

KANSAS ADMINISTRATIVE REGULATIONS

28-32-8. Definitions.

The following terms and abbreviations as used in this article shall have the following meanings, unless the context requires otherwise.

- (a) "Agency" means any law enforcement agency under whose authority evidential breath alcohol tests are performed.
- (b) "Agency custodian" means the employee at a certified agency who is responsible for administering the certified agency's EBAT program.
- (c) "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
- (d) "Alcohol concentration" means the number of grams of alcohol per 100 milliliters of blood or per 210 liters of breath.
- (e) "Certified agency" means a law enforcement agency that meets the requirements of K.A.R. 28-32-9.
- (f) "Certified operator" means an individual who meets the requirements of K.A.R. 28-32-10.
- (g) "Department" means the Kansas department of health and environment.
- (h) "Device custodian" means the certified operator employed by a certified agency who is responsible for oversight of the certified agency's EBAT device.
- (i) "Evidential breath alcohol test" and "EBAT" mean a quantitative chemical test for alcohol performed on a sample or samples of breath of an individual suspected of an offense that subjects the individual to the provisions of K.S.A. 8-1001 through K.S.A. 8-1022 and amendments thereto.
- (j) "Evidential breath alcohol test device" and "EBAT device" mean an instrument designed to perform a quantitative chemical test for alcohol on a sample of breath of an individual, which yields test results that are admissible as evidence in a court of law.
- (k) "Preliminary breath-screening test device" means an instrument designed to perform a qualitative or quantitative chemical test for alcohol on a sample of breath of an individual to determine the presence or absence of alcohol pursuant to K.S.A. 8-1012 and amendments thereto.
- (l) "Quality control" means a test of an evidential breath alcohol test device that is administered at the direction of the secretary and that uses a known alcohol standard to evaluate the accuracy of the device.
- (m) "Secretary" means the secretary of the Kansas department of health and environment or the secretary's designee. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-9. Agency certification.

- (a) Application. Each agency head seeking agency certification shall submit an application for agency certification on forms provided by the department.
- (b) Certification requirements. Each agency for which certification is sought shall demonstrate to the secretary that all of the following requirements are met:
 - (1) The agency head shall specify each certified EBAT device proposed for conducting evidential breath alcohol testing.
 - (2) The agency head shall provide and maintain a roster of the certified operators who perform evidential breath alcohol testing for the agency.
 - (3) Each certified operator shall use only EBAT devices certified by the secretary.
 - (4) Each certified operator shall follow the standard operating procedure provided by the secretary for the EBAT device in use.

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- (5) For quality control, each device custodian or the device custodian's designee shall test each EBAT device once each calendar week using the alcohol standards furnished by the department. The agency custodian shall report the test results to the department monthly on forms provided by the department.
- (c) Inspection. An annual inspection of each certified agency shall be made by the secretary or the secretary's designee to ensure compliance with this article.

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- (d) Certificate term. Each agency that meets the requirements of this regulation shall be issued a certificate by the secretary. Each certificate shall expire at midnight on December 31 of the year of the certificate's issuance.
- (e) Certificate renewal. Each agency head of a certified agency seeking to renew the agency's certificate shall submit an application for renewal on forms provided by the department. If an application for renewal is submitted and approved before the expiration date, the certificate shall be considered renewed even if the agency does not have physical possession of the renewal certificate.
- (f) Certificate suspension or revocation. The failure to comply with this regulation may be grounds for suspension or revocation of the agency's certification. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-10. Operator certification.

- (a) Application. Each individual seeking certification shall submit an application for operator certification through that individual's certified agency on forms provided by the department. Each applicant shall be a duly appointed Kansas law enforcement officer or have the written endorsement of a supervisory law enforcement officer or an agency custodian.
- (b) Certification requirements. Each applicant for operator certification shall be required to successfully complete the course of instruction and written examination approved by the secretary. Additional instruction may be required by the secretary to qualify a certified operator to perform evidential breath alcohol tests using additional EBAT devices.
- (c) Certificate term. Each applicant that meets the requirements for conducting evidential breath alcohol testing shall be issued a certificate by the secretary. Each operator certificate that is issued in an even-numbered year shall expire at midnight on December 31 of the next even-numbered year. Each operator certificate that is issued in an odd-numbered year shall expire at midnight on December 31 of the next odd-numbered year.
- (d) Certificate renewal. Each certified operator seeking to renew the operator certificate shall submit an application for renewal through that individual's certified agency on forms provided by the department. As a condition of an operator's certificate renewal, each certified operator shall biennially complete EBAT continuing education as approved by the secretary. If an application for renewal is submitted and approved before the certificate's expiration date, the certificate shall be considered renewed even if the operator does not have physical possession of the renewal certificate.
- (e) Effect of military service or official leave of absence.
 - (1) Any operator who returns from active military service or an official leave of absence that does not exceed two years may renew an inactive certification by meeting all of the following requirements and submitting

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the required information to the department on forms provided by the department:

- (A) Provide proof of active military duty or official leave of absence;
- (B) provide proof of the last operator certification before going on active duty or taking leave of absence;
- (C) pass the current department-approved written operator examination;

and

(D) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

- (2) Any operator who returns from active military service or an official leave of absence that exceeds two years may renew an expired certification by meeting all of the following requirements and submitting the required information to the department on forms provided by the department:

- (A) Provide proof of active military duty or official leave of absence;
- (B) provide proof of the last operator certification before going on active duty or taking leave of absence;
- (C) provide proof of completion of EBAT continuing education within 180 days of the date of return to the agency;
- (D) pass the current department-approved written operator examination;

and

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(E) provide proof of satisfactory performance of EBAT device operation in the presence of a device custodian.

- (f) Certificate denial, suspension, and revocation. The failure of an applicant or a certified operator to comply with this regulation may be grounds for denial of the application or renewal or for suspension or revocation of the operator's certificate. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-11. EBAT device certification.

- (a) Application. Each agency custodian seeking EBAT device certification shall submit an application on forms provided by the department for certification of each EBAT device the certified agency intends to use in the certified agency's EBAT program.
- (b) EBAT device list. The "conforming products list of evidential breath measurement devices" (CPL) established by the national highway traffic safety administration (NHTSA) and published in 71 fed. reg. 37159-37162 (2006) is hereby adopted by reference. Only an EBAT device listed on the CPL shall be submitted to the secretary for consideration for certification as an EBAT device.
- (c) Initial certification requirements. Each EBAT device shall be certified by the secretary if the secretary determines that the EBAT device meets NHTSA's performance criteria when operated according to the manufacturer's instruction manual.
- (d) Inspection. Once an EBAT device is certified, an inspection of the EBAT device may be made by the secretary at any time. Any EBAT device may be removed from service at the time of the inspection if deemed necessary.
- (e) Device maintenance. Each EBAT device shall be maintained by the device custodian or the device custodian's designee as directed by the secretary.

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- (f) Device repair. Each EBAT device removed from service for repair shall be repaired by the manufacturer or the manufacturer's authorized repair service. When the device is returned to the agency, the EBAT device shall be tested for accuracy by the device custodian or the device custodian's designee. The device custodian or the device custodian's designee shall notify the department of the date the instrument is placed back into service.
- (g) Device modification. No modification shall be made to any EBAT device without the prior written consent of the secretary. For purposes of this regulation, "modification" shall mean any change in the operating software or any physical change to a certified EBAT device that alters the accuracy or precision of the device. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-12. Certified operator instruction and continuing education requirements.

- (a) Agency personnel may be trained to administer evidential breath alcohol tests by any of the following entities:
 - (1) The department;
 - (2) a certified agency;
 - (3) a college or university; or
 - (4) a law enforcement training center.
- (b) Both of the following shall be approved in advance by the secretary:
 - (1) Each course instructor; and
 - (2) each course of instruction offered to fulfill operator certification and EBAT continuing education requirements. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-13. Records and reports.

- (a) Records.
 - (1) Each agency custodian or the agency custodian's designee shall maintain the following records on file at the certified agency's office for at least three years:

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- (A) Records of each current certified operator;
- (B) records showing that a quality control check was completed at least once each week for each EBAT device assigned to the agency; and
- (C) records documenting any maintenance or repair made to each EBAT device.
- (2) The records specified in this subsection shall be subject to inspection by the secretary at least annually.
- (b) Reports. Each agency custodian or the agency custodian's designee shall maintain a record of the number of individuals tested by each certified operator under the certified agency's supervision and shall submit a quarterly report to the department on forms provided by the department. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)

28-32-14. Preliminary breath-screening test devices.

- (a) Each preliminary breath-screening test conducted shall be performed on a preliminary breath-screening test device approved by the secretary. The devices approved for use as preliminary breath-screening test devices in Kansas shall consist of the following devices and any other device approved by the secretary as specified in subsection (b):

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| <u>Manufacturer</u> | <u>Model</u> |
|--------------------------------------|-------------------------------|
| Alcohol Countermeasure Systems Corp. | Alert J5 |
| CMI, Inc. | Intoxilyzer 300 |
| CMI, Inc. | Intoxilyzer 400 |
| CMI, Inc. | Intoxilyzer S-D2 |
| CMI, Inc. | Intoxilyzer S-D5 |
| Draeger Safety, Inc. | Alcotest 6510 |
| Draeger Safety, Inc. | Alcotest 6810 |
| Draeger Safety, Inc. | Breathalyzer 7410 |
| Guth Laboratories, Inc. | WAT89EC-1 |
| Guth Laboratories, Inc. | Alcotector BAC-100 |
| Intoximeters, Inc. | Alco-Sensor |
| Intoximeters, Inc. | Alco-Sensor Pass-Warn-Fail |
| Intoximeters, Inc. | Alco-Sensor III |
| Intoximeters, Inc. | Alco-Sensor Digital |
| Intoximeters, Inc. | Alco-Sensor IV Digital |
| Intoximeters, Inc. | Alco-Sensor IV Pass-Warn-Fail |
| Intoximeters, Inc. | Alco-Sensor FST |
| Lifeloc Technologies, Inc. | FC10 |
| Lifeloc Technologies, Inc. | FC10Plus |
| Lifeloc Technologies, Inc. | FC20 |
| Lifeloc Technologies, Inc. | PBA 3000 |
| Sound-Off, Inc. | AlcoData |

- (b) Each agency custodian seeking to use a preliminary breath-screening test device that is not specified in subsection (a) shall submit the device to the secretary for examination and evaluation to determine if the device meets the criteria for approval. In order for a preliminary breath-screening test device to be approved, whether the device meets the following requirements shall be determined by the secretary:
- (1) Each preliminary breath-screening test device shall meet the manufacturer's performance criteria when operated according to the procedures specified in the manufacturer's instruction manual for the device in use.
 - (2) Each reusable preliminary breath-screening test device shall have a disposable mouthpiece.
- (c) Each approved preliminary breath-screening test device shall be operated according to the procedures specified in the manufacturer's instruction manual for the device in use.
- (d) All training of preliminary breath-screening test device operators shall be the responsibility of each agency. All training shall follow the operational instructions supplied by the manufacturer for the device in use. (Authorized by and implementing K.S.A. 2006 Supp. 65-1,107; effective March 14, 2008.)