§ 26.91 Acceptable devices for conducting initial and confirmatory tests for alcohol and methods of use.

(a) Acceptable alcohol screening devices. Alcohol screening devices (ASDs), including devices that test specimens of oral fluids or breath, must be approved by the National Highway Traffic Safety Administration (NHTSA) and listed in the most current version of NHTSA’s Conforming Products List (CPL) for such devices. An ASD that is listed in the NHTSA CPL may be used only for initial tests for alcohol, and may not be used for confirmatory tests.

(b) Acceptable evidential breath testing devices. Evidential breath testing devices listed in the NHTSA CPL for evidential devices that meet the requirements of paragraph (c) of this section must be used to conduct confirmatory alcohol tests, and may be used to conduct initial alcohol tests. Note that, among the devices listed in the CPL for EBTs, only those devices listed without an asterisk (*) may be used for confirmatory alcohol testing under this subpart:

1. Provides a printed result of each breath test;
2. Assigns a unique number to each completed test, which the collector and donor can read before each test and which is printed on each copy of the test result;
3. Prints, on each copy of the test result, the manufacturer’s name for the device, its serial number, and the time of the test;
4. Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
5. Tests an air blank; and

(d) Quality assurance and quality control of ASDs. (1) Licensees and other entities shall implement the most recent version of the quality assurance plan submitted to NHTSA for any ASD that is used for initial alcohol testing.

(2) Licensees and other entities may not use an ASD that fails the specified quality control checks or that has passed its expiration date.

(3) For ASDs that test breath specimens and meet EBT requirements for confirmatory testing, licensees and other entities shall also follow the device use and care requirements specified in paragraph (e) of this section.
(e) Quality assurance and quality control of EBTs. (1) Licensees and other entities shall implement the most recent version of the manufacturer’s instructions for the use and care of the EBT consistently with the quality assurance plan submitted to NHTSA for the EBT, including performing external calibration checks no less frequently than at the intervals specified in the manufacturer’s instructions.

(2) When conducting external calibration checks, licensees and other entities shall use only calibration devices appearing on NHTSA’s CPL for “Calibrating Units for Breath Alcohol Tests.”

(3) If an EBT fails an external check of calibration, the licensee or other entity shall take the EBT out of service. The EBT may not be used again for alcohol testing under this subpart until it is repaired and passes an external calibration check.

(4) In order to ensure that confirmed positive alcohol test results are derived from an EBT that is calibrated, the licensee or other entity shall implement one of the following procedures:

(i) If an EBT fails any external check of calibration, cancel every confirmed positive test result that was obtained using the EBT from any tests that were conducted after the EBT passed the last external calibration check; or

(ii) After every confirmed positive test result obtained from using an EBT, conduct an external check of calibration of the EBT in the presence of the donor. If the EBT fails the external calibration check, cancel the donor’s test result and conduct another initial and confirmatory test on a different EBT as soon as practicable.

(5) Inspection, maintenance, and calibration of the EBT must be performed by its manufacturer or a maintenance representative or other individual who is certified either by the manufacturer or by a State health agency or other appropriate State agency.

§ 26.95 Conducting an initial test for alcohol using a breath specimen.

(a) The collector shall perform the initial breath test as soon as practical after the donor indicates that he or she has not engaged in the activities listed in §26.93(a)(1) or after the 15-minute waiting period has elapsed, if required.

(b) To perform the initial test, the collector shall—

1. Select, or allow the donor to select, an individually wrapped or sealed mouthpiece from the testing materials;

2. Open the individually wrapped or sealed mouthpiece in view of the donor and insert it into the device as required by the manufacturer’s instructions;

3. Examine the donor’s mouth to determine if anything is present that would interfere with the test;