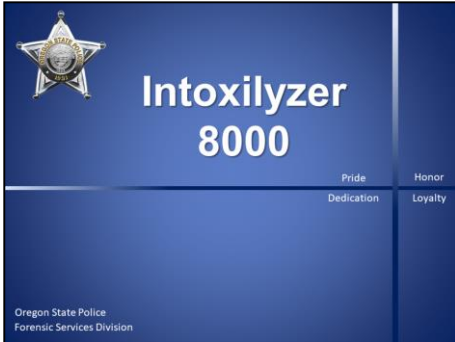


INTOXILYZER 8000 INSTRUCTOR'S GUIDE



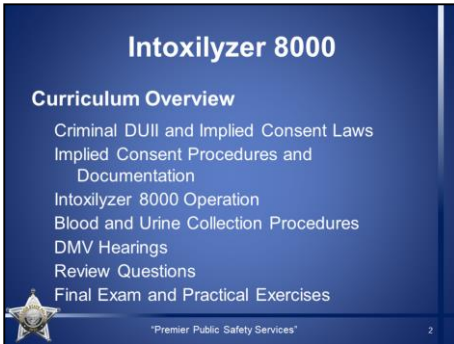
Lesson Plan:

1. Go to OSP website and review current training material posted to ensure you have the most current information.
 - a) <https://www.oregon.gov/osp/programs/forensics/Pages/Law-Enforcement-Resources.aspx#Intoxilyzer>
2. Instructor introductions and brief welcoming remarks.
 - a) Have students sign the DPSST F6
3. Provide students with information regarding:
 - a) The location of restrooms, break rooms, vending machines, etc.
 - b) Anticipated times for breaks and break duration.
4. Inform student now that at the end of the class they will need to pick a 4 digit PIN# (on test answers sheet).
5. Make sure all student are in the correct class.
 - a) No permit will be give to a student that does not have the authority to enforce the Motor Vehicle code.
6. Confirm that all training instruments have been turned on.

Note: Non-OSP employed instructors are working under the direction of the Oregon State Police. Additional information regarding the specific duties assigned to the Oregon State Police can be found by referring to ORS 813.160

- Authorization for non-OSP employed instructors is granted under OAR 257-030-0160

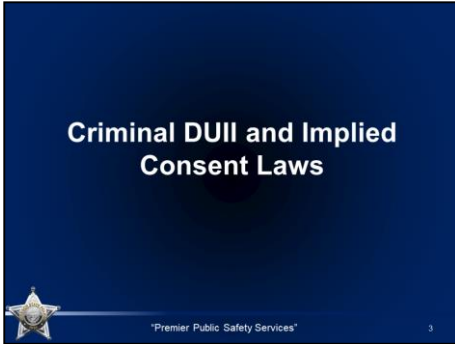
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Lesson Plan:

1. Provide a general overview of the curriculum to be covered.
2. Oregon DUII Laws:
 - a) General differences and similarities between the Implied Consent Law and the Criminal DUII laws.
 - b) Detailed discussion on the criminal laws associated with DUII enforcement.
 - c) Detailed discussion of the relevant statutes and the requirements of Oregon's Implied Consent Laws.
 - d) General laws that are often related to DUII enforcement.
3. Blood and Urine Collection Procedures
 - a) How to properly collect and submit blood
 - b) How to properly collect and submit urine
4. Oregon DUII Forms - DMV Implied Consent documentation process.
 - a) The need for Police Officers to pay close attention to the Implied Consent documentation process;
 - b) The documents required for the Implied Consent process;
 - c) How to properly complete Implied Consent documents.
5. Oregon DUII Case Law
 - a) Case law decisions involving DMV hearings that police officers should be aware of in order to be successful in the DMV hearing process.
6. Intoxilyzer 8000 Operation
 - a) Operator overview
 - b) Parts and controls of the Intoxilyzer 8000
 - c) Test Reports
 - d) Exception Messages and Suggested Corrective Action Statements
 - e) Operation / Test sequence – Jail Release vs. Breath Test
 - f) Placing the Intoxilyzer Out of Service
7. Practical Exercises and Final Exam

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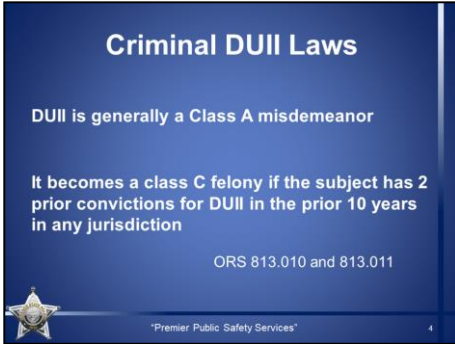


Lesson Plan:

1. This session addresses in more detail the criminal laws associated with DUII enforcement. Criminal DUII laws are discussed first because the primary course of a DUII investigation is completed first for purposes of the criminal offense of DUII. The administrative (or implied consent) portion of the investigation is secondary to the criminal offense and arrest of DUII.

2. Topics to be discussed in this section are:
 - a) What are the different crime classifications in Oregon and how is the offense of DUII classified;
 - b) What are the criminal consequences associated with a conviction for DUII;
 - c) What is the "Diversion" program and what does an officer need to know about the process;

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Lesson Plan:

1. DUII is generally a Class A misdemeanor
2. A DUII is a felony when the subject has:
 - a) 2 prior convictions for DUII in the prior 10 years in any jurisdiction (90 days minimum jail)
 - b) 3 prior convictions for DUII in the prior 10 years in any jurisdiction (presumptive prison for 3 or more).

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Lesson Plan:

1. Criminal Sanctions for conviction of DUII.

Reminder: These penalties are imposed upon conviction and are separate and independent of any sanctions imposed by the Administrative (Implied Consent) process.

2. In addition to any other sentence that may be imposed, the Court shall impose a minimum fine of:
 - a) First conviction - \$1000.00.
 - b) Second conviction -\$1500.00
 - c) Third or subsequent conviction - \$2000.00 if the person is not sentenced to a term of imprisonment.
 - d) If the BAC is $\geq 0.15\%$ -- the minimum fine is \$2000.00

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What is Diversion?

An agreement between the defendant and the Court in which the State will forego prosecution and sentencing of the subject for one year in exchange for the defendant's agreement to plead guilty to the DUII and complete certain requirements.

- If completed — DUII is dismissed
- If not — They are convicted and sentenced



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Lesson Plan:

1. What is "Diversion"?
2. Diversion – An agreement made between the defendant and the Court in which the State will forego prosecution and sentencing of the subject for a one year period of time in exchange for the defendant's agreement to complete certain requirements. To be eligible, the defendant must agree to plead guilty to the crime of DUII. During this one year the subject may also be required to:
 - a) Be evaluated by a substance abuse counselor.
 - b) Participate in an alcohol abuse education class while abstaining from all intoxicants.
 - c) Pay all associated fees and fines imposed by the Court.
 - d) Not have alcohol in their system while driving a vehicle for a period of one year.
 - e) Required to install ignition interlock device if the person has driving privileges.
3. If the Defendant meets all of the Court's requirements, at the end of one year, the DUII charge will be dismissed but the charge stays on the person's record. The diversion does not, however, count as an enhancement factor (prior DUII) for a felony DUII.
4. If the subject does not complete the Diversion agreement, the Court will convict and sentence the subject (based upon the earlier plea) of the offense of DUII.

Originally Adopted: 07/13/2006

Revision #: 3.2

Revision Effective Date: DRAFT

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Diversion Eligibility

- Can't be a DUII crash resulting in death or physical injury to *another* person
- In the past 15 years:
 - No pending or prior convictions for DUII
 - No current or prior diversion
 - No pending or prior convictions for murder, manslaughter, criminally negligent homicide or assault (from operation of a vehicle)



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Lesson Plan:

1. A subject is eligible for diversion if they:
 - a) The present DUII did not involve a crash resulting in death or physical injury to any person other than the defendant.
 - b) Have no pending DUII offense in any jurisdiction;
 - c) Have no prior conviction for DUII in any jurisdiction within 15 years;
 - d) Are not participating in a DUII diversion program in any jurisdiction;
 - e) Have not participated in a DUII diversion program in any jurisdiction within 15 years;
 - f) Have no pending or prior conviction for murder, manslaughter, criminally negligent homicide or assault that resulted from the operation of a motor vehicle for 15 years in any jurisdiction; and
2. Generally a person is eligible for diversion on their first arrest for DUII.
3. The court may also take into consideration whether the person would be a good candidate for diversion.

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Lesson Plan:

1. What should students know about Diversion?
 - a) Officers might be asked about it by subjects. Questions like, “Do you think I’ll be eligible for Diversion?”, “Do you think I should take Diversion?”, and “What will I have to do in Diversion?”
 - b) Do not give advice to an arrested person about “Diversion”. Students can explain what “Diversion” is, but when asked about eligibility, etc., student needs to direct the subject to an attorney or to DMV.
 - c) Document ANY injuries, especially if the current arrest involves a crash that did, or might, result in death or physical injury to any person other than the defendant. This is necessary documentation for the District Attorney to ensure that the defendant does NOT qualify for a “Diversion” agreement.

2. Ask students if there are any questions regarding Diversion.

NOTE: It is not necessary that students understand Diversion – this information will not appear on the final examination, However, it is necessary that students understand they are not to provide advice or counsel regarding the Diversion process to a person arrested for DUII.

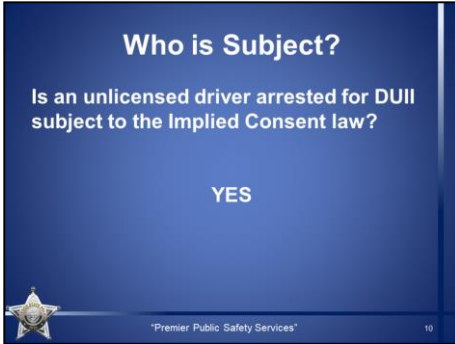
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Lesson Plan:

1. What is the Implied Consent law?
2. The term “Implied Consent” refers to the requirement in the Oregon Motor Vehicle Code which states in part that:
 - a) Anyone who operates a motorized vehicle on premises open to the public in Oregon has given their consent to take a breath, blood, or urine test (depending on the circumstances) when under arrest for DUII and asked to do so or their driving privileges are subject to suspension.
3. “Consent” is implied simply by driving a motor vehicle and does not require the person to have a driver’s license.
4. Remember: “Implied consent is **NOT** the same as “Voluntary Consent”.
5. The term “implied consent” only applies to the administrative suspension process. The implied consent laws allow the state to encourage an individual to perform field sobriety tests when suspected of impaired driving and to provide a chemical test after an arrest for impaired driving. If the person fails a breath or blood test or refuses a chemical test the person’s license is subject to suspension by the DMV outside of and separate from the criminal system.

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Lesson Plan:

1. Quiz students on the meaning of the Implied Consent law.

2. Is an unlicensed driver arrested for DUII subject to the Implied Consent law?
 - a) Answer: Yes. And officers should submit paperwork to DMV to suspend the driver's right to apply for a license.
 - b) DMV will create a driving record (a file reference number) for an unlicensed driver arrested for DUII, then suspend their privilege to operate a motor vehicle.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Who is Subject?

- Implied Consent only applies to arrested persons
- Arrests are based on impairment
- No impairment, no legal arrest
- No legal arrest, no legal breath/blood/urine test



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Lesson Plan:

1. Students should remember the following things:
 - a) All arrests must be based on Probable Cause. Impairment equals probable cause.
 - b) Without probable cause (impairment), you cannot legally arrest a person for DUII.
 - c) Without probable cause (impairment), you cannot legally search someone by requiring them to submit to a blood or breath test.

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Lesson Plan:

1. What constitutes a failure for purposes of the chemical test?

2. Under Implied Consent a person fails the chemical test if they have a blood alcohol level of:
 - a) 0.08% or more if not driving a commercial motor vehicle
 - b) 0.04% or more if driving a commercial motor vehicle
 - c) Any amount if under 21 years of age.

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Offenses and Consequences		
Non-Commercial driver	Failure	Refusal
1 st Offense	90 days	1 year
2 nd Offense	1 year	3 years
Commercial driver		
1 st Offense	1 year	3 years
Hazmat	3 years	5 years
2 nd Offense	Lifetime (20 years)	Lifetime (20 years)

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Lesson Plan:

1. What are the suspension periods for failure and refusal under the Implied Consent law?
2. Suspension levels for Non-commercial drivers (0.08% or higher)
 - a) Failure of the blood or breath test
 - 90 day suspension
 - 1 year, if within the last 5 years subject has been:
 - Convicted of DUII
 - Had driving privileges suspended under Implied Consent Law
 - Participated in a DUII diversion or similar program
 - b) Suspension levels for refusal
 - 1 year
 - 3 years if within the last 5 years:
 - Convicted of DUII
 - Had driving privileges suspended under Implied Consent Law
 - Participated in a DUII diversion or similar program
3. Suspension levels for Commercial drivers (0.04% or higher)
 - a) Failure of the blood or breath test
 - 1 year
 - 3 years, if hazardous materials are involved
 - Lifetime, if subject has a prior CDL suspension.
 - b) Suspension levels for refusal
 - 3 years
 - 5 years, if hazardous materials are involved
 - Lifetime, if subject has a prior CDL suspension
4. Suspension periods for subsequent convictions are enhanced if within 5 years of the previous convictions.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

A non-commercial vehicle driver is arrested for her 2nd DUII and submits a breath sample of 0.15% BAC.

How long will she be suspended?

1 year

If she'd refused the test?

3 years



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Lesson Plan:

1. Quiz students on suspension periods.
2. A non-commercial driver is arrested for her 2nd DUII and submits a breath sample of 0.15% BAC. How long will she be suspended?
 - a) Answer: 1 year
3. If she'd refused the test?
 - a) Answer: 3 years.

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Consecutive Suspensions

Refusal of a urine test carries the same suspension length as refusal of breath or blood test and is consecutive to any other suspension.



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Lesson Plan:

1. In criminal section - If the subject refuses a breath or urine test they are also subject to a fine of at least \$650. (ORS 813.095)
2. The refusal of a urine test will be treated as a refusal of a breath test and the suspension will be consecutive to any other Implied Consent suspension. The waiting period for a hardship permit shall be doubled.

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Implied Consent Law

A driver is injured in a motor vehicle crash and is receiving care at a medical facility. He is arrested for his first DUII and refuses to take the blood test. He also refuses a urine test.

How long will his suspension period be?

1 year for each refusal (assuming no prior suspensions) for a total of 2 years.



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Lesson Plan:

1. Quiz students on blood, breath, and urine suspension periods.

2. A driver is injured in a motor vehicle crash and is receiving care at a medical facility. He is arrested for his first DUII and refuses to take the blood test. He also refuses a urine test. How long will his suspension period be?
 - a) Answer: 1 year for each refusal (assuming no prior suspensions) for a total of 2 years.

NOTE: Students need to understand this information as background so they can better inform drivers of the consequences of failing a test and refusing a test.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal vs. Administrative Law

Implied Consent Suspension = A driver arrested for DUII with a BAC \geq 0.08%

Criminal Conviction = An officer's observations of impairment and/or evidence of BAC is the best combination

Document existence of "impairment" in conjunction with BAC



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Lesson Plan:

1. Can a person be too intoxicated to safely operate a motor vehicle at a blood alcohol level lower than 0.08%?
Yes
2. Can an officer, however well trained, testify to an estimated BAC based solely on FST performance? No
(See State v. O'Key)
3. Having a 0.08% BAC (or greater) does mean that an officer can immediately suspend a driver's license under Oregon's Implied Consent Laws. This is the administrative blood alcohol limit.
4. However, having a 0.08% BAC (or greater) does not mean that an officer is assured of a criminal conviction for DUII.
5. Documented existence of "impairment" in conjunction with a 0.08% BAC (or greater) is always needed in criminal court. Lower blood alcohol concentrations may be used to prosecute but must be combined with documented clues of impairment.
6. Ask students: Why must an officer witness "impairment" in a DUII case?
 - a) Answer: Because an officer's observations of impairment are necessary to develop his/her "probable cause" for the arrest and subsequent search of the person believed to be DUII.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Criminal vs. Administrative Law

Minors

For an adult to be arrested for the crime of DUII, an officer needs probable cause to believe that the person is impaired.

- The BAC may be over or under a 0.08%

What is the requirement for a minor?

The SAME



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Lesson Plan:

1. Be sure that students understand that under criminal DUII law, the standard for intoxication is exactly the same regardless of age. The "zero tolerance" exception for underage drinking drivers only refers to the administrative license suspension process.

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Criminal vs. Administrative Law

Minors

What is "Zero Tolerance"?

- Do NOT arrest a minor for DUII unless they are impaired.
- Under Implied Consent Law, any amount of alcohol = suspension *if a minor is arrested for DUII.*

Only applies to minors under 21 years old



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Lesson Plan:

1. What does the term "zero tolerance" refer to in Oregon law?
 "Zero Tolerance" is the phrase used to describe Oregon's law relating to underage drinking drivers wherein "any amount of alcohol" is the limit in which state law declares a minor to be too intoxicated to driver a motor vehicle.
 - a) This is an administrative limit only!
 - b) The "zero tolerance" only applies to DMV's administrative action of suspending a minor's license.
 - c) In order to legally suspend a driver's license, you must first legally arrest the person for DUII, regardless of the driver's age.

2. Remember, in order to arrest an underage drinking driver for criminal DUII, you must have PC (impairment).


3. If impairment is present, make the arrest for DUII, then use the Implied Consent law to gather BAC evidence. If a breath or blood test shows any amount of alcohol in the minor, suspend the driver's license.

4. Regardless of age, no impairment means no legal arrest for DUII. No legal arrest, there can be no implied consent breath test legally given. The burden of proof for a DUII arrest and conviction of a minor is exactly the same as for an adult. Do not make the mistake of arresting a minor in possession for DUII.

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Right to Counsel / Communicate
Right to counsel - Criminal Law
 A person has a right under Article 1 of the Oregon State Constitution when arrested for DUII to have an opportunity to speak to an attorney when requested.

Right to communicate – IC Law
 A person has a right under the Oregon Implied Consent law to have a reasonable opportunity to communicate with anyone regarding the decision to take a test.



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Lesson Plan:

1. The "Right to Counsel" applies to criminal DUII law. This relates to a person's guaranteed right to contact an attorney by phone under Article 1 of the Oregon State Constitution when placed under arrest and the person requests such contact. A request to speak to counsel should be granted.
2. The "Right to Communicate" applies to administrative (Implied Consent) law. This relates to affording a person the reasonable opportunity to communicate with anyone regarding the decision to take a test. (Moore v. MVD).
3. In the case where a person asks to speak with counsel, the officer must be very careful to ensure that the person is afforded a reasonable opportunity to contact an attorney and privacy **MUST** be given.

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Criminal vs. Administrative Law

Implied Consent

- Right to communicate with counsel or others
- No right to privacy – but give privacy!
- Must give defendant "REASONABLE OPPORTUNITY" to communicate

Criminal

- Right to counsel (Article I §11)
- Right to speak privately prior to breath test
- Must give "REASONABLE OPPORTUNITY" to consult with counsel



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Lesson Plan:

1. Who are they calling, do you give privacy, how long do you give?
2. Per the Oregon DOJ, a person should be given privacy regardless of who they want to call and after Implied Consent and the notice of private consultation has been read.

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Criminal vs. Administrative Law

If the suspect does NOT ask to talk to counsel or others

Continue with breath test

If the suspect asks to make phone call to anyone, including an attorney, or invokes at any time before taking the breath test, read the ICCR Rights and Consequences 1A and 1B and the Notice of Private Consultation (back of the Rohrs card) before providing the person a telephone.



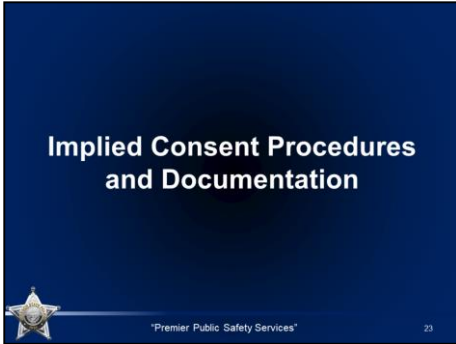
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Lesson Plan:

1. If the person mentioned the word attorney, counsel, need advice at any time during the investigation, the best practice is to provide privacy and 15-20 minutes to contact anyone they want including an attorney.
2. Explain that the officer can also simply tell the person they will get privacy to contact anyone they want including an attorney and leave the room. Document where the phone call was made and that the door was shut.
3. Reasons to follow this process:
 - a) Efficiency: prevents several 15 min observation periods
 - b) Prevents issues regarding purpose of call
 - "I want to talk to someone for advice" = equivocal request for counsel. State v. Ohm, 224 Or App 290 (2008)

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Lesson Plan:

1. This session will familiarize students with the DMV Implied Consent documentation process.
2. Topics to be covered are:
 - a) The need for Police Officers to pay close attention to the Implied Consent documentation process;
 - b) The documents required for the Implied Consent process;
 - c) How to properly complete Implied Consent documents.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Complete Forms Correctly

In 2019 DMV received 11,922 Implied Consent Combined Reports.

95% (11,376) of those forms were processed

- 546 were rejected
 - 66% boxes incorrectly marked
 - 18% incorrect date of arrest
 - 14% received untimely
 - 2% no signature

Approximately 23% of arrested motorists requested an Implied Consent hearing to challenge the proposed suspension.



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Lesson Plan:

1. Reasons for needing to complete DMV forms properly.
 - a) In 2019, DMV received 11,922 Implied Consent Combined Reports.
 - b) DMV accepted and processed 95% (11,376) of those forms.
 - c) Of the 4.58% (546) rejected
 - 66% the boxes were incorrectly marked
 - 18% had the incorrect date of arrest
 - 14% were received untimely
 - 2% had no signature
 - d) Approximately 23% of arrested motorists request an Implied Consent hearing to challenge the proposed suspension.

2. Students need to pay close attention to the rules of the Implied Consent laws in order to be successful in the DMV hearings process. Meticulous procedural requirements must be met to uphold the arrest. Did the officer meet the necessary documentation and procedural requirements necessary for the ALJ to uphold, and DMV to impose, the suspension.

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Lesson Plan:

1. Introduce students to the forms needed to affect a DMV suspension:
 - a) Implied Consent Combined Report
 - Basis for Suspension/Length of Suspension
 - Implied Consent Rights and Consequences (ICRC)
 - Temporary Driving Permit
 - b) CDL Addendum
 - c) Blood Test Failure
 - d) Form 49

2. Police officers request the DMV Suspensions Unit to suspend a person's drivers license by using one of three forms provided by DMV. These are referred to as Implied Consent Reports.
 - a) Officers need to use the correct form for the situation they are dealing with at the time.
 - b) Each form has its own unique purpose and must be prepared properly to ensure legal compliance.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Process

1. Print a Checklist
2. Start Observation Period
3. Fill Out Top of ICCR First Page
4. Read ICRC
5. Conduct Test(s)
6. Mark Basis for Suspension
7. Complete ICCR First Page
8. Issue Citations
9. Issue Temporary Permit



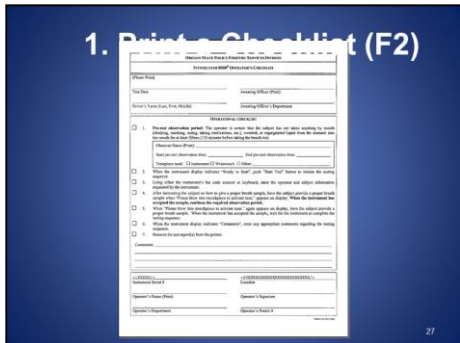
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Lesson Plan:

1. Once a driver is arrested for DUII and transported to the Intoxilyzer 8000, there are 9 steps to follow to bring the process to its conclusion.
 1. Print a Checklist
 2. Start Observation Period
 3. Fill Out Top of ICCR First Page
 4. Read ICRC
 5. Conduct Test(s)
 6. Mark Basis for Suspension
 7. Complete ICCR First Page
 8. Issue Citations
 9. Issue Temporary Permit

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Lesson Plan:

Provide students with a checklist to review during this section.

1. Step 1: Print a Checklist
2. To obtain a checklist, press the “F2” key on the instrument keyboard.
 - a) Although **strongly** recommended, use of an Operator’s Checklist is not required to successfully complete the testing process. Refer to 257.030.0130(7)
 - b) A jail release test does not require a checklist (more on jail release tests later).
 - c) Simple way to verify the printer is functional
3. Fill out the top section with the test date, driver’s name, arresting officers name and arresting officers department. Remember to print clearly.
4. Step one:
 - a) Requires the name of the officer that observed the suspect.
 - The observer and/or the operator do not have to be the arresting officer.
 - b) Fill in the start time and stop time for the observation period (This is just for the first fifteen minutes),
 - c) Note the time piece used i.e. instrument, watch or clock on the wall.
 - Be sure to use the same time piece for the whole process to avoid doubt as to whether suspect was given the proper amount of time.
5. Check off the rest of the steps as you complete them
6. Comments section is where you would note any observations. This would be especially important if the suspect refused to take the breath test before they were required to blow into the instrument. Note anything that will help you to remember the event come court time. Keep Comments limited – Do Not put anything in the comments section that should be in your report.

Examples:
6. Instrument Serial # and Location will be auto populated by the instrument.
7. Complete the Operator’s Checklist with the operator’s name, operator’s department, operator’s signature and operator’s permit #.

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2. Start Observation Period

- Must be conducted on all subjects prior to breath test – MOST IMPORTANT STEP!
- Starts **AT LEAST** 15 minutes prior to pressing the green start button and **continues through to end of 2nd sample**
- Check mouth, ask them to lift tongue
- Not allowed to take anything by mouth, vomit, or regurgitate.



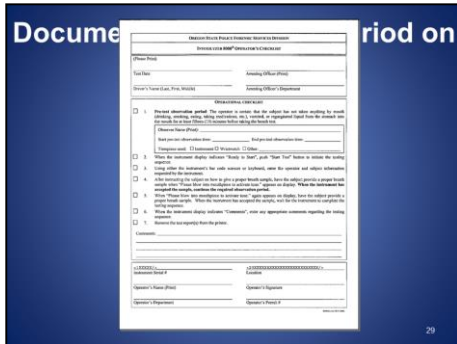
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Lesson Plan:

1. Step 2: Start Observation Period
2. The first and most important step in the breath testing process is the Pre-test Observation Period. The Pre-test Observation Period must be conducted on all subjects prior to starting any breath test. The subject can not take anything by mouth (drinking, smoking, eat, take medication, etc.), vomit, or regurgitate liquid from the stomach into mouth, for at least fifteen minutes before taking the test. This is to ensure there is no possibility of residual alcohol or mouth contamination causing a result that does not reflect the subject's true blood alcohol concentration. The Intoxilyzer does monitor the breath sample throughout the entire delivery and will automatically abort the testing sequence if any abnormalities are detected. By observing the fifteen minute pre-test observation period and continuing to observe the subject until the end of the second sample, the possibility of residual mouth alcohol contamination is eliminated.
3. Ask subject to open his/her mouth, then lift the tongue
 - a) Check for any foreign substance in the mouth
 - b) Check for any foreign substance under the tongue
4. Do not allow subject to eat, drink, smoke, chew tobacco, place anything in the mouth, regurgitate or vomit during the observation period
5. After the pre-test observation period and before the breath test, ask subject if they have regurgitated any stomach contents into their mouth.
 - a) If not, continue with the breath test.
 - b) If so, re-instruct and re-start the observation period. If regurgitation continues this may be a refusal.

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Lesson Plan:

1. The pre-test observation period needs to be AT LEAST fifteen minutes prior to pressing the green start button and continue through the two minute interval to the end of the second sample.
 - a) Give your suspect sixteen minutes to avoid any doubt that you only gave your suspect 14.5 minutes. (14:00:30 to 14:15:00 only equals 14 minutes and 30 seconds.)
 - b) Use the same timepiece for the start and stop time for the pre-test observation period.
 - c) Best Practice – use the time on the Intoxilyzer 8000 for the start and stop time for the pre-test observation period.

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Observation Period

State v. Barletta (2003):

- Officer allowed subject to go to restroom
- NOT A GOOD OBSERVATION PERIOD

State v. Balderson (1996):

- Officer within 3' of subject entire time.
- GOOD OBSERVATION PERIOD

State v. Snuggerud (1998):

- coughing and blowing nose does not violate requirement

State v. Goddard (1987):

- no requirement to rinse mouth before the test



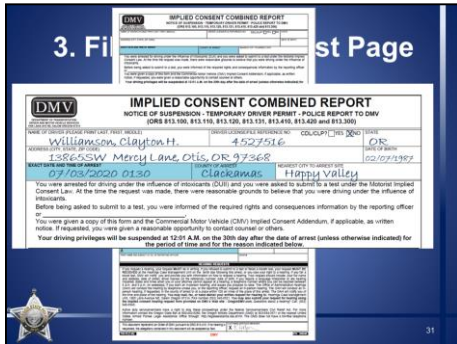
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Lesson Plan:

1. Challenges to a properly kept pre-test observation period.
 - a) *State v. Barletta*, 188 Or App 113 (2003): The officer did not comply with the requirements of OAR 257-030-0070(2) where he allowed the defendant to use the restroom during the pretest observation. Officer subjectively believed that defendant had not violated pretest requirements, but his belief was not objectively reasonable because the officer could not hear what defendant was doing while in the bathroom, and officer failed to ask defendant if she vomited, burped, or regurgitated when she returned from bathroom.
 - b) *State v. Balderson*, 138 Or App 531 (1996): At hearing, defendant testified that she regurgitated liquid from her stomach. The court found the officer did a careful enough observation to be able to establish a reasonable certainty, at the time of the observation, that no violation occurred. Court ruled that pretest requirement is subjective test (based on officer's belief).
 - c) *State v. Snuggerud*, 153 Or App 300 (1998): 1) two timepieces can be used, as long as officer is certain that at least 15 minutes has elapsed; 2) officer does not have to check person's mouth before the test; 3) coughing and blowing nose does not violate pre test requirements.
 - d) *State v. Goddard*, 87 Or App 130 (1987): There is no requirement that subject rinse mouth before test (presence of flakes of chew in mouth throughout observation period did not invalidate results).

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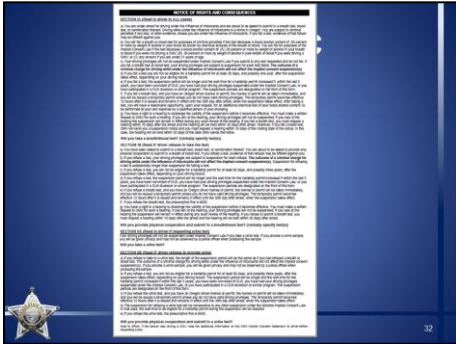
Lesson Plan:

Provide students with the current revision of the ICCR to review during this section.

1. Step 3: Fill out top of first page

- a) Driver Last Name, First Name, Middle Name or Initial
- b) Driver License or File Reference Number and CDL/CLP check Yes or No
- c) State of license issue
- d) Driver's address
- e) Driver's Date of Birth
- f) EXACT Date and Time of arrest
 - Must be correct
 - Obtain from CAD or Dispatch
- g) County of Arrest
- h) City Nearest to Arrest Site
 - If arrest site is within a city, that city is the nearest

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Step 4: Read ICRC
2. Instruct students to find the ICRC in the ICCR
 - a) Back of most pages of the ICCR
3. Section IA must be read ENTIRELY to every driver subject to Implied Consent.
 - a) One time
 - b) In English
 - c) There is no requirement that the person understand the information but they must be conscious. State v. Nguyen, 107 Or App 716, rev den 312 Or 528 (1991); State v. Cabanilla, 351 Or 622 (2012)
4. Ask the question at the end of Section IA: "Will you take a breath/blood test?"
 - a) Breath for Intoxilyzer 8000
 - b) Blood if driver is at a hospital receiving medical care for injuries suffered during a crash
5. Section IB must be read before indicating a breath or blood refusal suspension.
6. If Section IB is read, ask the question at the end of Section IB: "Will you provide physical cooperation and submit to a breath/blood test?"
 - a) Breath for Intoxilyzer 8000
 - b) Blood if driver is at a hospital receiving medical care for injuries suffered during a crash
7. Section IIA must be read prior to requesting urine.
8. If Section IIA is read, ask the question at the end of Section IIA: "Will you take a urine test?"
9. Section IIB must be read before indication a urine refusal suspension.

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10. If Section II B is read, ask the question at the end of Section II B: "Will you provide physical cooperation and submit to a urine test?"

Lesson Plan:

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Lesson Plan:

1. If a person says they are refusing a breath test, inform the person the LIKELY (very important to use this word) length of suspension for failing a test versus refusing a test. By doing this the prosecution can comment on the fact that the person knew this information before making their decision.


INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Using a Recorded ICRC

Reading the ICRC is the preferred method.

You may choose to use your agency's recorded ICRC within agency policy IF:

- You are wearing a mask; OR,
- Your suspect is belligerent/interrupting you;
AND,
- You stay in the room the entire time the recording is playing.
- Put a copy of the recording in the case file



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Lesson Plan:

1. The first option is to read the ICCR.
2. If there is a situation where playing the recording will be better, tell students to make sure they are playing the correct recording and DOCUMENT which recording was played. When they testify they need to be prepared to say that it is verbatim from the implied consent form, and that you were present in the room while you were playing them.
3. At an implied consent hearing they need to testify that the recorded version is a complete and accurate rendition of what is set out on the back of the ICCR, and testify that the right section was played at the right time (For example, "I played the recording of section IA, paragraphs (a) through (g), and asked [arrested person] to take a breath test. [Arrested person] said 'No' so I then played the recording of Section IB, paragraphs (a) through (g), and asked him/her to provide physical cooperation and submit to a breath test.")
4. Then testify that they were in the room when it was read and that they know the recording was working.
5. Make sure to retain a copy of the recording and put a copy in the case file for any hearing or court proceeding in case you need it.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

What If...

Subject mentions an attorney or a phone call AT ANY TIME during the investigation

1. Read ICRC Sections IA and IB. Don't ask the question after IA.
2. Read the Notice of Private Consultation (back of Rohrs card)
3. AFTER their phone call, Ask the question after 1B "Will you provide physical cooperation and submit to a breath/blood test"



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Lesson Plan:

1. If the driver mentions an attorney or a phone call at any time during the investigation:
 - a) Read ICRC Sections IA and IB. Don't ask the question after IA.
 - b) Read the Notice of Private Consultation (back of Rohrs card)
 - c) AFTER their phone call, Ask the question after 1B "Will you provide physical cooperation and submit to a breath/blood test"

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

What If...

After reading Section IA, the subject asks, "What if I Refuse?"

1. Read Section IB
2. Ask the question after 1B "Will you provide physical cooperation and submit to a breath/blood test
3. Suspension only happens AFTER you read 1B, ask the question, and subject STILL refuses



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Lesson Plan:

1. After reading Section IA, the subject asks, "What if I Refuse?"
 - a) Read Section IB
 - b) Ask the question after 1B "Will you provide physical cooperation and submit to a breath/blood test
 - c) Suspension only happens AFTER you read 1B, ask the question, and subject STILL refuses

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

What If...

The subject asks to read along with you – or they ask to see the ICCR

1. Have a photo copy of Section IA and Section IB (separately) available for subject to look at
2. Or (not as good) fold the ICRC in half so only IA shows



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Lesson Plan:

1. The subject asks to read along with you – or they ask to see the ICCR
 - a) Have a photo copy of Section IA and Section IB (separately) available for subject to look at
 - b) Or (not as good) fold the ICRC in half so only IA shows

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5. Conduct Test(s)

Intoxilyzer 8000 operation will be covered in the next session

Blood and Urine Collection procedures will be covered in a later session



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Lesson Plan:

1. Step 5: Conduct Test(s)
 - a) Intoxilyzer 8000 operation (breath test) will be covered in the next section
 - b) Blood and Urine collection procedures will be covered in a subsequent section

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

6. Mark Basis for Suspension

Failure – Mark ONE box only

Refusal – Mark ALL BOXES THAT APPLY



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Lesson Plan:

1. Step 6: Mark Basis for Suspension
2. There are two (2) bases for suspension:
 - a) Failure
 - Mark only one box, and only if the driver failed a breath test:
 - b) Refusal
 - Mark all boxes that apply
 - Breath test refusal or Blood test refusal;
and/or
 - Urine test refusal

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Basis for Suspension

The ICCR must state the proper basis for the license suspension.

- DMV lacks jurisdiction to impose a proposed suspension where the officer mistakenly marks the wrong box. *Coulter v. DMV*, 168 Or App 442 (2000).
- If form not completed correctly (i.e., wrong basis for the suspension is marked), suspension is invalid.



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Lesson Plan:

1. Challenges to validity of Implied Consent documents – properly completed vs. improperly completed forms:
 - a) *Coulter v. DMV*, 168 Or App 442 (2000): Petitioner refused breath test, but officer gave Petitioner and sent DMV copies of ICCR that indicated failure of test. Court held that ICCR is jurisdictional document, and that unless it complies substantially with ORS 813.120, DMV does not have jurisdiction to impose a suspension.

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Implied Consent Failure

Breath:
 Non-commercial -- $\geq 0.08\%$
 Commercial -- $\geq 0.04\%$
 Minor – $> 0.00\%$

Blood: Same as breath, but reported after results are received from OSP Forensic Lab

Urine: A driver cannot fail a urine test

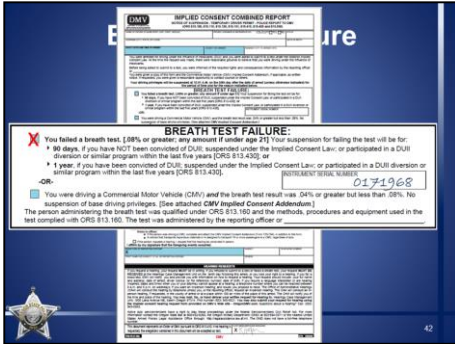


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Lesson Plan:

1. What constitutes a failure for purposes of the chemical test?
2. Under Implied Consent a person fails the chemical test (breath and blood) if they have a blood alcohol level of:
 - a) 0.08% or more if not driving a commercial motor vehicle
 - b) 0.04% or more if driving a commercial motor vehicle
 - c) Any amount if under 21 years of age.
3. Blood results over .08% BAC are reported by the officer to DMV after receiving results from the OSP Forensic Lab
4. A driver cannot fail a urine test

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Lesson Plan:

1. Officers document a breath test failure by marking the appropriate box on the first page of the ICCR.
2. The Instrument Serial Number may be found on the side of the instrument, or at the bottom of a checklist that is printed from that instrument

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Breath Test Refusal

A refusal is saying no, or "anything substantially short of unqualified assent to take a chemical test", including:

- Evading the officer's request;
- Intentionally stalling or delaying;
- Feigning an inability to provide a breath sample;
- Failing to seal lips around the mouthpiece and not directing breath into the breath tube; and/or
- Failing to blow as many times as necessary to complete the test.

Caldeira v. MVD, 181 Or App 168, 171 (2002)



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Lesson Plan:

1. What constitutes a refusal for purposes of the chemical test?
2. If the subject does not take the test as requested by the officer then it is a "Refusal". If the suspect changes his/her mind and wants to take the test, it is within the officer's discretion to allow it.
3. Discuss what constitutes a refusal of the breath test under implied consent (Caldeira v. DMV). Also, note that evidence of refusal can be used in criminal proceedings.
 - a) (Caldeira v DMV) After arresting defendant for driving under the influence of intoxicants, a police officer asked defendant to submit to a chemical breath test. Twice, defendant said he would prefer to take a blood test. On the officer's third request to take the breath test, defendant shook his head "no" and said again he would prefer to take a blood test. The officer then registered defendant's refusal to take the breath test and the Driver and Motor Vehicles Services Branch (DMV) suspended defendant's driving privileges based on defendant's refusal to take the breath test. Defendant argues that he did not refuse the breath test, but only indicated that he preferred a blood test. Held: Anything substantially short of unqualified assent to take a breath test constitutes a refusal. Once the defendant has refused, he cannot reconsider and recant his refusal. Reversed and remanded with instructions to reinstate DMV order suspending driving privileges.
4. Discuss what constitutes a refusal of the urine test under implied consent (Robinson v. MVD).
 - a) (Robinson v MVD) The state appeals a judgment of the circuit court setting aside a final order of the Driver and Motor Vehicle Services Division (DMV) that suspended petitioner's driving privileges for refusing to submit a urine sample. The state argues that the trial court erred in ruling that petitioner did not refuse the officer's request for a urine sample. Petitioner consumed approximately 72 ounces of water from the time of the officer's initial request for the sample until the officer's final request over two hours later. Held: When petitioner told the officer that she could not provide a urine sample and would not even try, that constituted a refusal to take the urine test. Reversed; DMV order suspending driving privileges reinstated.
5. Within 10 days, send the Implied Consent Form to DMV along with any confiscated Oregon license or permit. (more on forms later)
6. Evidence of the person's refusal is admissible in any civil or criminal action arising from a DUII.

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Breath Test Refusal

- The Officer declares a refusal, not the instrument.
- Do not wait the full three minutes to declare a refusal – the instrument will show "No Sample Given"
Gilliam v. ODOT, 178 Or App 267 (2001)
- Be prepared to articulate **how** this was a refusal.
- A physical incapacity or inability to take the test can be a defense in a refusal case.
 - The person must prove physical incapacity
 - The officer may offer evidence to the contrary, *i.e.*, why the officer believed the person was capable of providing a valid breath sample.



Lesson Plan:

1. What constitutes a refusal for purposes of the breath test?
 - a) *Caldiera v. MVD*, 181 Or App 168 (2002): Any conduct, short of an unequivocal, unqualified assent to the request to take a test is a refusal.
 - b) *Gilliam v. ODOT*, 178 Or App 267 (2001): the officer does not have to wait through the full three minute window in which to submit a breath sample before noting a refusal, if the test subject's failure to provide a sample is willful.
 - c) Officers should be prepared to articulate the reasons for declaring a refusal. The instrument does not declare a refusal.

2. Officers should be prepared to articulate why they chose a particular course of action and why it was reasonable to do so.

3. Officers should instruct subject how to provide a proper breath sample. If necessary, reinstruct subject on giving a proper breath sample and indicate that failure to comply will result in a refusal. If subject continues to willfully not comply, subject test should be documented as refused.

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Breath Test Refusal

Subject is not cooperating with breath test:

1. Re-instruct. If still refusing:
2. Abort test using "A" key
3. Maintain observation of subject
4. Read Section IB
5. Ask the question after IB, "Will you provide physical cooperation and submit to a breath/blood test"
6. Re-start the test
7. Suspend for refusal if subject does not complete the test



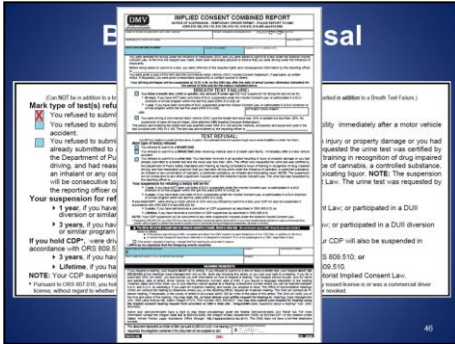
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Lesson Plan:

1. If a driver is not cooperating with the breath test:
 - a) Re-instruct. If the operator determines the subject is refusing,
 - Abort test using "A" key (only during the three-minute breath sample period).
 - Maintain Observation of subject
 - Read Section IB
 - Ask the question after IB, "Will you provide physical cooperation and submit to a breath test"
 - Re-start the test
2. Suspend for refusal if subject does not complete the test by pressing the "R" key (only during the three-minute breath sample period).
3. Articulate the refusal.
 - a) What did the subject say that indicated refusal?
 - b) What did the subject do that indicated refusal?
 - c) What other observations does the operator have regarding the subject's ability to provide a breath sample?

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Lesson Plan:

1. If the subject refuses to take the breath test read SECTION IB of the ICRC and, if the subject still refuses, mark refused breath test box.

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Blood Test Refusal at Hospital

TEST REFUSAL:
(Do NOT be in addition to a breath test failure above. Exception: Only a urine test refusal and suspension length may be marked in addition to a Breath Test Failure.)

Mark type of test(s) refused:

You refused to submit to a **breath test**.

You refused to submit to a **blood test** when receiving medical care in a health care facility immediately after a motor vehicle accident.

You refused to submit to a **urine test**. You had been involved in an accident resulting in injury or property damage or you had already submitted to a breath test and the result was less than 0.05%. The officer who requested the urine test was certified by the Department of Public Safety Standards and Training as having completed 8 hours of training in recognition of drug impaired driving, and had reasonable suspicion that you had been driving while under the influence of cannabis, a controlled substance, an inhalant or any combination of cannabis, a controlled substance, an inhalant and intoxicating liquor. **NOTE:** The suspension will be consecutive to any other suspension imposed under the Motorist Implied Consent Law. The urine test was requested by the reporting officer or

Your suspension for refusing a test(s) will be for:

- 1 year, if you have NOT been convicted of DUI; suspended under the Implied Consent Law; or participated in a DUI diversion or similar program within the last five years (ORS 813.430); or
- 3 years, if you have been convicted of DUI; suspended under the Implied Consent Law; or participated in a DUI diversion or similar program within the last five years (ORS 813.430);

If you hold CDP: were driving a motor vehicle or CMV and you refused to submit to a test, your CDP will also be suspended in accordance with ORS 808.510 and 808.520 for:

- 3 years, if you have not received a conviction or CDP suspension as described in ORS 808.510; or
- Lifetime, if you have received a conviction or CDP suspension as described in ORS 808.510.

NOTE: Your CDP suspension will be concurrent to any other suspension imposed under the Motorist Implied Consent Law.

* Pursuant to ORS 808.510, this Note CDP if you have an unexpired commercial driver license, or you hold a valid commercial license to or was a commercial driver license, without regard to whether that license is expired or your commercial driving privileges are suspended, canceled or revoked.

Lesson Plan:

1. If the subject refused to submit to a blood test when receiving medical care in a health care facility immediately after a motor vehicle crash, mark refused blood test box.

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When Can You Request Urine?

If a subject refuses to provide a breath sample **AND** you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?

Only if the subject was involved in a crash.



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Lesson Plan:

1. When can you request urine?
2. Quiz students
3. If a subject refuses to provide a breath sample **AND** you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?
4. Answer: Only if the subject was involved in a crash

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When Can You Request Urine?

If a subject not involved in a crash provides a breath sample AND you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?

Only if the BAC was below .08



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Lesson Plan:

1. When can you request urine?
2. Quiz Students:
3. If a subject not involved in a crash provides a breath sample AND you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?
4. Answer: Only if the BAC was below .08

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Lesson Plan:

1. Urine may only be requested when an officer has reasonable suspicion to believe something other than alcohol or in addition to alcohol is causing impairment. The officer requesting urine must have completed the DPSST 8-hour Drugs that Impair Driving course.
2. There are only 2 circumstances when an officer may request urine under implied consent:
 - a) The subject had been involved in an accident resulting in injury or property damage; or,
 - b) The subject had already submitted to a breath test and the result was less than .08%.

PROCEDURES:

1. Follow the preceding procedures for requesting breath or blood.
2. Read SECTION IIA of the ICRC.
3. If the subject refuses to take the breath test read SECTION IIB of the ICRC.
4. If the subject still refuses mark refused urine test box.

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Urine Refusal

What constitutes refusal of a urine test?

A refusal "need not be explicit, and a person who does not provide a urine sample within a reasonable amount of time has refused to submit to the urine test". Case-specific.

Possible Defenses:

- A doctor's letter showing the person has a medical condition that makes it impossible for the person to provide a urine sample.
- May assert a denial of privacy in producing the sample.

Ellicot v. MVD (2018)



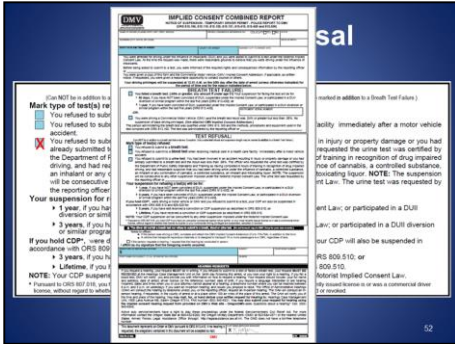
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Lesson Plan:

1. What constitutes a refusal for purposes of the urine test?
 - a) Robinson v. DMV, 191 Or App 122 (2003): The court recognized that a "more flexible standard must be applied" in that an officer may need to give the person a reasonable amount of time to produce a urine sample. Petitioner's assertion that she could not produce a sample "and would not even try" constituted a refusal to take the urine test.
 - b) Ellicot v. MVD, 291 Or App 566 (2018): A refusal "need not be explicit, and a person who does not provide a urine sample within a reasonable amount of time has refused to submit to the urine test. That is a case-specific inquiry, and what constitutes a reasonable amount of time will vary according to the facts of each case." Always err on the side of giving a good amount of time.

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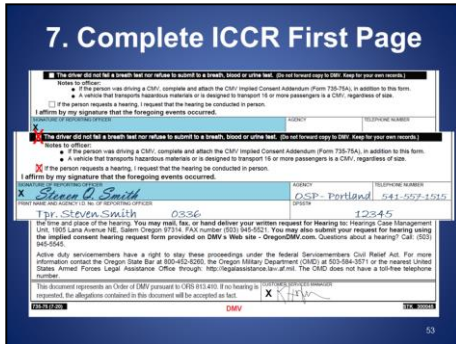


Lesson Plan:

1. Document a urine test refusal using the ICCR.
2. If the subject refuses to take the urine test read SECTION IIB of the ICRC and as the question at the end of Section IIB, "Will you provide physical cooperation and submit to a urine test?"
3. If the subject still refuses, mark refused breath test box.



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Lesson Plan:

1. Step 7: Complete ICCR First Page
2. Fill out the bottom part of the first page of the ICCR
3. Black shaded box should be marked if:
 - a) The driver did not fail a breath test,
 - AND
 - b) The driver did not refuse a breath, blood or urine test
4. If the black shaded box is marked, DO NOT Submit form to DMV. Give driver forms to driver, all others go into the case file.
 - a) The subject will NOT be suspended under Implied Consent.
 - b) DOES NOT AFFECT CRIMINAL CASE.
5. The next box says, "If the person requests a hearing, I request the hearing be conducted in person"
 - a) The default is a telephonic hearing. If the officer does not check the box the hearing will happen over the telephone.
 - b) If the officer checks the box the hearing will happen in person in front of an ALJ.
6. The reporting officer must sign the ICCR.
7. List the reporting officer's agency
8. List the reporting officer's agency phone number
9. Print the name and ID number of the reporting officer
 - a) ID number assigned by agency
 - b) If the ID number is the DPSST number, put the DPSST number
10. Print the reporting officer's DPSST number.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

8. Issue Citations

- **Cite for DUII separately**
 - DUII – [substance]
 - [substance] = Alcohol, Inhalant, Controlled Substance, Cannabis, or any combination of these
- **Cite for other crimes**
- **Cite for violations**
 - Separate Citation from the DUII citation
- **Cite for refusing breath or urine tests**
 - Fine for refusing a breath and/or urine test
 - ORS 813.095 (does NOT apply to blood)



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Lesson Plan:

1. Step 8: Issue Citations
2. Cite for DUII – [alcohol] or [inhalants] or [controlled substance] or [cannabis] or [any combination of these]
 - a) This citation should only have the DUII on the citation
3. Cite for other crimes (reckless, endangering, etc)
4. Cite for violations on a separate citation.
5. In criminal section - If the subject refuses a breath or urine test they are also subject to a fine of at least \$650. (ORS 813.095)
6. The refusal of a urine test will be treated as a refusal of a breath test and the suspension will be consecutive to any other Implied Consent suspension. The waiting period for a hardship permit shall be doubled.

Originally Adopted: 07/13/2006

Revision #: 3.2

Revision Effective Date: DRAFT

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

9. Issue Temporary Permit

When do you issue a temporary permit?

ONLY if you seize a valid ODL or Oregon permit **AND** the D07 says driver is eligible.

- Grants the same privileges as their license
- Valid for 30 days
- Becomes effective 12 hours after issue
- No fee
- Return license to DMV with paperwork



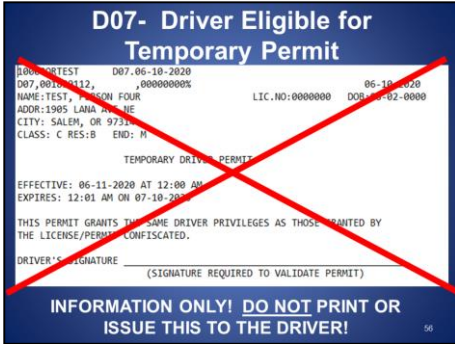
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Lesson Plan:

1. Step 9: Issue Temporary Permit
2. When would you issue a temporary permit?
 - a) Only if you seize a valid ODL
 - AND
 - a) The D07 says the driver is eligible for a temporary permit
3. Remind students that they are only to issue a temporary permit if they are taking a VALID OREGON DRIVERS LICENSE. They can not issue a temporary permit to a suspect that has an out of state license or even to a holder of a Warm Springs License. The permit does not become valid until 12 hours after it is issued and the temporary permit grants the same driving privileges as the person's license.
 - a) Grants same driving privileges as person's license
 - b) Valid for 30 days from date of arrest
 - c) 12-hours before permit is valid
 - d) No fee
 - e) Return license to DMV with paperwork.

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Lesson Plan:

1. Driver Eligible for Temporary Permit
2. This is an example of a DMV proposed D07 indicating the driver is eligible for a temporary permit.
3. The officer should NOT issue this form to the driver as a temporary permit .
4. The officer should use the Temporary Permit contained in the ICCR.

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Lesson Plan:

1. Driver Eligible for Temporary Permit
2. This is an example of the Temporary Permit form contained in the ICCR.
3. The information above the black shaded "TEMPORARY DRIVING PERMIT" box is transferred onto the Temporary Permit from the first page of the ICCR.
4. The officer may give this form to the driver as a temporary permit if the driver meets the requirements.
 - a) Officer seizes a valid Oregon DL
 - b) The D07 indicates the driver is eligible for a temporary permit
5. Mark "Eligible for temporary permit" YES
6. Indicate License type or class from D07 or LEDS
7. Indicate restrictions from D07 or LEDS
8. Mark the effective time.
 - a) Not dependent on the arrest time
 - b) Note current time, add 12 hours
 - c) Prevents driver from legally operating a vehicle for 12 hours
9. Ask driver to sign Temporary Permit
 - a) Driver is not required to sign in your presence
 - b) Temporary Permit MUST be signed by the driver to be valid

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

**D07- Driver NOT Eligible
for Temporary Permit**

100000RTEST 007-06-10-2020
D07-001001012, 000000000
NAME: TEST, PERSON FOUR LIC.NO:00000000 DOB:00-02-0000
ADDR:1985 LAMAR AVE NE
CITY: SALMON, OR 97334

NOT ELIGIBLE FOR DRIVER PERMIT
(OREGON PRIVILEGE IS CURRENTLY EXPIRED, CANCELLED, SUSPENDED, OR REVOKED OR DRIVER HAS NO OREGON LICENSE)

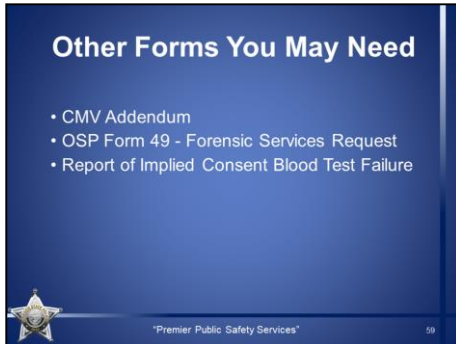
Do not issue Temporary Permit –
remove permit from ICCR before giving
Driver Copy to Driver

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Lesson Plan:

1. Driver NOT Eligible for Temporary Permit
2. This is an example of a DMV proposed D07 indicating the driver is not eligible for a temporary permit.
3. The officer should not give the D07 to the driver.
4. The officer should remove the Temporary Permit form from the ICCR before giving the Driver Copy to the driver.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. There are other forms that may be used during the Implied Consent process for DUII.
 - a) CMV Addendum
 - b) OSP Form 49 – Forensic Services Request
 - c) Report of Implied Consent Blood Test Failure

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Lesson Plan:

1. COMMERCIAL MOTOR VEHICLE (CMV) IMPLIED CONSENT ADDENDUM
 - a) is only used when the arrested driver is actually commercially engaged and required to possess a commercial driver's license
 - b) whether or not he/she actually possesses one.
 - c) It is a supplemental form that must be attached to the primary form.
2. Fill out the top of the CMV IMPLIED CONSENT ADDENDUM form with:
 - a) PRINT the name of the driver (LAST, FIRST, MIDDLE)
 - b) Driver license/file reference No.
 - c) Exact date and time of arrest
 - d) Driver's Date of Birth
3. If the driver qualifies as a Commercial Driver at the time of the arrest, prior to requesting breath, blood or urine, read the driver the "RIGHTS AND CONSEQUENCES" from the primary "Combined Report" form. Then read the driver the "ADDITIONAL RIGHTS AND CONSEQUENCES, COMMERCIAL MOTOR VEHICLE" from the CMV addendum.
4. If the commercial driver takes the test with a result of 0.04% or higher but less than 0.08%, complete the primary form and the addendum form but indicate only a CDL suspension on the primary form. After serving the driver his/her copies from both forms, submit both forms to DMV by the 10th day after the date of arrest.
5. If the result is 0.08% or higher, it would exceed both the base license and commercial license limits. In this case, the officer needs to request suspension of both licenses by indicating the failure of the base license test (0.08% or higher) on the primary form and the failure of the commercial license test (0.04% or higher) on the addendum. DMV must receive the forms by the 10th day after the date of arrest and will only suspend based on the information they receive.
6. If the commercial driver refuses to take a breath, blood, or urine test, depending on the circumstances, check the appropriate refusal boxes on both the primary "Combined Report" form and the CMV Addendum form. Complete the forms, serve the driver his/her copies of both, and submit them, along with any confiscated operator's license, to DMV by the 10th day after the date of arrest.
7. The reporting officer completes the form by signing their name

Originally Adopted: 07/13/2006

Revision #: 3.2

Revision Effective Date: DRAFT

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Commercial Vehicles

A driver is operating a commercial motor vehicle and is arrested (1st DUII). He refuses the breath test.


Will his license and/or CDP (Commercial Driving Privileges) be suspended under Implied Consent?

YES

The same driver was operating his personal vehicle and has a BAC of 0.06%

Will his license and/or CDP be suspended under Implied Consent?

NO

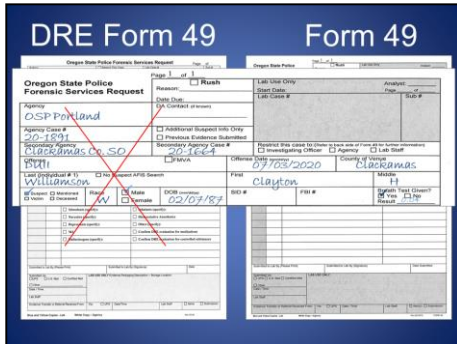


"Premier Public Safety Services"

Lesson Plan:

1. Quiz students on refusal suspension periods.
2. A driver is operating a commercial motor vehicle and is arrested (1ST DUII). He refuses the breath test. Will his license AND/OR CDP (Commercial Driving Privileges) be suspended under Implied Consent?
 - a) Answer: Yes to both. The driver has refused, thus resulting in the base license and CDP being suspended.
3. The same driver was operating his personal vehicle and has a BAC of 0.06%. Will his license AND/OR CDP (Commercial Driving Privileges) be suspended under Implied Consent?
 - a) Answer: No to both. The driver was not operating a commercial vehicle and breath test results were under a .08% BAC and the driver did not refuse a test.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. OSP Form 49
2. Do not use the DRE Form 49 unless you are a DRE
3. Fill out the Form 49:
4. Print clearly
 - a) Your Agency
 - b) Agency Case #
 - c) Mark appropriate box; if applicable
 - d) Offense
 - e) Offense Date
 - f) County of Venue
 - g) PRINT the name of the driver (LAST, FIRST, MIDDLE)
 - h) Mark whether breath test was given. YES or NO.
 - i) Mark who the sample is coming from (usually the suspect)
 - j) Subject's Date of Birth
 - k) Subject's Race
 - l) Mark subject gender
 - m) SID#, if applicable
 - n) FBI#, if applicable
 - o) Investigating officers name
 - p) Investigating officers phone number
 - q) Agency exhibit#
 - r) Officers name
 - s) Officer's agency
 - t) Exam requested - mark any appropriate box
 - u) Note any additional comments that may help the lab (e.g., sample may have been diluted with water)
 - v) When the sample is brought to the lab, the submitting officer needs to Print their name
 - w) Sign
 - x) Fill in date

The OSP Forensic Lab now has digital forms online (and has stopped printing hard copies).

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

~~We will continue to accept old forms.~~

Web page for digital forms (DRE and non-DRE/general requests) is at

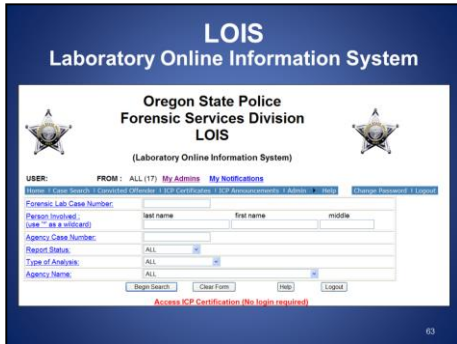
<https://www.oregon.gov/osp/programs/forensics/Pages/Requests-for-Services-Page.aspx>

Or the DRE form itself (direct link)

https://www.oregon.gov/osp/Docs/Form_49-DRE.pdf

Lesson Plan:

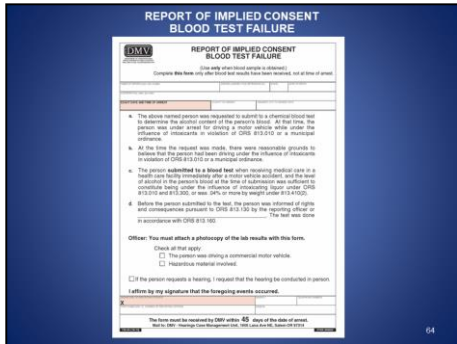
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. What is L.O.I.S. (Laboratory Online Information System)
 - a) LOIS allows customers of the Oregon State Police Forensic Lab to check the status of lab requests, if the lab has the evidence, and to retrieve signed copies of final lab reports. Users can also:
 - Send message to the lab/analyst
 - Get notification when report is complete
 - b) In addition, LOIS allows printing of Intoxilyzer 8000 certifications.
 - Can also search the convicted offender database.
2. Each agency should have a LOIS administrator that can set them up an account.
 - a) Questions regarding LOIS can be emailed to lois.info@state.or.us

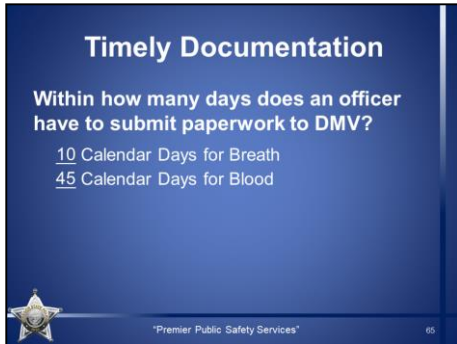
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Report of Implied Consent Blood Test Failure
2. If the officer is investigating a motor vehicle crash and the driver is “receiving medical care in a health care facility immediately after a motor vehicle crash”, a blood test request may be in order.
 - a) Prior to a request for blood by the officer.
 - The driver must be under arrest for DUII and
 - Be advised of the rights and consequences from the primary form (and addendum if applicable)
3. Fill out the top of the BLOOD TEST FAILURE form with:
 - a) PRINT the name of the driver (LAST, FIRST, MIDDLE), driver license/file reference No., state, and date of birth
 - b) Driver’s address
 - c) Exact date and time of arrest, county of arrest and nearest city to arrest site
4. If the driver refuses, that refusal is indicated in the “TEST REFUSAL” section of the primary form (and addendum if applicable) and submitted to DMV by the 10th day after the date of arrest.
5. If the driver consents, the officer will forward the blood to the Oregon State Police Crime Lab for analysis.
 - a) Send nothing to DMV until you get a report revealing a blood test failure
 - b) Then submit a photocopy of the lab result attached to a completed REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE form to DMV by the 45th day after the date of arrest.
 - c) DMV will send the “Notice of Suspension” to the driver.
 - d) The officer does not need to contact the driver or deliver anything further to the driver.
6. All IMPLIED CONSENT and COMMERCIAL MOTOR VEHICLE (CMV) IMPLIED CONSENT ADDENDUM forms must be received by the DMV HEARINGS CASE MANAGEMENT UNIT by the 10th day after the date of arrest. The REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE form is the exception. It must be received by the 45th day after the date of arrest.
7. Officers should always take a moment to double-check the forms prior to serving the driver his/her copies and sending DMV’s copies to them to ensure that all the necessary information has been included. Incomplete forms may jeopardize the suspension by DMV. Read through the form as you go.
8. The reporting officer completes the form by signing their name, filling in their agency, telephone number, printing name and DPSST#.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



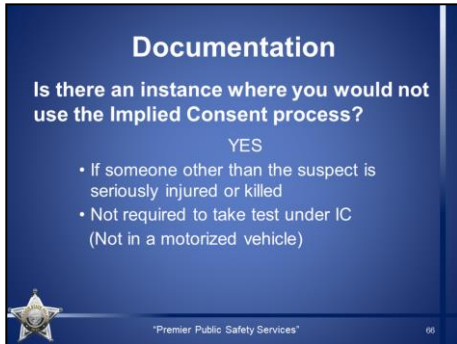
Lesson Plan:

1. Within how many days does an officer have to submit paperwork to DMV?
 - a) Answer: 10 calendar days from the date of arrest including Holidays for a breath test. Not 10 business days.
 - b) 45 days in the event of a blood draw

NOTE: This is one of the leading reasons that suspensions are disaffirmed by DMV – failure of officers submitting timely paperwork and officers failing to complete paperwork properly. The leading reason for suspensions being disaffirmed is officers failing to appear at the hearing.

2. Discuss suspension process and timelines: Officers need to have paperwork to DMV in a timely manner because DMV must hold hearing and issue suspension within 30 days of arrest (60 days in case of blood).

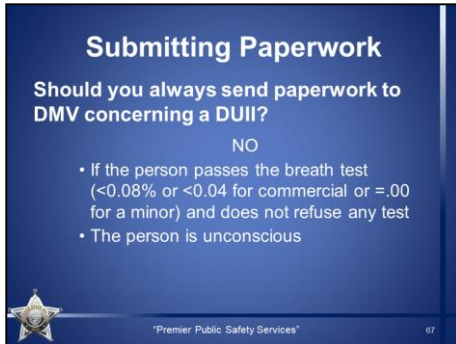
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Is there an instance where you would not use the Implied Consent process?
 - a) Answer: Yes
 - b) If someone other than the suspect is seriously injured or killed
 - c) A subject is not required to take a test under Implied Consent because they were not in a motor vehicle.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

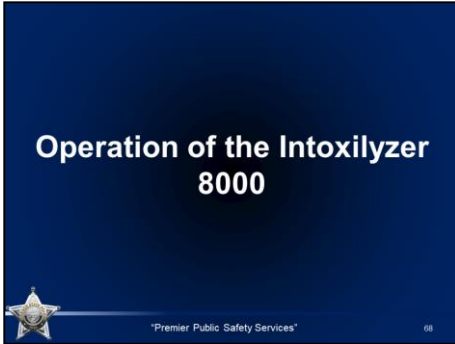


Lesson Plan:

1. Should you always send paper work to DMV concerning a DUII?
 - a) Answer: No

2. Paper work is only sent to DMV if the person refuses to take a chemical test or they failed a breath or blood test.
 - a) If a person agrees to take a breath test, passes the breath test and then agree to take a urine test, there is no refusal or failure of a test (under Implied Consent Law). The person may still be prosecuted and convicted under DUII Law.
 - b) If person suspected of DUII is unconscious they cannot reasonably be expected to understand the Implied Consent Rights and Consequences, and therefore, cannot be administratively suspended under the Implied Consent law if over the legal limit. Officer can still acquire a blood sample using PC and exigency for purposes of criminal DUII, but Implied Consent does not apply.

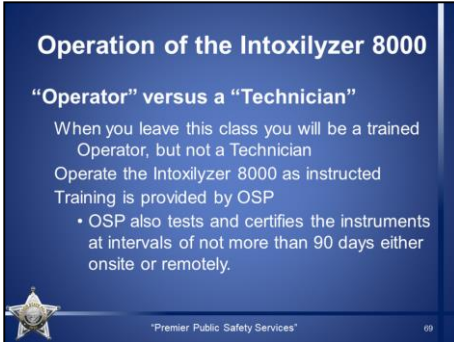
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Topics covered in this session include:
 - a) Operator overview
 - b) Parts and controls of the Intoxilyzer 8000
 - c) Test Reports
 - d) Exception Messages and Suggested Corrective Action Statements
 - e) Operation / Test sequence – Jail Release vs. Breath Test
 - f) Placing the Intoxilyzer Out of Service

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Officers are operators of the Intoxilyzer 8000, but are not certified as a Technician. The intent of this course is to train officers how to operate the instrument only, not to diagnose, explain, or even understand the inner-workings of the instrument. In the event an officer is asked “how the instrument works”, they should direct the question to the OSP Implied Consent Unit.
 - a) Students shall not testify to the inner workings of the Intoxilyzer 8000.

2. Students are to operate the Intoxilyzer 8000 as instructed, to avoid DMV Hearing, court problems and the possibility of bad case law.

3. Students need to understand that they are being trained by and according to the curriculum approved by the Oregon State Police.
 - a) When students are asked “Who trained you to operate the Intoxilyzer 8000?”, the answer needs to be “The Oregon State Police”.

4. OSP also Tests and certifies the instruments at intervals of not more than 90 days
 - a) Each site is visited at least twice a year.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE


Operation of the Intoxilyzer 8000

Where is the Intoxilyzer 8000 Student Manual?

There is NO "Student Manual"
Operator's Guides located on-site

A copy of the Intoxilyzer 8000 Operator's Guide is available online

https://www.oregon.gov/osp/Docs/8000_oper_guide_090806.pdf



"Premier Public Safety Services" 70

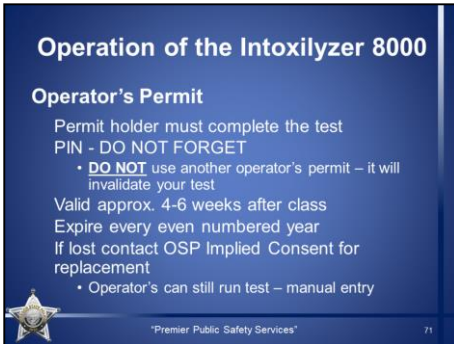
Lesson Plan:

1. Where is my Intoxilyzer 8000 Student Manual?
 - a) Unlike the Intoxilyzer 5000 program, there is no "Student Manual" for Intoxilyzer 8000 Operators.
 - b) Rather, an "Operator's Guide" will be maintained with the Intoxilyzer 8000 instrument at each testing location.
 - c) Operator's Guide contains information regarding the operation of the instrument only.

2. Where can I get a copy of the Intoxilyzer 8000 Operator's Guide?
 - a) Students wishing to obtain a personal copy of the Operator's Guide can visit the OSP Forensics web-site and download a current copy of the Guide.
 - b) URL is https://www.oregon.gov/osp/Docs/8000_oper_guide_090806.pdf

3. Additionally, any updates to the Guide will be posted on the web-site. Operator's should consider regularly consulting the web-site for current information.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

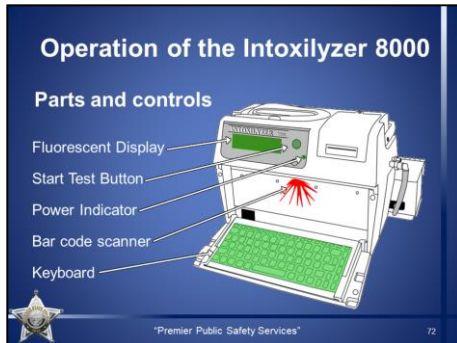
1. Each operator will receive a permit to operate the Intoxilyzer 8000.
 - a) Operator's will be unable to run a breath test without a permit and PIN#.
 - DO NOT use another operator permit and PIN#. Each test report states at the bottom of the test that the above mentioned operator is certified to run the instrument. The test report will have the name of the officer's permit that was used.
 - b) Students will not be able to run a test immediately after completing this course, it will take approximately 4-6 weeks to get the students information entered in the database and get their permit activated.
 - Each student gets to chose their own pin# (on Test Answer Sheet).
 - DO NOT forget your pin#, OSP Implied Consent Unit will have record of the number and you can call if you forget it, but that will be of no use to you at 2:00am when Implied Consent is closed.
 - Student's permit number will be the same as their DPSST number.

2. Operator's permits will expire on the date of your original training during years ending in an even year. (Training 2014 – expires 2016, training 2015 – permit expires 2018, training 2016 – expires 2018)
 - a) Permits will be valid for at least 2 years.
 - b) During the 2014-2016 timeframe - permits will be renewed if you have performed at least one breath test before the expiration date.
 - c) Instruct students to run a test with their permit when they first get it to insure all information and PINs are correct. Preforming this test will also renew it.

3. In the event an officer loses their permit or does not have it with them, they will still be able to run a test by entering all of their information manually using the key board. The display will lead you through the process.
 - a) If an operator loses their permit they need to contact OSP Implied Consent.

4. Reminder: OSP not only issues and renews permits, they can also terminate or suspend a permit, which is needed to run a breath test.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

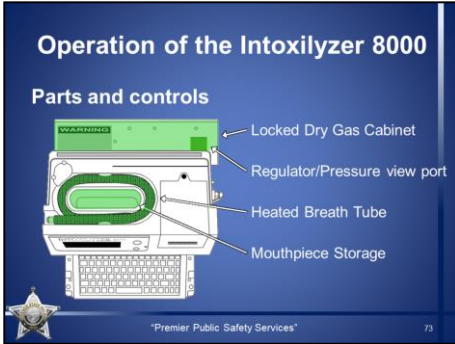


Lesson Plan:

1. Parts and controls

- a) Instrument fluorescent display
 - Instrument display will prompt operator's thru next step.
 - Displays time and date.
- b) Start Test button
 - Used to start test when the instrument is in the "Ready to Start" or Standby mode
 - If pressed a second time during the test but before you get information entered, it will abort the test and no record will be created.
 - If pressed a second time during the test after you have entered information but before the display reads "Please Blow", a test record will be created with that reads "Sequence Aborted by Operator".
 - If pressed while the display reads "Please Blow" you will get a test report that reads "Refused"
- c) Power Indicator
 - Will be a green, amber or red color.
- d) Bar code scanner
 - Reads bar code off of Intoxilyzer permit and driver's license
- e) Keyboard (removable)
 - If permit or license is unavailable or unreadable use the key board to enter data. Directions will be on the display.
 - Function Keys
 - "F2" print operator's check list
 - "F4" reprint test
 - "R" refuse a test
 - "A" abort a test
 - "F6" auto populate – subject information-(Note: "F6" will only pull up information from the operator's last entry if the operator's previously entered the subject's information and made it to the 1st "Air Blank" in the testing process.)
 - Pressed during "Scan Subject License or Press Enter"
 - "F12" reprint the last jail release test

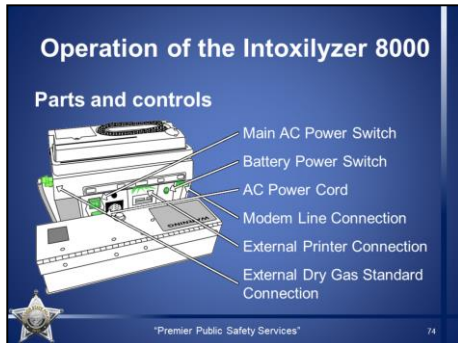
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Parts and controls (Cont.)
 - a) Locked dry gas cabinet
 - Not accessible to operators
 - b) Flexible heated breath tube
 - Heated, should feel warm to the touch.
 - Should be coiled up when not in use, including in-between sample 1 and 2.
 - Keeping the hose coiled up will help keep its temperature stable.
 - c) Mouthpiece storage area
 - d) External dry gas standard connection

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

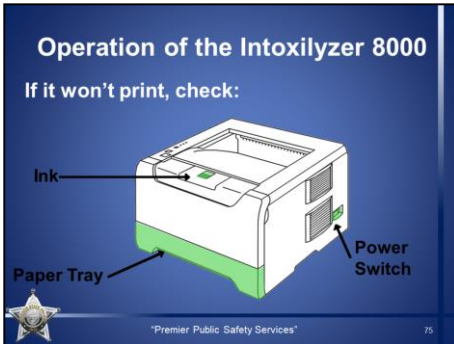


Lesson Plan:

1. Parts and controls (Cont.)

- a. Main AC power switch (rocker-switch)
 - Up position is on
- b. Battery power switch (rocker-switch)
 - Up position is on
 - Do Not Turn OFF unless instructed by a trained technician of the Oregon State Police or it presents a danger (smoke, sparks and/or fire).
 - Instruments take approximately twenty minutes to warm up
 - Both switches need to be in the on (up) position.
- c. AC Power Cord
- d. Dry-gas regulator/pressure view port
- e. Modem Line Connection (RJ-11)
- f. External Printer Connection (25-pin)

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. External printer Parts and controls (Not all the printers in the field will be the same as the one pictured.)
 - a. Control panel
 - Check Operator's Guide for error messages and trouble shooting (pg 52)
 - b. Front Cover Release Button
 - toner cartridge access
 - Paper jams
 - c. Front cover (multi-purpose tray)
 - Paper jams – open to remove paper and toner
 - d. Back Cover
 - Paper jams – open to remove paper
 - e. AC power switch
 - f. Paper tray
 - Paper jams – check the paper setting to make sure its in the right spot.

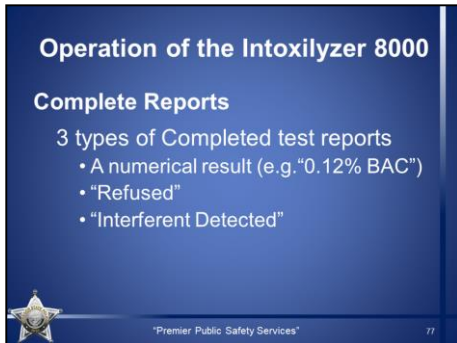
2. Students may be asked to add paper or change the toner cartridge.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

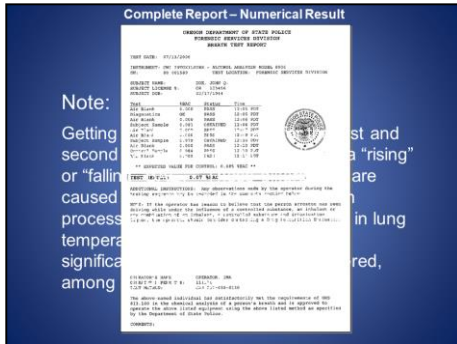
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Test reports are divided into two categories: Complete Test Reports and Incomplete Test Reports.
2. Complete Test Reports will contain one of three results in the Test Result area of the report:
 - a) If the subject submitted to the test, the instrument will print the numerical result obtained from the analysis in the Test Result location. The result will be printed as a two-digit number followed by the measurement units (i.e., "0.04%BAC")
 - b) If the subject refused the test and the operator pushes the "Start Test" button or the "R" key on the instrument keyboard, the instrument will print "Refused" in the Test Result location.
 - c) If the instrument detected an interfering substance in the person's breath sample, the instrument will print "Interferent Detected" in the Test Result location.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Once the testing sequence is completed, the instrument will print a final test report. The report will read “Breath Test Report” on the header of the document and contains all of the information from the testing sequence. The Test Report will contain the following information:
 - a) The date of the test
 - b) Instrument serial number
 - c) The testing location
 - d) Subject’s name, date of birth, license number, and state of issue.
 - e) The test method steps, the intermediary results of each step, the status of each step, and the time each step was initiated.
 - f) Final test result
 - g) Any additional information for the operator.
 - h) Any “Suggested Corrective Action” or “Note” information.
 - i) The operator’s name, permit number, and the OAR reference to the approved testing method.
 - j) The statement affirming that the operator has been trained to operate the Intoxilyzer 8000 using the approved testing method.
 - k) Any additional comments or observations made by the operator.
2. It should be noted that differing BAC numbers on a single report do not indicate a “rising” or “falling” BAC. Differing BAC’s can be the result of where in the lungs the breath is coming from. i.e., alveolar (deep lung) vs. non-alveolar breath.
3. Three copies of the Test Report will print out at the end of the test.
 - a) All three are considered originals
4. There are two types of Test Reports:
 - a) Complete Test Reports
 - b) Incomplete Test Reports
5. All test reports are to be kept, do not throw away any report.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Complete Report – Test Refused

Operator terminated the testing sequence because the subject refused to continue

- "R" key – only during the 3 minute breath sample period
- "Start Test" button – only during the 3 minute breath sample period
 - Pressing at any other time in the testing sequence will give you a "Sequence aborted" test report

Refusal report is not required to document a refusal (but should be done)



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Lesson Plan:

1. "Test Refused"
 - a) This exception occurs when the operator terminates the testing sequence because the subject refused to continue. The instrument will display "Subject Test Refused" and print "**Subject Test Refused".
 - b) The test is complete and should not be restarted (unless terminated in error by the operator).

2. The operator may terminate the testing sequence by pressing:

a) "R" key – only during the 3 minute

breath sample period

Lesson Plan:

- Pressing at any other time will be ignored by the instrument.

a) “Start Test”
button – only
during the 3
minute breath

sample period

- Pressing at any other time in the testing sequence will give you a “Sequence aborted” test report

Lesson Plan:

1. Refusal report is

not required to document a refusal (but should be done)

Lesson Plan

2. In addition, the following suggested corrective action is provided:
 - a) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

3. A refusal test report is not required however students should know that the prosecution will want one printed to submit into evidence.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE


Complete Report – Test Refused

If the suspect initially refuses then changes their mind and requests to take the test consider the following:

- Do you have reason to believe they will take the test based on their conduct?
- Has a refusal been registered on the Intoxilyzer?
- Has the refusal paperwork been completed?

An officer may give a suspect the opportunity to reconsider but is not required to do so

State v. Kirsch, 215 Or App 67 (2007)



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Lesson Plan:

1. It is very important that students understand that they must document the conversation they have with the suspect relating to the refusal. If they allow the person to change their mind the officer can give them the opportunity to take a test even if the instrument registered a refusal. If the person ultimately gives a sample, NO Implied Consent refusal paperwork should be given – only paperwork for a failure of the test if applicable.
2. If the officer filled out the IC refusal paperwork and gave it to the suspect and they change their mind, the officer needs to make it VERY CLEAR to the person that the implied consent process is over, that they have refused under implied consent and that if they agree to provide “physical cooperation” to give a breath test, that will be for criminal purposes and not implied consent purposes. If the person then blows and has a BAC over a .08 – DO NOT give implied consent paperwork for failing the test, only give implied consent paperwork for the refusal.
3. The bottom line: An officer can allow a test after an initial refusal however, it must be clear if the sample is being provided for implied consent purposes (then the appropriate suspension should be given) or, the refusal paperwork should be given to the person and they are told the IC process is over and the breath test is outside of that process.
4. There is no right to change their mind about refusing the test.
 - a) An officer *may* allow the person to change his or her mind, or may invite the person to change his or her mind, but there is no requirement to do so. *Bergstrom v. MVD*, 104 Or App 141 (1990); *State v. Kirsch*, 215 Or App 141 (1990)

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Complete Report – Interfering Substance Detected

Substance other than alcohol (e.g., acetone, toluene, etc.) was detected in the breath sample.

- Discontinue Implied Consent process.
- The test is complete and should **NOT** be restarted
- Ask about medical conditions or chemical exposure
- Consider requesting blood



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Lesson Plan:

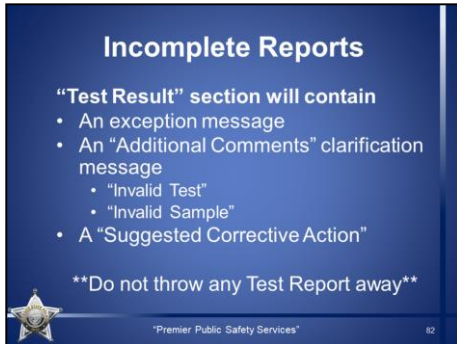
1. Interfering Substance Detected

- a) This exception will occur when a substance other than alcohol (e.g., acetone, toluene, etc.) was detected in the breath sample. The subject may be suffering from a dangerous medical condition. The instrument will display "Interferent Detected" and print "*Invalid Test – Interfering Substance Detected".
- b) The test is complete and should not be restarted.
 - A test report indicating "Subject Test Refused" is not required to document a refusal.

2. In addition, the following suggested corrective action is provided:

- a) The operator should discontinue the Implied Consent process.
- b) Ask the subject about diabetes, fasting, and solvent exposure. If diabetic, consider EMS assistance.
- c) Consider requesting a voluntary blood sample from the subject or obtain a warrant.
- d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Incomplete Test Reports can be differentiated from Complete Test Reports in several ways:
 - a) The Test Result will not contain any numerical information, a refusal or an interfering substance detected statement.
 - b) The instrument will print a statement clarifying the message contained in the Test Result location immediately below it in the “Additional Comments” section. The clarification message will begin with the statement “Invalid Test” or “Invalid Sample” followed by additional descriptive information.
 - c) If appropriate the instrument will also print a “Suggested Corrective Action” statement to be read and acted on by the operator.
 - This statement will often contain the necessary information for the operator to re-initiate the testing sequence and obtain a complete Test Report.

2. All Test Reports regardless of whether they are complete tests or incomplete tests should be kept by the operator as evidence.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE


**Incomplete Reports
Exception Messages**

Instrument monitors its internal systems during testing sequence.

- Notifies operator of conditions that might affect results of test.
- Only reports test results when no exceptions have occurred.

Suggested Corrective Action Statements

- Intended to provide operator with a course of action
- Neither required or necessary



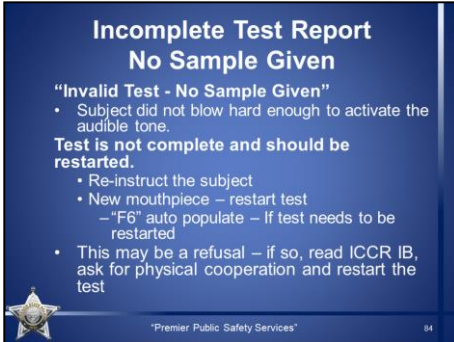
"Premier Public Safety Services" 83

Lesson Plan:

1. The Intoxilyzer 8000 has the capability of monitoring its internal systems during a testing sequence.
 - a) It will notify the operator anytime it finds a condition that might affect the result of a breath test.
 - b) The instrument is designed to only allow a test result to be reported when no exceptions have occurred during the entire testing sequence.

2. Suggested corrective action statements are intended to provide the operator with a suggested course of action in response to an instrument exception message. **STRICT ADHERENCE TO SUGGESTED CORRECTIVE ACTION STATEMENTS BY AN OPERATOR IS NEITHER REQUIRED NOR NECESSARY TO CORRECT AN EXCEPTION CONDITION.** Any attempt to suggest that an operator is negligent as a result of failure to perform all steps identified in a Suggested Corrective Action statement is misplaced.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

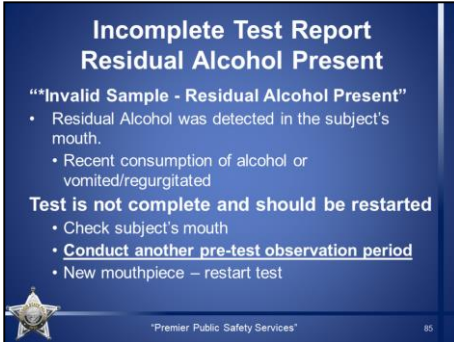


Lesson Plan:

1. "No Sample Given"
 - a) This exception occurs when the subject did not blow hard enough into the instrument to activate the audible tone during the breath sampling period. The instrument will display "No Sample Given" and print "*Invalid Test – No Sample Given".
 - b) The test is not complete and can be restarted.

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - b) If the operator is continuing the testing process, restart the test.
 - c) Continue the test until the subject properly submits to or refuses the test.
 - d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. “Residual Alcohol Present”
 - a) This exception occurs when residual alcohol was detected in the subject's mouth or upper respiratory tract. This could be the result of recent consumption of alcohol or having vomited or regurgitated liquid from the stomach into the mouth. The instrument will display “Residual Alcohol Present” and print “Invalid Sample – Residual Alcohol Present”.
 - b) The test is not complete and can be restarted.
 - “F6” auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Use a new mouthpiece and restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE


**Incomplete Test Report
Sequence Aborted**

The operator aborted the testing sequence

- "A" key
 - only during the 3 minute breath sample period.
- "Start Test" button
 - If pressed before the "Review Data" section – no test report will be printed and no record of the test is kept
 - If pressed during the 3 minute breath sample period – a "Refusal" test report will print

Test is not complete and should be restarted.

- "F6" to auto populate last information entered



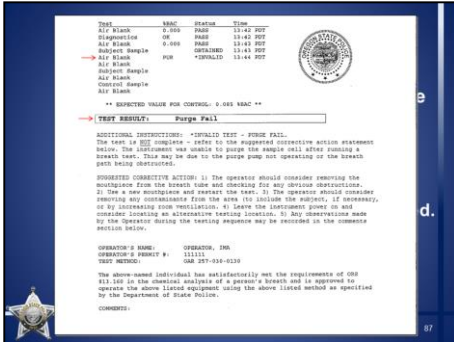
"Premier Public Safety Services" 86

Lesson Plan:

1. "Aborted"
 - a) This exception occurs when the operator aborts the testing sequence. The instrument will display "Sequence Aborted" and print "**Invalid Test – Sequence Aborted by Operator".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted
 - F6 only works after login
 - Press F6 when the instrument asks to scan driver's license

2. In addition, the following suggested corrective action is provided:
 - a) If the test was terminated in error, the test may be restarted by the operator.
 - b) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

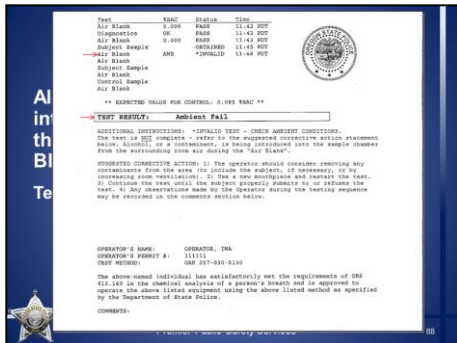
1. "Purge Fail"

- a) This exception occurs when the instrument was unable to purge the sample cell after running a breath test. This may be due to the purge pump not operating or the breath path being obstructed. The instrument will display "Purge Fail" and print "*Invalid Test – Purge Fail".
- b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:

- a) The operator should consider removing the mouthpiece from the breath tube and checking for any obvious obstructions.
- b) Use a new mouthpiece and restart the test.
- c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
- d) Leave the instrument power on and consider locating an alternative testing location.
- e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. “Ambient Fail”

- a) This exception will occur when alcohol, or a contaminant, is being introduced into the sample chamber from the surrounding room air during the “Air Blank”. The instrument will display “Ambient Fail” and print “*Invalid Test – Check Ambient Conditions”.
 - Instrument sucked alcohol or contaminant in.
- b) The test is not complete and can be restarted.
 - “F6” auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:

- a) The operator should consider removing any contaminants from the area (to include the subject, if necessary).
- b) Use a new mouthpiece and restart the test.
- c) Continue the test until the subject properly submits to or refuses the test.
- d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

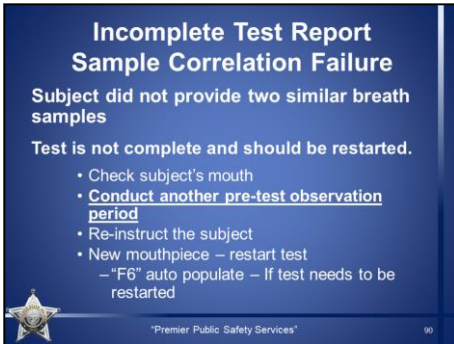


Lesson Plan:

1. "RFI Detected"
 - a) This exception occurs when a radio or cellular phone transmission is detected near the instrument. The instrument will display "RFI Detected" and print "*Invalid Test – RFI Detected".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider removing the radio frequency transmission source from the vicinity of the instrument.
 - b) Use a new mouthpiece and restart the test.
 - c) If the instrument gives an additional exception message, consider placing the instrument out of service by placing an "Intoxilyzer Out Of Service" form on the instrument and reporting the problem to the OSP Regional Dispatch Center at 1-800-292-6517.
 - d) Leave the instrument power on and consider locating an alternative testing location.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

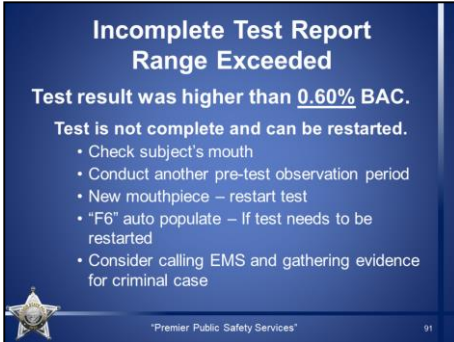


Lesson Plan:

1. "Sample Correlation Failure"
 - a) This exception occurs when the subject did not provide two similar valid breath samples. This could be a result of improper breath sample delivery or residual alcohol in the subject's upper respiratory tract. The instrument will display "Sample Corr. Fail" and print "Invalid Test – Subject Sample Correlation Failure".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Consider re-instructing the subject on how to provide a proper breath sample.
 - d) Use a new mouthpiece and restart the test.
 - e) Continue the test until the subject properly submits to or refuses the test.
 - f) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. "Range Exceeded"
 - a) This exception occurs when the test result was higher than 0.60 %BAC. This could be due to the subject's BAC actually being a .6 or higher, or a high concentration of residual alcohol in the subject's mouth or upper respiratory tract from recent consumption of alcohol or having vomited or regurgitated liquid from the stomach into the mouth. The instrument will display "Range Exceeded" and print "*Invalid Sample – Range Exceeded".
 - b) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider checking the subject's mouth.
 - b) Conduct another pre-test wait/observation period of at least 15 minutes.
 - c) Use a new mouthpiece and restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

**Incomplete Test Report
Improper Sample**


Subject blew into the instrument at the improper time.

Test is not complete and should be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted

How to Avoid

- **Maintain control of the breath tube!** Do not let the subject provide a sample until the proper time in the test sequence.



"Premier Public Safety Services" 92

Lesson Plan:

1. "Improper Sample"
 - a) This exception will occur when a subject blows into the mouthpiece at an improper time during the testing sequence. The instrument will display "Improper Sample" and print "**Invalid Test – Improper Sample".
 - b) Operator must maintain control of the breath tube.
 - c) The test is not complete and can be restarted.
 - "F6" auto populate – If test needs to be restarted


2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - b) Use a new mouthpiece and restart the test.
 - c) Continue the test until the subject properly submits to or refuses the test.
 - d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

**Incomplete Test Report
Deficient Sample**

Subject did not blow long enough with sufficient force to provide a proper sample.
Test is not complete and should be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
 - » "F6" auto populate – If test needs to be restarted
- Exception: subject may be physically incapable of providing a proper sample (no suspension)



"Premier Public Safety Services" 93

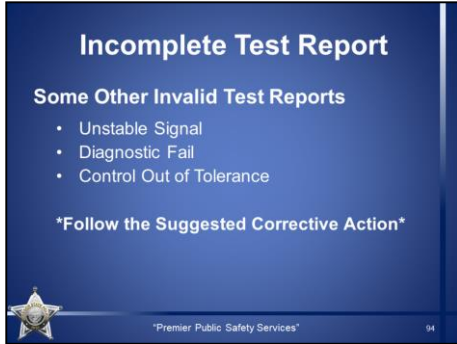
Lesson Plan:

1. "Deficient Sample"
 - a) This exception occurs when the subject did not blow long enough with sufficient force to properly provide a sample during the breath sample period. The instrument will display "Deficient Sample" and print "**Invalid Test – Deficient Sample".
 - b) The test is not complete and can be restarted (unless the operator determines that the subject is physically incapable of providing a proper sample).
 - "F6" auto populate – If test needs to be restarted

2. In addition, the following suggested corrective action is provided:
 - a) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - b) If the operator is continuing with the testing process, use a new mouthpiece and restart the test.
 - c) Continue the test until the subject properly submits to or refuses the test.
 - d) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

3. If the operator decides that the subject is incapable of providing a breath test, the operator may choose to discontinue the testing process. A deficient sample result cannot be used to suspend a driver's license.
 - a) On the rare occasion the operator feels the subject is physically incapable of completing a breath sample, they will need to be able to articulate the reason.
 - b) If the subject is able to provide the first sample then there is no reason why they can not provide a second, this would be a refusal.
 - c) There is not a BAC% result on a "Deficient Sample"

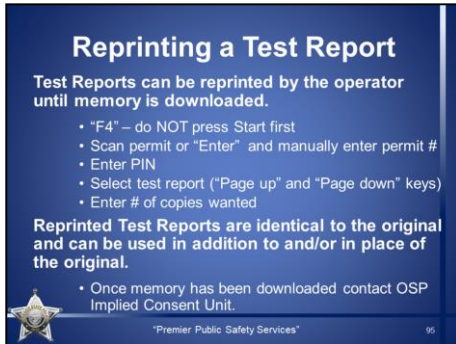
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Some other invalid test reports
 - a) "Unstable Signal"
 - b) Diagnostic Fail
 - c) Control out of Tolerance
2. If an operator receives these, or other, invalid test reports the officer should follow the suggested corrective action statements contained in the report as needed.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Both Complete and Incomplete Test Reports can be re-printed from the Intoxilyzer 8000 instrument by the operator at anytime up until the instrument's memory is downloaded by the Department of State Police. Once downloaded requests for duplicate Test Reports can be made by contacting :
 - Oregon State Police Portland Metro Forensic Laboratory
 - Toxicology / Implied Consent Section
 - 13309 SE 84th Avenue, Suite 200
 - Clackamas, Oregon 97015
 - (971) 673-8230

2. To Reprint a report - from the "Ready to Start" message, the operator needs to select the "F4" key on the keyboard. The instrument will display "Scan Operator Permit or Press Enter".
 - a) Scan operator's permit or press "Enter" and type in operator's permit#.

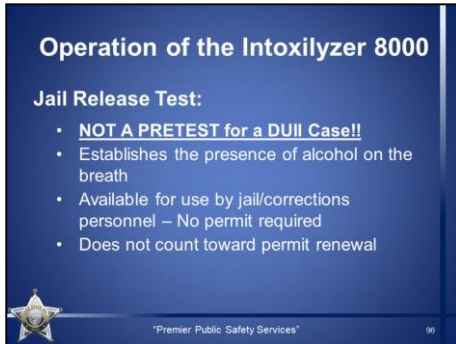
3. The instrument display will then read "Enter Operator PIN"
 - a) Operator needs to enter their personal PIN#
 - b) Asterisk will appear on the second line of the display as PIN is entered.

4. Once the instrument has recognized a valid Operator Permit and PIN combination, the instrument will display to the operator all Test Reports performed by the operator still stored in the instruments internal memory by test date, test time, and subject name.
 - a) Using the "Page Up" and "Page Down" keys to select the specific Test Report desired for reprinting.
 - b) Once the desired Test Report is identified, pressing the "Enter" key will initiate the reprint process.
 - It should be noted that only Test Reports generated by the operator will be available to the operator for reprinting.
 - Test Reports that are reprinted are identical Test Reports to the original Test Report and can be used in addition to and/or in place of the original.

5. The instrument will prompt the operator for the number of reprinted copies desired and then generate the requested Test Reports.

6. If the Test Report information is not displayed by the instrument during this process, the Test Report may have already been downloaded and removed from the instrument's internal memory. Additional copies of Test Reports can be requested from the Oregon State Police Implied Consent Program.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. A “Jail Release Test” has been developed for the purpose of conducting simple screening tests on people for the purpose of establishing the presence of alcohol on the breath and not necessarily the actual breath alcohol concentration.
 - a) Testing of minors for purposes of establishing Minor in Possession by Consumption.
 - b) Testing of person’s for purpose of release from jail detoxification sections.
 - c) Testing of parole and probation participants with no alcohol conditions.
 - d) Testing ordered at the direction of court personnel (i.e., judge ordered tests).

2. This is not a practice or pre test.

3. This test sequence has been made available for use by jail/corrections personnel.
 - a) Students may need to demonstrate and/or remind jail/corrections personnel how to use this feature.

4. Because the student does not use their permit and PIN# to run a jail release test it will not count towards their permit renewal.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

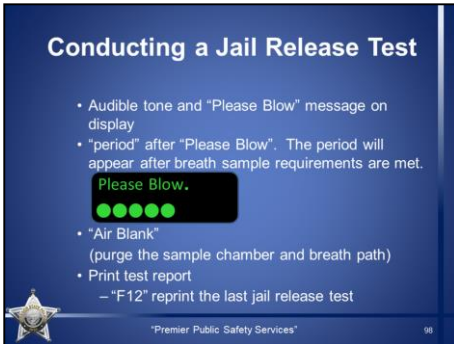
1. Conducting a Jail Release Test

- a) Suggest that the operator conduct the 15 minute observation period. As stated before this is the most important part of the testing sequence and should never be skipped.
- b) Note that the time and date are correct on the instrument.
- c) Then from the “Ready to Start “ screen press the “Start test button”.
- d) The display will then read “Jail Release (Y/N)?”.
 - Note that the instrument defaults to “No” for a test.
- e) The display will either read “Ready in 00:XX”, usually 30-60 seconds (depending on how long it has been since the instrument has been used) or “Air Blank”. At this point the instrument is purging the sample chamber and the breath path of any possible alcohol or other contaminants.
- f) From the “Air Blank” message, the instrument will next enter the breath sampling period.
- g) The instrument will briefly display a progress bar as a series of rectangular characters and then begin scrolling the message “Please blow into mouthpiece to activate tone.
- h) Read to the subject

I WANT YOU TO TAKE A DEEP BREATH AND BLOW INTO THE INSTRUMENT WITH ONE LONG, CONTINUOUS BREATH. BLOW WITH SUFFICIENT FORCE TO INITIATE AND MAINTAIN THE AUDIBLE TONE. CONTINUE BLOWING UNTIL I TELL YOU TO STOP. DO YOU UNDERSTAND THESE INSTRUCTIONS?

 - This statement is printed on the front of the instrument above the keyboard.
 - With these instructions the operator can control the length of time that the subject delivers the sample.
- i) Have subject provide the sample

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

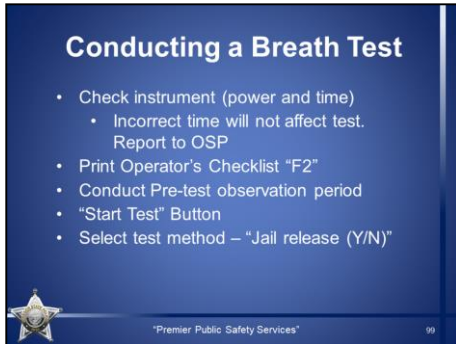


Lesson Plan:

1. Conducting a Jail Release Test (continued)

- a) The operator is assured that a proper sample is being provided to the instrument when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - Several circular indicators will appear across the display
- b) When a "period" is displayed following the "Please blow" message the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.
- c) If the subject does not provide an adequate breath sample the instrument will notify the operator by flashing the "Please Blow" message and emitting an audible tone.
 - Re-instruct the subject on how to provide a proper sample.
 - Have the subject blow again
- d) If the subject, through a willful act, still does not provide a proper sample, the operator should consider it a refusal and press the "Start Test" button or the "R" button.
- e) If the operator believes that the subject is physically unable to provide an acceptable sample, but he the subject evacuated his/her lungs and the sample was the best the subject could give the operator may let the instrument to time out.
 - The instrument will time out after 3 minutes
 - At the end of the three minutes the display will read "Refusal (Y/N).
 - The operator may select "N" to document an "Invalid Test – Deficient Sample"
 - Choosing "Y" would document a refused test
- f) After the breath sampling period is complete the instrument performs another "Air Blank".
- g) Test Report is printed out, operator needs to review it.
- h) Pressing "F12" will reprint the last jail release test.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Before beginning a breath test, the operator should check the power indicator on the instrument to insure that it is on. The display should be displaying the "Ready to Start" message.
 - a) Note if the date and time are correct. If incorrect note the correct time and date on the report and contact OSP Implied Consent.
 - b) The fact that the time and/or date are incorrect has absolutely no effect on the accuracy and validity of the test result.

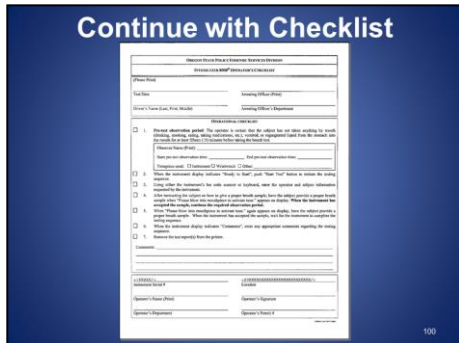
2. An Operator's checklist can be obtained by pressing the "F2" key on the keyboard.
 - a) Although strongly recommended, the use of the checklist is not required to successfully complete the testing process.
 - b) However, the prosecutor will want to use the checklist during prosecution of the impaired driver, so it should be used if possible.

3. The first and most important step in the breath testing process is the Pre-Test Observation Period, it must be conducted on all subjects prior to any breath test. To ensure that there is no possibility of residual alcohol or mouth contamination, the subject is not allowed to take anything by mouth (drink, smoke, eat, take medication, etc.), vomit, or regurgitate liquid from the stomach into mouth for at least 15 minutes prior to giving the first sample.

4. Press the "Start Test" button.

5. Select test method.
 - a) The display will display the message "Jail release (Y/N)?"
 - For a Breath test the operator can press "Enter", the instrument defaults to the "N".
 - For a Jail Release test the operator would press the "Y" key and then "Enter".

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. To obtain a checklist, press the “F2” key on the instrument keyboard.
 - a) Although **strongly** recommended, use of an Operator’s Checklist is not required to successfully complete the testing process. Refer to 257.030.0130(7)
 - b) A jail release test does not require a checklist (more on jail release tests later).
 - c) Simple way to verify the printer is functional

2. Fill out the top section with the test date, driver’s name, arresting officers name and arresting officers department. Remember to print clearly.

3. Step one:
 - a) Requires the name of the officer that observed the suspect.
 - The observer and/or the operator do not have to be the arresting officer.
 - b) Fill in the start time and stop time for the observation period (This is just for the first fifteen minutes),
 - c) Note the time piece used i.e. instrument, watch or clock on the wall.
 - Be sure to use the same time piece for the whole process to avoid doubt as to whether suspect was given the proper amount of time.

4. Check off the rest of the steps as you complete them

5. Comments section is where you would note any observations. This would be especially important if the suspect refused to take the breath test before they were required to blow into the instrument. Note anything that will help you to remember the event come court time. Keep Comments limited – Do Not put anything in the comments section that should be in your report.

Examples:

6. Instrument Serial # and Location will be auto populated by the instrument.

7. Complete the Operator’s Checklist with the operator’s name, operator’s department, operator’s signature and operator’s permit #.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Conducting a Breath Test

- Scan Operator's Permit or Press "Enter" and Manually Enter Operator's Permit Information
- Enter PIN
- Scanning the Subject's Driver's License/ID or Press "Enter" and Manually Enter the Driver's License/ID
- Review Data (Y/N)



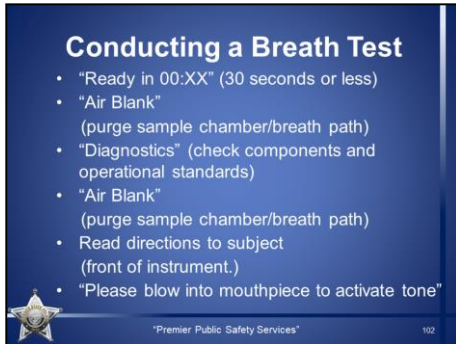
"Premier Public Safety Services"

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Lesson Plan:

1. The display on the instrument will then display "Scan Operator Permit or Press Enter".
 - a) If the operator has his permit they need to scan it by holding their permit perpendicular to the face of the instrument, directly about the key board. The permit needs to be held flat and still until the instrument reads the bar code printed on the permit.
 - The instrument will try to scan the permit for approximately 30 seconds, if it is successful the operator will hear an audible tone and the display will proceed to "Enter PIN #"
 - If the instrument is unable to scan the permit it will default to manual entry and the display will read "Enter Permit #"
 - b) If the operator presses the "Enter" key the instrument will prompt the operator to enter their permit information.
 - "Enter Permit #" - Operator needs to enter their permit # , then press the "Enter" key.
 - "Enter PIN #"
 - "Enter Operator Name (Last, First, M), then press "Enter".
2. Upon successfully scanning/manual entry of permit information, the instrument will proceed to "Enter Operator PIN".
 - a) Enter four digit PIN # and press the "Enter" key.
 - b) Operator gets three tries to enter the correct PIN # before test is aborted (returning to the "Ready to Start").
3. The instrument will then display "Scan Subject License or Press Enter". The operator can now scan the driver's license as they did their permit or the can press "Enter" and manually enter the driver's information.
 - a) "Enter Subject Name (Last, First, M)" – type in subject's name, press "Enter"
 - b) "Enter Subject DOB (MM/DD/YYYY)" – enter the subject's DOB, press "Enter"
 - c) "Enter Subject ID #" – enter license or ID #, press "Enter"
 - d) "Enter State of Issue" – enter the state of issue of the license or ID, press "Enter"
4. Once data has either been scanned or entered manually, the instrument will display "Review Data (Y/N)?"
 - a) The operator may choose "Y" to review the subject information data entered into the instrument or press "N" to proceed to the testing sequence.
 - The operator must confirm the selection by pressing the "Enter" key.
 - If "Y" is selected, the instrument will display the Subject Name, DOB, ID#, and State of Issue.
 - Operator can not edit the permit information, but may edit the subject information if necessary.
 - After displaying each entry, the operator must accept the information by pressing the "Enter" key.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Once the permit and license information has been entered and reviewed, the instrument will proceed to the testing sequence. Depending on the amount of time taken to enter operator and subject's data the display will either read
 - a) "Ready in XX:XX" (usually about 30 seconds or less) or "Air Blank".

2. The instrument will initiate the testing sequence by performing an air blank. The instrument display will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) The instrument will draw in room ("ambient") air to purge the sample chamber and breath path of any possible alcohol or other contaminants.
 - b) If all the parameters are met, the instrument will proceed to the next step.
 - c) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "Invalid Test – Check Ambient Conditions" on the Test report.

3. Following the successful completion of the "Air Blank", the instrument will perform a complete diagnostic check on its components and operational standards.
 - a) If no operational malfunctions are found, the instrument will display a message of "Diagnostics Pass" and then proceed to the next step.
 - b) If any malfunctions in the operation of the instrument are detected, the instrument will abort the test display a message of "Diagnostic Fail" on the display and print "Invalid Test – Diagnostic Fail" on the Test report.

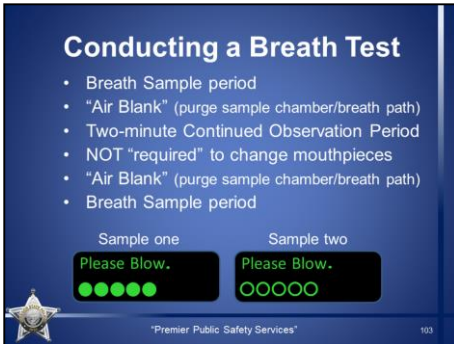
4. The instrument will perform another air blank following the completion of a Diagnostic Routine. The instrument will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "Invalid Test – Check Ambient Conditions" on the Test report.

5. From the "Air Blank" message, the instrument will next enter the breath sampling period. The instrument will briefly display a progress bar as a series of rectangular characters (i.e., "■") and then begin scrolling the message "Please blow into mouthpiece to activate tone" across the top line of the instrument's display.

6. Read the subject the following statement (located on the front of the instrument)

I WANT YOU TO TAKE A DEEP BREATH AND BLOW INTO THE INSTRUMENT WITH ONE LONG, CONTINUOUS BREATH. BLOW WITH SUFFICIENT FORCE TO INITIATE AND MAINTAIN THE AUDIBLE TONE. CONTINUE BLOWING UNTIL I TELL YOU TO STOP. DO YOU UNDERSTAND THESE INSTRUCTIONS?

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Have subject provide the sample
 - a) The operator is assured that a proper sample is being provided to the instrument when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - b) A "period" will be displayed following the "Please blow" message when the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.

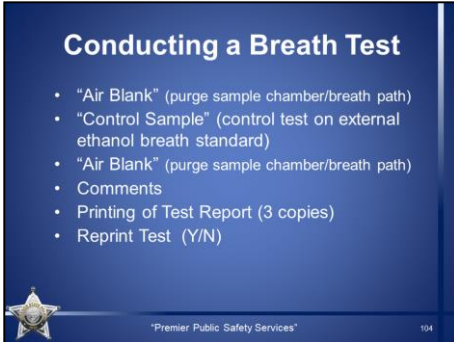
2. After the breath sampling period is complete, the instrument will next perform another air blank. The instrument display will display the "Air Blank" message and turn on the instrument's internal purge pump for approximately 20 seconds.
 - a) If there is a problem, the instrument will abort the test and display a message of "Ambient Failure" on the display and print "**Invalid Test – Check Ambient Conditions" on the Test report.

3. After successfully providing the breath sample, the instrument will display "Please Wait XX:XX remaining". The timer will count down time remaining in the two minute observation period. The operator needs to continue observing the subject to ensure that the subject does not take anything by mouth (eat, drink, smoke, or take medication, etc.), vomit, or regurgitated liquid from the stomach into the mouth for an additional period of approximately 2 minutes.
 - a) To ensure that there is no possibility of residual alcohol or mouth contamination causing a result that does not reflect the subject's true blood alcohol concentration.

4. After waiting for approximately two-minutes, the instrument will perform another air blank.

5. After a successful air blank, the instrument will again enter a breath sampling period. The instrument will briefly display a progress bar as a series of rectangular characters and then begin scrolling the message "Please blow into mouthpiece to activate tone." across the instrument display.
 - a) The operator should instruct the subject to provider an acceptable breath sample using the same instructions given to the subject previously (printed on the front of the instrument above the keyboard).
 - b) The operator is assured that a proper sample is being provided when a continuous audible tone is heard and the instrument displays the "Please Blow" message.
 - c) When a "period" is displayed following the "Please blow" message the instrument has obtained an adequate sample and the operator may instruct the subject to stop blowing.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

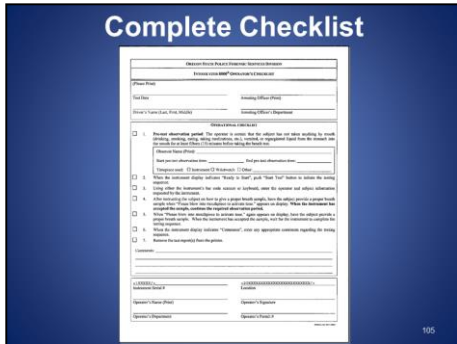


Lesson Plan:

1. The instrument will perform another air blank. If a problem occurs, the instrument will abort the test and give an exception message.
2. At the successful conclusion of both breath sampling periods, the instrument will perform a control test using an external ethanol breath standard. The instrument will make several “clicking” and “hissing” noises as the gas supply is initiated and terminated. The instrument display will read “Control Sample”.
 - a) The instrument will analyze a sample from the attached ethanol breath standard and evaluate the accuracy of the instrument.
 - b) The result of the analysis will be reported as part of the final Test report. The expected alcohol concentration of the standard is pre-determined and will also be printed on the Test report.
 - c) If there is a problem, the instrument will abort the test and display a message of “Control Sample Out of Tolerance” on the display and print “**Invalid Test – Control Sample Out of Tolerance” on the Test report.
3. The instrument will perform another air blank. If a problem occurs, the instrument will abort the test and give an exception message.
4. The operator will have the opportunity to enter comments into the “Comments” section of the report. This information will then appear on the final printed version of the Test Report. The instrument will prompt the operator displaying the message of “Add Comments (Y/N)?”.
 - a) Selecting “N” on the instrument keyboard - the instrument will proceed directly to printing of the Test Reports.
 - b) Selection of “Y” on the instrument keyboard will allow the operator to enter additional information into the Test Report. The instrument will display three (3) comment messages, starting with “Comment Line 1”
5. The final phase of the analysis is the printing of the test reports
 - a) The operator can be assured that all operational parameters of the test were met because the instrument printed a completed test report.
 - b) If at anytime during the testing sequence there had been an exception to the testing sequence, a malfunction, or an error, the test would have been aborted and the instrument would not have printed a completed Test report.
6. The instrument will provide three (3) copies of the Test Report for the operator to distribute.
7. Instrument will give the operator a chance to reprint the test “Reprint Test (Y/N)”.

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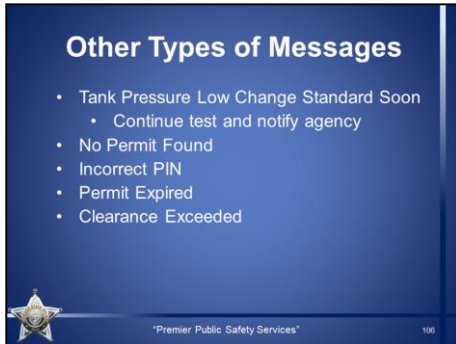
INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Check off the rest of the steps on the Operator Checklist as you complete them
2. Comments section is where you would note any observations. This would be especially important if the suspect refused to take the breath test before they were required to blow into the instrument. Note anything that will help you to remember the event come court time. Keep Comments limited – Do Not put anything in the comments section that should be in your report.
Examples: Put the Case Number for this DUII, or possibly the Subject's BAC
6. Instrument Serial # and Location will be auto populated by the instrument.
7. Complete the Operator's Checklist with the operator's name, operator's department, operator's signature and operator's permit #.

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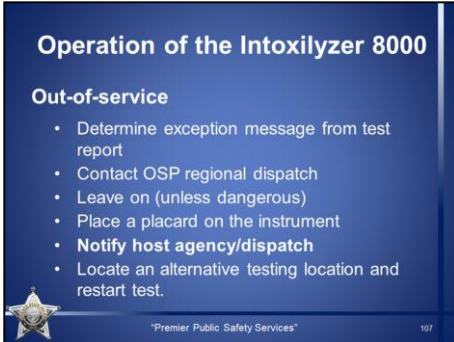


Lesson Plan:

1. Other Instrument Messages:

- a) Tank Pressure Low Change Standard Soon – The instrument detects that the external ethanol breath standard pressure is low. The operator needs to continue with the testing sequence and notify the agency responsible for hosting the instrument of the warning message.
- b) No Permit Found – This will be displayed if the instrument is unable to verify the permit number entered by the operator, the operator does not have a valid permit number, the permit number has not been entered in the instrument's internal database, or the operator is using an incorrect permit number.
- c) Incorrect PIN – The instrument is unable to verify the PIN entered by the operator.
 - An operator is given three attempts to correctly enter their PIN before the instrument aborts the testing sequence.
- d) Permit Expired – This will be displayed on the instrument if the operator's permit has expired.
 - The operator should contact the Oregon State Police Implied Consent Unit.
- e) Clearance Exceeded – The operator has attempted to perform an operation with the instrument that they have not been given clearance for.
 - The operator should contact Oregon State Police to arrange for a Technician to perform the attempted operation or to service the instrument.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

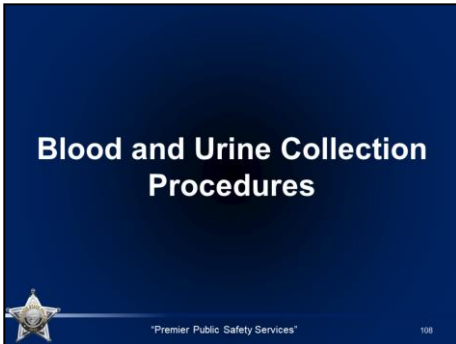


Lesson Plan:

1. An Intoxilyzer 8000 instrument may need to be placed out-of-service by an operator. When this occurs the operator should:
 - a) Determine exactly what the exception message being reported by the instrument is. This information will be important when reporting the condition to the Oregon State Police regional dispatch center. Also, be sure to perform the suggested correction action that is provided with the exception message. The dispatcher will inquire as to whether the operator has performed this step prior to placing the instrument out-of-service.
 - b) Contact the Oregon State Police regional dispatch center and provide notification of the exception:

OSP Regional Dispatch Center
1-800-292-6517
 - c) Leave the instrument ON and place an Out-of-Service notification placard on the instrument to notify future operator's of the condition of the instrument. Do not remove an out-of-service placard unless authorized to do so by a trained technician of the Oregon State Police.
 - Placard located on the back of the laminated "Local DRE" list.
 - d) Notify the host agency and/or dispatch
 - e) Locate an alternative testing location and restart the testing sequence.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. This section cover the collection procedures for the collection of blood and urine. Topics to be discussed are:
 - a) When can you collect a blood/urine sample?
 - b) Proper collection procedures
 - c) Submitting to lab

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Collection Procedures

Blood Collection

To request blood under Implied Consent, subject must be under arrest and receiving treatment at a medical care facility for injuries resulting from the crash.

If the suspect is at the hospital not due to a crash, blood collection is not authorized under Implied Consent, but may be collected with consent, exigency or warrant for criminal case.



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Lesson Plan:

1. Blood can be requested under Implied Consent only if the person is injured in a crash and is receiving treatment for these injuries in a medical care facility. The officer still needs to have "probable cause" and the person must be under arrest
 - a) If you stopped a suspect that had just been in a fight it may be necessary to take the suspect to the hospital for treatment, but you would not read implied consent because the injuries were not the result of a traffic crash.
 - b) Blood can be obtained pursuant to a warrant or PC and exigent circumstances

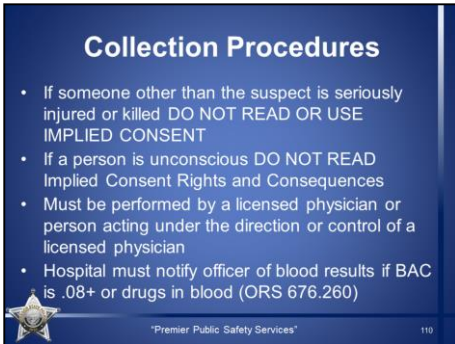
2. Nothing in the Implied Consent Law is intended to preclude a police officer from obtaining a chemical test of a person's blood for alcohol or a test of the person's blood and/or urine for a controlled substance or an inhalant.
 - a) If the person expressly consents to such a test
 - b) From a person without their consent if:
 - There are exigent circumstances and the officer has probable cause to believe that the person was DUII and that evidence will be found in the person's blood or urine and the person is unconscious or incapable of giving consent.
 - c) Or with a warrant

3. Only a duly licensed physician or a person action under the direction or control of a duly licensed physician may withdraw blood or pierce human tissue.
 - a) They shall not be held civilly liable for withdrawing any bodily substance, in a medically acceptable manner, at the request of a peace officer.
 - b) At the time of the draw the physician or person acting under the direction or control of the duly license physician will need to complete a "Certification of Technician to Collection of Blood Sample" form

4. A health care facility that provides medical care immediately after a motor vehicle accident shall notify any law officer who is at the health care facility and is acting in an official capacity in relation to the motor vehicle crash, if the person's BAC is .08 or higher and whether there is any controlled substances in their blood. ORS 676.260. This is based on the hospital's testing.

5. If a person fails a blood test, the police officer shall send the Blood Test Failure report to DMV within 45 days of the date of arrest.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Blood can be requested under Implied Consent only if the person is injured in a crash and is receiving treatment for these injuries in a medical care facility. The officer still needs to have “probable cause” and the person must be under arrest
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INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Blood Collection Procedures

- Do not use alcohol swabs
- Do not collect from same arm as IV
- Use grey or purple stopper tubes (NOT RED!)
 - Note expiration dates
- Collect at least two 5ml tubes of blood
- Observe the blood draw
- You or hospital mark the container with the suspects information including name and time of collection



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Lesson Plan:

1. Do not use alcohol swab – use an iodine based swab like betadine.
2. Do not collect blood “downstream” of IV.
 - a) Other arm is preferred
 - b) Can significantly dilute sample
3. Tubes with a grey stopper are preferred
 - a) Tubes with a purple stopper are also acceptable
 - b) Do Not use tubes with red stoppers
 - c) Make sure to check the expiration dates on the kit
4. Collect at least two 5ml tubes of blood.
 - a) Two draws one hour apart is not necessary. Elimination rate can't be determined from 2 draws in a non-lab situation anyway. However, it's always a good idea to collect two tubes for additional testing if necessary.
5. Make sure to observe the blood draw – you will then be able to lay the foundation for admissibility of blood and phlebotomist will not likely be needed.
6. Mark the container with the suspect information
 - a) Hospital staff may or may not mark the suspect's name and time of draw on the vial. Explain that HIPAA implications are not an issue when the officer writes the name on the vial of blood rather than the hospital – no protected health information given.
 - b) Do not put tape on the tube covering the suspects information and time of draw. If the lab can't read the name and/or time of collection, the report will read “reported as having been collected from...” instead of “labeled as having been collected from...”.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Blood Collection Procedures

- Do not put tape on tube or cover suspect's name or time of collection
- Place in evidence bag and attach evidence tape
 - Be sure to put sample in the larger pouch
- Place evidence bag into box. Apply evidence tape to seal the box. Initial and date the seal.
- Complete laboratory's FORM 49 (Toxicology)
 - Remember: the OSP Forensic Lab only tests blood for alcohol – not drugs
- Do not freeze



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Lesson Plan:

1. Place the tube in an evidence bag and attach evidence tape.
 - a) Do not put tape on the tube or cover the suspect's name or the time of collection.
 - b) Make sure the sample is put into the larger pouch.

2. Place the evidence bag into box
 - a) Apply evidence tape to seal the box
 - b) Initial and date the tape seal
 - Write initials and date across the edge of the tape seal so it spans both the tape and the box.

3. Officers are to complete the "Form 49" and submit the blood to either the Portland or Springfield Lab.
 - a) Neither Lab will test blood for drugs, only alcohol. If the blood needs to be tested for anything other than alcohol the officer will need to submit it to a private lab, or get urine.

4. Do not store the blood sample in the freezer
 - a) Freezing the tube may cause the tube to break and leak

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Urine Collection Procedures

- Officer must complete the 8 hour DID training.
- Officer has reasonable suspicion of an intoxicant other than or in addition to alcohol.
- Suspect is under arrest for DUUI and either
 - Breath test result is < 0.08%
 - Involved in a crash resulting in injury or property damage.
- Suspect must be given privacy



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Lesson Plan:

1. A police officer may not request urine unless the officer has completed at least eight hours of training in recognition of drug impaired driving (DID) and has reasonable suspicion that the person arrested is DUUI- controlled substance, an inhalant or any combination of an inhalant, a controlled substance and intoxicating liquor.

2. Anyone who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent to a chemical test of the person's urine for the purpose of determining the presence of a controlled substance or an inhalant if the person is arrested for DUUI and either:
 - a) Takes the breath test with a result of less than 0.08 percent; or
 - b) The person is involved in a crash resulting in injury or property damage.
 - A urine test may then be requested regardless of whether a breath test has been requested and regardless of the results of a breath test, if one is taken.

3. A person asked to give a urine sample shall be given privacy and may not be observed by a police officer when producing the sample.

Originally Adopted: 07/13/2006

Revision #: 3.2

Revision Effective Date: DRAFT

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Urine Collection Procedures

- Universal precautions: wear gloves.
- Inspect facilities: remove cleaning bottles.
- Flush toilet prior to use
- Ask suspect remove bulky clothes and wash hands.
- Remove contents from collection box and complete information on cup's label.
 - Suspects name – Officers name – Date – Time
- Place label on side of urine cup
- Provide privacy



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Lesson Plan:

1. Procedures For Urine Collection:

- a) Universal precautions : wear gloves
- b) Inspect facilities: remove cleaning bottles, wash bottles.
- c) Flush toilet and add bluing reagent if available prior to use.
- d) Request suspect remove outer bulky clothing, place purses in separate room and wash hands prior to providing a urine specimen.
- e) Remove contents (label, security seals, inner bag) from standard collection box.
- f) Complete information on cup's label –
 - Suspect's Name
 - Officer's Name
 - Date
 - Time
- g) A person asked to give a urine sample shall be given privacy and may not be observed by a police officer when producing the sample.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Urine Collection Procedures

- **Collection of specimen**
 - Collect at least 30 ml of urine
 - Secure lid and Note temperature on strip
 - Place in evidence bag and attach evidence tape.
- **Place bag in box, apply security seal, initial and date seal.**
- **Complete laboratory's FORM 49**
- **Remember:**
 - OSP Lab tests urine for drugs – not alcohol



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Lesson Plan:

1. Collection of Specimen
 - a) Collect at least 30 ml of urine
 - b) Have subject secure lid
 - c) Note temperature on thermal strip (90 – 100). If the thermal strip shows no "color" request a second sample

2. Remove tape in inner bag, insert cup and seal bag.

3. Place bag into box. Apply security seal on box. Initial seal.

4. Complete laboratory's FORM 49 (toxicology)
 - a) Include suspected drugs
 - b) If tampering has been suspected, it needs to be noted on the form 49.
 - c) Remember that not all drugs are controlled substances, take caution when filling out any forms or paperwork.
 - DRE's use a different form 49
 - If tampering has been suspected, it needs to be noted on the form 49.
 - d) Send to either the Springfield or Portland Forensic Laboratory

5. Students need to remember:
 - a) The OSP Lab does not test urine for alcohol, only drugs.
 - b) Note the temperature of the sample.
 - c) Mark the sample container with the suspects information.
 - d) Do not cover up the suspect information with the tape.
 - e) Make sure the lid is on straight and tight. If it leaks, laboratory will test ONLY the urine in the sample cup itself, not the surrounding packaging.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. Quiz students on independent testing
2. Does the suspect have the right to request an independent test?
 - a) Answer: Yes
3. After a person takes a test as requested by the operator, they have the right to request an independent chemical test. (If they refuse to take the chemical test requested by the officer they do not have the right to an independent test.)
 - a) The person **shall** be given a reasonable opportunity to a test.
 - Officers should use “reasonable person standard”.
 - b) The test will be at the expense of the subject.
 - c) The person administer the chemical test must be qualified.
4. The failure or inability to obtain an independent test or tests by a person shall not preclude the admission of evidence relating to a test or tests taken upon the request of a police officer.
 - a) This doesn't mean that an officer can deny the subject a reasonable opportunity to obtain an independent test.
 - b) DO NOT simply book the person in jail and assume they will be released in a reasonable amount of time to get an independent test.
5. For Implied Consent to be applicable, without a crash, the person must take a breath test and not a blood test. The blood test would be inadmissible in an implied consent hearing because the person was not at a medical care facility receiving treatment for injuries sustained in a crash. If the person is at the hospital, not due to injuries sustained in a crash, obtain blood if you have a warrant or PC and exigency and do not read Implied Consent Rights and Consequences.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE



Lesson Plan:

1. This section will discuss some of the more important case law decisions involving DMV hearings that police officers should be aware of in order to be successful in the DMV hearing process.

2. Topics to be covered are case law decisions relating to:
 - a) Admissibility of Hearsay
 - b) Reason for / Validity of Stop & Arrest
 - c) Articulation of PC
 - d) Credibility of Witnesses
 - e) Right to Communicate

3. Topics to be also covered in this section are case law decisions relating to:
 - a) No observed driving cases
 - b) Challenges to the breath test
 - c) Breath Test / Urine Test refusals
 - d) Challenges to the Observation Period
 - e) Challenges to IC documentation

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

Does the suspect have the right to appeal a license suspension?

Yes

The request must be received by 5:00 pm on the tenth (calendar) day following the arrest for the refusal of a test or the failure of a breath test. If the suspect failed a blood test they have till the tenth day following the date DMV sent the notice of suspension.

- The initial 30 day suspension cannot be appealed -



"Premier Public Safety Services" 118

Lesson Plan:

1. Does the suspect have the right to appeal a license suspension?

a) Answer: Yes

- If the subject wants to request a hearing they must submit it in writing. If they refused to submit to a test or failed a breath test, the request must be received at the Hearings Case Management Unit by 5 p.m. on the tenth day following the arrest, or they lose their right to at hearing. DMV will hold a hearing within thirty days after the arrest.
- If the subject failed a blood test, the request must be received at the Hearings Case Management Unit by 5 p.m. on the tenth day following the date DMV sent the notice of suspension, or they lose their right to a hearing. DMV will hold a hearing within thirty days after of the date DMV sent notice.
- The initial 30 day suspension can not be appealed


INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Common Reasons for Disaffirms

About 19% of suspensions are disaffirmed

Over half of disaffirms are due to the failure of the police officer to appear. The rest are:

- Procedural inaccuracies including incomplete or inaccurate police documents; breath test not administered as required; etc.
- Untimely or no documents received by DMV from police



"Premier Public Safety Services" 119

Lesson Plan:

1. In 2019, approximately 20% of DMV cases that were appealed were disaffirmed. In other words, the suspension was not upheld.
 - a) Over half of disaffirms are due to the failure of the police officer to appear
 - b) Most of the others were:
 - Incomplete or inaccurate police documents
 - Untimely or no documents received by DMV from police

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

In Person vs. Telephone Hearings

- The petitioner OR the reporting officer may request an in person hearing
- If neither requests, a telephone hearing is scheduled.

Telephonic Hearing

- OAH will issue a subpoena to the reporting officer requesting the officer make the written DUUI report available to OAH three days prior to the hearing.
- OAH will provide a copy of the officer's report to the petitioner.



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Lesson Plan:

1. Officers need to check the box at the bottom of the Implied Consent Combined Report to request that the hearing be conducted in person especially when they are new.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Implied Consent Law

DMV may reschedule the hearing if the officer is unable to appear due to illness, vacation, or "Official Duty conflicts"

- Community caretaking
- Court
- Hazardous or impeding travel conditions
- Participation in employer approved training
- Physical incapacity
- Service in the US Armed Forces, military reserves, National Guard or the organized militia

Can only be done once

"Premier Public Safety Services" 121

Lesson Plan:

1. DMV may provide a hearing if the time requirements could not be met. The inability of a subpoenaed police officer to appear due to the officer's illness, vacation, or official duty conflicts.
 - a) Turn in your "notice of availability".

2. "Officer Unavailability":

"Illness, vacation or official duty conflicts."

 - "Illness" and "vacation" are not defined in the statute or DMV's rules. Per case law, "illness" means "an unhealthy condition of the body or mind that impedes an officer's attendance at a suspension hearing."
 - *Walker v. DMV*, 254 Or App 543 (2013) (illness includes an officer's extreme exhaustion).

3. "Official Duty conflicts" OAR 735-090-0120(4)
 - a) Community caretaking
 - b) Court
 - c) Hazardous or impeding travel conditions
 - d) Participating in employer approved training
 - e) Physical incapacity
 - f) Service in the US Armed Forces, military reserves, National Guard or the organized militia

Does not include administrative leave

4. A hearing may not be rescheduled more than once for the officer, but it can also be rescheduled once for the petitioner/attorney.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE

Scope of Hearing

Statutory requirements listed in ORS 813.410(6):

- (a) the person was under arrest for DUII
- (b) the officer had reasonable grounds to believe the person was DUII;
- (c) the person refused or failed the test;
- (d) if applicable, evidence the person was driving a CMV;
- (e) the person was informed of rights and consequences;
- (f) the person was given written notice of the DMV's intent to suspend his or her license;
- (g) the person administering the test was qualified;
- (h) the procedures and equipment used in the test complied with the law.



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Lesson Plan:

1. What are the required elements under Oregon Implied Consent law necessary for DMV to enforce a suspension.
2. In order for a suspension to be valid, Oregon's Motorist Implied Consent Law requires that the following conditions must exist:
 - a) The person is under arrest for DUII.
 - The person operated a motor vehicle upon a public highway or a premise open to the public.
 - The police had "Probable Cause" to make the arrest (i.e., the arrest must be valid).
 - b) The person had been informed of rights and consequences. (back of ICCR)
 - c) The person refused the test or failed the test with:
 - 0.08% or more if not driving a commercial motor vehicle;
 - 0.04% or more if driving a commercial motor vehicle; or
 - Any amount if under 21 years of age.
 - d) The person administering the test is qualified. Make sure students understand that using someone else's permit INVALIDATES THE TEST.
 - e) The breath testing methods, procedures and instrument used were all approved by Oregon State Police.

INTOXILYZER 8000 INSTRUCTOR'S GUIDE


Officer's Role in the Hearing

Any officer actively involved in the investigation may:

- Present evidence
- Cross examine witnesses
- Argue applicability and meaning of rules and statutes
- Argue admissibility of evidence
- Argue proper hearing procedures

An officer should notify the ALJ if they want to do any of the above

ORS 813.412



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Lesson Plan:

1. What is the role of a police officer in a hearing?
2. The officer who issued the citation may present evidence, examine and cross-examine witnesses and make arguments relation to:
 - a) The application of statutes and rules to the facts in the case
 - b) The literal meaning of the statutes or rules at issue in the case
 - c) The admissibility of evidence
 - d) Proper procedure to be used in the hearing
3. Officers should use this right only if deemed necessary. If an officer choose to examine, cross-examine, or make arguments during a hearing they need to remember;
 - a) DO NOT give the impression of being "invested" in the outcome of the hearing. It is important that the officer does not have a personal stake in the outcome of the hearing and potentially create bad case law. *Tew v. DMV*, 179 Or App 443 (2002).
 - b) The officer must advise the Administrative Law Judge.
 - c) The officer can only examine a witnesses if they testify.
4. Defense attorneys should not be able to exclude the officer from any part of the hearing.

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Officers' Reports

- Bring your report to the hearing
- Bring the report of any other officer involved in the stop, arrest or processing of the petitioner
- You may offer reports into evidence
- The petitioner can object to the report on relevancy and hearsay grounds; BUT,
- Hearsay (including reports) is admissible in DMV hearings
- If warrantless home entry involved, just the report is not enough. Make sure the officer that entered the home is present at the hearing.

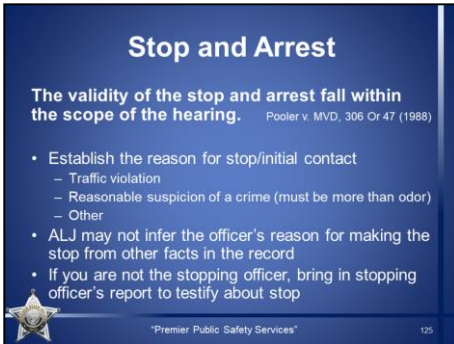


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Lesson Plan:

1. Admissibility of Hearsay:
2. Generally, these are cases where the stopping officer and arresting / reporting officer are not the same officer:
 - a) Cole/Dinsmore v. DMV, 366 Or 565 (2004). In an Implied Consent hearing, the agency can use a hearsay police report as evidence when the petitioning party fails to exercise his or her right to subpoena the officer. The court reached the same conclusion in Petteys v. DMV, 195 Or App 644 (2004) and Golliher v. DMV, 173 Or App 856 (2001).
3. If the reporting officer feels the need for other witnesses at the hearing, the officer needs to attach a list of those witnesses to the Implied Consent Form for DMV to subpoena.

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Lesson Plan:

1. Reason for Stop and Arrest / Validity of Stop and Arrest (continued):
2. Pooler v. MVD, 306 Or 47 (1988). The validity of the stop and arrest come within the scope of an Implied Consent proceeding when raised by the petitioner.
3. Pomeranke v. MVD (1995) Even if the stopping officer is not subpoenaed to the hearing, the subpoenaed officer should be able to articulate the reason for the stop, or have the stopping officer's report.
 - a) NOTE: If the case is a warrantless home entry, the entering officer must be present to testify if different from reporting officer.
4. If either the stop or the arrest are found to be invalid, the suspension will be disaffirmed.
5. Officers need to be prepared to articulate the reason for stop, the reason petitioner was believed to be intoxicated, and the objective facts that lead to the officer's belief that the petitioner was intoxicated. Although the scope of a hearing is meant to be kept narrow, this is an area where case law has dictated otherwise. This is necessary so that at hearing, evidence for the validity of the stop and arrest can be introduced into the record and so that the petitioner can exercise his/her right to challenge the validity of the stop and/or arrest.

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Field Sobriety Tests

If field sobriety tests were conducted and helped form the basis for the arrest:

- Establish that the tests were administered based on consent and/or probable cause and exigent circumstances.
- Consent alone is a sufficient basis to conduct FSTs
- If PC exists early on, articulate factors to establish PC
- If both were present, articulate both

The conditions and circumstances of the testing – review Session VIII of the SFST manual!



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Lesson Plan:

1. Articulation of Probable Cause:

- a) *Ezell v. DMV*, 171 Or App 591, rev. den. 332 Or 316 (2001). The court held that if illegally obtained evidence forms an "indispensable building block" of the officer's subjective belief, the probable cause is not valid. In *Ezell*, the officer administered field sobriety tests without valid consent and before he believed that he had probable cause to arrest for DUII.

2. This refers to the earlier discussion regarding the need for PC prior to requesting that a subject submit to a "search" when conducting a DUII investigation. Without PC, an officer cannot compel someone to perform SFSTs and must be prepared to discontinue the contact should the subject refuse to submit. If the subject is not free to leave, be prepared to articulate why (your Probable Cause).

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The ALJ Will Also Need:

Copy of ICRC Recording (if used)

Results of Blood and/or Urine Tests

- Available from LOIS

Copy of Intoxilyzer Certification

- Also available on LOIS
- Ask ALJ to leave hearing open to get this form if DMV does not send it to the administrative hearing office prior to DMV hearing (this should happen)



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Lesson Plan:

1. The ALJ will also need other information for the hearing.
2. Copy of a recorded ICRC, if used
3. Results of Blood and/or Urine tests
 - a) Available through LOIS
4. Copy of Intoxilyzer Certification
 - a) Also available through LOIS
 - b) Normally, DMV will have already sent the form to the hearing office, but sometimes it does not arrive for the hearing.
 - c) If DMV has not already sent this to the ALJ, the officer should ask the ALJ to leave the hearing open to get the form.

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Outside the Scope of the Hearing

Challenges to BAC result: Challenges to the accuracy of a breath test result are beyond the scope of an Implied Consent hearing. *Owens v. MVD*

Blood warrants: A blood sample obtained after a refusal is outside the scope of the hearing.

Witnesses: Officers may make a motion for defense witnesses to be excluded from room



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Lesson Plan:

1. Challenges to the breath test result:
 - a) *Owens v. MVD*, 319 Or 259 (1994): Challenges to the accuracy of a breath test result are generally considered beyond the scope of an Implied Consent hearing.
2. Blood Warrants
 - a) A blood sample obtained after a refusal is outside the scope of the hearing.
3. Witnesses
 - a) Officer may make a motion for defense witnesses to be excluded from the room

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Notice

Explain how you provided the person with written notice of the DMV's intent to suspend

- Did you personally hand it to the person
- Place it in the person's pocket OR
- Place it in a secured property bag with the person's other personal effects.

ORS 813.410(6)(f) and 813.100(3)(b)



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Lesson Plan:

1. Explain how you provided the person with written notice of the DMV's intent to suspend
 - a) Did you personally hand it to the person
 - b) Place it in the person's pocket OR
 - c) Place it in a secured property bag with the person's other personal effects.
 - d) ORS 813.410(6)(f) and 813.100(3)(b)

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DMV Hearings

- A DMV suspension does not necessarily lead to DUII conviction
- A decision not to suspend under Implied Consent does not necessarily lead to DUII acquittal.
- In a criminal trial you may be cross-examined using the transcript of the DMV hearing, but your prosecutor must get notice first.



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Lesson Plan:

1. A person could be suspended under Implied Consent, yet be acquitted on the criminal charge of DUII.
2. A person may have their suspension dismissed under Implied Consent, yet be convicted on the criminal charge of DUII.
3. Less than 0.08% BAC does not mean the criminal DUII charges should be dismissed. A blood alcohol concentration less than 0.08% BAC is indirect evidence that can, when combined with other evidence (documented case of impairment), be used to successfully prosecute a driver for DUII in a criminal case.
4. Officers may be cross-examined at a criminal trial using the transcript from the DMV hearing. If the defense will do this they must first give notice to the prosecutor.

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Lesson Plan:

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Review

What would you do if the subject gave the 1st breath sample but not the 2nd?

This may be a Refusal

- Read ICCR IB and ask for physical cooperation
 - If they subsequently provide a completed test, no refusal
 - If they do not provide a completed test, press the "Start Test" or the "R" button to indicate the refusal



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Lesson Plan:

1. What would the operator do if the subject provided the first breath sample but not the second?
 - a) This is a Refusal, the breath test consists of two samples. If the subject does not give both, they are refusing to take the test.
 - b) Press the "Start Test" or the "R" button

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Review

What has happened if the instrument displays "Improper Sample" and prints "Invalid Test – Improper Sample" on the report?

The subject has blown into the instrument at an improper time during the testing sequence.

How should it be corrected?

Refer to the "Suggested Corrective Action" statement



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Lesson Plan:

1. What has happened if the instrument displays "Improper Sample" and prints "Invalid Test – Improper Sample" on the report?
 - a) The subject has blown into the instrument at an improper time during the testing sequence.

2. How should it be corrected?
 - a) Refer to the "Suggested Corrective Action" statement.
 - Re-instruct the subject on how to provide a proper breath sample
 - Consider using a new mouthpiece.
 - Continue testing the subject until a proper sample is received or a refusal.
 - Record any observations in the comments section.

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Review

If the instrument displays "RFI Detected", what would the "Suggested Corrective Action" statement recommend doing?

Remove any Radio Frequency transmission source from the vicinity of the instrument or turn transmission source off and restart test (phone/radio).



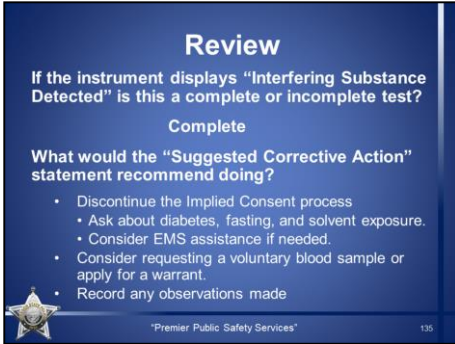
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Lesson Plan:

1. If the instrument displays "RFI Detected", what would the "Suggested Corrective Action" statement recommend doing?
 - a) Remove any Radio Frequency transmission source from the vicinity of the instrument and restart test (phone/radio).

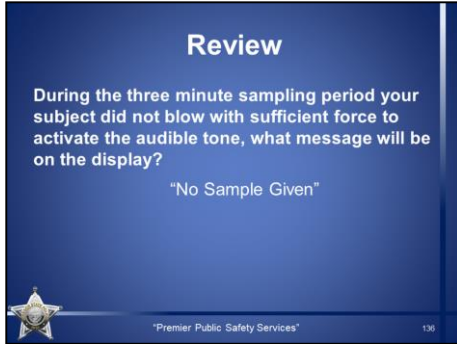
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Lesson Plan:

1. If the instrument displays "Interfering Substance Detected", is this a complete or incomplete test?
 - a) Complete
2. What would the "Suggested Corrective Action" statement recommend doing?
 - a) Discontinue the Implied Consent process and ask the subject about diabetes, fasting, and solvent exposure. If diabetic, consider EMS assistance.
 - b) Consider requesting a voluntary blood sample from the suspect or obtain a warrant.
 - c) Record any observation made.

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Lesson Plan:

1. During the three minute sampling period your subject did not blow with sufficient force to activate the audible tone. What message will be on the display?
 - a) "No Sample Given"
 - b) The operator should consider re-instructing the subject on how to provide a proper breath sample.
 - c) If the operator is continuing the testing process, restart the test.
 - d) Continue the test until the subject properly submits to or refuses the test.
 - e) Any observations made by the Operator during the testing sequence may be recorded in the comments section.

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Lesson Plan:

1. Quiz students on unusual situations involving Implied Consent suspensions.
2. What would you do if your suspect does not have a valid Oregon Driver's License?
 - a) Out of state Driver's License
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - b) Temporary Permit
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)

This is the only circumstance under which the D07 may wrongly indicate the subject is eligible for a temporary permit, depending on whether or not the information from the preceding DUII case has made it to DMV
 - c) Hardship
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - d) No Driver's License
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (No)
 - Seize subject's license? (No)
 - e) Learner's Permit
 - Implied Consent Combined Report? (Yes)
 - Temporary permit? (Yes)
 - Seize subject's learner's permit? (Yes)

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Final Examination and Practical Exercises

To receive credit for course, each student will need to score at least 80% on the final exam and complete the following:

- Jail Release Test
- Scanned Breath Test
- Manually entered Refusal
- Reprint of a Breath Test

Write name in upper right hand corner
Give all four items to your instructor



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Lesson Plan:

1. Final exam answer sheet
 - a) Students must print names clearly in block lettering and exactly as they would like to have it appear on their permit (i.e., Bill vs. William).
 - b) Students that do not have a DPSST # will need to contact Oregon State Police Implied Consent Unit immediately after getting a DPSST#.

Send information to:

Oregon State Police Portland Forensic Laboratory
Implied Consent Unit
13309 SE 84th Ave, Suite 200
Clackamas, Oregon 97015
971-673-8230

Contact Person is Fawnda VanRheen – Program Analyst for the OSP Implied Consent Unit
fawnda.vanrheen@state.or.us
971-673-8235
2. PIN# – Students need to pick a four digit PIN (Personal Identification Number) number that they will be able to remember. The PIN is necessary to authorize/initiate a breath test on the Intoxilyzer 8000.
 - a) Suggest that students choose an easy PIN to remember. If a PIN number is forgotten, the student will be unable to conduct a test.
3. Students will need a score of at least 80% to pass the class. (Correctly answer 20 out of 25 questions.)
4. Each student will also need to complete one of each of the following (4 total):
 - a) Jail release test
 - b) Breath test (using the scanner)
 - Students will use the operator's permit provide and their own driver's license
 - c) Breath test - Refusal (manually entering all information)
 - Student will need to use the keyboard to enter operator and subject information
 - d) Reprint one of the two breath tests they just ran (not the jail release test) F4
5. The students need to put their names on the top right hand corner and hand them in with their final exam.