

**NEW MEXICO DEPARTMENT OF HEALTH
SCIENTIFIC LABORATORY DIVISION
700 Camino de Salud N.E.
Albuquerque, New Mexico 87106**

TITLE 7 HEALTH

CHAPTER 33 SCIENTIFIC, CHEMICAL AND BIOLOGIC LABORATORIES AND TESTING

PART 2 BLOOD AND BREATH TESTING UNDER THE NEW MEXICO IMPLIED CONSENT ACT

**7.33.2.1 ISSUING AGENCY: New Mexico Department of Health - Scientific Laboratory Division
[7.33.2.1 NMAC - Rp, 7 NMAC 33.2.1, 03-14-01]**

**7.33.2.2 SCOPE: These regulations govern the certification of laboratories, breath alcohol testing instruments and individuals and the methods of taking and analyzing samples for blood and breath testing for alcohol or other chemical substances or both under the New Mexico Implied Consent Act, Section 66-8-107 et seq. NMSA 1978.
[7.33.2.2 NMAC - Rp, 7 NMAC 33.2.2, 03-14-01]**

**7.33.2.3 STATUTORY AUTHORITY: These regulations are promulgated by the Secretary of the Department of Health under the authority of Section 9-7-6(E), Section 24-1-22 and Section 66-8-107 et seq, NMSA 1978 Administration and enforcement of these regulations is the responsibility of the Scientific Laboratory Division (SLD) of the Department of Health.
[7.33.2.3 NMAC - Rp, 7 NMAC 33.2.3, 03-14-01]**

**7.33.2.4 DURATION: Permanent.
[7.33.2.4 NMAC - Rp, 7 NMAC 33.2.4, 03-14-01]**

**7.33.2.5 EFFECTIVE DATE: March 14, 2001, unless a later date is cited at the end of a Section or Paragraph.
[7.33.2.5 NMAC - Rp, 7 NMAC 33.2.5, 03-14-01]**

**7.33.2.6 OBJECTIVE: The objective is to establish standards and procedures for the certification of laboratories, breath alcohol testing instruments and individuals and the methods of taking and analyzing samples for blood and breath testing for alcohol and other chemical substances under the New Mexico Implied Consent Act, Section 66-8-107 et seq, NMSA 1978.
[7.33.2.6 NMAC - Rp, 7 NMAC 33.2.6, 03-14-01]**

7.33.2.7 DEFINITIONS:

A. "Accessory" means any device or item that assists in the operation of the instrument but is not a component of the instrument, such as a surge suppressor.

B. "Alcohol" means a hydrocarbon molecule that contains a hydroxyl (oxygen, hydrogen) as its primary functional group. The term "alcohol," when used in these regulations means ethyl alcohol.

- C. "Blood" means whole blood which contains the cellular components and the serum or plasma of blood or hemolyzed blood.
- D. "Blood Alcohol Concentration (BAC)" means a unit of measurement of alcohol in blood; the number of grams of alcohol per 100 milliliters of blood.
- E. "Breath" means that portion of exhaled lung air that is collected for alcohol analysis.
- F. "Breath Alcohol Concentration (BrAC)" means a unit of measurement of alcohol in breath; the number of grams of alcohol per 210 liters of breath.
- G. "Breath Alcohol Testing Instrument" means any device that is capable of analyzing breath to establish the concentration of alcohol contained in that sample. Such instruments must be approved and individually certified by the Scientific Laboratory Division for use in testing pursuant to the Implied Consent Act and these regulations.
- H. "Breath Alcohol Testing Instrument Modification" means any alteration, variation or redesign of any part, device or electronic circuit that directly affects, alters, varies or changes the analytical or operational section of the equipment. Such modification may, at the discretion of the Scientific Laboratory Division, require reapproval of the instrument.
- I. "Department" means the New Mexico Department of Health, including its predecessor and successor agencies and its Scientific Laboratory Division (SLD).
- J. "Director" means the Director of the Scientific Laboratory Division (SLD).
- K. "Division" means the Scientific Laboratory Division (SLD) including its predecessor and successor divisions of the New Mexico Department of Health.
- L. "Drug" means any chemical agent that affects living processes and has the potential to impair those processes.
- M. "Foreign Substance" means materials not commonly found in the human mouth; it does not include dental appliances, dental adhesives, orthodontics or orthotics.
- N. "Key Operator" - Certified Key Operators are responsible for the weekly calibration checks of the breath alcohol testing instruments and participation in the proficiency testing specified in these regulations. Certified Key Operators must be full-time, salaried employees of law enforcement agencies or detention facilities in New Mexico.
- O. "Operator" - Certified operators must be full-time, salaried peace officers commissioned in New Mexico or full-time employees of detention facilities in New Mexico.
- P. "Preservative" means any chemical that inhibits the development of microbial growth in a collected blood sample. The preserved blood must contain a minimum of 1.0 percent sodium fluoride.
- Q. "Sample" means a quantity of a subject's blood or exhaled breath to be analyzed for the presence of alcohol or other drugs or both pursuant to the New

Mexico Implied Consent Act. All samples should be of sufficient volume so that complete analysis for alcohol or drugs or any combination of alcohol and drugs may be performed. The breath test operator should make a good faith attempt to collect and analyze at least two (2) samples of breath.

R. "Test" - means in the case of blood, the analysis of a blood sample for alcohol or other chemical substances or both. In the case of breath, "test" means the analysis of breath samples for alcohol or other chemical substances or both.

S. "Vendor" means any company or representative of a manufacturer responsible or involved in the sale or marketing of testing instruments for alcohol or other chemical substances, and any associated equipment, accessories or supplies. [7.33.2.7 NMAC - Rp, 7 NMAC 33.2.7, 03-14-01]

7.33.2.8 APPLICATIONS FOR CERTIFICATION:

Applications for certification to analyze for alcohol or other chemical substances in breath or blood or both pursuant to these regulations, for qualified individuals, laboratories and breath alcohol testing instruments shall be made in writing to the Director of the Scientific Laboratory Division, P.O. Box 4700, 700 Camino de Salud N.E., Albuquerque, New Mexico 87196-4700. [7.33.2.8 NMAC - Rp, 7 NMAC 33.2.8, 03-14-01].

7.33.2.9 CERTIFICATION OF LABORATORIES:

A. The Scientific Laboratory Division shall conduct blood/breath tests for alcohol and other chemical substances on samples collected pursuant to the New Mexico Implied Consent Act, Sections 66-8-105 et.seq. NMSA 1978. The Division shall prepare breath alcohol simulator solutions used to determine the eligibility for certification of laboratories, instruments and all classes of operators. The Director of the Scientific Laboratory Division may certify other laboratories that meet the specified criteria to conduct testing under the Implied Consent Act.

B. Each SLD-certified laboratory shall have adequate space, equipment, materials, quality assurance controls and qualified staff which shall be used in the performance of blood/breath tests.

C. Laboratories other than the Scientific Laboratory Division may be certified for periods not to exceed one year to conduct blood or breath tests or both subject to the following standards, procedures, conditions and on-site inspections. All laboratory certifications shall expire annually on June 30. SLD certified laboratories must apply for renewal of certification annually. All applications must be received at least 60 days prior to the expiration date of the laboratory's certification.

(1) Any laboratory seeking certified status shall furnish to the Director of the Scientific Laboratory Division, in writing, documentation of the scientific training and experience in toxicology or clinical/analytical chemistry of its director and all personnel performing tests. The applicant laboratory shall also provide to the Scientific Laboratory Division written copies of the analytical methods and techniques and equipment it proposes to use, as well as a set of quality control measures whose adequacy will be determined by SLD.

(2) The Scientific Laboratory Division shall provide to those laboratories seeking initial certification for blood alcohol testing 10 specimens to be analyzed for

alcohol content. The results of all the quantitatively analyzed samples shall be within 10% of the actual amount of alcohol contained in the specimen.

(3) A certificate shall be issued to any laboratory that meets the standards and successfully completes the proficiency testing for alcohol analysis. Laboratories certified by SLD shall display their certification prominently.

(4) Any laboratory seeking certification to test blood for drug content shall furnish to the Director of the Scientific Laboratory Division documentation of the scientific training and experience in toxicology or clinical/ analytical chemistry of its director and all personnel performing tests.

(a) The applicant laboratory shall also provide to the Scientific Laboratory Division written copies of the analytical methods, equipment, techniques and quality control measures it proposes to utilize. The Scientific Laboratory Division will determine the adequacy of the applicant laboratory's equipment, personnel, analytical methods and quality control measures.

(b) Any laboratory seeking certification for drug testing shall provide to the Director of the Scientific Laboratory Division records of satisfactory performance in an SLD-approved proficiency testing program for the year preceding the application.

(5) Applications for renewal of certification shall include the following:

(a) The same information regarding personnel, techniques and equipment as described in Subsection C paragraph (1) of 7.33.2.9 NMAC above.

(b) Results of all proficiency tests performed in the previous year. These proficiency tests shall be exclusive of any provided by the SLD.

(6) A certificate shall be issued to any laboratory successfully meeting the standards and successfully completing the proficiency testing for drug analysis. Laboratories certified by SLD shall display their certification prominently.

(7) The Scientific Laboratory Division shall maintain an updated list of its certified laboratories, which shall be available to any interested party upon written request to the Scientific Laboratory Division. A reasonable copying fee will be charged.

D. General Responsibilities of Laboratories:

(1) The director of any laboratory certified by SLD shall be directly responsible for the accuracy of all tests performed as well as for the accuracy of all reports issued.

(2) Each SLD-certified laboratory shall adhere to an SLD-approved written method of analysis and shall maintain evidence of its compliance.

(3) Each SLD-certified laboratory shall be subject to inspection by authorized personnel of the Scientific Laboratory Division prior to certification and may be reinspected at any time during the period for which certification was granted.

(4) SLD-certified laboratories are required to submit to the Director of SLD any changes in their analytical personnel, analytical methodology or analytical

equipment for approval a minimum of 20 days prior to commencing analysis with the new personnel, methodology or equipment.

(5) Laboratories certified by SLD are subject to performance tests conducted in a manner prescribed by the Scientific Laboratory Division. Each laboratory shall have access to the records of its performance test results.

(6) Records containing all pertinent facts relating to analyses performed shall be maintained for a minimum period of five years. All records shall be sufficiently complete as to allow verification by an independent chemist unaffiliated with the SLD-certified laboratory. Such records shall be open to inspection by authorized personnel of the Scientific Laboratory Division.

(7) Copies of all results of tests for alcohol or other drugs shall be submitted to SLD within 30 days of the completion of the blood analysis. The name of the scientist responsible for reviewing the test data and determining the final result shall be provided on the report.

(8) The results of positive tests for drugs other than alcohol shall not be reported until they are confirmed. Confirmation tests must employ an approved method that is different than the one utilized to achieve the initial result unless the confirmation test method has been approved for that use by SLD.

E. Proficiency testing of each laboratory certified by SLD shall be conducted in a manner prescribed by the Scientific Laboratory Division. This testing shall require that each laboratory analyze a minimum of eight samples each year. In the case of proficiency samples provided by SLD, certified laboratories must return test results within ten (10) days of their receipt. Continued certification of a laboratory shall depend on satisfactory performance in the proficiency testing. If a laboratory fails to perform satisfactorily, its certificate shall be suspended or revoked. Laboratories seeking review of unsatisfactory proficiency test results must request a review in writing within 10 days of receipt of notification of the unsatisfactory performance. Performance is considered satisfactory if the results of all analyses in a single year fall within acceptable limits based on considerations that include, but are not limited to, the subject analytes and the sample matrix.

(1) Acceptable limits are defined as follows for blood samples: ± 10 percent of the alcohol content of the specimen if the known alcohol content is 0.10 grams per 100 milliliters or more; ± 0.01 grams per 100 milliliters if the known alcohol content is less than 0.10 grams per 100 milliliters.

(2) Acceptable limits are defined as follows for breath samples: ± 10 percent of the alcohol content of the specimen if the known alcohol content is 0.10 grams per 210 liters or more; ± 0.01 grams per 210 liters if the alcohol content is less than 0.10 grams per 210 liters.

F. All SLD-certified laboratories shall establish and maintain adequate SLD-approved quality control measures and shall maintain complete records of their quality control programs. These records shall be available for inspection by the Scientific Laboratory Division personnel upon demand and shall be maintained for a minimum period of five years. Results of all proficiency tests performed by SLD-certified laboratories shall be provided with any applications for certification or recertification.

[7.33.2.9 NMAC - Rp, 7 NMAC 33.2.9, 03-14-01]

7.33.2.10 METHODS OF ALCOHOL ANALYSIS

A. Alcohol in Blood

(1) The method used shall be capable of analyzing reference samples of known alcohol concentration with accuracy limits of $\pm 10\%$ of the actual blood alcohol concentration if the known alcohol concentration is 0.10 grams per 100 milliliters or more and ± 0.01 grams per 100 milliliters if the known concentration is less than 0.10 grams per 100 milliliters. The method shall also be capable of analyzing reference samples of known alcohol concentration within specificity and precision limits that will be established and reviewed by the Scientific Laboratory Division annually.

(2) All analytical results shall be expressed in terms of the alcohol concentration in blood, based on the number of grams of alcohol per 100 milliliters of blood. These results shall be reported to two decimal places except for analyses of standards, controls and proficiency samples, which shall be reported to three decimal places.

(3) All analytical methods and any modifications of approved analytical methods must be approved in advance by the Scientific Laboratory Division.

B. Alcohol in Breath Samples

(1) Breath samples shall be analyzed by certified Operators or Key Operators on instruments and equipment approved and certified by the Scientific Laboratory Division.

(2) The minimum requirements for operation of breath alcohol testing instruments are:

(a) a system blank analysis shall be used preceding each breath sample.

(b) a calibration check shall be performed in accordance with the following

(i) the instrument shall be maintained and calibration checked by the Key Operator. Calibration checks shall be made a minimum of once every seven days. These calibration checks shall consist of checking the instrument with two breath alcohol simulator solutions, one of which shall simulate a 0.08 grams per 210 liters BrAC and the other shall simulate a BrAC of greater than 0.15 grams per 210 liters BrAC. These solutions may only be prepared by the Scientific Laboratory Division. Satisfactory calibration results must be within ± 10 percent of the listed values for a BrAC of 0.10 grams per 210 liters and above or ± 0.01 for a BrAC below 0.10 grams per 210 liters or

(ii) a single calibration check of .08 grams per 210 liters shall be performed with each subject test. Satisfactory calibration check results must be within plus or minus 0.01. These test results shall be valid for the purpose of determining if the subject test is .08 grams per 210 liters or more;

(iii) or both (i) and (ii) above.

(c) A chronological log book shall be kept for each instrument to show calibration tests, maintenance and analyses performed, results and identities of the subjects tested, as well as the identities of the persons performing analyses. Records shall

be kept on forms provided by the Scientific Laboratory Division. Copies of these records shall be submitted to the Scientific Laboratory Division each month. It shall be permissible to maintain an additional logbook in which calibration checks, proficiency tests and maintenance are recorded.

(3) The Scientific Laboratory Division shall review and prescribe the Operational Checklist Procedures to be used for approved breath alcohol testing instruments.

(4) All analytical results shall be reported as grams of alcohol per 210 liters of breath (g /210L). These results shall be reported to two decimal places except in the case of standards and proficiency samples, which shall be reported to three decimal places.

(5) The Division may consider scientific information concerning breath alcohol testing issues submitted in writing by any organization or person. The Director will provide a written response to any such submission within ninety (90) days of receipt. Priority shall be assigned to those submitting original research.
[7.33.2.10 NMAC - Rp, 7 NMAC 33.2.10, 03-14-01]

7.33.2.11 BREATH ALCOHOL TESTING INSTRUMENTS USED BY LAW ENFORCEMENT AGENCIES

A. SLD-approved breath alcohol testing instruments used by New Mexico law enforcement agencies shall be certified by SLD to conduct breath alcohol tests provided that all criteria for certification are met.

B. Each breath alcohol testing instrument certification shall be for a period of up to one year and shall expire annually on September 30.

C. Prior to initial certification and twice annually thereafter as scheduled by SLD, calibration tests and inspection of the instrument will be conducted by the Scientific Laboratory Division. These inspections may take place at the Scientific Laboratory Division. If the results do not meet criteria established by the Scientific Laboratory Division certification shall not be granted, or, if previously granted, shall be suspended or revoked.

D. All new breath alcohol testing instruments must be certified by SLD prior to placement and use in the field. Any breath alcohol testing instrument removed from an SLD-approved site to a location other than an SLD-approved site is required to receive SLD recertification prior to the instrument being returned to service. Any modifications of an SLD-approved field site must be approved in advance and SLD may require removal or recertification of the breath alcohol testing instrument at that site.

E. All breath alcohol testing instruments shall be returned to SLD on an annual basis for inspection. Such inspection shall consist of, but not be limited to:

(1) Establishing the current status of the breath alcohol testing instrument;

(2) Testing the breath alcohol testing instrument's electronic functions and settings ;

(3) A series of controlled ethyl alcohol solutions shall be analyzed with an accuracy requirement of ± 5 percent or .005, whichever is greater, on all target values;

(4) All updates, modifications or changes that have been approved by SLD may be installed;

(5) A review of the breath alcohol testing instrument's sensitivity for the detection of any interfering substances.

F. At least one (1) certified Key Operator shall assigned to each breath alcohol testing instrument. The lack of a certified Key Operator shall be grounds for suspension or revocation of the certification of an instrument.

G. Certification of breath alcohol testing instruments shall be dependent upon the following:

(1) At least monthly submission to the Scientific Laboratory Division of records pertaining to all tests administered on the instrument(s). All records shall be submitted no later than the 10th day of the succeeding month.

(2) Satisfactory performance on the requisite proficiency testing. Six (6) proficiency samples should be analyzed yearly on each such certified instrument.

(3) A calibration check on the instrument(s) shall be conducted at least once every seven calendar days or a .08 calibration check shall be conducted with each subject test, or both.

H. Law enforcement agencies shall be required to pay for any repairs or adjustments required as a result of any negligence, incompetence or misconduct in the operation or handling of any breath alcohol testing instrument in the agency's custody or control. The Scientific Laboratory Division is not required to support or service any breath alcohol testing instruments that are not certified by SLD.

I. The Scientific Laboratory Division shall maintain lists of currently approved testing and collection devices, criteria for testing equipment, checklists and procedures. Copies may be obtained upon written request to the Scientific Laboratory Division. A reasonable copying fee per page will be charged. [7.33.2.11 NMAC - Rp, 7 NMAC 33.2.11, 03-14-01]

7.33.2.12 SAMPLE COLLECTION FOR ANALYSIS

A. Blood Sample Collection:

(1) Blood samples shall be collected in the presence of the arresting officer or other responsible person who can authenticate the samples. Blood samples shall be collected by veni-puncture as authorized by the New Mexico Implied Consent Act NMSA 1978, Sections 66-8-105 et. seq. The term laboratory technician shall include phlebotomists.

(2) The initial blood samples should be collected within two hours of arrest. Any blood samples collected subsequent to the initial blood or breath sample collection should be collected within 60 minutes of the initial sample collection.

(3) Ethyl alcohol shall not be used as a skin antiseptic in the course of collecting blood samples. The samples shall be dispensed or collected using an SLD-approved blood collection kit or directly into two or more sterile tubes containing sufficient sodium fluoride so that the final concentration shall contain not less

than 1.0 percent sodium fluoride. In the case of an insufficient sample, it shall be permissible to collect the sample in one tube only.

(4) The blood samples shall be delivered to the Scientific Laboratory Division or a laboratory certified by the Scientific Laboratory Division to conduct tests for alcohol or other drug content. At the laboratory, the seal shall be broken on one tube and the blood shall be analyzed. In the case of samples containing an insufficient sample, it shall be permissible to open more than one sample tube.

(5) The samples of blood shall be retained by the laboratory which performed the initial alcohol or drug testing for a period of not less than six months unless the laboratory is ordered by a court with appropriate jurisdiction to release the samples. If any party requires that these samples be retained for more than six months, that party shall request the laboratory retaining the samples to save the desired samples. The request must be made in writing and must specify the name of the donor of the sample, the date of arrest, the county of arrest and, if available, any laboratory identification numbers. The retained samples shall be made available upon receipt of a court order or subpoena directing the laboratory to release a portion of the remaining sample to a testing facility specified by the requesting party. The laboratory which performed the initial alcohol or drug testing is not responsible for the transport of the retained samples.

B. Breath Sample Collection:

(1) Two breath samples shall be collected and analyzed by certified Operators or Key Operators only, and shall be end expiratory in composition. Breath shall be collected only after the Operator or Key Operator has ascertained that the subject has not had anything to eat, drink or smoke for at least 20 minutes prior to collection of the first breath sample. If during this time the subject eats, drinks or smokes anything, another 20 minutes deprivation period must be initiated. The two breath samples shall be taken not more than 15 minutes apart. If the difference in the results of the two samples exceeds 0.02 grams per 210 liters (BrAC), a third sample of breath or blood shall be collected and analyzed. If the subject declines or is physically incapable of consent for the second or third samples, it shall be permissible to analyze fewer samples.

(2) Samples of the subject's breath shall be collected and analyzed pursuant to the procedures prescribed by, and employing only devices approved and certified by, the Scientific Laboratory Division.

[7.33.2.12 NMAC - Rp, 7 NMAC 33.2.12, 03-14-01]

7.33.2.13 CERTIFICATION OF OPERATORS OF BREATH ALCOHOL TESTING EQUIPMENT

A. Operators who have been issued certificates by SLD certifying their satisfactory completion of training in SLD-approved methods of determining breath alcohol concentration are considered certified Operators. Certification shall be granted for up to two years. All certifications shall expire on the last day of the month indicated on the SLD-issued certification credential. Certified Operators shall be full-time, salaried peace officers commissioned in New Mexico or employees of detention facilities in New Mexico.

B. Certification procedures:

(1) In order to be certified, the operator shall furnish the Scientific Laboratory Division evidence that he or she has at least eight hours of instruction provided by SLD-certified instructors. The training must include, but is not limited to:

- (a) The value and purpose of blood and breath alcohol testing.**
- (b) The effects of alcohol on the human body.**
- (c) 13.2.1.3 The methods of alcohol analysis and the theory of breath testing.**
- (d) Breath alcohol testing instruments and the procedures for breath testing.**
- (e) Practical experience and demonstration of competency.**
- (f) New Mexico Implied Consent Act, these regulations and any amendments or revisions and court testimony.**

(2) Comprehensive practical and written examinations must be successfully completed by applicants for certification. This examination will be formulated or approved by the Scientific Laboratory Division and shall be graded by representatives of the Scientific Laboratory Division or SLD-certified Operator Instructors.

(3) Certification may be denied for inadequate scores or failure to complete any performance tests or examinations in the manner prescribed by the Scientific Laboratory Division.

(4) SLD shall provide training for Operators and Operator Applicants at SLD or other facilities in Albuquerque. SLD may authorize training classes in other areas of the state.

(5) SLD may restrict admission to initial certification classes to those who have not previously been certified and to those who do not qualify for a recertification class.

C. The certification of Operators shall be for a period of up to two years. All certifications shall expire on the last day of the month indicated on the SLD-issued certification credential. Applications for renewal shall show:

(1) The applicant has successfully completed an Operator Certification or Recertification training formulated or approved by the SLD within the previous twenty-seven (27) months; and

(2) successful completion of recertification training conducted by certified Operator Instructors. This training shall be approximately four (4) hours in duration and shall include a written, as well as a practical, examination formulated or approved by the Scientific Laboratory Division.

(3) Candidates for renewal who do not satisfy the requirements must attend and successfully complete the initial certification class before they are eligible to take the recertification examination again.

D. Certified Operators of an SLD approved model of breath alcohol testing instrument may be certified to operate additional SLD-approved breath alcohol testing instruments upon the successful completion of training conducted by a

certified Operator Instructor. This training shall follow a course of instruction outlined or approved by SLD and shall include a written as well as a practical examination formulated or approved by SLD. This training shall be approximately four (4) hours in duration.

E. If the certification of an Operator is due to expire before the certification is renewed, the Operator may petition the Scientific Laboratory Division for an extension of certification. This petition must be received by the Scientific Laboratory Division before certification is due to expire. Extension of certification shall be within the discretion of Scientific Laboratory Division based on good cause having been shown and shall be for a period of not more than sixty (60) days. Extensions shall not be granted for more than a total of 60 consecutive days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily. New certification may be obtained by successfully completing the initial certification process as set out in these regulations.

F. Replacement or duplicate Operator certification credentials shall be subject to the fees specified in SLD's fee schedule.

[7.33.2.13 NMAC - Rp, 7 NMAC 33.2.13, 03-14-01]

7.33.2.14 CERTIFICATION OF KEY OPERATORS

A. Applicants must be currently certified as Operators for the instruments on which they seek to be certified as Key Operators prior to applying for certification as a Key Operator. Certified Key Operators must be full-time, salaried employees of law enforcement agencies or detention facilities in New Mexico. SLD may certify as Key Operators SLD-selected, non-Operator employees of law enforcement agencies or corrections departments in New Mexico who successfully complete written and practical examinations formulated and administered by SLD.

B. Key Operator applicants shall demonstrate the following qualifications

(1) At least eight hours of instruction that shall include the following:

(a) The theory of breath testing;

(b) The operational and theoretical principles of the selected breath testing instruments;

(c) The preparation and use of a simulator;

(d) Calibration checks of selected breath alcohol testing instruments;

(e) Quality Control measures and proficiency testing;

(f) Minor maintenance and repair of breath alcohol testing equipment;

(g) The New Mexico Implied Consent Act, these regulations and any amendments or revisions and court testimony;

(h) Laboratory practice and the demonstration of competency on the applicable equipment.

(2) Successful completion of comprehensive practical and written examinations administered by the Scientific Laboratory Division.

C. Key Operators shall be certified for a period of up to one year. All Key Operator certification shall expire annually on March 31. Certifications may be renewed based on a demonstration of competency which may include successful completion of a refresher class as specified by the Scientific Laboratory Division.

D. Certified Key Operators of an SLD-approved model of breath alcohol testing instrument may be certified as a Key Operator of additional SLD-approved breath alcohol testing instruments upon the successful completion of training conducted by SLD. The training shall be a minimum of four hours in length and shall include a written as well as a practical examination.

E. Key Operator certification shall be limited to the model of instruments upon which the Key Operator has been trained and examined or models considered equivalent by the Scientific Laboratory Division.

F. Certified Key Operators shall be responsible for the calibration checks of the instruments their agencies use, maintenance of those instruments and supplies for those instruments as well as participation in the proficiency testing specified in these regulations. Key Operators shall insure that the records specified in training are submitted as required to the Scientific Laboratory Division.

G. Solutions for proficiency testing of each certified Key Operator shall be issued at least six (6) times every year by the Scientific Laboratory Division. A minimum of one solution must be analyzed by each certified Key Operator within 30 days of receipt of the solutions. Results must be received by SLD within 10 working days thereafter. The results must meet criteria established by the Scientific Laboratory Division.

H. If the certification of a Key Operator is due to expire before the certification is renewed, the Key Operator may petition the Scientific Laboratory Division for an extension of certification. This petition must be received by the Scientific Laboratory Division before certification is due to expire. Extension of certification shall be within the discretion of Scientific Laboratory Division based on good cause having been shown and shall be for a period of not more than sixty (60) days. Extensions shall not be granted for more than a total of 60 consecutive days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily. New certification may be obtained by successfully completing the initial certification process as set out in these regulations.

I. Replacement or duplicate Key Operator certification credentials shall be subject to the fees specified in SLD's fee schedule.
[7.33.2.14 NMAC - Rp, 7 NMAC 33.2.14, 03-14-01]

7.33.2.15 DESIGNATION OR CERTIFICATION OF OPERATOR INSTRUCTORS

A. Qualified representatives of the Scientific Laboratory Division shall be designated as Operator Instructors, as determined by the Director.

B. Persons not employed by the SLD may apply for certification as Operator Instructors. Such applicants shall demonstrate the following qualifications:

(1) Current certification as an Operator of the applicable breath testing equipment, or demonstration of equivalent knowledge to qualify as such by the successful completion of written and practical examinations approved or formulated by the Scientific Laboratory Division; and

(2) At least 12 semester hours in which the applicant received a grade of C (or satisfactory) or higher in any combination of the following disciplines: Chemistry, Biology, Physics, or Mathematics from an accredited university or college. At least four of those twelve semester hours must be in Chemistry.

C. Certified Operator Instructors shall have a minimum of 32 hours of instruction in areas relating to blood/breath collection and analysis, to include the following:

(1) The value and purpose of blood and breath alcohol analysis;

(2) The effects of alcohol on the human body;

(3) The instruments and procedures for alcohol analysis;

(4) The interpretation of the results of alcohol analysis;

(5) The New Mexico Implied Consent Act, these regulations and any amendments or revisions and court testimony;

(6) The methods of alcohol analysis;

(7) The operational principles of the selected breath alcohol testing instruments;

(8) Practical experience and demonstration of competency in use of blood/breath collection and analysis equipment

D. Comprehensive practical and written examinations shall be successfully completed by all applicants prior to certification. These examinations shall be administered by the Scientific Laboratory Division.

E. As an alternative to completing the above course of instruction, an Operator Instructor may be certified if he/she has earned a Bachelor's degree in chemistry, biology or a related science from an accredited university or college and he/she demonstrates equivalent knowledge by successfully completing written and practical examinations formulated or approved by the Scientific Laboratory Division and at least one initial Operator class conducted by SLD for the instrument for which certification is sought within six months of the beginning of each certification period.

F. Operator Instructors must maintain their certification as Operators or Key Operators. Failure to maintain certification as an Operator or Key Operator or to demonstrate equivalent knowledge as established by SLD shall cause certification as an Operator Instructor to be revoked.

G. Certification shall be for a period of up to two years and shall expire on December 31 of the year noted on the SLD-issued credential. Certification may be renewed after demonstrating competency or completing an instructor refresher class as specified or approved by the Scientific Laboratory Division.

H. If the certification of an Operator Instructor is due to expire before the certification is renewed, the Operator Instructor may petition the Scientific Laboratory Division for an extension of certification. This petition must be received by the Scientific Laboratory Division no later than five working days before certification is due to expire. Extension of certification shall be within the discretion of Scientific Laboratory Division based on good cause having been shown and shall be for a period of not more than sixty (60) days. Extensions shall not be granted for more than a total of 60 consecutive days. Certification shall be deemed to have expired at the end of the extension period if the renewal requirements have not been completed satisfactorily. New certification may be obtained by successfully completing the initial certification process as set out in these regulations.

I. Replacement or duplicate Operator Instructor certification credentials shall be subject to the fees specified in SLD's fee schedule.

J. Only certified Operator Instructors and duly qualified employees of SLD are qualified to train, test and grade Operators of breath alcohol testing equipment. The Scientific Laboratory Division shall issue Operator Certification to applicants who successfully complete the above described courses of instruction and pass the examinations, subject to the following conditions:

(1) The Scientific Laboratory Division must be notified in writing at least ten (10) working days in advance of the date, time and location of all training and examinations to be conducted by a certified Operator Instructor. In case of an emergency or unforeseen circumstances, the date, time, or location of such training or examinations may be changed if the Scientific Laboratory Division is notified at least 24 hours before such a change is made.

(2) All Operator training classes conducted by a certified Operator Instructor shall follow a course of instruction outlined or approved by the Scientific Laboratory Division.

(3) Tests must be outlined or approved by the Scientific Laboratory Division for each type of breath alcohol testing instrument covered in the training.

(4) All students of the Operator Instructor must take and pass examinations designed or approved by the Scientific Laboratory Division prior to certification.

(5) The Operator Instructor shall maintain records of the classes he or she has conducted for at least the previous three (3) years. These records shall include but not be limited to the dates, times, locations and attendees of such classes. The Scientific Laboratory Division may inspect the Operator Instructor's records concerning the courses taught by the instructor.

(6) Representatives of the Scientific Laboratory Division may observe any training sessions and examinations conducted by certified Operator Instructors. If the training or examinations observed are not conducted in accordance with the regulations and standards of the Scientific Laboratory Division, certification shall be denied the applicants and the certification of the Operator Instructor shall be suspended or revoked.

(7) All copies of the examinations are to be forwarded to the Scientific Laboratory Division upon completion of grading with a written statement by the Instructor that he or she has conducted the class in compliance with the

requirements of these regulations. The Scientific Laboratory Division may grade any examinations at random or for cause. The grades assigned by the Scientific Laboratory Division shall be the official grades. SLD shall not maintain copies of any examinations for more than 30 days after certification has been granted or denied.

(8) SLD shall not release copies of any examinations to anyone other than applicants and approved certified instructors in order to protect the integrity of training process and to insure that applicants for certification are tested on their knowledge of the materials presented. Applicants shall be required to return all copies of the tests they may have received at the end of the testing session. [7.33.2.15 NMAC - Rp, 7 NMAC 33.2.15, 03-14-01]

7.33.2.16 DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATION

A. The Scientific Laboratory Division shall refuse to certify, or shall suspend or revoke the certification of any SLD-certified laboratory, any breath testing instrument, any Operator of breath alcohol testing instruments, any Key Operator of breath alcohol testing instruments or any Operator Instructor for any one or more of the following causes;

(1) Fraud or deceit in applying for or obtaining the certification or renewal thereof.

(2) Loss of professional certification or affiliation.

(3) Any serious or repeated violation of any rule or regulation of the Scientific Laboratory Division.

(4) Any major violation of the standards for laboratories, facilities, personnel or equipment relevant to the testing procedures that are the subject of these regulations.

(5) For good cause, including but not limited to perjury, fraud or incompetence.

(6) Failure to perform analyses and proficiency testing in a satisfactory manner as specified by SLD.

(7) Inadequate scores or failure to complete any performance tests or examinations conducted in the manner prescribed by the Scientific Laboratory Division.

(8) As required by New Mexico Parental Responsibility Act (Section 40-5A-1-et. seq. NMSA 1978).

B. A written request to stay suspension or revocation may be made by any Operator, Operator Instructor, or Key Operator who is unable to carry out his/her specific duties due to circumstances beyond the requestor's control. The request must show good cause and be received at the Scientific Laboratory Division within 10 days of receipt of notification of suspension or revocation.

C. Any Operator, Operator Instructor, or Key Operator who has received notice that certification will be denied, suspended, or revoked shall be granted a hearing upon written request to the Director of the Scientific Laboratory Division. The request for hearing must be received by the Director within 10 days of the

date of the notice of denial, suspension or revocation. The Director shall set the hearing within 30 days of receiving the request. The Director shall issue a final determination within 10 days after the hearing is concluded.

D. If any Laboratory, Operator, Operator Instructor or Key Operator is denied certification or renewal of certification, they may re-apply for certification after 90 days. Subsequent denials will require that six months elapse prior to re-application.

E. If any Laboratory, Operator, Operator Instructor, or Key Operator has had their SLD certification revoked, they may not re-apply for a minimum of one year. [7.33.2.16 NMAC - Rp, 7 NMAC 33.2.16, 03-14-01]

7.33.2.17 BREATH ALCOHOL TESTING INSTRUMENT LOCATION REQUIREMENTS

A. All locations performing breath alcohol testing must have one or more certified Key Operators responsible for the care, maintenance and field certification of the breath alcohol testing instrument. The Key Operator is not required to be a member of the agency in which the instrument is placed.

B. All locations must have sufficient number of certified Operators and Key Operators to warrant placement and support by SLD. The number of Operators for any location shall be based on the total number of certified Operators and certified Key Operators within the County.

C. All locations shall provide an adequate operational environment for the breath alcohol testing instrument. If an agency fails to provide an adequate operational environment, the Scientific Laboratory Division shall place that location on suspension, and if the location does not meet the SLD's requirements within 10 days of notification of the location's deficiencies, SLD's instrument shall be removed from the agency. The certification shall be revoked for any affected breath alcohol testing instrument that is owned by any entity other than the Scientific Laboratory Division.

D. All law enforcement agencies shall notify SLD in advance of any substantial changes in the room in which the breath alcohol testing instrument is located or any movement of the instrument from its original approved location. SLD may require recertification of the breath alcohol testing instrument after either of these events.

E. All law enforcement agencies are required to submit copies of all calibration checks, proficiency tests and all breath alcohol analysis results on a monthly basis, no later than the 10th day of the succeeding month. Failure to provide these reports on a timely basis may result in the removal of the breath alcohol testing instrument and the suspension or revocation of the certification of the Key Operator for that instrument. Failure to file the required reports does not invalidate any breath alcohol test administered at that site or on that instrument.

F. Temporary testing locations may be designated upon the request of a law enforcement agency if the Scientific Laboratory Division determines that additional sites are warranted and sufficient certified breath alcohol testing instruments are available. Temporary testing locations must conform to all applicable certification specifications required for a permanent testing location, excluding roadside sobriety checkpoints.

[7.33.2.17 NMAC - Rp, 7 NMAC 33.2.17, 03-14-01]

7.33.2.18 EVALUATION OF BREATH ALCOHOL TESTING INSTRUMENTS AND ASSOCIATED EQUIPMENT

A. All manufacturers/vendors of breath alcohol testing instruments and associated equipment, supplies and accessories are required to submit their instrumentation or associated equipment, supplies and accessories to the Scientific Laboratory Division for formal approval prior to introduction of the instruments, associated equipment, supplies and accessories for use by law enforcement agencies in New Mexico.

B. A list of all breath alcohol testing instruments, associated equipment, supplies and accessories that have been approved by the Scientific Laboratory Division for use under the New Mexico Implied Consent Act shall be maintained by SLD.

C. The Scientific Laboratory Division reserves the right to withdraw the approval of any breath alcohol testing instrument, associated equipment, supplies or accessories if the manufacturer/vendor fails to comply with the provisions of the approval criteria, the regulations governing the manufacturer/vendor obligations to the State of New Mexico, or the terms of any contracts with SLD.

D. Manufacturers/vendors of breath alcohol testing instruments, equipment, supplies and accessories shall comply with the following requirements:

(1) All manufacturers/vendors must seek approval in writing to sell specified equipment. The request must meet the requirements of this section (7.33.2.18 NMAC). The requests shall be maintained on file with the Director of the Scientific Laboratory Division.

(2) All manufacturers/vendors must provide technical manuals, schematics and other materials necessary for the operation, preventative maintenance and repair of the breath alcohol testing instruments.

(3) The manufacturer/vendor shall provide at least two production-line breath alcohol testing instruments for evaluation by the Scientific Laboratory Division. SLD staff shall not be required to perform any repairs or modifications to the instruments to assist the instruments in meeting the approval criteria.

(4) The manufacturer/vendor shall provide at least one representative knowledgeable in the technology and electronic configurations of the breath alcohol testing instrument to provide training for the personnel of the Scientific Laboratory Division.

(5) The manufacturer/vendor must provide all information concerning any modifications, changes or upgrades to SLD-approved breath alcohol testing instruments within two months of the modifications, changes or upgrades. The Scientific Laboratory Division will evaluate the modifications, changes or upgrades and determine if they substantially affect the operation of the instruments and whether the instrument alterations require that the instruments be reevaluated.

(6) All analytical results shall be reported as grams of alcohol per 210 liters of breath (g per 210L). These results shall be reported to two decimal places except in the case of standards and proficiency samples, which shall be reported to three decimal places.

(7) Failure to comply with these or any subsequent manufacturer/vendor related regulations may result in the withdrawal of approval for the manufacturer/vendor's breath alcohol testing instruments to be utilized in testing under the New Mexico Implied Consent Act.

E. The Scientific Laboratory Division shall select the primary breath alcohol testing instrument for use by law enforcement agencies in New Mexico. Selection shall be based on, but not be limited to, performance of the instrumentation in each segment of SLD's evaluation process, the field history of the instrumentation, the manufacturers/vendors support capability and evaluations by other users of the instruments .

F. All breath alcohol testing results must be reported in a form approved by the Scientific Laboratory Division.

[7.33.2.18 NMAC - Rp, 7 NMAC 33.2.18, 03-14-01]

History of 7.33.2 NMAC:

Pre-NMAC History:

Material in the part was derived from that previously filed with the commission of public records - State Records Center and Archives:

HED 81-3 (SLD), Emergency Regulations Regarding Certification of Operators for Blood-and-Breath Testing Apparatus, filed 06-30-81.

HED 82-5 (SLD), Regulations Governing Blood and Breath Testing under the Implied Consent Act, filed 12-08-82 HED 87-5 (SLD), Regulations Governing Blood and Breath Testing under the Implied Consent Act, filed 08-25-87

HED 94-12 (SLD), Regulations Governing Blood and Breath Testing under the New Mexico Implied Consent Act, filed 01-23-95.

History of Repealed Material: 7 NMAC 33.2, Blood and Breath Testing under the New Mexico Implied Consent Act, filed 10-18-96, repealed effective, 03-14-01.