

**IDAPA 11 - IDAHO STATE POLICE
ISP FORENSIC SERVICES**

11.03.01 - Rules Governing Alcohol Testing

Docket No. 11-0301-1401

**NOTICE OF RULEMAKING -
ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is December 1, 2014. This pending rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 67-2901, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

ISPFSS held a public hearing on November 13, 2014, wherein testimony was received by a hearing officer on the proposed rules. Pursuant to recommendations of the hearing officer, ISPFSS is amending the text of pending and temporary rule as follows:

- The definition of “Waiting Period/Monitoring Period/Deprivation Period/Observation Period” in IDAPA 11.03.01.010.26 is deleted and a definition for “Monitoring period” and “Deprivation period” were added as IDAPA 11.03.01.010.19 and IDAPA 11.03.01.010.14, respectively, to clarify the meaning of the different periods of time involved in the testing. Additionally, the rule was amended for consistency throughout where either of these terms were used.
- The second sentence of IDAPA 11.03.01.014.03(b) was removed as the statement does not add any meaning to the rule. Examples contained in this sentence were included in the definition of “Deprivation Period” and “Monitoring Period.” Further, the definition of “Observation Period” was updated.
- IDAPA 11.03.01.014.03(c) was simplified due to the terms “deprivation period” and “monitoring period” being defined in sections 11.03.01.010 and 11.03.01.010.19.
- IDAPA 11.03.01.014.03(d) was amended to clarify the procedure by adding the word “if” instead of “before” because that makes it so the monitoring period is required if the test is performed, but does not require that the test be performed. There were many circumstances discussed where another test would not be feasible or possible. Additionally, the word “officer” was amended to read “operator.”
- IDAPA 11.03.01.014.03(e) was amended to clarify that the operator should switch mouthpieces between test subjects, not between test sequences issued to the same individual for hygienic reasons
- IDAPA 11.03.01.014.03(g) was amended to read “shall when possible” instead of “should” to give the operator the ability to explain the circumstances behind the lack of a third test being administered.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule as previously adopted while the pending rule

awaits legislative approval, the Agency amended the temporary rule with the same revisions made to the pending rule. Only the sections that differ from the proposed rule text are printed in this Bulletin. The original text of the temporary and proposed rule was published in the October 1, 2014 Idaho Administrative Bulletin, Vol. 14-10, page(s) 171-178.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Matthew Gamette, Director of Forensic Services at (208) 884-7217.

DATED this 1st day of December, 2014.

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