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SALUS POPULI SUPREMA LEX ESTO

"The welfare of the people shall be the supreme law."



JASON KANDER
SECRETARY OF STATE

MISSOURI
REGISTER

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IN THIS ISSUE:

EMERGENCY RULES

Department of Transportation
 Traffic and Highway Safety Division1591

Department of Social Services
 Family Support Division1601

Department of Health and Senior Services
 State Public Health Laboratory1602

PROPOSED RULES

Office of Administration
 Personnel Advisory Board and Division of Personnel1608

Department of Transportation
 Traffic and Highway Safety Division1610

Department of Social Services
 Family Support Division1617
 MO HealthNet Division1617

Department of Health and Senior Services
 State Public Health Laboratory1623

Department of Insurance, Financial Institutions and Professional Registration
 Division of Finance1628
 Behavior Analyst Advisory Board1631
 Board of Cosmetology and Barber Examiners1637
 Board of Examiners for Hearing Instrument Specialists . .1638
 State Board of Nursing1641
 Division of Professional Registration1642
 Board of Private Investigator and Private Fire Investigator Examiners1643

ORDERS OF RULEMAKING

Department of Labor and Industrial Relations
 Division of Employment Security1667

Department of Natural Resources
 Division of Energy1667

Elected Officials
 Treasurer1667

Department of Insurance, Financial Institutions and Professional Registration
 Behavior Analyst Advisory Board1667
 Interior Design Council1668

IN ADDITIONS

Department of Natural Resources
 Air Conservation Commission1669

CONTRACTOR DEBARMENT LIST1670

DISSOLUTIONS1671

SOURCE GUIDES

RULE CHANGES SINCE UPDATE1675
EMERGENCY RULES IN EFFECT1680
EXECUTIVE ORDERS1682
REGISTER INDEX1684

Register Filing Deadlines	Register Publication Date	Code Publication Date	Code Effective Date
June 3, 2013 June 17, 2013	July 1, 2013 July 15, 2013	July 31, 2013 July 31, 2013	August 30, 2013 August 30, 2013
July 1, 2013 July 15, 2013	August 1, 2013 August 15, 2013	August 31, 2013 August 31, 2013	September 30, 2013 September 30, 2013
August 1, 2013 August 15, 2013	September 3, 2013 September 16, 2013	September 30, 2013 September 30, 2013	October 30, 2013 October 30, 2013
September 3, 2013 September 16, 2013	October 1, 2013 October 15, 2013	October 31, 2013 October 31, 2013	November 30, 2013 November 30, 2013
October 1, 2013 October 15, 2013	November 1, 2013 November 15, 2013	November 30, 2013 November 30, 2013	December 30, 2013 December 30, 2013
November 1, 2013 November 15, 2013	December 2, 2013 December 16, 2013	December 31, 2013 December 31, 2013	January 30, 2014 January 30, 2014
December 2, 2013 December 16, 2013	January 2, 2014 January 15, 2014	January 29, 2014 January 29, 2014	February 28, 2014 February 28, 2014
January 2, 2014 January 15, 2014	February 3, 2014 February 18, 2014	February 28, 2014 February 28, 2014	March 30, 2014 March 30, 2014
February 3, 2014 February 18, 2014	March 3, 2014 March 17, 2014	March 31, 2014 March 31, 2014	April 30, 2014 April 30, 2014
March 3, 2014 March 17, 2014	April 1, 2014 April 15, 2014	April 30, 2014 April 30, 2014	May 30, 2014 May 30, 2014

Documents will be accepted for filing on all regular workdays from 8:00 a.m. until 5:00 p.m. We encourage early filings to facilitate the timely publication of the *Missouri Register*. Orders of Rulemaking appearing in the *Missouri Register* will be published in the *Code of State Regulations* and become effective as listed in the chart above. Advance notice of large volume filings will facilitate their timely publication. We reserve the right to change the schedule due to special circumstances. Please check the latest publication to verify that no changes have been made in this schedule. To review the entire year's schedule, please check out the website at <http://www.sos.mo.gov/adrules/pubsched.asp>

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RULES—Cite material in the *Missouri Register* by volume and page number, for example, Vol. 28, *Missouri Register*, page 27. The approved short form of citation is 28 MoReg 27.

The rules are codified in the *Code of State Regulations* in this system—

Title	Code of State Regulations	Division	Chapter	Rule
1	CSR	10-	1.	010
Department		Agency, Division	General area regulated	Specific area regulated

They are properly cited by using the full citation, i.e., 1 CSR 10-1.010.

Each department of state government is assigned a title. Each agency or division within the department is assigned a division number. The agency then groups its rules into general subject matter areas called chapters and specific areas called rules. Within a rule, the first breakdown is called a section and is designated as (1). Subsection is (A) with further breakdown into paragraph 1., subparagraph A., part (I), subpart (a), item I. and subitem a.

RSMo—The most recent version of the statute containing the section number and the date.

Rules appearing under this heading are filed under the authority granted by section 536.025, RSMo 2000. An emergency rule may be adopted by an agency if the agency finds that an immediate danger to the public health, safety, or welfare, or a compelling governmental interest requires emergency action; follows procedures best calculated to assure fairness to all interested persons and parties under the circumstances; follows procedures which comply with the protections extended by the *Missouri* and the *United States Constitutions*; limits the scope of such rule to the circumstances creating an emergency and requiring emergency procedure, and at the time of or prior to the adoption of such rule files with the secretary of state the text of the rule together with the specific facts, reasons, and findings which support its conclusion that there is an immediate danger to the public health, safety, or welfare which can be met only through the adoption of such rule and its reasons for concluding that the procedure employed is fair to all interested persons and parties under the circumstances.

Rules filed as emergency rules may be effective not less than ten (10) days after filing or at such later date as may be specified in the rule and may be terminated at any time by the state agency by filing an order with the secretary of state fixing the date of such termination, which order shall be published by the secretary of state in the *Missouri Register* as soon as practicable.

All emergency rules must state the period during which they are in effect, and in no case can they be in effect more than one hundred eighty (180) calendar days or thirty (30) legislative days, whichever period is longer. Emergency rules are not renewable, although an agency may at any time adopt an identical rule under the normal rulemaking procedures.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.010 Definitions. The Missouri Highways and Transportation Commission is amending subsection (1)(A).

PURPOSE: This proposed emergency amendment defines new terms and clarifies existing terms used in the breath alcohol ignition interlock device certification and operational requirements in the *Code of State Regulations*, Title 7, 60-2.010 through 60-2.060.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure public safety by defining global positioning systems (GPS), photo ID technology, a refusal, and to more clearly define a violations reset in order to support recent legislative changes in *Truly Agreed to and Finally Passed Senate Bill (TAFP SB) 23*.

History: The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. In 2008 the Missouri General Assembly changed the ignition interlock law by requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of

or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact.

Recent Developments: TAFP SB 480 made several changes to the ignition interlock law during the 2012 legislative session. TAFP SB 480 requires those offenders with a five- (5-) year or ten- (10-) year driver license denial to install an ignition interlock device that has a global positioning system and photo ID technology installed. The bill also allows for first time driving while intoxicated (DWI) offenders to get a restricted driving privilege fifteen (15) days after their revocation provided the offender installs an ignition interlock device on any vehicle the offender operates and uses such device on such vehicle(s) for a period of seventy-five (75) days. In addition, the bill included language that requires monitoring of the DWI offenders for violations during the period of use. If violations occur, on a first offender, the period of ignition interlock use will be extended for additional seventy-five (75) day increments until the offender is violation free, or by one (1) six (6) month period for repeat offenders. The provisions in TAFP SB 480 go in to effect on October 1, 2013.

While rulemaking to implement TAFP SB 480 was in the rulemaking process, TAFP SB 23 was being considered by the legislature and was passed in May 2013. TAFP SB 23 repeals sections of existing law where duplication or conflicts exist and re-enacts certain portions with changes. This resolved some of the conflicts and problems created by TAFP SB 480. While TAFP SB 480 has sections to become effective on October 1, 2013, TAFP SB 23, which was enacted a year later, makes further changes and makes certain of the same provisions effective July 5, 2013, upon the governor's signature. The commission has incorporated the changes from both TAFP SB 480 and TAFP SB 23 in the emergency rules to clarify what is required for compliance for both offenders, manufacturers, and installers.

TAFP SB 23 made additional changes to the ignition interlock law and contains two (2) effective dates. The first effective date, July 5, 2013 (upon the governor's signature), required the GPS and Photo ID technology capability be immediately required for ignition interlock devices used by those offenders driving on a limited driver license for a five- (5-) year or ten- (10-) year license denial due to impaired driving. A second effective date is March 3, 2014 that further changes the first offender requirements for ignition interlock use and the monitoring periods for both the first offenders and repeat offenders.

Ignition interlock use has increased dramatically since laws were strengthened in 2009. Each time the ignition interlock laws are strengthened the number of offenders required to use them increases as well. Ignition interlock use has increased from approximately one thousand five hundred (1,500) installed on vehicles in 2009 to approximately seven thousand seven hundred (7,700) today. TAFP SB 480 and TAFP SB 23 expand the requirement for ignition interlock use to include first offenders, those who have refused breath testing, and have decreased the hard suspension times for eligibility of a limited driving privilege for repeat offenders. The number of offenders who will now be required to have an ignition interlock device installed will again be increased.

Compelling Governmental Interest for this Emergency Amendment: There has been at least one (1) documented case in Missouri of circumvention of an interlock device. Strengthening the tampering, suspension, and revocation provisions will enable the commission to better regulate this program and ensure that individuals who are under court order to only drive vehicles with ignition interlock installed are not driving in an intoxicated condition.

In the last three (3) years, seven hundred fifty-five (755) people were killed and three thousand fifty-one (3,051) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the

potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

The language in paragraph (1)(A)1. of this rule is being changed to remove the language "to lock the ignition." This language is not necessary in the definition of an alcohol retest setpoint since the ignition cannot be locked during a retest when the vehicle is in operation.

Currently, 7 CSR 60-2.010 does not include definitions for the designated monitoring period, global positioning system, photo ID technology, or a refusal as required by TAFP SB 23. These definitions are necessary to ensure that the ignition interlock manufacturers and installers have a clear and consistent understanding of the requirements in order to carry out TAFP SB 23 and TAFP SB 480.

In addition, 7 CSR 60-2.010 does not include the violations reset feature when three (3) retest breath samples are above the alcohol setpoint or any attempt to circumvent or tamper with a device. This section is of particular importance when monitoring the DWI offenders for violations during ignition interlock use. The period of ignition interlock use will be extended if an offender receives a violations reset. This definition will be used by the ignition interlock manufacturers to determine a violation and in turn report to the Department of Revenue when an offender has successfully completed their period of ignition interlock use.

This emergency amendment is being filed in order to ensure that ignition interlock manufacturers and installers have clear and consistent guidelines when programming ignition interlock devices for use in Missouri. In addition, MoDOT will file a proposed permanent amendment to change the appropriate sections of 7 CSR 60-2.010 to reflect the same requirements.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the Secretary of State's Office and the Joint Committee on Administrative Rules, which will appear in the October 15, 2013 Missouri Register but is not intended to become effective until March 30, 2014.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. Missouri Department of Transportation staff has met with ignition interlock manufacturers and distributors, Missouri Department of Revenue, and other interested parties. The group discussed the current rule and the proposed amendments. All comments received were considered when preparing the proposed rules.

Effective Date and Duration: MHTC filed this emergency amendment on September 12, 2013 and it will become effective on October 1, 2013, and will expire on March 29, 2014.

(1) Definitions.

(A) The following words and terms as used in these requirements shall have the following meaning:

1. Alcohol retest setpoint—The breath alcohol concentration at which the ignition interlock device is set [to lock the ignition] for the rolling retests;

2. Alcohol setpoint—The breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the nominal lock point at which the ignition interlock device is set at the time of calibration;

3. Alveolar air—Deep lung air or alveolar breath, which is the last portion of a prolonged, uninterrupted exhalation;

4. Authorized service provider—A person, company, or authorized franchise who is certified by the state of Missouri to provide breath alcohol ignition interlock devices under sections 577.600–577.614, RSMo;

5. Bogus breath sample—Any gas sample other than an unaltered, undiluted, and unfiltered alveolar air sample from a driver;

6. Breath alcohol concentration (BAC)—The number of grams of alcohol (% weight/volume) per two hundred ten (210) liters of breath;

7. Breath alcohol ignition interlock device (BAIID)—A mechanical unit that is installed in a vehicle which requires the taking of a BAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the unit detects a BAC test result below the alcohol setpoint, the unit will allow the vehicle's ignition switch to start the engine. If the unit detects a BAC test result at or above the alcohol setpoint, the vehicle will be prohibited from starting;

8. Breath sample—Expired human breath containing primarily alveolar air;

9. Calibration—The process which ensures an accurate alcohol concentration reading on a device;

10. Circumvention—An unauthorized, intentional, or overt act or attempt to start, drive, or operate a vehicle equipped with a breath alcohol ignition interlock device without the driver of the vehicle providing a pure breath sample;

11. Designated monitoring period—The period of time indicated by the Department of Revenue for required monitoring of the driver's ignition interlock use by the authorized service provider;

[11.]12. Device—Breath alcohol ignition interlock device (BAIID);

[12.]13. Download—The transfer of information from the interlock device's memory onto disk or other electronic or digital transfer protocol;

[13.]14. Emergency service—Unforeseen circumstances in the use and/or operation of a breath alcohol ignition interlock device, not covered by training or otherwise documented, which requires immediate action;

[14.]15. Filtered breath sample—A breath sample which has been filtered through a substance in an attempt to remove alcohol from the sample;

16. Global positioning system—A feature of the device that will log the location (longitude and latitude), date, and time of each breath sample including any refusal, any circumvention attempt, and any attempt to tamper with the ignition interlock device;

[15.]17. Independent laboratory—A laboratory which is properly equipped and staffed to conduct laboratory tests on ignition interlock devices;

[16.]18. Initial breath test—A breath test required to start a vehicle to ensure that the driver's BAC is below the alcohol setpoint;

[17.]19. Installation—Mechanical placement and electrical connection of a breath alcohol ignition interlock device in a vehicle by installers;

[18.]20. Installer—A dealer, distributor, supplier, individual, or service center who provides device calibration, installation, and other related activities as required by the authorized service provider;

[19.]21. Lockout—The ability of the device to prevent a vehicle's engine from starting unless it is serviced or recalibrated;

[20.]22. NHTSA—Federal agency known as the National Highway Traffic Safety Administration;

[21.]23. Operator—Any person who operates a vehicle that has a court-ordered or Department of Revenue required breath alcohol ignition interlock device installed;

[22.]24. Permanent lockout—A feature of a device in which a vehicle will not start until the device is reset by a device installer;

25. Photo ID technology—A feature of the device that incorporates technology that will photograph the person who is providing the breath test;

26. Refusal—The failure of a driver to provide a breath sample and complete the breath test when prompted by the ignition interlock device;

23./27. Pure breath sample—Expired human breath containing primarily alveolar air and having a breath alcohol concentration below the alcohol setpoint of twenty-five thousandths (.025);

24./28. Reinstallation—Replacing a breath alcohol ignition interlock device in a vehicle by an installer after it has been removed for service;

25./29. Retest—Two (2) additional chances to provide a breath sample below the alcohol setpoint when the first sample failed; or three (3) chances to provide a breath alcohol sample below the alcohol setpoint on the rolling retest;

26./30. Rolling retest—A subsequent breath test that must be conducted five (5) minutes after starting the vehicle and randomly during each subsequent thirty- (30-)/-minute time period thereafter while the vehicle is in operation;

27./31. Service lockout—A feature of the breath alcohol ignition interlock device which will not allow a breath test and will not allow the vehicle to start until the device is serviced and recalibrated as required;

28./32. Tampering—An overt, purposeful attempt to physically alter or disable an ignition interlock device, or disconnect it from its power source, or remove, alter, or deface physical anti-tampering measures, so a driver can start the vehicle without taking and passing an initial breath test;

29./33. Temporary lockout—A feature of the device which will not allow the vehicle to start for fifteen (15) minutes after three (3) failed attempts to blow a pure breath sample; and

30./34. Violations reset—A feature of a device in which a service reminder is activated due to one (1) of the following reasons:

A. Two (2) fifteen- (15-)/-minute temporary lockouts within a thirty- (30-)/-day period;

B. Any three (3) refusals to provide a retest sample within a thirty- (30-)/-day period; *for*

C. Any three (3) retest breath samples above the alcohol setpoint within a thirty- (30-)/-day period.; *or*

D. Any attempts to circumvent or tamper with a device.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2012, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. [2009] 2012, and section 226.130, RSMo 2000. This rule originally filed as II CSR 60-2.010. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.020 Approval Procedure. The Missouri Highways and Transportation Commission is amending subsection (1)(B).

PURPOSE: This proposed emergency amendment outlines the necessary steps for manufacturers to get their interlock devices approved and certified in the state of Missouri.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure public safety by establishing more stringent guidelines for approval of ignition interlock devices and ensure that authorized service providers have oversight of their installation sites, service centers and technicians and that they are reputable and doing business according to federal, state, and local regulations.

History: The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. In 2008 the Missouri General Assembly changed the ignition interlock law by requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact.

Recent Developments: TAFP SB 480 made several changes to the ignition interlock law during the 2012 legislative session. TAFP SB 480 requires those offenders with a five- (5-) year or ten- (10-) year driver license denial to install an ignition interlock device that has a global positioning system and photo ID technology installed. The bill also allows for first time driving while intoxicated (DWI) offenders to get a restricted driving privilege fifteen (15) days after their revocation provided the offender installs an ignition interlock device on any vehicle the offender operates and uses such device on such vehicle(s) for a period of seventy-five (75) days. In addition, the bill included language that requires monitoring of the DWI offenders for violations during the period of use. If violations occur, on a first offender, the period of ignition interlock use will be extended for additional seventy-five (75) day increments until the offender is violation free, or by one (1) six (6) month period for repeat offenders. The provisions in TAFP SB 480 go in to effect on October 1, 2013.

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TAFP SB 23 made additional changes to the ignition interlock law and contains two (2) effective dates. The first effective date, July 5, 2013 (upon the governor's signature), required the GPS and Photo ID technology capability be immediately required for ignition interlock devices used by those offenders driving on a limited driver license for a five- (5-) year or ten- (10-) year license denial due to impaired driving. A second effective date is March 3, 2014 that further changes the first offender requirements for ignition interlock use and the monitoring periods for both the first offenders and repeat offenders.

Ignition interlock use has increased dramatically since laws were strengthened in 2009. Each time the ignition interlock laws are strengthened the number of offenders required to use them increases as well. Ignition interlock use has increased from approximately one thousand five hundred (1,500) installed on vehicles in 2009 to approximately seven thousand seven hundred (7,700) today. TAFP SB 480 and TAFP SB 23 expand the requirement for ignition interlock use to include first offenders, those who have refused breath testing, and have decreased the hard suspension times for eligibility of a limited driving privilege for repeat offenders. The number of offenders who will now be required to have an ignition interlock device installed will again be increased.

Compelling Governmental Interest for this Emergency

Amendment: There has been at least one (1) documented case in Missouri of circumvention of an interlock device. Strengthening the tampering, suspension, revocation, and recordkeeping provisions will enable the commission to better regulate this program and ensure that individuals who are under court order to only drive vehicles with ignition interlock installed are not driving in an intoxicated condition.

In the last three (3) years, seven hundred fifty-five (755) people were killed and three thousand fifty-one (3,051) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

The language in subparagraph (1)(B)1.E. of this rule is being changed to require authorized service providers to submit a quality control plan that outlines the requirements for installation sites, service centers, and technicians who install and/or service ignition interlock devices. This will provide the state with some assurances that the authorized service providers are providing oversight and screening of those sites, centers, and technicians to ensure they are operating as a reputable business. The state has experienced problems in this area with technicians who had multiple DWIs on their own record and businesses that were not operating in a professional manner. In fact, during the last year there have been three (3) reports of technicians who are repeat DWI offenders. In addition, some of the installation sites have been in vacant lots or at apartment buildings.

The language in paragraph (1)(B)3. will require the authorized service providers to notify the state of Missouri when an offender is required by Missouri law to install an ignition interlock device on any vehicle they operate even though the offender resides in another state. Offenders in this situation need to meet all Missouri requirements including installing a device that has been approved for use in the state of Missouri and is programmed according to Missouri rules. This usually doesn't pose a problem at the time of installation but poses a greater problem when the authorized service provider does not follow through with reporting to the state throughout the duration of ignition interlock use by that offender. This could result in the offender removing the device early and the Department of Revenue (DOR) is not notified to take licensing action on that offender's driver record. In short, without adequate safeguards, drivers who have consumed intoxicants such that their ignition interlock device keeps the vehicle from operating may still receive their full license and be allowed to drive without an ignition interlock device if such violations are not reported to DOR in a timely manner. In addition, this could impact the required monitoring period established in TAFP SB 23.

The language in paragraph (1)(B)3. also requires the authorized service providers to install an ignition interlock device on a vehicle so the ignition interlock device can be field tested to ensure that the device is programmed accurately following all administrative rules outlined in 7 CSR 60-2.010 through 7 CSR 60-2.060. Missouri recently removed an ignition interlock device from the list of approved devices because the service centers within the state for this authorized service provider were not installing the devices correctly and therefore were not functioning properly. Staff with the department (or an agent of the department) will perform field testing to ensure that the device is installed correctly and is programmed to meet the requirements set forth in 7 CSR 60-2.010 through 7 CSR 60-2.060.

It is increasingly more important to ensure that the authorized service providers who are conducting business in the state are reputable and that the ignition interlock devices they install are performing according to Missouri standards.

This emergency amendment is being filed in order to ensure that

ignition interlock manufacturers and installers have clear and consistent guidelines when programming ignition interlock devices for use in Missouri. In addition, MoDOT will file a proposed permanent amendment to change the appropriate sections of 7 CSR 60-2.020 to reflect the same requirements.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the secretary of state's office and the Joint Committee on Administrative Rules, which will appear in the October 15, 2013 Missouri Register but is not intended to become effective until March 30, 2014.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. Missouri Department of Transportation staff has met with ignition interlock manufacturers and distributors, DOR, and other interested parties. The group discussed the current rule and the proposed amendments. All comments received were considered when preparing the proposed rules.

Effective Date and Duration: MHTC filed this emergency amendment on September 12, 2013 and it will become effective on October 1, 2013 and will expire on March 30, 2014.

(1) Approval Procedure.

(B) Application.

1. Application to become an authorized service provider must be made by submitting a letter requesting approval of a breath alcohol ignition interlock device to the /S/state of Missouri, Department of Transportation, Highway Safety Division, PO Box 270, Jefferson City, MO 65102, in the manner described herein. All applicants must certify that their device—

A. Does not impede the safe operation of a vehicle;

B. Minimizes opportunities to circumvent the device; and

C. Prevents an operator from starting a vehicle when the operator has a breath alcohol concentration which exceeds the alcohol setpoint.

2. An application for certification must include all of the following:

A. A written request for certification of a device on the company's letterhead, signed by an authorized representative of the company;

B. The name and business address of the applicant;

C. The name and model number of the device. A separate application is required for each model of device;

D. Complete technical specifications describing the device's accuracy, reliability, security, data collection and recording, tamper detection, and environmental features;

E. **A quality control plan that outlines the requirements for installation sites, service centers, and technicians who install and/or service ignition interlock devices. The plan must be submitted annually, or when changes occur, and must include, but not be limited to, the following:**

(I) Certification that ignition interlock technicians do not have two (2) or more alcohol-related enforcement contacts as defined in section 302.525, RSMo, or a manslaughter, involuntary manslaughter, or any other type of crime or conduct involving moral turpitude that would compromise the program;

(II) Installation sites and service centers are operating as a business meeting all federal, state, and local government regulations;

(III) The process the authorized service provider will use for ongoing supervision of the sites and technicians in the state; and

(IV) Outline suspension and revocation procedures for installation sites, service centers, and technicians for non-compliance of requirements set forth in 7 CSR 60-2.010 through 7 CSR 60-2.060 or any policies outlined by the authorized service provider;

/E./F. A complete and certified copy of data from an independent laboratory demonstrating that the device meets or exceeds the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 11772-11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the *Federal Register* by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992. This rule does not incorporate any subsequent amendments or additions to this publication;

/F./G. A complete listing of all installers that includes the name, location, phone number, contact name, and hours of operation; *[and]*

/G./H. The applicant's toll-free customer service/question/complaint hot-line number*./;* and

I. A separate application is required for devices that differ in any operational aspect.

3. The applicant seeking certification shall—

A. Agree to ensure any service performed outside the state of Missouri on a device installed pursuant to Missouri law shall be in compliance with all requirements included herein;

B. Agree to ensure proper record keeping and provide testimony relating to any aspect of the installation, service, repair, removal, interpretation of any report, or information recorded in the data storage system of a device;

C. Advise the Missouri Department of Transportation, Traffic and Highway Safety Division, whether the device for which certification is being sought in Missouri is the subject of any action to disallow, or has ever been, in any way, disallowed for use in another state whether such action occurred before or after approval in Missouri and if or when such action is or has been appealed in the other state and the outcome of the appeal;

D. Upon request of the Missouri Department of Transportation, Traffic and Highway Safety Division, and/or an agent of the state, for each device submitted for certification or certified under this section, agree to install the device with all proposed anti-circumvention features activated in a vehicle provided by the state, and/or an agent of the state; and

E. The state, and/or an agent of the state, may conduct compliance testing on the device submitted for certification and periodically throughout the certification period.

/3./4. All compliance costs associated with the *[certification and recertification process]* requirements set forth in 7 CSR 60-2.010 through 7 CSR 60-2.060 shall be borne by the applicant or authorized service provider.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2012, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. [2008] 2012, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.020. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.020, effective Aug. 28, 2003. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.030 Standards and Specifications. The Missouri Highways and Transportation Commission is amending subsections (1)(A)–(1)(C) and (1)(E), and adding a new subsection (1)(G).

PURPOSE: This emergency amendment clarifies installation and certification standards and procedures for ignition interlock devices in the state of Missouri.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure public safety by requiring that the ignition interlock devices capture data with regard to global positioning and photo ID in order to support recent legislative changes in Truly Agreed to and Finally Passed Senate Bill (TAFP SB) 480, which has an effective date of October 1, 2013. This rule will also close some gaps that are being experienced in the state with regard to installation of devices on vehicles that are being towed in for installation of an ignition interlock device or for monthly servicing and calibration.

History: The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. In 2008 the Missouri General Assembly changed the ignition interlock law by requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact.

Recent Developments: TAFP SB 480 made several changes to the ignition interlock law during the 2012 legislative session. TAFP SB 480 requires those offenders with a five- (5-) year or ten- (10-) year driver license denial to install an ignition interlock device that has a global positioning system and photo ID technology installed. The bill also allows for first time driving while intoxicated (DWI) offenders to get a restricted driving privilege fifteen (15) days after their revocation provided the offender installs an ignition interlock device on any vehicle the offender operates and uses such device on such vehicle(s) for a period of seventy-five (75) days. In addition, the bill included language that requires monitoring of the DWI offenders for violations during the period of use. If violations occur, on a first offender, the period of ignition interlock use will be extended for additional seventy-five (75) day increments until the offender is violation free, or by one (1) six (6) month period for repeat offenders. The provisions in TAFP SB 480 go in to effect on October 1, 2013.

While rulemaking to implement TAFP SB 480 was in the rulemaking process, TAFP SB 23 was being considered by the legislature and was passed in May 2013. TAFP SB 23 repeals sections of existing law where duplication or conflicts exist and re-enacts certain portions with changes. This resolved some of the conflicts and problems created by TAFP SB 480. While TAFP SB 480 has sections to become effective on October 1, 2013, TAFP SB 23, which was enacted a year later, makes further changes and makes certain of the same provisions effective July 5, 2013, upon the governor's signature. The commission has incorporated the changes from both TAFP SB 480 and TAFP SB 23 in the emergency rules to clarify what is required for compliance for both offenders, manufacturers, and installers.

TAFP SB 23 made additional changes to the ignition interlock law and contains two (2) effective dates. The first effective date, July 5, 2013 (upon the governor's signature), required the GPS and Photo ID technology capability be immediately required for ignition interlock

devices used by those offenders driving on a limited driver license for a five- (5-) year or ten- (10-) year license denial due to impaired driving. A second effective date is March 3, 2014 that further changes the first offender requirements for ignition interlock use and the monitoring periods for both the first offenders and repeat offenders.

Ignition interlock use has increased dramatically since laws were strengthened in 2009. Each time the ignition interlock laws are strengthened the number of offenders required to use them increases as well. Ignition interlock use has increased from approximately one thousand five hundred (1,500) installed on vehicles in 2009 to approximately seven thousand seven hundred (7,700) today. TAFP SB 480 and TAFP SB 23 expand the requirement for ignition interlock use to include first offenders, those who have refused breath testing, and have decreased the hard suspension times for eligibility of a limited driving privilege for repeat offenders. The number of offenders who will now be required to have an ignition interlock device installed will again be increased.

Compelling Governmental Interest for this Emergency Amendment: There has been at least one (1) documented case in Missouri of circumvention of an interlock device. Strengthening the tampering, suspension, and revocation provisions will enable the commission to better regulate this program and ensure that individuals who are under court order to only drive vehicles with ignition interlock installed are not driving in an intoxicated condition.

In the last three (3) years, seven hundred fifty-five (755) people were killed and three thousand fifty-one (3,051) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

The language in paragraph (1)(A)3. of this rule is being changed to add language that prohibits ignition interlock installers from installing an ignition interlock device on a vehicle that is inoperable or is not functioning in a capacity that allows for the proper operation of an ignition interlock device. The department has experienced an increase in the number of calls reporting this type of violation which allows the offender to install an ignition interlock on a vehicle that they have no intentions of driving in order to meet the minimum requirements for driver license reinstatement. These offenders are in violation of Missouri law if they drive another vehicle that isn't equipped with an ignition interlock device and are putting the motoring public at risk.

The language in paragraph (1)(A)4. addresses the requirement for anti-tampering measures to be utilized through placement and covering of all connections of the ignition interlock device to aid in prevention of tampering of the device by an offender. TAFP SB 23 makes it a violation of an offender's restricted driving privilege to circumvent or tamper with an ignition interlock device and the penalty is to extend the period of time in which the offender must use an ignition interlock device. There has been a documented case in Missouri of circumvention of an ignition interlock device in which the offender published a video and book. The video has been taken down however, the book can be found on Amazon's website.

The language in paragraph (1)(E)8. requires that the ignition interlock device be programmed to capture specific information with regard to global positioning and photo ID and to have the ability to print that information on a report for the court supervising authority and the Department of Revenue (DOR) to review. This information can be utilized to confirm that the offender was the person providing the breath test and the location the breath test was provided and is required in TAFP SB 23.

This emergency amendment is being filed in order to ensure that ignition interlock manufacturers and installers have clear and con-

sistent guidelines when programming ignition interlock devices for use in Missouri. In addition, MoDOT will file a proposed permanent amendment to change the appropriate sections of 7 CSR 60-2.030 to reflect the same requirements.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the secretary of state's office and the Joint Committee on Administrative Rules, which will appear in the October 15, 2013 Missouri Register but is not intended to become effective until March 30, 2014.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. Missouri Department of Transportation staff has met with ignition interlock manufacturers and distributors, DOR, and other interested parties. The group discussed the current rule and the proposed amendments. All comments received were considered when preparing the proposed rules.

Effective Date and Duration: MHTC filed this emergency amendment on September 12, 2013 and it will become effective on October 1, 2013 and will expire on March 29, 2014.

(1) Standards and Specifications.

(A) Beginning July 1, 2009, all devices newly installed into a vehicle must be based on electro-chemical fuel cell sensor technology and shall meet or exceed the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 11772-11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the Federal Register by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992. This rule does not incorporate any subsequent amendments or additions to this publication. Beginning July 1, 2011, all devices currently installed in an operator's vehicle that are not electro-chemical fuel cell technology shall be removed by the authorized service provider of the non-electro-chemical fuel cell device and such authorized service provider shall install new devices based on electro-chemical fuel cell technology, which must be selected from the state of Missouri's list of such approved devices. The authorized service provider shall notify by May 1, 2011, operators with non-electro-chemical fuel cell devices in their vehicles that such devices are to be removed from the operators' vehicles at the cost of the authorized service provider and that new devices shall be installed at the authorized service provider's expense.

1. All devices approved by the Missouri Department of Transportation, Highway Safety Division, must contain an anti-circumvention feature to help deter bogus breath samples and that feature should not be disengaged by any other person, including, but not limited to, the installer.

2. All devices approved by the Missouri Department of Transportation, Highway Safety Division, shall be programmed to allow the vehicle to be restarted without requiring an additional breath test for three (3) minutes after the ignition has been turned off or the vehicle has stalled, except when the driver has failed to take a random test or has provided a breath sample over the alcohol set-point.

3. An ignition interlock installer shall—

A. Be prohibited from installing an ignition interlock device on a vehicle that is inoperable. Any vehicle towed in for installation must be driven away from the installation facility of

its own power;

B. Ensure that a driver or other unauthorized person does not witness the installation or removal of an ignition interlock device; and

C. Inspect all vehicles prior to installation to determine that mechanical and electrical parts of the vehicle affected by an ignition interlock device are deemed in acceptable condition by the technician and not install a device unless and until the vehicle is in acceptable condition.

4. The following anti-tampering measures shall be utilized when installing an ignition interlock device:

A. Place all connections between a device and the vehicle under the dash or in an inconspicuous area of the vehicle;

B. Cover all of the following connections with unique and easily identifiable seal, epoxy, resin, wire, sheathing, or tape:

(I) Any wiring between an ignition interlock device and the vehicle;

(II) All wires used to install the device that are not inside a secured enclosure; and

(III) All exposed electrical connections.

(B) All approved devices must have an alcohol setpoint of twenty-five thousandths (.025) for initial startup.

1. A device shall be programmed to allow a maximum of three (3) attempts to blow a breath sample below the alcohol setpoint within a ten (10)-minute period.

2. Three (3) failed startup attempts within a ten (10)-minute period shall result in a fifteen (15)-minute temporary lockout.

3. Two (2) fifteen (15)-minute temporary lockouts within a thirty (30)-day period will result in a violations reset message.

4. The violations reset message shall instruct the operator to return the device to the installer for servicing within five (5) working days.

A. As the result of a reset message, the installer must download and calibrate the device.

B. The installer must report all violations to the court-ordered supervising authority within three (3) working days.

5. If the vehicle is not returned to the installer within five (5) working days, the device shall cause the vehicle to enter a permanent lockout condition.

(C) A retest feature is required for all devices.

1. A device shall be programmed to require a rolling retest five (5) minutes after the start of the vehicle and randomly during each subsequent thirty (30)-minute time period thereafter as long as the vehicle is in operation.

2. Any breath sample above the alcohol retest setpoint of twenty-five thousandths (.025) or any failure to provide a retest sample within five (5) minutes shall activate the vehicle's horn or other installed alarm and/or cause the vehicle's emergency lights to flash until the engine is shut off by the operator. Three (3) breath samples above the alcohol setpoint or three (3) refusals by the driver to provide a retest sample within a thirty (30)-day period *[will]* shall result in a violations reset message.

3. The violations reset message shall instruct the operator to return the device to the installer for servicing within five (5) working days.

A. As the result of a reset message, the installer must download and calibrate the device.

B. The installer must report all violations to the court-ordered supervising authority within three (3) working days.

4. If the vehicle is not returned to the installer within five (5) working days, the device shall cause the vehicle to enter a permanent lockout condition.

(E) A device shall record data in its memory in such a manner that a hard copy report can be printed which includes all of the following information:

1. The date and time of any use or attempted use of a vehicle;

2. The date and time of any act or attempt to tamper or circumvent the device;

3. The date, time, and breath alcohol concentration, in grams per two hundred ten (210) liters of air, of each breath sample provided to the device;

4. The date and time of any malfunctions of the device;

5. The date and time of any failures to provide retest samples;

6. The date that a "service required" (that is, violations reset) message is issued to the operator; *[and]*

7. The date that any service is performed*[/]; and*

8. Photo identification and global positioning data when the features are enabled as required by the court supervising authority, Department of Revenue, or Missouri statute. The GPS and photo ID data should be captured during the events outlined in paragraphs 2.-5. above.

(G) The sale or use of any type of remote code or reset feature allowing a driver to bypass an installed ignition interlock without providing a pure breath sample at startup or during operation of the vehicle is prohibited.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2012, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. [2009] 2012, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.030. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. For intervening history, please consult the Code of State Regulations. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.040 Responsibilities of Authorized Service Providers. The Missouri Highways and Transportation Commission is amending subsections (1)(A) and (1)(B).

PURPOSE: This emergency amendment clarifies the monitoring, reporting, and record keeping protocols for breath alcohol ignition interlock device authorized service providers.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure public safety by outlining the monitoring requirements of the authorized service provider and reporting requirements to the Department of Revenue (DOR) in order to support recent legislative changes in Truly Agreed to and Finally Passed Senate Bill (TAFP SB) 480, which has an effective date of October 1, 2013. Additional language is being added to outline record retention and technical support to offenders who have a device installed and are experiencing device failure or vehicle problems related to the interlock device.

History: The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. In 2008 the Missouri General Assembly changed the ignition interlock law by requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact.

Recent Developments: TAFP SB 480 made several changes to the ignition interlock law during the 2012 legislative session. TAFP SB

480 requires those offenders with a five- (5-) year or ten- (10-) year driver license denial to install an ignition interlock device that has a global positioning system and photo ID technology installed. The bill also allows for first time driving while intoxicated (DWI) offenders to get a restricted driving privilege fifteen (15) days after their revocation provided the offender installs an ignition interlock device on any vehicle the offender operates and uses such device on such vehicle(s) for a period of seventy-five (75) days. In addition, the bill included language that requires monitoring of the DWI offenders for violations during the period of use. If violations occur, on a first offender, the period of ignition interlock use will be extended for additional seventy-five (75) day increments until the offender is violation free, or by one (1) six (6) month period for repeat offenders. The provisions in TAFP SB 480 go in to effect on October 1, 2013.

While rulemaking to implement TAFP SB 480 was in the rulemaking process, TAFP SB 23 was being considered by the legislature and was passed in May 2013. TAFP SB 23 repeals sections of existing law where duplication or conflicts exist and re-enacts certain portions with changes. This resolved some of the conflicts and problems created by TAFP SB 480. While TAFP SB 480 has sections to become effective on October 1, 2013, TAFP SB 23, which was enacted a year later, makes further changes and makes certain of the same provisions effective July 5, 2013, upon the governor's signature. The commission has incorporated the changes from both TAFP SB 480 and TAFP SB 23 in the emergency rules to clarify what is required for compliance for both offenders, manufacturers, and installers.

TAFP SB 23 made additional changes to the ignition interlock law and contains two (2) effective dates. The first effective date, July 5, 2013 (upon the governor's signature), required the GPS and Photo ID technology capability be immediately required for ignition interlock devices used by those offenders driving on a limited driver license for a five- (5-) year or ten- (10-) year license denial due to impaired driving. A second effective date is March 3, 2014 that further changes the first offender requirements for ignition interlock use and the monitoring periods for both the first offenders and repeat offenders.

Ignition interlock use has increased dramatically since laws were strengthened in 2009. Each time the ignition interlock laws are strengthened the number of offenders required to use them increases as well. Ignition interlock use has increased from approximately one thousand five hundred (1,500) installed on vehicles in 2009 to approximately seven thousand seven hundred (7,700) today. TAFP SB 480 and TAFP SB 23 expand the requirement for ignition interlock use to include first offenders, those who have refused breath testing, and have decreased the hard suspension times for eligibility of a limited driving privilege for repeat offenders. The number of offenders who will now be required to have an ignition interlock device installed will again be increased.

Authorized service providers will now be required to monitor the data logs of the ignition interlock use for violations. If violations occur the required time of ignition interlock use will be extended for those first time offenders and for those offenders who have had a five- (5-) year and ten- (10-) year driver license denial. This requirement is a result of TAFP SB 480 and TAFP SB 23.

Compelling Governmental Interest for this Emergency Amendment: There has been at least one (1) documented case in Missouri of circumvention of an interlock device. Strengthening the tampering, suspension, and revocation provisions will enable the commission to better regulate this program and ensure that individuals who are under court order to only drive vehicles with ignition interlock installed are not driving in an intoxicated condition.

In the last three (3) years, seven hundred fifty-five (755) people were killed and three thousand fifty-one (3,051) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The

use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

The language in paragraph (1)(A)16. of this rule is being added to outline monitoring requirements of the authorized service provider in order to carry out TAFP SB 480 and TAFP SB 23. The authorized service providers are required to interpret the data logs of the ignition interlock devices to monitor the offender for violations. If the offender receives a violation the period of time in which the offender must use an ignition interlock device will be extended as required in TAFP SB 480.

The language in paragraph (1)(A)17. outlines when an authorized service provider should notify the DOR. The DOR will post the appropriate action to the offender's driver record based on the information submitted by the authorized service provider. In some cases the offender's driving privileges will be suspended or revoked. In other situations the information will be posted to the offender's driving record in order for the offender to reinstate their driving privilege or document that the required use of ignition interlock has been completed. In short, without adequate safeguards, drivers who have consumed intoxicants such that their ignition interlock device keeps the vehicle from operating may still receive their full license and be allowed to drive without an ignition interlock device if such violations are not reported to DOR in a timely manner.

It is important that authorized service providers, installation sites, and service centers retain information about ignition interlock use and service in case a question arises regarding the offenders ignition interlock use or the service provided to the offender. This is especially important if action is taken against the offender by the court supervising authority or the DOR. Those records may need to be accessed to verify or discount any claims by the offender or the authorized service provider.

The department receives complaints by offenders utilizing ignition interlocks that they cannot receive technical assistance after hours from the authorized service providers. The offenders have been in various situations when this occurs ranging from being at the side of the road with a small child in the vehicle, attempting to start their vehicle to go to work, and sitting in a parking lot after work trying to get home, etc. The language included in the emergency amendment more clearly defines assistance that the authorized service providers are required to provide to the offenders to ensure they can be productive members of society and carry out their obligations and commitments. In addition, the technicians employed by the authorized service providers are the only ones certified to work on the ignition interlock devices and therefore the offender cannot find service through any other method after general business hours of that provider.

This emergency amendment is being filed in order to ensure that ignition interlock manufacturers and installers have clear and consistent guidelines when programming ignition interlock devices for use in Missouri. In addition, MoDOT will file a proposed permanent amendment to change the appropriate sections of 7 CSR 60-2.040 to reflect the same requirements.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the secretary of state's office and the Joint Committee on Administrative Rules, which will appear in the October 15, 2013 Missouri Register but is not intended to become effective until March 30, 2014.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. Missouri Department of Transportation staff has met with ignition interlock manufacturers and distributors, DOR, and other interested parties. The group discussed the current rule and the proposed amendments. All comments received were considered when preparing the proposed rules.

Effective Date and Duration: MHTC filed this emergency amendment on September 12, 2013 and it will become effective on October 1, 2013 and will expire on March 29, 2014.

(1) Responsibilities of Authorized Service Providers.

(A) The responsibilities of a breath alcohol ignition interlock device authorized service provider to the state of Missouri shall include:

1. The authorized service provider shall carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as manufacturing, calibration, installation, and removal of devices. The authorized service provider shall ensure that its installers are named additional insureds or that its installers carry like insurance in the amounts stated herein. The proof of insurance shall include a statement from the insurance company that thirty (30) days' notice will be given to the director, Highway Safety Division, before cancellation of the insurance. Proof of insurance must be submitted to the Missouri Department of Transportation, Highway Safety Division within thirty (30) days after a Letter of Certification has been issued. Failure to provide certificate of insurance may result in suspension or revocation of approval for the device;

2. The authorized service provider shall indemnify and hold harmless the state of Missouri and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the authorized service provider or its installers relating to the installation, service, repair, use, or removal of a device;

3. The authorized service provider shall provide expert or other required testimony in any civil or criminal proceedings or administrative hearings as to the method of manufacture of the device, how said device functions, *and* the testing protocol by which the device was evaluated for approval, **and interpretation of any report or information recorded in the data storage system of the device.** Failure to provide testimony may result in suspension or revocation of approval for the device;

4. The authorized service provider shall notify the Missouri Department of Transportation, Highway Safety Division in writing of any material modification or alteration in the components, design, or installation and operating instructions of any device approved for use in the state of Missouri and shall provide the Highway Safety Division satisfactory proof that any modifications or alterations do not adversely affect the ability of the device to satisfy the standards established by the United States Department of Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 57 FR 11772-11787 (April 7, 1992), which is incorporated by reference and made a part of this rule as published in the *Federal Register* by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective April 7, 1992. This rule does not incorporate any subsequent amendments or additions to this publication;

5. The authorized service provider must provide informational materials to the Division of Probation and Parole, the circuit courts (including circuit, associate, and municipal divisions), and the Department of Revenue for distribution to operators at no cost;

6. In cases of operator noncompliance, the authorized service provider or his/her installer must notify the appropriate court-ordered supervising authority before the end of the next working day. Noncompliance shall include tampering, circumvention, violations

resets, high breath alcohol concentration (BAC), missing a scheduled service date, or other noncompliance as determined by the referring court;

7. The authorized service provider shall notify the appropriate court-ordered supervising authority by the end of the next working day of removal of a device;

8. The authorized service provider, **installation site and service center** shall conduct physical tamper inspections any time the device is serviced or given routine inspection, maintenance, or repair. Tamper inspections shall include the following:

A. Inspection of all external wiring, insulation, connections, tamper seals, and sheathing for the device and where the device connects to the vehicle; and

B. Checking the device for proper operation to ensure tamper detection capabilities;

9. The authorized service provider must immediately notify the chief law enforcement official of the county, or a city not within a county, where the installer is located, and the court-ordered supervising authority of any evidence of tampering with or circumvention of the device. The evidence must be preserved by the authorized service provider or his/her installer until otherwise notified by local law enforcement officials;

10. The authorized service provider must provide summary reports every thirty (30) days to the court-ordered supervising authority. The summary reports must contain a summary of violations, the number of starts, and all noncompliance on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo;

11. The authorized service provider must provide to the court-ordered supervising authority additional reports, to include, but not be limited to, records of installation, calibrations, maintenance checks, and usage records on devices placed in service in the state of Missouri under sections 577.600-577.614, RSMo. These records shall be agreed upon and transmitted using electronic transfer protocols or in hard copy;

12. The authorized service provider must provide a quarterly status report to the Missouri Department of Transportation, Highway Safety Division. The first quarter of each year shall be January 1 through March 31. The quarterly reports should reach the Highway Safety Division on or before the fifteenth of the month immediately following the end of the quarter. The reports shall be filed electronically and contain the following information: the name of the ignition interlock device, total number of devices in operation in Missouri each quarter at the time of reporting, total number of devices installed during the quarter, total number of voluntary installations during the quarter, total number of devices removed during the quarter, total number of breath alcohol tests resulting in a BAC above the alcohol setpoint, total number of attempts to circumvent the device, and the total number of devices that malfunctioned or were defective;

13. The authorized service provider shall grant the state of Missouri the right to inspect or request copies of any and all operator files and records on a random basis;

14. The authorized service provider shall supply for each ignition interlock device installed as a result of a Missouri probation order a warning label, which shall not be less than one-half inch (1/2") in height by three inches (3") in length and shall contain the following language: "WARNING! ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THIS DEVICE IS GUILTY OF A CLASS A MISDEMEANOR.";

15. The authorized service provider must notify the Highway Safety Division electronically or in writing of changes in the status of any installer and additions or deletions or other changes to its complete listing of all installers that includes the name, location, phone number, contact name, and hours of operation. Such notification shall occur at least once per month and shall occur more frequently if additional changes are made; *and*

16. Data downloaded from an ignition interlock device shall be—

A. Reviewed by the authorized service provider for any evidence of violations reset, tampering, and/or circumvention as defined in 7 CSR 60-2.010 for the designated monitoring period; and

B. All information obtained as a result of each calibration or inspection must be retained by the authorized service provider for three (3) years from the date the ignition interlock device is removed from the vehicle;

[16./17. The authorized service provider shall electronically notify the Department of Revenue in a format as determined by the director of revenue within one (1) working day of the following:

A. The date the ignition interlock device was installed;

B. [The driver's failure to have the ignition interlock device calibrated every thirty (30) days] A service lockout condition; [and]

C. The date the ignition interlock device was removed[.]; and

D. The completion of the designated monitoring period of ignition interlock use by the driver with no violation resets, tampering, and/or circumventions as defined in 7 CSR 60-2.010;

18. Each installation site and service center must maintain records documenting all calibrations, downloads, and any other services performed on an ignition interlock device, including service of a violation reset; and

19. Retention of the record of installation, calibrations, downloads, service, and associated invoices must be maintained for a minimum of three (3) years.

(B) The responsibilities of an authorized service provider to the operator shall include:

1. Written instructions on how to clean and care for the device;

2. Written instructions on what type of vehicle malfunctions or repairs may affect the device, and what to do when such repairs are necessary;

3. Written and hands-on training for the operator, and all persons who will use the vehicle, on how to use the device after it is installed in the operator's vehicle. Training shall include operation, maintenance, and safeguards against improper operations;

4. A[n emergency] twenty-four- (24-)/-hour toll-free telephone number that the operator may contact to receive assistance in the event of device failure or vehicle problems related to the interlock device. **Calls must either be answered by an ignition interlock technician qualified to service the manufacturer's ignition interlock device, or the call must be returned by a qualified technician within thirty (30) minutes of the original call.**

A. Assistance shall include technical information, tow service, and/or road service.

B. [Emergency a] Assistance related to the failure of a device should be provided within two (2) hours [for vehicles located in or near an area with an installation or repair center].

C. The device must be made functional within twenty-four (24) hours from when the call for assistance is made or the device must be replaced;

5. Restoration of the operator's vehicle to its original condition after removal of the breath alcohol ignition interlock device; and

6. Access to an enclosed building with a separate waiting area for operators. If installation is by a mobile unit, the operator must have a separate, enclosed waiting area available.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2012, sections 577.041, 577.600–577.614, RSMo 2000 and RSMo Supp. [2008] 2012, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

**Title 7—DEPARTMENT OF TRANSPORTATION
Division 60—Traffic and Highway Safety Division
Chapter 2—Breath Alcohol Ignition Interlock Device
Certification and Operational Requirements**

EMERGENCY AMENDMENT

7 CSR 60-2.050 Breath Alcohol Ignition Interlock Device Security. The Missouri Highways and Transportation Commission is amending subsection (1)(A).

PURPOSE: This emergency amendment outlines the security and inspection requirements of the authorized service providers.

EMERGENCY STATEMENT: This emergency amendment is necessary to ensure public safety by limiting those who are allowed to observe an ignition interlock installation and also requires that an ignition interlock device be inspected for any signs of tampering any time the ignition interlock is serviced.

History: The Missouri General Assembly passed legislation in 1995 mandating that a court shall require that any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense shall not operate any motor vehicle unless the vehicle is equipped with a functioning, certified ignition interlock device. In 2008 the Missouri General Assembly changed the ignition interlock law by requiring proof of installation of an interlock device, with or without a court order, for any person who is found guilty of or pleads guilty to a second or subsequent intoxication-related traffic offense or who is subject to a license suspension, revocation, or denial action as a result of a second or subsequent alcohol-related enforcement contact.

Recent Developments: Truly Agreed to and Finally Passed Senate Bill (TAFP SB) 480 made several changes to the ignition interlock law during the 2012 legislative session. TAFP SB 480 requires those offenders with a five- (5-) year or ten- (10-) year driver license denial to install an ignition interlock device that has a global positioning system and photo ID technology installed. The bill also allows for first time driving while intoxicated (DWI) offenders to get a restricted driving privilege fifteen (15) days after their revocation provided the offender installs an ignition interlock device on any vehicle the offender operates and uses such device on such vehicle(s) for a period of seventy-five (75) days. In addition, the bill included language that requires monitoring of the DWI offenders for violations during the period of use. If violations occur, on a first offender, the period of ignition interlock use will be extended for additional seventy-five (75) day increments until the offender is violation free, or by one (1) six (6) month period for repeat offenders. The provisions in TAFP SB 480 go in to effect on October 1, 2013.

While rulemaking to implement TAFP SB 480 was in the rulemaking process, TAFP SB 23 was being considered by the legislature and was passed in May 2013. TAFP SB 23 repeals sections of existing law where duplication or conflicts exist and re-enacts certain portions with changes. This resolved some of the conflicts and problems created by TAFP SB 480. While TAFP SB 480 has sections to become effective on October 1, 2013, TAFP SB 23, which was enacted a year later, makes further changes and makes certain of the same provisions effective July 5, 2013, upon the governor's signature. The commission has incorporated the changes from both TAFP SB 480 and TAFP SB 23 in the emergency rules to clarify what is required for compliance for both offenders, manufacturers, and installers.

TAFP SB 23 made additional changes to the ignition interlock law and contains two (2) effective dates. The first effective date, July 5, 2013 (upon the governor's signature), required the GPS and Photo ID technology capability be immediately required for ignition interlock devices used by those offenders driving on a limited driver license for a five- (5-) year or ten- (10-) year license denial due to impaired driving. A second effective date is March 3, 2014 that further changes the first offender requirements for ignition interlock use

and the monitoring periods for both the first offenders and repeat offenders.

To further complicate the situation, TAFP SB 23 did not contain language to repeal some sections enacted by TAFP SB 480, and therefore, the October 1, 2013 effective date is believed to be required for the monitoring periods and the first offender option for a restricted driving privilege with ignition interlock use. However, those provisions will change again on March 3, 2014 in accordance with TAFP SB 23.

Ignition interlock use has increased dramatically since laws were strengthened in 2009. Each time the ignition interlock laws are strengthened the number of offenders required to use them increases as well. Ignition interlock use has increased from approximately one thousand five hundred (1,500) installed on vehicles in 2009 to approximately seven thousand seven hundred (7,700) today. TAFP SB 480 and TAFP SB 23 expand the requirement for ignition interlock use to include first offenders, those who have refused breath testing, and have decreased the hard suspension times for eligibility of a limited driving privilege for repeat offenders. The number of offenders who will now be required to have an ignition interlock device installed will again be increased.

Compelling Governmental Interest for this Emergency Amendment: There has been at least one (1) documented case in Missouri of circumvention of an interlock device. Strengthening the tampering, suspension, and revocation provisions will enable the commission to better regulate this program and ensure that individuals who are under court order to only drive vehicles with ignition interlock installed are not driving in an intoxicated condition.

In the last three (3) years, seven hundred fifty-five (755) people were killed and three thousand fifty-one (3,051) people received disabling injuries in traffic crashes involving impaired drivers. Ignition interlock devices have been proven in this and other jurisdictions to be an effective means to prevent offenders from driving their vehicle while under the influence of alcohol, thereby greatly reducing the potential for traffic crashes caused by repeat alcohol offenders. The use of ignition interlock devices ensure the safety of the motoring public by monitoring repeat DWI offenders when their driving privileges are reinstated or while they are driving on a limited or restricted driving privilege.

The language in paragraph (1)(A)1. of this rule is being changed to limit the observation of ignition interlock installations to a technician. This is a common practice in other states to avoid or discourage circumvention or tampering with an ignition interlock device once the offender has the device installed and has left the installation site.

Also, TAFP SB 23 makes it a violation of an offender's restricted driving privilege to circumvent or tamper with an ignition interlock device and the penalty is to extend the period of time in which the offender must use an ignition interlock device. There has been a documented case in Missouri of circumvention of an ignition interlock device in which the offender published a video and book. The video has been taken down however, the book can be found on Amazon's website. Paragraph (1)(A)4. of this rule adds the requirement of circumvention or tampering to the list of violations that would prompt a violation reset message and extend the period of interlock use.

This emergency amendment is being filed in order to ensure that ignition interlock manufacturers and installers are conducting inspections of ignition interlock devices and the vehicle to document and report any evidence of such an act. The documented case mentioned above could have possibly been averted if the service center had conducted a thorough inspection. In addition, MoDOT will file a proposed permanent amendment to change the appropriate sections of 7 CSR 60-2.050 to reflect the same requirements.

Proposed Permanent Amended Rule Filed: Also, the Missouri Highways and Transportation Commission (MHTC) is filing a proposed amended administrative rule regarding this same subject with the secretary of state's office and the Joint Committee on Administrative Rules, which will appear in the October 15, 2013 *Missouri Register* but is not intended to become effective until March

30, 2014.

Because of the lengthy delay in the effective date of the proposed amended administrative rule, an emergency amendment is being filed which is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. It is limited to establishing terms used in the breath alcohol ignition interlock device certification and operational requirements.

Fairness to All Interested Parties and Support from Industry: MHTC believes this emergency amendment is fair to all interested persons and parties under the circumstances. Missouri Department of Transportation staff has met with ignition interlock manufacturers and distributors, DOR, and other interested parties. The group discussed the current rule and the proposed amendments. All comments received were considered when preparing the proposed rules.

Effective Date and Duration: MHTC filed this emergency amendment on September 12, 2013 and it will become effective on October 1, 2013 and will expire on March 29, 2014.

(1) Security.

(A) The authorized service providers shall be responsible for ensuring that the installers comply with all of the following security requirements:

1. Only authorized [employees] technicians of an installer may observe the installation of a device. Reasonable security measures must be taken to prevent the operator from observing the installation of a device, or obtaining access to installation materials;

2. An installer is prohibited from assisting or facilitating any tampering or circumvention of a device; [and]

3. An installer [may] shall not install or service a device on a vehicle owned or operated by any of its employees[.]; and

4. Physical tamper inspections shall be conducted any time the device is serviced or given routine inspection, maintenance, or repair. Tamper inspections shall include the following:

A. Inspection of all external wiring, insulation, connections, tamper seals, and sheathing for the device and where the device connects to the vehicle; and

B. Checking the device for proper operation to ensure tamper detection capabilities.

AUTHORITY: sections 302.060, 302.304, 302.309, and 302.525, RSMo Supp. 2012, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. [2008] 2012, and section 226.130, RSMo 2000. This rule originally filed as 11 CSR 60-2.050. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.050, effective Aug. 28, 2003. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expires March 29, 2014. A proposed amendment covering this same material is published in this issue of the Missouri Register.

**Title 13—DEPARTMENT OF SOCIAL SERVICES
Division 40—Family Support Division
Chapter 100—Child Support Program, General
Administration**

EMERGENCY RULE

13 CSR 40-100.040 State Directory of New Hires

PURPOSE: For new hire reporting purposes under section 285.300, RSMo, this rule defines "newly hired employee" in accordance with The Trade Adjustment Assistance Extension Act of 2011 (Public Law 112-40) amendment to section 453A(a)(2) of the Social Security Act.

EMERGENCY STATEMENT: This emergency rulemaking is necessary for the Family Support Division to operate the state directory of

new hires in compliance with section 453A of the Social Security Act. By October 1, 2013, the state must adopt the P.L. 112-40 definition of newly hired employee in order to have a compliant Title IV-D State Plan. The definition was included in HB 611, which the Missouri General Assembly truly agreed to and finally passed on May 17, 2013, and the governor vetoed on July 2, 2013. The Missouri General Assembly did not override the HB 611 veto on September 11, 2013. Therefore, adoption of the definition by an emergency rule, to be in effect by October 1, 2013, is the only remaining mechanism for a compliant Title IV-D State Plan. If the state does not adopt the P.L. 112-40 definition by October 1, 2013, the Administration for Children and Families, Office of Child Support Enforcement will initiate steps to determine that Missouri's Title IV-D State Plan is not compliant, resulting in the loss of Title IV-D federal funding. The Family Support Division consulted the federal Office of Child Support Enforcement and it is that agency's opinion that a state regulation containing the definition will indicate the state's compliance with the mandate to operate the state directory of new hires in accordance with section 453A of the Social Security Act. A proposed rule, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency rule is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Family Support Division believes this emergency rule is fair to all interested persons and parties under the circumstances. This emergency rule was filed September 16, 2013, becomes effective September 26, 2013, and expires March 24, 2014.

- (1) "Newly hired employee" means an employee who—
- (A) Has not previously been employed by the employer; or
 - (B) Was previously employed by the employer but has been separated from such prior employment for at least sixty (60) consecutive days.

AUTHORITY: section 454.400.2(5), RSMo 2000. Emergency rule filed Sept. 16, 2013, effective Sept. 26, 2013, expires March 24, 2014. A proposed rule covering this same material is published in this issue of the **Missouri Register**.

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

EMERGENCY AMENDMENT

19 CSR 25-30.031 Type II Permit. The department is amending subsection (7)(A) and Report No. 1 that follows the rule in the *Code of State Regulations*.

PURPOSE: This amendment reflects the name change in one (1) of the approved instruments and updates the maintenance report to reflect that name change as well.

EMERGENCY STATEMENT: Only instruments that have been approved by the Department of Health and Senior Services and are listed in these rules may be used to test breath alcohol for alcohol-related driving offenses. DataMaster breath alcohol instruments are currently the only type of instrument available for use in eighty-eight (88) of the one hundred and fourteen (114) counties in Missouri. Between January 1, and July 1, 2012, DataMaster breath alcohol instruments were used in performing twelve thousand and ninety-three (12,093) breath alcohol tests in Missouri. In March of 2013, National Patent Analytical Systems, Inc., the manufacturer of DataMaster breath alcohol instruments, sold its interests in breath

alcohol instruments to another company, Intoximeters, Inc., which is changing the name of one (1) of the DataMaster instrument lines. This emergency amendment changes the model name of one (1) of the approved breath alcohol instruments listed in this rule as well as on the maintenance report form for that instrument that follows in the Code. This emergency amendment is necessary to protect the public health, safety, and welfare and presents a compelling governmental interest because failure to amend this rule could result in both confusion and legal challenges to the use of the Intox DMT and DataMaster DMT in driving while intoxicated criminal and administrative actions in Missouri. In addition, the Missouri Department of Transportation's Office of Traffic and Highway Safety, the Missouri State Highway Patrol, and the Missouri Safety Center have executed contracts to purchase approximately two million one-hundred and twenty-nine thousand dollars (\$2,129,000) worth of breath alcohol instruments and accomplish related training using federal funds. At least one hundred seventy (170) of the instruments contracted for will be Intox DMTs. The Missouri Department of Transportation's Office of Traffic and Highway Safety began conducting training on the new Intox DMT instruments starting the week of August 19, 2013, and following such training will begin placing the new instruments in the field. Until the rule is amended adding the new instrument name as well as changing the instrument name listed on the report form, any use of the instrument may cause confusion and legal challenges of breath alcohol results from the instruments. Such confusion could likely result in the inability to convict individuals for driving while intoxicated or take administrative action against their driver's licenses using results from these instruments. As a result, the Department of Health and Senior Services finds an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 4, 2013, becomes effective September 15, 2013, and expires March 13, 2014.

(7) For the maintenance checks referred to in sections (3)–(5) of this rule, the appropriate maintenance report form for the specific instrument being checked shall be used—

- (A) When performing a maintenance check on the [DataMaster] Intox DMT, the report incorporated in the instrument software shall be used (see Report No. 1 included herein for example);



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
STATE PUBLIC HEALTH LABORATORY
BREATH ALCOHOL PROGRAM
INTOX DMT MAINTENANCE REPORT

REPORT #1

Complete this report at the time of the regular monthly preventive maintenance check (not to exceed 35 days).
Complete this report whenever the instrument is serviced or repaired and whenever it is placed into service.
Retain the original and send a copy within 15 days to the Breath Alcohol Program, DHSS.

INTOX DMT SN	NAME OF AGENCY	DATE OF INSPECTION
LOCATION OF INSTRUMENT (STREET AND CITY)		TIME OF INSPECTION

CHECKLIST: Place a mark on the line by each item if found to be satisfactory or is operating within established limits. (Write in observed values where determined). Unmarked items must be corrected before using instrument.

<input type="checkbox"/> DIAGNOSTIC RECORD	
DATE AND TIME _____	<input type="checkbox"/> DETECTOR
<input type="checkbox"/> PROGRAM	<input type="checkbox"/> FILTER 1
<input type="checkbox"/> SAMPLE CHAMBER _____	<input type="checkbox"/> FILTER 2
<input type="checkbox"/> BREATH TUBE _____	<input type="checkbox"/> FILTER 3
<input type="checkbox"/> PUMP	<input type="checkbox"/> INTERNAL STANDARD

BREATH ANALYZER ACCURACY STANDARDS

<input type="checkbox"/> SIMULATOR SOLUTION	<input type="checkbox"/> COMPRESSED ETHANOL-GAS MIXTURE
<input type="checkbox"/> STANDARD SUPPLIER _____	LOT # _____ EXP. DATE _____
<input type="checkbox"/> SIMULATOR TEMP (34°C ± 0.2°C) _____	SIMULATOR SN _____ SIMULATOR EXP DATE _____
<input type="checkbox"/> CALIBRATION CHECK - (ONLY ONE STANDARD IS TO BE USED PER MAINTENANCE REPORT) Run three tests using a standard solution. All three tests must be within ±5% of the standard value and must have a spread of .005 or less. Mark the box corresponding to the standard solution being used.	
<input type="checkbox"/> 0.10% STANDARD - MUST READ BETWEEN 0.095% AND 0.105% INCLUSIVE	
<input type="checkbox"/> 0.08% STANDARD - MUST READ BETWEEN 0.076% AND 0.084% INCLUSIVE	
<input type="checkbox"/> 0.04% STANDARD - MUST READ BETWEEN 0.038% AND 0.042% INCLUSIVE	

TEST 1:	TEST 2:	TEST 3:
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PERFORM R.F.I. TEST

INDICATE THE NUMBER OF BREATH TEST IN THE FOLLOWING RANGES SINCE THE LAST MAINTENANCE REPORT:

REFUSALS	0-.04	.05-.09	.10-.14	.15-.19	OVER .19
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LIST ANY NEW PARTS AND DESCRIBE ANY ALTERATION OR MODIFICATION THAT WAS MADE TO RESTORE THE INSTRUMENT TO OPERATE SATISFACTORILY AND WITHIN ESTABLISHED LIMITS (USE OTHER SIDE IF NECESSARY)

INSPECTING OFFICER

SIGNATURE	PRINT FULL NAME
TYPE II PERMIT NUMBER	EXPIRATION DATE
	TELEPHONE NUMBER ()

RETURN COMPLETED REPORT TO THE

Breath Alcohol Program, Missouri Department of Health and Senior Services, Southeast District Office, 2875 James Blvd, Poplar Bluff, MO 63901

AUTHORITY: sections 192.006 and 577.026, RSMo 2000, and sections 306.114, 306.117, 577.020, and 577.037, RSMo Supp. [2011] 2012. This rule previously filed as 19 CSR 20-30.031. Original rule filed July 15, 1988, effective Sept. 29, 1988. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 4, 2013, effective Sept. 15, 2013, expires March 13, 2014. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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

EMERGENCY AMENDMENT

19 CSR 25-30.050 Approved Breath Analyzers. The department is amending section (1).

PURPOSE: This amendment reflects the name change in one (1) of the approved instruments as well as the change in manufacturer for two (2) of the approved instruments.

EMERGENCY STATEMENT: Only instruments that have been approved by the Department of Health and Senior Services and are listed in these rules may be used to test breath alcohol for alcohol-related driving offenses. DataMaster breath alcohol instruments are currently the only type of instrument available for use in eighty-eight (88) of the one hundred and fourteen (114) counties in Missouri. Between January 1, and July 1, 2012, DataMaster breath alcohol instruments were used in performing twelve thousand and ninety-three (12,093) breath alcohol tests in Missouri. In March of 2013, National Patent Analytical Systems, Inc., the manufacturer of DataMaster breath alcohol instruments, sold its interests in breath alcohol instruments to another company, Intoximeters, Inc., which is changing the name of one (1) of the DataMaster instrument lines. This emergency amendment changes the model name and manufacturer of one of the approved breath alcohol instruments listed in this rule as well as the manufacturers of two (2) other approved breath alcohol instruments. This emergency amendment is necessary to protect the public health, safety, and welfare and presents a compelling governmental interest because failure to amend this rule could result in both confusion and legal challenges to the use of the Intox DMT and DataMaster DMT in driving while intoxicated criminal and administrative actions in Missouri. In addition, the Missouri Department of Transportation's Office of Traffic and Highway Safety, the Missouri State Highway Patrol, and the Missouri Safety Center have executed contracts to purchase approximately two million one-hundred and twenty-nine thousand dollars (\$2,129,000) worth of breath alcohol instruments and accomplish related training using federal funds. At least one hundred seventy (170) of the instruments contracted for will be Intox DMTs. The Missouri Department of Transportation's Office of Traffic and Highway Safety began conducting training on the new Intox DMT instruments starting the week of August 19, 2013, and following such training will begin placing the new instruments in the field. Until the rule is amended adding the new instrument name and manufacturer as well as changing the manufacturer of two (2) approved instruments, any use of the instrument may cause confusion and legal challenges of breath alcohol results from the instruments. Such confusion could likely result in the inability to convict individuals for driving while intoxicated or take administrative action against their driver's licenses using results from these instruments. As a result, the Department of Health and Senior Services finds an immediate danger to the public health, safe-

ty, and/or welfare and a compelling governmental interest which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the *Missouri Register*. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the *Missouri and United States Constitutions*. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 4, 2013, becomes effective September 15, 2013, and expires March 13, 2014.

(1) Approved breath analyzers are—

NAME OR ITEM	MANUFACTURER OR SUPPLIER
Alco-Sensor IV with printer and Intox EC/IR II	Intoximeters, Inc., St. Louis, MO
BAC DataMaster and Intox DMT (formerly DataMaster DMT)	Intoximeters, Inc., St. Louis, MO or National Patent Analytical Systems, Inc., Mansfield, OH [[formerly a subsidiary of National Patent Development Corporation, East Hartford, CT, formerly Verax Systems, Inc., Fairport, NY]]
Intoxilyzer, Model 5000 and Intoxilyzer, Model 8000	CMI/MPH, Operations of MPD, Inc., Owensboro, KY [[formerly CMI, Inc., a subsidiary of Federal Signal Corp., Minturn, CO]]

AUTHORITY: sections 192.006 and 577.026, RSMo 2000, and sections 306.114, 306.117, 577.020, and 577.037, RSMo Supp. [2011] 2012. This rule was previously filed as 13 CSR 50-140.050 and 19 CSR 20-30.050. Original rule filed Oct. 1, 1965, effective Oct. 13, 1965. For intervening history, please consult the *Code of State Regulations*. Emergency amendment filed Sept. 4, 2013, effective Sept. 15, 2013, expires March 13, 2014. A proposed amendment covering this same material is published in this issue of the *Missouri Register*.

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

EMERGENCY AMENDMENT

19 CSR 25-30.060 Operating Procedures for Breath Analyzers. The department is amending section (4) and form #11 which follows the rule.

PURPOSE: This amendment reflects the name change to one (1) of the approved instruments, and updates the blood alcohol test report to reflect that name change as well.

*EMERGENCY STATEMENT: Only instruments that have been approved by the Department of Health and Senior Services and are listed in these rules may be used to test breath alcohol for alcohol-related driving offenses. DataMaster breath alcohol instruments are currently the only type of instrument available for use in eighty-eight (88) of the one hundred and fourteen (114) counties in Missouri. Between January 1, and July 1, 2012, DataMaster breath alcohol instruments were used in performing twelve thousand and ninety-three (12,093) breath alcohol tests in Missouri. In March of 2013, National Patent Analytical Systems, Inc., the manufacturer of DataMaster breath alcohol instruments, sold its interests in breath alcohol instruments to another company, Intoximeters, Inc., which is changing the name of one (1) of the DataMaster instrument lines. This emergency amendment changes the model name of one (1) of the approved breath alcohol instruments listed in this rule as well as on the blood alcohol test report for that instrument that follows in the Code. This emergency amendment is necessary to protect the public health, safety, and welfare and presents a compelling governmental interest because failure to amend this rule could result in both confusion and legal challenges to the use of the Intox DMT and DataMaster DMT in driving while intoxicated criminal and administrative actions in Missouri. In addition, the Missouri Department of Transportation's Office of Traffic and Highway Safety, the Missouri State Highway Patrol, and the Missouri Safety Center have executed contracts to purchase approximately two million one-hundred and twenty-nine thousand dollars (\$2,129,000) worth of breath alcohol instruments and accomplish related training using federal funds. At least one hundred seventy (170) of the instruments contracted for will be Intox DMTs. The Missouri Department of Transportation's Office of Traffic and Highway Safety began conducting training on the new Intox DMT instruments starting the week of August 19, 2013, and following such training will begin placing the new instruments in the field. Until the rule is amended adding the new instrument name and the blood alcohol test report form, any use of the instrument may cause confusion and legal challenges of breath alcohol results from the instruments. Such confusion could likely result in the inability to convict individuals for driving while intoxicated or take administrative action against their driver's licenses using results from these instruments. As a result, the Department of Health and Senior Services finds an immediate danger to the public health, safety, and/or welfare and a compelling governmental interest which requires this emergency action. A proposed amendment, which covers the same material, is published in this issue of the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Department of Health and Senior Services believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed September 4, 2013, becomes effective September 15, 2013, and expires March 13, 2014.*

(4) When using *[DataMaster] 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).



MISSOURI DEPARTMENT OF HEALTH AND SENIOR SERVICES
BLOOD ALCOHOL TEST REPORT - INTOX DMT

FORM #11

LOCATION OF INSTRUMENT		INSTRUMENT SERIAL NUMBER	DATE OF TEST	TIME OF TEST
SUBJECT NAME			DATE OF BIRTH	
SEX	SUBJECT DRIVER'S LICENSE NUMBER		STATE	
ARRESTING OFFICER		ARRESTING OFFICER ID		
OPERATOR		OPERATOR PERMIT	PERMIT EXP DATE	

OPERATIONAL CHECKLIST: INTOX DMT

- 1. Examination of mouth conducted. If any substance is observed or indicated to be present, the substance observed or indicated must be removed prior to starting the 15 minute observation period.
- 2. Subject observed for at least 15 minutes by _____. No smoking, oral intake or vomiting during this time; if vomiting occurs, start over with the 15 minute observation period.
- 3. Assure that the power switch is ON and the screen is displaying "READY <PUSH RUN>".
- 4. Press the Run button on the display screen.
- 5. Enter subject and officer information.
- 6. When display reads "Please Blow" and gives audible beep, insert mouthpiece and take the subject's breath sample.

SUBJECT TEST RESULTS

COMMENTS

CERTIFICATION BY OPERATOR

BAC

As set forth in the rules promulgated by the Department of Health and Senior Services related to the determination of blood alcohol by breath analysis, I certify that:

- 1. There was no deviation from the procedure approved by the department.
- 2. To the best of my knowledge the instrument was functioning properly.
- 3. I am authorized to operate the instrument.
- 4. No radio transmission occurred inside the room where and when this test was being conducted.

SIGNATURE OF OPERATOR

DATE

WITNESS (IF ANY)

DATE

*AUTHORITY: sections 192.006 and 577.026, RSMo 2000, and sections 306.114, 306.117, 577.020, and 577.037, RSMo Supp. [2011] 2012. 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. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Sept. 4, 2013, effective Sept. 15, 2013, expires March 13, 2014. A proposed amendment covering this same material is published in this issue of the **Missouri Register**.*