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**To:** Bonneville, Dennis; Boyer, Steve; Evans, Jake D.; Haney, Chief Matt; Jahns, Jeffrey; Newlin, Ned; Noland, Lt. Ken; Rogers, Chief Craig; Simpson, Gary; Townsend, Alan  
**Date:** 8/3/2007 8:12:07  
**Subject:** Alco-Sensor III vs. Alco-Sensor FST

Greetings again...

An issue has arisen about PBT devices concerning the Alco-Sensor III versus Alco-Sensor FST. The Toxicologist has only approved the Alco-Sensor III for use in determining probable cause to arrest for alcohol related offenses.

The Toxicologist is in the process of amending WAC 448-15-010 to add the Alco-Sensor FST as an approved device. I am unsure how long this rule-making process will take. Here is the information from the Toxicologist website:

<http://www.leg.wa.gov/documents/wsr/2007/12/07-12-014.htm>

On May 25, 2007, a proposed rule concerning the amendment of WAC 448-15 says...

"Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Devices used by law enforcement for evidential breath alcohol testing must be approved by the state toxicologist. The currently approved device, the Alconsensor III is going out of production and the Alconsensor FST has been selected to replace it. Chapter 448-15 WAC approving devices will be amended accordingly."

Here is the Alco-Sensor vendor's website. Looks like several different types of Alco-Sensors are available for purchase:

<http://www.intox.com/products/handheld.asp>

At this point in time, however, pursuant to WAC 448-15-010 only Alco-Sensor III results are admissible in Washington courts as evidence in support of probable cause to arrest for alcohol related offenses (assuming the requirements I outlined in my August 1, 2007 e-mail attached below are also satisfied).

Jeff

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>>> Jeffrey Jahns 8/1/2007 9:01 >>>  
Greetings...

An issue arose yesterday in a DUI case concerning the admissibility of a PBT test result to show alcohol concentration in support of probable cause to arrest. PBT test results are especially important in DUI and Felony DUI cases because a DataMaster breath test result is not admissible unless the officer had

probable cause to arrest the driver.

WAC 448-15, which was promulgated by the State Toxicologist concerning PBTs, is attached. I have underlined various portions of the WAC which spell out what must be shown by the prosecution in order to have a PBT test result be admitted to show PC to arrest.

Specifically, for a PBT to be admissible to support PC to arrest for an alcohol related offense, the prosecution must show...

448-15-010. The PBT must be an Alcosensor III (Intoximeters, St. Louis, MO).

448-15-020. The PBT must be administered by a certified PBT operator. See 448-15-050.

448-15-030. Test Protocol.

(1) The operator must advise the subject that the PBT is a voluntary test;

(2) The operator must advise the subject that the PBT is not an alternative to an evidentiary breath test as described in WAC 448-13;

(3) The operator shall determine by observation or inquiry that the subject has not consumed any alcohol in the 15 minutes prior to administering the PBT. If the subject when asked responds that he/she has not consumed any alcohol in the last 15 minutes, the officer may offer the PBT. If the subject claims to have consumed alcohol in the last 15 minutes or the subject refuses to answer the question, the officer must wait at least 15 minutes before conducting the PBT.

(4) If the subject consents to the PBT, the officer must check the temperature of the PBT to ensure it is within normal operating range.

(5) The officer will then press the "read" button to obtain a sample of ambient air, and ensure the result is 0.003 or less.

(6) The subject will be asked to exhale into the device.

(7) The PBT will be activated towards the end of the subject's exhalation to capture a portion of the end expiratory breath for analysis.

448-15-040. The PBT must be certified at least every 6 months by a PBT technician. See 448-15-060.

I request that every officer's report discussing the administration of a PBT specifically document the above WAC-required items. If the report does not do so, it is very likely that a judge will not allow the prosecution to use the PBT result to show an alcohol level in support of probable cause to arrest.

Although other probable cause factors may well exist in support of the arrest, I see no reason to fail to also support the PC with a PBT result if a PBT is offered. Essentially, if an officer is going to ask a subject to submit to a PBT, the officer must follow the WAC 448-15 protocols exactly and document the officer's compliance with the WAC in the officer's narrative report.

I think that the use of PBTs is important, and a valuable tool to be used in alcohol related offenses. But it does no good to use a PBT if the PBT results are not admitted into evidence in the subsequent criminal case due to the failure to follow the mandatory requirements of WAC 448-15.

Thank you.

Jeff

# Chapter 448-15 WAC

## Administration of breath alcohol screening test

Last Update: 3/1/99

### WAC Sections

448-15-010 Approval of devices.

448-15-020 Use of test results.

448-15-030 Test protocol.

448-15-040 Certification.

448-15-050 PBT operators.

448-15-060 PBT technicians.

### 448-15-010

#### Approval of devices.

The following preliminary breath test (PBT) instruments are approved for use in the state of Washington as breath alcohol screening devices, subject to the requirements outlined in the following sections:

Alcosensor III (Intoximeters, St. Louis, MO).

Any other instruments on the National Highway Traffic Safety Administration (NHTSA) approved products list will be considered for approval in Washington state on application to the state toxicologist, providing that a suitable program for maintenance, certification and operator training is also established and approved.

[Statutory Authority: RCW 46.61.506. 99-06-047, § 448-15-010, filed 3/1/99, effective 4/1/99.]

### 448-15-020

#### Use of test results.

The devices described in WAC 448-15-010 are approved for use in aiding police officers to form probable cause that a subject has committed an offense involving the consumption of alcohol. The test results, when obtained by a trained operator using an approved device which has been maintained and certified according to the rules described below, and carried out according to the approved test protocol, will show to a reasonable degree of scientific certainty, the test subject's breath alcohol concentration. The results are therefore suitable to show whether an officer has probable cause to place a person under arrest for alcohol related offenses. These results may not be used on their own for determining, beyond a reasonable doubt, that a person's breath alcohol concentration exceeds a proscribed level such as anticipated under the 'per se' statutes for intoxication.

This preliminary breath test is voluntary, and participation in it does not constitute compliance with the implied consent statute (RCW 46.20.308).

[Statutory Authority: RCW 46.61.506. 99-06-047, § 448-15-020, filed 3/1/99, effective 4/1/99.]

