

500 KAR 8:010. Certification of breath alcohol analysis instrument operators.

RELATES TO: KRS 15A.070, 189A.103(3), (6)

STATUTORY AUTHORITY: KRS 15A.160, 189A.103(3)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 authorizes the Secretary of the Justice and Public Safety Cabinet to promulgate administrative regulations for the administration of all laws and functions which are vested in the cabinet. KRS 189A.103(3)(b) directs the secretary, or his or her designee, to issue certification for operation of breath alcohol analysis instruments to Kentucky peace officers. This administrative regulation establishes the certification of breath analysis operators as required by KRS 189A.103(3)(b).

Section 1. Training Program.

- (1) To become certified to operate a breath alcohol analysis instrument, the person shall successfully complete the Breath Test Operator Certification training program of the Department of Criminal Justice Training, or the Department of Kentucky State Police.
- (2) Successful completion shall mean receiving a passing score on a standardized written examination as provided by the Department of Criminal Justice Training, or the Department of Kentucky State Police, and the satisfactory completion of a standardized practical proficiency examination administered by a certified instructor.
- (3) The examinations shall be included in a minimum of twenty-four (24) hours of instruction, which shall include operation of approved instruments that measure alcohol concentration.

Section 2. Certification Period.

- (1) Breath test operator certification shall be valid for a period of two (2) years from the date of issuance.
- (2) Certification shall expire if the breath test operator does not obtain recertification within the two (2) year certification period.
- (3) A breath test operator whose certification has expired shall be eligible for recertification pursuant to Section 3 of this administrative regulation for a period of six (6) months following expiration.
- (4) A breath test operator whose certification expires during his or her service on active duty with the Kentucky National Guard or the United States Armed Forces shall be eligible for recertification pursuant to Section 3 of this administrative regulation for a period of six (6) months following his or her return to employment as a peace officer.

Section 3. Recertification. (1) To obtain recertification under Sections 2(2)-(4) of this administrative regulation, a certified breath test operator, or a breath test operator whose certification has expired, shall review standards and procedures for a minimum of four (4) hours of recertification instruction by the Department of Criminal Justice Training, or the Department of Kentucky State Police.

Section 4. Repeating Training. A breath test operator whose certification expires and fails to obtain recertification under Section 2(3) or 2(4) of this administrative regulation shall repeat the twenty-four (24) hour Breath Test Operator Certification training program.

Section 5. Revocation of Certification.

- (1) The following are grounds for revocation of certification to operate a breath analysis instrument:
 - (a) Misuse of the instrument by the breath test operator in violation of law;
 - (b) Refusal or failure to perform procedures in an acceptable manner; and
 - (c) Failure to testify at any judicial proceeding under KRS Chapter 189A without just cause.

(2) Any revocation of a breath test operator's Breath Test Operator Certification shall be conducted by the Commissioner of the Department of Criminal Justice Training or his designee, or the Commissioner of the Department of Kentucky State Police or his designee, following written notice to the certified breath test operator of the basis for revocation and an administrative hearing conducted pursuant to KRS Chapter 13B.

(17 Ky.R. 1885; 2203; 2440; eff. 2-7-1991; 18 Ky.R. 148; 454; 1131; 1333; eff. 11-8-1991; 37 Ky.R. 2927; 38 Ky.R. 240; eff. 9-12-2011; 44 Ky.R. 662; eff. 12-1-2017; Crt eff. 12-17-2018.)