.

2. Alcotest 7110 MK III, Draeger Safety, Inc., Durango, CO.

(4) Methods Approved by the Alabama Department of Forensic Sciences.

(a) Intoxilyzer 5000. The approved procedure, technique or method of operation appears on the Intoxilyzer 5000 Operational Procedure Card.

(b) Draeger Alcotest 7110 MK III. The approved procedure, technique or method of operation resides in the software of the Draeger Alcotest 7110 MK III. The procedure requires the operator to input the following clerical data as prompted in order to initiate the test sequence. It is appropriate for the operator to enter a "-" for steps 6.(i), 6.(ii), 6.(iii), 6.(iv), 6.(v), 9,10,11,12,13,14,15,16 and 17 when the requested information cannot be obtained. Omission of an entry in any field will prevent the completion of the test.

1. Permit Number. The operator must enter his pen-nit number.

2. <1> DUI <2> ADMIN <3> DEMO. The operator must select the type of test to be administered.

3. Enter Dry Gas Standard #1 Pressure. The operator must observe and record the pressure from the gas regulator gauge on bottle #1.

4. Enter Dry Gas Standard #2 Pressure. The operator must observe and record the pressure from the gas regulator gauge on bottle #2.

5. Twenty Minute Deprivation Period. The operator must confirm that the subject has been under the control of the arresting officer and /or the operator for a minimum of 20 minutes. Enter "Y" for yes or "N" for no.

6. Arresting Officer Same As Operator. The operator must designate whether the breath test operator is or is not the arresting officer. Enter "Y" for yes or "N" for no. If the arresting officer is not the breath test operator then the following information on the arresting officer will also be required.

(i). Arresting Officers Last Name. The operator must enter the last name of the arresting officer.

(ii). Arresting Officers First Name. The operator must enter the first name of the arresting officer.

(iii). Arresting officers Middle Initial. The operator must enter the middle initial of the arresting officer.

(iv). Arresting Officers Identification Number. The operator must enter the badge number of the arresting officer.

(V). Arresting Officers Agency. The operator must enter the agency name of the arresting officer.

7. Date Of Offense. The operator must enter date of offense using the format <MM/DD/YYYY>.

8. Time Of Offense. The operator must enter the approximate time of offense using military time designation. When the difference between the time of the offense and the real time is less than twenty minutes the unit will Purge the system and abort the test.

9. County of Offense. The operator must enter the county in which the offense occurred.
10. Subject's Uniform Traffic Complaint Number. The operator must enter the subject's Uniform Traffic Complaint number.
11. Subject Last Name. The operator must enter the subject's last name.
12. Subject First Name. The operator must enter subject's first name.
13. Subject Middle initial. The operator must enter subject's middle initial.
14. Subject Street Address/Apartment. The operator must enter subject's street or apartment address.
15. Subject Town/City. The operator must enter subject's town or city of residence.
16. Subject State. The operator must enter subject's state of residence using the appropriate two letter designation.
17. Subject Driver License or Social Security Number. The operator must enter subject driver's license, social security number or Alabama I.D. number.
18. Subject <Male /Female>. The operator must designate the subject's gender using "M" for male and "F" for female.
19. Subject Date Of Birth. The operator must enter the subject's date of birth using the format <MM/DD/YYYY> or <MM/DD/YY>. An entry of 01/01/1900 will be used when the subject's date of birth can not be obtained.

(5) Report of Breath Alcohol Test Result.

(a) Intoxilyzer 5000. Two (2) samples of breath shall be tested. A second breath sample shall be tested at no less than two (2) minutes and not more than fifteen (15) minutes after the first sampling as reflected by the time stamped on the printer ticket. Report the lower test result if they are different. Maintain the record of both test results.

(b) Draeger Alcotest 7110 MK III. For purposes of this regulation two (2) acceptable samples of breath shall constitute a breath alcohol test.

1. The Draeger Alcotest 7110 MK III is programmed to require a second sample of breath be tested no less than two (2) minutes and not more than fifteen (15) minutes after the first sampling. The two samples must agree within ± 0.020 grams of ethanol per 210 liters of breath. If the two samples do not agree within ± 0.020 grams of ethanol per 210 liters of breath, the instrument is programmed to begin a second breath alcohol test procedure. The instrument will prompt the operator to have the subject provide two (2) additional samples of breath. Failure to provide two (2) acceptable samples of breath for the second breath alcohol test procedure will constitute a refusal of the whole test. The lowest of the breath alcohol results from the completed breath alcohol test procedure will be reported. A record of the breath alcohol results from the breath alcohol test will be stored in the electronic memory. The Alcotest 7110 MK III is programmed to generate a Certificate of Breath Alcohol Analysis.

2. A complete breath alcohol test procedure shall incorporate two (2) calibration checks to verify the calibration of the Draeger Alcotest 7110 MK III. A 0.020 grams of ethanol per 210 liters of breath calibration check shall precede and a 0.080 grams of ethanol per 210 liters of breath calibration check shall follow each set of duplicate subject samples. The Draeger Alcotest 7110 MK III must produce a reading between 0.015 grams of ethanol per 210 liters of breath and 0.025 gram of ethanol per 210 liters of breath

inclusive when a 0.020 grams of ethanol per 210 liters of breath calibration check vapor is introduced into the instrument to pass the calibration check. The Draeger Alcotest 7110 MK III must produce a reading between 0.076 grams of ethanol per 210 liters of breath and 0.084 grams of ethanol per 210 liters of breath inclusive when a 0.080 grams of ethanol per 210 liters of breath calibration check vapor is introduced into the instrument to pass the calibration check. The Alcotest 7110 MK III will discontinue the test sequence if the acceptable range for the 0.020 grams of ethanol per 210 liters of breath calibration check or the 0.080 grams of ethanol per 210 liters of breath calibration check is exceeded. "Calibration Checks Before and After Test - OK" will be noted on the Certificate of Breath Alcohol Analysis to indicate the criteria for an acceptable calibration check was met.

3. An internal diagnostic check is performed by the Draeger Alcotest 7110 MK III one hundred twenty eight (128) times per second. The Draeger Alcotest 7110 MK III will store in memory a record of the diagnostics test performed at the beginning and end of each test sequence. "Diagnostic Checks Before and After Test - OK" will be noted on the Certificate of Breath Alcohol Analysis to indicate that no malfunction was detected.

(c) A person directed to submit to a breath alcohol test procedure requiring two (2) breath samples, who fails to provide two (2) complete and acceptable samples sufficient for analysis by an approved evidential breath alcohol testing instrument shall be deemed to have refused the entire test. Such person shall be reported as having refused to submit to the chemical test.

Authority: Code of Alabama, 1975, Section 32-5A-194, as amended.

History: Amended: Filed December 4, 1998; effective January 8, 1999. Amended: Filed May 7, 1999; effective June 11, 1999.

370-1-1-.02 Evidential Breath Alcohol Testing Instrument Inspections.

(1) Each Intoxilyzer 5000 shall be inspected at least once a calendar month.

(a) Inspection Form IC-12 shall have inspection results recorded as either pass or fail by a Department of Public Safety Implied Consent Unit Inspector, the Department of Forensic Sciences Technical Director or his designee. A description of any failure condition found and corrected during inspection shall be recorded. An Intoxilyzer 5000 must be removed from service if any failure is not corrected on site by the inspector.

(b) Standard Operational Test. Enter pass if the printer prints all characters legibly and in proper sequence and the checklist operations are performed properly and when an alcohol-free breath test produces a reading of 0.000%. Enter fail if the printer does not print all characters legibly and in proper sequence or when the Intoxilyzer 5000 fails to perform properly the checklist operations.

(c) Electrical Requirement. An Intoxilyzer 5000 used for evidentiary purposes shall be powered an outlet, which is electrically grounded.

(d) Operator's Manual. An operator's manual shall be available at each Intoxilyzer 5000.

(e) Diagnostic Check. Enter pass if the Intoxilyzer 5000 completes the diagnostic sequence display indicating any malfunctions. Enter fail if any malfunction is indicated. Correct any malfunction on site and so note or remove the Intoxilyzer 5000 from service until corrected and re-inspected.

(f) Display Test. Enter pass if all segments of the Intoxilyzer 5000 display panel are functioning properly. Enter fail if any segment of the display panel functions improperly. Correct any display functions on site and so note or remove the Intoxilyzer 5000 from service until corrected and re-inspected.

(g) Date Check. Enter pass if the Intoxilyzer 5000 displays the correct date. Enter fail if the 5000 displays an incorrect date. Correct the date, if necessary, and so note in Form IC-12 or remove the Intoxilyzer 5000 from service until corrected and re-inspected.

(h) Time Check. Enter pass if the Intoxilyzer 5000 displays time, which agrees with the inspector's watch. Enter fail if the Intoxilyzer 5000 displays time, which disagrees with the inspector's watch. Correct the time, if necessary, and so note in Form IC- 12 or remove the Intoxilyzer 5000 from service until corrected and re-inspected.

(i) Mouth Alcohol Detection Test. A breath sample containing mouth alcohol will be analyzed. Enter pass or fail result in Form IC- 1 2. Enter pass if Intoxilyzer 5000 does not display a numerical result. Enter fail if Intoxilyzer 5000 displays a numerical result and remove the Intoxilyzer 5000 from service until corrected and re-inspected.

(j) Calibration Check. The Department of Forensic Sciences shall verify the concentration of each lot of ethanol solutions used for Intoxilyzer 5000 calibration checks. Storage of calibration check solutions shall comply with manufacturers recommendations. Calibration check solution lot number, manufacturer and expiration date shall be recorded in Form IC- 12.

1. inspector shall enable three (3) decimal place test result display and recording.

2. Enter pass if the Intoxilyzer 5000 produces a reading between 0.076% and 0.084% inclusive when a 0.080% calibration solution vapor is introduced into the Intoxilyzer 5000 upon duplicate analyses. Enter fail if the Intoxilyzer 5000 produces any other reading upon the introduction of a 0.080% calibration solution vapor into the Intoxilyzer 5000 and remove the Intoxilyzer 5000 from service until corrected and re-inspected. Attach the tissue part of the printer cards to the green copy of Form IC-12. Attach the second tissue part of the printer cards to the blue copy of Form IC- 12. Set test result display and recording to two (2) decimal places.

(k) Radio Frequency Interference Detector Test. Place a two-way portable radio within six inches of the breath hose. Start a test. During test, key radio to broadcast function. Enter pass if the Intoxilyzer 5000 displays "inhibited RFI". Enter fail if said display is not observed and correct any malfunction on site and so note or remove the Intoxilyzer 5000 from service until corrected and re-inspected. RFI Detection Tests will begin on October 1, 1996.

(l) Standard Operational Test. Enter pass if the printer prints all characters legibly and in proper sequence and the checklist operations are performed properly and when an alcohol-free breath test produces a reading of 0.000%. Enter fail if the printer does not print all characters legibly and in proper sequence or when the Intoxilyzer 5000 fails to perform properly the checklist operations and remove the Intoxilyzer 5000 from service until corrected and reinspected.

(m) Complete an Inspection Form IC-12 for each Intoxilyzer 5000 inspected. File the pink copy of the IC- 12 with the logbook.

(2) Each Draeger Alcotest 7110 MK III shall be certified by the Department of Forensic Sciences Technical Director or his designee prior to being placed in operation. Each Draeger Alcotest 7110 MK III shall be electronically inspected at least once every six calendar months by the Department of Forensic Sciences Technical Director or his designee. Each Draeger Alcotest 7110 MK III shall be recertified by the Department of Forensic Sciences Technical Director or his designee at least once a calendar year.

(a) Certification. Certification of the Draeger Alcotest 7110 MK III will demonstrate the ability of the instrument to identify and flag specific conditions and verify the analytical integrity of the instrument. A Draeger Alcotest 7110 MK III shall not be placed in service until a result of pass is attained for all certification tests. The Alcotest 7110 MK III Certification Record (Form DFS.IC.02) shall have certification results recorded as either pass or fail by the Department of Forensic Sciences Technical Director or his designee.

1. Purging Error- Place the instrument in the "Error Check" mode. Restrict the air flow into the ambient air inlet for a minimum of forty five (45) seconds while the pump is running. This will prompt the instrument to display "Check Sampling Hose" and sound an audible alarm. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
2. Minimum Volume Not Achieved. Place the instrument in the "Error Check" mode. At the prompt "Please Blow", deliver a deficient sample volume indicated on the display by less than ten (10) asterisks while blowing into the instrument for at least four and a half (4.5) seconds. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
3. Blowing Time Too Short. Place the instrument in the "Error Check" mode. At the prompt "Please Blow", deliver a sample of at least one and a half (1.5) liters indicated on the display by more than ten (10) asterisks in less than four and a half (4.5) seconds. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
4. Blowing Not Allowed. Place the instrument in the "Error Check" mode. When the instrument displays "Ambient Air Check" deliver a sample into the instrument. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
5. Ready To Blow Expired. Place the instrument in the "Error Check" mode. At the prompt "Please Blow" do not provide a sample. After three (3) minutes has elapsed this error will be triggered by the instrument. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
6. Ambient Air Check. Place the instrument in the "Error Check" mode. When the instrument begins to purge itself, direct an ethanol vapor with a concentration of 0.001 grams of ethanol per 210 liters of breath or greater near the breath hose inlet, but not directly into the breath hose inlet. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
7. Interference. Place the instrument in the "Error Check" mode. Prepare a 500 milliliter Methanol control by adding 105 microliters of Methanol to 500 milliliters of distilled water and dispense simulator. At the prompt "Please Blow", deliver a sufficient sample into the instrument. Record pass message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
8. Mouth Alcohol. Place the instrument in the "Error Check" mode. At the prompt "Please inspector should rinse his mouth with a common mouthwash containing ethanol, wait at least 30 seconds then deliver a sufficient sample into the instrument. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
9. Accuracy Check Failed. Place the instrument in the "Error Check" mode. Connect the dry gas reverse sequence and initiate a test. Record pass if the message "Error Triggered, Test Okay" is printed. Record fail if it is not printed. The target error will be stored as the actual error in memory.
10. Standard Gas Supply. Disconnect the dry gas cylinders from the instrument and initiate a test. Record pass if the message "Std Gas Supply" is displayed. Enter fail if it is not displayed.
11. Outside \pm Tolerance. Initiate a test sequence. At the prompt "Please Blow" deliver a sufficient sample. When prompted to deliver the second sample, deliver a sufficient sample which varies in

concentration from the first by at least 0.021 grams of ethanol per 210 liters of breath. Record pass if the message "Outside \pm Tol" is displayed. Record fail if it is not displayed.

12. No Admittance. The inspector should attempt to initiate a restricted function without the use of an appropriate key. Record pass if the message "No Admittance" is displayed. Record fail if it is not displayed.

13. Linearity Check. Prepare ethanol control solutions at the following concentrations 0.000, 0.020 (± 0.005 grams of ethanol per 210 liters of vapor), 0.040 (± 0.005 grams of ethanol per 210 liters of vapor), 0.080 ($\pm 5\%$), 0.120 ($\pm 5\%$), 0.200 ($\pm 5\%$), 0.500 ($\pm 5\%$), gram of ethanol per 210 liters of vapor, and dispense into a simulator. Initiate a test sequence. At the prompt "Please Blow", deliver a sufficient vapor sample at a concentration of the 0.000 grams of ethanol per 210 liters of vapor into the instrument. Repeat this procedure three times for each ethanol control. Record pass if the average of the three results the instrument produces is within the acceptable range for each level of ethanol controls. Record fail if the average of the three results the instrument produces exceeds the acceptable range for any one ethanol control. If a response of fail is recorded during the linearity check the instrument must be recalibrated.

14. Breath Temperature Check. Initiate a test sequence. Deliver a sample into the instrument from a precisely controlled water bath apparatus adjusted to a temperature of approximately 34.0°C . Record pass if the instrument displays a temperature within $\pm 0.3^{\circ}\text{C}$ of the actual temperature. Record fail if the instrument displays a temperature that exceeds the acceptable limit. Repeat this procedure using a precisely controlled water bath apparatus adjusted to a temperature of approximately 37.0°C .

15. Interference Check. Prepare a 500 milliliter solution at a concentration of 0.080 grams of ethanol per 210 liters of vapor and dispense into a simulator. Add 950 microliters of Acetone to the simulator and mix. Initiate a test sequence. At the prompt "Please Blow", deliver a sufficient sample into the instrument. Record pass if the message "Interference" is displayed or if the instrument provides a result of 0.080 grams of ethanol per 210 liters of breath ($\pm 5\%$) result. Record fail if "Interference" is not displayed or if the instrument provides an unacceptable analytical result.

16. AC Voltage Range Check. Verify the Draeger Alcotest 7110 MK III's performance capability throughout a voltage range of approximately 90 - 200 volts AC and 12 volts DC.

(i) With the instrument connected to a variable AC power supply adjust the voltage to approximately 90 volts AC. Initiate a test sequence. When prompted deliver a sufficient sample into the instrument. Record pass if the instrument produces an acceptable result. Record fail if the instrument does not produce an acceptable result.

(ii) With the instrument connected to a variable AC power supply adjust the voltage to approximately 220 volts AC. Initiate a test sequence. When prompted deliver a sufficient sample into the instrument. Record pass if the instrument produces an acceptable result. Record fail if the instrument does not produce an acceptable result.

(iii) With the instrument connected to a DC power supply adjust the voltage to approximately 12 volts DC. Initiate a test sequence. When prompted deliver a sufficient sample into the instrument. Record pass if the instrument produces an acceptable result. Record fail if the instrument does not produce an acceptable result.

(b) Electronic Inspection. The electronic preventative maintenance inspection will insure the reliability of the Draeger Alcotest 7110 MK III. Initiate the Draeger Alcotest 7110 MK III communication software. Compare the displayed parameters for instrument Serial Number, Instrument Location, Firmware Version, Sequential Test Number, Sequential Calibration Number, Date Last Calibrated, Date, Time, Host PC Modem Number, Measuring Units, IR Signal, EC Offset, 12 VDC Power Supply, Battery Voltage, Calibration Configuration, Local Print, Cuvette Temperature, Breath Hose Temperature, % Memory Full, Ambient Air Pressure, Function Key, Flow Sensor 1, Breath Probe Temperature, Breath Temperature 1,

Breath Temperature 2, and Cylinder Pressure Limit with previous certification and recertification parameters.

(c) Annual Recertification. The recertification shall consist of the same tests used during initial certification. The results of the recertification shall be recorded on the Draeger Alcotest 7110 MK III certification Record (Form DFS.IC.02) and shall be maintained by the Department of Forensic Sciences with any previous certification or recertification records. An instrument must be removed from service if any failure is detected during annual recertification.

The Department of Forensic Sciences shall verify the concentration of each lot of ethanol solutions used for the Draeger Alcotest 7110 MK III calibration checks. The calibration check solution lot number, manufacturer and expiration date shall be recorded by the Department of Forensic Sciences.

(5) Appendices

(a) Intoxilyzer 5000 Operations Procedure Card.

(b-1) Intoxilyzer 5000 Inspection Sheet (Form IC-12 Rev. 9/1/96). In use on and after October 1, 1996.

(d) Draeger Alcotest 7110 MK III Certification Record (Form DFS.IC.02). In use on and after April 28, 1999.

Authority: Code of Alabama, 1975, Section 32-5A-194, as amended.

History: Amended: Filed December 4, 1998; effective January 8, 1999. Amended: Filed May 7, 1999; Effective June 11, 1999.

370-1-1-.03 Blood, Urine and Other Bodily Substances

(1) Qualifications. Applicants for a permit to perform chemical analysis of a person's blood, urine, or other bodily substance pursuant to the Alabama Chemical Test for Intoxication Act shall meet the following requirements:

(a) Have performed and demonstrated the ability to perform routine blood, urine, or other bodily substance analyses during a normal course of business by using an approved method for the identification and quantitation of alcohol and/or other drugs.

(b) Be either

1. a pathologist duly licensed to practice pathology in the State of Alabama.

2. a medical technologist holding a current certificate by the American Society of Clinical Pathologists.

3. a licensed registered nurse or clinical laboratory technician with a minimum of two years medical laboratory experience and is under the direct supervision of a duly licensed pathologist.

4. the holder of a bachelor's degree in chemistry or its equivalent with a minimum of two years of experience in analytical chemistry.

5. Director, Alabama Department of Forensic Sciences and/or his/her designated assistant employed as a member of the Alabama Department of Forensic Sciences.

(2) Certification Permits.

(a) Permits to perform chemical analysis of a person's blood, urine, or a preserved breath sample the Alabama Chemical Test for Intoxication Act will be issued by the Director and certified by the Technical Director.

(b) All permits outstanding will automatically expire at 12:01 a.m. on the date indicated on the permit. Permits will be issued for a period not to exceed two (2) years following the year of issuance.

(3) Methods

(a) Definition - Method as defined herein shall mean a discipline that deals with the principles and techniques of scientific inquiry.

(b) Alcohol analysis shall be performed by Gas Chromatography utilizing internal standard headspace injection.

(c) Other drugs shall be analyzed by Gas Chromatography, Ultraviolet Spectrophotometry, Visible Spectrophotometry, Thin Layer Chromatography, Mass Spectrometry, Liquid Chromatography, Color Tests, Microcrystalline Tests, Fluorimetry, Infrared Spectrophotometry, Nuclear Magnetic Resonance Spectroscopy, or Immunoassay.

Authority: Code of Alabama, 1975 && 32-5-192, as amended.

370-1-1-.04 Field Sobriety Screening Tests

(1) Approved Procedure. The test battery comprising the Horizontal Gaze Nystagmus (HGN), One-leg Stand (OLS), and Walk and Turn (WAT) Field Sobriety Tests as described and applied according to the DUI Detection and Standardized Field Sobriety Testing Student Manual Publication HS 178, Transportation Safety Institute, National Highway Traffic Safety Administration, U.S. Department of Transportation in its June, 1992 or successor printings.

(2) Training Certificates. A certificate will be issued to each officer who passes written and practical examinations during a minimum of 16 hours of Standardized Field Sobriety Test Training which included no less than two controlled drinking workshops using volunteer drinkers and wherein the administration and interpretation of the HGN, OLS, and WAT tests was presented.

(3) Appendix. Standardized Field Sobriety Test Certificate.

Authority. Act 96-324

370-1-1-.05 Field Sobriety Screening Devices

(1) Device approval. Only screening devices meeting the following requirements shall be accepted for evaluation:

(a) Device must be named on the conforming products list of instruments which meet the model specification for evidential breath testing devices (58 FR 48705 or its successor standard).

(b) The device shall provide a digital test result displayed to three decimal places.

(c) The device shall be battery powered by AA and/or AAA and/or C and/or D and/or nine-volt type cells.

(d) The device must utilize disposable mouthpieces.

(e) The device manufacturer shall submit no fewer than two production units for evaluation.

(f) The device manufacturer shall provide a one-year warranty covering parts and labor to the purchaser.

(2) Approved Field Sobriety Screening Device List. The following devices are approved:

(a) Alco-Sensor III (Device Model)
Intoximeters, Inc., Saint Louis, MO (Manufacturer)

(b) intoxilyzer 300 (Device Model)
CMI, Inc., Owensboro, KY (Manufacturer)

(c) S-D2 (Device Model)
CMI, Inc., Owensboro, KY (Manufacturer)

(3) Approved Training. Training afforded by the manufacturer of an approved device and/or training received as a part of the Alabama Breath Testing Instrument course shall constitute approved training.

(4) Operation of Devices.

(a) Officers shall use the device according to the manufacturer's operational procedure.

(b) Every subject must be under observation by the arresting officer for a period of twenty minutes before the screening device test is administered.

(5) Calibration. Calibration shall be checked every twelve (12) months. The device passes the calibration check if it renders a reading between 0.030 and 0.050 inclusive on a 0.040 percent standard livered from either a wet bath simulator or a dry gas cylinder.

(6) Training and Calibration Records. It shall be the responsibility of each law enforcement agency to maintain permanent records documenting the training of each officer in the use of approved field sobriety screening devices and the annual calibration check results on each device in use by the law enforcement agency.

Appendix II

Relevant Alabama Codes (*Extracted from Title 32, 1998*)

§32-5-171. Arrest without warrant.

A uniformed police officer, state trooper, county sheriff or his deputy or member of a municipal police force may arrest, at the scene of a traffic accident, any driver of a vehicle involved in the accident if upon personal investigation, including information from eyewitnesses, the officer has reasonable grounds to believe that the person by violating section 32-5A-191 contributed to the accident. He may arrest such a person without a warrant although he did not personally see the violation.

§32-5-192. Implied consent; when tests administered; suspension of license or permit to drive, etc., for refusal to submit to test.

(a) Any person who operates a motor vehicle upon the public highways of this state shall be deemed to have given his consent, subject to the provisions of this division, to a chemical test or tests of his blood, breath, or urine for the purpose of determining the alcoholic content of his blood if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle on the public highways of this state while under the influence of intoxicating liquor. The test or tests shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor. The law enforcement agency by which such officer is employed shall designate which of the aforesaid tests shall be administered. Such person shall be told that his failure to submit to such a chemical test will result in the suspension of his privilege to operate a motor vehicle for a period of 90 days; provided if such person objects to a blood test, the law enforcement agency shall designate that one of the other aforesaid tests be administered.

(b) Any person who is dead, unconscious or who is otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by subsection (a) of this section and the test or tests may be administered, subject to the provisions of this division.

(c) If a person under arrest refuses upon the request of a law enforcement officer to submit to a chemical test designated by the law enforcement agency as provided in subsection (a) of this section, none shall be given, but the director of public safety, upon the receipt of a sworn report of the law enforcement officer that he had reasonable grounds to believe the arrested person had been driving a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor and that the person had refused to submit to the test upon the request of the law enforcement officer, shall, on the first refusal, suspend his license or permit to drive, or the privilege of driving a motor vehicle on the highways of this state given to a nonresident; or if the person is a resident without a license or permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit, for a period of 90 days, subject to review as hereinafter provided. For a second or subsequent refusal of such test within a five-year period, the director, upon said receipt of a sworn report, shall suspend his license or permit to drive, or the privilege of driving a motor vehicle on the highways of this state given to a nonresident for a period of one year; or if the person is a resident without a license or permit to operate a motor vehicle in state, the director shall deny to the person the issuance of a license or permit for a period of one year subject to review as hereinafter provided. If such person is acquitted of the charge of driving a motor vehicle upon the highways of this state while under the influence of intoxicating liquor, then in that event the Director of Public safety may, in his discretion, reduce said period of suspension.

(d) Upon suspending the license or permit to drive or the privilege of driving a motor vehicle on the highways of this state given to a nonresident or any person, or upon determining that the issuance of a license or permit shall be denied to the person, as hereinbefore in this section directed, the director of

public safety or his duly authorized agent shall immediately notify the person in writing and upon his request shall afford him an opportunity for a hearing in the same manner and under the same conditions as is provided in section 32-6-16, for notification and hearings in the cases of suspension of licenses; except, that the scope of such a hearing for the purposes of this section shall cover the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle upon the public highways of this state while under the influence of intoxicating liquor, whether the person was placed under arrest, and whether he refused to submit to the test upon request of the officer. Whether the person was informed that his privilege to drive would be suspended or denied if he refused to submit to the test shall not be an issue. The director of public safety shall order that the suspension or determination that there should be a denial of issuance either be rescinded or sustained.

(e) If the suspension or determination that there should be a denial of issuance is sustained by the director of public safety or his authorized agent upon such hearing, the person whose license or permit to drive or nonresident operating privilege has been suspended or to whom a license or permit is denied, under the provisions of this section, shall have the right to file a petition in the appropriate court to review the formal order of suspension or denial by the director or his duly authorized agent in the same manner and under the same conditions as is provided in section 32-6-16 in the cases of suspensions and denials.

(f) When it has been formally determined under the procedures of this section that a nonresident's privilege to operate a motor vehicle in this state has been suspended the director shall give information in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of any state in which he has a license.

§ 32.5A-191. Driving while under the influence of alcohol, controlled substances, etc.

(a) A person shall not drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in his or her blood;
- (2) Under the influence of alcohol;
- (3) Under the influence of a controlled substance to a degree which renders him or her incapable of safely driving;
- (4) Under the combined influence of alcohol and a controlled substance to a degree which renders him or her incapable of safely driving; or
- (5) Under the influence of any substance which impairs the mental or physical faculties of such person to a degree which renders him or her incapable of safely driving.

(b) A person who is under the age of 21 years shall not drive or be in actual physical control of any vehicle there is .02 percentage or more by weight of alcohol in his or her blood. The Department of Public Safety shall suspend or revoke the driver's license of any person, including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection. Notwithstanding the foregoing, upon the first violation of this subsection by a person whose blood alcohol level is between .02 and .08, the person's driver's license or driving privilege shall be suspended for a period of 30 days in lieu of any penalties provided in subsection (e) of this section and there shall be no disclosure, other than to courts and law enforcement agencies, by any entity or person of any information, documents, or records relating to the person's arrest, conviction, or adjudication of or finding of delinquency based on this subsection. All persons, except as otherwise provided in this subsection for a first offense including, but not limited to, a juvenile, child, or youthful offender, convicted or adjudicated of, or subjected to a finding of delinquency based on this subsection shall be fined pursuant to this section, notwithstanding any other law to the contrary.

(c) A school bus Or day care driver shall not drive or be in actual physical control of any vehicle while in performance of his or her duties if there is greater than .02 percentage by weight of alcohol in his or her blood. A person convicted pursuant to this subsection shall be subject to the penalties provided by this section except that on the first conviction the Director of Public Safety shall suspend the driving privilege or driver's license for a period of one year.

(d) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a controlled substance shall not constitute a defense against any charge of violating this section.

(e) Upon first conviction, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine of not less than six hundred dollars (\$600) nor more than two thousand one hundred dollars (\$2,100), or by both a fine and imprisonment. In addition, on a first conviction, the Director of Public Safety shall suspend the driving privilege or driver's license of the person convicted for a period of 90 days.

(f) On a second conviction within a five-year period, a person convicted of violating this section shall be punished by a fine of not less than one thousand one hundred dollars (\$1,100) nor more than five thousand one hundred dollars (\$5,100) and by imprisonment, which may include hard labor in the county or municipal jail for not more than one year. The sentence shall include a mandatory sentence, which is not subject to suspension or probation, of imprisonment in the county or municipal jail for not less than 48 consecutive hours or community service for not less than 20 days. In addition the Director of Public Safety shall revoke the driving privileges or driver's license of the person convicted for a period of one year.

(g) On a third conviction, a person convicted of violating this section shall be punished by a fine of not less than two thousand one hundred dollars (\$2,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment, which may include hard labor, in the county or municipal jail for not less than 60 days nor more than one year, to include a minimum of 60 days which shall be served in the county or municipal jail and cannot be probated or suspended. In addition, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of three years.

(h) On a fourth or subsequent conviction, a person convicted of violating this section shall be guilty of a Class C felony and punished by a fine of not less than four thousand one hundred dollars (\$4,100) nor more than ten thousand one hundred dollars (\$10,100) and by imprisonment of not less than one year and one day nor more than 10 years. Any term of imprisonment may include hard labor for the county or state, and where imprisonment does not exceed three years confinement may be in the county jail. Where imprisonment does not exceed one year and one day, confinement shall be in the county jail. The minimum sentence shall include a term of imprisonment for at least one year and one day, which may be suspended or probated, but only if the defendant enrolls and successfully completes a state certified chemical dependency program recommended by the court referral officer and approved by the sentencing court. Where probation is granted, the sentencing court may, in its discretion, and where monitoring equipment is available, place the defendant on house arrest under electronic surveillance during the probationary term. In addition to the other penalties authorized, the Director of Public Safety shall revoke the driving privilege or driver's license of the person convicted for a period of five years.

Any law to the contrary notwithstanding, the Alabama habitual felony offender law shall not apply to a conviction of a felony pursuant to this subsection, and a conviction of a felony pursuant to this subsection shall not be a felony conviction for purposes of the enhancement of punishment pursuant to Alabama's habitual felony offender law.

(i) In addition to the penalties provided herein, any person convicted of violating this section shall be the court referral officer for evaluation and referral to appropriate community resources. The defendant shall, at a minimum, be required to complete a DUI or substance abuse court referral program by the Administrative Office of Courts and operated in accordance with provisions of the Mandatory Treatment Act of 1990, Sections 12-23-1 to 12-23-19, inclusive. The Department of Public Safety shall not reissue a driver's license to a person convicted under this section without receiving proof that the defendant has successfully completed the required program.

(j) Neither reckless driving nor any other traffic infraction is a lesser included offense under a charge of the influence of alcohol or of a controlled substance.

(k) Except for fines collected for violations of this section charged pursuant to a municipal ordinance, fines collected for violations of this section shall be deposited to the State General Fund; however, beginning October 1, 1995, of any amount collected over two hundred fifty dollars (\$250) for a first conviction, over

five hundred dollars (\$500) for a second conviction within five Years, over one thousand dollars (\$1,000) for a third conviction within five years, and over two thousand dollars (\$2,000) for a fourth or subsequent conviction within five years, the first one hundred dollars (\$100) of that additional amount shall be deposited to the Alabama Chemical Testing Training and Equipment Trust Fund, after three percent of the one hundred dollars (\$100) is deducted for administrative costs, and beginning October 1, 1997, and thereafter, the second one hundred dollars (\$100) of that additional amount shall be deposited in the impaired Drivers Trust Fund as deducting five percent of the one hundred dollars (\$100) for administrative costs and the remainder shall be deposited to the State General Fund. Fines collected for violations of this section charged pursuant to a municipal ordinance shall be deposited as follows: the first three hundred fifty dollars (\$350) collected for a first conviction, the first six hundred (\$600) collected for a second conviction within five years, the first one thousand one hundred dollars (\$1,100) collected for a third conviction, and the first two thousand one hundred dollars (\$2,100) collected for a fourth or subsequent conviction shall be deposited to the State Treasury with the first one hundred dollars (\$100) collected for each conviction credited to the Alabama Chemical Testing Training and Equipment Trust Fund after deducting five percent of the one hundred dollars (\$100) for administrative costs and the balance credited to the State General Fund. Any amounts collected over these amounts shall be deposited as otherwise provided by law.

(l) A person who has been arrested for violating this section shall not be released from jail under bond or otherwise, until there is less than the same percent by weight of alcohol in his or her blood as specified in subsection (a)(1) or, in the case of a person who is under the age of 21 years, subsection (b) hereof.

(m) Upon verification that a defendant arrested pursuant to this section is currently on probation from another court of this state as a result of conviction for any criminal offense, the prosecutor shall provide written or oral notification of the defendant's subsequent arrest and pending prosecution to the court in which the prior conviction occurred.

§ 32-5A-191-3. Operation of vessel and other marine devices while under the influence of alcohol or controlled substances

(a) A person shall not drive or be in actual physical control of any vessel, or manipulate any water skis, aquaplane, or any other marine transportation device on the waters of this state, as the waters are defined in Section 33-5-3, while:

- (1) There is 0.10 percent or more by weight of alcohol in the blood;
- (2) Under the influence of alcohol;
- (3) Under the influence of a controlled substance to a degree which renders the person incapable of safely driving;
- (4) Under the combined influence of alcohol and a controlled substance to a degree which renders the person incapable of safely driving; or
- (5) Under the influence of any substance which impairs the mental or physical faculties of the person to a degree which renders the person incapable of safely driving.

(b) In the case of a vessel or other marine device described in subsection (a), only where the law enforcement Officer of the Department of Conservation and Natural Resources has prior to stopping a vessel probable cause to believe that the operator of the vessel is driving under the influence of alcohol or under the influence of a controlled substance in violation of this section, the law enforcement officer is authorized to Administer and may test the operator, at the scene, by using a field breathalyzer or other a screening device, to determine if the operator may be operating a vessel or device in violation of subsection (a). Refusal to submit to a field breathalyzer test or other approved testing device shall result in the same punishment as provided in subsection (c) of Section 32-5-192 for operators of motor vehicles on the state highways. No field breathalyzer test shall be administered where the operator is stopped for violation other than under this section.

(c) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a controlled substance shall not constitute a defense against any charge of violating this section.

(d) Upon first conviction, a person violating this section shall be punished by imprisonment in the county or municipal jail for not more than one year, or by fine of not less than two hundred fifty dollars (\$250) nor more than one thousand dollars (\$1,000), or by both a fine and imprisonment. In addition, on a first conviction, the Commissioner of Conservation and Natural Resources shall suspend the vessel operating privilege or boater safety certification of the person so convicted for a period of 90 days. First time offenders convicted of driving or operating a vessel while under the influence of alcohol shall also be required to complete a DUI court referral program approved by the State Administrative Office of Courts. Neither reckless or careless operation of a vessel, nor any other boating or water safety infraction is a lesser included offense under a charge of operating a vessel while under the influence of alcohol or controlled substances.

(e) On a second conviction within a five-year period, the person convicted of violating this section shall be punished by a fine of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) and by imprisonment, which may include hard labor in the county or municipal jail for not more than one year. The sentence shall include a mandatory sentence, which is not subject to suspension or probation, of imprisonment in the county or municipal jail for not less than 48 consecutive hours or community service for not less than 20 days. In addition, the Commissioner of Conservation and Natural Resources shall revoke the vessel operating privileges or boater safety certification of the person so convicted for a period of one year.

(f) On a third or subsequent conviction within a five-year period, the person convicted of violating this section shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) and by imprisonment, which may include hard labor, in the county or municipal jail for not less than 60 days nor more than one year, to include a minimum of 60 days which shall be served in the county or municipal jail and cannot be probated or suspended. In addition, the Commissioner of Conservation and Natural Resources shall revoke the vessel operating privilege or boater safety certification of the person so convicted for a period of three years.

(g) All fines collected for violation of this section as to vessels or other marine devices on the waters of this state shall be paid into the State Water Safety Fund.

(h) A person who has been arrested for violating this section shall not be released from jail under bond or otherwise, until there is less than the same percent by weight of alcohol in the person's blood as specified in subdivision (1) of subsection (a).

(i) "Vessel," for the purposes of this section, shall mean any vessel as defined in Section 33-5-3, operated on the waters of this state, as defined in Section 33-5-3.

(j) No provision of this section shall be construed to assess points for DUI convictions under motor vehicle convictions for driving under the influence.

§ 32-5A-194. Chemical tests; admissible as evidence; procedure for valid chemical analyses; permits for individuals performing analyses; persons qualified to withdraw blood; presumptions based on percent of alcohol in blood; refusal to submit; no liability for technician.

(a) Upon the trial of any civil, criminal or quasi-criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual control of a vehicle while under the influence of alcohol or controlled substance, evidence of the amount of alcohol or controlled substance in a person's blood at the alleged time, as determined by a chemical analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a chemical test is made the following provisions shall apply:

- (1) Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the Department of Forensic Sciences and by an individual Possessing a valid permit issued by the Department of Forensic Sciences for this purpose.

The court trying the case may take judicial notice of the methods approved by the Department of Forensic Sciences. The Department of Forensic Science is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the Department of Forensic Sciences. The Department of Forensic Sciences shall approve permits required in this section only for employees of the state, county, municipal, and federal law enforcement agencies and for laboratory personnel employed by the Department of Forensic Sciences.

- (2) When a person shall submit to a blood test at the direction of a law enforcement officer under the provisions of Section 32-5-192, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic content therein. This limitation shall not apply to the taking of breath or urine specimens. If the test given under Section 32-5-192 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved.
- (3) The person tested may at his own expense have a physician, or a qualified technician, registered nurse or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the discretion of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer.
- (4) Upon the written request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney.
- (5) Percent by weight of alcohol in the blood shall be based upon grams of alcohol per 100 cubic centimeters of blood or grams of alcohol per 210 liters of breath.

(b) Upon the trial of any civil, criminal, or quasi-criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the amount of alcohol in the person's blood at the time alleged as shown by chemical analysis of the person's blood, urine, breath or other bodily substance shall give rise to the following presumptions:

- (1) If there were at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of alcohol unless the person was operating a motor vehicle in performance of his or her duties as a school bus driver or day care driver at that time or was under the age of 21 years at that time.
- (2) If there were at the time in excess of 0.05 percent but less than 0.08 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol unless the person was operating a motor vehicle in performance of his or her duties as a school bus driver or day care driver at that time or was under the age of 21 years at that time.
- (3) If there were at that time 0.08 percent or more by weight of alcohol in the person's blood, or greater than .02 percent if the person was operating a motor vehicle in performance of his or her duties as a school bus driver or day care driver at that time or was under the age of 21 years at that time, it shall be presumed that the person was under the influence of alcohol.
- (4) The foregoing provisions of this subsection shall to be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol.

(c) If a person under arrest refuses to submit to a chemical test under the provisions of Section 32-5-192, evidence of refusal shall be admissible in any civil, criminal or quasi-criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or controlled substance.

(d) No physician, registered nurse or duly licensed chemical laboratory technologist or clinical laboratory technician or medical facility shall incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a law enforcement officer to administer such a test.

§ 32-5A-300. Determinations requiring suspension of driving privileges by director; basis for, and finality of, determination; relationship to disposition of criminal charges.

(a) The director, or his or her agent, shall suspend the driving privilege of any person upon a determination that the person drove or was in actual physical control of a motor vehicle while the amount of alcohol in the blood of the person was above the legal limit.

(b) The director, or his or her agent, shall suspend the driving privilege of any person upon a determination that the person refused a test to determine the amount of alcohol in the blood of the person as provided in Section 32-5A-192.

(c) The director, or his or her agent shall make a determination pursuant to subsections (a) and (b) based on the report of a law enforcement officer required in Section 32-5A-301, and this determination shall be final unless an administrative review is requested under Section 32-5A-306 or a hearing is held under Section 32-5A-307.

(d) The determination of these facts by the director, or his or her agent, is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence. The disposition of these criminal charges shall not affect any suspension under this section.

§32-5A-301. Report of arresting officer.

(a) A law enforcement officer who arrests any person for a violation of Section 32-5A-191 shall immediately forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the arrested person, a statement of the officer's grounds for belief that the person violated Section 32-5A-191, a report of the results of any chemical test which was conducted, a statement if the person refused to submit to a test, and a copy of the citation or complaint filed with the court.

(b) The report required by this section shall be made on forms supplied by the department or in a manner specified by regulations of the department.

§ 32-5A-302. Determination by director; notice of suspension; notification of persons not subject to driving privilege suspension.

(a) Upon receipt of the report of the law enforcement officer, the director, or his or her agent, shall make the determination described in Section 32-5A-300. If the director, or his or her agent, determines that the person is subject to driving privilege suspension and notice of the suspension has not been served upon the person by an enforcement officer, as provided in Section 32-5A-303, the director, or the agent, shall issue a notice of the suspension.

(b) The notice of suspension shall be mailed to the person at the last known address shown on the department's record. The notice is deemed received three days after mailing.

(c) The notice of suspension shall clearly specify the reason and statutory grounds for suspension, the effective date of the suspension, the right of the person to request an administrative review and a hearing, the procedure for requesting an administrative review and a hearing, and the date by which a request for an administrative review is required to be made in order to receive a determination prior to the effective date of the suspension.

(d) if the director, Or his or her agent, determines that the person is not subject to driving privilege suspension, the director, or his or her agent, shall notify the person of the determination and shall rescind any order of suspension served upon the person by the enforcement officer.

§32-5A-303. Service of notice of suspension based on chemical test results; temporary driving permit; items to be forwarded to department; forms.

(a) If the chemical test results for a person charged with a violation of Section 32-5A-191 show 0.08 percent or more by weight of alcohol in the blood of the person, or the person refuses a test, the officer, acting on behalf of the director, shall serve the notice of suspension personally on the arrested person.

(b) When serving the notice of suspension, the law enforcement officer shall take possession of any driver's license issued by this state which is held by the person. When taking possession of a valid driver's license issued by this state, the officer, acting on behalf of the director, shall issue a temporary driving permit which is valid for 30 days after its date of issuance.

(c) A copy of the completed notice of suspension form, a copy of any completed temporary driving permit form, and any driver's license taken into possession under this section shall be forwarded immediately to the department by the officer.

(d) The department shall provide forms for notice of suspension and for temporary driving permits to law enforcement agencies.

§ 32-5A-304. Effective date of suspension; duration of suspension; relationship to Section 32-5A-191.

(a) A driving privilege suspension shall become effective 30 days after the person has received a notice of suspension as provided in Section 32-5A-303, or is deemed to have received a notice of suspension by mail as provided in Section 32-5A-302.

(b) The period of driving privilege suspension under this section shall be as follows:

- (1) Ninety days if the driving record of a person shows no prior alcohol or drug-related enforcement contacts during the immediately preceding five years.
- (2) One year if the driving record of a person shows one prior alcohol or drug-related enforcement contact during the immediately preceding five years.
- (3) Three years if the driving record of a person shows two or three alcohol or drug-related enforcement contacts during the immediately preceding five years.
- (4) Five years if the driving record of a person shows four or more alcohol or drug-related enforcement contacts during the immediately preceding five years.
- (5) For the purposed of this section, "alcohol or drug-related enforcement contacts" shall include any suspension or revocation under this article, any suspension or revocation entered in this or any other state for a refusal to submit to chemical testing under an implied consent law, and any conviction in this or any other state for a violation which involves driving a motor vehicle while having an unlawfull percent of alcohol in the blood, or while under the influence of alcohol or drugs, or alcohol and drugs.

(c) If a license is suspended or revoked under this section and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Section 32-5A-191, the suspension or revocation under this section shall be imposed, but no period of suspension or revocation shall be imposed under Section 32-5A-191.

§ 32-5A-306. Request for administrative review; review by director; stay of suspension or revocation; request for hearing.

(a) Any person who has received a notice of suspension or revocation under this article may request an administrative review. The request may be accompanied by a sworn statement or statements and any other

relevant evidence which the person wants the director, or his or her agent, to consider in reviewing the determination made pursuant to Section 32-5A-300 and 32-5A-302.

(b) When a request for an administrative review is made, the director, or his or her agent, shall review the determination made pursuant to Sections 32-5A-300 and 32-5A-302. In review, the director, or his or her agent, shall give consideration to any relevant sworn statement or other evidence accompanying the request for the review, and to the sworn statement of the law enforcement officer required by Section 32-5A-301. If the director, or his or her agent determines, by a preponderance of the evidence, that the person drove or was in actual physical control of a motor vehicle with 0.08 Percent or more by weight of alcohol in blood, or the person refused the test, the director, or his or her agent, shall sustain the order of suspension or revocation. If the evidence does not support such a determination, the director, or his or her agent, shall rescind the order of suspension or revocation. The determination by the director or his or her agent, upon administrative review is final unless a hearing is requested under 32-5A-307.

(c) The director, or his or her agent shall make a determination upon administrative review prior to the effective date of the suspension or revocation order if the request for review is received by the department within eight days following service of the notice of suspension or revocation. Where the request for administrative review is received by the department more than eight days following service of the notice of suspension or revocation, the director, or his or her agent, shall make the determination within 20 days following the receipt of the request for review.

(d) A request for administrative review shall not stay the driving privilege suspension or revocation. If the director, or his or her agent, is unable to make a determination within the time limits specified in subsection (c), the director or agent shall stay the suspension or revocation pending determination.

(e) The request for administrative review may be made by mail or in person to the Department of Public Safety, Montgomery, Alabama.

(f) A Person may request and be granted a hearing under Section 32-5A-307 without first requesting administrative review under this section. An administrative review is not available after a hearing is held.

32-5A-307. Request for hearing; time and place of hearing; presiding officer; issues at hearing; decision; Waiver of hearing Upon failure to appear; relationship to other provisions.

(a) Any person who has received a notice of suspension or revocation may make a written request for a review to the director, or his or her agent for determination at a hearing. If the driver's license of the person has not been previously surrendered, it shall be surrendered at the hearing. A request for a hearing shall not stay the driving privilege suspension or revocation.

(b) The hearing shall be scheduled to be held as quickly as Practicable and not more than 30 days after the filing of the request for a hearing. The hearing shall be held at a location designated by the director unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least five days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The Presiding hearing officer shall be the director, or an authorized agent designated by the director. The presiding hearing officer shall have authority to: administer oaths and affirmations; examine witnesses and take testimony; receive relevant evidence; issue subpoenas, take depositions, or cause depositions or interrogatories to be taken; regulate the course and conduct of the hearing; and make a final ruling on the issue.

(d) The sole issues at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle with 0.08 percent or more by weight of alcohol in the blood, or whether the person refused the test as provided in Section 32-5-192. If the presiding hearing officer finds in the affirmative concerning either of these issues, the suspension or revocation order shall be

sustained. If the presiding hearing officer finds in the negative concerning both of these issues, the suspension or revocation shall be rescinded.

(e) The decision of the presiding hearing officer shall be rendered in writing, and shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the earlier determination by the director, or his or her agent shall be final. If an earlier determination has not been made by the director, an administrative review shall be performed pursuant to Section 32-5A-306.

(g) The procedures set forth in this article shall be the sole and exclusive manner to determine the administration of this article. The Alabama Administrative Procedure Act in Sections 41-22-1 to 41-22-27, inclusive, shall not apply.

§ 32-5A-308. Judicial review of determination following hearing.

(a) Within 30 days of the issuance of the final determination of the department following a hearing under Section 32-5A-307, a person aggrieved by the determination shall have the right to file a petition in the circuit court of the county where the arrest was made for judicial review. The filing of a petition for judicial review shall not stay the suspension or revocation order.

(b) If the Circuit court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence, the court may reverse the determination of the department.

§ 32-6-49-11. Disqualifications; period of less than one year.

(a) Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a commercial motor vehicle under the influence of alcohol, or a controlled substance or any other drug which renders a person incapable of safely driving;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the person's blood, urine, or breath is 0.04 or more;
- (3) Knowingly and willfully leaving the scene of an accident involving a commercial motor vehicle driven by the person;
- (4) Using a commercial motor vehicle in the commission of an felony as defined in this act; and
- (5) Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

(b) A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection (a), or any combination of those offenses, arising from two or more separate incidents.

(c) The department may issue regulations and promulgate establishing guidelines, including conditions, under which a disqualification for life under subsection (b) may be reduced to a period of not less than 10 years.

(d) A person is disqualified from driving a commercial motor vehicle for life who used a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) A person is disqualified from driving a commercial motor vehicle for a period of not less than 60 days if convicted of two serious traffic violation, or 120 days if convicted Of three serious traffic violations,

committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

(f) After suspending, revoking or canceling a commercial driver license, the department must update its records to reflect that action within 10 days. After suspending, revoking or canceling a nonresident commercial driver's privilege, the department must notify the licensing authority of the state which issued the commercial driver license or commercial driver instruction permit within 10 days.

Any failure to report or disclose required information, either before or after issuance of a commercial driver license shall be a Class C felony and shall, upon conviction thereof, be punished as provided by law.

§ 32-6-49-12. Use of alcohol while driving; when placed out of service; when disqualified.

(a) Notwithstanding any other provision of this article, or of existing law, a person may not drive, operate, or be in physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in his or her system.

(b) A person who drives, operates, or is in physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in his or her system or who refuses to submit to an alcohol test under section 32-6-49.13, must be placed out of service for 24 hours.

(c) Any person who drives a commercial motor vehicle within this state with an alcohol concentration of 0.04 or more must, in addition to any other sanctions which may be imposed under this article, or under federal or state law, or rules or regulations of the department be disqualified from driving a commercial motor vehicle under section 32-6-49.11.

§ 32-6-49.13. Implied consent to take test of blood, breath, etc; administration of test; refusal to take test; report of law enforcement officer; sanctions; notice and hearing; review; notification of other states.

(a) A person who drives a commercial motor vehicle within this state is deemed to have given consent, subject to provisions of Section 32-5-192, to take a test or tests of that person's blood, breath, or urine for the purpose of determining that person's alcohol concentration, or the presence of other drugs.

(b) A test or tests shall be administered at the direction of a law enforcement officer, who after stopping or detaining the commercial motor vehicle driver, has probable cause to believe that driver was driving a commercial motor vehicle while having alcohol or drugs in his or her system. The law enforcement officer shall test the driver at the scene by using a field breathalyzer or other approved device, technique, or procedure approved by the Department of Forensic Sciences, or transport the driver to an appropriate facility where a chemical test by an approved method shall be administered either by the officer or at his or her direction, or both.

A test or tests shall be administered at the direction of a law enforcement officer to all commercial motor vehicle drivers who are involved in an vehicular accident which results in death or physical injury requiring hospitalization or emergency medical treatment.

(c) A person requested to submit to a test as provided in subsection (a) above must be warned by the law enforcement officer requesting the test that refusal to submit to the test will result in that person being immediately placed out of service for a period of 24 hours and being disqualified from operating a commercial motor vehicle for a period of not less than two years under Section 32-6-49.12.

(d) If the person refuses testing, or submits to a test which discloses an alcohol concentration of 0.04 or more, the law enforcement officer shall submit a sworn report to the department certifying that the test was requested pursuant to subsection (b) and that the person refused to submit to testing, or submitted to a test which disclosed an alcohol concentration of 0.04 or more.

(e) Upon receipt of the sworn report of a law enforcement officer submitted under subsection (d), the department shall disqualify the driver from driving a commercial motor vehicle for a period of not less than

two years under Section 32-6-49.12. This penalty shall be in addition to and cumulative of any other penalties imposed upon the driver under any other existing laws and shall run consecutively with any penalties for other offenses.

Upon suspending the license or permit to drive or the privilege of driving a motor vehicle on the highways of this state that is given to a nonresident or any person, or upon determining that the issuance of a license or permit shall be denied to the person, the director or his or her authorized agent shall within three days of suspension notify the person in writing. Upon a request filed by the person within five days from the date of the notice of suspension or denial, the director shall schedule a hearing with notice of the hearing to be provided by certified mail to the person stating the date, time, place, and scope of the hearing. The scope of the hearing shall pertain to all of the following issues:

- (1) Whether the law enforcement officer had reasonable grounds to believe the person had been driving a motor vehicle on the public highways of this state while under the influence of the substances enumerated in subsection (a).
- (2) Whether the person refused to submit to the test upon request of a law enforcement officer.
- (3) Whether the person was informed that his or her privilege to drive would be suspended or denied if he or she refused to submit to the test.

(g) If the suspension or determination that there should be a denial of issuance is sustained by the director or his or her authorized agent, the person whose license or permit to drive or a nonresident operating privilege has been suspended, or to whom a license or permit is denied, shall have the right to file a petition to review the final order, suspension, or denial within 30 days after the entry of the final order of suspension or denial by the director in the appropriate court to review the final order of suspension.

(h) When it has been finally determined under the procedures of this section that the privilege of a nonresident to operate a motor vehicle in this state has been suspended, the director shall give information in writing of the action taken to the motor vehicle administrator of the state of the residence of the person and to any state in which the person has a license.

§ 32-6-49.14. Out of state conviction; notice to licensing state.

Within 10 days after receiving a report of the conviction of any nonresident holder of a commercial driver license for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, committed in a commercial motor vehicle, the department must notify the driver licensing authority in the licensing state of the conviction.