IDAPA 11 – IDAHO STATE POLICE

Idaho State Police Forensic Laboratory

11.03.01 – Rules Governing Alcohol Testing

Who does this rule apply to?
Law enforcement agencies, prosecuting attorneys, and defense attorneys.

What is the purpose of this rule?
The rules relate to the governance and operation of the Alcohol Testing Program, and further provides for laboratory alcohol analysis, performing breath alcohol testing, and defines proper verification, proficiency, quality control, and recertification of those officers administering alcohol testing.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

Crimes and Punishment -
Motor Vehicles:
- Section 18-8002A, Idaho Code – Tests of Driver for Alcohol Concentration, Presence of Drugs or Other Intoxicating Substances
- Section 18-8004, Idaho Code – Persons Under the Influence of Alcohol, Drugs or Any Other Intoxicating Substances

Criminal Procedure -
The Idaho DNA Database Act of 1996:
- Section 19-5504, Idaho Code – Implementation Of The Chapter — Rules

State Government and State Affairs -
Idaho State Police:
- Section 67-2901, Idaho Code – Idaho State Police Created – Director – Divisions – Powers and Duties – Failure of Peace Officers to Obey Orders, Misdemeanor – Deputies – Compensation and Powers
- Section 67-2919, Idaho Code – Testing and Retention of Sexual Assault Evidence Kits

Who do I contact for more information on this rule?

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Monday through Friday, 8:00 a.m. to 5:00 p.m.
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IDAPA 11 – IDAHO STATE POLICE
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11.03.01 – RULES GOVERNING ALCOHOL TESTING

000. LEGAL AUTHORITY.
The Director of the Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol testing, pursuant to Section 67-2901, Idaho Code. (7-1-21)T

001. SCOPE.

01. Scope. The rules relate to the governance and operation of the Alcohol Testing Program. (7-1-21)T

002. INCORPORATION BY REFERENCE.
The following are incorporated by reference in this chapter of rules: (7-1-21)T

01. Conforming Products List of Evidential Breath Measurement Devices (revised 11/2/2017). This document is available on the Internet at https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf. (7-1-21)T

003. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. (7-1-21)T

02. Approved Vendor. A source/provider/manufacturer of an approved standard. (7-1-21)T

03. Blood Alcohol Analysis. An analysis of blood to determine the concentration of alcohol present. (7-1-21)T

04. Breath Alcohol Analysis. An analysis of breath to determine the concentration of alcohol present. (7-1-21)T

05. Breath Alcohol Test. A breath sample or series of separate breath samples provided during a breath testing sequence(s). (7-1-21)T

06. Breath Alcohol Testing Sequence. A sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. (7-1-21)T

07. Breath Testing Specialist (BTS). An operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. (7-1-21)T

08. Calibration. A set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. (7-1-21)T

09. Certificate of Analysis. A certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005, 17025:2017, (or equivalent standard) vendor and are traceable to N.I.S.T. standards. (7-1-21)T

10. Certificate of Instrument Calibration. A certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. (7-1-21)T

11. Department. The Idaho State Police. (7-1-21)T

12. Deprivation Period. A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject/individual is not to be allowed to smoke, drink, or eat substances containing alcohol. (7-1-21)T

13. Evidentiary Test. A blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/ monitoring. (7-1-21)T

14. Idaho State Police Forensic Services (ISPFS). A division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the alcohol testing programs in Idaho. (7-1-21)T

15. Laboratory. The place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, urine, or beverages for law enforcement purposes. (7-1-21)T

16. MIP/MIC. An abbreviation used to designate minor in possession or minor in consumption of alcohol. (7-1-21)T

17. Monitoring Period. A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing. The monitoring period consists of a mandatory deprivation period and discretionary observation period. The observation period becomes mandatory if the numeric results from only a single breath sample are used. (7-1-21)T

18. Observation Period. The time period running concurrently with the deprivation period in which the officer(s) should be observing the subject/individual, and any belch/burp/vomit/regurgitation should be noted by the operator(s). The officer(s) should be in a position, either physically or remotely, to be able to use their available senses to detect the aforementioned events. (7-1-21)T

19. Operator Certification. The condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. (7-1-21)T

20. Operator. An individual certified by the department as qualified by training to administer breath alcohol tests. (7-1-21)T

21. Performance Verification. A verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as "calibration check" or "simulator check." (7-1-21)T

22. Performance Verification Standard. An ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (7-1-21)T

23. Proficiency Testing. A periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. (7-1-21)T

24. Quality Control. An analysis of referenced samples whose alcohol content is known, which is performed with each batch of blood, vitreous humor, urine or beverage analysis to ensure that the laboratory's determination of alcohol concentration is reproducible and accurate. (7-1-21)T

25. Urine Alcohol Analysis. An analysis of urine to determine the concentration of alcohol present. (7-1-21)T

011. – 012. (RESERVED)

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol, vitreous humor, blood alcohol, or beverage analysis shall meet the following standards: (7-1-21)T

a. Prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing. A copy of the procedure shall be provided to ISPFS for initial approval. Whenever procedure, protocol, or method changes (however named) are adopted by a laboratory, a copy of the update with the changes clearly indicated shall be approved by ISPFS before implementation; (7-1-21)T

b. Provide adequate facilities and space for the procedure used. The laboratory alcohol related functions shall be subject to an assessment by either an accrediting body or the department each calendar year, and the results from the annual audit shall be submitted to the department. The assessment shall be at the expense of the laboratory; (7-1-21)T

c. Maintain specimens in a limited access and secure storage area prior to analysis. A chain of custody shall be maintained while the evidence is in the laboratory; (7-1-21)T

d. All instrumentation, equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises. Instrument maintenance documentation shall be available for review by the department; (7-1-21)T

e. Participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Laboratories must participate in proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Traffic Safety Administration (NHTSA) and Collaborative Testing Services (CTS). Each test consists of at least four (4) blood samples spiked with an unknown concentration of ethyl alcohol, and possibly other volatiles, for qualitative determination. Participating laboratories must obtain proficiency tests from approved providers and are responsible for all costs associated with obtaining and analyzing such tests. Results from proficiency tests must be submitted by the due date to the test provider and ISPFS. Results not submitted to a test provider within the allowed time do not qualify as a proficiency test. An alcohol concentration range is determined from the target value and ±3.0 standard deviations as provided by the proficiency test provider. Reported values must fall within this range. If a laboratory determines more than one (1) alcohol value for a given sample, the mean value of results will be submitted and evaluated. Upon satisfactory completion of an approved proficiency test, a certificate of approval will be issued by the department to the participating laboratory. Approval to perform legal blood alcohol determinations is continued until the results of the next proficiency test are reviewed and notification is sent to the respective laboratory by ISPFS. Failure to pass a proficiency test shall result in immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as unsuccessful when the mean results are outside the tolerance range established from the accepted mean values. The laboratory shall have thirty (30) calendar days to respond to the department inquiry. The department shall notify the laboratory within fourteen (14) calendar days regarding corrective action steps necessary to lift the testing suspension, or the department may issue a written revocation. The department shall not lift a proficiency testing related suspension or revocation until a successful proficiency test has been completed by the individual analyst or laboratory. (7-1-21)T

f. For a laboratory performing blood, urine, vitreous humor, or beverage analysis for alcohol, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst. The department may temporarily suspend or permanently revoke the approval of a laboratory or analyst if the listed requirements are not met. The department will issue the suspension or revocation in writing to the laboratory director or primary analyst responsible; (7-1-21)T

g. Reinstatement after revocation requires completed corrective action of any items listed on the revocation documentation issued by the department. Documentation of corrective actions taken to address the nonconformities shall be submitted to the department for review. Once the department is satisfied that the laboratory is in compliance with all requirements, the department will issue written approval for the resumption of testing by

that laboratory or analyst. A laboratory may appeal a suspension or revocation to the Director of the department. (7-1-21)T

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-21)T

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-21)T

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-21)T

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (7-1-21)T

03. Blood Reported. The results of analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (7-1-21)T

04. Urine Collection. Urine samples shall be collected in clean, dry containers. (7-1-21)T

05. Urine Reported. The results of analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. (7-1-21)T

06. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-21)T

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and be listed in the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 002 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. (7-1-21)T

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-21)T

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFS analytical methods, and ISPFS standard operating procedures. (7-1-21)T

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (7-1-21)T

b. Prior to administering the monitoring period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard (e.g. gum, chewing tobacco, food) should be removed. (7-1-21)T

c. The operator shall administer a monitoring period prior to evidentiary testing. (7-1-21)T

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator shall begin another fifteen (15) minute monitoring period if repeating the testing sequence. If during the monitoring period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the monitoring period should start over. If there is doubt as to the events occurring during the monitoring period (e.g. silent burp, belch,

vomit, regurgitation), the operator should evaluate the instrument results for any indication of mouth alcohol. (7-1-21)T

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide two (2) adequate samples as requested by the operator, the test result of a single adequate sample shall be considered valid. If a single test result is used, then the observation criteria of the monitoring period (observation period) is mandatory. For hygienic reasons, the operator should use a new mouthpiece for each subject/individual tested. (7-1-21)T

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide adequate samples as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples was the fault of the subject/individual and not the operator. (7-1-21)T

g. A third breath sample shall, when possible, be collected if the first two (2) results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining a third breath sample. (7-1-21)T

h. The results for breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. (7-1-21)T

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (7-1-21)T

04. Training. Each individual operator (BTO or BTS) shall demonstrate sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. (7-1-21)T

05. Performance Verification Checks. Each breath testing instrument shall be checked for accuracy with a performance verification standard approved by the department. Performance verification checks shall be performed according to a procedure established by the department and be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. (7-1-21)T

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification. (7-1-21)T

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. (7-1-21)T

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. (7-1-21)T

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (7-1-21)T

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (7-1-21)T

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (7-1-21)T

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (7-1-21)T

h. Performance verification standards should not be used beyond the expiration date. (7-1-21)T

i. If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (7-1-21)T

j. Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. (7-1-21)T

k. An agency may run additional performance verification standard levels at their discretion. (7-1-21)T

06. Records. Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible for storage of documentation not generated by ISPFS. (7-1-21)T

07. Deficiencies. Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (7-1-21)T

08. Standards. Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (7-1-21)T

09. MIP/MIC. The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. (7-1-21)T

a. Fifteen (15) minute monitoring period: The monitoring period is not required for the MIP/MIC procedure. (7-1-21)T

b. The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (7-1-21)T

c. The instrument used must be certified by ISPFS. The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. (7-1-21)T

d. The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. (7-1-21)T

e. A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. (7-1-21)T

f. A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute monitoring period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering a monitoring period. (7-1-21)T

g. The operator should manually log test results and/or retain printouts for possible use in court. (7-1-21)T

h. The instrument must not be in passive mode for the testing of subjects for evidential purposes. (7-1-21)T

i. The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (7-1-21)T

015. -- 999. (RESERVED)

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