

**Title 19—DEPARTMENT OF
HEALTH AND SENIOR SERVICES
Division 25—State Public Health Laboratory
Chapter 30—Determination of Blood
Alcohol by Blood, Breath, Saliva and
Urine Analysis; and Determination for
the Presence of Drugs in Blood, Saliva and Urine**

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.]*

*AUTHORITY: section[s] 192.006 [and 577.026], RSMo 2000, and section[s] [306.114, 306.117,] 577.020, **RSMo 2017**, and **section 577.037**, RSMo [Supp. 2013] **2016**. * This rule was previously filed as 13 CSR 50-140.060 and 19 CSR 20-30.060. Original rule filed July 11, 1979, effective Oct. 12, 1979. Amended: Filed Feb. 8, 1982, effective May 13, 1982. Emergency amendment filed July 27, 1984, effective Aug. 6, 1984, expired Jan. 4, 1985. Amended: Filed Aug. 3, 1984, effective Dec. 13, 1984. Changed to 19 CSR 20-30.060, effective Aug. 15, 1986. Emergency rescission and emergency rule filed June 2, 1988, effective June 12, 1988, expired Sept. 19, 1988. Rescinded and readopted: Filed June 2, 1988, effective Aug. 25, 1988. Emergency amendment filed July 11, 1988, effective July 21, 1988, expired Sept. 19, 1988. Amended: Filed June 16, 1989, effective Sept. 11, 1989. Emergency amendment filed Sept. 5, 1991, effective Sept. 15, 1991, expired Jan. 12, 1992. Amended: Filed Sept. 5, 1991, effective Jan. 13, 1992. Amended: Filed Jan. 15, 1993, effective July 8, 1993. Emergency amendment filed Nov. 9, 1993, effective Nov. 19, 1993, expired March 18, 1994. Emergency amendment filed March 1, 1994, effective March 11, 1994, expired July 8, 1994. Emergency amendment filed July 12, 1994, effective July 22, 1994, expired Nov. 18, 1994. Emergency amendment filed Oct. 28, 1994, effective Nov. 7, 1994, expired March 6, 1995. Amended: Filed July 22, 1994, effective Dec. 30, 1994. Changed to 19 CSR 25-30.060 Jan. 1, 1995. Emergency amendment filed March 3, 1995, effective March 13, 1995, expired July 1, 1995. Emergency amendment filed June 21, 1995, effective July 1, 1995, expired Oct. 28, 1995. Amended: Filed March 3, 1995, effective July 30, 1995. Emergency amendment filed March 15, 1996, effective March 25, 1996, expired Sept. 20, 1996. Amended: Filed March 15, 1996, effective Aug. 30, 1996. Amended: Filed Aug. 25, 1997, effective Feb. 28, 1998. Amended: Filed May 31, 2012, effective Dec. 30, 2012. Emergency amendment filed Sept. 4, 2013, effective Sept. 15, 2013, expired March 13, 2014. Amended: Filed Sept. 4, 2013, effective Feb. 28, 2014.*

**Original authority: 192.006, RSMo 1993, amended 1995; 306.114, RSMo 1993, amended 2004, 2005, 2008; 306.117, RSMo 1993, amended 2005, 2008; 577.020, RSMo 1977, amended 1982, 1983, 1996, 1998, 2001, 2006; 577.026, RSMo 1982; and 577.037, RSMo 1982, amended 1983, 1988, 1993, 1996, 2001.*

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.*