



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators DARRINGTON, Vick, Bock and
Representatives WILLS, Luker, Burgoyne

FROM: Brooke Murdoch - Principal Legislative Research Analyst

DATE: December 12, 2011

SUBJECT: Temporary Rule

IDAPA 11.03.01 - Rules Governing Alcohol Testing - TEMPORARY RULE - Docket No.
11-0301-1201

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. Please call with any questions - 334-4845. Thank you.

Attachment: Temporary Rule

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 11 - IDAHO STATE POLICE

11.03.01 - RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1201

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 1, 2011.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-2901, Idaho Code.

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

Clarifying that blood samples need to only contain a minimal concentration of sodium fluoride. The tubes in the ISP Blood Alcohol kits are prepared so that if they are filled, the sodium fluoride concentration will be ten (10) milligrams of sodium fluoride per cubic centimeter of blood. If the blood tube is not all the way full, the concentration of sodium fluoride in the tube will be greater. Having a larger concentration of sodium fluoride in the tube (due to a smaller blood collection) makes no difference because the sodium fluoride is a preservative and has no effect on the testing. Regardless of the amount of blood in the tube, there will be an adequate amount of sodium fluoride to preserve the blood sample appropriately.

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

The current wording of the rule has led to suppression hearings in Idaho's courts, to suppress breath alcohol results. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a public safety threat.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Matthew Gamette, ISPFQ Quality Manger, 884-7217 or matthew.gamette@isp.idaho.gov.

DATED this 8th day of November, 2011.

Col. G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Phone: 208-884-7003
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THE FOLLOWING IS THE TEMPORARY TEXT OF DOCKET NO. 11-0301-1101

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. **Laboratory.** Any laboratory desiring to perform urine alcohol or blood alcohol analysis shall meet

the following standards: (3-19-99)

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing; (7-1-93)

b. The laboratory shall provide adequate facilities and space for the procedure used; (7-1-93)

c. Specimens shall be maintained in a secure storage area prior to analysis; (7-1-93)

d. All equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises; (7-1-93)

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Failure to pass a proficiency test shall result in disapproval until the problem is corrected and a proficiency test is successfully completed; (7-1-93)

f. For a laboratory performing blood or urine alcohol analysis, 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; (3-19-99)

g. Urine samples shall be collected in clean, dry containers. (7-1-93)

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

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; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. ~~(7-1-93)~~(11-1-11)T

03. Results. 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. (3-19-99)

04. 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. (3-19-99)

05. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)