

**CHAPTER 11D-8  
IMPLIED CONSENT PROGRAM**

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**11D-8.001 Purpose – Scope.**

*Rulemaking Authority 316.1932(1)(a)1., 322.63(3)(a), 327.352(1)(d) FS. Law Implemented 316.1932(1)(a)1., 322.63(3)(a), 327.352(1)(d) FS. History–New 10-31-93, Repealed 1-1-97.*

**11D-8.002 Definitions.**

(1) Acceptable Range – the results of alcohol reference solutions and dry gas standard analyses which fall within the following ranges at each alcohol vapor concentration: 0.05 g/210L range is 0.045 to 0.055 g/210L; 0.08 g/210L range is 0.075 to 0.085 g/210L; 0.20 g/210L range is 0.190 to 0.210 g/210L; or the Alcohol Reference Solution gas chromatographic results which fall within the following ranges: 0.0605 g/100mL range is 0.0586 to 0.0623 g/100mL; 0.0968 g/100 mL range is 0.0938 to 0.0997 g/100mL; 0.2420 g/100mL range is 0.2347 to 0.2492 g/100mL.

(2) Accuracy – the nearness of a measurement to a known concentration.

(3) Acetone Stock Solution – a mixture of acetone and distilled or deionized water provided by the Department.

(4) Agency – a law enforcement agency other than the Department, or an entity which conducts breath tests or submits blood samples for alcohol testing pursuant to these rules, or a civilian entity performing such duties on behalf of a law enforcement agency.

(5) Agency Inspection – the periodic testing of the calibration and operation of a breath test instrument, including all required preventive maintenance, in accordance with rule 11D-8.006, F.A.C., and performed by a person authorized by the Department.

(6) Agency Inspector – a person who has been issued an Agency Inspector permit by the Department.

(7) Alcohol – ethyl alcohol, also known as ethanol.

- (8) Alcohol Free Test – a result of 0.000 g/210L when using distilled or deionized water.
- (9) Alcohol Reference Solution – a standard used to verify the calibration of a breath test instrument consisting of a mixture of alcohol and distilled or deionized water that will produce a known alcohol vapor concentration at a specific temperature.
- (10) Analyst – a person who has been issued a permit by the Department to conduct blood alcohol analyses.
- (11) Approved Blood Alcohol Test – the analyses of two separate portions of the same blood sample using a Department-approved blood alcohol test method and a Department-approved procedure, with results within 0.010 grams of alcohol per 100 milliliters of blood (g/100mL), and reported as the blood alcohol level.
- (12) Approved Breath Alcohol Test – a minimum of two samples of breath collected within fifteen minutes of each other, analyzed using an approved breath test instrument, producing two results within 0.020 g/210L, and reported as the breath alcohol level, on a single Form 38 affidavit. If the results of the first and second samples are more than 0.020 g/210L apart, a third sample shall be analyzed. Refusal or failure to provide the required number of valid breath samples constitutes a refusal to submit to the breath test. Notwithstanding the foregoing sentence, the result(s) obtained, if proved to be reliable, shall be acceptable as a valid breath alcohol level.
- (13) Authorized Repair Facility – the breath test instrument manufacturer or an entity authorized by the breath test instrument manufacturer to service and repair such breath test instrument.
- (14) Blood – human whole blood.
- (15) Blood Alcohol Level – the alcohol concentration by weight in a person’s blood based upon grams of alcohol per 100 milliliters of blood (g/100mL).
- (16) Breath Alcohol Level – the alcohol concentration by weight in a person’s breath based upon grams of alcohol per 210 liters of breath (g/210L).
- (17) Breath Test Instructor – a person who has been issued a Breath Test Instructor Certification by the Criminal Justice Standards and Training Commission.
- (18) Breath Test Operator – a person who has been issued a Breath Test Operator permit by the Department.
- (19) Department – the Florida Department of Law Enforcement.
- (20) Dry Gas Standard – a National Institute of Standards and Technology or international equivalent traceable standard consisting of a mixture of alcohol and gas which produces a known alcohol vapor concentration used to verify the accuracy of a breath test instrument.
- (21) Evidentiary Breath Test Instrument – a breath test instrument approved by the Department under rule 11D-8.003, F.A.C., and used primarily to conduct alcohol breath tests pursuant to Florida law.
- (22) Instrument Registration – when issued by the Department, certifies that the specified breath test instrument meets the requirements of rules 11D-8.003 and 11D-8.004, F.A.C, and is authorized to be placed into evidentiary use. A breath test instrument registration remains valid until relinquished by the agency or suspended or revoked by the Department.
- (23) Methods – types of alcohol analyses approved by the Department to conduct chemical or physical tests of blood or breath.
- (24) Mouth Alcohol Solution – a mixture of alcohol and distilled or deionized water provided by the Department.
- (25) Permit – when issued by the Department, certifies that the holder has met all necessary qualifications, remains in full compliance with these rules and is authorized to perform all related duties. A permit is issued only to a qualified applicant and remains valid and in full effect until determined otherwise by the Department.
- (26) Permit Cycle – the 4-year period in which continuing education requirements shall be satisfied. The initial cycle due date is June 30th of the fourth year following the initial permit date. Subsequent cycles will run for 4-year periods from the initial cycle due date.

EXAMPLE:

Initial Permit Date

November 21,

2012

4-year Anniversary Date

November 21,

2016

Continuing Education Due Date/Initial Cycle Due Date

June 30, 2017

(27) Reference Sample Device – a device, also known as a simulator, that produces a known vapor concentration by the passage of air through a liquid.

(28) Target Concentration – a gas chromatographic result equivalent to the following known alcohol vapor concentrations of alcohol reference solution: for 0.05 g/210L the target concentration is 0.0605 g/100mL; for 0.08 g/210L the target concentration is 0.0968 g/100mL; for 0.20 g/210L the target concentration is 0.2420 g/100mL.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a), (b), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-6-99, 7-29-01, 11-5-02, 12-9-04, 3-27-06, 7-29-15.*

### **11D-8.003 Approval of Breath Test Methods and Instruments.**

(1) The approved breath test method for evidentiary breath testing is Infrared Spectroscopy, also known as Infrared Light Absorption.

(2) The Department approves breath test methods and new instrumentation to ensure the accuracy and reliability of breath test results. The approved breath test instrument make and model is the CMI, Inc. Intoxilyzer 8000 using software evaluated by the Department in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34, revised March 2004, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05645>. This form may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P.O.Box 1489, Tallahassee, Florida 32302.

(3) A Department inspection performed in accordance with Rule 11D-8.004, F.A.C., validates the approval, accuracy and reliability of an evidentiary breath test instrument.

(4) The Department shall conduct evaluations for approval of new instrumentation under subsection (2) in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34 – Rev. March 2004.

(5) The availability or approval of new instruments, evaluation of software, options or modifications does not negate the approval status of previously approved instruments, or evaluated software, options or modifications. An approved make and model of a breath test instrument remains approved until disapproved by the Department.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), (b), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 7-29-15.*

### **11D-8.0035 Approval of Alcohol Reference Solution and Sources.**

(1) The Department shall approve a source of alcohol reference solution for use by agencies in the State of Florida. The source approved by the Department shall be an entity that manufactures alcohol reference solutions and meets the following requirements:

(a) The source must prepare alcohol reference solution, and be capable of producing a minimum batch volume of 800 bottles, each containing at least 500 milliliters, to produce the following vapor alcohol concentrations: 0.05 g/210L, 0.08 g/210L, and 0.20g/210L;

(b) The source must have performed and documented tests that demonstrate that the alcohol reference solutions are reliable for at least two years from the date of manufacture.

(2) The Department shall approve each lot of alcohol reference solution prior to distribution for use in Florida.

(a) The Department shall determine the alcohol concentration in a minimum of ten (10) sample bottles of each lot of alcohol reference solution using gas chromatography or other scientifically accepted method at the

time such lots are submitted for approval. Duplicate analyses will be performed on each sample bottle of alcohol reference solution. If any result falls outside the alcohol reference solution acceptable range, a second set of analyses will be performed. If the second set of results are within the alcohol reference solution acceptable range, the alcohol reference solution shall be approved. If any of the results fall outside the alcohol reference solution acceptable range a second time, the alcohol reference solution shall be disapproved.

(b) The Department shall notify the source that the approved lots may be distributed for use in Florida, and shall issue a Certificate of Assurance, FDLE/ATP Form 32 revised March 2001, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05643> This form may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P.O. Box 1489, Tallahassee, Florida 32302.

(3) Alcohol reference solution lots approved by the Department shall be used in agency or Department inspections within two (2) years of the date of manufacture.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3., (d) FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History—New 7-6-99, Amended 7-29-01, 12-9-04, 7-29-15, 9-4-16.*

#### **11D-8.0036 Approval of Dry Gas Standards Source.**

(1) The Department shall approve a source of dry gas standards for use by agencies in the State of Florida. The source approved by the Department shall be an entity that manufactures dry gas standards and meets the following requirements:

(a) The source must produce dry gas standards which are traceable to the National Institute of Standards and Technology.

(b) Each dry gas standard lot produced by the source must be certified by the source as to its contents and alcohol vapor concentration.

(c) The source must be capable of producing a minimum of 300 cylinders of dry gas standard during a thirty day period at an alcohol vapor concentration of 0.08 g/210L.

(d) The source must have performed and documented tests that demonstrate that the source's dry gas standards are reliable for at least two years from the date of manufacture.

(2) Dry gas standard cylinders produced by the approved source must not be used beyond the expiration date.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), (b), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History—New 11-5-02, Amended 12-9-04.*

#### **11D-8.004 Department Inspection and Registration of Breath Test Instruments.**

(1) The Department shall register and inspect each individual breath test instrument for accuracy and reliability prior to such instrument being initially placed into evidentiary use by an agency. The inspection validates that instrument's approval for evidentiary use, and the registration completes that instrument's approval pursuant to these rules. The registration shall reflect the registration date, the owner of the instrument, the instrument serial number, the manufacturer, and the model designation.

(2) Registered breath test instruments shall be inspected by the Department at least once each calendar year to ensure accuracy and reliability, and must be accessible to the Department for inspection. A department inspection must be conducted subsequent to repair and prior to being placed in evidentiary use.

(3) Department inspections shall be conducted in accordance with Department Inspection Procedures FDLE/ATP Form 36, revised August 2005, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05654>, Department Inspection Report – Intoxilyzer 8000, FDLE/ATP Form 41, revised August 2005, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05647>. These forms may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P.O. Box 1489, Tallahassee, Florida 32302.

(4) Department Inspectors shall be employed by the Department to register evidentiary breath test instruments, to conduct inspections and maintenance of breath test instruments and related equipment and facilities, to conduct and monitor training classes, and to otherwise ensure compliance with chapter 11D-8, F.A.C.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06, 7-29-15.*

#### **11D-8.005 Periodic Department Inspections of Breath Test Instruments.**

*Rulemaking Authority 316.1932(1)(a)1., 322.63(3)(a), 327.352(1)(d) FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History–New 10-31-93, Repealed 1-1-97.*

#### **11D-8.006 Agency Inspection of Breath Test Instruments.**

(1) Evidentiary breath test instruments shall be inspected by an agency inspector at least once each calendar month. The agency inspection shall be conducted in accordance with the Agency Inspection Procedures – Intoxilyzer 8000 FDLE/ATP Form 39, revised August 2005, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05652> and the results on Agency Inspection Report – Intoxilyzer 8000 FDLE/ATP Form 40, created March 2004, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-056653> These forms may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P.O. Box 1489, Tallahassee, Florida 32302. Agencies will be provided blank forms upon request and without cost for their alcohol testing program use.

(2) Whenever an instrument is taken out of evidentiary use, the agency shall conduct an agency inspection. The agency shall also conduct an agency inspection prior to returning an instrument to evidentiary use.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06, 7-29-15.*

#### **11D-8.007 Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures.**

(1) Evidentiary breath test instruments shall only be accessible to a person issued a valid permit by the Department and to persons authorized by a permit holder. This section does not prohibit agencies from sending an instrument out of evidentiary use to an authorized repair facility or the Department via common carrier transport. Only authorized repair facilities or the Department are authorized to remove the top cover of an Intoxilyzer 8000 evidentiary breath test instrument.

(2) The instrument will be located in a secured environment which limits access to authorized persons described in subsection (1), and will be kept clean and dry. All breath test facilities, equipment and supplies are subject to inspection by the Department.

(3) The breath test operator, agency inspector, arresting officer, or person designated by the permit holder shall reasonably ensure that the subject has not taken anything by mouth or has not regurgitated for at least twenty (20) minutes before administering the test. This provision shall not be construed to otherwise require an additional twenty (20) minute observation period before the administering of a subsequent sample.

(4) When operating an Intoxilyzer 8000 instrument, a breath test operator shall conduct a breath test in accordance with Operational Procedures – Intoxilyzer 8000 FDLE/ATP Form 37, revised August 2005, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05648>, and the results of the test shall be recorded on the Breath Alcohol Test Affidavit – Intoxilyzer 8000 FDLE/ATP Form 38, created March 2004, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05649>. Forms

FDLE/ATP 37 and FDLE/ATP 38 may be obtained by contacting the Florida Department of Law Enforcement, Alcohol Testing Program, P.O. Box 1489, Tallahassee, Florida 32302. Agencies will be provided blank forms upon request and without cost for their alcohol testing program use.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b)2., 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06, 7-29-15.*

#### **11D-8.0075 Agency Retention of Records.**

(1) Each agency shall maintain the following records for at least three years from the last entry date: agency inspection reports and breath test instrument repair records. The breath test instrument registration shall be retained by an agency for at least three years after the instrument is removed from evidentiary use. Dry gas standard certificates of analysis shall be retained by an agency for at least three years after receipt. These records shall be accessible to the Department upon request.

(2) At least once each calendar month each agency shall electronically transmit to the Department all breath tests conducted on that agency's Intoxilyzer 8000 evidentiary breath test instruments.

(3) The purpose of this section is solely for regulatory and administrative use, and any violation of this section shall not affect the admissibility, validity or reliability of breath test results.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 322.63(3), 327.354(3) FS. History–New 7-29-01, Amended 11-5-02, 12-9-04, 7-29-15.*

#### **11D-8.008 Breath Test Operator and Agency Inspector.**

(1) Qualifications for Breath Test Operator Permit – An applicant for a breath test operator permit must meet the following qualifications:

- (a) Eighteen (18) years of age or older;
- (b) High school diploma or its equivalent;
- (c) Present employment by an agency, or the Department;

(d) Successful completion of the basic Breath Test Operator Course approved by the Criminal Justice Standards and Training Commission. Successful completion shall require obtaining a passing score of at least 80% on a written examination, and demonstrating proficiency by:

- 1. Properly operating an approved breath test instrument in accordance with the applicable procedures for such instrument;
- 2. Properly completing the required forms.

(e) Submit to the Department a complete written application, Breath Test Permit Application, FDLE/ATP Form 8, revised October 2007, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05642>, upon successful completion of the breath test operator course, but no later than 90 days after completion. This form may be obtained by contacting the Florida Department of Law Enforcement, P.O. Box 1489, Tallahassee, Florida 32302. Agencies will be provided blank forms upon request and without cost for their alcohol testing program use.

(2) Qualifications for Agency Inspector Permit – An applicant for an agency inspector permit must meet the following qualifications:

(a) Has been issued a breath test operator permit by the Department valid at the time that the application is submitted;

(b) Successfully completes the basic Agency Inspector Course approved by the Criminal Justice Standards and Training Commission. Successful completion shall require a passing score of at least 80% on a written examination and a demonstration of proficiency by:

- 1. Proper inspection of an approved breath test instrument in accordance with the procedures for such instrument;
- 2. Proper completion of all required forms.

(c) Submits to the Department a complete written application, Breath Test Permit Application, FDLE/ATP Form 8, upon successful completion of the agency inspector course, but no later than 90 days after completion.

(d) Present employment by an agency or the Department.

(3) Breath Test Operators and Agency Inspectors must satisfy continuing education requirements in order to maintain valid permits. Continuing education requires successful completion of the applicable Commission-approved Renewal Course by June 30 following the fourth permit anniversary date, and at least once during each subsequent 4-year cycle. Successful completion of the Commission-approved Agency Inspector Course or Agency Inspector Renewal Course also satisfies an Agency Inspector's breath test operator continuing education requirements.

(4) Any Breath Test Operator or Agency Inspector who fails to satisfy the continuing education requirements shall not perform any duties authorized by the permit until successful completion of the applicable renewal course.

(5) Permits to conduct breath tests and inspect breath test instruments issued pursuant to this rule section shall remain valid until such permits expire on December 31st following the mandatory continuing education due date without completion of such training.

(6) Agency Inspectors are responsible for compliance with chapter 11D-8, F.A.C., rules governing agency custody, care, and inspection of breath test instruments and related records.

(7) Any breath test operator or agency inspector whose permit has expired pursuant to subsection (5) of this rule section or who fails to successfully complete the Commission-approved renewal course shall not perform any duties authorized by the permit until successful completion of the Commission-approved basic course.

(8) Members of the Department's Alcohol Testing Program who instruct Commission-approved breath test courses may use such course instruction to satisfy their continuing education requirements under this section.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06, 7-29-15.*

#### **11D-8.010 Qualifications for Instructors.**

(1) Persons who conduct breath test training courses must have a valid Breath Test Instructor certification issued by the Criminal Justice Standards and Training Commission, and such persons shall be deemed permitted by the Department to conduct breath test training courses.

(2) Unless exempted by the Commission, each breath test instructor must successfully complete the Commission-approved breath test instructor certification renewal course pursuant with rule 11B-20.0017, F.A.C., to remain qualified for a breath test instructor certification. Successful completion of the Commission-approved breath test instructor certification course or breath test instructor certification renewal course satisfies that person's agency inspector and breath test operator continuing education requirements. Each breath test instructor must also successfully complete all Department breath test instructor update courses.

(3) Breath test instructors must adhere to and comply with the approved curricula and related forms when teaching Commission or Department approved courses and processing related documentation.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1934(3), 322.63(3)(b), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 7-29-15.*

#### **11D-8.011 Approval of Blood Alcohol Test Methods.**

The Department approves the following test methods for determining blood alcohol level:  
Gas Chromatography.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3., (d) FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History—New 10-31-93, Amended 7-29-15.*



### **11D-8.012 Blood Samples – Labeling and Collection.**

(1) Before collecting a sample of blood, the skin puncture area must be cleansed with an antiseptic that does not contain alcohol.

(2) Blood samples must be collected in a glass evacuation tube that contains a preservative such as sodium fluoride and an anticoagulant such as potassium oxalate or EDTA (ethylenediaminetetraacetic acid). Compliance with this section can be established by the stopper or label on the collection tube, documentation from the manufacturer or distributor, or other evidence.

(3) Immediately after collection, the tube must be inverted several times to mix the blood with the preservative and anticoagulant.

(4) Blood collection tubes must be labeled with the following information: name of person tested, date and time sample was collected, and initials of the person who collected the sample.

(5) Blood samples need not be refrigerated if submitted for analysis within seven (7) days of collection, or during transportation, examination or analysis. Blood samples must be otherwise refrigerated, except that refrigeration is not required subsequent to the initial analysis.

(6) Blood samples must be hand-delivered or mailed for initial analysis within thirty days of collection, and must be initially analyzed within sixty days of receipt by the facility conducting the analysis. Blood samples which are not hand-delivered must be sent by priority mail, overnight delivery service, or other equivalent delivery service.

(7) Notwithstanding any requirements in chapter 11D-8, F.A.C., any blood analysis results obtained, if proved to be reliable, shall be acceptable as a valid blood alcohol level.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3., (d) FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History—New 10-31-93, Amended 7-29-01.*

### **11D-8.013 Blood Alcohol Permit – Analyst.**

(1) The application for a permit to determine the alcohol level of a blood sample shall be made on the Application for Permit to Conduct Blood Alcohol Analyses FDLE/ATP Form 4, revised December 2014, effective date July 2015, hereby incorporated by reference, <https://www.flrules.org/Gateway/reference.asp?No=Ref-05640>, provided by the Department and shall include the following information:

(a) Name and address of applicant;

(b) A copy of state license if licensed, or college transcript;

(c) Name and address of employer and laboratory facility where applicant performs analyses;

(d) Identify at least one Agency for which blood analyses are to be performed pursuant to chapters 316, 322 and 327, F.S.; and,

(e) A complete description of proposed analytical procedure(s) to be used in determining blood alcohol level.

(2) Qualifications for blood analyst permit – To qualify, the applicant must meet all of the following requirements:

(a) Department approval of analytical procedure(s). All proposed analytical procedures will be reviewed and a determination of approval will be made by the Department;

(b) Satisfactory determination of blood alcohol level in five proficiency samples provided by the Department using the proposed analytical procedure. Satisfactory determination shall be made by reporting results for blood alcohol proficiency samples within the acceptable range for the samples. For blood alcohol testing, acceptable ranges shall mean the calculated proficiency sample mean + or - 3 standard deviations iterated twice. The mean and standard deviations will be calculated using the results reported by the analysts and reference laboratories;

(c) Identify at least one Agency for which blood analyses are to be performed pursuant to chapters 316, 322



and 327, F.S.; and,

(d) Meet one of the following:

1. Possess a clinical laboratory license in clinical chemistry as a technologist, supervisor or director, under chapter 483, F.S.; or

2. Be a licensed physician pursuant to chapter 458, F.S.; or

3. Complete a minimum of 60 semester credit hours or equivalent of college, at least 15 semester hours of which must be in college chemistry.

(3) The department shall approve gas chromatographic analytical procedures which meet the following requirements:

(a) Includes the approved method used and a description of the method, and the equipment, reagents, standards, and controls used;

(b) Uses commercially-prepared standards and controls certified by the manufacturer, or laboratory-prepared standards and controls verified using gas chromatography against certified standards. For commercially-prepared standards and controls, the manufacturer, lot number and expiration date must be documented for each sample or group of samples being analyzed. For laboratory-prepared standards and controls, date, person preparing the solution, method of preparation and verification must be documented;

(c) A statement of the concentration range over which the procedure is calibrated. The calibration curve must be linear over the stated range;

(d) Uses a new or existing calibration curve. The new calibration curve must be generated using at least three (3) standards: one at 0.05 g/100mL or less, one between 0.05 and 0.20 g/100mL (inclusive) and one at 0.20 g/100mL or higher, and must be verified using a minimum of two (2) controls, one at 0.05 g/100mL or less and one at 0.20g/100mL or higher. The existing calibration curve must be verified using a minimum of two (2) controls, one at 0.05 g/100mL or less and one at 0.20g/100mL or higher;

(e) Includes the analysis of an alcohol-free control, and the analysis of a whole blood or serum control. The whole blood or serum control may be used to satisfy the control requirement(s) in paragraph (d);

(f) A gas chromatographic analytical procedure must discriminate between methanol, ethanol, acetone and isopropanol and employ an internal standard technique;

(4) The permit shall be issued by the Department for a specific method and procedure. Any substantial change to the method or analytical procedure must receive prior approval by the Department before being used to determine the blood alcohol level of a sample submitted by an agency. The Department shall determine what constitutes a substantial change.

(5) An analyst shall only use a Department-approved procedure to determine the blood alcohol level of samples submitted by an agency. Approval of blood alcohol analysis methods and procedures shall be based on rule requirements in effect at the time they were submitted for approval.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 316.1933(2)(b), 316.1934(3) 322.63(3)(b), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(b), (e), 327.353(2), 327.354(3) FS. History—New 10-31-93, Amended 4-1-94, 2-1-95, 1-1-97, 11-5-02, 12-9-04, 7-29-15.*

#### **11D-8.014 Blood Alcohol Permit – Analyst: Renewal.**

(1) Permits to conduct blood alcohol analyses shall remain valid until otherwise suspended or revoked by the Department. In order to remain qualified for such permit, an analyst must satisfactorily determine the blood alcohol level of at least 2 proficiency samples provided by the Department semiannually. Satisfactory determination shall be made by reporting results for blood alcohol proficiency samples within the acceptable range for the samples. For blood alcohol testing acceptable ranges shall mean the calculated proficiency sample mean + or - 3 standard deviations iterated twice. The mean and standard deviations will be calculated using the results reported by the analysts and reference laboratories.

(2) Upon notification by the Department that an analyst has failed to satisfactorily determine the blood

alcohol level on any set of proficiency samples, the analyst shall be required to satisfactorily determine the blood alcohol level of a second set of five proficiency samples provided by the Department.

(3) Upon notification by the Department that an analyst has failed to satisfactorily determine the blood alcohol level on a second set of proficiency samples, the analyst shall not perform any duties authorized by the analyst's permit until the analyst satisfactorily determines the blood alcohol level of a subsequent set of proficiency samples provided by the Department. This section shall not preclude the Department from taking further action in accordance with rule 11D-8.015, F.A.C.

(4) Failure to satisfactorily determine the blood alcohol level of any 4 sets of proficiency samples provided by the Department within a 12-month period shall result in revocation of the blood analyst permit.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2), 327.354(3) FS. History—New 10-31-93, Amended 1-1-97, 11-5-02, 5-29-14.*

### **11D-8.015 Denial, Revocation, and Suspension of Permits.**

(1) Notwithstanding an applicant's qualifications, the Department shall deny an application for an original permit where the applicant:

(a) Fails to meet the permit qualifications under these rules.

(b) Has been convicted of any of the following offenses in any federal or state court:

1. Any felony;

2. Any misdemeanor involving perjury, false statements or falsification of records;

3. Criminal conviction for any violation of chapter 893, F.S.;

4. Driving under the influence of alcoholic beverages or drugs during the five years prior to submitting the application;

5. Leaving the scene of a crash involving death or serious bodily injury.

(c) Knowingly performing the duties of a breath test operator, agency inspector, breath test instructor, or analyst without a valid applicable permit.

(d) Had the permit previously revoked under subsection (3) below.

(2) The Department is authorized to suspend any permit for any of the following reasons:

(a) Failure to prepare and maintain breath or blood testing records as required by these rules.

(b) Failure to continue to meet the qualifications for such permit.

(c) Any violation of these rules, or aiding and abetting any violation of these rules.

(3) The Department is authorized to revoke any permit for any of the following reasons:

(a) Knowingly making a false statement or providing false information on any agency document or on any document required by these rules.

(b) Knowingly making a false statement or providing false information on any application for permit submitted to the Department.

(c) Being convicted after issuance of the permit of any of the following offenses in any federal or state court:

1. Any felony;

2. Any misdemeanor involving perjury, false statements or falsification of records;

3. Driving under the influence of alcoholic beverages or drugs;

4. Leaving the scene of a crash involving death or serious bodily injury;

5. Any criminal violation of chapter 893, F.S.

(d) Performing the duties of a breath test operator, agency inspector, or analyst with knowledge that the applicable permit is suspended or in violation of continuing education requirements.

(e) Having had the permit previously suspended for any violation of these rules.

(4) The Department is authorized to require a breath test operator, agency inspector, breath test instructor, or analyst who violates any of these rules to attend additional training or education related to their certification or permit.

(5) The Department is authorized to invalidate the registration of any evidential instrument for a violation of any rule relating to the use, custody and care of such instrument.

(6) All permits and registrations which have been suspended, revoked or invalidated must be surrendered to the Department upon demand.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a), (b), 327.352(1)(b)3. FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06.*

#### **11D-8.016 Administrative Hearings.**

All proceedings concerning the revocation, suspension, or denial of permits shall be conducted in accordance with Chapter 120, F.S., and the Florida Administrative Code.

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 322.63(3)(a), 327.352(1)(b)3., (d) FS. Law Implemented 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.353(2), 327.354(3) FS. History–New 10-31-93, Amended 7-29-01.*

#### **11D-8.017 Forms.**

*Rulemaking Authority 316.1932(1)(a)2., (f)1., 316.1933(2)(b), 316.1934(3), 322.63(3)(a), (b), 327.352(1)(b)3. FS. Law Implemented 316.1932(1)(b), 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.352(1)(e), 327.353(2)(b), 327.354(3) FS. History–New 10-31-93, Amended 2-1-95, 1-1-97, 7-29-01, 11-5-02, 12-9-04, 3-27-06, Repealed 7-29-15.*

#### **11D-8.018 Transition Clause.**

*Rulemaking Authority 316.1932(1)(a)1., 322.63(3)(a), 327.352(1)(d) FS. Law Implemented 316.1932(1)(a)2., 316.1933(2)(b), 316.1934(3), 322.63(3)(b), 327.353(2), 327.354(3) FS. History–New 10-31-93, Repealed 1-1-97.*