

## **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?**

Idaho State Police

Forensic Services

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# IDAPA 11 – IDAHO STATE POLICE STATE FORENSIC LABORATORY

## 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. (3-23-22)

### 001. SCOPE.

The rules relate to the governance and operation of the Alcohol Testing Program. (3-23-22)

### 002. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules: (3-23-22)

#### 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>. (3-23-22)

### 003. – 009. (RESERVED)

### 010. DEFINITIONS AND ABBREVIATIONS.

01. **Alcohol.** The chemical compounds of ethyl alcohol, methyl alcohol, or isopropyl alcohol. (3-23-22)

02. **Alcohol Analysis.** An analysis of breath, blood, or urine to determine the concentration of alcohol present. (7-1-25)

03. **Breath Alcohol Test.** A breath sample or series of separate breath samples provided during a breath testing sequence(s). (3-23-22)

04. **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. (3-23-22)

05. **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. (3-23-22)

06. **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. (3-23-22)

07. **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. (3-23-22)

08. **Department.** The Idaho State Police. (3-23-22)

09. **Deprivation Period.** A minimum time period of fifteen (15) minutes immediately prior to evidentiary breath alcohol testing during which the subject is not to be allowed to smoke, drink, or eat substances containing alcohol. (7-1-25)

10. **Evidentiary Test.** A blood, breath, or urine test performed on a subject for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. (7-1-25)

11. **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. ISPFPS is the administrative body for the alcohol testing programs in Idaho. (3-23-22)

**12. 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. (3-23-22)

**13. 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. (3-23-22)

**14. Observation Period.** The time period running concurrently with the deprivation period in which the officer(s) should be observing the subject, 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 detect the aforementioned events. (7-1-25)

**15. Operator Certification.** Training requirements for administering breath alcohol tests as established by the department. (7-1-25)

**16. Operator.** An individual certified by the department as qualified after completion of Breath Test Operator or Breath Test Specialist training to administer breath alcohol tests. (7-1-25)

**17. Performance Verification.** Accuracy check of the breath testing instrument utilizing a performance verification standard, reported to three (3) decimal places. Synonymous with terms “calibration check” or “simulator check.” (7-1-25)

**18. Performance Verification Standard.** An ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (3-23-22)

**19. Proficiency Testing.** A periodic analysis to evaluate the capability of a laboratory to perform accurate analysis for alcohol concentration. (7-1-25)

**20. Quality Control.** An analysis of reference samples whose content is known to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (7-1-25)

**21. 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. (7-1-25)

**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: (3-23-22)

**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 ISPFPS 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 ISPFPS before implementation; (3-23-22)

**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; (3-23-22)

**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; (3-23-22)

**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; (3-23-22)

**e.** Participate in approved proficiency testing according to standards set by the department. Laboratories must pass 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 are responsible for all costs associated with 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  $\pm 3.0$  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 established tolerance range. 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. (7-1-25)

**f.** Laboratory approval is awarded to the laboratory manager or analyst responsible for correct test performance. The department may suspend or revoke if requirements are not met. The department will issue the suspension or revocation in writing to the laboratory; (7-1-25)

**02. Appeal.** 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. (7-1-25)

**03. Blood Collection.** Blood collection shall be accomplished according to the following requirements: (3-23-22)

**04. Blood Samples.** Shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-25)

**a.** The puncture area shall be disinfected with an aqueous nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-25)

**b.** Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter plus an anticoagulant. (7-1-25)

**05. Blood Reported.** Results of analysis for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (7-1-25)

**06. Urine Collection.** Urine samples shall be collected in clean, dry containers. (3-23-22)

**07. Urine Reported.** Results for alcohol concentration shall be reported in grams of alcohol per sixty-

seven (67) milliliters, with a warning about the questionable value of urine alcohol results. (7-1-25)

**08. Records.** All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (3-23-22)

**014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.**

**01. Instruments.** Instrument models incorporated by reference in Section.02.01 of this rule shall be approved by the department. Each breath testing instrument must be certified by the department. The department may revoke instrument approval for cause. (7-1-25)

**02. Report.** Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (3-23-22)

**03. Administration.** Breath tests must be administered by a certified operator and follow department standards. 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. (7-1-25)

**a.** 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. (3-23-22)

**b.** The operator shall administer a monitoring period prior to evidentiary testing. (3-23-22)

**c.** If mouth alcohol is suspected or indicated by the testing instrument, the operator shall restart 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, the operator should evaluate the instrument results for any indication of mouth alcohol. (7-1-25)

**d.** A complete breath alcohol test includes two (2) valid breath samples, preceded by air blanks, taken at least two (2) minutes apart. If the subject fails or refuses to provide two (2) adequate samples as requested by the operator, a single sample result shall be considered a valid test only if the observation period has been met. For hygienic reasons, the operator should use a new mouthpiece for each subject tested. (7-1-25)

**e.** Operators may end testing, repeat testing, or request a blood draw as needed. If a subject fails or refuses to provide adequate samples as requested by the operator, the results obtained are considered valid, provided the failure to supply the samples was the fault of the subject and not the operator. (7-1-25)

**f.** Additional breath samples shall, when possible, be collected if the results differ by more than zero point zero two (0.02) g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the monitoring period prior to obtaining additional breath samples. (7-1-25)

**g.** The breath sample results should correlate within zero point zero two (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 breath pathway as a contributing factor to the breath results. (7-1-25)

**h.** In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (3-23-22)

**04. Training.** Each operator shall successfully complete a training course approved by the department on each instrument model used. Operator certifications are valid for two (2) years from the course completion date. The department may revoke certification for cause. (7-1-25)

**05. Performance Verification Checks.** Each instrument shall be checked for accuracy with an approved performance verification standard. Performance verification checks shall be performed and documented according to a procedure established by the department. 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. (7-1-25)

**a.** A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. For portable instruments, multiple breath alcohol tests may be covered by a single performance verification. (7-1-25)

**b.** A performance verification on a portable instrument consists of two (2) samples at either the zero point zero eight (0.08) or zero point two zero (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 verifications fail, the instrument shall be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. (7-1-25)

**c.** A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the zero point zero eight (0.08) or zero point two zero (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 zero point zero eight (0.08) or zero point two zero (0.20) level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the verifications fail, the instrument must be taken out of service and not be returned to service until it has been calibrated and certified by ISPFS. (7-1-25)

**d.** Performance verification checks must be within +/- 10% of the standard's target value. (7-1-25)

**e.** A wet bath zero point zero eight (0.08) standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. Closed loop, recirculating system should replace standards approximately every one hundred (100) verifications or every calendar month, whichever comes first. (7-1-25)

**f.** Wet bath zero point two zero (0.20) standards should be replaced with fresh standard approximately every twenty-five (25) verifications. (7-1-25)

**g.** Dry gas standards may be used continuously until spent or expired. (7-1-25)

**h.** Standards should not be used beyond the expiration date. (7-1-25)

**i.** If Section 18-8004C, Idaho Code, is applicable, a zero point two zero (0.20) performance verification must be run and documented once per calendar month. Failure to perform this will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A zero point two zero (0.20) performance verification does not need to be performed within twenty-four (24) hours of a breath test in excess of zero point two zero (0.20) g/210L alcohol. (7-1-25)

**j.** Wet bath simulator temperature shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) for valid results. (7-1-25)

**k.** An agency may run additional performance verification levels at their discretion. (7-1-25)

**06. Records.** Operators must document and retain test results (i.e. written log, printout, or electronic database), and maintenance records for three (3) years. ISPFS is not responsible for storing non-ISPFS documentation. (7-1-25)

**07. Deficiencies.** Failure to meet conditions in Sections 013 and 014 may lead to disapproval of any laboratory or breath testing instrument until corrected. (7-1-25)

**08. Standards.** An approved standard shall be from a source, provider, or manufacturer of an approved standard and explicitly approved by the department. Standards from ISO 17034 (or equivalent) certified providers are approved without department evaluation. (7-1-25)

**09. Minor in Possession or Minor in Consumption (MIP/MIC).** Presence or absence of alcohol

determines the evidence in MIP/MIC cases. 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. The administration of a MIP/MIC breath test should follow Subsection 014.03 with the following exceptions: (7-1-25)

- a. A fifteen (15) minute monitoring period is required before retesting if mouth alcohol is suspected. (7-1-25)
- b. The instrument used must be initially certified by ISPFS. The instrument does not need to be checked regularly or periodically with any of the zero point zero eight (0.08) or zero point two zero (0.20) standard. (7-1-25)
- c. 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. (7-1-25)
- d. A complete breath alcohol test includes two (2) valid breath samples preceded by an air blank taken at least two (2) minutes apart. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. (7-1-25)
- e. The operator should document results and/or retain printouts for possible use in court. (7-1-25)
- f. The instrument must not be in passive mode for an evidentiary subject but should only be used for testing liquids for the presence of alcohol. (7-1-25)
- g. The passive mode should be used for testing liquids for the presence or absence of alcohol. (7-1-25)

**015. – 999. (RESERVED)**