



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Senators LODGE, Lee, Burgoyne and,
Representatives LUKER, Malek, Gannon

FROM: Ryan Bush - Principal Legislative Research Analyst

DATE: January 03, 2018

SUBJECT: Temporary Rule

IDAPA 11.03.01 - Rules Governing Alcohol Testing - Adoption of Temporary Rule - Docket No.
11-0301-1801

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) 334-4834. Thank you.

Attachment: Temporary Rule

Mike Nugent, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

**IDAPA 11 – IDAHO STATE POLICE
IDAHO STATE FORENSIC LABORATORY**

11.03.01 – RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1801

NOTICE OF RULEMAKING – ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is December 14, 2017.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 67-2901(6), Idaho Code.

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

This rule is being amended to update the incorporation by reference. The National Highway Traffic Safety Administration (NHTSA) updated the conforming products list (CPL) on November 2, 2017. Idaho State Police has no notification when these updates will occur in the federal register. This new CPL posting in the federal register updates the former incorporation by reference in the IDAPA 11.03.01 document and clearly delineates that all the evidentiary breath testing instruments in Idaho are approved for use on the NHTSA CPL. A question has been raised by the courts in Idaho if the Lifeloc FC20 and FC20BT instruments are materially the same instrument. There is no difference in the instruments other than the Bluetooth ability. Idaho performed a validation of the FC20BT model to ensure that nothing impacted the quality of testing done in Idaho. The Lifeloc FC20 is listed by name on the 2010 CPL and the FC20BT does not formally appear by name on the list until the 2017 federal register posting. While ISPPS has all the documentation from NHTSA, DOT, Volpe, and Lifeloc Corporation (and our own validation study) to show that there was no change to the instrument to give it Bluetooth capability, and that the instrument was considered still on the CPL by NHTSA, the new incorporation by reference document makes it abundantly clear to the Idaho courts in a federal register document.

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

Necessary to protect the public health, safety or welfare and to conform to changes in the federal regulatory code.

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, (208) 884-7217.

DATED this December 15, 2017.

Colonel Kedrick R. Wills
Director
Idaho State Police
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FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 11-0301-1801
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following are incorporated by reference in this chapter of rules:

(4-7-11)

01. Conforming Products List of Evidential Breath Measurement Devices (revised ~~3/11/2010~~ **11/2/2017**). This document is available on the Internet at ~~<http://edocket.access.gpo.gov/2010/pdf/2010-5242.pdf>~~ <https://www.gpo.gov/fdsys/pkg/FR-2017-11-02/pdf/2017-23869.pdf>. ~~(4-7-11)~~(12-14-17)T