

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)**

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

State Police

2. Bureau:

Forensic Science Division

3. Promulgation type:

Full Process

4. Title of proposed rule set:

Tests for Breath Alcohol

5. Rule numbers or rule set range of numbers:

R 325.2651 - R 325.2659

6. Estimated time frame:

6 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The existing rules have accompanied the current evidential breath alcohol test instruments since the purchase and adoption of those instruments into the program. The State of Michigan is purchasing new instruments with additional technological features and expanded capabilities and will need to change the existing rules to accommodate both the technological features and the new capabilities. The rules will also need to be updated to apply to the new instrument for training instrument users and technicians.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

The department has the authority and responsibility to promulgate rules for approving an instrument for chemical tests and the administration of chemical tests under MCL 257.625a(6)(g).

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 257.625a

MCL 257.625h

MCL 324.80181

MCL 324.82137

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

MCL 257.625a(6)(g) requires the department to promulgate these rules.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The rules do not conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Yes. The subject matter of these rules is currently in use in manuals and handbooks. With the revisions to these rules, any reference to the current rules will be updated. These rules will be incorporated as a guidance document for the Michigan State Police – Forensic Science Division’s new Evidential Breath Alcohol Calibration and Maintenance Program. This program will seek accreditation using ISO 17025 and forensic accreditation supplemental documents or their future equivalents and these updated Administrative Rules.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

Yes.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

Full Process

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

These rules do not exceed any regulations or compliance requirements. The rules adopt by reference federal specifications for evidential breath alcohol analysis.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Yes. In a 2021 meeting with stakeholders from the Criminal Defense Attorneys of Michigan (CDAM) and the Prosecuting Attorneys Association of Michigan (PAAM), the Michigan State Police Forensic Science Division was encouraged to improve the following:

Field a new evidential breath alcohol instrument that allows for measurement of uncertainty. This requires instrumentation that can reliably report to 0.000 grams alcohol/210 L breath.

Increase the information available within a standard breath test report by the instrument, including a breath flow profile and instrument uncertainty.

Allow for improved and/or streamlined instrument data access and discovery.

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

The rules were last evaluated in June 2021. Since then, the Michigan State Police has decided to replace the outdated fleet of Evidential Breath Alcohol instruments currently in use. The department has selected a replacement instrument profile/attributes and prepared a bid platform for a new purchase. The new instrument profile, along with public and department recommendations for the instrument’s performance, will require a change to the Administrative Rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

No.

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

No