

Activity	Title 17 §§	Current Requirements	Rationale for Continuing Current Requirements	Current Regulatory Work Product
Approval of Personnel Qualifications	1215.1., (f) - (h) <b>1216.1, (e), (f), &amp; (g)</b> 1217.1.(a)(3) 1217.3.(c) 1221.1.(b) 1222.1.(a)	The regulations require the Department to evaluate the qualifications (education and experience) of staff employed in forensic alcohol analysis, and these staff must successfully complete an external proficiency test and written examination conducted by the Department. The regulations also require that forensic alcohol analysis shall be performed only by persons qualified by the Department.	These requirements are needed to ensure the competency of the employees to prepare, analyze, and report the results of the tests [cf. H&S Code Section 100703.(d)], and to enable the Department to meet the mandate of H&S Code Section 100725 to enforce the law and the regulations.	Section 1216.1 requires the Department to approve the qualification of all personnel performing forensic alcohol analysis. The committee has proposed to repeal these requirements.
Evaluation of Proficiency Tests	1216.1.(a)(3) 1217.3.(a) <b>1220.1.(b)</b>	The regulations require the Department to evaluate the ability of a laboratory's method(s) to meet the standard of performance requirements set forth in the regulations using the lab's proficiency test results. The Department evaluates laboratories' performances on proficiency tests based on the accuracy and precision requirements set forth under Section 1220.1.(a)(1). The Department has scheduled these proficiency tests at a frequency sufficient to monitor analytical competence. Laboratories with more than one method must complete the proficiency test requirements for each method used. A laboratory with an unsatisfactory performance is required to provide a written report of the corrective action taken and experimental data demonstrating that the method again meets the required standard of performance.	The Department should retain state-level oversight of laboratory proficiency testing in order to monitor the competence of the testing in support of DUI enforcement and to assure proper accountability.	Section 1220.1 requires the Department to evaluate the ability of a laboratory's method(s) to meet the standard of performance requirements set forth in the regulations using the laboratory's proficiency test results. The committee has proposed to amend this section to permit staff at the laboratory to evaluate performances on proficiency tests without any external oversight.
Approval of Training Programs	<b>1218.</b> 1221.4.(a)(3) 1221.4.(a)(3), (A) – (E) 1221.4.(a)(4) <b>1221.4.(a)(4)(A)</b>	The current regulations require the Department to approve any training intended to qualify personnel under the regulations. This requirement applies primarily to the breath operator training conducted by the laboratories. The training procedures are submitted by the laboratories to the Department for review to make sure that the training is adequate and in compliance with the requirements of the regulations.	<p>The Department should retain state-level oversight of the training of personnel involved in breath alcohol analysis. Law enforcement personnel who perform these tests generally lack technical skills or scientific backgrounds, therefore, it is critical that they receive proper training in the use of the instrument. Case law supports breath testing performed by police officers if the instruments are in good working order, the test was properly administered, and the officer is competent and qualified. Proper, scientific-based training directly supports two of the three prongs here.</p> <p>The State has a vested interest in making sure that this testing is performed correctly to ensure that drunk drivers are properly convicted and that innocent drivers are not prosecuted unjustly because of faulty testing. This is why the legislature passed laws requiring the regulation of this testing. Nearly every state maintains direct oversight of breath instrument operator training, either conducting the training itself or approving the training, so California's current oversight requirements are consistent with those found in other states.</p>	Section 1218 requires the Department to review and approve all training intended to qualify persons under these regulations. The committee has proposed the repeal of Section 1218. Laboratories will be able to independently conduct training without any oversight.

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Reports to the Department	1217.(a) 1217.2. <b>1217.3., (a) – (c)</b>	The current regulations require laboratories to initially apply for approval to perform forensic alcohol analysis and to report any changes in activities authorized under the regulations to the Department in writing within 30 days.	The statutes mandate the Department to enforce the regulations pertaining to forensic and breath alcohol analysis (cf. H&S Code Section 100725). In order to carry out this responsibility, the Department must be able to identify the laboratories engaged in these analyses and the activities performed by these laboratories.	Sections 1217 and 1217.3 require laboratories to initially apply for approval to perform forensic alcohol analysis and to report any changes in activities to the Department in writing within 30 days. The committee has proposed the repeal of the aforementioned sections.
Site inspections (for cause)	<b>1217.6.(b)</b> <b>1217.7.(a)</b>	The current regulations state that the Department may enter a laboratory at all reasonable times to conduct inspections for the purpose of determining whether there is compliance with the provisions of the regulations.	The regulations should continue to describe the Department's ability to site inspect the laboratories for a specific cause (e.g., a compliant, a lab's failure on a proficiency test, etc.). Such inspections are needed to enable the Department to meet the mandate of H&S Code Section 100725 and in support of the purposes of the regulations as set forth under H&S Code Section 100703.(d).	Sections 1217.6 and 1217.7 state that the Department may conduct inspections of the laboratories for the purpose of determining compliance with the regulations. Reports of such inspections are public records. The committee has proposed to repeal the aforementioned sections and as a consequence there will be no laboratory inspection requirements.
Availability of records	<b>1220.(b)</b> <b>1220.(b)(1)</b> <b>1222.</b>	The current regulations require the laboratories to maintain records of their activities covered by the regulations and to either file these records with the Department or alternatively make these records available for inspection by the Department on request.	The regulations should retain the basic requirements for making specified records available to the Department in order to enable the Department to meet its mandated responsibility to enforce the law and its regulations (cf. H&S Code 100725). Clearly any such enforcement effort would necessitate ready access to the records.	Sections 1220 and 1222 include requirements for the laboratories to make specified records available to the Department. The committee has proposed to repeal these requirements.