SOUTH CAROLINA LAW ENFORCEMENT DIVISION

4400 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210

8.12.5 IMPLIED CONSENT - ADMINISTRATION OF BREATH ALCOHOL TESTS

POLICY #: 8.12.5	**DATE: 09/01/93**	**REVISION DATE: 08/19/03**
TITLE: IMPLIED CONSENT - ADMINISTRATION OF BREATH ALCOHOL TESTS		**PAGE 1 OF 13**

RESPONSIBLE AUTHORITY: SPECIAL AGENT IN CHARGE OF FORENSIC SERVICES LABORATORY

RELATED STANDARDS/STATUTES/REFERENCES:
S. C. Code of Laws, Section 23-31-410
S. C. Code of Laws, Section 50-21-114
S. C. Code of Laws, Section 55-1-100
S. C. Code of Laws, Section 56-1-10
S. C. Code of Laws, Section 56-1-286
S. C. Code of Laws, Section 56-1-2130
S. C. Code of Laws, Section 56-5-2950
S. C. Code of Laws, Section 56-5-2953
S. C. Code of Regulations, Chapter 73, Article 1

GENERAL PURPOSE: To set forth policies for the administration of implied consent breath alcohol tests.

POLICY: The Division will establish procedures for properly conducting implied consent and non-implied consent DataMaster breath alcohol tests.

SPECIFIC PROCEDURES:

A. IMPLIED CONSENT TESTS

1. Any arresting and/or primary investigating officer may direct that a subject under arrest or detained for an implied consent related offense submit to a breath alcohol test.

2. Except for Flying Under the Influence (FUI), any officer (if a certified operator), including the arresting and/or primary investigating officer, may administer the breath test if the observation period is videotaped.

3. SLED approved methods do not require the breath test be administered within any particular time after the arrest. The test should be administered as soon as practicable without undue delay. However, statutory time requirements do exist for some implied consent offenses.

B. NON-IMPLIED CONSENT TESTS

1. A non-implied consent test is any breath test on a SLED certified instrument not performed under the authority of the implied consent laws of South Carolina.

2. After a high reading on an implied consent test, the operator may perform a non-implied consent test if he/she is concerned about the subject's health. A high reading is defined as any significant reading that gives the operator concern regarding the subject's welfare. This reading is typically 0.35% alcohol concentration or greater. The results of this second test should not be used for court purposes. The operator does not have to wait to perform a second test before seeking medical attention for a subject.

3. To perform a non-implied consent test, the operator will enter an "N" after the question, "DUI/CDL/BUI/FUI/<21 TEST".

4. During a non-implied consent test, only minimal test questions will be prompted. The operational protocol will be the same as in an implied consent test. If a non-implied consent test is performed, the instrument will denote this type of test on the evidence ticket.

C. BREATH TEST SEQUENCE

1. The breath test sequence for an implied consent test encompasses the following events: video recording of the breath test (if applicable), advisement process (Miranda and implied consent rights, if applicable), checking of the mouth, time stamp, observation period, data entry, operational protocol, and printout of the ticket. To ensure a proper test is administered, a test is considered complete only after the operational protocol has finished and the signature lines are printed on the ticket. For a non-implied consent test, video recording of the breath test, advisement process, checking of the mouth, time stamp, and observation period are not required. However, checking of the mouth, time stamp, and observation period are recommended to ensure an accurate test.

2. If a statute requires videotaping of the breath test, the test operator will activate the video recording equipment, advise the subject of Miranda rights, and inform the subject in writing of implied consent rights. If videotaping is not required, the operator is only required to inform the subject in writing of implied consent rights.

3. It is recommended, but not required, that the advisement process occur before checking of the mouth and time stamp (beginning of the observation period). A typical order of events would be advisement process, checking of the mouth, and time stamp the evidence ticket.

4. Checking of the mouth should occur before the time stamp (beginning of the observation period). However, if the time stamp occurs before checking of the mouth and if any foreign material and/or removable dental work is discovered and removed, another evidence ticket will be time stamped and a new observation period initiated.

5. The test operator will begin the data entry by pressing the run button. The ticket, which has previously been time stamped (except in refusals), is then inserted into the instrument. After all data has been entered and reviewed, the instrument begins the operational protocol. If all steps pass in the operational protocol, the subject is requested to provide a sample. After sample collection, the instrument completes the final steps of the operational protocol and prints the evidence ticket.

6. The test operator and the arresting officer should sign the completed evidence ticket on any implied consent test or refusal. Unless the subject is unruly, he/she should be given the opportunity to sign the ticket and receive a copy, regardless of whether it is a test or refusal. It is not required that the defendant be given a copy of aborted tests.

D. ADVISEMENT FORMS

1. SLED will provide rights advisement forms for implied consent tests. SLED will furnish all forms in a standard English version, and may furnish some forms in a Spanish version. In applicable circumstances, a Spanish version may be used in lieu of or in addition to the English version.

2. SLED's "DRIVING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Driving Under the Influence (DUI) violations. The "FELONY DRIVING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Felony DUI violations.

3. SLED's "COMMERCIAL DRIVER'S LICENSE ADVISEMENT" is to be read to subjects given breath alcohol tests for Commercial Driver's License (CDL) violations. If a DUI or Felony DUI charge is also involved, that applicable advisement should also be read to the subject. However, if no DUI or Felony DUI charge is involved, only the CDL advisement should be read to the subject.

4. SLED's "ZERO TOLERANCE ADVISEMENT" is to be read to subjects given breath alcohol tests for zero tolerance violations. If a DUI or Felony DUI charge is involved, that applicable advisement should be read to the subject in lieu of the zero tolerance advisement. If no DUI or Felony DUI charge is involved, only the zero tolerance advisement should be read to the subject.

5. SLED's "BOATING UNDER THE INFLUENCE (BUI) ADVISEMENT" is to be read to subjects given breath alcohol tests for applicable Boating Under the Influence (BUI) violations. SLED's "BUI INVOLVING DEATH, BODILY INJURY, OR PROPERTY DAMAGE ADVISEMENT" is to be read to subjects given breath alcohol tests for applicable BUI violations.

6. SLED's "FLYING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Flying Under the Influence (FUI) violations.

7. SLED's "SHOOTING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for shooting under the influence violations.

E. ADVISEMENT PROCESS

1. The advisement process consists of the officer reading any applicable advisements and furnishing the subject a copy. The reading of any applicable rights advisements and furnishing the subject a copy should be completed as soon as practical after the subject arrives at the testing site. The advisement process will be completed before the subject is requested to blow into the instrument.

2. Unless the subject is unruly, he/she should be given the opportunity to sign the advisement form. The subject's signature only signifies that he/she received a copy of the form. When the subject is provided a copy of the form, the subject has been informed in writing of his/her rights whether or not he/she signs the form.

3. The subject may sign the advisement form after the test as long as he/she is provided a copy before being requested to blow into the instrument. A subject is provided a copy if a copy is either given to him/her or made available by placing in his/her proximity where he/she can read it.

4. Whether or not the subject signs the advisement form, he/she will be furnished with a copy or a copy left with his/her items at the detention facility or other applicable location.

F. REFUSAL

1. A subject may be removed from the testing site at any time after a refusal occurs. If a subject gives the test operator a refusal after the advisement process, checking of the mouth, time stamp, and/or observation period may be waived.

2. In the event a refusal occurs during the observation period, this period may be terminated whether or not the evidence ticket has been time stamped. The instrument will print "REFUSED" by the subject sample after two minutes has elapsed and the operator has answered that the subject has refused the test.

3. Regardless of the type of refusal, the operator will proceed with the applicable breath test sequence on the DataMaster. Unless unusual circumstances exist, all refusals will be entered into the DataMaster. This action is done solely for documentary and statistical purposes, not to check the instrument.

4. A refusal to submit to a breath test can occur in any of the following ways:

   a. The subject expresses a refusal to take the test after being advised of his/her implied consent rights.

   b. The subject refuses to cooperate or interferes with the administration of the test.

   c. The subject acts unruly while the test is being administered. This includes the entire process from the time the subject encounters the operator until the test is complete.

   d. The subject delays the administration of the test. The test operator is not required to wait until an attorney or other individual arrives at the test site.

   e. The subject does not cooperate in the checking of his/her mouth. This includes, but is not limited to, failure to open mouth, failure to accurately answer questions about foreign material and/or dental work, and failure to remove foreign material and/or removable dental work.

   f. The subject ingests prohibited substances during the observation period. This prohibition includes smoking during the observation period.

   g. The subject intentionally regurgitates or refuses to rinse out his/her mouth after unintentional regurgitation.

   h. The subject refuses to answer or incorrectly answers biographical information required by the operator. The operator, may at his/her discretion, test a subject without complete biographical information, as long as the operator has sufficient information to identify the subject.

   i. The subject does not attempt to blow, pretends to blow, or does not blow an adequate sample, as determined by the instrument. Any subject will be able to provide an adequate sample, as determined by the instrument.

   j. The subject intentionally causes the instrument to have an error or failure.

G. CHECKING OF THE SUBJECT'S MOUTH FOR FOREIGN MATERIAL

1. The operator will look inside the subject's mouth and/or ask the subject if he/she has any foreign material and/or removable dental work in his/her mouth.

2. Dental work (removable or permanent) is not considered foreign material. Even though the presence of dental work will not affect the breath test when a minimum twenty-minute observation period is utilized, any removable dental work discovered in the mouth will be removed as a precaution.

3. If any foreign material and/or dental work is discovered and removed, it is neither necessary nor required the mouth be rinsed out, as long as the observation period is used.

4. Any foreign material and/or removable dental work discovered in the mouth will be removed before the observation period begins. If foreign material and/or removable dental work discovered in the mouth is removed, it is not required the operator denote what foreign material was removed.

5. If a subject intentionally misleads an operator concerning any foreign material and/or removable dental work, the subject has forfeited his/her right to have it removed. Permanent dental work or dental work that is difficult to remove (such that a dentist is required to safely remove it) will be left in the mouth, because it will not affect breath test results when a minimum twenty-minute observation period is used.

H. EVIDENCE TICKET

1. Only SLED issued evidence tickets will be used. A copy of every ticket used in an implied consent test, including aborted tests, should be saved.

2. Whether or not the subject signs the ticket, he/she should be furnished with a copy or a copy left with his/her items at the detention facility.

3. If extra copies of the evidence ticket are needed, the operator may press the "CPY" button on the keyboard. After a ticket is inserted, the instrument will print a copy of the last test performed. The original ticket needs to be retained, because it has the time stamp information, while a copy will not.

I. TIME STAMP

1. A DataMaster will be used to time stamp the SLED evidence ticket to denote the beginning of the observation period unless a refusal has already occurred. In this case, a time stamp is not necessary. The ticket may be time stamped by any DataMaster, not necessarily the one on which the test is to be performed.

2. During the time stamp process, the operator will be required to enter his/her operator certification number and traffic ticket/warrant number. "NA" should be entered if there is no traffic ticket/warrant number.

3. After data review, the instrument will print the beginning observation time and date on the ticket and eject the ticket. The operator will then wait until time to administer the test.

4. For breath testing purposes, the "official time" is the time recorded by the DataMaster. This time is recorded on both the evidence ticket and internal memory of the DataMaster and is used to establish if the operator has followed proper protocol.

5. The time displayed on the VDS-2 (video recording system) is present to ensure integrity of the recording. The times on the VDS-2 and the DataMaster may often differ due to the separate time measurement systems used by these devices.

J. OBSERVATION PERIOD

1. The purpose of the observation period is to allow for the deprivation of mouth alcohol. While the DataMaster has the capability to detect the presence of mouth alcohol and will abort the test if significant mouth alcohol is detected, an observation period of a minimum of twenty minutes will be used as a precaution.

2. The operator is not required to maintain eye contact with the subject, but the operator will monitor the subject to ensure no external liquids and/or solids are ingested before providing a breath sample.

3. Except in refusals, there will be a minimum of twenty minutes between the time stamp and the time listed by the subject's sample on the evidence ticket. The actual test sequence may begin less than twenty minutes from the beginning observation time, as long as at least twenty minutes elapses before the subject provides his/her breath sample.

4. The test operator may observe multiple subjects during the same time, if the observation periods are performed properly. The operator must be able to verify none of the subjects ingested any external liquids and/or solids during the observation period.

5. The subject may not smoke during the observation period. If ingestion of prohibited substances or any other type of compromise of the observation period occurs and the operator proceeds with the test, he/she will again check the mouth, time stamp an evidence ticket, and begin another observation period. If the observation period must be restarted, the original evidence ticket should be saved.

6. Merely belching during the observation period will not affect the test results and therefore the mouth does not have to be rinsed out or another observation period begun.

7. If a subject regurgitates significant (as determined by the operator) solid and/or liquid matter into the mouth during the observation period, the operator will have the subject rinse his/her mouth out with water, check the mouth, and then time stamp another ticket to begin another observation period (unless a refusal occurs). If significant regurgitation that could affect the test went undetected by the operator, the instrument's mouth alcohol detection system should abort the test.

K. DATA ENTRY

1. For all displayed questions, except middle initials, the test operator is required to enter data. If an initial is not known or does not exist, press the enter key.

2. Data entry errors or omissions will not affect the accuracy of the test results or invalidate the test; however, the data should be entered accurately for documentary and statistical reasons.

3. The instrument will not accept entries of the wrong format for that particular question or obvious errors. For all questions that are to be answered by Yes or No, "Y" is entered for "YES" and "N" is entered for "NO". If a question, other than initials or date of birth, cannot be answered for whatever reason (unknown, not relevant to subject, etc.), "NA" (for non-applicable or not available) should be entered. For a date of birth that is unknown or unavailable, the operator should enter an arbitrary date of 01/01/00. If an answer is too long to enter completely, the information should be entered to the extent possible.

4. After proper entry into the computerized database, data will not be changed. If an operator discovers that incorrect data was entered either by error or incorrect information supplied by the subject, he/she should make the proper notations in his/her records. SLED does not need to be notified.

5. The operator has approximately three minutes to answer each question or the test will abort. The following test questions are prompted:

   a. "DUI/CDL/BUI/FUI/<21 TEST"
      A "Y" should be entered if the test is an implied consent test. An "N" should be entered if the test is a non-implied consent test.

   b. "TRAFFIC TICKET#"
      The traffic ticket or warrant number should be entered.

   c. "ACCIDENT INVOLVED?" - A "Y" or "N" should be entered.

   d. "NUMBER OF INJURIES?"
      This question will only appear if a "Y" is entered for "ACCIDENT INVOLVED". Deaths are counted as injuries.

e. "SUBJECT ADVISED?"
A "Y" is the only acceptable entry, since the subject will be advised of his/her rights. If the subject has not been advised of his/her rights, the advisement(s) should be done at this point.

f. "SUBJECT'S MOUTH CHECKED?"
A "Y" or "N" should be entered. If "N" is entered, a refusal situation should exist.

g. "SUBJECT OBSERVED 20 MIN."
A "Y" or "N" should be entered. If "N" is entered, a refusal situation should exist.

h. "COUNTY OF ARREST"
The two digit county code should be entered.

i. "SUBJECT'S FIRST NAME"
The subject's first name should be entered.

j. "MID INIT"
The subject's middle initial should be entered.

k. "LAST NAME" - The subject's last name should be entered.

l. "STREET/APT/BOX" - The subject's address should be entered.

m. "CITY/TOWN" - The subject's city or town should be entered.

n. "STATE"
The appropriate two letter state abbreviation, using the postal system abbreviations, for the subject's state should be entered.

o. "STATE LICENSED"
The appropriate two letter state abbreviation, using the postal system abbreviations, for the state of issue of the subject's driver's license should be entered. If the subject has a highway department identification number, the state may be entered.

p. "DL NUMBER"
The subject's driver's license number should be entered. A social security number should be entered only if it is also the driver's license number. If the subject has a highway department identification number or a driver's license from a foreign country, that number may be entered.

q. "SEX:"
Either an "M" (male) or an "F" (female) should be entered.

r. "RACE:"
The following are acceptable abbreviations for race/ethnic group:

A - Asian or Pacific Islander
B - Black
H - Hispanic
I - American Indian
U - Unknown
W - White

s. "DATE OF BIRTH
mm/dd/yy"
The subject's date of birth in the month, day, and year format should be entered.

t. "ARREST DATE
mm/dd/yy"
The arrest or violation date in the month, day, and year format should be entered.

u. "ARREST TIME
hh:mm _M"
The arrest or violation time in twelve hour format with either an "A" for AM or a "P" for PM should be entered. Exactly 12:00 midnight is 12:00 AM. Exactly 12:00 noon is 12:00 PM. The instrument will convert this time to military time before it is printed on the ticket.

v. "ARREST OFF FIRST INIT"
The arresting officer's first initial should be entered.

w. "MIDDLE INIT"
The arresting officer's middle initial should be entered.

x. "LAST NAME"
The arresting officer's last name should be entered.

y. "AGENCY ORI:"
The arresting officer's agency's ORI should be entered. If an agency does not have an ORI number, SC0000000 may be entered.

z. "ANOTHER ARREST OFF?"
If "N" is entered, the next topic will appear. If "Y" is entered, another arresting officer may be entered.

aa. "TEST OPERATOR FIRST INIT"
The test operator's first initial should be entered.

bb. "MID INIT"
The test operator's middle initial should be entered.

cc. "LAST NAME"
The test operator's last name should be entered.

dd. "AGENCY ORI:"
The test operator's agency's ORI should be entered.

ee. "OPERATOR CERTIFICATION #"
The operator's DataMaster certificate number should be entered.

ff. "SIM. SOLUTION LOT #"
The simulator solution lot number should be entered.

gg. "SIM. SOLUTION BOTTLE #"
The simulator solution bottle number should be entered.

hh. "SOLUTION EXPIRATION:
mm/dd/yy"
The simulator solution expiration date in the month, day, and year format should be entered.

ii. "REVIEW DATA? <Y/N>"
A "Y" will be entered. Data will be reviewed one item at a time and changes may be made during this process. After all questions are reviewed, the operational protocol ensues.

L. OPERATIONAL PROTOCOL

1. The DataMaster operational protocol consists of the following steps in this order:

a. PURGING
b. AMBIENT ZEROING
c. BLANK TEST
d. INTERNAL STANDARD
e. EXTERNAL STANDARD
f. PURGING
g. AMBIENT ZEROING
h. BLANK TEST
i. PLEASE BLOW
j. PURGING
k. BLANK TEST
l. INTERNAL STANDARD

2. These steps are defined as follows:

a. PURGING - Flushes sample chamber with room air.

b. AMBIENT ZEROING - Establishes a reference point for measurements. The test will abort if significant alcohol and/or interference is present in the room air and/or sample chamber.

c. BLANK TEST - A test to ensure no significant alcohol and/or interference is present in the room air and/or sample chamber. The test will abort if significant alcohol and/or interference is present.

d. INTERNAL STANDARD - A check of optical and electronic accuracy by using a quartz plate of known infrared absorption.

e. EXTERNAL STANDARD (0.08% SIMULATOR) - A reading of 0.076% through 0.084%, inclusive, constitutes a 0.08% alcohol concentration reading according to SLED policy and passes test. Any reading outside this range constitutes a failure and the test aborts. The external standard (simulator) test serves as a calibration check for the system and shows whether the instrument is functioning properly (along with the other checks).

f. PLEASE BLOW - The instrument will display, "PLEASE BLOW", at the time for the subject to blow. The test operator will ensure a new mouthpiece is placed on the breath tube, unless a refusal has already occurred. The subject may use the same mouthpiece in the event the test is aborted and must be started again. The subject is given approximately two minutes to provide an acceptable breath sample.

i. The subject will provide a continuous breath sample, acceptable to the instrument, containing a minimum of approximately one and one half liters. "PLEASE BLOW" will display until an adequate sample is obtained or time expires.

ii. The instrument will indicate if the subject has significant mouth alcohol on his/her breath. Belching during the process of providing a breath sample will have no effect on the breath test reading.

iii. Regurgitating during the process of providing a breath sample, to an extent that would affect the test results, would cause the instrument to abort the test.

iv. An "INVALID SAMPLE" or "DETECTOR OVERFLOW" reading is not a completed test. Additionally, an "INVALID SAMPLE" or "DETECTOR OVERFLOW" reading, by itself, is not a refusal situation. If an "INVALID SAMPLE" (prints "INVALID") or "DETECTOR OVERFLOW" (prints "DETECTOR OVERFLOW") reading is obtained and the arresting officer still desires a breath test, the checking of the mouth, time stamp, and observation period are required to be repeated. However, the advisement process is not required to be repeated.

v. The instrument will indicate if significant interference is present in the subject's breath. In this case, the breath sample is not acceptable, and the instrument will display "INTERFERENCE DETECTED" (prints "INTERFERENCE").

vi. An "INTERFERENCE DETECTED" reading is not a completed test and, by itself, is not a refusal situation. If necessary, medical attention should be given to the subject. The operator may elect to continue to administer a breath test. In this case, the advisement process, checking of the mouth and observation period are not required to be repeated.

vii. If an acceptable breath sample is not provided in two minutes, the instrument will display "SUBJECT REFUSE? <Y/N>". If "Y" is entered, the instrument will print "REFUSED" by "SUBJECT SAMPLE", after the final steps of the operational protocol are completed. If "N" is entered, the test will abort and the instrument will print "INCOMPLETE" by "SUBJECT SAMPLE". An "INCOMPLETE" reading, by itself, is not a refusal situation. An "N" should only be entered if the subject failed to provide an acceptable breath sample through no fault of his/her own. In the event of an "INCOMPLETE", the breath test sequence may be repeated, except the advisement process, checking of the mouth and observation period are not required to be repeated. However, if the observation period has been invalidated, the checking of the mouth, time stamp, and another observation period are required to be repeated.

M. EVIDENCE TICKET PRINTOUT

1. The time stamp and instrument serial number will be printed on the evidence ticket. With the exception of accident and injury data, all other entered data will be printed on the ticket. Simulator test results will be displayed in thousandths of a percent. Blank tests and subject test results will be truncated and displayed in hundredths of a percent.

2. Alcohol concentration is used for reporting results of breath alcohol tests. Alcohol concentration is the number of grams of alcohol for each two hundred and ten liters of breath by weight (pursuant to Section 56-1-10, S.C. Code of Laws, 1976, as amended for breath, a bodily fluid other than blood). The forensically and medically accepted alveolar air to blood conversion factor of 2100 to 1 is used in converting breath alcohol measurements to blood alcohol measurements. This ratio means that 1 milliliter of blood contains approximately the same amount of alcohol as 2100 milliliters of alveolar air.

BY ORDER OF:

CHIEF OF SLED