



Ohio Administrative Code

Rule 4301:1-1-38 Use of chemical analysis affidavits.

Effective: June 4, 2004

(A) In any hearing before the liquor control commission, a laboratory report from the Ohio department of public safety, the bureau of criminal identification and investigation, a laboratory operated by another law enforcement agency, or a laboratory established by or under the authority of an institution of higher education that has its main campus in this state and that is accredited by the "Association of American Universities" or the "North Central Association of Colleges and Secondary Schools," primarily for the purpose of providing scientific services to law enforcement agencies, and signed by the persons performing the analysis, stating the substance which is the basis of the alleged offense has been analyzed and stating findings as to the contents, identity, and other characteristics of the substance or alcohol is prima facie evidence of the content, identity, other characteristics, and chemical analysis of the substance.

Attached to the report shall be a copy of a notarized statement by the signer of the report giving the name of the signer, stating that the signer is an employee of the laboratory issuing the report, that performing the analysis is part of the signer's regular duties, and giving an outline of the signer's education, training, and experience in performing analysis of material included under this rule. The signer shall attest that scientifically accepted tests were performed with due caution, and that the evidence was handled in accordance with established and accepted procedures while in the custody of the laboratory.

(B) The report shall not be prima facie evidence of the contents, identity, or other characteristics of the substance if the permit holder or the permit holder's attorney demands, in writing within three days from the time of the written report is offered as evidence, the testimony of the person signing the report, for good cause shown, on the basis that the report is either irregular on its face or defective in its conclusion.

(C) If the permit holder or the permit holder's attorney challenge the report pursuant to paragraph (B) of this rule, the hearing in which the challenged report is intended to be part of the record shall be continued to a date set by the liquor control commission in order that the preparer of the report can



be called to testify as to his findings contained therein.

(D) Any permit holder or its attorney is entitled upon written request made to the liquor control commission to have a portion of the substance that is the basis of the alleged violation preserved for the benefit of independent analysis performed by a laboratory analyst employed by the permit holder. Such portion shall be a representative sample of the entire substance that is the basis of the alleged violation and shall be of sufficient size, in the opinion of the commission, to permit the analyst to make a thorough scientific analysis concerning the identity of the substance. If the liquor control commission determines that such a sample portion cannot be preserved and given to the analyst, the commission shall so inform the permit holder or its attorney. In such a circumstance, the permit holder or its attorney, is entitled upon written request made to the liquor control commission, to have made available to it the recorded data which formed the basis of the analysis of the substance that is the basis of the alleged violation.