

# REGULATIONS

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## SOUTH CAROLINA LAW ENFORCEMENT DIVISION

### CHAPTER 73

#### ARTICLE 1

#### IMPLIED CONSENT TESTS

*Statutory Authority: 1976 Code §§ 17-7-780, 23-3-130, 23-3-600 through 23-3-690 and 56-5-2950 and Article 1 of Chapter 23 of Title 16, Article 3 of Chapter 31 of Title 23 and Chapter 17 of Title 40.*

[73-1. Definitions.](#) [SC ADC 73-1]

[73-2. Methods of Making Chemical Analyses.](#) [SC ADC 73-2]

[73-3. Certification of Breath Test Operators.](#) [SC ADC 73-3]

[73-4. Advisory Board \(Repeal\).](#) [SC ADC 73-4]

[73-5. Videotaping at Breath-Test Sites.](#) [SC ADC 73-5]

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### 73-1. Definitions.

- A. SLED.** The term "SLED" shall mean the South Carolina Law Enforcement Division.
- B. Chemical Analysis.** The term "chemical analysis" shall mean a chemical analysis of a person's breath to determine alcohol concentration.
- C. Alcohol Concentration.** The term "alcohol concentration" shall mean the number of grams of alcohol for each one hundred milliliters of blood by weight or the number of grams of alcohol for each two hundred and ten liters of breath by weight.
- D. Breath-Testing Device.** The term "breath-testing device" shall mean an instrument for

**E. Breath Test Operator.**

making a chemical analysis and giving the resultant alcohol concentration based on an alveolar air/blood ratio of 2.100:1. The term "breath test operator" shall mean an individual currently holding a valid permit from SLED to perform chemical analysis, of the type set forth within the permit, under the provisions of Sections 23-31-410, 50-21-114, 55-1-100, 56-1-286, 56-1-2130, and 56-5-2950 Code of Laws of South Carolina, 1976, as amended.

**F. Videotaping System.**

The term "videotaping system" shall mean the video equipment, audio equipment, and related hardware used to record breath tests.

*Amended by State Register Volume 24, Issue No. 4, eff April 28, 2000.*

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**73-2. Methods of Making Chemical Analyses.**

**A. Methods.**

SLED shall approve such methods of performing chemical analysis as are demonstrated to the satisfaction of SLED to produce accurate and reliable determinations of alcohol concentration in a reasonable, convenient, and efficient manner.

**B. Breath-Testing Devices.**

SLED hereby approves the method of performing chemical breath analysis to determine alcohol concentration by using breath-testing devices. SLED will consider for approval only devices that first have been tested and approved for their accuracy and reliability by the National Highway Traffic and Safety Administration of the United States Department of Transportation. All approved devices will be specified in the SLED Policy and Procedures Manual.

**C. Certifications.**

SLED shall certify each breath-testing device. This certification shall include the calibration of the device with an external standard and the verification of the device's calibration with an internal and or external standard. Whenever a breath-testing device is certified, this certification will also constitute an inspection of the breath-testing device. For an instrument whose testing station is a mobile van, once the instrument is certified for use in the van, it remains certified regardless of the physical location of the van. Additionally, the certification tests and certification do not have to be repeated if the instrument and or its software are upgraded.

**D. Inspections.**

SLED shall inspect each certified breath testing device (either remotely via computer modem or on-site) at least once every three months. In addition, an inspection is performed after any repair is completed. This inspection shall include the verification of the

device's calibration with an internal and/or external standard. The inspection may begin before three months has elapsed and not be completed until after the three-month period. In this case, the time lapse between inspections may exceed three months. This occurrence is acceptable as long as no subject tests are performed until the inspection is completed. Therefore, at least one SLED inspection must be performed in the three months before a subject test. Failure to have an inspection within the required time does not cause revocation of certification for that instrument but signifies that proper procedures for that time were not followed.

#### **E. Records.**

Certification, inspection, and database records shall be maintained by SLED for a minimum of five years. However, the accidental/unavoidable loss of data does not invalidate any breath tests.

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### **73-2.1. Suggested Procedures for Obtaining and Handling Blood and Urine Samples. [sc ADC 73-2.1]**

#### **A. Obtaining and Handling Blood and Urine Samples.**

The South Carolina Law Enforcement Division (SLED) recommends the following procedures by which blood and urine samples are to be obtained and handled if such samples are taken from persons arrested for DUI (1976 Code 56-5-2930 or 56-5-2950, as amended) and are taken under authority of 1976 Code 56-5-2950, as amended. Other procedures that meet appropriate medical standards are acceptable as well.

**B. Reimbursement Procedures.** The cost for obtaining a urine or blood sample shall be set by the Chief of SLED. Reimbursement for obtaining samples shall be made by mailing a copy of the SLED Urine/Blood Collection Report form for each sample collected. More than one collection report may be submitted with each invoice.

#### **C. Suggested Procedures for Obtaining and Handling Urine Samples by Individuals so Authorized, Using Appropriate Collection Materials.**

*Note: Step 2 should be performed in view of subject and a witness of same sex.*

1. Take an unused, uncontaminated container and remove cap or lid.
2. Hand the container to subject with instructions to fill container.
3. Have subject immediately return filled urine container. Replace cap or lid on container and tighten down to prevent leakage.
4. Label container with the following information: Name of subject, time and date of sample

- collection, and name of person collecting sample.
5. Place a piece of tape across cap or lid and seal to sides of container. Person sealing container should initial tape.
  6. Fill out all information on Urine/Blood Collection Report Sheet.
  7. As soon as possible after specimen collection, deliver sealed sample and Urine/Blood Collection Report to SLED Chemistry Laboratory for analysis.

**D. Suggested Procedures for Obtaining and Handling Blood Samples by Individuals so Authorized, Using Appropriate Collection Materials.**

1. Clear venipuncture site with non-ethanol skin preparation.
2. Withdraw blood and place in an unused, uncontaminated vial. Vials that contain both an anticoagulant and a preservative are preferred.
3. Cap vial securely.
4. Place following information on label: Name of subject, time and date of blood withdrawal, and name of person withdrawing blood.
5. Fill out information on Urine/Blood Collection Report.
6. Wrap blood vial securely in suitable material for transport.
7. As soon as possible after specimen collection, deliver sealed sample and Urine/Blood Collection Report to SLED Chemistry Laboratory for analysis.

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**73-3. Certification of Breath Test Operators.**

**A. Duty of the Chief of SLED.**

The Chief of SLED shall certify breath test operators. In addition, the Chief shall issue, deny, renew, terminate, or revoke certifications of individuals to perform chemical analysis because of standards herein set forth.

**B. Ability and Good Character.**

Permits shall be granted to individuals who (1) demonstrate the ability to perform chemical analyses accurately and reliably in accordance with a method or methods approved by SLED; (2) offer satisfactory proof of good character to the Chief of South Carolina Law Enforcement Division.

**C. Course of Instruction.**

Individuals successfully completing courses held by the South Carolina Law Enforcement Division on chemical tests for intoxication, with a minimum number of course hours and with a curriculum approved in consultation with the Chief or his designated representative, shall be deemed to have demonstrated sufficient ability to qualify for the issuance of a permit. SLED may accomplish part of its statutory responsibilities by administratively delegating the training of

breath test operators to the South Carolina Criminal Justice Academy.

**D. Limitation of Permits.**

Permits may be limited in scope to the methods or devices for performing chemical analysis to those in which individual applying for a permit has demonstrated competence.

**E. Terms/Conditions of Permits.**

Permits shall state the date upon which they are to expire, which date shall in no event be longer than twenty-four months from the date of issuance. Permits shall be subject to renewal at expiration, or at such time before expiration as is convenient for the Chief of SLED. The breath test operator may be required to show continuing ability to perform accurate and reliable chemical analysis and renewed proof of good character, if desired by the Chief of SLED. The Chief of SLED or his representative may at any time examine operators to determine such continuing ability. Permits shall be terminated or revoked by the Chief of SLED upon his finding that the breath test operator does not meet, or no longer meets, the qualifications necessary for the issuance of a permit.

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**73-4. Deleted by State Register Volume 24, Issue No. 4, effective April 28, 2000.**

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**73-5. Videotaping at Breath-Test Sites.**

**A. Methods.**

SLED will approve such methods for performing videotaping that are demonstrated to the satisfaction of SLED to produce quality reproductions in a reasonable, convenient, and efficient manner.

**B. Videotaping Systems.**

SLED will consider for approval only videotaping systems that have been approved for their quality and reliability by SLED. All approved systems will be specified in the SLED Policy and Procedures Manual.

**C. Certifications.**

Pursuant to Section 56-5-2953, SLED will equip all SLED certified breath-testing sites with videotaping systems. SLED shall certify each videotaping system for recording breath tests. Videotaping systems, not certified by SLED, may be used only until SLED certified videotaping systems are installed. To obtain certification, a videotaping system must provide quality playback of a recording.

Whenever a videotaping system is certified, this certification will also constitute an inspection of the videotaping system. For a videotaping system whose testing station is a mobile van, once the videotaping system is certified for use in the van, it remains certified regardless of the physical location of the van.

#### **D. Inspections.**

SLED shall inspect every certified videotaping system on-site at least once every twelve months. However, the inspection may begin before twelve months has elapsed and not be completed until after the twelve-month period. In this situation, the time lapse between inspections may exceed one year. This occurrence is acceptable as long as no subject recordings are performed until the inspection is completed. Therefore, at least one SLED inspection must be performed in the twelve months before a subject recording. Failure to have an inspection within the required time does not cause revocation of certification for that videotaping system but signifies that proper procedures for that time were not followed.

#### **E. Records.**

Certification and inspection records shall be maintained by SLED for a minimum of five years. However, the accidental/unavoidable loss of these records does not invalidate any videotape recordings or breath test results.

*Added by State Register Volume 24, Issue No. 4, effective April 28, 2000.*

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