PROPOSED AMENDMENT

19 CSR 25-30.060 Operating Procedures for Breath Analyzers. The department is amending sections (9), (10), and four (4) forms that follow the rule, and deleting sections (1) and (2) and two (2) forms that follow the rule.

PURPOSE: This amendment removes the references to two (2) instruments that are no longer used for evidential testing in Missouri.

[1] When using Intoxilyzer, Model 5000, the procedures on the form included herein shall be performed and the form shall be completed (see form #5).

[2] When using DataMaster, the procedures on the form included herein shall be performed and the form shall be completed (see form #7).

(1) [(3)] When using Alco-Sensor IV with printer, the procedures on the form included herein shall be performed and the form shall be completed (see form #8).

(2) [(4)] When using Intox DMT, the procedures on the form incorporated within the instrument software shall be performed and the form shall be completed (see form #11 included herein for example).

(3) [(5)] When using Intoxilyzer, Model 8000, the procedures on the form incorporated within the instrument software shall be performed and the form shall be completed (see form #12 included herein for example).

(4) [(6)] When using Intox EC/IR II, the procedures on the form incorporated within the instrument software shall be performed and the form shall be completed (see form #13 included herein for example).

(5) [(7)] The fifteen- (15-) minute observation of the subject, which is the second procedure on the forms in sections (1)–(6) of this rule, shall be done by a current Type II or Type III permit holder. The observation period is intended to ensure that any alcohol in a test subject’s mouth has time to dissipate before a breath sample is taken so that mouth alcohol does not affect the accuracy of a test result. A fifteen- (15-) minute observation period is deemed to be sufficient for the dissipation of any mouth alcohol to a reasonable degree of scientific certainty.

(6) [(8)] Results of subject tests shall be recorded on the operational checklist in a manner consistent with the breath analyzer’s digital display and/or printout. For example, if the display
and/or the printout reads one hundred forty-nine thousandths percent (0.149%), the result shall be recorded as one hundred forty nine thousandths percent (0.149%).

(7) [(9)] Operational Checklists and breath tests completed prior to the effective date of this rule shall be considered valid if such tests were completed in compliance with the rules in effect at the time the test was conducted. **Operational Checklists and breath tests completed within ninety (90) days after the effective date of this rule shall be considered valid if such tests were completed in compliance with the rules in effect at the time the tests were conducted or the rules in effect immediately prior to the effective date of this rule.**

(8) [(10)] When using the Alco-Sensor IV with printer, the use of the Manual button shall not be allowed to obtain a breath alcohol test result from a subject. **[Any subject breath test conducted with the Manual button prior to the effective date of this rule shall be considered valid under this rule if such tests were completed in compliance with the rules in effect at the time the test was conducted.]**


Eckhoff v. Director of Revenue, 745 S.W.2d 815 (Mo. App. 1988); Director of Revenue v. Martin, 752 S.W.2d 453 (Mo. App. 1988). For purpose of breath analysis tests, the procedural components of these tests include the testing techniques and methods, the qualifications of the person administering the tests, and the nature and description of the equipment and devices to be used. The designation of approved suppliers of test ampoules for breathalyzer test was procedural only and would be applied retrospectively.

Stuhr v. Director of Revenue, 760 S.W.2d 127 (Mo. App. 1988). Though the operational checklist which was used differed from the rule, the checklist exceeded the minimum established requirements and provided a proper foundation for admitting the results of the breath test.

Stuhr v. Director of Revenue, 760 S.W.2d 127 (Mo. App. 1988); Bradford v. Director of Revenue, 735 S.W.2d 208 (Mo. App. 1987). The time and date component of the BAC Verifier is a separate component from that of the sample collection portion of the unit. The wrong date or time on the printout is not evidence of a malfunction.

PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with Bill Whitmar, Director, Missouri Department of Health and Senior Services, Missouri State Public Health Laboratory, P.O. Box 570, Jefferson City, MO 65102. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.