



Terri Kondeff
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators LAKEY, Ricks, Burgoyne and,
Representatives CHANEY, Hartgen, Gannon

FROM: Ryan Bush - Principal Legislative Drafting Attorney

DATE: August 03, 2021

SUBJECT: Temporary Rule

IDAPA 11.00.00 - Notice of Omnibus Rulemaking - Adoption of Temporary Rule \ Rescission of
Previous Temporary Rule - Docket No. 11-0000-2100

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Ryan Bush at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 11 – IDAHO STATE POLICE

DOCKET NO. 11-0000-2100

NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF TEMPORARY RULE \ RESCISSION OF PREVIOUS TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rules being adopted through this omnibus rulemaking as listed in the descriptive summary of this notice is July 1, 2021. The rescission of previous temporary rule under docket 11-0801-2002 is effective July 1, 2021.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules and rescinded a previous temporary rule. The action is authorized pursuant to Sections (Forensics) 67-2901, 18-8002A, 18-8004, 19-5504, 67-2919, (Forfeitures) 67-2901, 37-2744, (Motor Vehicles) 67-2901, 49-901, (Sex Offender Registry) 18-8304, 18-8305, (Commercial Vehicle Safety) 67-2901A, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting temporary rules and rescinding a previous temporary rule:

This temporary rulemaking adopts and republishes the following existing rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 11, rules of the Idaho State Police:

IDAPA 11

- 11.03.01, *Rules Governing Alcohol Testing*;
- 11.06.01, *Rules Governing Civil Asset Forfeiture Reporting*;
- 11.07.01, *Rules Governing Motor Vehicles – General Rules*;
- 11.07.02, *Rules Governing Safety Glazing Material*;
- 11.07.03, *Rules Governing Emergency Vehicles/Authorized Emergency Vehicles*;
- 11.10.03, *Rules Governing the Sex Offender Registry*; and
- 11.13.01, *The Motor Carrier Rules*.

Rescission of previous temporary rule aligns these chapters wholly with the administrative code effective 7-1-21.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), (b), and (c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules and rescission of temporary rule, contact:

- 11.03.01 Forensics–Lab Director Matthew Gamette, phone 208-884-7217, fax 208-884-7290, email matthew.gamette@isp.idaho.gov
- 11.06.01 Forfeitures–Captain John Ganskey, phone 208-884-7207, fax 208-884-7290, email john.ganskey@isp.idaho.gov
- 11.07.01, 11.07.02, 11.07.03 Motor Vehicles–Major Russell Wheatley, phone 208-884-7202, fax 208-884-7290, email russ.wheatley@isp.idaho.gov
- 11.10.03 Sex Offender Registry–Bureau Chief Leila McNeill, phone 208-884-7136, fax 208-884-7193, email leila.mcneill@isp.idaho.gov
- 11.13.01 Commercial Vehicle Safety–Captain Shawn Staley, phone 208-884-7222, fax 208-884-7192, email shawn.staley@isp.idaho.gov

DATED this 1st day of July, 2021.

Lt. Colonel Bill Gardiner
Chief of Staff
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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. (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 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; (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 ISPFPS. 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 ISPFPS. 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. ISPFPS is not responsible for storage of documentation not generated by ISPFPS. (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 ISPFPS. The instrument only needs to be initially certified by ISPFPS. 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)

11.06.01 – RULES GOVERNING CIVIL ASSET FORFEITURE REPORTING

000. LEGAL AUTHORITY.

01. In accordance with Section 37-2744 (Chapter 27, Article V), Idaho Code, the Idaho State Police is authorized to promulgate such rules and forms it deems necessary to carry out the provisions and mandate of said Section 37-2744, Idaho Code. (7-1-21)T

001. SCOPE.

These rules concern the civil asset forfeiture reporting form that the Idaho State Police is charged with promulgating pursuant to Section 37-2744, Idaho Code. (7-1-21)T

002. INCORPORATION BY REFERENCE.

The following is incorporated by reference in this chapter of rules: (7-1-21)T

01. Idaho Civil Asset Forfeiture Reporting Form. As adopted February 7, 2019, this document is available on the Internet at <https://www.isp.idaho.gov>. (7-1-21)T

003. – 009. (RESERVED)

010. DEFINITIONS.

01. Civil Asset Forfeiture Reporting Form. A form promulgated by and available from the Idaho State Police, to be used by each state and local law enforcement agency. (7-1-21)T

011. CONTENTS OF CIVIL ASSET FORFEITURE REPORTING FORM.

01. Asset Forfeiture Reporting Form. The Asset Forfeiture Reporting Form shall contain fields for entry of the following information: (7-1-21)T

- a.** The name of the law enforcement agency that seized the property; (7-1-21)T
- b.** The date of seizure; (7-1-21)T
- c.** The type and description of property seized, including make, model, year, and serial number, if applicable; (7-1-21)T
- d.** The crime(s), if any, for which the suspect has been charged, including whether such crime is a violation of state or federal law; (7-1-21)T
- e.** The criminal case number, if any, and the outcome, if any, of the suspect's case; (7-1-21)T
- f.** If the forfeiture was not processed under state law, the reason for the federal transfer, if known; (7-1-21)T
- g.** The forfeiture case number; (7-1-21)T
- h.** The date of the forfeiture decision; (7-1-21)T
- i.** Whether there was a forfeiture settlement; (7-1-21)T
- j.** The date and outcome of property disposition as described by one (1) or more of the following: returned to owner; partially returned to owner; sold; destroyed; or retained by law enforcement; and (7-1-21)T
- k.** The value of the property forfeited based on the value realized, if sold, or a reasonable good faith estimate of the value, if possible. (7-1-21)T

012. – 999. (RESERVED)

11.07.01 – RULES GOVERNING MOTOR VEHICLES – GENERAL RULES

000. LEGAL AUTHORITY.

These rules adopting national safety codes and standards are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67- 2901 and 49-901, Idaho Code. (7-1-21)T

001. SCOPE.

All owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with these rules to the extent the rules are applicable. (7-1-21)T

002. DEFINITIONS.

The definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. (7-1-21)T

003. INCORPORATED BY REFERENCE.

Rules 20, 30, and 40 incorporate by reference various state and national safety codes and federal regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the Headquarters Office of the Idaho State Police, listed in Rule 004. The following codes and standards are incorporated: (7-1-21)T

01. Society of Automotive Engineers (SAE). The SAE Ground Vehicle Lighting Standards Manual, 2009 edition, and SAE standards J586, J588, and J639 are published by the Society of Automotive Engineers and are available from SAE World Headquarters, 400 Commonwealth Drive, Warrendale, PA 15096-0001 and may be ordered by calling 1-877-606-7323 or on the worldwide web at <http://store.sae.org/>. (7-1-21)T

02. Idaho State Department of Education, Standards for Idaho School Buses and Operations Manual. The Standards for Idaho School Buses and Operations Manual, effective July 1, 2018, is published by the Idaho Department of Education, 650 West State Street, P.O. Box 83720, Boise, ID 83720-0027 and may be ordered by calling 1-208-332-6800 or downloaded from the worldwide web at <http://www.sde.idaho.gov/student-transportation/files/forms-lists/regulations/SISBO-Manual-2018.pdf>. (7-1-21)T

03. Federal Regulations – 49 C.F.R. Parts 392, 393, and 571 (June 3, 2019). These regulations are found in the Code of Federal Regulations, available from the U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 37954, Pittsburgh, PA 15250-7954. The incorporated parts are also available on the worldwide web at <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>. (7-1-21)T

004. -- 019. (RESERVED)

020. SOCIETY OF AUTOMOTIVE ENGINEERS (SAE).

In accordance with the SAE Ground Vehicle Lighting Standards Manual, and SAE standards J586, J588, and J639, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable provisions incorporated by reference in Subsection 008.01. (7-1-21)T

01. Standards and Specifications for Lighting Devices. Pursuant to Section 49-901(1), Idaho Code, the standards and specifications set forth by the Society of American Engineers in the SAE Ground Vehicle Lighting Standards Manual, as incorporated by reference in Subsection 008.01. (7-1-21)T

02. Standards for Rear Mounted Acceleration and Deceleration Lighting Systems (Use Optional). The current standards found in “Supplemental High Mounted Stop and Rear Turn Signal Lamps for Use on Vehicles Less Than 2032 MM Overall Width -- SAE J586 and J588,” is found in Section 49-921, Idaho Code, as incorporated by reference in Subsection 008.01. (7-1-21)T

03. Safety Practices and Standards for Automotive Air Conditioning Devices, Standards and Specifications. Pursuant to Section 49-901(7), Idaho Code, the current standards set forth in “Safety Practices For Mechanical Vapor Compression Refrigeration Equipment of Systems Used to Cool Passenger Compartment of Motor Vehicles -- SAE J639,” as incorporated by reference in Subsection 008.01. (7-1-21)T

021. -- 029. (RESERVED)

030. IDAHO STATE DEPARTMENT OF EDUCATION, STANDARDS FOR IDAHO SCHOOL BUSES AND OPERATIONS MANUAL.

In accordance with the “Standards for Idaho School Buses and Operations” manual, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply

with the applicable standards incorporated by reference in Subsection 006.02. (7-1-21)T

01. General Rules. Pursuant to Section 49-901(8), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 006.02. (7-1-21)T

02. Lighting Equipment. Pursuant to Section 49-901(2), Idaho Code, the standards found in the “Standards for Idaho School Buses and Operations” manual approved by the Idaho State Department of Education incorporated by reference in Subsection 006.02. (7-1-21)T

031. -- 039. (RESERVED)

040. FEDERAL REGULATIONS - 49 C.F.R. PARTS 392, 393, AND 571.

In accordance with Title 49 of the Code of Federal Regulations, Parts 392, 393, and 571, all owners and operators of motor vehicles that operate on the highways under the jurisdiction of the Idaho State Police are required to comply with the applicable Parts found in Title 49 of the Code of Federal Regulations. (7-1-21)T

01. Certain Vehicles Required to Stop at All Railroad Crossings. Pursuant to Section 49-648, Idaho Code, the Director hereby incorporates by reference the requirements found in Title 49 (49 C.F.R.) of the Code of Federal Regulations (Federal Motor Carrier Safety Regulations) Part 392, Subpart B, Section 392.10, as if set forth herein in full. (7-1-21)T

02. Devices With Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to Requirements for fusees and liquid burning flares found in 49 C.F.R., Part 393, Subpart H, Section 393.95. Warning devices with self-contained energy sources permissible, under this chapter are limited to liquid burning emergency flares, and fusees. (7-1-21)T

03. Modulating Headlights for Motorcycles. Pursuant to Section 49-925, 49-901(3), 49-901(4), Idaho Code, the Director hereby approves modulating headlights for use on motorcycles. Such headlights shall conform to the standards and specifications with regard to modulating headlights found in 49 C.F.R. Section 571.108, Standard 108, S7.9.4, which is hereby adopted by reference as if set forth herein in full. (7-1-21)T

04. Standards for Safety Helmets. Pursuant to Section 49-666, Idaho Code, the Director hereby incorporates by reference the standards found in 49 C.F.R. Section 571.218, Standard No. 218, as if set forth herein in full. (7-1-21)T

05. Standards for Devices Without Self Contained Energy Sources. Pursuant to Section 49-952, Idaho Code, the Director hereby incorporates by reference the standards and specifications with regard to reflex reflective and fluorescent material warning devices found in 49 C.F.R. Section 571.125, Standard 125, as if set forth herein in full. (7-1-21)T

041. -- 999. (RESERVED)

11.07.02 – RULES GOVERNING SAFETY GLAZING MATERIAL

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901(4), Idaho Code. (7-1-21)T

001. SCOPE.

The rules apply to safety glazing material on motor vehicles under the jurisdiction of the Idaho State Police. (7-1-21)T

002. INCORPORATION BY REFERENCE.

01. Incorporated Document. Pursuant to Section 49-901, Idaho Code, the director hereby adopts by reference the standards and specifications set forth in 49 C.F.R. Sections 571.1 through 571.500, revised as of June 3, 2019. (7-1-21)T

02. Availability of Reference Material. The federal regulations adopted by reference in these rules are maintained at the following locations: (7-1-21)T

a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174; and (7-1-21)T

b. Idaho State Police, 700 S. Stratford Drive, Meridian, Idaho 83642. (7-1-21)T

003. -- 009. (RESERVED)

010. DEFINITIONS.

01. Light Transmission. The ratio of the amount of total light, expressed in percentages, that is allowed to pass through the product or material to the amount of total light falling on the product or material and the glazing. (7-1-21)T

02. Luminous Reflectance. The ratio of the amount of total light, expressed in percentages, that reflected outward by the product or material to the amount of total light falling on the product or material. (7-1-21)T

03. Own or Owning. Having the property in or title to a motor vehicle. These terms include persons, other than lienholders, who are entitled to the use and possession of a vehicle subject to a security interest in another person, but excludes a lessee under a lease not intended as security. (7-1-21)T

04. Person. Every natural person, firm, fiduciary, co-partnership, association, corporation, trustee, receiver or assignee for the benefit of creditors, political subdivision, state or federal governmental department, agency, or instrumentality. (7-1-21)T

05. Window Tinting Films or Sunscreening Devices. Designed to be used in conjunction with approved vehicle glazing materials for the purpose of reducing the effects of the sun. (7-1-21)T

011. STANDARDS FOR SAFETY GLAZING MATERIAL.

01. General. It is unlawful for any person to place, install, affix or apply any window tinting film or sunscreening device to the windows of any motor vehicle, except as follows: (7-1-21)T

a. Non-reflective window tinting film or sunscreening devices shall not be applied to the windshield below the AS-1 line; if no AS-1 line is identifiable on the windshield, non-reflective window tinting film or sunscreening devices shall not be applied to the windshield below a line extending six (6) inches below and parallel to the roof line; (7-1-21)T

b. Non-reflective window tinting film or sunscreening devices that have a light transmission of not less than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the front side vents, front side windows to the immediate right and left of the driver, and the rear window; (7-1-21)T

c. Non-reflective window tinting film or sunscreening devices that have a light transmission of not

less than twenty percent (20%) with a tolerance limit of plus or minus three percent (3%) and a luminous reflectance of no more than thirty-five percent (35%) with a tolerance limit of plus or minus three percent (3%) may be applied to the side windows to the rear of the driver. (7-1-21)T

02. Restriction. No person may operate on the public highways, sell or offer to sell any motor vehicle with a windshield or windows which are not in compliance with the provisions of this rule and the standards of Section 40-944, Idaho Code. (7-1-21)T

03. Limitation. Nothing in this section may be construed to make illegal the operation or sale of any motor vehicle, the windshield or windows of which are composed of, covered by, or treated with, any material, substance, system, or component with which such motor vehicle was sold when new or could have been equipped for sale when new as standard or optional equipment under any United States government statute or regulation governing such sale at the time of manufacture. (7-1-21)T

012. -- 999. (RESERVED)

11.07.03 – RULES GOVERNING EMERGENCY VEHICLES/AUTHORIZED EMERGENCY VEHICLES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901(4), Idaho Code. (7-1-21)T

001. SCOPE.

The rules apply to emergency vehicles/authorized emergency vehicles under the jurisdiction of the Idaho State Police. (7-1-21)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

Unless specifically defined in this chapter, the definitions in Title 49, Chapter 1, Idaho Code apply to this chapter. (7-1-21)T

01. Limited Authorized Vehicle. A vehicle to which a limited authorization is issued by the Director for limited emergency uses as defined by the Director upon agreement with an applicant under terms specified therein. (7-1-21)T

02. Driver. Every person who is in actual physical control of an authorized emergency vehicle. (7-1-21)T

011. PURPOSE.

01. General. The purpose of this chapter is to specify a procedure to be followed to obtain approval for authorized emergency vehicles. Pursuant to Section 49-218, Idaho Code, the Director may designate any particular vehicle as an authorized emergency vehicle upon a finding that designation of that vehicle is necessary to the preservation of life or property or to the execution of an emergency governmental function. (7-1-21)T

02. Emergency Vehicles. This chapter will not pertain to emergency vehicles as defined by Section 49-123, Idaho Code, i.e., vehicles operated by any fire department or law enforcement agency of the state of Idaho or political subdivision thereof, and ambulances of any public utility or public service corporation. (7-1-21)T

012. AUTHORIZATION REQUIREMENTS.

01. General. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as an authorized emergency vehicle, pursuant to Section 49-218, Idaho Code, must apply for authorization to the Director on forms provided by the department and: (7-1-21)T

- a.** Provide a description of: (7-1-21)T
 - i.** The specific geographic area in which the vehicle will be used as an authorized emergency vehicle. (7-1-21)T
 - ii.** The specific purposes for which the vehicle will be used as an emergency vehicle. (7-1-21)T
 - iii.** The emergency vehicle listing year, make, model, vehicle identification number and license plate number. (7-1-21)T
 - iv.** The emergency lighting equipment to be used on the emergency vehicle. (7-1-21)T
 - v.** The emergency horns or warning devices to be used on the emergency vehicle. (7-1-21)T
- b.** Provide written documentation indicating the emergency vehicle will have radio communications between a central dispatch location and, when applicable, between other emergency vehicles. (7-1-21)T
- c.** Maintain a certificate of liability and property damage insurance executed by an insurer authorized to transact insurance business with the state and have a copy on file in the Director's office and update it upon each renewal period, with notice of renewal being filed with the Director. The certificate must show expiration date, liability (single event and aggregate) and property damage coverage. (7-1-21)T
- d.** Provide an explanation of the nature and the scope of the duties, responsibilities and the authority

of the vehicle driver which necessitates the vehicle's registration as an authorized emergency vehicle. (7-1-21)T

e. Provide a list of the names, addresses, birthdates, social security numbers of all persons who use the vehicle as an authorized emergency vehicle. (7-1-21)T

f. Provide written documentation as to the emergency vehicle driving courses and hours of instruction completed by each driver. (7-1-21)T

g. Provide a recommendation by the chief law enforcement officer or fire chief, if the vehicle is to be used for firefighting purposes, of each jurisdiction in which the vehicle is to be used as an authorized emergency vehicle stating that a need exists in such jurisdiction for the vehicle to be used as described in the application. The Director may issue emergency vehicle authorization to vehicles which operate throughout the state. (7-1-21)T

013. LIMITED AUTHORIZED EMERGENCY VEHICLE.

01. General. Any person, firm, corporation, or municipal corporation, desiring to have a vehicle registered as a limited authorized emergency vehicle must apply for authorization to the Director on forms provided by the department that provides the following information: (7-1-21)T

a. A description of the emergency vehicle listing year, make, model, vehicle identification number and license plate number. (7-1-21)T

b. A description of the emergency lighting equipment to be used on the emergency vehicle. (7-1-21)T

02. Requirements. Each driver of an authorized emergency vehicle must: (7-1-21)T

a. Be eighteen (18) years of age or older. (7-1-21)T

b. Not have been convicted in any court within three (3) years of an offense of driving under the influence of alcohol, drugs, or any other intoxicating substance, reckless driving, failure to stop or report an accident, or any other conviction which the Director may deem a disqualifier to drive an authorized emergency vehicle. (7-1-21)T

c. Not have had driving privileges suspended for any reason within the last three (3) years. (7-1-21)T

014. AUTHORIZATION LIMITATIONS.

01. Durations. The authorization proved by the Director will be for one (1) year. The application for continued emergency vehicle authorization or limited emergency vehicle authorization must be renewed prior to the expiration date. (7-1-21)T

02. Restrictions. An authorized emergency vehicle may not be used except as follows: (7-1-21)T

a. Only by the drivers named on the original or amended application. (7-1-21)T

b. Only with the equipment described in the original or amended application. (7-1-21)T

c. Only within the geographical area described in the original or amended application. (7-1-21)T

d. Only for the purposes set forth in the original or amended application. (7-1-21)T

03. Limited Restriction. A limited authorized emergency vehicle may not be used except as follows: (7-1-21)T

a. Where a lane of traffic is obstructed or at the discretion of a peace officer, it may display a red, flashing light. (7-1-21)T

b. To gain access to accident or emergency scenes, it may use interstate system emergency crossovers, provided such usage is done in a safe manner. (7-1-21)T

c. It is unlawful and cause for immediate revocation of the limited authorization if red lights are used while traveling to or from an incident or an emergency or for any reason not described herein. (7-1-21)T

015. -- 020. (RESERVED)

021. EQUIPMENT REQUIRED.

01. Authority. Pursuant to Section 49-901, Idaho Code, the Director has authority to approve and disapprove warning lighting devices on emergency vehicles and to issue and enforce regulations for such emergency warning lighting devices. (7-1-21)T

02. Equipment. Every authorized emergency vehicle must be equipped in conformance with Section 49-623(3), Idaho Code, with at least one (1) red light visible in a three hundred and sixty (360) degree arc at a distance of one thousand feet (1000') under normal atmospheric conditions and/or an audible signaling device having a decibel rating of at least one hundred (100) decibels at a distance of ten feet (10'). (7-1-21)T

022. PROCEDURE.

01. Approval. If the Director approves the application, he may issue a certificate of approval which is valid for thirty (30) days, during which time the emergency equipment may be installed. After installation of the emergency equipment, the applicant must bring the vehicle to a district office of the Idaho State Police to be examined to determine if the equipment is of an approved type and is properly mounted. An Idaho State Police officer must certify the results of this examination on a form prescribed and provided by the department, and the applicant must file the form with the Idaho State Police. (7-1-21)T

02. Carried. The certificate of approval, and when issued the agreement or copies thereof, including all endorsements for changes of conditions, must be carried in the authorized emergency vehicle or limited authorized emergency vehicle at all times and be displayed upon request of any law enforcement officer. (7-1-21)T

03. Violation. Violation of any of the Rules is grounds for suspension or revocation of the authorized emergency vehicle agreement or limited authorized emergency vehicle agreement without prior written notice or opportunity for hearing. (7-1-21)T

04. Authorization. Any authorization may be terminated at any time without cause or prior written notice or opportunity for hearing by the Director or his designated representative. (7-1-21)T

05. Copy. A copy of the authorized emergency vehicle certificate approved by the Director or limited authorization certificate approved by the Director must be carried in each authorized vehicle and shown to any peace officer upon request. (7-1-21)T

06. Valid. Any renewals or new applications expire on June 30 of each subsequent year following. (7-1-21)T

023. -- 999. (RESERVED)

11.10.03 – RULES GOVERNING THE SEX OFFENDER REGISTRY

000. LEGAL AUTHORITY.

The Idaho State Police has authority to make rules to implement the sex offender central registry pursuant to Title 18, Chapter 83, Idaho Code, Sections 18-8301 through 18-8331. (7-1-21)T

001. SCOPE.

The rules relate to the administration of the state's sex offender central registry, which includes both adult and juvenile offenders. (7-1-21)T

002. -- 009. (RESERVED)

010. DEFINITIONS.

The terms defined in Section 67-3001, Idaho Code, will have the same meaning in these rules. In addition, the following terms have the meanings set forth below: (7-1-21)T

01. Central Registry. The state-level records system containing information, photographs and fingerprints relating to persons required to register as a sex offender under Title 18, Chapters 83 and 84, Idaho Code. (7-1-21)T

02. Substantially Equivalent. Any sex offense related crime, regardless of whether a felony or misdemeanor, that consists of similar elements defined in Title 18 of the Idaho Criminal Code. It does not mean exactly the same, nor exactly identical to. (7-1-21)T

03. Working Days. Each day except Saturday, Sunday, or a legal state holiday. (7-1-21)T

011. (RESERVED)

012. SEX OFFENDER CENTRAL REGISTRY -- ADMINISTRATION.

01. Central Registry Established. Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (7-1-21)T

02. Forms. The following forms and procedures will be used to provide notice to and collect information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (7-1-21)T

a. "Idaho Sex Offender Registry Form." This three (3) page form notifies an offender of register requirements and collects from an offender information required for registration or any change of address or status, as required by statute. (7-1-21)T

b. "Idaho Sex Offender Registry Homeless - Location Verification Form." This one (1) page form is used during weekly reporting to collect from an offender the information required when the offender does not provide a physical address at the time of registration. (7-1-21)T

03. Photographs and Fingerprints. (7-1-21)T

a. An offender's photograph will be in color. The sheriff will forward a copy of the photograph with tagging information so it may easily be located by registry staff in the department of transportation photo database. Photographs submitted to the central registry will be a copy of the new photographs taken at the time of each registration. From collected registration fees, the sheriff will pay to the state the cost of photography materials lawfully required by a state agency or department. (7-1-21)T

b. The sheriff will also submit the required fingerprints and palmprints for each registrant, in a manner prescribed by the department, either by manual card or electronic submission each registration. (7-1-21)T

04. Notification to Local Law Enforcement. Lists of all offenders registered within a county are available on the sex offender registry web site. The bureau will notify the appropriate county law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or change of residence of a registered sex offender; and of a registered offender's intent to reside in an agency's jurisdiction. (7-1-21)T

05. Notification to Other Jurisdictions. Within one (1) working day of receiving notification that a registered sex offender is moving to another jurisdiction, the bureau will notify the receiving jurisdiction's designated sex offender registration agency of the move by mail or electronic means. (7-1-21)T

06. Expungement of Central Registry Information. (7-1-21)T

a. Upon receipt of an official death notification recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. (7-1-21)T

b. Upon receipt of a duly attested copy of a pardon issued by the governor of the jurisdiction where the conviction was entered and then reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. (7-1-21)T

c. Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed by the court of conviction, the bureau will expunge all records concerning the conviction from the central registry, provided that the person has no other conviction requiring registration.(7-1-21)T

i. Expungement of a record will not occur in cases where a court has ordered a dismissal for a withheld judgment. (7-1-21)T

d. Pursuant to Section 18-8310(5), Idaho Code, if a person is exempted from the registration requirement by court order, the bureau will expunge all records and references concerning the offender from the central registry. (7-1-21)T

07. Determination of Substantially Equivalent or Similar Crime. (7-1-21)T

a. A person convicted of a sex offense in another jurisdiction and who moves to, works in, or becomes a student in Idaho may be required to register as a sex offender in Idaho pursuant to Title 18, Chapters 83 or 84, Idaho Code. (7-1-21)T

b. The bureau shall determine if a person's out-of-jurisdiction conviction is substantially equivalent or similar to an Idaho sex related offense, as defined by Idaho's Criminal Code, for the purposes of requiring a person to register in Idaho. (7-1-21)T

c. The bureau may make all substantially equivalent determinations using the police report (of the incident related to the sex offense), indictment or information or other lawful charging document, judgment or order (of sex offense conviction), psychosexual evaluation report, and order of probation. (7-1-21)T

d. If a person seeks a substantially equivalent determination by the bureau before moving to, working in, or becoming a student in Idaho, that person shall provide a completed application and attach certified copies of all above-named documents to the bureau. (7-1-21)T

e. The bureau shall issue a substantially equivalent determination within sixty (60) days upon receipt of a completed application and the required documents. (7-1-21)T

f. The bureau's determination is a declaratory ruling as defined by Chapter 52, Title 67, Idaho Code. (7-1-21)T

g. Judicial review of the bureau's determination will be made in accordance with Chapter 52, Title 67, Idaho Code. (7-1-21)T

013. -- 999. (RESERVED)

11.13.01 – THE MOTOR CARRIER RULES

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority granted to the Idaho State Police pursuant to Section 67-2901A, Idaho Code. (7-1-21)T

001. SCOPE.

These rules apply to intrastate motor carriers under the jurisdiction of the Idaho State Police and, when provided in the rule, to interstate or foreign carriers providing transportation of persons or property over highways of the state of Idaho by motor vehicles in the furtherance of their business or for hire. (7-1-21)T

002. INCORPORATION BY REFERENCE.

In accordance with Section 67-5229, Idaho Code, the following sections of the Code of Federal Regulations, specifically 49 CFR, and 40 CFR are herein incorporated by reference: (7-1-21)T

01. Safety Fitness Procedures (See Section 012). Adoption of Federal Regulations, 49 CFR subtitle, chapter III. subchapter B - Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I. subchapter C-Hazardous Materials Regulations. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (7-1-21)T

02. Transportation of Hazardous Materials, Substances, and Wastes (See Section 018). Adoption of Federal Regulations. 40 CFR Part 262 and 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate carriers subject to the safety authority of the Idaho State Police while operating in Idaho that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, Section 018 removes that exemption and subjects intrastate carriers to the same requirements. The Department asserts its authority under Section 018, to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (7-1-21)T

a. Version of Federal Regulations Adopted. Per Section 49-2212, Idaho Code, the federal regulations adopted by reference in Section 018 of these rules, are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1998, and as subsequently recom piled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1998, and as subsequently recom piled, and all amendments to these rules appearing in the Federal Registers. Amendments to the annual volumes are published in the Federal Register pending their incorporation in the next annual volumes. (7-1-21)T

03. Carrier Safety Requirements (See Rule 19). Adoption of Federal Regulations 49 CFR Parts 356, 365, 380, 382, 383, 385, 386, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, the rule at Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 of these rules to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (7-1-21)T

a. Version of Federal Regulations Adopted. The federal regulations adopted by reference in Section 019 of these rules, are those contained in the compilation of 49 CFR Parts 356, 365, 380, 382, 383, 385, 386, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated October 15, 2020, and as subsequently recom piled, and all amendments to these rules appearing in the Federal Registers. Amendments to the annual volumes are published in the Federal Register pending their incorporation in the next annual volumes. (7-1-21)T

04. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov. (7-1-21)T

003. -- 007. (RESERVED)

008. FORMS.

The Idaho State Police Commercial Vehicle Safety Program Manager is authorized to produce and distribute forms and reports to carry out these rules. (7-1-21)T

009. RELIEF FROM REGULATIONS.

The Department may issue a declaration of emergency relieving intrastate carriers from the requirements of 49 CFR Parts 390 through 399 adopted by reference in Section 019 of these rules following the declaration of an emergency. The maximum duration of the declaration of emergency, the particular rules in 49 CFR Parts 390 through 399 from which the carrier is relieved from complying, and all other aspects relieved from regulation are the same as provided in those Federal regulations. (7-1-21)T

010. DEFINITIONS.

Whenever any term used in these rules is defined or referred to in the Idaho Code, that term takes its statutory definition in these rules. (7-1-21)T

01. Commercial Motor Vehicle (CMV). Any self-propelled or towed motor vehicle used on a highway in interstate or intrastate commerce to transport passengers or property when the vehicle: (7-1-21)T

a. Has a gross vehicle weight rating (GVWR) or gross combination weight rating (GCWR), or gross vehicle weight (GVW) or gross combination weight (GCW), of four thousand, five hundred thirty-six kilograms (4,536 kg.), (ten thousand, one pounds (10,001 lbs.)) or more, whichever is greater; or (7-1-21)T

b. Is designed or used to transport more than eight (8) passengers, including the driver, for compensation; or (7-1-21)T

c. Is designed or used to transport more than fifteen (15) passengers, including the driver, and is not used to transport passengers for compensation; or (7-1-21)T

d. Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, Subtitle B, Chapter I, Subchapter C. (7-1-21)T

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

03. Highway. Public roads, highways, and streets of the State. (7-1-21)T

04. Interstate Carrier. Any person owning or operating any motor vehicle in the state of Idaho or on the highways of the state of Idaho, in commerce between the States, or between the States and a foreign Nation, used or maintained for the transportation of persons or property. (7-1-21)T

05. Motor Carrier. An individual, partnership, corporation or other legal entity engaged in the transportation by motor vehicle of persons or property in the furtherance of a business or for hire. (7-1-21)T

06. Motor Vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. (7-1-21)T

07. Person. Any individual, firm, co-partnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. (7-1-21)T

08. Transportation. Includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contract, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho. (7-1-21)T

011. (RESERVED)

012. SAFETY FITNESS PROCEDURES.

01. Purpose and Scope. (7-1-21)T

a. This section establishes procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial action when required and prohibit motor carriers receiving a safety rating of “unsatisfactory” from operating a commercial motor vehicle: (7-1-21)T

i. To provide transportation of hazardous materials for which vehicle placarding is required in accordance with 49 CFR Part 172, subpart F; or (7-1-21)T

ii. To transport more than fifteen (15) passengers, including the driver. (7-1-21)T

b. All provisions of Section 012 apply to all motor carriers subject to the requirement of this subchapter. (7-1-21)T

02. Definitions. The following definitions apply to Section 012. (7-1-21)T

a. Applicable safety regulations or requirements. Means 49 CFR subtitle, chapter III. subchapter B- Federal Motor Carrier Safety Regulations; and 49 CFR subtitle B, chapter I. subchapter C- Hazardous Materials Regulations. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Whenever a federal regulation is adopted by reference in these rules, subsequent recompilations are also adopted by reference, but subsequent amendments are not. (7-1-21)T

b. Preventable accident on the part of a motor carrier. Means an accident that: (7-1-21)T

i. Involved a commercial motor vehicle, and (7-1-21)T

ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (7-1-21)T

c. Reviews: (7-1-21)T

i. Compliance review. An onsite examination of motor carrier operations, which may be at the carrier’s place of business, including driver’s hours of service, vehicle maintenance and inspection, driver qualifications, commercial driver’s license requirements, financial responsibility, accidents, hazardous materials, and such other related safety and transportation records to determine safety fitness. (7-1-21)T

(1) A compliance review may be conducted in response to a request to change a safety rating, to investigate potential violations of safety regulations by motor carriers, or to investigate complaints or other evidence of safety violations. (7-1-21)T

(2) A compliance review may result in the initiation of an enforcement action. (7-1-21)T

ii. Safety management controls. The systems, policies programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations which ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, and property damage. (7-1-21)T

d. Safety ratings: (7-1-21)T

i. Satisfactory safety rating. A motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Subsection 012.03 of this rule. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (7-1-21)T

ii. Conditional safety rating. A motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in occurrences listed in Subsection 012.03 of this rule. (7-1-21)T

iii. Unsatisfactory safety rating. A motor carrier does not have adequate safety management controls in

place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Subsection 012.03 of this rule. (7-1-21)T

- iv. Unrated carrier. A safety rating has not been assigned to the motor carrier. (7-1-21)T

03. Safety Fitness Standard. The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier must demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with: (7-1-21)T

- a. Commercial driver's license standards violations. (7-1-21)T
- b. Inadequate levels of financial responsibility. (7-1-21)T
- c. The use of unqualified drivers. (7-1-21)T
- d. Improper use and driving of motor vehicles. (7-1-21)T
- e. Unsafe vehicles operating on the highways. (7-1-21)T
- f. Failure to maintain accident register and copies of accident reports. (7-1-21)T
- g. The use of fatigued drivers. (7-1-21)T
- h. Inadequate inspection, repair, and maintenance of vehicles. (7-1-21)T
- i. Transportation of hazardous materials, driving and parking rule violations. (7-1-21)T
- j. Violation of hazardous materials regulations. (7-1-21)T
- k. Motor vehicle accidents and hazardous materials incidents. (7-1-21)T

04. Factors to Be Considered in Determining a Safety Rating. The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following: (7-1-21)T

- a. Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization or automation is found to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly. (7-1-21)T
- b. Frequency and severity of regulatory violations. (7-1-21)T
- c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections. (7-1-21)T
- d. Number and frequency of out-of-service driver/vehicle violations. (7-1-21)T
- e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews. (7-1-21)T
- f. Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time. (7-1-21)T
- g. The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations,

standards and orders. (7-1-21)T

05. Determination of Safety Fitness. Following a compliance review of a motor carrier operation, the Idaho State Police Commercial Vehicle Safety Program Manager, using the factors prescribed in Subsection 012.04 of this rule, will determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule. (7-1-21)T

06. Notification of a Safety Fitness Rating. Following a compliance review, the Idaho State Police Commercial Vehicle Safety Program Manager will determine the safety fitness of a motor carrier and notify the motor carrier and the Department in writing. Notification will include a list of those items for which immediate corrective actions must be taken. (7-1-21)T

07. Motor Carrier Certification. Upon notification of violations cited in the compliance review and recommendations made to correct violations a motor carrier must certify to the Idaho State Police Commercial Vehicle Safety Program Manager, within thirty (30) days, whether all corrective actions identified by the safety review have been taken. Failure to certify or falsely certifying under Section 012 of this Chapter will be considered a reporting violation under Section 67-2901B(3), Idaho Code. (7-1-21)T

013. -- 017. (RESERVED)

018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES, AND WASTES.

01. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to Section 018 that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. Failure to be familiar with these federal regulations adopted by reference is a violation of Section 018 of this Chapter for any carrier transporting such cargoes. The federal regulations adopted by reference in this Section 018 have the following subject matter: (7-1-21)T

- a.** Part 107. Hazardous Materials Program Procedures. (7-1-21)T
- b.** Part 171. General Information, Regulations and Definitions. (7-1-21)T
- c.** Part 172. Hazardous Materials Table, special provisions, hazardous materials communications, emergency response information, and training requirements. (7-1-21)T
- d.** Part 173. Shippers-General Requirements for Shipments and Packaging. (7-1-21)T
- e.** Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (7-1-21)T
- f.** Part 177. Carriage by Public Highway. (7-1-21)T
- g.** Part 178. Specifications for packagings. (7-1-21)T
- h.** Part 179. (Not adopted regulations for rail tanker cars). (7-1-21)T
- i.** Part 180. Continuing Qualification and Maintenance of Packagings. (7-1-21)T

02. Recognition of Federal Waivers. Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Department will not administer a program to duplicate consideration or approval of federal waivers on the state level. (7-1-21)T

03. Hazardous Materials. Means a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce and has designated as hazardous under section 5103 of the Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in Part 173 of Subchapter C of Title 49 of the Code of Federal Regulations. (7-1-21)T

04. Hazardous Substances. Means a material, its mixtures or solutions, that is listed in the Appendix A to 49 CFR 172.101 and that is in a quantity in one (1) package that equals or exceeds the reportable quantity (RQ) listed in the Appendix A to 49 CFR 172.101. (7-1-21)T

05. Hazardous Waste. Means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262. (7-1-21)T

019. CARRIER SAFETY REQUIREMENTS.

01. Adoption of Federal Regulations - Exceptions. (7-1-21)T

a. All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b. of this rule, subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (7-1-21)T

b. Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (7-1-21)T

c. The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (7-1-21)T

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate carriers subject to Section 019, must obtain copies of the federal regulations adopted by reference in Subsection 019.01 of this rule, and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Subsection 019.02 of this rule, for any carrier subject to those regulations. The federal regulations adopted by reference address the following subject matter: (7-1-21)T

a. Part 356. Motor Carrier Routing Regulations. (7-1-21)T

b. Part 365. Rules Governing Application for Operating Authority. (7-1-21)T

c. Part 380. Longer Combination Vehicle (LCV) Driver-Training and Driver-Instructor Requirements. (7-1-21)T

d. Part 382. Controlled Substance and Alcohol Use and Testing. (7-1-21)T

e. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (7-1-21)T

- f. Part 385. Safety Fitness Procedures. (7-1-21)T
- g. Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. (7-1-21)T
- h. Part 387. Minimum Levels of Financial Responsibility. (7-1-21)T
- i. Part 388. Cooperative Agreements with States. (7-1-21)T
- j. Part 390. Federal Motor Carrier Safety Regulations: General. (7-1-21)T
- k. Part 391. Qualifications of Drivers. (7-1-21)T
- l. Part 392. Driving of Commercial Motor Vehicles. (7-1-21)T
- m. Part 393. Parts and Accessories Necessary for Safe Operation. (7-1-21)T
- n. Part 395. Hours of Service of Drivers. (7-1-21)T
- o. Part 396. Inspection, Repair and Maintenance. (7-1-21)T
- p. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (7-1-21)T
- q. Part 398. Transportation of Migrant Workers. (7-1-21)T
- r. Part 399. Employee Safety and Health Standards. (7-1-21)T

03. Recognition of Federal Waivers. Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01 of these rules, the federal waiver will also be recognized under these rules. The Department reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers. (7-1-21)T

020. -- 029. (RESERVED)

030. INTERSTATE AND FOREIGN COMMERCE.

Section 018 and 019 of these rules apply to motor carriers when engaged in interstate or foreign commerce in Idaho: (7-1-21)T

031. OBEDIENCE AND COMPLIANCE WITH RULES AND REGULATIONS.

01. Proof of Compliance Required. Whenever requested by an employee of this Department whose duties include enforcement of any of these rules and regulations, all motor carriers and their agents or employees are required to demonstrate proof of compliance with these rules. (7-1-21)T

02. Sanctions. The failure of any motor carrier to obey and comply with these rules is just and sufficient cause for imposition of the sanctions authorized by Title 67, Chapter 29, Idaho Code. (7-1-21)T

032. -- 999. (RESERVED)