

Gamette, Matthew

From: Gamette, Matthew
Sent: Monday, April 18, 2016 8:16 PM
Subject: IMPORTANT INFORMATION ON THE ISPFS BREATH TESTING PROGRAM

BTO or BTS,

Attached you will find an Idaho Court of Appeals decision on State vs. Cruz-Romero. ISPFS consulted with several legal experts including our ISP Deputy Attorney General and the consensus opinion is that this decision requires a law enforcement agency to disclose to the court the instances where a breath testing instrument has been ruled “out of compliance.” The important points of this email are these:

- (1) The BTO/BTS must ensure at the law enforcement agency level that they are documenting instruments that test out of compliance.*
- (2) At the state level, ISPFS is documenting what instruments are sent in for calibration and software upgrades and produces records that are available online.*
- (3) The law enforcement agency should consult with their local prosecuting attorneys office regarding the records, retention, and making records available to the courts.*

Further Explanation:

(1)—The BTO/BTS for each agency is responsible to maintain the instrument log, including instances where the instrument is out of compliance. Per IDAPA 11.03.01 the agency is responsible to maintain instrument records for at least three years.

(2)—One potential method agencies could use to help accomplish instrument discovery is to refer the officers of the court to the ISPFS website where each calibration record is located by instrument serial number. This online documentation contains the “as found” data and the “calibration data.” This method of discovery obviously assumes that the law enforcement agency sends each instrument to ISPFS each time the instrument is taken out of service due to failing of a performance verification. We want to emphasize that an instrument being sent to ISPFS does not necessarily mean that the instrument is out of compliance. We often calibrate instruments that are within specification when we receive them. This is specifically true when we perform software upgrades to the instruments such as we are currently doing with the FC20 instruments to be compatible with the EasyCal stations. Those records will show no “as received” data and will have “software upgraded” on the certificates. Data from the website should be carefully evaluated. On our website we have placed all the data we have from historical instrument calibrations. If you have records that we do not have, we encourage you to submit them and we will add them to our database.

(3)—ISPFS encourages law enforcement agencies to visit with their local and county prosecutors about this Idaho Court of Appeals decision to make a determination about how this will be handled in each jurisdiction. Idaho TSPR Jared Olson jared.olson@post.idaho.gov is available to prosecutors to consult on this issue.

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