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By Administrative Rules SOS at 12:04 pm, Dec 06, 2024

**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 60-2.030 Standards and Specifications. The Missouri Highways and Transportation Commission is amending section (1)(C)2. through (1)(C)5.

PURPOSE: This emergency amendment clarifies the requirements that an operator provide a second breath sample that shall be below the alcohol set point within ten (10) minutes after the operator's initial breath sample provided is at or above the alcohol set point and the ignition interlock manufacturer report within thirty (30) days two (2) temporary lockout occurrences as a violation as required in 7 CSR 60-2.040(4).

PUBLISHER'S NOTE: The secretary of state has determined that publication of the entire text of the material that is incorporated by reference as a portion of this rule would be unduly cumbersome or expensive. This material as incorporated by reference in this rule shall be maintained by the agency at its headquarters and shall be made available to the public for inspection and copying at no more than the actual cost of reproduction. This note applies only to the reference material. The entire text of the rule is printed here.

EMERGENCY AMENDMENT: This emergency amendment, along with an emergency amendment to Title 7, Code of State Regulations (CSR) 60-2.010(1)(A)41, corrects an inconsistency, namely, that the definition of "temporary lockout" of an ignition interlock device in 7 CSR 60-2.010(1)(A)41 ensure a lockout occurs when there are two (2) failed attempts to blow a pure breath sample within a ten (10) minute period, which is identical to when a temporary lockout occurs under this rule 7 CSR 60-2.030(1)(C)2. The last amendments to this rule and 7 CSR 60-2.030(1)(A)41 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.

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By JCAR at 11:29 am, Dec 06, 2024

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 a violation as the device is set to only report when three (3) failed attempts are provided as set forth in the definition of “temporary lockout” in 7 CSR 60-2.010(1)(A)41.

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 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 this 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 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 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. A proposed, permanent amendment to this rule, which covers the same material, will also be published in the Missouri Register.

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 December 6, 2024, effective January 1, 2025, and expires June 30, 2025.

(1) Device standards and specifications. To be certified, a breath alcohol ignition interlock device must—

(C) Alcohol set point to start vehicle—

1. Have an alcohol set point below twenty-five thousandths (.025) for initial breath test to start the vehicle.

2. Require the operator to provide a second breath sample that shall be below the alcohol set point within ten (10) minutes after the operator’s initial breath sample provided is at or above the alcohol set point.

3. Permit a maximum of two (2) attempts to blow a breath sample below the alcohol set point within a ten- (10-) minute period.

[3]4. Cause a fifteen- (15-) minute temporary lockout when two (2) failed startup attempts occur within a ten- (10-) minute period.

[4]5. Present a violations reset message when two (2) fifteen- (15-) minute temporary lockouts occur within a thirty- (30-) day period.

[5]6. [When a breath sample provided is at or above the alcohol set point, the operator shall provide a second breath sample below the alcohol set point within ten (10) minutes, or it shall be reported as a violation by] **Require the manufacturer in the event of two (2) temporary lockout occurrences within a thirty- (30-) day period to report such occurrences as a violation as required in 7 CSR 60-2.040(4);**

*AUTHORITY: sections 226.130, 302.304, 302.309, 302.525, 577.041, 577.600, 577.605, and 577.612, RSMo 2016, section 302.060, RSMo Supp. 2023, and sections 302.440–302.462, RSMo 2016 and Supp. 2023. * 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. Moved to 7 CSR 60-2.030, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed April 8, 2010, effective April 18, 2010, expired Nov.*

30, 2010. Amended: Filed April 8, 2010, effective Nov. 30, 2010. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and readopted: Filed March 9, 2018, effective Oct. 30, 2018. Amended: Filed May 6, 2022, effective Dec. 30, 2022. Amended: Filed Jan. 5, 2024, effective Aug. 30, 2024. Emergency Rule filed Dec. 6, 2024, effective, Jan. 1, 2025, expires June 30, 2025. A proposed amendment covering this same material is published in this 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.