

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

# Implied Consent

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## Operations Manual

**Version 6**



SOUTH CAROLINA LAW ENFORCEMENT DIVISION  
FORENSIC SERVICES LABORATORY  
Implied Consent Operations Manual

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**8.12.1 BREATH ALCOHOL DEVICE**

**GENERAL PURPOSE:** To set forth policies for the administration of Implied Consent Breath Alcohol Tests.

**POLICY:** The Division will approve, certify, and inspect breath alcohol devices for the Implied Consent program.

**SPECIFIC PROCEDURES:**

**A. APPROVAL**

1. Alcohol, when mentioned in this document, refers to ethanol. The Division is statutorily responsible for approving breath alcohol devices, operators, and procedures by the authority of the Implied Consent Laws and Regulations of the State of South Carolina.
2. The INTOX DMT (also known as the DataMaster) is the only evidential breath alcohol device approved by the Division. The INTOX DMT is owned and manufactured by Intoximeters, Inc., and is assembled by National Patent Analytical Systems (NPAS). The INTOX DMT will remain approved even if the manufacturer changes. The INTOX DMT has been tested and approved by the National Highway Traffic Safety Administration.
3. The INTOX DMT is a breath alcohol device that performs an accurate chemical test to determine a subject's alcohol concentration (State vs. Squires, 426, SE 2nd 738, 1992). This instrument utilizes infrared spectroscopy to perform a chemical analysis of the breath. The chemistry of alcohol determines its infrared absorption characteristics. Chemicals, such as alcohol, absorb infrared light in specific amounts at specific wavelengths. The INTOX DMT uses three infrared wavelengths to distinguish ethanol from any other possible substances.

**B. INITIAL INSPECTIONS**

1. Each INTOX DMT will pass an initial inspection by a SLED certified Breath Test Specialist before instrument certification. This inspection is in addition to any manufacturer inspection and does not need repeating as long as the instrument is certified.
2. The following listed procedures occur during an initial inspection:
  - a. Visual inspection for correct software signature.
  - b. Confirmation of passwords to ensure proper access.
  - c. Identification of printed circuit boards.

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- d. Inspection of breath tube and rear panel connection.
- e. Examination of check valves.
- f. Inspection of inlet/outlet hoses for simulator connections.
- g. Verification of simulator temperature.
- h. Confirmation of instrument voltages
- i. Confirmation of one and one-half liters volume requirement.
- j. Verification of date and time.
- k. Remote access of instrument using modem and phone line or internet connection.
- l. Inspection of Breath Alcohol Analysis Test Report/Evidence ticket printout.
- m. Calibration using a 0.08% alcohol concentration standard.
- n. Performance of Linearity checks using at least three different alcohol concentrations.

**C. CERTIFICATION**

1. A SLED certified Breath Test Specialist will certify each INTOX DMT. To obtain certification, an instrument will pass a calibration (establishment of calibration factors), a supervisor (a series of a minimum of five 0.08% alcohol concentration simulator tests), and diagnostic test (an internal diagnostic routine) at its site. If a testing site is a mobile van, the instrument remains certified regardless of the physical location of the van.
2. To pass the calibration and diagnostic test, no errors or failures may appear. To pass the Supervisor Test, the average simulator solution reading will be a 0.08% alcohol concentration (0.076% through 0.084%, inclusive), and the simulator solution temperature will be 34 degrees Celsius (C), 33.5 through 34.5, inclusive.
3. A certification record documenting the serial number, site location, date/time of certification, and identification of the SLED certified breath testing specialist will be completed. The certification record is also the documentation that the instrument passed the initial inspection. This information is maintained electronically for a minimum of five years.
4. A certification does not expire unless revoked by SLED. A new certification will be issued for each new site except when the instrument is moved to SLED or manufacturer's service center for repair, inspection, or storage and later moved back to its original site. In this case, an inspection is issued when the instrument is returned to its original site.

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5. The certification record denotes the site where the instrument is certified for operation. The instrument may not be moved from this general location without SLED performing another site inspection. Movement of the instrument within a limited area, such as different locations within a room, may be done by the local agency without another site inspection or instrument certification by SLED.
6. The certification does not have to be repeated if the instrument or its software is upgraded. SLED will approve upgrades to the instrument or software before installation. Upgrades will be phased in, unless an urgent need exists.
7. Notification of significant upgrades to the instrument, as determined by the manufacturer, will be sent to the National Highway Traffic Safety Administration for evaluation and possible testing.
8. Certified breath testing devices at certified breath testing sites shall be utilized for their intended purpose of breath testing individuals who have been arrested for any of the offenses pertaining to the Implied Consent Laws of South Carolina, other alcohol related offenses, or for any other law enforcement purposes.

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**8.12.2 WET BATH SIMULATOR**

**GENERAL PURPOSE:** To set forth policies for the administration of Implied Consent Breath Alcohol Tests.

**POLICY:** The Division will approve and certify wet bath simulator devices to be used during every breath test in the calibration check process.

**SPECIFIC PROCEDURES:**

**A. APPROVAL/CERTIFICATION**

1. The Model 12V500 is the only simulator approved by the Division for use with the INTOX DMT. The current manufacturer is Guth Laboratories, Inc. The 12V500 will remain approved even if the manufacturer were to change. The 12V500 has been tested and approved by the National Highway Traffic Safety Administration. Simulators may be changed as needed among DataMasters.
2. The alcoholic breath simulator is a specifically designed, constant temperature water and alcohol solution wet bath device. An electronic probe checks the solution temperature during the breath test process.
3. The simulator solution temperature will be 34 degrees Celsius (C), 33.5 through 34.5, inclusive, to pass each test. If the simulator solution temperature is in this range, the test passes and the actual temperature will be printed on the Breath Alcohol Analysis Test Report/Evidence Ticket. If the temperature is not within this range, the test is aborted.

**B. SOLUTION ANALYSIS/CERTIFICATION**

1. Each lot of simulator solution will have a certificate of analysis verifying concentration. Additionally, each lot will be analyzed by SLED. The specific methods used by the vendor and SLED may vary depending on instrumentation, etc.
2. The basic elements of the SLED analysis are:
  - a. Analysis is performed using the testing procedures of the SLED Toxicology Department.
  - b. A minimum of 2 bottles of a particular lot will be sampled.
  - c. The average of the simulator solution readings from all bottles should be 0.0968% alcohol concentration (grams of ethanol per 100 milliliters of solution) +/- 5% of the reading (0.0919% through 0.1016%, inclusive). NOTE: This range of solution concentration when used in a calibrated simulator, operating at 34 degrees Celsius (C), 33.5 through 34.5, inclusive, will give a reading of 0.08% alcohol concentration (0.076% through 0.084%, inclusive).

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3. Only SLED certified simulator solution may be used in the breath alcohol testing process. SLED will issue a certification record for each lot of approved solution. The certification is valid from 12:01 A.M. of the date listed on the certification sheet.
4. The analytical data of the solution samples, independent lab report, and SLED certification record will be maintained electronically for a minimum of five years from the date of certification.
5. Each bottle will have a lot number, bottle number, an integrity seal, and an expiration date. A bottle of simulator solution may not be used after its expiration date.

**C. SOLUTION CHANGE PROTOCOL**

1. The INTOX DMT requires a solution change after 100 simulator tests or 31 days, whichever comes first. The solution may be changed at any time before the mandatory change. When a mandatory change is indicated, the instrument will not leave the "Change Soln Now" status until an acceptable solution change has been completed. It is acceptable for the period between solution changes to exceed 31 days, since the instrument will not allow breath tests to occur until the solution is changed.
2. After 90 simulator tests or 26 days, whichever comes first, the instrument will display, "Change Soln Soon". This message will be displayed on the instrument until a solution change is performed or a mandatory change is required.
3. Only certified operators will change the solution. Operators will enter the new lot/bottle number and expiration date of the solution used in a change. This information will be saved electronically by the instrument and will be populated on the "Solution Information" screen and printed on every Breath Alcohol Analysis Test Report/Evidence Ticket until the next solution change.
4. Specific questions are prompted to document the solution change. After the simulator solution (external standard) reaches proper temperature, 34 degrees Celsius (C), 33.5 through 34.5, inclusive, the instrument performs five simulator tests. All readings from the five tests will be 0.076% through 0.084%, inclusive, which constitutes a 0.08% alcohol concentration reading according to policy. The standard deviation will be 0.003% or less.
5. If a failure to meet these standards occurs, a mandatory solution change is required. The entire procedure will be repeated with a different bottle of solution. A failed solution change does not indicate the certified solution lot and/or bottle was improper, only that the readings obtained were outside acceptable limits. The bottle is changed only so that the solution counter may be reset. The solutions are verified by an independent laboratory and SLED.

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**8.12.3 BREATH TEST SITES**

**GENERAL PURPOSE:** To set forth policies for the administration of Implied Consent Breath Alcohol Tests.

**POLICY:** The Division will establish eligibility criteria for Breath Alcohol Testing sites.

**SPECIFIC PROCEDURES:**

**A. ELIGIBILITY**

1. Based on available funding and need, SLED may purchase INTOX DMTs for testing sites. Preference is given to sites that have a significant number of Implied Consent arrests, and an overnight adult detention facility, or sites in a county seat.
2. With the concurrence of SLED, other agencies may purchase INTOX DMTs to be submitted for SLED certification.

**B. REQUIREMENTS**

1. Each potential site for a certified INTOX DMT is required to pass a site inspection by a SLED certified Breath Test Specialist. The certification record issued for each instrument serves as documentation the site inspection is approved.
2. The room temperature should be typically maintained between 70 degrees and 80 degrees Fahrenheit. NOTE: Monitoring of the site temperature is not required. If variances in site temperature become extreme, the instrument will abort the test due to varied status code messages.
3. Each site, except SLED, will have one dedicated phone line. Certified INTOX DMTs at SLED are only required to have access to a phone line. Multiple INTOX DMTs at the same site may each have a separate phone line or may, at the discretion of SLED, operate from one phone line using distinctive ring capability.
4. The phone line(s) may not be used for any purpose not related to the INTOX DMTs.
5. Each site will have a high-speed internet connection.
6. Each site will have access to a 110-volt (normal household current) electrical line. The receptacle will be properly grounded and will be compatible with a three-prong plug. There will not be excessive demand on this line from other equipment.
7. Each site will be located in a secure building or van that can be secured by a lock.

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**8.12.4 OPERATOR CERTIFICATION**

**GENERAL PURPOSE:** To set forth policies for the administration of Implied Consent Breath Alcohol Tests.

**POLICY:** The Division will assist the South Carolina Criminal Justice Academy with Operator certification/recertification.

**SPECIFIC PROCEDURES:**

A. The South Carolina Criminal Justice Academy, in consultation with SLED, is responsible for establishing eligibility requirements for INTOX DMT Operator training.

B. The South Carolina Criminal Justice Academy provides training for INTOX DMT Operator certification and recertification pursuant to SLED policies.

C. The certification period begins at 12:01 A.M. on the certification date and ends at 11:59 P.M. on the expiration date. Operator recertification will be conducted every two years. Only certified Operators may perform tests on certified INTOX DMTs.

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**8.12.5 ADMINISTRATION OF BREATH ALCOHOL TEST**

**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 INTOX DMT 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 video recorded.
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 activate the appropriate icon on the INTOX DMT touchscreen labeled as "Non-Implied Consent."
4. During a Non-Implied Consent Test, only minimal test questions will be prompted. The operational protocol may 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 Breath Alcohol Analysis Test Report/Evidence Ticket.

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C. BREATH TEST SEQUENCE

1. The breath test sequence for an Implied Consent Test encompasses the following events:
  - a. Video recording of the breath test (if applicable)
  - b. Advisement process (Implied Consent Rights, if applicable)
  - c. Checking of the mouth
  - d. Data entry
  - e. Observation period
  - f. Operational protocol
  - g. Printout of the Breath Alcohol Analysis Test Report/Evidence Ticket.

(The INTOX DMT performs the start of the observation period/time-stamp function automatically. 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 Breath Alcohol Analysis Test Report/Evidence Ticket. (For a Non-Implied Consent Test, video recording of the breath test, advisement process, checking of the mouth, and observation period are not required. However, to ensure an accurate test, checking of the mouth and the observation period are recommended.) If a subject refuses at any time prior to or during the observation period, a simulator test does not need to be performed to ensure the instrument is in proper working order at the time of the test. (State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 1991.) In this event, the operational protocol will be considered complete once the officer answers, “Yes,” to the question, “Subject Refused?” In the event of a Refusal, no further steps in the operational protocol need to be completed in order for the test to be defined as a completed test.

2. If a statute requires a video recording of the breath test, the test Operator will activate the video recording equipment, advise the subject they are being video recorded, and inform the subject verbally and in writing of their Implied Consent Rights. If a video recording is not required, the Operator is only required to inform the subject verbally and in writing of their Implied Consent Rights.
3. It is recommended, but not required, that the advisement process occur before checking of the mouth and the start of the observation period, however, it is a requirement that the subject be advised of his/her applicable Implied Consent Rights prior to providing a breath sample. A typical order of events would be advisement process, checking of the mouth, and start of the observation period.
4. Checking of the mouth will occur before the start of the observation period. The observation period is initiated at the point the Operator answers the question, “Subject’s Mouth Checked?” (The time the observation period begins is electronically stored by the DMT.) This question should be answered with a “Yes” only after the Operator has checked the mouth for any foreign material and/or removable dental work. However, if the observation period is initiated before checking of the mouth, the Operator will abort/cancel the test and begin a new breath test sequence.
5. The test Operator will begin the testing protocol/data entry process by touching the INTOX DMT screen and entering the password. After all questions have been answered and all data has been entered and reviewed, the instrument begins the operational protocol. If all steps pass in the

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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 Breath Alcohol Analysis Test Report/Evidence Ticket.

6. The test Operator and the arresting officer should sign the completed Breath Alcohol Analysis Test Report/Evidence Ticket on any Implied Consent Test or Refusal. (It is not required that the “Subject Copy” be signed.) Unless the subject is unruly, he/she should be given the opportunity to sign the test Breath Alcohol Analysis Test Report/Evidence Ticket and receive a copy, regardless of whether it is a test or refusal. (It is not required that the subject be given a copy of aborted tests.) The INTOX DMT will print two copies of the Breath Alcohol Analysis Test Report/Evidence Ticket, one (1) for the testing/arresting officer and the second (2) for the subject. It is not required that the “Subject Copy” be signed.

#### D. ADVISEMENT FORMS

1. SLED will provide rights advisement forms for Implied Consent Tests. Based on the type of test selected to be run, the INTOX DMT will print the applicable advisement forms utilizing a stand-alone printer. Advisement forms will be printed in a Standard English version, and some forms may include a Spanish version. In applicable circumstances, a Spanish version may be used in lieu of or in addition to the English version. The INTOX DMT will print two copies of the applicable advisement, one (1) for the testing/arresting officer and the second (2) for the subject. If additional advisement forms are needed, press the touchscreen icon “Additional Advisements” on the main menu screen.
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.
6. 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.

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7. SLED's "FLYING UNDER THE INFLUENCE ADVISEMENT" is to be read to subjects given breath alcohol tests for Flying Under the Influence (FUI) violations.
8. 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. (The INTOX DMT automatically prints two copies of the applicable advisement of rights form. One copy will be the Operator/Officer's copy that will be signed by the Subject and the Operator/Officer. This copy should also have the date/time recorded by the Operator/Officer. The second copy will be labeled in bold, "**Subject Copy**". This should be given to or placed in close proximity to the subject for his/her perusal. Only the Operator/Officer's copy needs to be signed.)
2. Unless the subject is unruly, he/she should be given the opportunity to sign the testing/arresting officer's copy of the advisement form. The only advisement form that needs to be filled out and signed is the copy that is retained by the testing/arresting officer. The subject needs to be furnished only a copy of the applicable advisement form.
3. The subject's signature signifies only 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 testing/arresting officer's copy of the advisement form.
4. 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.
5. 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, the checking of the mouth and/or observation period may be waived.
2. In the event a Refusal occurs during the observation period, this period may be terminated. The Operator can terminate the observation period by pressing the touchscreen icon "Abort Observation"

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displayed on the screen during the observation period. If the “Abort Observation” icon is activated, the instrument will display the question “Did the subject refuse?” If the operator answers this question with a “Yes”, the instrument will print "REFUSED" by the subject sample on the Breath Alcohol Analysis Test Report/Evidence Ticket.

3. Regardless of the type of refusal, the Operator will proceed with the applicable breath test sequence on the INTOX DMT. If a subject refuses at any time prior to or during the observation period, a simulator test does not need to be performed to ensure the instrument is in proper working order at the time of the test. (State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 1991.) In this event, the operational protocol will be considered complete once the officer answers, “Yes,” to the question, “Subject Refused?” In the event of a refusal, no further steps in the operational protocol need to be completed in order for the test to be defined as a completed test. Unless unusual circumstances exist, all Refusals should be entered into the INTOX DMT. 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.

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- 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. BREATH ALCOHOL ANALYSIS TEST REPORT/EVIDENCE TICKET**

1. Utilizing a stand-alone printer, the INTOX DMT will print the Breath Alcohol Analysis Test Report/Evidence Ticket on standard 8½” x 11” copy paper. A copy of every Breath Alcohol Analysis Test Report/Evidence Ticket used in an Implied Consent Test, including aborted tests, should be saved.
2. Whether or not the subject signs the Breath Alcohol Analysis Test Report/Evidence Ticket, he/she should be furnished with a copy or a copy left with his/her items at the detention facility. (The INTOX DMT automatically prints two copies of the Breath Alcohol Analysis Test Report/Evidence Ticket. One copy will be the Officer’s copy that will be signed by the Subject and the Officer. This copy should also have the date/time recorded by the Officer. The second copy will be labeled in bold, “**Subject Copy**”. Only the Officer’s copy needs to be signed.)
3. If extra copies of the Breath Alcohol Analysis Test Report/Evidence Ticket are needed, the Operator may press the “Copy” icon on the INTOX DMT screen. The instrument will print a copy of the last test performed.

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**I. OBSERVATION PERIOD START TIME**

1. The time the observation period begins is electronically stored by the DMT. The INTOX DMT will denote the beginning of the observation period on the Breath Alcohol Analysis Test Report/Evidence Ticket unless a Refusal has already occurred. This time is captured by the INTOX DMT based on the operator answering “Yes” to the question prompted by the instrument, “Subject’s Mouth Checked?” This question should only be answered with a “Yes” after the operator has looked inside the subject’s mouth and/or asked the subject if he/she has any foreign material and/or removable dental work in his/her mouth.
2. The INTOX DMT will not denote the beginning of the observation period on the Breath Alcohol Analysis Test Report/Evidence Ticket if the question prompted by the instrument, “Subject’s Mouth Checked?” is answered with “No,” followed by answering the question “Subject Refused?” with a “Yes.”
3. If the Operator answers “Yes.” to the question “Subject’s Mouth Checked?” the instrument will capture this time as the start of the observation period and automatically lock-out the Operator for a minimum of 20 minutes before allowing a breath sample to be given.
4. If the operator answers “No.” to the question “Subject’s Mouth Checked?” followed by answering the question “Subject Refused?” with a “Yes,” the instrument will not capture or record a time for the start of the observation period and the instrument will skip the 20 minute observation period and will not allow a breath sample to be given. In the event of a Refusal, a simulator test does not need to be performed to ensure the instrument is in proper working order at the time of the test. (State v. Jansen, 305 S.C. 320, 408 S.E.2d 235 1991.) In this event, the operational protocol will be considered complete once the officer answers, “Yes,” to the question, “Subject Refused?” No further steps in the operational protocol need to be completed in order for the test to be defined as a completed test.
5. For breath testing purposes, the “official time” is the time recorded by the INTOX DMT. This time is recorded on both the Breath Alcohol Analysis Test Report/Evidence Ticket and internal memory of the INTOX DMT and is used to establish if the operator has followed proper protocol.

**J. OBSERVATION PERIOD**

1. The purpose of the observation period is to allow for the deprivation of mouth alcohol. While the INTOX DMT 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.

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3. The INTOX DMT will automatically lock-out the Operator for a minimum of 20 minutes before allowing a breath sample to be given. Except in Refusals, there will be a minimum of twenty minutes between the observation start time and the time listed by the subject's sample on the Breath Analysis Test Report/Evidence Ticket.
4. 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 abort the current observation period and restart the testing protocol over again. Check the mouth and begin another observation period. The advisement of Implied Consent Rights would not have to be repeated. If the observation period must be restarted, the original Breath Alcohol Analysis Test Report/Evidence Ticket should be saved.
5. 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.
6. 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 restart the testing protocol over again (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.
7. The Operator can terminate the observation period by pressing the abort button displayed on the screen during the observation period. If the abort button is activated, the instrument will display the question "Subject Refused?" If the Operator answers this question with a "No", the instrument will print "INCOMPLETE SUBJECT TEST" by the subject sample on the Breath Alcohol Analysis Test Report/Evidence Ticket. The Operator can then restart the testing protocol over again. The advisement of Implied Consent Rights would not have to be repeated. However, all other data entry would have to be repeated. If the observation period must be restarted, the original Breath Alcohol Analysis Test Report/Evidence Ticket should be saved.

#### 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 tab to bypass that particular data entry field.
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. 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 01/01/1900. If an answer is too long to enter completely, the information should be entered to the extent possible.

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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 choose a function or answer each question or the test will abort.
  - a. Using the keyboard, enter password to access INTOX DMT. Press touchscreen icon “OK”.
  - b. Main Menu gives Operator ability to choose, by touchscreen activation, one of the following functions:
    - i. “RUN” – Operator can conduct a breath test.
    - ii. “Help/Information” – Operator can get a copy of helpful information about the running of a breath test.
    - iii. “Solution Change” – Operator can conduct a solution change.
    - iv. “Inquiry Complaint” – Operator can enter an inquiry/ complaint about testing.
    - v. “Additional Forms” – Operator can print additional advisement forms.
    - vi. “Copy” – Operator can print a copy of last breath test.
    - vii. “Log Off” – Logs Operator out of instrument.
  - c. If the “RUN” function is chosen, the next screen will display the types of breath tests available. Choose one of the following types of tests by touch-screen activation:
    - “Driving Under the Influence”
    - “Felony Driving Under the Influence”
    - “Zero Tolerance” (Under 21)
    - “Boating Under the Influence”
    - “Felony Boating Under the Influence”
    - “Commercial Driver’s License” (CDL)
    - “Shooting Under the Influence”
    - “Flying Under the Influence”
    - “Non-Implied Consent”
6. Once a type of breath test is selected, the following sequence of questions is prompted using a combination of touchscreen and keyboard activation:
  - a. “Is Video Activated?” – Press applicable touch-screen icon: “Yes” or “No”

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- i. If “Yes”, the next screen prompts officer to enter the video code (SLED ID) located on video monitor.
- ii. If “No”, then the INTOX DMT will prompt the question, “Do you need Affidavit Failure to Produce?”, if type breath test being run has a statutory requirement to be video recorded.
- b. “Enter Video Code Below” – Using keyboard, enter the unique alpha numeric code (SLED ID) provided on the video monitor. If code is entered correctly, press “OK” using the touchscreen. If code is entered incorrectly, the DMT will prompt you to re-enter code by refreshing the screen.
- c. “Print Video Code on Subject’s Test Report?” – Press applicable touch-screen icon: “Yes” or “No”
  - i. If “Yes”, a unique Subject ID and Subject Password will be generated and printed on the bottom of the Breath Alcohol Analysis Test Report/Evidence Ticket.
  - ii. If “No”, the Subject ID and Subject Password will be printed only on the Officer’s copy of the Breath Analysis Test Report/Evidence Ticket. The “Subject Copy” will have printed, “Contact officer for video code information.”
- d. Two copies of the applicable “Advisement of Implied Consent Rights” form will be printed at this time. One copy will be the Officer’s copy that will be signed by the Subject and the Officer. This copy should also have the date/time recorded by the Officer. The second copy will be labeled in bold, “**Subject Copy**”. This should be given to the subject for his/her perusal. Only the Officer’s copy needs to be signed.
- e. “Advisement Form Printed?” – Press applicable touch-screen icon: “Yes” or “No”
- f. “Subject Advised of Video Recording?” – This question will be asked only if Officer answers “Yes” to question, “Is Video Activated?” This question can only be answered with a “Yes.”
- g. “Subject Advised that a Breath Sample is being Requested?” – This question can only be answered with a “Yes.”
- h. “Subject Advised of Applicable Rights?” – This question can only be answered with a “Yes.”
- i. “Subject’s Mouth Checked?” – Press applicable touch-screen icon: “Yes” or “No”
  - i. If “Yes”, the INTOX DMT will record this time as the start of the observation period and proceed to the next question.
  - ii. If “No”, the INTOX DMT prompts the question, “Subject Refused?”

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j. “Subject Information” Screen asks for the following information to be entered utilizing the keyboard:

- Subject Name (F/M/L)
- Street/Apt/Box
- City/Town
- State
- Zip Code
- Date of Birth
- Race (drop down box provided)
- Sex (drop down box provided)
- License Number
- State Licensed (two letter state abbreviation)

Press applicable touchscreen icon: “Cancel” or “Next>”

k. “Arrest Information” Screen asks for the following information to be entered utilizing the keyboard:

- Arresting Officer Name (F/M/L)
- County Code of Arrest (drop down box provided)
- Agency ORI #
- Traffic Ticket #, Citation # or Agency Case #
- Accident Involved? (drop down box provided)
- # of Injuries
- Arrest Date
- Arrest Time (24-Hour)

Press applicable touch-screen icon: “<Prev”, “Cancel”, or “Next>”

l. “Operator Information” and “Solution Information” Screen asks for the following information to be entered utilizing the keyboard:

**Operator Information**

- Operator Name (F/M/L)
- Certification #
- Agency ORI #

**Solution Information**

- Lot #
- Bottle#
- Expiration Date

NOTE: This information is automatically populated from data entered during last solution change.

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Press applicable touch-screen icon: “<Prev”, “Cancel”, or “Next>”

- m. “Verify Data” Screen asks the following question: “Would you like to review the data that you have entered?” The Operator must press the “Yes” icon in order to continue. The Operator will then have the ability to check all information entered for accuracy. Corrections to data entry would be made at this time. After each screen is reviewed press the touch-screen icon “Next>” to scroll to next page.
- n. “Subject Test: Observation Period” Screen – During this screen, the mandatory 20 minute observation period is being counted down by the INTOX DMT. The “Status Box”, indicating minutes/seconds remaining, appears in the lower left-hand corner of the screen. The “Abort Observation” icon is located in the upper right-hand corner of the screen. The “Abort Observation” icon is available in refusals situations and other exigent circumstances in which the observation period needs to be terminated.

If the “Abort Observation” icon is pressed, the DMT will prompt the question, “Did the subject refuse?” Press the touch-screen icon: “Yes” or “No” to proceed.

- i. If “Yes.” is pressed, the observation period is aborted and the operational protocol is completed. “SUBJECT REFUSED” is printed by “SUBJECT SAMPLE” on Breath Alcohol Analysis Test Report/Evidence Ticket. This is considered a completed test and signature lines will be printed on the Breath Alcohol Analysis Test Report/Evidence Ticket.
- ii. If “No.” is pressed, the result is an “INCOMPLETE SUBJECT TEST” which is printed on the Breath Alcohol Analysis Test Report/Evidence Ticket. This is not a completed test and no signature lines will be printed.

## L. OPERATIONAL PROTOCOL

1. The INTOX DMT 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

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

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- 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".
- 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 "Did the subject refuse?" When question is prompted, press the touch-screen icon, "Yes" or "No." If "Yes" is answered, the instrument will print "REFUSED" by "SUBJECT SAMPLE", after the final steps of the operational protocol are completed. This is considered a completed test and signature lines will be printed on the Breath Alcohol Analysis Test Report/Evidence Ticket. If "No" is answered, the test will abort and the instrument will print "INCOMPLETE SUBJECT TEST" on the Breath Alcohol Analysis Test Report/Evidence Ticket. An "INCOMPLETE SUBJECT TEST" reading, by itself, is not a refusal situation. (A "NO" 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 SUBJECT TEST", the breath test sequence may be repeated, except the advisement process is not required to be repeated. This is not a completed test and no signature lines will be printed.

#### M. BREATH ALCOHOL ANALYSIS TEST REPORT/EVIDENCE TICKET PRINTOUT

1. The start of the observation period and instrument serial number will be printed on the Breath Alcohol Analysis Breath Report/Evidence Ticket. With the exception of accident and injury data, all other entered biographical data will be printed on the Breath Alcohol Analysis Test Report/Evidence Ticket. If applicable and per Officer discretion, Subject ID and Subject Password will be printed at the bottom of the Breath Alcohol Analysis Test Report/Evidence Ticket, which is used to access the breath test video recording. 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.

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## **8.12.6 INTOX DMT STATUS CODE MESSAGES AND INSPECTIONS**

**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 INTOX DMT Breath Alcohol Tests.

### **SPECIFIC PROCEDURES:**

#### **A. STATUS CODE MESSAGES**

1. Any status code message occurring during the operational protocol will cause the test to abort. The instrument is programmed to eliminate any chance of an improper test. All checks, such as internal standard, simulator solution temperature, simulator solution reading, etc., will pass or the test is aborted at the point of the failed check. All status codes are electronically recorded by the INTOX DMT.
2. A simulator test, two internal standard tests, and other operational protocol steps inspect the instrument each time a subject test is performed. This inspection ensures the instrument is working properly with every subject test, regardless of any prior or subsequent status code messages. Previous or subsequent status code messages do not affect the accuracy of a completed test.
3. If the officer transports the subject to another breath testing site because of equipment or other issues, the officer will re-initiate the breath testing sequence. If necessary to comply with statutory requirements related to breath site video recording, the advisement process should be repeated at the new site.
4. If a subject provides an acceptable breath sample and the test is aborted before completion, the subject may be required to provide another sample since aborted tests are not considered completed tests. If the test is aborted, the operational protocol should be repeated. The advisement process, checking of the mouth, and observation period do not have to be repeated unless required by specific policy.
5. An aborted test is not considered a second breath test because a test has not been completed. If a reading is obtained for the subject sample, but a status code message then occurs and aborts the test, this test is not a valid or completed test, and the test should be repeated. The test may be repeated on either the same instrument or another instrument. If the same status code message were to occur again on the same instrument, it would again abort the test. The test Operator should retain copies of all aborted tests.
6. If a status code message of "EXTERNAL STANDARD OUT OF RANGE" (0.08% simulator test) is encountered during a subject test, this condition does not indicate the simulator solution (lot or bottle) or calibration is improper. This status code message ("EXTERNAL STANDARD OUT OF RANGE") only indicates that the calibration check did not pass. It is not required or even suggested

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the bottle of simulator solution be changed or the instrument be recalibrated after one or more "EXTERNAL STANDARD OUT OF RANGE" status code message(s). The purpose of the simulator test is to verify the performance of the entire instrumental system, not the accuracy of the solution lot/bottle or calibration. Before field usage, the solutions are verified by an independent laboratory and SLED.

**B. INSPECTIONS AFTER CERTIFICATION**

1. A SLED certified Breath Test Specialist or Breath Test Technician will begin an inspection on every certified breath alcohol device (either remotely, via computer modem/internet connection, or on-site) at least once every three months and issue a SLED inspection report upon completion.
2. The inspection may begin before three months has elapsed and not be completed until after the three-month period. Therefore, the time lapse between inspection reports may exceed three months.
3. No instrument may be removed from its assigned site by an agency other than SLED without receiving approval from the SLED Implied Consent Department.
4. Status code messages do not require an inspection or repair action to be undertaken. When a status code message repeatedly occurs, an inspection and/or repair may be performed. A SLED certified Breath Test Specialist and/or manufacturer's service representative will perform all repairs of breath alcohol devices.
5. Any inspection will have at least a supervisor test (a series of a minimum of five 0.08% alcohol concentration simulator tests) or diagnostic test (an internal diagnostic routine). A supervisor and/or diagnostic test may be performed without the completion of an inspection record. To pass the supervisor test, the simulator solution average reading will be a 0.08% alcohol concentration (0.076% through 0.084%, inclusive), and the simulator solution temperature will be 34 degrees Celsius (C), 33.5 through 34.5, inclusive. To pass the diagnostic test, no errors or failures may appear.
6. After a repair is completed, a SLED certified breath test specialist and/or manufacturer's service representative will inspect the instrument before it is placed back into service and issue an inspection record. However, inspections not involving repair action may be performed remotely.
7. After an inspection, an inspection record, with serial number, site location, date/time of completion, and name of SLED certified Breath Test Specialist and/or manufacturer's service representative will be completed documenting the instrument is working properly. Inspection records do not require the signature of the SLED certified Breath Test Specialist and/or manufacturer's service representative, since the name is listed on the report. These records are maintained electronically for a minimum of five years.
8. Upgrades, deemed significant by SLED, will be added to the inspection record. No other documentation of upgrades or their approval is required.

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9. Recalibrations are done when necessary, with this action denoted on the inspection record. Since calibration checks are performed during each test, no specific interval exists at which an instrument will be recalibrated.
10. Three calibration checks (simulator test and two internal standards) are performed with each subject test. A failed calibration check does not necessarily require recalibration, but repeated failed calibration checks may require an inspection, repair, and/or recalibration.
11. The INTOX DMT will electronically record and save for uploading to SLED's website status codes, inspections, maintenance/repairs, malfunctions, inquiries/complaints, and all breath test data. Records will be automatically recorded by the INTOX DMT. The INTOX DMT provides the ability for the Operator/Officer to electronically enter any and all remarks by pressing the touchscreen icon "Inquiries/Complaints" located on the main menu screen. Retrieved data will be maintained electronically for a minimum of five years. However, the accidental/unavoidable loss of data does not invalidate any tests.

**C. VERIFICATION OF LINEARITY**

1. A SLED certified Breath Test Specialist or a service representative of the instrument's manufacturer will perform a Linearity Verification on every certified breath alcohol device at least once a year.
2. Linearity Verification will consist of a series of five simulator tests performed at three different levels of concentration of simulator solution.
3. Linearity Verification records will be posted under Verification of Linearity on SLED's Implied Consent website.

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**8.12.7 BREATH SITE VIDEO RECORDING**

**GENERAL PURPOSE:** To set forth policies for breath site video recording.

**POLICY:** The Division will approve and certify video recording systems for breath sites.

**SPECIFIC PROCEDURES:**

**A. SYSTEM APPROVAL/CERTIFICATION**

1. SLED will approve such methods for performing video recordings that are demonstrated to the satisfaction of SLED to produce quality and reliable reproductions. The only approved video recorder is The W.H. Platts Company's VDS-2. However, the VDS-2 will remain approved even if the manufacturer changes.
2. A SLED certified Video Recording Specialist will certify each IRSAVideo Recording System. For a video recording system whose testing station is a mobile van, once the video recording system is certified for use in the van, it remains certified regardless of the physical location of the van.
3. A certification record documenting the serial number, site location, date/time, and name of SLED certified video recording specialist will be completed and maintained by SLED. A record will be issued for each new site except when the system is moved to SLED or manufacturer's service representative for inspection, repair, maintenance, or storage and later moved back to its original site. Certification records do not require the signature of the SLED Video Recording Specialist, since the name is listed on the report. These records are maintained electronically by SLED for a minimum of five years.
4. A new certification is not required if a system component(s) is replaced but is required if the entire system is replaced. A certification does not expire unless revoked by SLED.

**B. SYSTEM INSPECTIONS**

1. SLED certified Video Recording Specialists and/or manufacturer's service representatives may inspect, repair, or maintain video recording systems. SLED will begin an on-site inspection on every certified VDS-2 at least once every twelve months and a report will be issued upon completion. The inspection may begin before twelve months has elapsed and not be completed until after the twelve-month period. Therefore, the time lapse between inspection reports may exceed twelve months.
2. After an inspection, an inspection record, with serial number, site location, date/time of completion, and name of SLED certified Video Recording Specialist will be completed documenting the system is working properly. Inspection records do not require the signature of the SLED certified Video

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Recording Specialist and/or manufacturer's service representative, since the name is listed on the report. These records are maintained electronically by SLED for a minimum of five years.

3. No system should be removed from its assigned site by an agency other than SLED and/or the manufacturer without first notifying the SLED Implied Consent Department and receiving approval.

**C. SYSTEM MISCELLANEOUS**

1. No operator certification or forms are required to operate a SLED certified video recording system; therefore, any officer may operate this equipment. In addition, any officer may advise the subject of video recording.
2. The SLED video recording systems will produce a video recording of the breath test.
  - (a) The resulting subject's breath-test video recording will be treated with confidentiality.
  - (b) Therefore, in general, the subject's breath-test video recording, or access codes to the video recording, will be released to third parties only with the authorization of the subject.
  - (c) However, due to the statutory requirements placed upon SLED as a government agency, release of a subject's breath-test video recording to third parties may occur under the following circumstances:
    - (i) When the requestor is an investigating police department or sheriff's office, and the third party is the responsible Solicitor's office.
    - (ii) When authorized by the responsible Solicitor's office and the requestor is an investigating police department or sheriff's office.
    - (iii) In response to valid subpoenas and court orders.
    - (iv) In response to valid requests made under the S.C. Freedom of Information Act.
3. The video recording systems may be used to comply with statutory requirements related to video recording. Additionally, these systems may be used to document breath tests not involving mandatory recording.