Distributed from the ISPFS List-serve on 10/29/2010

Subject: Idaho Breath Alcohol Standard Operating Procedure Revision---EFFECTIVE NOVEMBER 1st

You are receiving this email because you subscribed (or were subscribed) to the ISP Breath Alcohol List. This is notification that the Idaho Breath Alcohol Standard Operating Procedure will be revised (effective Monday November 1, 2010). This draft revision has been circulated to a panel of attorneys, scientists, and hearing examiners. Their comments have been implemented in this revision.

Below are the changes that will be in effect November 1st. We are providing them to your agency in advance of implementation so that you can be prepared and implement the changes effectively on November 1st. Please also let me know of any typographical errors or other considerations you think we may have missed.

**Clarified section 5.1.3 for the use of 0.20 solutions

A performance verification of the Alco-Sensor and Lifeloc FC20 instruments using a 0.08 or 0.20 performance verification solution must be performed within 24 hours, before or after an evidentiary test to be approved for evidentiary use. Multiple breath alcohol tests may be covered by a single performance verification. Reference 5.1.4.1 for clarification on the use of the 0.20 solution in this capacity.

**Section 6.2 was clarified for instrument specificity.

A complete breath alcohol test includes two (2) valid breath samples taken during the testing sequence and preceded by air blanks. The duplicate breath samples should be approximately 2 minutes apart for the ASIIIs and the FC20s to allow for the dissipation of potential mouth alcohol contamination.

**Added section 6.2.2.3

In the event that all three samples fall outside the 0.02 correlation, and the officer suspects that mouth alcohol could have been a contributing factor, then they should restart the 15 minute observation period and retest the subject.

**Added section 6.2.2.3.1

If the officer does not suspect that mouth alcohol was present, and that the sample variability was due to a lack of subject cooperation in providing the samples as requested, then the samples can be considered valid if all three samples are above the per se limit of prosecution.

**Added section 6.2.2.4

If all three samples fall outside the 0.02 correlation, the officer may at their discretion elect to have a blood sample drawn for analysis in lieu of retesting the subjects breath alcohol concentration.

**Added section 8.0 for the MIP/MIC procedure

Minors in Possession/Minors in Consumption Procedure

Breath testing instruments certified by ISPFS are often used in investigating violations of Idaho Code 23-949 (punishment set forth by I.C. 18-1502), wherein a person under twenty-one (21) years of age is deemed to have possessed and consumed alcohol. Unlike the Driving Under the Influence statutes and their associations with per se limits of 0.08 and 0.20, a specific level of alcohol is not required to prove a violation of I.C. 23-949. Nor is there a requirement that the State prove the person is impaired by alcohol. Rather, the presence or absence of alcohol is a determining factor for proving the offense. Therefore, there is a different standard operating procedure associated with this type of charge. The main purpose of the procedure outlined below is to rule out mouth alcohol as a potential contributing factor to the results given during the breath testing done for MIP/MIC cases.

8.1 15 minute observation period: The monitoring/observation period is not required for the MIP/MIC procedure. The duplicate samples, separated by approximately 2 minutes or more and within the 0.02 correlation, provide the evidence of consistent sample delivery, the absence of mouth alcohol as well as the absence of RFI (radio frequency interference) as a contributing factor to the results of the breath test.

8.2 MIP/MIC requirements:

8.2.1 The breath alcohol test must be administered by an operator currently certified in the use of that instrument.

8.2.2 The instrument used must be certified by ISPFS.

8.2.2.1 The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone.

8.2.2.2 The instrument used does not need to meet other requirements set forth in previous sections of this SOP. It does not need to be checked regularly or periodically with any of the 0.08 or 0.20 solutions.

8.2.3 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.

8.2.4 The officer should have the individual being tested remove all loose foreign material from their mouth before testing. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing.

8.2.5 Any material containing alcohol left in the mouth during the entirety of the breath testing sampling could contribute to the results in the breath testing sequence. (For clarification refer to section 8.1)

8.3 Procedure:

A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The duplicate breath samples do not need to be consecutive samples. The individual breath samples should be 2 minutes or more apart, to allow for the dissipation of potential mouth alcohol contamination.

NOTE: A deficient or insufficient sample does not automatically invalidate a test sample.

8.3.1 If the subject/individual fails or refuses to provide a duplicate adequate sample as requested by the operator, the single test result will be considered valid.

8.3.1.1 The operator may repeat the testing sequence as required by circumstances.

8.3.1.2 The operator should use a new mouthpiece for each individual and for each series of tests (i.e. complete set of breath testing samples).

8.3.2 A third breath sample is required if the first two results differ by more than 0.02.

8.3.2.1 The results for duplicate breath samples should correlate within 0.02 to indicate the absence of alcohol contamination in the subjects breath pathway (mouth alcohol), show consistent sample delivery, and indicates the absence of RFI as a contributing factor to the breath results.

8.3.2.2 In the event that all three samples fall outside the 0.02 correlation, and the officer suspects that mouth alcohol could have been a contributing factor, then they should administer a 15 minute observation period and then retest the subject. If mouth alcohol is not suspected, then the officer may reinstruct the individual in the proper breath sample technique and retest the subject without administering a 15 minute observation.

8.3.3 The operator should manually log test results and/or retain printouts for possible use in court.

8.3.4 The instrument should not be in passive mode for the testing of subjects for the purposes of the previous sections.

8.4 Passive mode:

8.4.1 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.

8.4.2 The passive mode can be used for screening purposes on individuals who are required to provide breath samples whenever requested by a law enforcement agency. Example may include but are not limited to: probationers, work release, parolees, prison inmates, etc.