**R714. Public Safety, Highway Patrol.**

**R714-501. Preliminary Oral Fluid and Portable Breath Testing Standards.**

**R714-501-1. Authority.**

This rule is authorized by Section 53-25-102, which requires the department to establish standards for the proper use of oral fluid and portable breath testing as part of a field sobriety test.

**R714-501-2. Definitions.**

Terms used in this rule are defined in Sections 53-1-102 and 41-6a-102.

**R714-501-3. Proper Use of Preliminary Oral Fluid Testing.**

(1) A peace officer shall:

(a) complete training provided by the law enforcement agency with which they are employed on the proper use of an oral fluid testing instrument before use of an oral fluid testing instrument in connection with any type of investigation, including a DUI or drug related arrest; and

(b) ensure that the use of an oral fluid testing instrument:

(i) complies with this rule; and

(ii) is consistent with manufacturer and industry standards.

(2) An oral fluid test:

(a) shall only be conducted:

(i) after the standardized field sobriety tests have been administered if administered in connection with a DUI investigation; and

(ii) when there is evidence of impairment based on the totality of the circumstances; and

(b) may not be the primary factor upon which a decision to arrest is made.

(3) Preliminary oral fluid testing:

(a) is voluntary for the subject of the investigation; and

(b) may be refused by the subject of the investigation.

(4) When administering a preliminary oral fluid test, a peace officer shall:

(a) ensure that the sample obtained is valid and free of potential tampering; and

(b) conduct the test with the cooperation of the subject of the investigation.

(5) An oral fluid testing instrument shall provide the peace officer with a positive or negative test result.

(6) The results of a preliminary oral fluid test shall be documented and included in the peace officer's report through inclusion of:

(a) a printed copy of the test results; or

(b) a photograph of the results if a printed copy is not available.

(7) In instances where a preliminary oral fluid test is administered, a peace officer should obtain a follow-up test, such as a blood draw, for evidentiary purposes.

**R714-501-4. Proper Use of Portable Breath Testing.**

(1) A peace officer shall:

(a) complete training provided by the law enforcement agency with which they are employed on the proper use of a portable breath testing instrument before use of a portable breath testing instrument in connection with any type of investigation, including a DUI or drug related arrest; and

(b) ensure that the use of portable breath testing instrument:

(i) complies with this rule and

(ii) is consistent with manufacturer and industry standards.

(2) A portable breath test:

(a) shall only be conducted:

(i) after the standardized field sobriety tests have been administered if administered in connection with a DUI investigation; and

(ii) when there is evidence of impairment based on the totality of the circumstances; and

(b) may not be the primary factor upon which a decision to arrest is made.

(3) Portable breath testing:

(a) is voluntary for the subject of the investigation; and

(b) may be refused by the subject of the investigation.

(4) When administering a portable breath test, a peace officer shall:

(a) ensure that the sample obtained is valid and free of potential tampering; and

(b) conduct the test with the cooperation of the subject of the investigation.

(5) A portable breath testing instrument shall provide the peace officer with a test result that reflects the breath alcohol concentration of the subject of the investigation.

(6) The results of a portable breath test shall be documented and included in the peace officer's report through inclusion of a hand-written positive, negative, or actual test result.

(7) In instances where a portable breath test is administered, a peace officer should obtain a follow-up test, such as an intoxylizer test or a blood draw, for evidentiary purposes.

**KEY: alcohol, breath testing, oral fluid testing, portable breath testing**

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