
EMERGENCY RULE

TITLE 7 – MISSOURI DEPARTMENT OF TRANSPORTATION

Division 60 – Highway Safety and Traffic 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 paragraph (1)(A)41.

PURPOSE: This emergency amendment changes the definition of a “temporary lockout” of an ignition interlock device so that it occurs when there are two (2) failed attempts to blow a pure breath sample within a ten (10) minute period, a reduction from the currently required three (3) failed attempts.

EMERGENCY AMENDMENT: This emergency amendment corrects an inconsistency in which the definition of “temporary lockout” of an ignition interlock device in this rule that currently requires three (3) failed attempts to blow a pure breath sample within a ten (10) minute period, is contrary to a “temporary lockout” of a motor vehicle that shall occur under Title 7, **Code of State Regulations** (CSR) 60-2.030(1)(C)2, when there are only two (2) failed breath sample tests. The latest amendments to this rule and 7 CSR 60-2.030(1)(C)2 became effective on August 30, 2024, and the inconsistencies between both rules’ “temporary lockout” provisions were discovered a few weeks before these rules’ effective date.

When the need for an amended rule was determined, Missouri Department of Transportation (MoDOT) staff began its internal rulemaking development process, a process that was created by policy of the Missouri Highways and Transportation Commission (hereinafter, Commission). The policy is to ensure there is a need for, and determine the impact of, such rulemaking. The process is time-consuming as it requires MoDOT staff to contact potentially affected external stakeholders and state agencies to ensure they are aware of and understand the proposed rulemaking’s impact. MoDOT staff contacted five ignition interlock manufacturers and staff of the Missouri Department of Revenue, who reviewed and agreed to the proposed rulemaking changes. And even after reaching external stakeholder consensus, the Commission’s rulemaking process then requires senior MoDOT staff to understand and agree to the proposed rulemaking before it is finally taken to the Commission for its approval to commence the statutory process for the proposed rulemaking. This process takes significant time.

Section 302.458, RSMo, requires the Missouri Highways and Transportation Commission (Commission) to certify ignition interlock devices and directs the Commission to adopt rules for the proper use of such devices in consultation with the National Highway Traffic Safety Administration. An ignition interlock device is a breath testing device installed in a motor vehicle that prevents the motor vehicle from continued operation if breath test results show a breath alcohol concentration that meets or exceeds the alcohol setpoint established in the rule at twenty-five thousandths (.025). The device also requires the driver to continue to pass repeated breath tests while the vehicle is running to ensure that the driver remains below the alcohol setpoint.

The Commission and Missouri Department of Transportation (MoDOT) find that this emergency amendment is necessary to preserve a compelling governmental interest, namely, that with 7 CSR 60-2.010(1)(A)41 allowing three (3) failed breath sample tests before a temporary lockout of the motor vehicle is triggered, and 7 CSR 60-2.030(1)(C)2 allowing only two (2) failed attempts

before triggering a temporary lockout, this results in the failure to consistently impose temporary lockouts of motor vehicles after two (2) failed breath tests by an operator-client that has an ignition interlock device. And because 7 CSR 60-2.030(1)(C)5 requires an ignition interlock manufacturer to report two (2) temporary lockout occurrences in a thirty-day period, an operator-client that would have otherwise violated the terms of 7 CSR 60-2.030(1)(C)2 with two(2) failed breath test attempts may not be reported by the device manufacturer as the device is set to only report when three (3) failed attempts are provided.

The Commission and MoDOT’s compelling governmental interest is to assure that operator-clients are locked out of their motor vehicles when such clients submit two (2) failed breath tests as required in current rule 7 CSR 60-2.030(1)(C)2 and that such failures are timely reported by the manufacturer when two such lockouts occur within a thirty (30) day period. If an operator-client would have otherwise been subject to a temporary lockout due to the submission of two (2) failed breath tests to an ignition interlock device as required in current rule 7 CSR 60-2.030(1)(C)2, but such temporary lockout does not occur because the ignition interlock device only recognizes a lockout when there are three (3) failed breath tests as required in the current definition of a “temporary lockout” in 7 CSR 60-2.010(1)(A)41, this would pose an immediate danger to the public health, safety, and welfare to other Missouri citizen drivers in the event the operator is impaired but still allowed to operate the motor vehicle and becomes involved in a motor vehicle crash. This immediate danger requires the promulgation of this emergency rule.

The emergency rule is best calculated to assure fairness to all interested parties, including manufacturers, who will have consistent requirements to program their devices to trigger a temporary lockout when there are two(2) failed breath tests, and to operator-clients, who will be consistently prohibited from submitting more than one failed breath test before their motor vehicle is subjected to a temporary lockout, and to Missouri citizens who will be protected from impaired operators that are not locked out from operating their motor vehicles after submitting more than one (1) failed breath test. This emergency rule would also avoid potential unnecessary and expensive litigation of legal claims by both manufacturers and operator-clients over the inconsistent temporary lockout provisions. The emergency amendment addresses these immediate harms to Missouri citizens, ignition interlock manufacturers, and operator-clients by ensuring consistent application of the temporary lockout provisions to occur when there are two (2) failed breath test attempts within a ten (10) minute period and including the reporting of two temporary lockouts in a thirty-(30-)day period.

The emergency amendment is limited solely to correcting the inconsistencies in defining what constitutes a “temporary lockout” in both 7 CSR 60-2.010(1)(A)41 and 7 CSR 60-2.030(1)(C)2. Since the amended rules became effective on August 30, 2024, the Commission and MoDOT have not documented any instances that have shown a detrimental impact attributed to the inconsistencies. But because of the potential for immediate harm the afore-mentioned inconsistencies would pose to the public health, safety, and welfare to other Missouri citizen drivers in the event an operator is impaired but still allowed to operate a motor vehicle and becomes involved in a motor vehicle crash due to such operator not being temporarily locked out of such vehicle due to two (2) failed breath tests, this emergency amendment is necessary. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended by the **Missouri and United States Constitutions**. The Commission and MoDOT believe this emergency amendment to be fair to all interested parties under the circumstances. The emergency amendment was filed

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December 6, 2024, becomes effective January 1, 2025, and expires June 29, 2025.

(1) Definitions.

(A) The following words and terms as used in 7 CSR 60-2.010 through 7 CSR 60-2.060 have the following meaning:

1. Alcohol retest setpoint – The breath alcohol concentration at which the ignition interlock device is set for the running retest;

2. Alcohol setpoint – The breath alcohol concentration at which the ignition interlock device prevents the vehicle from starting;

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

4. Authorized service provider (ASP) – The entity designated by the manufacturer to provide services to include but not be limited to installation, monitoring, maintenance, and removal of the breath alcohol ignition interlock device;

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

6. Breath alcohol concentration (BrAC) – The amount of alcohol in a given amount of breath, expressed in weight per volume (% weight/volume) based on grams of alcohol per two hundred ten (210) liters of breath;

7. Breath alcohol ignition interlock device (BAIID) – A breath testing device, including all parts necessary for operation, e.g., handset and camera, installed in a vehicle that prevents it from operating if breath test results show a BrAC that meets or exceeds the alcohol setpoint. The device also requires the driver to continue to pass repeated breath tests while the vehicle is running to ensure that the driver remains below the alcohol setpoint. However, the interlock device will not interfere with the normal operation of the vehicle while it is in use;

8. Breath – Expired human breath containing primarily alveolar air;

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

10. Camera – A feature of the device that incorporates photo identification or digital images of the person who is providing the breath test;

11. Circumvention – To bypass the correct operation of a BAIID by starting the vehicle by any means without first providing a breath test;

12. Commission – The Missouri Highways and Transportation Commission created by article IV, section 29, Constitution of Missouri;

13. Department – The Missouri Department of Transportation created by article IV, section 29, Constitution of Missouri;

14. 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 manufacturer;

15. Device – Breath alcohol ignition interlock device;

16. Division – The Highway Safety and Traffic Division under the department that is delegated the authority to administer the provisions of 7 CSR 60-2.010 through 7 CSR 60-2.060;

17. Download – The transfer of information from the interlock device's memory onto disk or other electronic or digital transfer protocol;

18. 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;

19. Filtered breath sample – A breath sample which has been filtered through a substance in an attempt to remove alcohol from the sample;

20. Global positioning system (GPS) – 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;

21. Initial breath test – A breath test required to start a vehicle to ensure that the driver's BrAC is below the alcohol setpoint;

22. Installation – Mechanical placement and electrical connection of a breath alcohol ignition interlock device in a vehicle by a technician;

23. ISO – International Organization for Standardization;

24. Lockout – A condition of the device which prevents a vehicle's engine from starting unless it is serviced or recalibrated;

25. Manufacturer – A person or company responsible for the design, construction, and/or production of a BAIID;

26. Mechanical override code – Method of overriding the breath sample requirement during the mechanical servicing of a vehicle by a mechanic utilizing a unique code provided by the manufacturer;

27. Mobile service – A portable operation of an authorized service provider, whether contained within a vehicle or temporarily erected on location, which includes all personnel and equipment necessary to conduct ignition interlock device related business and services, separately and simultaneously with its parent fixed location service centers. The mobile service center shall comply with all of the requirements provided for an authorized service provider herein;

28. Operator – Any person who operates a vehicle that has a court-ordered or Department of Revenue-required breath alcohol ignition interlock device installed;

29. Override lockout code – Method of overriding a lockout condition by providing a unique code;

30. Permanent lockout – A condition in which the device will not accept a breath test until serviced by an ASP;

31. 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);

32. Real-time reporting – The near real-time transmission of ignition interlock data between the manufacturer's server and the operator's ignition interlock while the device is in use;

33. Refusal – The failure of a driver to provide a breath sample and complete the breath test when prompted by the device;

34. Relative within second degree of consanguinity or affinity – A spouse or domestic partner, parent, step-parent, child, step-child, grandparent, step-grandparent, grandchild, step-grandchild, brother, step-brother, sister, step-sister, mother-in-law, father-in-law, grandparent-in-law, grandchild-in-law, brother-in-law, or sister-in-law;

35. 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 running retest;

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

37. Service lockout – A condition of the breath alcohol ignition interlock device that occurs when the operator fails to

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have the device serviced during a certain period of time and results in a permanent lockout condition;

38. Start or starting – To manipulate a vehicle’s inputs or systems or to activate a motor, thereby initiating the transition of a stationary vehicle into motor-powered, driver-controlled motion;

39. 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 and/or blocking, moving, or disabling the camera, if required;

40. Technician – A person trained by the authorized service provider to possess the skills necessary to install, service, calibrate, and/or remove ignition interlock devices;

41. Temporary lockout – A condition in which the device will not allow the vehicle to start for fifteen (15) minutes after ~~three (3)~~ **two (2)** failed attempts to blow a pure breath sample within a ten (10) minute period; and

42. 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) running retest refusals within a thirty- (30-) day period;

C. Any three (3) breath samples, after startup, at or above the alcohol setpoint within a thirty- (30-) day period;

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

or

E. When a device is not serviced on its service date.

*AUTHORITY: sections 226.130, 302.304, 302.309, 302.525, and 577.041, RSMo 2016, section 302.060, RSMo Supp. [2023] 2024, and sections 302.440–302.462, RSMo 2016 and Supp. [2023] 2024. This rule originally filed as 11 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 Rule filed Dec. 6, 2024, effective, Jan. 1, 2025, expires June 29, 2025. An emergency amendment and a proposed amendment covering this same material will be published in the Jan. 15, 2025, issue of the **Missouri Register**.*

PUBLIC COST: This emergency amendment will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the time the emergency is effective.

PRIVATE COST: This emergency amendment will not cost private entities more than five hundred dollars (\$500) in the time the emergency is effective.