**FDLE’s Rules for the Intoxilyzer 8000**

At the Sammis Law Firm, we are exploring recent evidence that the testing procedures used in Hillsborough County, Florida, to test, repair, maintain, calibrate, and maintain the Intoxilyzer 8000 are not in substantial compliance with the Florida Administrative Code (“F.A.C.”) Chapter 11D-8, Implied Consent Program (the “Rule”).

Click here to read more about our [**Recent Case Results in DUI Intoxilyzer 8000 Cases**](https://www.tampaflduilawyer.com/case-results/)**.**

Challenges to the [DUI breath test result](https://www.tampaflduilawyer.com/defenses/breath-test/) and compliance with the testing procedure are based on recent evidence that FDLE employees have learned how to hide serious flaws with the machines by pulling the plug or otherwise causing a power outage.

Other problems have been reported with “failure to upload” data onto the mother computer in Tallahassee. Any mention of power outages or failure to upload data could be a red flag that the data was intentionally destroyed to avoid sending the machine for repairs.

The Intoxilyzer 8000 has been designed to allow data to be lost in this situation (at least the data that is available to the general public which is published on the FDLE website).

Only by examining the login records can you begin to tell how many times data may have been dumped in order to avoid sending the machines out for needed repairs.

During routine monthly inspections a number of problems can be flagged by the machine, including the following:

1. Control Outside Tolerance;
2. RFI Detect;
3. Interferent Detect;
4. Purge fail; or
5. Ambient fail.

The Rules allow the Agency Inspector to start a subsequent test, however, a second failure requires the machine to be sent for repairs.

In order to avoid repairing the machine and creating additional documentation, many believe that the agency inspectors and department inspectors working for the FDLE have found a way to trick the public into thinking the machines are working just fine by intentionally pulling the plug or otherwise causing power outages or the failure to upload data.

Read more about the Florida Administrative Code (“F.A.C.”) Chapter 11D-8, which governs the Implied Consent Program (the “Rule”).

**FAC 11D-8.004 Department Inspection and Registration of Breath Test Instruments (3/27/06)**

(1) The Department shall register and inspect a breath test instrument prior to such instrument being initially placed into evidentiary use by an agency. The inspection validates the instrument’s approval for evidentiary use, and the registration denotes an instrument approved pursuant to these rules and 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, and must be accessible to the Department for inspection.**Any evidentiary breath test instrument *returned from* an authorized repair facility shall be inspected by the Department prior to being placed in evidentiary use.** The inspection validates the instrument’s approval for evidentiary use. (Emphasis added)

(3) Department inspections shall be conducted in accordance with … Department Inspection Procedures – Intoxilyzer 8000 FDLE/ATP Form 36 – Rev. August 2005 for the Intoxilyzer 8000; and the results reported … FDLE/ATP Form 41 – Department Inspection Report – Intoxilyzer 8000 – Rev. August 2005 for the Intoxilyzer 8000.

(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.

**FAC 11D-8.006 Agency Inspection of Breath Test Instruments (3/27/06).**

(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 … Agency Inspection Procedures – Intoxilyzer 8000 FDLE/ATP Form 39 – Rev. August 2005 for the Intoxilyzer 8000; and the results reported on … FDLE/ATP Form 40 – Agency Inspection Report – Intoxilyzer 8000 – March 2004 for the Intoxilyzer 8000.

(2) Whenever an agency relocates an Intoxilyzer 5000 evidentiary breath test instrument for use at another facility, an agency inspection shall be conducted prior to the instrument’s removal, and another inspection shall be conducted prior to the instrument’s use for evidentiary breath testing at the new facility. A mobile testing unit is considered an agency facility.

(3) 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.

**FAC 11D-8.007 Approved Breath Test Instruments – Access, Facility Requirements, Observation Period, and Operational Procedures (3/27/06).**

(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 to an authorized repair facility.

**Only authorized repair facilities 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 that 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 5000 Series instrument, a breath test operator shall conduct a breath test in accordance with, and shall record the results on, the Breath Test Results Affidavit FDLE/ATP Form 14 – Rev. March 2002. 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 – Rev. August 2005, **and the results of the test shall be recorded on the Breath Alcohol Test Affidavit – Intoxilyzer 8000 FDLE/ATP Form 38 – March 2004.**

(5) Each agency shall record all breath tests conducted on a particular Intoxilyzer 5000 Series evidentiary breath test instrument on the Breath Test Log FDLE/ATP Form 13 – Effective January 1997. The breath test log shall be reviewed each calendar month by an agency inspector to ensure that the information is properly recorded and that all necessary corrections are made. The agency inspector’s signature on the breath test log shall signify compliance with this section.

**11D-8.008 Breath Test Operator and Agency Inspector (3/27/06).**

(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 upon successful completion of the breath test operator course, but no later than ninety days after completion.

(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 upon successful completion of the agency inspector course, but no later than ninety 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 during each subsequent four-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 former Rule 11D-8.008, F.A.C., shall remain valid until such permits expire or otherwise become invalid in accordance with those rules.

(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 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.

*Specific 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.*

**FAC 11D-8.017 Forms.**

The following forms referenced in these rules are hereby incorporated by reference:

FDLE/ATP Form 13 – Breath Test Log – Effective January 1997.
FDLE/ATP Form 14 – Breath Test Result Affidavit – Revised March 2002.
FDLE/ATP Form 16 – Agency Inspection Procedures – Revised March 2004.
FDLE/ATP Form 24 – Agency Inspection Report – Revised March 2001.
FDLE/ATP Form 26 – Department Inspection Report – Revised March 2004.
FDLE/ATP Form 32 – Certificate of Assurance – Revised March 2001.
FDLE/ATP Form 34 – Instrument Evaluation Procedures – Revised March 2004.
FDLE/ATP Form 35 – Department Inspection Procedures – Revised August 2005.
FDLE/ATP Form 36 – Department Inspection Procedures – Intoxilyzer 8000 – Revised August 2005.
FDLE/ATP Form 37 – Operational Procedures – Intoxilyzer 8000 – Revised August 2005.
FDLE/ATP Form 38 – Breath Alcohol Test Affidavit – Intoxilyzer 8000 – March 2004.
FDLE/ATP Form 39 – Agency Inspection Procedures – Intoxilyzer 8000 – Revised August 2005.
FDLE/ATP Form 40 – Agency Inspection Report – Intoxilyzer 8000 – March 2004.
FDLE/ATP Form 41 – Department Inspection Report – Intoxilyzer 8000 – Revised August 2005.

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.

*Specific 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.*

**11D-8.0075 Agency Retention of Records (3/27/06).**

(1) Each agency shall maintain the following records for at least three years from the last entry date: agency inspection reports and agency inspection print cards, breath test logs, 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.

(2) The above records shall be accessible to the Department upon request. 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.

*Specific 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.*

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