



U.S. Department of
Transportation

Office of the Secretary
of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

NOV 29 2002

Gary A. Kahn
President
Kahn Tact USA, Inc.
37 Hillside
Hillside, IL 60162

Dear Mr. Kahn:

Thank you for your recent letter regarding the Department of Transportation's (DOT) drug and alcohol program. Your letter asks a very specific question: Can a manufacturer restrict who can train individuals on a particular evidential breath test device and who can train an individual to perform external calibration checks on a device?"

No. The DOT rules (49 CFR Part 40, "Procedures for Transportation Drug and Alcohol Testing Programs") specifically set forth the requirements that individuals must meet in order to be qualified as a Breath Alcohol Technician (BAT) or a Screening Test Technician (STT). The minimum criteria that all BAT trainers must meet can be found at §40.213. It would be an undue burden on both the individuals conducting the tests and the companies for whom they are providing testing services to meet additional requirements (e.g., of device manufacturers), over and above the Federal requirements.

Part 40 does refer to device manufacturers in the context of limitations that define the requirements for proper use and care of evidential breath testing devices (EBTs). §40.233(c)(5) states in part that, "...*the inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.*" [Emphasis added.] The point being: Part 40 does not put similar limitations on external calibration checks and neither should anyone else.

If you desire additional clarification, please contact me at (202) 366-3784.

Sincerely,

Kenneth C. Edgell
Acting Director
Office of Drug and Alcohol
Policy and Compliance

cc: Dr. James Frank, NHTSA