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MICHIGAN DATAMASTER DMT EVIDENTIAL BREATH TESTING TRAINING MANUAL 2011

CLASS II OPERATOR



**MICHIGAN STATE POLICE
TRAINING DIVISION
ALCOHOL ENFORCEMENT UNIT**



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Preface

The purpose of this manual is to train law enforcement personnel in the proper use of the DATAMASTER TRANSPORTABLE (DMT) breath alcohol testing instrument.

Upon successful completion of this training program, a certified operator will be able to administer a breath alcohol test on a suspected intoxicated subject in the state of Michigan. The operator will be familiar with the operating principle of the DATAMASTER DMT; know the exterior components of the instrument; and know the pretest, subject, and accuracy check procedures and sequences.

The ease of operation of the DATAMASTER DMT offers the real possibility to train all law enforcement officers in the state of Michigan.

Revised and Reprinted by the Michigan State Police
October 2011

Chapter 1

Introduction

Introduction

The DATAMASTER TRANSPORTABLE (DMT) is an infrared evidential breath alcohol test instrument manufactured by National Patent Analytical Systems, Inc., Mansfield, Ohio, at (800) 800-8143. The operating principle of the DATAMASTER DMT is based on infrared absorption.

Infrared technology as applied to breath alcohol analysis had its origin in the early 1980s. This advent of increasing technology prompted the development of an infrared breath alcohol analysis program in Michigan. With their ease of operation, more rapid analysis, and advances in computer technology, infrared devices have taken over the testing for breath alcohol. The DATAMASTER DMT has evolved through the years to its present state-of-the-art instrument with expanding computer capabilities.

The DATAMASTER DMT was chosen to replace the current BAC DataMaster in Michigan. A contract was established to cover the purchases of the test equipment and for the maintenance and service of the instruments.

The DATAMASTER DMT:



Chapter 2

Administrative Rules

Administrative Rules

The Michigan Department of State Police has been granted mandatory rule-making power under the Operating While Impaired statute, MCL 257.625, et.seq. An administrative rule promulgated under this authority carries the full weight of the law.

Filed with the Secretary of State on April 14, 2010
 These rules take effect April 21, 2010

RULE 1 – Definitions

| Function | Operator Class | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------|----------------|----|------|------|-----|-----|
| | I | II | IIIA | IIIB | IVA | IVB |
| Train and Certify Class I Operators | | | X | | X | X |
| Train and Certify Class II Operators | | | | | X | X |
| Train and Certify Class IIIA Operators | | | | | X | X |
| Train and Certify Class IIIB Operators | | | | | | X |
| Train and Certify Class IVA Operators | | | | | | X |
| Administer preliminary breath alcohol analyses on preliminary breath alcohol test instruments specified by the department | X | | X | | X | X |
| Administer evidentiary breath alcohol analyses on evidential breath alcohol test instruments specified by the department | | X | X | X | X | X |
| Verify for accuracy and calibrate, as required, preliminary breath alcohol test instruments | | | X | | X | X |
| Verify for accuracy evidentiary breath alcohol test instruments specified by the department | | X | X | X | X | X |
| Calibrate, as required, evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Provide limited service on evidentiary breath alcohol test instruments specified by the department | | | | X | | X |
| Provide service on preliminary breath alcohol test instruments specified by the department | | | | | | X |
| Provide repair and service on evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Inspect and certify evidentiary breath alcohol test instruments for proper working order within 120 days pursuant to R 325.2653(3) | | | | | | X |
| Conduct inspections for compliance with applicable department rules, policies, and procedures | | | | | X | X |

RULE 2 - Approved Equipment

- All breath alcohol test equipment shall meet federal model specifications and appear on the conforming products list published by the U.S. Department of Transportation in the Federal Register.
- Equipment and accessories shall be approved by the Michigan Department of State Police.

RULE 3 - Equipment Accuracy

- An evidential breath tester shall be verified for accuracy at least once each calendar week.
- An accuracy check may be performed with a wet bath solution or with a compressed dry gas device.
- Accurate wet bath test results shall be 0.076 to 0.084 inclusive. Compressed alcohol gas device results shall be within 5% of the target factor.
- A PBT shall be verified for accuracy once each calendar month.
- An evidential breath tester shall be inspected, verified for accuracy, and certified by a Class IVB operator or the instrument manufacturer's authorized representative within 120 days of the previous inspection.

RULE 4 - Equipment Maintenance

- Installation, maintenance, and repair of evidential breath test instruments and PBTs are the responsibility of Class IVB operators or the instrument manufacturer's authorized representatives approved by the department.

RULE 5 - Techniques and Procedures

- Only certified operators shall operate evidential breath test instruments.
- A person may be administered a breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes by 1 or more appropriate class operators pursuant to R 325.2658(4) before collection of the breath sample, during which period the person shall not have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the test. The observation may be conducted by more than 1 operator working in concert. The operator need not stare continuously at the subject, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator's field of vision. Breaks in the observation lasting only a few seconds do not invalidate the observation if the operator can reasonably determine that the subject

did not smoke, regurgitate, or place anything in his or her mouth during the break in the observation.

- A second breath alcohol analysis shall be requested from the person being tested and administered, unless the person refuses to give the second sample or a substance is found in the person's mouth subsequent to the first test that could interfere with the test result. Obtaining the first sample is sufficient to meet the requirements for evidentiary purposes prescribed in 1949 PA 300, MCL 257.625c. The purpose of obtaining a second sample result is to confirm the result of the first sample. A second sample result shall not vary from the first sample result by more than the following values:

Table 1

| Blood alcohol concentration | Allowable variation of second sample result range from the first |
|-----------------------------|------------------------------------------------------------------|
| 0.00 - 0.14 | +/- 0.01 |
| 0.15 - 0.24 | +/- 0.02 |
| 0.25 - 0.34 | +/- 0.03 |
| 0.35 - or more | +/- 0.04 |

- If the variation is more than that allowed, a third breath sample shall be requested from the person being tested and a third result may be obtained. If the third result does not conform to the allowable variation of either of the first 2 tests, as established in Table 1, the person shall be requested to submit a blood or urine sample for analysis in accordance with MCL 257.625a(6)(c) and the procedures established in R 325.2671 to R 325.2677.
- The results of a breath alcohol analysis of a person's breath shall be expressed in terms of grams of alcohol per 210 liters of breath, truncated to the second decimal place. For example, 0.237 found shall be reported as 0.23.
- A person's welfare shall be protected by requesting medical assistance if the person has a body alcohol concentration of 0.35 or more.

RULE 8 - Operator training and certification

- (1) The department shall train and certify selected persons to perform various functions as described in subrule (4) of this rule, and shall designate such persons as class I, class II, class IIIA, class IIIB, class IVA, or class IVB operators according to training and function. An operator may hold multiple and concurrent classifications. Operator certification is non-expiring.
- (2) The minimum training requirements and proficiency standards for operator candidates are as follows:
 - (a) A class I operator shall complete a 2-hour class I departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of a preliminary breath test instrument.

- (b) A class II operator shall complete a 6-hour class II departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of an evidentiary breath test instrument.
 - (c) A class IIIA operator shall be currently certified as both a class I and class II operator, complete a 3-hour class IIIA departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the verification and calibration of preliminary breath alcohol test instruments.
 - (d) A class IIIB operator shall be a currently certified class II operator, complete a 2-hour class IIIB departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the limited service of evidentiary breath test instruments.
 - (e) A class IVA operator shall be a currently certified class IIIA operator, complete an 8-hour class IVA departmentally approved instructor training course, and demonstrate proficiency instructing class II and class IIIA operator candidates.
 - (f) A class IVB operator shall be a currently certified class IVA operator that has been designated by the department to administer the breath testing program for the state of Michigan. Before such designation, the class IVB operator shall receive additional training in the service of preliminary breath test instruments, the repair and service of evidentiary breath test instruments, and certification by the manufacturer(s) of such instruments.
- (3) The department shall develop and distribute to each certified operator a training manual for each of the operator's classification(s). Manuals shall specify the functions performed by each classification pursuant to subrule (4) of this rule, as well as the knowledge and skills necessary to perform the appropriate functions.
- (4) The primary functions of each classification of operator are described in Table 2. Additional functions not described in Table 2 may be designated by the department and described and explained in the appropriate training manual.

Table 2

| Function | Operator Class | | | | | |
|---------------------------------------------------------------------------------------------------------------------------|----------------|----|------|------|-----|-----|
| | I | II | IIIA | IIIB | IVA | IVB |
| Train and Certify Class I Operators | | | X | | X | X |
| Train and Certify Class II Operators | | | | | X | X |
| Train and Certify Class IIIA Operators | | | | | X | X |
| Train and Certify Class IIIB Operators | | | | | | X |
| Train and Certify Class IVA Operators | | | | | | X |
| Administer preliminary breath alcohol analyses on preliminary breath alcohol test instruments specified by the department | X | | X | | X | X |
| Administer evidentiary breath alcohol analyses on evidential breath alcohol test instruments specified by the department | | X | X | X | X | X |
| Verify for accuracy and calibrate, as required, preliminary breath alcohol test instruments | | | X | | X | X |
| Verify for accuracy evidentiary breath alcohol test instruments specified by the department | | X | X | X | X | X |

| | | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------|--|--|--|---|---|---|
| Calibrate, as required, evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Provide limited service on evidentiary breath alcohol test instruments specified by the department | | | | X | | X |
| Provide service on preliminary breath alcohol test instruments specified by the department | | | | | | X |
| Provide repair and service on evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Inspect and certify evidentiary breath alcohol test instruments for proper working order within 120 days pursuant to R 325.2653(3) | | | | | | X |
| Conduct inspections for compliance with applicable department rules, policies, and procedures | | | | | X | X |

Chapter 3

Accuracy Checks

Accuracy Checks

A. General Information

1. Each instrument shall have an accuracy check run on that instrument within each calendar week as defined by the Administrative Rules. An accuracy check may consist of either a wet bath or dry gas check.

B. Two Types of Accuracy Checks

1. Automatic:

- a. The DATAMASTER DMT will run a dry gas accuracy check automatically each calendar week.
- b. The operator must place a copy of the OD-80 into the file for record keeping purposes.
- c. The operator must log the accuracy check on the OD-33 (Evidential Breath Testing Log).
- d. If the instrument detects any problems during the automatic accuracy check sequence, it will stop the sequence and place the instrument out of service. **This will require a service technician to resolve the issue and to place the instrument back into service.**

2. Manual:

- a. Operator must touch the “Accuracy Check” button on the DATAMASTER DMT menu screen and enter the required information.
- b. The DATAMASTER DMT will run the required accuracy check.
- c. The operator must place a copy of the OD-80 into the file for record keeping purposes.
- d. The operator must log the accuracy check on the OD-33 (Evidential Breath Testing Log).

Additional Procedures

The following procedures **shall** be followed in performing accuracy checks on evidential breath alcohol test instruments.

1. If the first test is high or low, (wet bath - outside the 0.076 to 0.084 range, inclusive, or with dry gas, within 5% of the corrected factor), run a second test.
2. If the second test is high or low:
 - a. **Notify your supervisor.**
 - b. **Notify the service representative for your location.**
 1. **Call the service representative at – 1-800-800-8143.**
 - c. **Take the unit out of service only if advised to do so by the service representative.**
 - d. **Place a sign on the unit (“OUT OF SERVICE”).**
 - e. **Make an entry in the OD-33 log book (“OUT OF SERVICE”) with the date and time.**
 - f. **E-mail the Alcohol Enforcement Unit at MSP-AlcoholUnit@michigan.gov**
3. Record **ALL** accuracy check results (high, low, or satisfactory), on the OD-33 Evidential Breath Testing Log.

Chapter 4

Administrative Forms

Administrative Forms

OD-80

USE:

1. Whenever a subject test or accuracy check is performed on the DATAMASTER DMT, the OD-80 form, shall be used to document the results.

INSTRUCTIONS FOR USE OF OD-80:

1. Upon completion of the test, the result will automatically be printed.
2. Distribution and retention of the forms are described in Chapter 10.

OD-80

| SUBJECT TEST | | |
|----------------------------|----------|-------|
| ----- | | |
| OD-80 | | |
| STATE OF MICHIGAN | | |
| DEPARTMENT OF STATE POLICE | | |
| DATAMASTER dmt: 106509 | | |
| ----- | | |
| Date: 12/27/2010 | | |
| Time: 09:22:04 | | |
| | | |
| OBS. START TIME: 09:05 | | |
| SUBJECT NAME: | | |
| JOHN J SMITH | | |
| DOB: 01/01/1950 | | |
| OPS. CODE: S1234567890 | | |
| STATE OF ISSUE: MI | | |
| | | |
| OPERATOR NAME: | | |
| CURTIS | | |
| CERTIFICATE #: 11200 | | |
| | | |
| BLANK TEST | 0.00 | 09:23 |
| INTERNAL STANDARD | VERIFIED | 09:23 |
| SUBJECT SAMPLE | 0.09 | 09:23 |
| BLANK TEST | 0.00 | 09:26 |
| SUBJECT SAMPLE | 0.09 | 09:26 |
| BLANK TEST | 0.00 | 09:27 |
| INTERNAL STANDARD | VERIFIED | 09:27 |

OD-33 Evidential Breath Testing Log

USE:

1. Whenever the instrument or a certified operator performs an accuracy check, the results shall be entered on the Evidential Breath Testing Log (OD-33).
2. If an instrument is taken out of service, an entry shall be made to that effect.
3. Each log sheet shall contain entries for a one-month period.
4. A new log sheet shall be used for each month.
5. Distribution and retention of the forms are described in Chapter 10.

INSTRUCTIONS FOR RECORDING AN ACCURACY CHECK:

All sections of the form must be completed. Specific instructions for each section are given below.

1. Month - Enter current month.
2. Year - Enter current year.
3. Location - Enter name of department where instrument is located.
4. Instrument Number - Enter the serial number (not the MSP tag number) for the instrument used.
5. ORI Number. - Enter seven-digit number assigned to above location.
6. Day - Enter the day of the month (1-31).
7. Operation
 - a. Enter "Accuracy Check" for weekly test.
 - b. Enter "Out of Service" if instrument is taken out of service.
CHECK WITH A SUPERVISOR BEFORE MAKING THIS ENTRY. ENTRY REQUIRES A SERVICE CALL.
8. Operator ORI Number. - Enter seven-digit number assigned to the operator's department.

9. Results - Enter the results of the first accuracy check using three decimal places for wet bath results, and four decimal places for dry gas results. Enter a second result if conditions warrant.
10. Alcohol Standard Control Number. - Enter the lot number appearing on the alcohol standard used for the test.
11. Certification Number. - Enter the five-digit number assigned to the certified Breath Test Operator.
12. Signature - Enter the signature of the certified Breath Test Operator conducting the test.

INSTRUCTIONS FOR SIGNING AT THE END OF THE MONTH:

At the end of each month, a supervisor or designee shall sign directly below the last log entry and enter the date and time.

13. Supervisor/Designee Signature - A supervisor/designee shall sign his/her name after checking for proper log completion.
14. Date - Enter date supervisor/designee check was completed in month, day, and year order.

AUTHORITY: 1949 PA 300
COMPLIANCE: Required
PENALTY: Removal/Decertification of Instrument

EVIDENTIAL BREATH TESTING LOG

Alcohol Standard Control Number

| | | Month | Year |
|-----|-----------|---------------------------------|------------------|
| | | Instrument Location | |
| | | Instrument Number | ORI Number MI |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| | | Supervisor / Designee Signature | |
| | | Date | |

Accurate test results shall be:
 Wet Bath - .076 to .084 inclusive.
 Dry Gas - Within 5% of corrected factor.

DI-93 Officer's Report of Refusal to Submit to Chemical Test

USE:

1. The DI-93, Officer's Report of Refusal to Submit to Chemical Test, is to be filled out by the arresting officer.
2. The Evidential Breath Test Operator is required to fill out only selected portions of the form.

INSTRUCTIONS FOR COMPLETION BY EVIDENTIAL BREATH TEST (EBT) OPERATOR:

The EBT Operator will need to fill out four boxes if the refusal deals with the actual breath test on the subject (i.e., technical refusal).

1. Breath Test Operator Number - Enter five-digit operator certification number.
2. Breath Test Operator Name - Enter the name of the operator who attempted to perform the breath test on the subject.
3. Badge Number - Enter the Breath Test Operator's badge number.
4. ORI Number - Enter the Breath Test Operator's ORI number for his/her department.

DI-93

DI-93 (10/10) By the authority of P.A. 300 of 1949 as amended

| | | |
|-----------------|------------|--------------------|
| BTH TEST OPR NO | LEIN ENTRY | RECORD SEQUENCE NO |
|-----------------|------------|--------------------|

OFFICER'S REPORT OF REFUSAL TO SUBMIT TO CHEMICAL TEST

| | | | | | | | |
|---------------------------------------------------------------------------------|--|----------------------------------------------------|--|--------------------------------|--|---------------------------------------------------------|--|
| PERSON'S FULL NAME (AS APPEARS ON MICHIGAN DRIVERS LICENSE) | | | | BIRTH DATE (MM/DD/YY) | | SEX MALE FEMALE | |
| ADDRESS (NUMBER & STREET) | | | | MICHIGAN DRIVER LICENSE NUMBER | | | |
| CITY | | STATE | | ZIP | | OTHER STATE DRIVER LICENSE NUMBER | |
| HEIGHT | | WEIGHT | | EYE COLOR | | HAIR COLOR | |
| ARREST DATE (MM/DD/YY) | | | | MILITARY TIME | | REFUSAL DATE (MM/DD/YY) | |
| COUNTY (OF ARREST) | | | | CITY OR TOWNSHIP (OF ARREST) | | CO/CTY/TWP CODE | |
| VEHICLE TYPE | | Was person involved in an accident? YES NO | | INSTRUMENT # REFUSED | | BAC #1 BAC #2 BAC #3 N/A N/A N/A | |
| ARRESTING OFFICER'S NAME | | | | BADGE NUMBER | | ORI NUMBER | |
| BREATH TEST OPERATOR'S NAME, only if not listed above and necessary for hearing | | | | BADGE NUMBER | | ORI NUMBER | |
| OTHER OFFICER, if necessary for hearing | | | | BADGE NUMBER | | ORI NUMBER | |

The above named person was arrested for a violation of section 625(1), (3), (4), (5), (6), (7), (8), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or a local ordinance substantially corresponding to section 625(1), (3), (4), (5), (6), (7), (8), 625a(5) or 625m or for the offense of manslaughter, murder, reckless driving causing death, reckless driving causing serious impairment of a body function, moving violation causing death, or moving violation causing serious impairment of a body function resulting from the operation of a motor vehicle.

The officer had reasonable grounds to believe that the above named person violated section 625(1), (3), (4), (5), (6), (7), (8), 625a(5) or 625m of the Michigan Vehicle Code, as amended, or local ordinance substantially corresponding to section 625(1), (3), (4), (5), (6), (7), (8), 625a(5) or 625m or committed the offense of manslaughter, murder, reckless driving causing death, reckless driving causing serious impairment of a body function, moving violation causing death, or moving violation causing serious impairment of a body function resulting from the operation of a motor vehicle while impaired by or under the influence of alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and controlled substance, or while having an unlawful bodily alcohol content, or if the person is less than 21 years of age while having any bodily alcohol content. [MCL 257.625c(1)(b)]

The above named person was requested to take a chemical test. The person was advised of the chemical test rights as required under section 625a and refused to take a chemical test.

| | | | | | | | | | | | | | | | | |
|--------------------------------------|----------------------------------|----------------------------------|-------------------------------------|------------------------------------|----------------------------------|------------------------------------|-------------------------------------|----------------------------------|------------------------------------------------|----------------------------|------------------|-------------|-----------------------------|----------------------------|----------------------------|--------------------------------|
| Michigan Driver License confiscated? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Michigan Driver License destroyed? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | Under 21? <input type="checkbox"/> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | LICENSED OUT OF STATE <input type="checkbox"/> | | | | | | | |
| Driving status on date of arrest | VALID <input type="checkbox"/> | EXPIRED <input type="checkbox"/> | RESTRICTED <input type="checkbox"/> | SUSPENDED <input type="checkbox"/> | REVOKED <input type="checkbox"/> | DENIED <input type="checkbox"/> | UNLICENSED <input type="checkbox"/> | UNKNOWN <input type="checkbox"/> | STATE <input type="checkbox"/> | | | | | | | |
| CDL | License <input type="checkbox"/> | Permit <input type="checkbox"/> | A <input type="checkbox"/> | B <input type="checkbox"/> | C <input type="checkbox"/> | H <input type="checkbox"/> | N <input type="checkbox"/> | X <input type="checkbox"/> | P <input type="checkbox"/> | T <input type="checkbox"/> | CDL restrictions | ENDORSEMENT | CY <input type="checkbox"/> | F <input type="checkbox"/> | R <input type="checkbox"/> | Other <input type="checkbox"/> |

| | | | | |
|-------------------------|-------------------------------------------|------------------------------------|-----------------------------|-----------------------------|
| VEHICLE TYPES | MD Med Tr w/hw Trl over 10,000# (non CDL) | AP Group A Passenger | BH Group B Hazardous | CS Group C School Bus |
| CY Cycle | OR Offroad Vehicle (ATV type) | AS Group A School Bus | BN Group B Tank | BB Group B |
| MO Moped | SM Snowmobile | AT Group A Double/Triple | BP Group B Passenger | CK Group C Tank & Hazardous |
| PA Pass Car & Sta Wgn | OO Other | AX Group A Tank & Hazardous | BS Group B School Bus | |
| VA Van & Motor Home | AA Group A | AT Group A Tank & Double/Triple | BX Group B Tank & Hazardous | |
| PU Pickup | AH Group A Hazardous | AZ Group A Hazardous Double/Triple | CH Group C Hazardous | |
| ST Sm Tr (up to 10,000) | AN Group A Tank | AL Grp A Hazard Tank Double/Triple | CP Group C Passenger | |

SERVICE OF NOTICE OF SUSPENSION

I certify that I hand delivered a copy of the document containing the Notice of Suspension and Appeal Rights to the person named above.

Officer's Signature _____ Date (MM/DD/YY) _____

OFFICER'S INSTRUCTIONS
Give two white copies to person
Keep two pink copies

REQUEST FOR HEARING

Driver's Copy to Request Hearing

DI-177 Breath, Blood, Urine Test Report

USE:

1. The DI-177, Breath, Blood, Urine Test Report, is to be filled out by the arresting officer.
2. The EBT Operator is required to fill out only selected portions of the form.

INSTRUCTIONS FOR COMPLETION BY EBT OPERATOR:

Eight boxes need to be filled out by the evidential breath test operator.

1. Breath Test Operator Number - Enter five-digit operator certification number.
2. Instrument Number - Enter the DATAMASTER DMT serial number (not the MSP tag number).
3. BAC #1 - Enter subject's test result.
4. BAC #2 - Enter second test if provided. If a sample is not obtained, leave blank.
5. BAC #3 - Enter third test if needed. If sample is not obtained, leave blank.
6. Breath Test Operator Name - Enter the name of the operator performing the breath test.
7. Badge Number - Enter the Breath Test Operator's badge number.
8. ORI Number - Enter the Breath Test Operator's ORI number for his/her department.

DI-177

DI-177 (10/10) By the Authority of P.A. 300 of 1949 as amended

BREATH, BLOOD, URINE TEST REPORT LEIN INPUT PROMPT

| | | |
|-----------------|------------|--------------------|
| BTH TEST OPR NO | LEIN ENTRY | RECORD SEQUENCE NO |
|-----------------|------------|--------------------|

| | | | | | | | |
|----------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|------------------------------|------------|-----------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|------------------|
| PERSON'S FULL NAME (As Appears On Michigan Driver License) | | | | BIRTH DATE (MMDDYY) | | SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE | |
| ADDRESS (Number & Street) | | | | MICHIGAN DRIVER LICENSE NUMBER | | | |
| CITY | | STATE | ZIP | OTHER STATE DRIVER LICENSE NUMBER | | STATE | |
| HEIGHT | WEIGHT | EYE COLOR | HAIR COLOR | | <input type="checkbox"/> OPERATOR <input type="checkbox"/> CHAUFFEUR <input type="checkbox"/> MOPED | | |
| ARREST DATE (MMDDYY) | | MILITARY TIME | | INCIDENT DATE (MMDDYY) | | MILITARY TIME | |
| COUNTY (Of Arrest) | | CITY OR TOWNSHIP (Of Arrest) | | CO/CITY/TWP CODE | | MICHIGAN | |
| VEHICLE TYPE | Was Person Involved In An Accident? <input type="checkbox"/> YES <input type="checkbox"/> NO | INSTRUMENT NUMBER | BAC #1 | BAC #2 | BAC #3 | UCR CODE | COMPLAINT NUMBER |
| ARRESTING OFFICER'S NAME | | | | BADGE NUMBER | | ORI NUMBER | |
| BREATH TEST OPERATOR'S NAME (Only if Not Listed Above And Necessary For Hearing) | | | | BADGE NUMBER | | ORI NUMBER | |

You have been arrested for a crime described in section 625c of the Michigan Vehicle Code and submitted to a chemical test which revealed an unlawful bodily alcohol content or have a blood or urine test pending.

This temporary driving permit is valid only if you have a valid Michigan driver license. If your license was restricted, this permit grants the same restrictions. This permit grants you the same CDL and/or indorsements that are on your Michigan license. You may not apply for a replacement photo license.

This permit is to be used until the criminal charges against you are dismissed or until you are acquitted, or your license or permit is suspended, restricted, or revoked for a conviction. [MCL 257.625g(3)]

| | | | | | | | | | | | | | | |
|--------------------------------------|--------------------------|--------------------------|------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Michigan driver license confiscated? | YES | NO | Michigan driver license destroyed? | YES | NO | Under 21? | YES | NO | LICENSED OUT OF STATE | | | | | |
| | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | | | | |
| Driving status on date of arrest | VALID | EXPIRED | RESTRICTED | SUSPENDED | REVOKED | DENIED | UNLICENSED | UNKNOWN | <input type="checkbox"/> | | | | | |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | | | | | |
| License | Permit | A | B | C | H | N | X | P | T | CDL restrictions | CY | F | R | Other |
| CDL | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | ENDORSEMENT | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Officer's Signature _____ Date (MMDDYY) _____

| | | | |
|------------------------------------------|-------------------------------|--------------------------------------|-----------------------------|
| VEHICLE TYPES | OR Offroad Vehicle (ATV type) | AT Group A Double/Triple | BP Group B Passenger |
| CY Cycle | SM Snowmobile | AX Group A Tank & Hazardous | BS Group B School Bus |
| MO Moped | OO Other | AY Group A Tank & Double/Triple | BX Group B Tank & Hazardous |
| PA Pass Car & Sta Wgn | AA Group A | AZ Group A Hazardous Double/Triple | CH Group C Hazardous |
| VA Van & Motor Home | AH Group A Hazardous | AL Group A Hazard Tank Double/Triple | CP Group C Passenger |
| PU Pickup | AN Group A Tank | BB Group B | CS Group C School Bus |
| ST Sm Tr (un 10,000#) | AP Group A Passenger | BH Group B Hazardous | CK Group C Tank & Hazardous |
| MD Med Tr w/w Trl ovr 10,000# (non DCCL) | AS Group A School Bus | BN Group B Tank | |

Notice to officer: Complete this form when any alcohol test is given.

Confiscate and destroy the arrested person's Michigan driver license or permit, issue the third copy of this form, and destroy the second copy **if a breath test revealed a bodily alcohol content of:**

- 0.08 grams or more per 210 liters of breath while operating a motor vehicle, **or**
- 0.04 grams or more per 210 liters of breath while operating a commercial motor vehicle, **or**
- 0.02 grams or more per 210 liters of breath while operating a vehicle and less than 21 years of age.

When a voluntary blood or urine test is pending, or in special cases involving an unconscious person where a search warrant has been issued, attach the Michigan driver license or permit to the second copy of this form and issue the third copy to the arrested person.

If a chemical test is refused, use the Officer's Report of Refusal to Submit to Chemical Test form (DI-93).

For all of the above, input arrest data into the LEIN F Breath Screen, even if the driver is licensed out of state. (Do not confiscate the out of state license.)

Officer's Copy

Chapter 5

DataMaster DMT Functional Parts

DATAMASTER DMT Exterior Components



The functional parts of the DATAMASTER DMT are described as follows:

Touch Screen

The touch screen provides directions for operation of the instrument, and for navigating through the DATAMASTER DMT menus. The operator is prompted through each testing procedure step. Any error messages are also displayed.

Keyboard

The keyboard allows the operator to input data required for subject and accuracy checks.

Breath Tube

The breath tube is used to provide test samples into the instrument. A mouthpiece must be attached to the tube before use. The tube is semi-rigid and heated to avoid vapor condensation.

Metal Cover

The metal cover protects the inner workings of the DATAMASTER DMT and is not to be removed.

DATAMASTER DMT PRINTER

The printer is a standard Laser Jet computer printer and is supplied with the DATAMASTER DMT. It is not to be used for anything other than the DATAMASTER DMT.



DATAMASTER DMT Rear Panel



The functional parts of the DATAMASTER DMT rear panel are described as follows:

Breath Tube

The breath tube is used to introduce a sample into the instrument.

On/Off Switch

This toggle switch should be left ON at all times.

Power Supply

Use only the grounded power supply cable furnished with the instrument.

USB Ports

These ports are used to connect the keyboard and the printer to the DATAMASTER DMT. Do not use them to connect any other devices.

Ethernet Jack

This jack is for data transmission, and is not currently being used in Michigan.

Telephone Jack

This jack is for data transmission, and is not currently being used in Michigan.

Calibrate Port

During the “Purge” cycle on the DATAMASTER DMT, room air is drawn into the sample chamber via the “Breath Tube” and is expelled through this port by means of an internal pump.

Simulator Ports - Vapor In and Pump Out Ports

These two ports are not used in Michigan.

Dry Gas Port

This port is not used in Michigan.

Dry Gas Canister Cover

This covers the dry gas canister, which is used for accuracy checks.

Serial Number Plate

The serial number of the instrument is located on this plate.

DATAMASTER DMT Keyboard



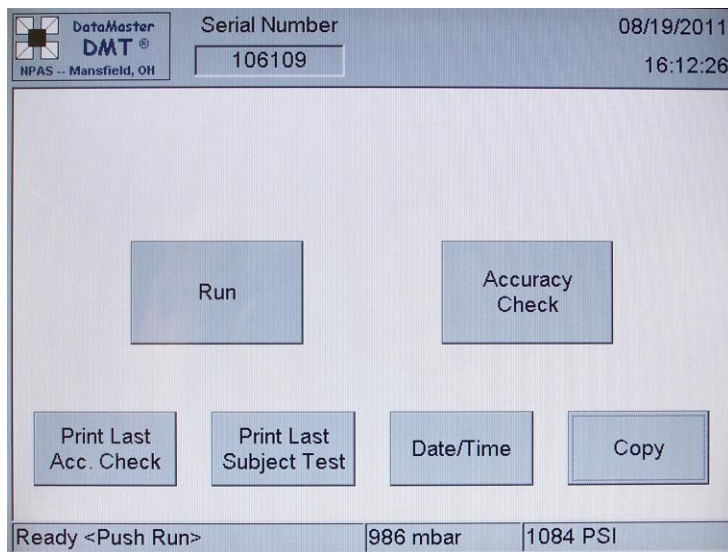
The keyboard supplied with the DATAMASTER DMT is a standard USB keyboard. Some of the instrument functions and data entry is performed via the keyboard.

Chapter 6

Manual Accuracy Check Sequence

Manual Accuracy Check Sequence

The instrument may be either in sleep mode or in the normal standby display. If it is in sleep mode, touch the screen anywhere to get to the normal standby display.



Step 1: Touch the “Accuracy Check” button, or hit the F5 button on the keyboard. This will bring up the “Operator Information” screen. The cursor will be in the “Last Name” box.

The screenshot shows the Operator Information screen. It has a title bar that says 'Supervisor Information'. Below the title bar, there are three input fields: 'Last Name', 'Badge #', and 'Certificate #'. The 'Last Name' field is currently selected, indicated by a cursor. At the bottom of the screen, there are two buttons: 'Cancel' and 'OK'.

Step 2: Type in the operator's last name.

Characters are allowed for the entire name. They may be:

- a. A letter.
- b. A hyphen (-).
Example: SMITH-JONES
- c. An apostrophe (').
Example: O'LEARY

Step 3: Use the Tab key to move to the "Badge #" box".

Type in your Badge number. (Not a required field.)

Step 4: Use the Tab key to move to the "Certificate #" box".

Type in your five-digit operator certification number.

Step 5: Touch the "OK" button.

Step 6: The instrument will now run through the accuracy check process. When the test is completed it will print a copy of the accuracy check results. File the test results and log them on the OD-33.

Note:

1. Only one test is allowed for this sequence. If repeat testing is required, the test sequence must be initiated a second time.
1. See the “Additional Accuracy Check Procedures” on Page 14 for the procedure to be followed if test results do not meet the allowable variation.

Accuracy Check

| ACCURACY CHECK TEST | | |
|----------------------------|----------|-------|
| ----- | | |
| OD-80 | | |
| STATE OF MICHIGAN | | |
| DEPARTMENT OF STATE POLICE | | |
| DATAMASTER dmt: 106309 | | |
| ----- | | |
| Date: 10/25/2011 | | |
| Time: 15:03:43 | | |
| SOLUTION INFORMATION | | |
| NOMINAL: 0.0800 | | |
| TARGET: 0.0797 | | |
| BLANK TEST | 0.0000 | 15:04 |
| INTERNAL STANDARD | VERIFIED | 15:04 |
| EXTERNAL STANDARD | 0.0773 | 15:04 |
| BLANK TEST | 0.0000 | 15:05 |
| INTERNAL STANDARD | VERIFIED | 15:05 |

AUTHORITY: 1949 PA 300
COMPLIANCE: Required
PENALTY: Removal/Decertification of Instrument

EVIDENTIAL BREATH TESTING LOG

Alcohol Standard Control Number

| | | Month | Year |
|-----|-----------|---------------------------------|-----------|
| | | Instrument Location | |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| Day | Operation | Results (1) | Signature |
| | | (2) | Signature |
| | | Supervisor / Designee Signature | |
| | | Date | |

Accurate test results shall be:
Wet Bath - .076 to .084 inclusive.
Dry Gas - Within 5% of corrected factor.

Chapter 7

Subject Test Sequence

Subject Test Sequence

- Step 1: Check mouth of subject for blood, food, gum, tobacco, or any other foreign substances. Observe subject for at least 15 minutes. Use the time displayed on the instrument panel only.
- Step 2: The instrument may be either in sleep mode or in the normal standby display. If it is in sleep mode, touch the screen anywhere to get to the normal standby display.

Normal standby display:

The screenshot shows the instrument's standby display. At the top left is the DataMaster logo with 'DMT' and 'NPAS - Mansfield, OH'. To the right, it displays 'Serial Number 106109', the date '08/19/2011', and the time '16:12:26'. The central area features a large 'Run' button and an 'Accuracy Check' button. Below these are four smaller buttons: 'Print Last Acc. Check', 'Print Last Subject Test', 'Date/Time', and 'Copy'. The bottom status bar indicates 'Ready <Push Run>', '986 mbar', and '1084 PSI'.

- Step 3: Touch **“RUN”** button on the display.

This will bring up the Subject Information screen.

The Subject Information screen is divided into two main sections. The 'Subject Information' section includes input fields for 'Obs. Time' (with a clock icon), 'Name(F/M/L)', 'Ops Code', 'Date of Birth' (with a date icon), and 'State of Issue'. The 'Operator Information' section includes input fields for 'Last Name', 'Badge #', 'Certificate #', and 'Comp/Report #'. At the bottom of the screen are 'Cancel' and 'OK' buttons.

- Step 4: The cursor will be in the **“Obs. Time”** box. Type in the observation start time using military time.

Step 5: Use the Tab key to move to the subject's "Name" box.
Type in the subject's first name/middle initial/last name.
Characters are allowed for the entire name. They may be:

- a. A letter.
- b. A hyphen (-).
Example: LUCILLE/S/SMITH-JONES
- c. An apostrophe (').
Example: DAN/M/O'LEARY

If the subject's name is unknown, type "UNKNOWN."

Step 6: Use the Tab key to move to the "Ops" code.
Type in the subject's drivers' license number.
If driver's license number is unknown, type "UNKNOWN."

Step 7: Use the Tab key to move to the "State of Issue" box.
Type in the two letter state abbreviation.

Step 8: Use the Tab key to move to the "Date of Birth" box.

Type in the date. "mm/dd/yyyy"

Eight (8) numerals must be entered. Zero-fill if necessary. Four (4) numerals must be entered for the year of birth. Only numerals are acceptable. If an unrealistic date is entered, it will not be accepted. An error beep will result and the display will request new data for DOB. Only the numerals need to be added. The slashes (/) are typed automatically. If the Date of Birth is unknown make no entry.

Examples:

| <u>Correct</u> | <u>Incorrect</u> |
|----------------|------------------|
| 01/07/1956 | 1/7/1956 |
| 10/05/1942 | 10/5/1942 |
| 10/10/2001 | 15/35/1998 |

Step 9: Use the Tab key to move to the operator's "Last Name" box.

Type in the operator's last name

Characters are allowed for the entire name. They may be:

- a. A letter.
- b. A hyphen (-).
Example: SMITH-JONES
- c. An apostrophe (').
Example: O'LEARY

Step 10: Use the Tab key to move to the "Badge #" box.

Type in your Badge number. (Not a required field.)

Step 11: Use the Tab key to move to the "Certificate #" box.

Type in your five-digit operator certification number.

Step 12: Type in the report (complaint) number.

If report number is unknown, do not enter anything. (Not a required field.)

Step 13: If the information entered is correct, touch the "OK" button.

The DATAMASTER DMT will now proceed to the automatic test sequence.

Step 14: **"TIMED PURGE"**

All chambers and internal plumbing are cleansed of any residual substances by ambient (surrounding) air, which is pulled through the inlet (Breath) tube and pumped throughout the instrument by an internal pump.

CAUTION: Breath tube can act as a vacuum cleaner and suck in dirt on the counter. It is recommended you lay the breath tube across the top of the instrument.

If the subject reeks of ethanol, remove him/her from the immediate test area until this cycle is completed, or the instrument may stop the test and display "**Ambient Fail.**"

Step 15: **“AMBIENT ZEROING”**

After the pump stops, the DATAMASTER DMT determines a zero reference based on ambient air in the Sample Chamber. During this cycle an interference filter is inserted into the infrared path to check for contaminants in the ambient air sample. Three different filters with unique and known infrared bandwidths are used to separate ethanol from potential interference such as acetone.

Step 16: **“BLANK TEST”**

A reading is made of the checks conducted during **“Ambient Zeroing.”** A **“Blank”** test is conducted prior to any subject or accuracy check.

Step 17: **“INTERNAL STANDARD”**

This indicates the internal standard was checked.

During this cycle a quartz plate is inserted into the infrared path to ensure that the accuracy of the DATAMASTER DMT has not changed since the last calibration. Each DATAMASTER DMT is programmed to retain in memory the exact infrared absorption value of this quartz standard. The instrument measures the absorption of the quartz plate and compares this measured value with the value obtained at calibration. The two values must agree within prescribed limits or the operation will be aborted due to calibration error.

Step 18: **“PLEASE BLOW” (flashing in the lower left corner of the display)**

A beeping signal indicates the DATAMASTER DMT is ready to accept a subject sample.

Step 19: Insert a new mouthpiece into the breath tube.

Each mouthpiece is individually wrapped.

Open bag and use the plastic bag to avoid touching the mouthpiece as you insert the mouthpiece into the breath tube.

Step 20: Position the subject near the instrument, and, if not handcuffed, have the subject place his or her hands behind his or her back so that the subject will not interfere with the test procedure.

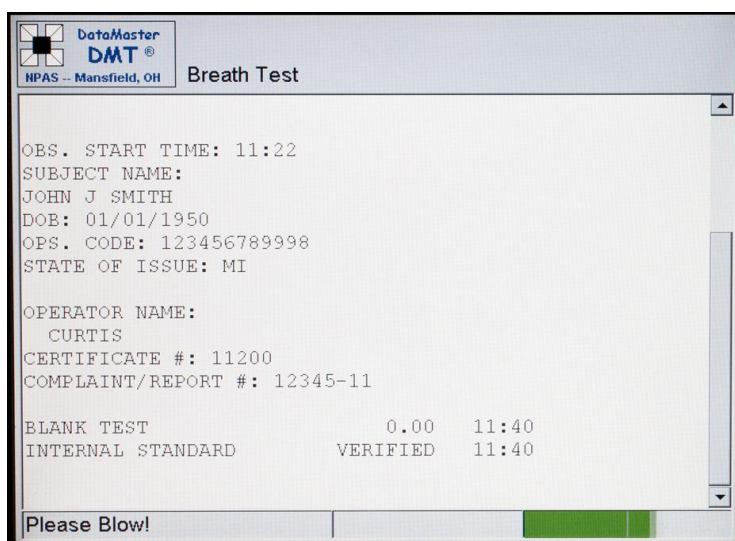
Communicate with the person taking the test.

Give clear instructions so the subject will understand how to provide an adequate breath sample.

The operator should advise the subject to:

“Place your mouth on the mouthpiece and blow long and steady into the tube until I tell you to stop.”

Once the subject starts to blow through the breath tube, the instrument’s beeping tone will change to a steady tone, and the green volume bar in the lower right corner of the screen will indicate breath volume. This shows that the instrument is receiving a sample.

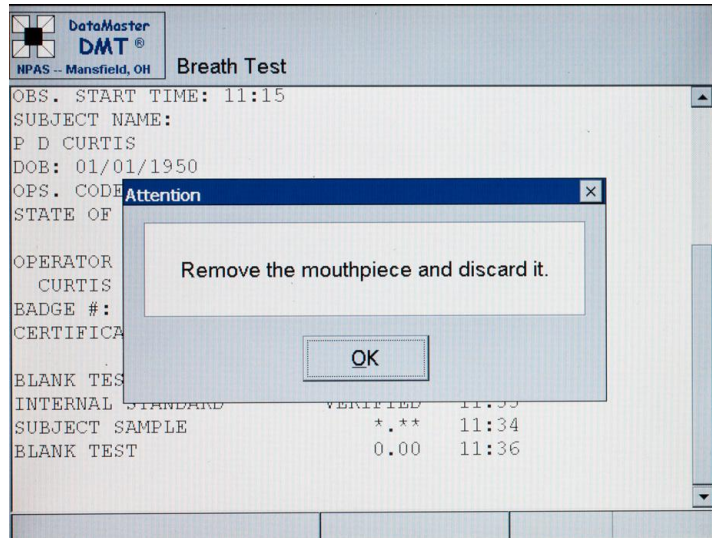


“Please Blow”
(Displayed Above)

“Breath Volume Bar”
(Displayed Above)

Allow the subject to expel all of the air in his/her lungs before telling him/her to stop. If the instrument does not produce the beeping sound and flash “**Please Blow**” after the subject stops blowing, the breath sample has been accepted. If it continues to beep and flash “**Please Blow**”, the sample was not accepted, and the subject must continue to provide a breath sample.

Step 21: “Remove the mouthpiece and discard it” box will now appear.



Immediately remove and discard the mouthpiece after the subject has finished providing the breath sample, and touch the “OK” button.

Step 22: **“ANALYZING”**

The instrument is now analyzing the result of the breath sample.

Step 23: **“PURGING”**

Step 14 is repeated.

Step 24: **“WAIT FOR NEXT TEST - 120 Seconds**

The instrument counts down a two-minute wait between breath samples in the lower left corner.

Step 25: **“AMBIENT ZEROING”**

Step 15 is repeated.

Step 26: **“BLANK TEST”**

Step 16 is repeated.

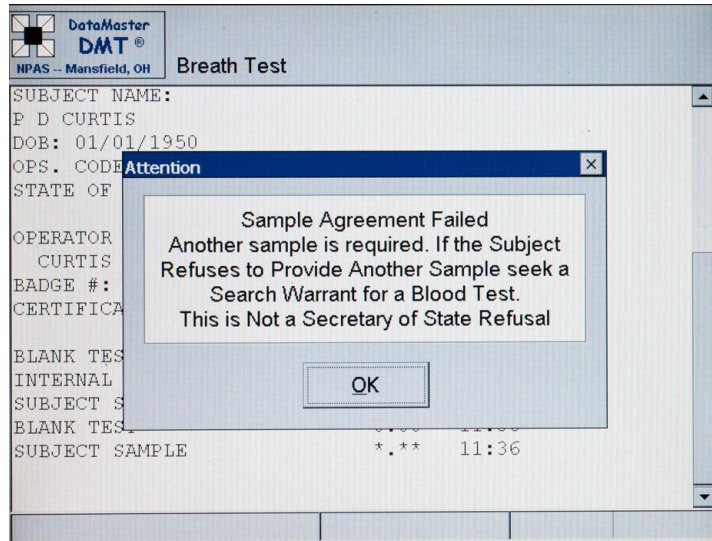
Step 27: **“PLEASE BLOW” (flashing in the lower left corner of the display)**

A beeping signal indicates the DATAMASTER DMT is ready to accept the second breath sample from the subject.

Repeat Steps 19 through 21.

A new mouthpiece must be used for each breath sample.

NOTE: If the second breath test result is not within the allowable variation of the first breath test results, the DATAMASTER DMT will automatically request a third breath test.



If so, Steps 22 through 27 will be repeated.

Step 28: **“ANALYZING”**

Step 22 is repeated.

Step 29: **“PURGING”**

Step 14 is repeated.

Step 30: **“AMBIENT ZEROING”**

Step 15 is repeated.

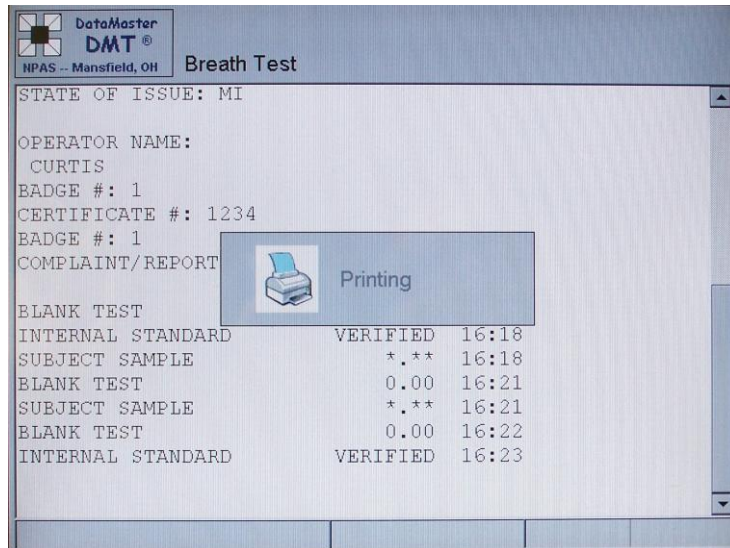
Step 31: **“BLANK TEST”**

Step 16 is repeated.

Step 32: **“INTERNAL STANDARD CHECK”**

Step 17 is repeated.

Step 33: A “Printing” box will appear on the display as the instrument sends the test results to the printer.



The instrument will now return to the normal standby display screen.

Evidence Ticket distribution:

One copy - Attach to original complaint.

One copy - Forward to prosecutor’s office.

One copy - Give to arrested subject.

Additional Considerations

Refusal

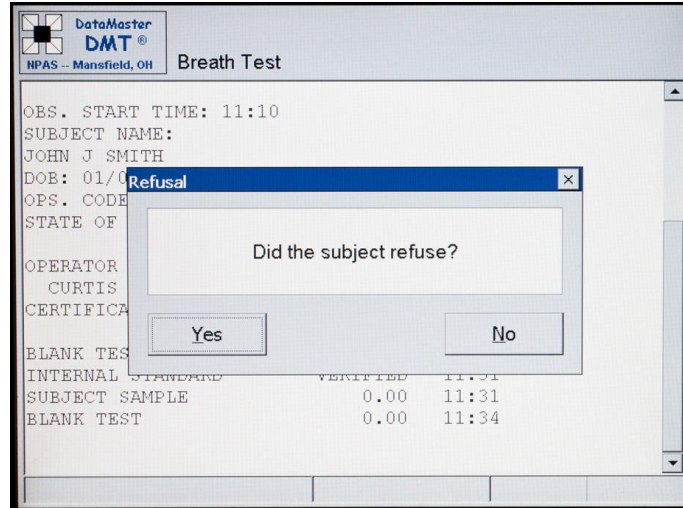
A refusal may result after a subject has been read the chemical test rights and has agreed to provide a breath alcohol test but does not provide an adequate breath sample into the DATAMASTER DMT.

A. Operator Refusal - Two-minute time limit on the DATAMASTER DMT.

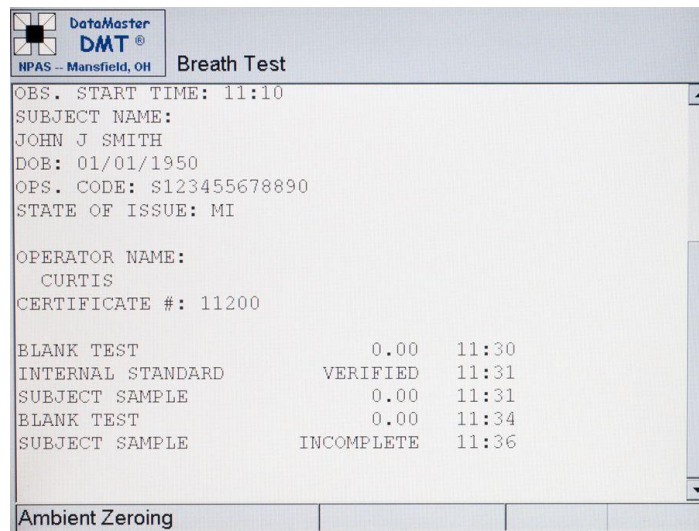
An **operator refusal** occurs when the **operator** decides that the subject is not making a reasonable effort to provide a breath sample.

When the display “PLEASE BLOW” appears, the subject has two (2) minutes to provide a breath sample. If an inadequate sample or no sample at all is received during that time, the display will bring up the “Remove and Discard Mouthpiece” box, once the “OK” button is touched then the instrument will indicate:

“DID THE SUBJECT REFUSE”? with a “YES” and “NO” button.



The operator must decide if the subject should be cited for an **“operator refusal”** at this time. If a refusal is warranted, the operator will touch the **“YES”** button, and the instrument will automatically purge, ambient zero, run a blank test, check the internal standard, and print an evidence ticket with **“Refused,”** and the test is completed. If an **“operator refusal”** is not warranted at this time, the operator will touch the **“NO”** button. The instrument will automatically purge, ambient zero, run a blank test, check the internal standard, and while doing this will display **“Incomplete”** in the subject test line.



The Instrument will now display:

“PLEASE BLOW” (flashing)

The subject now has additional two (2) minutes to provide a breath sample. If no adequate sample is received within two (2) minutes again, the display will bring up the **“Remove and Discard Mouthpiece”** box, once the **“OK”** button is touched then the instrument will indicate:

“DID THE SUBJECT REFUSE?” with a “YES” and “NO” button.

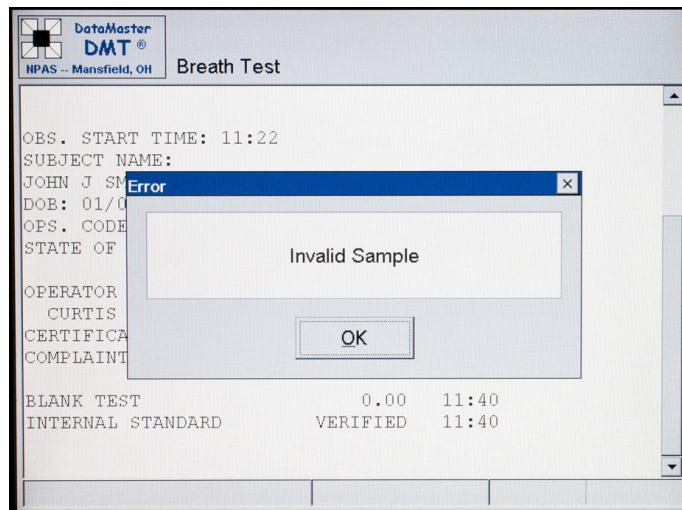
The operator must again decide if the subject should be cited for an **“operator refusal.”** If a refusal is warranted, the operator will touch the **“YES”** button, and the instrument automatically purge, ambient zero, run a blank test, check the internal standard and will print an evidence ticket with **“Refused,”** and the test is completed. If an **“operator refusal”** is still not warranted, the operator will touch the **“NO”** button. This time the instrument will automatically purge, ambient zero, run a blank test, check the internal standard, and print out the evidence ticket indicating an **“INCOMPLETE”** subject sample, and will print **“INCOMPLETE TEST, THIS IS NOT A DAAD REFUSAL”** on the evidence ticket.

When an **“INCOMPLETE”** test is received, the operator will need to start the testing procedure over by touching the **“RUN”** button. If the subject again continues to not give an adequate sample after two minutes, the operator should press the **“YES”** button at the **“DID THE SUBJECT REFUSE?”** display.

If an **“OPERATOR REFUSAL”** is warranted, the instrument will print **“OPERATOR REFUSAL, THIS IS A DAAD REFUSAL”** on the evidence ticket.

Invalid Sample

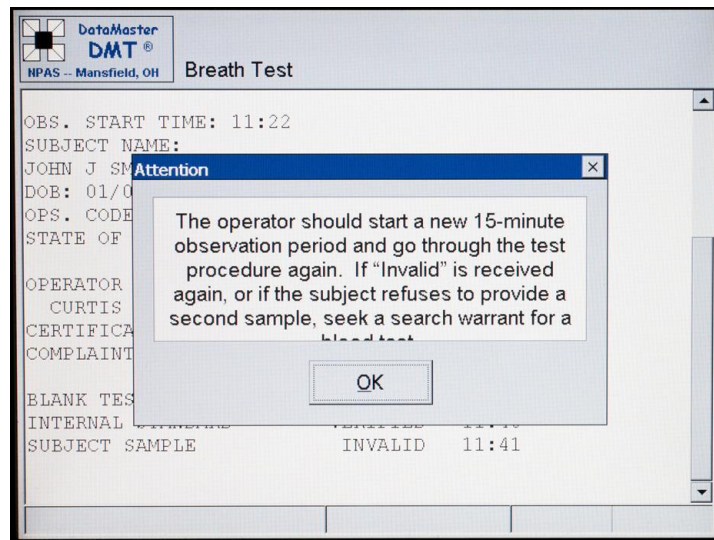
There are a number of reasons as to why an **“INVALID SAMPLE”** reading may be displayed on the instrument.



If, while the subject is blowing into the DATAMASTER DMT, he/she has a discontinuous breath flow, i.e. starts and stops blowing, or sucks back on the breath tube, the instrument may display “**Invalid Sample.**”

Residual mouth alcohol may also cause an “**Invalid Sample**” message. Scientific testing has shown that if the 15-minute observation period has been satisfied, then residual mouth alcohol is not the cause of the “**Invalid Sample**” result.

The officer’s observations of the subject while he/she is blowing into the instrument can provide the best explanation as to the cause of an “**Invalid Sample.**”



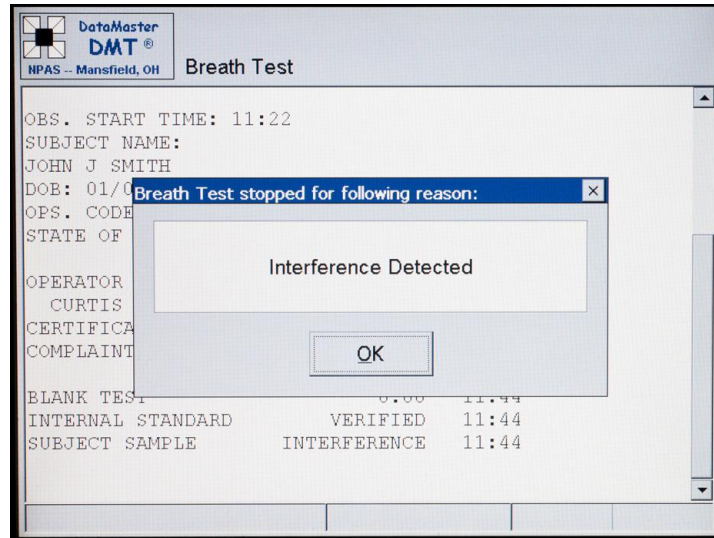
The operator should touch the “**OK**” button and should start a new 15-minute observation period and go through the test procedure again. If “**Invalid Sample**” reading is received again, or if the subject refuses to provide a second sample, seek a search warrant for a blood test.

This is not a DAAD Refusal. Failure of the subject to provide the second sample cannot be regarded as a “Refusal” as the subject did provide a sample, pursuant to implied consent.

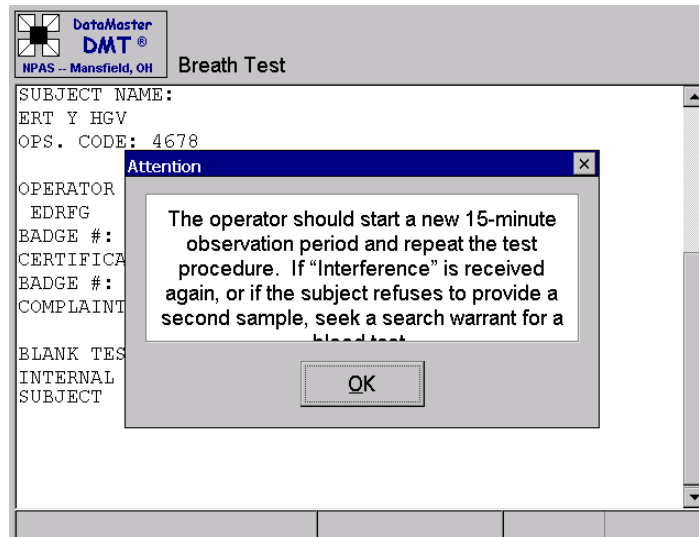
Chemical Interference

If the DATAMASTER DMT detects a chemical substance other than ethanol, the test will be aborted.

If the instrument gives an “**Interference Detected**” reading on the display, touch the “**OK**” button, and the printout will also indicate “**Interference Detected.**”



Once the “OK” button is touched the next screen will appear.

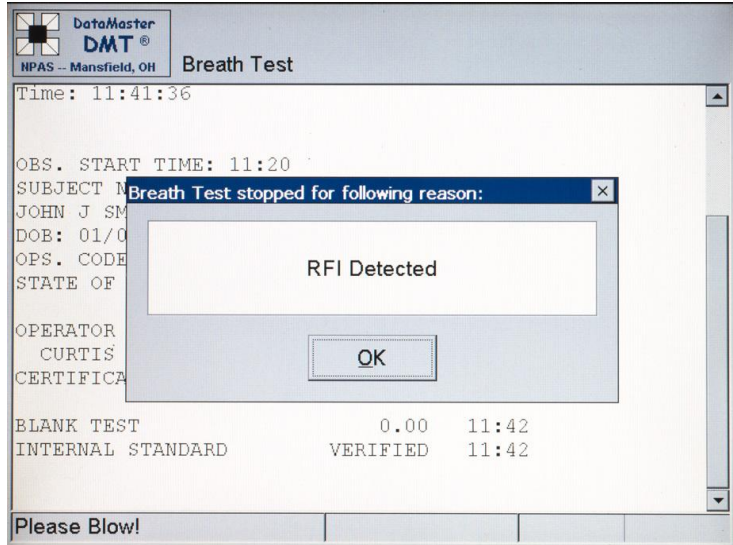


The operator should start a new 15-minute observation period and go through the test procedure again. If an **“Interference Detected”** message is received again, or if the subject refuses to provide a second sample, seek a search warrant for a blood test.

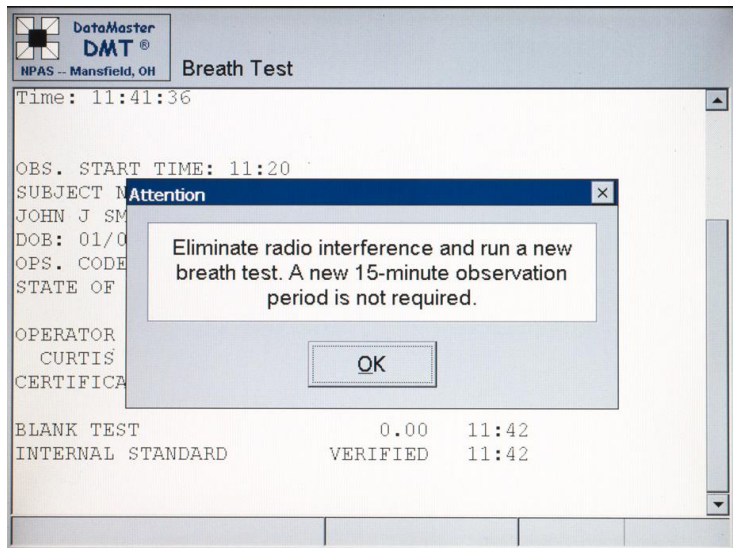
This is not a DAAD Refusal. Failure of the subject to provide the second sample cannot be regarded as a “Refusal” as the subject did provide a sample, pursuant to implied consent.

Radio Frequency Interference

If the DATAMASTER DMT detects any radio transmissions in the area that could interfere with a test result, the test will be aborted.



If the instrument gives an “RFI Detected” message on the display, touch the “OK” button, and the printout will also indicate “RFI Detected.”



After the interference has been eliminated, touch the “RUN” button to initiate a new test. A new 15-minute observation period is not necessary.

The display will show **“USE THE PREVIOUS DATA?”** with a **“YES”** and **“NO”** button. Touch **“YES”** or **“NO”** and proceed with test.

This is not a DAAD Refusal. Failure of the subject to provide the second sample cannot be regarded as a “Refusal” as the subject did provide a sample, pursuant to implied consent.

One Subject Test – Second Refused

SUBJECT TEST

OD-80
STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
DATAMASTER dmt: 106509

Date: 12/27/2010
Time: 10:15:39

OBS. START TIME: 10:00
SUBJECT NAME:
JOHN J SMITH
DOB: 01/01/1950
OPS. CODE: S123456789012
STATE OF ISSUE: MI

OPERATOR NAME:
CURTIS
CERTIFICATE #: 11200

| | | |
|-------------------|----------|-------|
| BLANK TEST | 0.00 | 10:16 |
| INTERNAL STANDARD | VERIFIED | 10:16 |
| SUBJECT SAMPLE | 0.12 | 10:17 |
| BLANK TEST | 0.00 | 10:19 |
| SUBJECT SAMPLE | REFUSED | 10:21 |
| BLANK TEST | 0.00 | 10:22 |
| INTERNAL STANDARD | VERIFIED | 10:22 |

One Subject Test – Second Incomplete

SUBJECT TEST

OD-80
STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
DATAMASTER dmt: 106509

Date: 12/27/2010
Time: 09:47:25

OBS. START TIME: 09:20
SUBJECT NAME:
JOHN J SMITH
DOB: 01/01/1950
OPS. CODE: S1234567890
STATE OF ISSUE: MI

OPERATOR NAME:
CURTIS
CERTIFICATE #: 11200

| | | |
|-------------------|------------|-------|
| BLANK TEST | 0.00 | 09:48 |
| INTERNAL STANDARD | VERIFIED | 09:48 |
| SUBJECT SAMPLE | 0.10 | 09:48 |
| BLANK TEST | 0.00 | 09:51 |
| SUBJECT SAMPLE | INCOMPLETE | 09:53 |
| BLANK TEST | 0.00 | 09:54 |
| INTERNAL STANDARD | VERIFIED | 09:54 |

Operator Refusal

Invalid Sample

SUBJECT TEST

OD-80
STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
DATAMASTER dmt: 106509

Date: 12/27/2010
Time: 09:01:51

OBS. START TIME: 08:45
SUBJECT NAME:
JOHN J SMITH
DOB: 01/01/1950
OPS. CODE: S1234567890
STATE OF ISSUE: MI

OPERATOR NAME:
CURTIS
CERTIFICATE #: 11200

| | | |
|-------------------|----------|-------|
| BLANK TEST | 0.00 | 09:02 |
| INTERNAL STANDARD | VERIFIED | 09:03 |
| SUBJECT SAMPLE | REFUSED | 09:05 |
| BLANK TEST | 0.00 | 09:05 |
| INTERNAL STANDARD | VERIFIED | 09:05 |

OPERATOR REFUSAL
THIS IS A DLAD REFUSAL

SUBJECT TEST

OD-80
STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
DATAMASTER dmt: 106509

Date: 12/27/2010
Time: 09:44:22

OBS. START TIME: 09:20
SUBJECT NAME:
JOHN J SMITH
DOB: 01/01/1950
OPS. CODE: S1234567890
STATE OF ISSUE: MI

OPERATOR NAME:
CURTIS
CERTIFICATE #: 11200

| | | |
|-------------------|----------|-------|
| BLANK TEST | 0.00 | 09:45 |
| INTERNAL STANDARD | VERIFIED | 09:45 |
| SUBJECT SAMPLE | INVALID | 09:45 |

Invalid Sample

Interference Detected

| SUBJECT TEST | | | |
|----------------------------|--------------|-------|--|
| ----- | | | |
| OD-80 | | | |
| STATE OF MICHIGAN | | | |
| DEPARTMENT OF STATE POLICE | | | |
| DATAMASTER dmt: 106509 | | | |
| ----- | | | |
| Date: 12/27/2010 | | | |
| Time: 09:39:17 | | | |
| | | | |
| OBS. START TIME: 09:20 | | | |
| SUBJECT NAME: | | | |
| JOHN J SMITH | | | |
| DOB: 01/01/1950 | | | |
| OPS. CODE: S1234567890 | | | |
| STATE OF ISSUE: MI | | | |
| | | | |
| OPERATOR NAME: | | | |
| CURTIS | | | |
| CERTIFICATE #: 11200 | | | |
| | | | |
| BLANK TEST | 0.00 | 09:40 | |
| INTERNAL STANDARD | VERIFIED | 09:40 | |
| SUBJECT SAMPLE | INTERFERENCE | 09:40 | |
| | | | |
| Interference Detected | | | |

RFI Detected

| SUBJECT TEST | | | |
|----------------------------|----------|-------|--|
| ----- | | | |
| OD-80 | | | |
| STATE OF MICHIGAN | | | |
| DEPARTMENT OF STATE POLICE | | | |
| DATAMASTER dmt: 106509 | | | |
| ----- | | | |
| Date: 12/27/2010 | | | |
| Time: 11:16:25 | | | |
| | | | |
| OBS. START TIME: 11:00 | | | |
| SUBJECT NAME: | | | |
| JOHN J SMITH | | | |
| DOB: 01/01/1950 | | | |
| OPS. CODE: S123456789098 | | | |
| STATE OF ISSUE: MI | | | |
| | | | |
| OPERATOR NAME: | | | |
| CURTIS | | | |
| CERTIFICATE #: 11200 | | | |
| | | | |
| BLANK TEST | 0.00 | 11:17 | |
| INTERNAL STANDARD | VERIFIED | 11:17 | |
| | | | |
| RFI Detected | | | |

Subject Test Practice Procedures

1. Touch “Run”, and enter the required information.
At the first “Please Blow.” Provide sample.
At the second “Please Blow.” Provide sample.

(Standard two subject tests)

2. Touch “Run”, and enter the required information.
At the first “Please Blow.” Provide sample.
At the second “Please Blow.” Provide sample.

(Standard two subject tests)

3. Touch “Run”, and enter the required information.
At the first “Please Blow.” Provide sample.
At the second “Please Blow.” Don’t provide any sample, wait two minutes and press “Y” at “Subject Refused Y/N.”

(Valid first subject test, then “Refused” for second test. Valid overall test for DAAD purposes, as only one test is required; example Page 49.)

Chapter 8

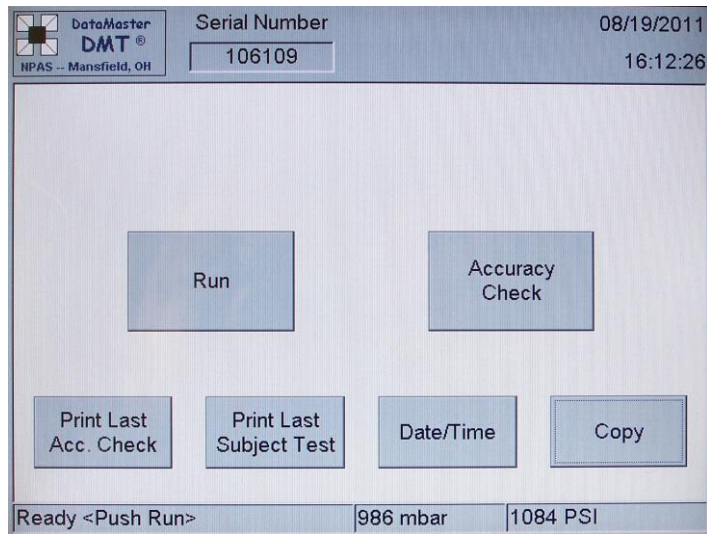
Date/Time Modifications

Date/Time Modifications

The instrument is set up to automatically make the adjustment for daylight savings time based on the second Sunday in March, and the first Sunday in November.

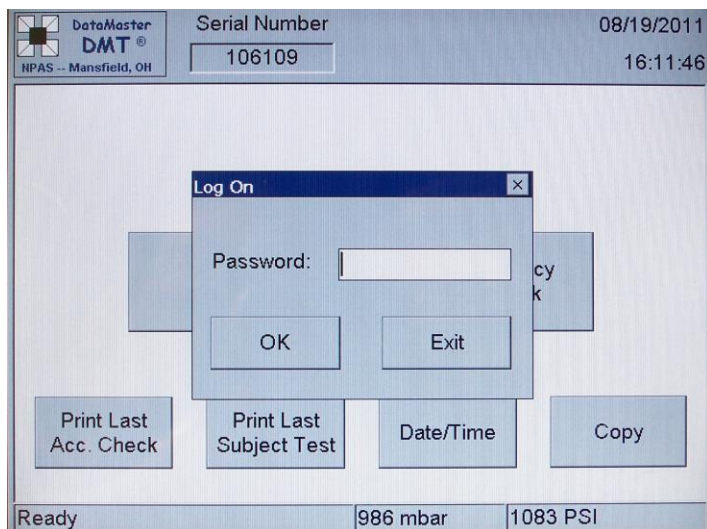
If an adjustment must be made to the time or date on the DMT DataMaster, the operator may make changes by performing the following steps

Step 1: Normal standby display:



Step 2: Touch the “DATE/TIME” box in the bottom of the display.

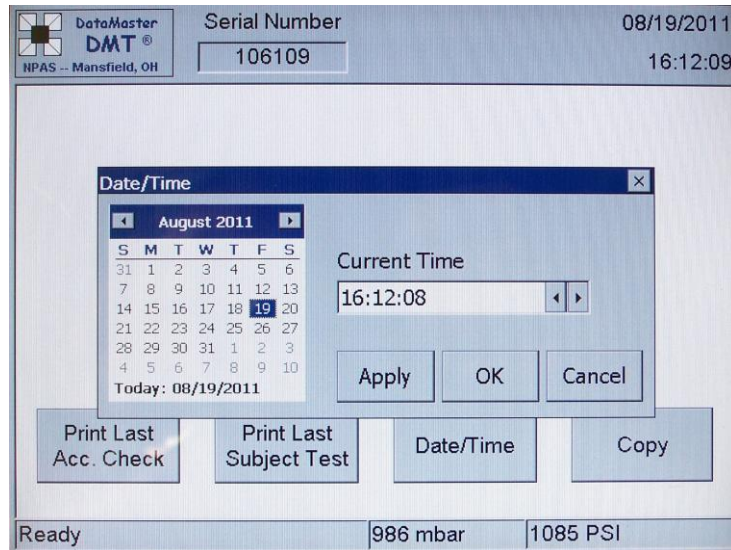
This will bring up the “Password” screen.



Step 3: Type in “Time.”

Step 4: Touch the “OK” button.

This will bring up the “Date/Time” box.



Step 5: Make the required changes using the keyboard, and touch the “Apply” button.

Step 6: Touch “OK” button.

This locks the setting and returns to the normal standby display.

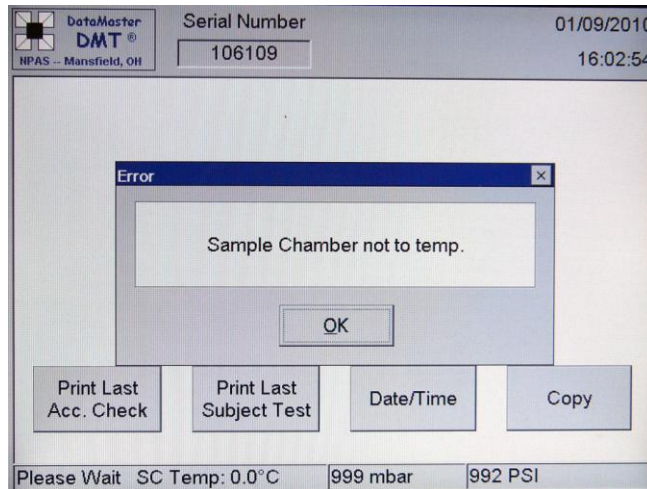
Chapter 9

Display Messages

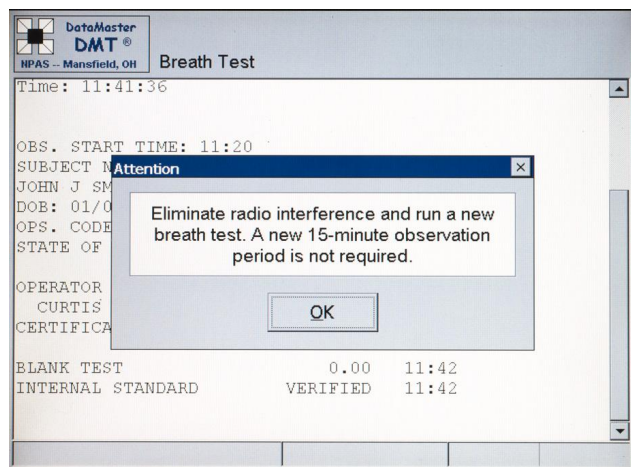
Display Messages

IF ANY OF THESE MESSAGES APPEAR ON THE DISPLAY, DO NOT TAKE UNIT OUT OF SERVICE.

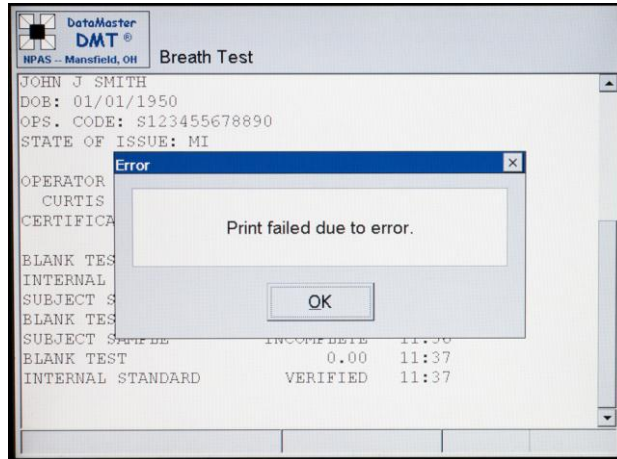
1. **“Sample Chamber Not to Temp”** - May appear after instrument is initially turned on. It will display **“Please Wait”** in the lower left corner. Wait until the instrument has time to get to proper operating temperature. If it will not come up to the proper temperature, contact the service representative.



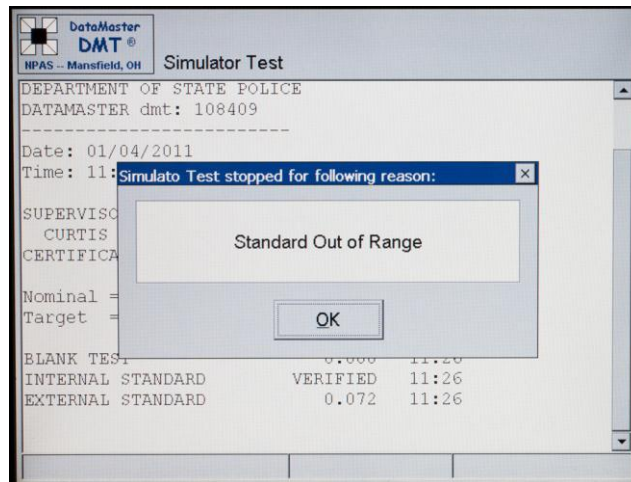
2. **“RFI Detected”** – Eliminate the radio interference and continue the test. (There is no need for another 15-minute observation period for radio interference.)



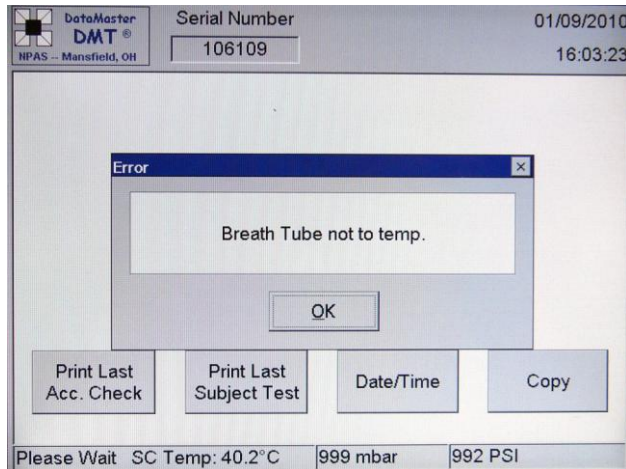
3. **“Print failed due to error”** – Check printer to ensure it is properly connected, has paper loaded in the tray, and ink.



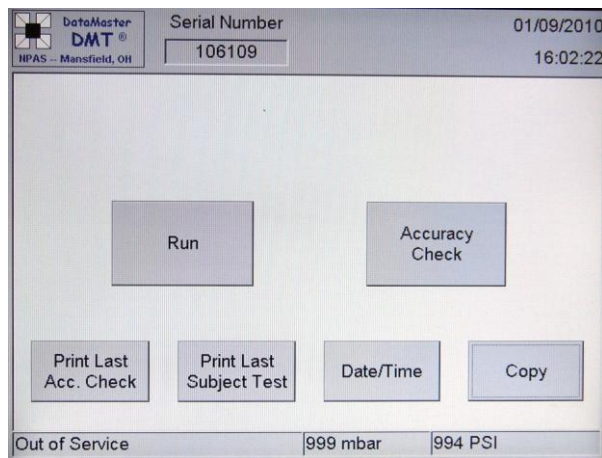
4. **“Standard Out of Range”** – This indicates that the external standard used for the simulator test is outside of the allowable range. See page 14. (Additional Simulator Procedures)



5. **“Breath Tube not to temp”** – May appear after instrument is initially turned on. It will display **“Please Wait”** in the lower left corner. Wait until the instrument has time to get to proper operating temperature. If it will not come up to the proper temperature, contact the service representative.



6. **“Out of Service”** – May appear if the instrument has attempted to run an automatic accuracy check, but has been unable to complete the process due to some type of problem. **This requires a service call to put the instrument back into service.**



Reporting DATAMASTER DMT Incidents

If you are having a problem with the DATAMASTER DMT, please call:

1. **National Patent Analytical Systems, Inc.**
P.O. Box 1435
Mansfield, Ohio 44901
1-800-800-8143

If the recorder does not answer, it is busy. Hang up and call again!

2. Leave the following information:
 - A brief description of the difficulty.
 - Was an error screen displayed? If so, which one?
 - What was the operator doing at the time?
 - Conducting a subject test?
 - Running a simulator test?
 - Any other pertinent circumstances?
3. Leave a telephone number and a person's name for *National Patent* to call. If the person who experienced the problem or the supervisor is going off duty, please brief someone who can tell *National Patent* about the specific problem. Or, call them as soon as possible during business hours (7:30 a.m. to 5:00 p.m.) and explain the problem.

The following persons are at *National Patent* to serve you:

1. John Fusco (President)
2. Dave Radomski (Production and Technical)
3. Chris Spayde (Technical)

Chapter 10

Record Keeping Distribution and Retention

Record Keeping - Distribution and Retention

Distribution

1. Subject print-outs (Evidence Ticket OD-80) - 3 copies
 - a. One copy is attached to the master complaint.
 - b. One copy is to be given to the prosecutor.
 - c. One copy is to be given to the arrested subject.
2. Accuracy check print-outs (OD-80) - 1 copy
 - a. Print-out is for the police department where the instrument is located.
3. OD-33 Evidential Breath Testing Log
 - a. To be used to record accuracy checks only.
 - b. A new sheet shall be used for each calendar month.

Retention

1. Subject printouts
 - a. Retain per your department's retention policy.
2. Simulator printouts
 - a. Current year plus one year.
3. OD-33 Evidential Breath Testing Log
 - a. Current year plus seven years.

Chapter 11

DRIVER ASSESSMENT AND APPEAL DIVISION HEARING INFORMATION

ADMINISTRATIVE HEARINGS SECTION HEARING INFORMATION

The following areas should be addressed at an Administrative Hearings Section hearing:

- State that there was reasonable cause for the arrest by observations, actions, etc. Be prepared to provide details.
- State that the subject was placed under arrest for an alcohol-related offence listed on the DI-177 or DI-93.
- State that the subject was advised of the Chemical Test Rights. Make sure to specify that the rights were read from the DI-177 or DI-93.
- State that the subject was requested to take a chemical test. Identify what test was requested.
- State that the subject refused to take a chemical test either verbally or by actions during the breath alcohol test.
- Be prepared to detail that the instrument was working properly (required protocol, i.e., weekly simulator tests, 120-day maintenance, etc.).
- Take the pink “Officers Copy for DAAD” Hearing section of the DI-93 with you to the hearing and get it on the record. Take the “Officers Copy” from which to testify.
- Take a copy of your Operator Certification Card to the hearing and get it on the record.
- Take copies of all Evidence Tickets to the hearing and get them on the record.
- Review the operator’s manual regarding the instrument operating procedures.

Prepare for testimony, and be prepared to explain the “Operator Refusal” during the hearing. Review your report in detail. Do not expect to read from your report during your testimony.

Appendix A

Administrative Rules Tests for Breath Alcohol

Appendix A - Administrative Rules - Tests for Breath Alcohol

SOAHR 2006-029

DEPARTMENT OF STATE POLICE

FIELD OPERATIONS DIVISION

TESTS FOR BREATH ALCOHOL

Filed with the Secretary of State on April 14, 2010

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

By authority conferred on the department of state police by 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625h, and 1994 PA 451, MCL 324.80181 and MCL 324.82137)

R 325.2651 Definitions.

Rule 1. (1) As used in these rules:

(a) "Acts" means 1945 PA 327, MCL 259.190, 1949 PA 300, MCL 257.625a, 1993 PA 354, MCL 462.359, 1994 PA 451, MCL 324.80181, MCL 324.81136, and MCL 324.82137.

(b) "Alcohol standard" means a certified alcohol standard.

(c) "Calendar month" means 12:01 a.m. on the first date of any of the 12 named months of the year to midnight on the last date of the same month.

(d) "Calendar week" means 12:01 a.m. Sunday to midnight Saturday.

(e) "Class" means a classification of operator status as certified by the department, based on training and function as specified in subrule (4) of R 325.2658.

(f) "Department" means the department of state police.

(g) "Equipment" means evidential and preliminary breath test instruments, simulator devices, forms, and any accessories and supplies necessary for compliance with the procedures in these rules or law.

(h) "Evidential breath alcohol analysis" means chemical analysis of an essentially alveolar breath sample that indicates a specific result in grams of alcohol per 210 liters of breath.

(i) "Evidential breath alcohol test instrument" means an evidential breath-testing device that indicates a specific result in grams of alcohol per 210 liters of breath.

(j) "Preliminary breath alcohol analysis" means chemical analysis of essentially alveolar breath samples that indicates the presence or absence of alcohol in a person's blood.

(k) "Preliminary breath alcohol test instrument" means a breath alcohol-screening device that indicates the presence or absence of alcohol in a person's blood.

(l) "Shall" means that a function is mandatory.

(m) "Should" means that a function is recommended, but not mandatory, with reasonable deviation allowed.

(2) Terms used in the acts have the same meanings when used in these rules.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS.

R 325.2652 Approved equipment.

Rule 2. (1) Evidential and preliminary breath alcohol test instruments shall be tested by, and shall meet the existing model specifications for evidential breath alcohol analysis as established by, the United States department of transportation, national highway traffic safety administration. The specifications, identified as "Model Specifications for Evidential Breath Testing Devices," 49 FR 48854 et seq., (December 14, 1984), as amended by 58 FR 48705 et seq., (September 17, 1993), 62 FR 43416 et seq., (August 13, 1997), 69 FR 42237 et seq., (July 14, 2004), 71 FR 37159 et seq., (June 29, 2006), and 72 FR 71480 et seq., (December 17, 2007) are adopted in these rules by reference. A copy of the specifications and a current conforming products list are available from the Superintendent of Documents, United States Government Printing Office, Washington, DC 20402, or from the Michigan State Police, Field Operations Division, 714 South Harrison Road, East Lansing, Michigan 48823, at a cost as of the time of adoption of these rules of \$25.00.

(2) If the United States Department of Transportation discontinues the testing of evidential breath alcohol test instruments or the issuance of model specifications for such testing, only those instruments tested and approved by the department shall be used.

(3) Equipment, including accessories and supplies for determining evidential or preliminary breath alcohol analysis, shall be approved by the department before use.

(4) An application for equipment approval shall be submitted to the department.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 MR 8, Eff. Apr. 21, 2010.

R 325.2653 Equipment accuracy.

Rule 3. (1) An evidential breath alcohol test instrument shall be verified for accuracy at least once at any time during each calendar week, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). Alternatively, a pre-programmed self-test may be initiated by the instrument and recorded by an appropriate class operator pursuant to R 325.2658(4) if the instrument is so equipped and programmed. The tests need not be performed within 7 days of each other, but shall be performed less than 14 days apart. The test for accuracy shall be made in a prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor. Controlled devices include both of the following:

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

(b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer.

(2) A preliminary breath alcohol test instrument shall be verified for accuracy at least monthly, or more frequently as the department may require, by an appropriate class operator pursuant to R 325.2658(4). The test for accuracy shall be made in a prescribed manner using an alcohol standard that is approved by the department. For the instrument to meet the requirements for accuracy, a test result of .076 to .084 shall be obtained when using a controlled device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor. Controlled devices include both of the following:

(a) Wet bath device that delivers an alcohol vapor concentration of .080 grams of alcohol per 210 liters of vapor.

(b) Compressed alcohol gas device that delivers .080 grams of alcohol per 210 liters of vapor or a result that is within 5% of the compressed alcohol standard concentration after applying applicable altitude or topographic elevation correction factor supplied by the manufacturer. Such correction factor may be applied by the operator or by the instrument if so pre-programmed.

(3) Approved evidential breath alcohol test instruments shall be inspected, verified for accuracy, and certified as to their proper working order by either an appropriate class operator pursuant to R 325.2658(4) or the instrument manufacturer's authorized representatives approved by the department within 120 days of the previous inspection.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS; 2003 AACS; 2007 AACS; 2010 MR 8, Eff. Apr. 21, 2010.

R 325.2654 Equipment repair and service.

Rule 4. (1) The repair and service of equipment approved by the department for evidential and preliminary breath alcohol analysis shall be at the expense of the agency using the equipment. The department may make arrangements to have this service provided either by an appropriate class operator pursuant to R 325.2658(4) or provided by the instrument manufacturer's authorized representatives approved by the department.

(2) Subsequent to repair or service and before being placed in service, preliminary and evidential breath alcohol test instruments shall be verified for accuracy in accordance with the provisions of R 325.2653 and records of verification shall be kept as required by the department.

History: 1979 AC; 1984 AACS; 1992 AACS; 2007 AACS.

R 325.2655 Techniques and procedures.

Rule 5. (1) A procedure that is used in conjunction with evidential breath alcohol analysis shall be approved by the department and shall be in compliance with all of the following provisions:

(a) Evidential breath alcohol test instruments shall be operated only by appropriate class operators pursuant to R 325.2658(4).

(b) All analyses shall be conducted using the department-approved procedures and report forms as required.

(c) Prescribed records of operation, analyses, and results shall be maintained at the instrument location as prescribed by the department, and copies shall be forwarded to the department as required.

(d) The department shall test samples from each lot of alcohol standards used in the state in conjunction with evidential breath alcohol test instruments. The department shall certify for use those lots of alcohol standards that are found to be proper in chemical composition.

(e) A person may be administered a breath alcohol analysis on an evidential breath alcohol test instrument only after being observed for 15 minutes by 1 or more appropriate class operators pursuant to R 325.2658(4) before collection of the breath sample, during which period the person shall not have smoked, regurgitated, or placed anything in his or her mouth, except for the mouthpiece associated with the performance of the test. The observation may be conducted by more than 1 operator working in concert. The operator need not stare continuously at the subject, but must be close enough to be aware of the person's actions and conditions. The operator may complete paperwork, enter data into the breath test instrument, or conduct other reasonable tasks during the observation period provided the subject is within the operator's field of vision. Breaks in the observation lasting only a few seconds do not invalidate the observation if the operator can reasonably determine that the subject did not smoke, regurgitate, or place anything in his or her mouth during the break in the observation.

(f) A second breath alcohol analysis shall be requested from the person being tested and administered, unless the person refuses to give the second sample or a substance is found in the person's mouth subsequent to the first test that could interfere with the test result. Obtaining the first sample is sufficient to meet the requirements for evidentiary purposes prescribed in

1949 PA 300, MCL 257.625c. The purpose of obtaining a second sample result is to confirm the result of the first sample. A second sample result shall not vary from the first sample result by more than the following values:

Table 1

| Blood alcohol concentration | Allowable variation of second sample result range from the first |
|-----------------------------|------------------------------------------------------------------|
| 0.00 - 0.14 | +/- 0.01 |
| 0.15 - 0.24 | +/- 0.02 |
| 0.25 - 0.34 | +/- 0.03 |
| 0.35 - or more | +/- 0.04 |

If the variation is more than that allowed, a third breath sample shall be requested from the person being tested and a third result may be obtained. If the third result does not conform to the allowable variation of either of the first 2 tests, as established in table 1, the person shall be requested to submit a blood or urine sample for analysis in accordance with MCL

257.625a(6)(c) and the procedures established in R 325.2671 to R 325.2677.

(g) The results of a breath alcohol analysis of a person's breath shall be expressed in terms of grams of alcohol per 210 liters of breath, truncated to the second decimal place. For example, 0.237 found shall be reported as 0.23.

(2) A procedure that is used in conjunction with preliminary breath alcohol analysis shall be approved by the department and shall be in compliance with all of the following provisions:

(a) Preliminary breath alcohol test instruments shall be operated only by appropriate class operators pursuant to R 325.2658(4).

(b) A person may be administered a breath test on a preliminary breath alcohol test instrument only after it has been determined that the person has not smoked, regurgitated, or placed anything in his or her mouth for at least 15 minutes.

(c) Prescribed records shall be maintained at the instrument location as prescribed by the department and copies shall be forwarded to the department as required.

(3) A person's welfare shall be protected by requesting medical assistance if the person has a body alcohol concentration of 0.35 or more.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 MR AACS; 2003 AACS; 2007 AACS.

R 325.2656 Operator certification.

Rule 6. (1) Evidential breath alcohol test instrument operator certification training courses supervised by the department are offered only to authorized police agency personnel.

(2) Certification on evidential breath testing equipment requires an applicant to successfully complete a course of instruction that is approved by the department.

(3) The operation of a preliminary breath-testing instrument requires an applicant to successfully complete a course of instruction as approved by the department.

(4) Evidential breath alcohol test instrument operators shall successfully pass the examinations given by the department to obtain certification as an operator. Upon successful completion of the examinations, a person shall be issued a certification card, which shall remain the property of the department. In the case of failure to pass a prescribed examination, a second opportunity to take the examination shall be provided as the department may direct. Failure to successfully complete the examination a second time necessitates repeating the operator course of instruction to qualify for certification.

(5) An operator shall comply with all applicable department rules, policies, and procedures or his or her certification may be suspended and his or her certification card forfeited to the department. Requests for reinstatement of operator certification shall be made to the department in writing and, upon approval, may require attendance at, and the successful completion of, a certification school.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS.

R 325.2657 Rescinded.

History: 1979 AC; 1984 AACS; 1988 AACS; 1992 AACS; 1994 AACS.

R 325.2658 Operator training and certification.

Rule 8. (1) The department shall train and certify selected persons to perform various functions as described in subrule (4) of this rule, and shall designate such persons as class I, class II, class IIIA, class IIIB, class IVA, or class IVB operators according to training and function. An operator may hold multiple and concurrent classifications. Operator certification is non-expiring.

(2) The minimum training requirements and proficiency standards for operator candidates are as follows:

(a) A class I operator shall complete a 2-hour class I departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of a preliminary breath test instrument.

(b) A class II operator shall complete a 6-hour class II departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the operation of an evidentiary breath test instrument.

(c) A class IIIA operator shall be currently certified as both a class I and class II operator, complete a 3-hour class IIIA departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the verification and calibration of preliminary breath alcohol test instruments.

(d) A class IIIB operator shall be a currently certified class II operator, complete a 2-hour class IIIB departmentally approved training course, obtain a minimum score of 70% on a written examination, and demonstrate proficiency in the limited service of evidentiary breath test instruments.

(e) A class IVA operator shall be a currently certified class IIIA operator, complete an 8-hour class IVA departmentally approved instructor training course, and demonstrate proficiency instructing class II and class IIIA operator candidates.

(f) A class IVB operator shall be a currently certified class IVA operator that has been designated by the department to administer the breath-testing program for the state of Michigan. Before such designation, the class IVB operator shall receive additional training in the service of preliminary breath test instruments, the repair and service of evidentiary breath test instruments, and certification by the manufacturer(s) of such instruments.

(3) The department shall develop and distribute to each certified operator a training manual for each of the operator's classification(s). Manuals shall specify the functions performed by each classification pursuant to subrule (4) of this rule, as well as the knowledge and skills necessary to perform the appropriate functions.

(4) The primary functions of each classification of operator are described in Table 2. Additional functions not described in Table 2 may be designated by the department and described and explained in the appropriate training manual.

Table 2

| Function | Operator Class | | | | | |
|------------------------------------------------------------------------------------------------------------------------------------|----------------|----|------|------|-----|-----|
| | I | II | IIIA | IIIB | IVA | IVB |
| Train and Certify Class I Operators | | | X | | X | X |
| Train and Certify Class II Operators | | | | | X | X |
| Train and Certify Class IIIA Operators | | | | | X | X |
| Train and Certify Class IIIB Operators | | | | | | X |
| Train and Certify Class IVA Operators | | | | | | X |
| Administer preliminary breath alcohol analyses on preliminary breath alcohol test instruments specified by the department | X | | X | | X | X |
| Administer evidentiary breath alcohol analyses on evidentiary breath alcohol test instruments specified by the department | | X | X | X | X | X |
| Verify for accuracy and calibrate, as required, preliminary breath alcohol test instruments | | | X | | X | X |
| Verify for accuracy evidentiary breath alcohol test instruments specified by the department | | X | X | X | X | X |
| Calibrate, as required, evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Provide limited service on evidentiary breath alcohol test instruments specified by the department | | | | X | | X |
| Provide service on preliminary breath alcohol test instruments specified by the department | | | | | | X |
| Provide repair and service on evidentiary breath alcohol test instruments specified by the department | | | | | | X |
| Inspect and certify evidentiary breath alcohol test instruments for proper working order within 120 days pursuant to R 325.2653(3) | | | | | | X |
| Conduct inspections for compliance with applicable department rules, policies, and procedures | | | | | X | X |

History: 1979 AC; 1984 AACS; 1992 AACS; 1994 AACS; 2007 AACS.

R 325.2659 Rescinded.

History: 1979 AC; 2003 AACS; 2005 AACS.

Appendix B

Michigan Drunk Driving Laws

Appendix B - Michigan Drunk Driving Laws

MICHIGAN OUIL/OUID LAWS

257.625 Operating motor vehicle while intoxicated; operating motor vehicle when visibly impaired; penalties for causing death or serious impairment of a body function; operation of motor vehicle by person less than 21 years of age; requirements; controlled substances; costs; enhanced sentence; guilty plea or nolo contendere; establishment of prior conviction; special verdict; public record; burden of proving religious service or ceremony; ignition interlock device; "prior conviction" defined.

Sec. 625.

(1) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person is operating while intoxicated. As used in this section, "operating while intoxicated" means either of the following applies:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(2) The owner of a vehicle or a person in charge or in control of a vehicle shall not authorize or knowingly permit the vehicle to be operated upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of motor vehicles, within this state by a person if any of the following apply:

(a) The person is under the influence of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person has an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate the motor vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(3) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state when, due to the consumption of alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate the vehicle is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty under this subsection may be rendered.

(4) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes the death of another person is guilty of a crime as follows:

(a) Except as provided in subdivision (b), the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(b) If, at the time of the violation, the person is operating a motor vehicle in a manner proscribed under section 653a and causes the death of a police officer, firefighter, or other emergency response personnel, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both. This subdivision applies regardless of whether the person is charged with the violation of section 653a. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(5) A person, whether licensed or not, who operates a motor vehicle in violation of subsection (1), (3), or (8) and by the operation of that motor vehicle causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. The judgment of sentence may impose the sanction permitted under section 625n. If the vehicle is not ordered forfeited under section 625n, the court shall order vehicle immobilization under section 904d in the judgment of sentence.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, the person has an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person, whether licensed or not, is subject to the following requirements:

(a) He or she shall not operate a vehicle in violation of subsection (1), (3), (4), (5), or (8) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a crime punishable as follows:

(i) Except as provided in subparagraph (ii), a person who violates this subdivision is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(b) He or she shall not operate a vehicle in violation of subsection (6) while another person who is less than 16 years of age is occupying the vehicle. A person who violates this subdivision is guilty of a misdemeanor punishable as follows:

(i) Except as provided in subparagraph (ii), a person who violates this subdivision may be sentenced to 1 or more of the following:

(A) Community service for not more than 60 days.

(B) A fine of not more than \$500.00.

(C) Imprisonment for not more than 93 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(c) In the judgment of sentence under subdivision (a)(i) or (b)(i), the court may, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (a)(ii) or (b)(ii), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(d) This subsection does not prohibit a person from being charged with, convicted of, or punished for a violation of subsection (4) or (5) that is committed by the person while violating this subsection. However, points shall not be assessed under section 320a for both a violation of subsection (4) or (5) and a violation of this subsection for conduct arising out of the same transaction.

(8) A person, whether licensed or not, shall not operate a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state if the person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(9) If a person is convicted of violating subsection (1) or (8), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the sanction permitted under section 625n.

(10) A person who is convicted of violating subsection (2) is guilty of a crime as follows:

(a) Except as provided in subdivisions (b) and (c), a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than \$100.00 or more than \$500.00, or both.

(b) If the person operating the motor vehicle violated subsection (4), a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,500.00 or more than \$10,000.00, or both.

(c) If the person operating the motor vehicle violated subsection (5), a felony punishable by imprisonment for not more than 2 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both.

(11) If a person is convicted of violating subsection (3), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00, and 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(e) In the judgment of sentence under subdivision (a), the court may order vehicle immobilization as provided in section 904d. In the judgment of sentence under subdivision (b) or (c), the court shall, unless the vehicle is ordered forfeited under section 625n, order vehicle immobilization as provided in section 904d.

(f) In the judgment of sentence under subdivision (b) or (c), the court may impose the sanction permitted under section 625n.

(12) If a person is convicted of violating subsection (6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(i) Community service for not more than 360 hours.

(ii) A fine of not more than \$250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment for not more than 93 days.

(13) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(14) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(15) If the prosecuting attorney intends to seek an enhanced sentence under this section or a sanction under section 625n based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information, or an amended complaint and information, filed in district court, circuit court, municipal court, or family division of circuit court, a statement listing the defendant's prior convictions.

(16) If a person is charged with a violation of subsection (1), (3), (4), (5), (7), or (8) or section 625m, the court shall not permit the defendant to enter a plea of guilty or nolo contendere to a charge of violating subsection (6) in exchange for dismissal of the original charge. This subsection does not prohibit the court from dismissing the charge upon the prosecuting attorney's motion.

(17) A prior conviction shall be established at sentencing by 1 or more of the following:

(a) A copy of a judgment of conviction.

(b) An abstract of conviction.

(c) A transcript of a prior trial or a plea taking or sentencing proceeding.

(d) A copy of a court register of actions.

(e) A copy of the defendant's driving record.

(f) Information contained in a presentence report.

(g) An admission by the defendant.

(18) Except as otherwise provided in subsection (20), if a person is charged with operating a vehicle while under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance in violation of subsection (1) or a local ordinance substantially corresponding to subsection (1), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether the person was under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.

(19) Except as otherwise provided in subsection (20), if a person is charged with operating a vehicle while his or her ability to operate the vehicle was visibly impaired due to his or her consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance in violation of subsection (3) or a local ordinance substantially corresponding to subsection (3), the court shall require the jury to return a special verdict in the form of a written finding or, if the court convicts the person without a jury or accepts a plea of guilty or nolo contendere, the court shall make a finding as to whether, due to the consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance, the person's ability to operate a motor vehicle was visibly impaired at the time of the violation.

(20) A special verdict described in subsections (18) and (19) is not required if a jury is instructed to make a finding solely as to either of the following:

(a) Whether the defendant was under the influence of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.

(b) Whether the defendant was visibly impaired due to his or her consumption of a controlled substance or a combination of alcoholic liquor and a controlled substance at the time of the violation.

(21) If a jury or court finds under subsection (18), (19), or (20) that the defendant operated a motor vehicle under the influence of or while impaired due to the consumption of a controlled substance or a combination of a controlled substance and an alcoholic liquor, the court shall do both of the following:

(a) Report the finding to the secretary of state.

(b) On a form or forms prescribed by the state court administrator, forward to the department of state police a record that specifies the penalties imposed by the court, including any term of imprisonment, and any sanction imposed under section 625n or 904d.

(22) Except as otherwise provided by law, a record described in subsection (21)(b) is a public record and the department of state police shall retain the information contained on that record for not less than 7 years.

(23) In a prosecution for a violation of subsection (6), the defendant bears the burden of proving that the consumption of alcoholic liquor was a part of a generally recognized religious service or ceremony by a preponderance of the evidence.

(24) The court may order as a condition of probation that a person convicted of violating subsection (1) or (8), or a local ordinance substantially corresponding to subsection (1) or (8), shall not operate a motor vehicle unless that vehicle is equipped with an ignition interlock device approved, certified, and installed as required under sections 625k and 625l.

(25) Subject to subsection (27), as used in this section, "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Except as provided in subsection (26), a violation or attempted violation of any of the following:

(i) This section, except a violation of section 625(2), or a violation of any prior enactment of this section in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(ii) Section 625m.

(iii) Former section 625b.

(b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(26) Except for purposes of the enhancement described in subsection (12)(b), only 1 violation or attempted violation of subsection (6), a local ordinance substantially corresponding to subsection (6), or a law of another state substantially corresponding to subsection (6) may be used as a prior conviction.

(27) If 2 or more convictions described in subsection (25) are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction.

257.625a Arrest without warrant; circumstances; preliminary chemical breath analysis; operator ordered out-of-service; refusal of commercial motor vehicle operator to submit to breath analysis as misdemeanor; provisions applicable to chemical tests and analysis; evidence; availability of test results; admissibility of refusal to submit to chemical test.

Sec. 625a.

(1) A peace officer may arrest a person without a warrant under either of the following circumstances:

(a) The peace officer has reasonable cause to believe the person was, at the time of an accident in this state, the operator of a vehicle involved in the accident and was operating the vehicle in violation of section 625 or a local ordinance substantially corresponding to section 625.

(b) The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 625 or a local ordinance substantially corresponding to section 625.

(2) A peace officer who has reasonable cause to believe that a person was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state and that the person by the consumption of alcoholic liquor may have affected his or her ability to operate a vehicle, or reasonable cause to believe that a person was operating a commercial motor vehicle within the state while the person's blood, breath, or urine contained any measurable amount of alcohol or while the person had any detectable presence of alcoholic liquor, or reasonable cause to believe that a person who is less than 21 years of age was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state while the person had any bodily alcohol content as that term is defined in section 625(6), may require the person to submit to a preliminary chemical breath analysis. The following provisions apply with respect to a preliminary chemical breath analysis administered under this subsection:

(a) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(b) The results of a preliminary chemical breath analysis are admissible in a criminal prosecution for a crime enumerated in section 625c(1) or in an administrative hearing for 1 or more of the following purposes:

(i) To assist the court or hearing officer in determining a challenge to the validity of an arrest. This subparagraph does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(ii) As evidence of the defendant's breath alcohol content, if offered by the defendant to rebut testimony elicited on cross-examination of a defense witness that the defendant's breath alcohol content was higher at the time of the charged offense than when a chemical test was administered under subsection (6).

(iii) As evidence of the defendant's breath alcohol content, if offered by the prosecution to rebut testimony elicited on cross-examination of a prosecution witness that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was administered under subsection (6).

(c) A person who submits to a preliminary chemical breath analysis remains subject to the requirements of sections 625c, 625d, 625e, and 625f for purposes of chemical tests described in those sections.

(d) Except as provided in subsection (5), a person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction.

(3) A peace officer shall use the results of a preliminary chemical breath analysis conducted pursuant to this section to determine whether to order a person out-of-service under section 319d. A peace officer shall order out-of-service as required under section 319d a person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis as provided in this section. This section does not limit use of other competent evidence by the peace officer to determine whether to order a person out-of-service under section 319d.

(4) A person who was operating a commercial motor vehicle and who is requested to submit to a preliminary chemical breath analysis under this section shall be advised that refusing a peace officer's request to take a test described in this section is a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both, and will result in the issuance of a 24-hour out-of-service order.

(5) A person who was operating a commercial motor vehicle and who refuses to submit to a preliminary chemical breath analysis upon a peace officer's lawful request is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$100.00, or both.

(6) The following provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath, other than preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding and is presumed to be the same as at the time the person operated the vehicle.

(b) A person arrested for a crime described in section 625c(1) shall be advised of all of the following:

(i) If he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing administer 1 of the chemical tests.

(ii) The results of the test are admissible in a judicial proceeding as provided under this act and will be considered with other admissible evidence in determining the defendant's innocence or guilt.

(iii) He or she is responsible for obtaining a chemical analysis of a test sample obtained at his or her own request.

(iv) If he or she refuses the request of a peace officer to take a test described in subparagraph (i), a test shall not be given without a court order, but the peace officer may seek to obtain a court order.

(v) Refusing a peace officer's request to take a test described in subparagraph (i) will result in the suspension of his or her operator's or chauffeur's license and vehicle group designation or operating privilege and in the addition of 6 points to his or her driver record.

(c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368, MCL 333.16215, qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

(d) A chemical test described in this subsection shall be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in section 625c(1). A person who takes a chemical test administered at a peace officer's request as provided in this section shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this subsection within a reasonable time after his or her detention. The test results are admissible and shall be considered with other admissible evidence in determining the defendant's innocence or guilt. If the person charged is administered a chemical test by a person of his or her own choosing, the person charged is responsible for obtaining a chemical analysis of the test sample.

(e) If, after an accident, the driver of a vehicle involved in the accident is transported to a medical facility and a sample of the driver's blood is withdrawn at that time for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or

criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subdivision. A medical facility or person disclosing information in compliance with this subsection is not civilly or criminally liable for making the disclosure.

(f) If, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner to determine the amount of alcohol or the presence of a controlled substance, or both, in the decedent's blood. The medical examiner shall give the results of the chemical analysis of the sample to the law enforcement agency investigating the accident and that agency shall forward the results to the department of state police.

(g) The department of state police shall promulgate uniform rules in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, for the administration of chemical tests for the purposes of this section. An instrument used for a preliminary chemical breath analysis may be used for a chemical test described in this subsection if approved under rules promulgated by the department of state police.

(7) The provisions of subsection (6) relating to chemical testing do not limit the introduction of any other admissible evidence bearing upon any of the following questions:

(a) Whether the person was impaired by, or under the influence of, alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance.

(b) Whether the person had an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person had an alcohol content of 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) If the person is less than 21 years of age, whether the person had any bodily alcohol content within his or her body. As used in this subdivision, "any bodily alcohol content" means either of the following:

(i) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or, beginning October 1, 2013, the person had an alcohol content of 0.02 grams or more but less than 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than the consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(8) If a chemical test described in subsection (6) is administered, the test results shall be made available to the person charged or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the results at least 2 days before the day of the trial. The prosecution shall offer the test results as evidence in that trial. Failure to fully comply with the request bars the admission of the results into evidence by the prosecution.

(9) A person's refusal to submit to a chemical test as provided in subsection (6) is admissible in a criminal prosecution for a crime described in section 625c(1) only to show that a test was offered to the defendant, but not as evidence in determining the defendant's innocence or guilt. The jury shall be instructed accordingly.

257.625b Arraignment of person arrested for misdemeanor violation; pretrial conference; advising accused of maximum penalty before acceptance of plea; screening, assessment, and rehabilitative services; action by secretary of state pending appeal.

Sec. 625b.

(1) A person arrested for a misdemeanor violation of section 625(1), (3), (6), (7), or (8) or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8) or section 625m shall be arraigned on the citation, complaint, or warrant not more than 14 days after the arrest for the violation or, if an arrest warrant is issued or reissued, not more than 14 days after the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit. The time limit does not apply to a violation of section 625(1), (3), (7), or (8) or section 625m punishable as a felony or a violation of section 625(1), (3), (6), (7), or (8) or section 625m joined with a felony charge.

(2) The court shall schedule a pretrial conference between the prosecuting attorney, the defendant, and the defendant's attorney in each case in which the defendant is charged with a misdemeanor violation of section 625(1), (3), (6), (7), or (8) or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8) or section 625m. The pretrial conference shall be held not more than 35 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 35 days after the issued or reissued arrest warrant is served, whichever is later. If the court has only 1 judge who sits in more than 1 location in that district, the pretrial conference shall be held not more than 42 days after the person's arrest for the violation or, if an arrest warrant is issued or reissued, not more than 42 days after the date the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with the applicable time limit. The 35- and 42-day time limits do not apply to a violation of section 625(1), (3), (7), or (8) or section 625m punishable as a felony or a violation of section 625(1), (3), (6), (7), or (8) or section 625m joined with a felony charge. The court shall order the defendant to attend the pretrial conference and may accept a plea by the defendant at the conclusion of the pretrial conference. The court may adjourn the pretrial conference upon the motion of a

party for good cause shown. Not more than 1 adjournment shall be granted to a party, and the length of an adjournment shall not exceed 14 days.

(3) Except for delay attributable to the unavailability of the defendant, a witness, or material evidence or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, the court shall finally adjudicate, by a plea of guilty or nolo contendere, entry of a verdict, or other final disposition, a case in which the defendant is charged with a misdemeanor violation of section 625(1), (3), (6), (7), or (8) or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8) or section 625m, within 77 days after the person is arrested for the violation or, if an arrest warrant is issued or reissued, not more than 77 days after the date the issued or reissued arrest warrant is served, whichever is later. The court shall not dismiss a case or impose any other sanction for a failure to comply with this time limit. The 77-day time limit does not apply to a violation of section 625(1), (3), (7), or (8) or section 625m punishable as a felony or a violation of section 625(1), (3), (6), (7), or (8) or section 625m joined with a felony charge.

(4) Before accepting a plea of guilty or nolo contendere under section 625 or a local ordinance substantially corresponding to section 625(1), (2), (3), (6), or (8), the court shall advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed for the violation and shall advise the defendant that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the secretary of state under section 204a.

(5) Before imposing sentence for a violation of section 625(1), (3), (4), (5), (6), (7), or (8) or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. Except as otherwise provided in this subsection, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence. If the person has 1 or more prior convictions, the court shall order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs as part of the sentence. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(6) If the judgment and sentence are appealed to circuit court, the court may ex parte order the secretary of state to stay the suspension, revocation, or restricted license issued by the secretary of state pending the outcome of the appeal.

257.625c Consent to chemical tests; persons not considered to have given consent to withdrawal of blood; administration of tests.

Sec. 625c.

(1) A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of section 625.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood.

(3) The tests shall be administered as provided in section 625a(6).

257.625d Refusal to submit to chemical test; court order; report to secretary of state; form.

Sec. 625d.

(1) If a person refuses the request of a peace officer to submit to a chemical test offered pursuant to section 625a(6), a test shall not be given without a court order, but the officer may seek to obtain the court order.

(2) A written report shall immediately be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1), and that the person had refused to submit to the test upon the request of the peace officer and had been advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

257.625e Refusal to submit to chemical test pursuant to § 257.625d; request for hearing; notice.

Sec. 625e.

(1) If a person refuses to submit to a chemical test pursuant to section 625d, the peace officer shall immediately notify the person in writing that within 14 days of the date of

the notice the person may request a hearing as provided in section 625f. The form of the notice shall be prescribed and furnished by the secretary of state.

(2) The notice shall specifically state that failure to request a hearing within 14 days will result in the suspension of the person's license or permit to drive. The notice shall also state that there is not a requirement that the person retain counsel for the hearing, though counsel would be permitted to represent the person at the hearing.

257.625f Effect of failure to request hearing; hearing procedure; notice; authority of hearing officer; scope of hearing; finding; record; licensing sanctions; judicial review; notice to motor vehicle administrator of another state.

Sec. 625f.

(1) If a person who refuses to submit to a chemical test pursuant to section 625d does not request a hearing within 14 days after the date of notice pursuant to section 625e, the secretary of state shall impose the following license sanctions:

(a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny the person's operator's or chauffeur's license or permit to drive, or nonresident operating privilege, for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall not issue the person a license or permit for 1 year or, for a second or subsequent refusal within 7 years, for 2 years.

(b) If the person was operating a commercial motor vehicle, for the first refusal, suspend all vehicle group designations on the person's operator's or chauffeur's license or permit or nonresident privilege to operate a commercial motor vehicle or, if the person is a resident without a license or permit to operate a commercial motor vehicle in the state, not issue the person an operator's or chauffeur's license with vehicle group designations, for 1 year.

(c) If the person was operating a commercial motor vehicle, for a second or subsequent refusal that occurred in a separate incident from and within 10 years of a prior refusal, revoke all vehicle group designations on the person's operator's or chauffeur's license or permit or nonresident privilege to operate a commercial motor vehicle or, if the person is a resident without a license or permit to operate a commercial motor vehicle in the state, not issue the person an operator's or chauffeur's license with vehicle group designations, for not less than 10 years and until the person is approved for the issuance of a vehicle group designation.

(d) If the person was operating a commercial motor vehicle and was arrested for an offense enumerated in section 625c other than a violation of section 625a(5) or 625m,

impose the license sanction described in subdivision (a) and the license sanction described in subdivision (b) or (c), as applicable.

(2) If a hearing is requested, the secretary of state shall hold the hearing in the same manner and under the same conditions as provided in section 322. Not less than 5 days' notice of the hearing shall be mailed to the person requesting the hearing, to the peace officer who filed the report under section 625d, and if the prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths, issue subpoenas for the attendance of necessary witnesses, and grant a reasonable request for an adjournment. Not more than 1 adjournment shall be granted to a party and the length of an adjournment shall not exceed 14 days. A hearing under this subsection shall be scheduled to be held within 45 days after the date of arrest for the violation. The hearing officer shall not impose any sanction for a failure to comply with these time limits.

(3) Except for delay attributable to the unavailability of the defendant, a witness, or material evidence, or due to an interlocutory appeal or exceptional circumstances, but not a delay caused by docket congestion, a hearing shall be finally adjudicated within 77 days after the date of arrest. The hearing officer shall not impose any sanction for a failure to comply with this time limit.

(4) The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person had committed a crime described in section 625c(1).

(b) Whether the person was placed under arrest for a crime described in section 625c(1).

(c) If the person refused to submit to the test upon the request of the officer, whether the refusal was reasonable.

(d) Whether the person was advised of the rights under section 625a(6).

(5) A person shall not order a hearing officer to make a particular finding on any issue enumerated in subsection (4)(a) to (d).

(6) The hearing officer shall make a record of a hearing held pursuant to this section. The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. Upon notification of the filing of a petition for judicial review pursuant to section 323 and not less than 10 days before the matter is set for review, the hearing officer shall transmit to the court in which the petition was filed the original or a certified copy of the official record of the proceedings. Proceedings at which evidence was presented need not be transcribed and transmitted if the sole reason for review is to determine whether the court will order the issuance of a restricted license. The parties to the proceedings for judicial review may stipulate that the record be shortened. A party unreasonably refusing to stipulate to a

shortened record may be taxed by the court in which the petition is filed for the additional costs. The court may permit subsequent corrections to the record.

(7) If the person who requested a hearing does not prevail, the secretary of state shall impose the following license sanctions after the hearing:

(a) If the person was operating a vehicle other than a commercial motor vehicle, suspend or deny issuance of a license or driving permit or a nonresident operating privilege of the person for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. If the person is a resident without a license or permit to operate a vehicle in the state, the secretary of state shall not issue the person a license or permit for 1 year or, for a second or subsequent refusal within 7 years, for 2 years. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in section 323.

(b) If the person was operating a commercial motor vehicle, impose the sanction prescribed under subsection (1)(b) or (1)(c), as applicable. The person may file a petition in the circuit court of the county in which the arrest was made to review the suspension or denial as provided in section 323.

(c) If the person was operating a commercial motor vehicle and was arrested for an offense enumerated in section 625c other than a violation of section 625a(5) or 625m, impose the license sanctions described in subdivisions (a) and (b).

(8) If the person who requested the hearing prevails, the peace officer who filed the report under section 625d may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 323.

(9) When it has been finally determined that a nonresident's privilege to operate a vehicle in the state has been suspended or denied, the department shall give notice in writing of the action taken to the motor vehicle administrator of the state of the person's residence and of each state in which he or she has a license to operate a motor vehicle.

257.625g Duties of peace officer if person refuses chemical test or if test reveals unlawful alcohol content; test results; duration of temporary license or permit; “unlawful alcohol content” defined.

Sec. 625g.

(1) If a person refuses a chemical test offered pursuant to section 625a(6), or submits to the chemical test or a chemical test is performed pursuant to a court order and the test reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall do all of the following:

(a) On behalf of the secretary of state, immediately confiscate the person's license or permit to operate a motor vehicle and, if the person is otherwise eligible for a license or permit, issue a temporary license or permit to the person. The temporary license or permit shall be on a form provided by the secretary of state.

(b) Except as provided in subsection (2), immediately do all of the following:

(i) Forward a copy of the written report of the person's refusal to submit to a chemical test required under section 625d to the secretary of state.

(ii) Notify the secretary of state by means of the law enforcement information network that a temporary license or permit was issued to the person.

(iii) Destroy the person's driver's license or permit.

(2) If a person submits to a chemical test offered pursuant to section 625a(6) that requires an analysis of blood or urine and a report of the results of that chemical test is not immediately available, the peace officer who requested the person to submit to the test shall comply with subsection (1)(a) pending receipt of the test report. If the report reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately comply with subsection (1)(b). If the report does not reveal an unlawful alcohol content, the peace officer who requested the person to submit to the test shall immediately notify the person of the test results and immediately return the person's license or permit by first-class mail to the address given at the time of arrest.

(3) A temporary license or permit issued under this section is valid for 1 of the following time periods:

(a) If the case is not prosecuted, for 90 days after issuance or until the person's license or permit is suspended pursuant to section 625f, whichever occurs earlier. The prosecuting attorney shall notify the secretary of state if a case referred to the prosecuting attorney is not prosecuted. The arresting law enforcement agency shall notify the secretary of state if a case is not referred to the prosecuting attorney for prosecution.

(b) If the case is prosecuted, until the criminal charges against the person are dismissed, the person is acquitted of those charges, or the person's license or permit is suspended, restricted, or revoked.

(4) As used in this section, "unlawful alcohol content" means any of the following, as applicable:

(a) If the person tested is less than 21 years of age, 0.02 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) If the person tested was operating a commercial motor vehicle within this state, 0.04 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) If the person tested is not a person described in subdivision (a) or (b), 0.08 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, 0.10 grams or more of alcohol per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

257.625h Drunk driving prevention equipment and training fund; drunk driving caseflow assistance fund.

Sec. 625h.

(1) The drunk driving prevention equipment and training fund is created as a separate fund in the state treasury. Money in the fund shall be expended only as provided in subsection (2). The state treasurer shall credit to the fund all money received for that purpose under section 320e, and as otherwise provided by law. The state treasurer shall invest money in the fund in the same manner as surplus funds are invested under section 143 of 1855 PA 105, MCL 21.143. Earnings from the fund shall be credited to the fund. Money in the fund at the end of the fiscal year shall remain in the fund, and shall not revert to the general fund.

(2) The department of state police shall administer the fund. Money in the fund shall be used only to administer the fund, to purchase and maintain breath alcohol testing equipment, and to provide training to law enforcement personnel of this state in the use of that breath alcohol testing equipment.

(3) The department of treasury shall, before November 1 of each year, notify the department of state police of the balance in the fund at the close of the preceding fiscal year.

(4) The department of state police shall promulgate rules to implement subsection (2).

(5) The drunk driving caseflow assistance fund is created as a separate fund in the state treasury. The purpose of the fund is to promote the timely disposition of cases in which the defendant is charged with a violation of any of the following or a local ordinance substantially corresponding to any of the following:

(a) Section 625 or 625m.

(b) Section 80176, 81134, 81135, or 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176, 324.81134, 324.81135, and 324.82127.

(6) Money in the fund shall be expended only as provided in subsection (8).

(7) The state treasurer shall credit the drunk driving caseload assistance fund with deposits of proceeds from the collection of revenue from license reinstatement fees as provided for in section 320e, and all income from investment credited to the fund by the state treasurer. The state treasurer may invest money contained in the drunk driving caseload assistance fund in any manner authorized by law for the investment of state money. However, an investment shall not interfere with any apportionment, allocation, or payment of money as required by this section. The state treasurer shall credit to the fund all income earned as a result of an investment. Money in the fund at the end of the fiscal year shall remain in the fund and shall not revert to the general fund.

(8) The state court administrator, at the direction of the supreme court and upon confirmation of the amount by the state treasurer, shall distribute from the drunk driving caseload assistance fund the total amount available in a fiscal year to each district of the district court and each municipal court as provided in this section. The state court administrator, after reimbursement of costs as provided in this subsection, shall distribute the balance of the drunk driving caseload assistance fund annually to each district of the district court and each municipal court in an amount determined by multiplying the amount available for distribution by a fraction, the numerator of which is the number of cases in which the defendant was charged with a violation enumerated in subsection (5) in the prior calendar year in that district of the district court or that municipal court as certified by the state court administrator and the denominator of which is the total number of cases in all districts of the district court and all municipal courts in which the defendant was charged with a violation enumerated in subsection (5) in the calendar year. The state court administrative office shall be reimbursed annually from the drunk driving caseload assistance fund for all reasonable costs associated with the administration of this section, including judicial and staff training, on-site management assistance, and software development and conversion.

257.625i Michigan annual drunk driving audit; preparation; contents; report; evaluation of 1998 legislation.

Sec. 625i.

(1) The department of state police shall prepare an annual report that shall be designated the Michigan annual drunk driving audit. The secretary of state, circuit court, district court, family division of circuit court, municipal courts, and local units of government in this state shall cooperate with the department of state police to provide information necessary for the preparation of the report. A copy of the report prepared under this subsection shall be submitted to the governor, the secretary of the senate, the clerk of the house of representatives, and the secretary of state on July 1 of each year. The report shall contain for each county in the state all of the following information applicable to the immediately preceding calendar year:

(a) The number of alcohol related motor vehicle crashes resulting in bodily injury, including a breakdown of the number of those injuries occurring per capita of population and per road mile in the county.

(b) The number of alcohol related motor vehicle crashes resulting in death, including the breakdown described in subdivision (a).

(c) The number of alcohol related motor vehicle crashes, other than those enumerated in subdivisions (a) and (b), including the breakdown described in subdivision (a).

(d) The number of arrests made for violations of section 625(1) or local ordinances substantially corresponding to section 625(1).

(e) The number of arrests made for violations of section 625(3) or local ordinances substantially corresponding to section 625(3).

(f) The number of arrests made for violations of section 625(6) or local ordinances substantially corresponding to section 625(6).

(g) The number of arrests made for violations of section 625(4) or (5).

(h) The number of arrests made for violations of section 625(7).

(i) The number of arrests made for violations of section 625(8).

(j) The number of operator's or chauffeur's licenses suspended pursuant to section 625f.

(k) The number of arrests made for violations of section 625m or local ordinances substantially corresponding to section 625m.

(2) The secretary of state shall compile a report of dispositions of charges for violations of section 625(1), (3), (4), (5), (6), (7), or (8) or section 625m or section 33b(1) or (2) of former 1933 (Ex Sess) PA 8, section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, or local ordinances substantially corresponding to section 625(1), (3), (6), or (8) or section 625m or section 33b(1) or (2) of former 1933 (Ex Sess) PA 8, or section 703(1) or (2) of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1703, by each judge for inclusion in the annual report. The report compiled by the secretary of state shall include information regarding all of the following:

(a) The number of dismissals granted.

(b) The number of convictions entered.

(c) The number of acquittals entered.

(d) The average length of imprisonment imposed.

(e) The average length of community service imposed in lieu of imprisonment.

(f) The average fine imposed.

(g) The number of vehicles ordered immobilized under section 904d.

(h) The number of vehicles ordered forfeited under section 625n.

(3) The secretary of state shall include in the compilation under subsection (2) the number of licenses suspended, revoked, or restricted for those violations.

(4) The department of state police shall enter into a contract with the university of Michigan transportation research institute, under which the university of Michigan transportation research institute shall evaluate the effect and impact of the 1998 legislation addressing drunk and impaired driving in this state and report its findings to the governor and the legislature not later than October 1, 2002.

257.625j Repealed. 1991, Act 98, Eff. Jan. 1, 1992.

257.625k Ignition interlock device; approval; certification; list of manufacturers; rules; cost; notice to department by certifying laboratory; unlawful conduct; penalties.

Sec. 625k.

(1) The department shall approve an ignition interlock device certified by a department-approved laboratory as complying with the national highway traffic safety administration's model specifications for breath alcohol ignition interlock devices (BAIID), 57 F.R. p. 11772, April 7, 1992. Subject to subsection (5), the department shall publish a list of all manufacturers of approved certified devices.

(2) The secretary of state shall promulgate rules to implement this section in compliance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(3) The manufacturer of an ignition interlock device shall bear the cost of that device's certification.

(4) A laboratory that certifies an ignition interlock device as provided in this section shall immediately notify the department of that certification.

(5) The department shall not include the manufacturer of a certified ignition interlock device on the list of manufacturers published under subsection (1) unless the manufacturer complies with all of the following:

(a) The manufacturer has filed copies of all of the following with the department:

(i) A bond executed as provided in section 625o or a letter of credit.

(ii) Evidence of insurance as described in section 625l.

(iii) An affidavit that the ignition interlock device is all of the following:

(A) An alcohol concentration measuring device that prevents a motor vehicle from being started at any time without first determining through a deep lung sample the operator's breath alcohol level.

(B) Calibrated to render the motor vehicle incapable of being started if the device detects an alcohol content of 0.025 grams or more per 210 liters of breath of the person who offers a breath sample.

(C) Set to periodically take samples while the vehicle is in operation and to do 1 or both of the following:

(I) Emit a warning signal when the device detects an alcohol content of 0.025 grams or more per 210 liters of breath in the person who offers a breath sample.

(II) If it detects an alcohol content of 0.04 grams or more per 210 liters of breath of the person who offers the breath sample, render the vehicle inoperable as soon as the vehicle is no longer being operated.

(b) The manufacturer of ignition interlock devices provides a list of installers who are authorized to install and service its ignition interlock devices to the secretary of state.

(c) Agrees to have service locations within 50 miles of any location within this state.

(d) Agrees to provide an ignition interlock device without cost to a person whose gross income for the immediately preceding tax year based on his or her state income tax return was less than 150% of the official poverty line for that same tax year established in the poverty guidelines issued by the secretary of health and human services under authority of section 673(2) of the community services block grant act, subtitle B of title VI of the omnibus budget reconciliation act of 1981, Public Law 97-35, 42 U.S.C. 9902. A person in whose vehicle an ignition interlock device is installed without cost under this subdivision shall pay a maintenance fee to the installer of not more than \$1.00 per day.

(e) Agrees to periodically monitor installed ignition interlock devices and if monitoring indicates that the device has been circumvented, to communicate that fact to the secretary of state or to the court, as appropriate.

(6) A manufacturer that has made a filing under subsection (5) shall immediately notify the department if the device no longer meets the requirements of subsection (5).

(7) A person who knowingly provides false information to the department under subsection (4) or (5) is guilty of a felony punishable by imprisonment for not less than 5

years or more than 10 years or a fine of not less than \$5,000.00 or more than \$10,000.00, or both, together with costs of the prosecution.

(8) A person who negligently provides false information to the department under subsection (4) or (5) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, together with costs of the prosecution.

(9) A person who knowingly fails to comply with subsection (6) is guilty of a felony punishable by imprisonment for not less than 5 years or more than 10 years or a fine of not less than \$5,000.00 or more than \$10,000.00, or both, together with costs of the prosecution.

(10) A person who negligently fails to comply with subsection (6) is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both, together with costs of the prosecution.

257.6251 Ignition interlock device; warning label; prohibited conduct; violation as misdemeanor; penalty; definition; liability; insurance; servicing.

Sec. 6251.

(1) The manufacturer of an ignition interlock device shall design a warning label, and the person who has an ignition interlock device shall promptly affix that label to each ignition interlock device upon installation. The label shall contain a warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor punishable as provided by law.

(2) A person who has an ignition interlock device installed and whose driving privilege is restricted shall not request or solicit any other person to blow into an ignition interlock device or to start a vehicle equipped with the device for the purpose of providing the person whose driving privilege is restricted with an operable vehicle.

(3) A person shall not blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable vehicle to a person who has an interlock device installed and whose driving privilege is restricted.

(4) A person shall not tamper with or circumvent the operation of an ignition interlock device.

(5) A person who violates subsection (2), (3), or (4) is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$5,000.00, or both.

(6) As used in this act, "ignition interlock device" or "device" means an alcohol concentration measuring device that prevents a motor vehicle from being started at any

time without first determining through a deep lung sample the operator's breath alcohol level. The system shall be calibrated so that the motor vehicle may not be started if the breath alcohol level of the operator, as measured by the test, reaches a level of 0.025 grams per 210 liters of breath.

(7) The state, or the department, its officers, employees, or agents, or a court, its officers, employees, or agents are not liable in any claim or action that may arise, directly or indirectly, out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that results in damage to persons or property.

(8) A person shall not sell, lease, install, or monitor in a vehicle in this state an ignition interlock device unless the ignition interlock device manufacturer and provider carries liability insurance covering product liability, including, but not limited to, insurance to indemnify the department and any person injured as a result of a design defect or the calibration or removal of the ignition interlock device or a misrepresentation about the ignition interlock device. The insurance required by this subsection shall be in an amount of not less than \$1,000,000.00 per incident.

(9) The provider of insurance described in this section may cancel the insurance upon 30 days' written notice to the department and is not liable for a claim arising from an event that occurs after the effective date of a cancellation made in compliance with this section.

(10) An ignition interlock device shall be serviced according to manufacturer's standards. Service shall include, but not be limited to, physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within the device's memory. Only authorized employees of the manufacturer or the department, or other persons approved by the court, may observe the installation of a device. Reasonable security measures must be taken to prevent the customer from observing the installation of a device or obtaining access to installation materials.

257.625m Operation of commercial motor vehicle by person with certain alcohol content; arrest without warrant; violation as misdemeanor; sentence; "prior conviction" defined.

Sec. 625m.

(1) A person, whether licensed or not, who has an alcohol content of 0.04 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2013, an alcohol content of 0.04 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, shall not operate a commercial motor vehicle within this state.

(2) A peace officer may arrest a person without a warrant under either of the following circumstances:

(a) The peace officer has reasonable cause to believe that the person was, at the time of an accident, the driver of a commercial motor vehicle involved in the accident and was operating the vehicle in violation of this section or a local ordinance substantially corresponding to this section.

(b) The person is found in the driver's seat of a commercial motor vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of this section or a local ordinance substantially corresponding to this section.

(3) Except as otherwise provided in subsections (4) and (5), a person who is convicted of a violation of this section or a local ordinance substantially corresponding to this section is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$300.00, or both, together with costs of the prosecution.

(4) A person who violates this section or a local ordinance substantially corresponding to this section within 7 years of 1 prior conviction may be sentenced to imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(5) A person who violates this section or a local ordinance substantially corresponding to this section within 10 years of 2 or more prior convictions is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(a) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(b) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subdivision shall be served consecutively.

(6) A term of imprisonment imposed under subsection (4) or (5) shall not be suspended.

(7) Subject to subsection (9), as used in this section, "prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(a) Except as provided in subsection (8), a violation or attempted violation of any of the following:

(i) This section.

(ii) Section 625, except a violation of section 625(2), or a violation of any prior enactment of section 625 in which the defendant operated a vehicle while under the influence of intoxicating or alcoholic liquor or a controlled substance, or a combination of intoxicating or alcoholic liquor and a controlled substance, or while visibly impaired, or with an unlawful bodily alcohol content.

(iii) Former section 625b.

(b) Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit any of those crimes.

(8) Only 1 violation or attempted violation of section 625(6), a local ordinance substantially corresponding to section 625(6), or a law of another state substantially corresponding to section 625(6) may be used as a prior conviction.

(9) If 2 or more convictions described in subsection (7) are convictions for violations arising out of the same transaction, only 1 conviction shall be used to determine whether the person has a prior conviction.

257.625n Forfeiture of vehicle or return to lessor.

Sec. 625n.

(1) Except as otherwise provided in this section and in addition to any other penalty provided for in this act, the judgment of sentence for a conviction for a violation of section 625(1) described in section 625(8)(b) or (c), a violation of section 625(3) described in section 625(10)(b) or (c), a violation of section 625(4), (5), or (7), or a violation of section 904(4) or (5) may require 1 of the following with regard to the vehicle used in the offense if the defendant owns the vehicle in whole or in part or leases the vehicle:

(a) Forfeiture of the vehicle if the defendant owns the vehicle in whole or in part.

(b) Return of the vehicle to the lessor if the defendant leases the vehicle.

(2) The vehicle may be seized pursuant to an order of seizure issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return to the lessor.

(3) The forfeiture of a vehicle is subject to the interest of the holder of a security interest who did not have prior knowledge of or consent to the violation.

(4) Within 14 days after the defendant's conviction for a violation described in subsection (1), the prosecuting attorney may file a petition with the court for the forfeiture of the vehicle or to have the court order return of a leased vehicle to the lessor. The prosecuting attorney shall give notice by first-class mail or other process to the defendant and his or

her attorney, to all owners of the vehicle, and to any person holding a security interest in the vehicle that the court may require forfeiture or return of the vehicle.

(5) If a vehicle is seized before disposition of the criminal proceedings, a defendant who is an owner or lessee of the vehicle may move the court having jurisdiction over the proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner or lessee pending disposition of the criminal proceedings. The court shall hear the motion within 7 days after the motion is filed. If the defendant establishes at the hearing that he or she holds the legal title to the vehicle or that he or she has a leasehold interest and that it is necessary for him or her or a member of his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner or lessee. If the court orders the return of the vehicle to the owner or lessee, the court shall order the defendant to post a bond in an amount equal to the retail value of the vehicle, and shall also order the seizing agency to file a lien against the vehicle.

(6) Within 14 days after notice by the prosecuting attorney is given under subsection (4), the defendant, an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle with the court. Within 21 days after the expiration of the period for filing claims, but before or at sentencing, the court shall hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, the liability of the defendant to any co-lessee, and whether to order the vehicle forfeited or returned to the lessor. In considering whether to order forfeiture, the court shall review the defendant's driving record to determine whether the defendant has multiple convictions under section 625 or a local ordinance substantially corresponding to section 625, or multiple suspensions, restrictions, or denials under section 904, or both. If the defendant has multiple convictions under section 625 or multiple suspensions, restrictions, or denials under section 904, or both, that factor shall weigh heavily in favor of forfeiture.

(7) If a vehicle is forfeited under this section, the unit of government that seized the vehicle shall sell the vehicle and dispose of the proceeds in the following order of priority:

- (a) Pay any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation.
- (b) Pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.
- (c) Satisfy any order of restitution entered in the prosecution for the violation.
- (d) Pay the claim of each person who shows that he or she is a victim of the violation to the extent that the claim is not covered by an order of restitution.
- (e) Pay any outstanding lien against the property that has been imposed by a governmental unit.

(f) Pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.

(g) The balance remaining after the payment of items (a) through (f) shall be distributed by the court having jurisdiction over the forfeiture proceedings to the unit or units of government substantially involved in effecting the forfeiture. Seventy-five percent of the money received by a unit of government under this subdivision shall be used to enhance enforcement of the criminal laws and 25% of the money shall be used to implement the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834. A unit of government receiving money under this subdivision shall report annually to the department of management and budget the amount of money received under this subdivision that was used to enhance enforcement of the criminal laws and the amount that was used to implement the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834.

(8) The court may order the defendant to pay to a co-lessee any liability determined under subsection (6). The order may be enforced in the same manner as a civil judgment.

(9) The return of a vehicle to the lessor under this section does not affect or impair the lessor's rights or the defendant's obligations under the lease.

(10) A person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(11) The failure of the court or prosecutor to comply with any time limit specified in this section does not preclude the court from ordering forfeiture of a vehicle or its return to a lessor, unless the court finds that the owner or claimant suffered substantial prejudice as a result of that failure.

(12) The forfeiture provisions of this section do not preclude the prosecuting attorney from pursuing a forfeiture proceeding under any other law of this state or a local ordinance substantially corresponding to this section.

257.625o Ignition interlock device; sale, lease, or installation in vehicle; surety bond.

Sec. 625o.

(1) A person shall not sell, lease, or install in a vehicle in this state an ignition interlock device unless the manufacturer of the device has obtained an executed bond described in subsection (2) or a renewal certificate for that bond.

(2) The bond required under subsection (1) shall be in the amount of \$50,000.00 with a surety approved by the department and shall be conditioned to indemnify or reimburse a person who has an ignition interlock device installed on his or her vehicle for monetary

loss caused by the manufacturer's fraud, cheating, misrepresentation, or defaulting on a contractual obligation, whether the fraud, cheating, misrepresentation, or defaulting was done by the manufacturer or by an employee or agent of the manufacturer.

(3) The surety on the bond described in subsection (2) is required to make indemnification or reimbursement for a monetary loss only after final judgment has been entered in a court of record against the manufacturer or an employee or agent of the manufacturer. The surety on the bond may cancel the bond upon 30 days' written notice to the department and is not liable for a loss arising from an event that occurs after the effective date of the cancellation.

Appendix C

Court Testimony

Appendix C - Court Testimony

1. What is your name?
2. Where are you employed?
3. How long have you been an officer/deputy with _____?
4. What is your assignment/duty?
5. Was this your assignment/duty on _____?
6. How long have you been a DATAMASTER DMT operator?
 - What was your previous assignment?
 - How long?
7. Have you had any specialized training in administering tests on the DATAMASTER DMT?
8. When did you receive the training?
9. Where did you receive this training?
10. How long did you attend?
11. What did your training consist of?
 - Laboratory and classroom exercises.
12. Were you tested to determine your degree of proficiency in the operation of the DATAMASTER DMT instrument?
13. Did you pass the examination(s) given as part of the course?
14. Were you issued a certification card for passing this course?
15. Do you have that certification card with you?
16. Since the completion of the DATAMASTER DMT training course, how many occasions have you had to test people arrested for operating a motor vehicle under the influence of intoxicating liquor as part of your police duties?

17. Did all of these tests indicate that the persons tested were under the influence of intoxicating liquor?
18. Have you testified previously in court concerning your operation of the DATAMASTER DMT?
19. Approximately how many times have you testified concerning DATAMASTER DMT results?
20. As a certified DATAMASTER DMT operator, could you tell the jury what the DATAMASTER DMT instrument is?
 - Infrared evidential breath alcohol test instrument manufactured by National Patent Analytical Systems, Inc. of Mansfield, Ohio.
21. Are you trained as a doctor?
22. Are you trained as a chemist?
23. Do you claim any expertise today beyond expertise in operating the DATAMASTER DMT?
24. What safeguards are required to ensure the accuracy of a test?
 - Only certified operators may conduct tests on a subject.
 - The instrument is checked at least once a week with a test standard containing a known alcohol concentration.
 - A tested subject cannot have anything in his/her mouth for 15 minutes prior to the test.
 - Two breath specimens from each subject are analyzed in succession.
25. Are there any records/logs kept concerning the use of the DATAMASTER DMT instrument?
26. Where are those records/logs kept?
27. Do you have the records with you that were kept on the instrument that was used to test the defendant on trial today?

28. Do they reflect whether or not the DATAMASTER DMT instrument has been given its weekly accuracy checks?
29. Do the records reflect whether or not the instrument has been given its inspection every 120 days as required?
30. Is there a prescribed method followed in performing a DATAMASTER DMT test?
31. What is this method?
32. Do you know _____, the defendant in this case?
33. Do you see him/her in the courtroom?
34. Would you describe and point him/her out for the jury/court?
35. On _____, did you administer a breath test to the defendant on the DATAMASTER DMT instrument?
36. Prior to giving the test to the defendant, did you advise the defendant of anything?
37. What did you advise the defendant?
 - Chemical test rights.
 - The test will require two breath samples.
 - Place your mouth on the mouthpiece and blow long and steady into the tube until I tell you to stop.
38. When and where did you give the defendant this test?
39. How long was the defendant under your observation before you administered the test?
40. During that time, did the defendant have anything to eat, drink, or smoke?
41. Did you ask the defendant any questions?
42. How many tests did you give the defendant on the DATAMASTER DMT?
43. Did you follow the prescribed method in testing the defendant?
44. Let me show you a document that has been marked as People's Proposed Exhibit _____. Can you identify it for the jury/court?

- Evidence ticket.
45. Is this the document you kept regarding the test results of the defendant?
 46. What was the result of the first breath alcohol test that you conducted on this defendant?
 47. What was the result of the second breath alcohol test that you conducted on this defendant?
 - Move for admission of the document indicating the test results of the defendant.
 48. As a result of these tests, do you have an opinion as to the condition of the defendant at the time you administered them?
 49. Will you state this opinion to the jury/court?
 50. Based on your observation of the defendant's behavior prior to and during the time of the test, do you have an opinion as to the sobriety of the defendant?
 51. On what do you base that conclusion?

Appendix D

**State and Canadian
Abbreviations**

State/Territory:

| | |
|--------------------------------|----|
| Alabama | AL |
| Alaska | AK |
| Arizona..... | AZ |
| Arkansas..... | AR |
| California | CA |
| Colorado..... | CO |
| Connecticut | CT |
| Delaware | DE |
| District of Columbia | DC |
| Florida..... | FL |
| Georgia..... | GA |
| Hawaii and American Samoa..... | HI |
| Idaho | ID |
| Illinois | IL |
| Indiana..... | IN |
| Iowa..... | IA |
| Kansas | KS |
| Kentucky..... | KY |
| Louisiana..... | LA |
| Maine | ME |
| Maryland..... | MD |
| Massachusetts | MA |
| Michigan | MI |
| Minnesota..... | MN |
| Mississippi | MS |
| Missouri | MO |
| Montana | MT |
| Nebraska | NE |
| Nevada | NV |
| New Hampshire | NH |
| New Jersey..... | NJ |
| New Mexico..... | NM |
| New York..... | NY |
| North Carolina | NC |
| North Dakota..... | ND |

State/Territory:

| | |
|---------------------------------|----|
| Ohio..... | OH |
| Oklahoma..... | OK |
| Oregon..... | OR |
| Pennsylvania | PA |
| Puerto Rico..... | PR |
| Rhode Island | RI |
| South Carolina | SC |
| South Dakota..... | SD |
| Tennessee..... | TN |
| Trust Territories and Guam..... | TT |
| Texas..... | TX |
| Utah..... | UT |
| Vermont | VT |
| Virginia | VA |
| Virgin Islands..... | VI |
| Washington | WA |
| West Virginia..... | WV |
| Wisconsin..... | WI |
| Wyoming..... | WY |

Canadian Province:

| | |
|-----------------------------|----|
| Alberta..... | AB |
| British Columbia..... | BC |
| Labrador | LB |
| Manitoba | MB |
| New Brunswick..... | NB |
| Newfoundland..... | NF |
| Northwest Territories | NT |
| Nova Scotia..... | NS |
| Ontario | ON |
| Prince Edward Island | PE |
| Quebec | PQ |
| Saskatchewan..... | SK |
| Yukon Territory | YT |