

Administrative Procedures – Final Proposed Rule Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

RECEIVED
MAY 21 2018

BY:

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule Title: Rules Governing Ignition Interlock Program

Joe Flynn, on 05/10/2018.
(signature) (date)

Printed Name and Title: Joe Flynn, Secretary Transportation

RECEIVED BY: _____

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Rules Governing Ignition Interlock Program

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

18P-004

3. ADOPTING AGENCY:

Agency of Transportation ~ Department of Motor Vehicles

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Michael Smith, Director Of Operations

Agency: Agency of Transportation, Department of Motor Vehicles

Mailing Address: 120 State St., Montpelier, VT 05603-0001

Telephone: 802 828 - 2066 Fax: 802 828 - 2170

E-Mail: michael.smith@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://dmv.vermont.gov/policies-rules>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Michael Charter, DMV Project Coordinator

Agency: Agency of Transportation, Department of Motor Vehicles

Mailing Address: 120 State St., Montpelier, VT 05603-0001

Telephone: 802 828 - 0496 Fax: 802 828 - 2826

E-Mail: michael.charter@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

3 V.S.A. §801(b) (11) & 23 VSA §1213(1) (1)

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. **CONCISE SUMMARY (150 WORDS OR LESS):**

The proposed amendment modifies the process by which Ignition Interlock Device (IID) manufacturers make application to the Commissioner to conduct IID business.

The minimum amount of breath per blow regarding the medical reduction is adjusted to reflect the standards according to Association of Ignition Interlock Program Administrators (AIIPA) recommendations.

The proposed rule amends the period of time required between the "initial" breath test, the first "rolling retest" and the subsequent rolling retests.

The proposed rule amends the period of time between initial installation of the IID and subsequent calibration visits.

The proposed rule requires the written permission of the owner of the vehicle in which the IID is to be installed when that owner is not the applicant.

The proposed rule amends requirements of the manufacturers and standards as well as the "Standardized Best Practice Recommendations" set forth by AIIPA.

14. EXPLANATION OF WHY THE RULE IS NECESSARY:

The ignition interlock program affords persons an opportunity to operate legally so they may go to work and obtain other necessities of life. Further, the interlock device will reduce the operation of vehicles by persons under the influence of alcohol - a significant safety benefit.

15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Vermont drivers whose licenses are suspended as a result of driving under the influence of alcohol, Department of Motor Vehicles, Department of Corrections, Law Enforcement, Ignition Interlock Device Manufacturers and Installers.

16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):

A participant in the program will be required to bear the cost of the installation and the monthly service visits to the installer. There are between 700 - 1000 participants. The cost per participant is estimated to be in the range of \$100.00 - \$150.00 per month.

17. A HEARING WAS HELD.

18. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 4/11/2018

Time: 10:00 AM

Street Address: 120 State Street, 3rd floor conference room

Zip Code: 056034

Date:

Time: AM

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19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

4/18/2018

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Ignition Interlock Device
Restricted Driver's License

Driving Under the Influence

License Suspension

Breath Test

Vermont DMV

VT DMV

Vermont Department of Motor Vehicles

DEPARTMENT OF MOTOR VEHICLES
Agency of Transportation

120 State St
Montpelier, Vermont 05603-0001
(voice) 802.828.0496
(fax) 802.828.2826
dmv.vermont.gov

May 10, 2018

To: Secretary of State – State Archives & Records Administration
Legislative Committee on Administrative Rules

From: Michael Charter, DMV Project Coordinator

Subject: 18P-004 Ignition Interlock Rules Public Comment

The Department received public comment on the review of the Ignition Interlock Rule. Below are the explanations for the actions taken, or not taken, as a result of comments received.

Comment

(a) "Alcohol set point" means the minimum alcohol concentration at which an ignition interlock device is set to lock a motor vehicle's ignition. That level shall be 0.02 BAC.

Commented [DH1]: The word "set point" is not used in the standard language used in Vermont. The word "BAC" is the standard language used in Vermont. The word "set point" is not used in the standard language used in Vermont.

Formatted: Font color: Auto

Response

BAC is the standard language used in Vermont.

Comment

(c) "Calibration" means the process of testing and adjusting a device to ensure accuracy as set forth in the NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices (78 FR 26849).

Commented [DH2]: The definition of "calibration" is the process of testing and adjusting a device to ensure accuracy as set forth in the NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices (78 FR 26849).

Response

Rule clarified to indicate - NHTSA Model Specifications for Breath Alcohol Ignition Interlock Devices (78 FR 26849)

Comment

(e) "Ignition Interlock Device" or "IID" means a device capable of measuring a person's blood-breath alcohol concentration and ~~prevents~~ immobilizes a motor vehicle ~~from being started by a person~~ whose driver's blood alcohol concentration BrAC is 0.02 or greater. The device must be equipped with a camera capable of recording a digital image of the person using the device as well as the front compartment of the vehicle.

~~"Ignition interlock restricted driver's license" or "RDL" or "certificate" means an operator's driver's license that has been restricted to limit operation of motor vehicles by a person whose license or privilege to operate has been suspended or~~

Commented [JH3]:

Commented [JH4]: Intoxalock supports a camera requirement to make it easier to assess whether the offender caused the violation and reduces the time to resolve related issues for both the offender and the DMV.

Response

Vermont agrees.

Comment

vehicles installed with an approved ignition interlock device. ~~[A RDL may not be issued to a person under the age of 19 years].~~ A person with a RDL may not operate a commercial motor vehicle as defined in 23 VSA §4103.

(e) "Inclusion zone" means an area encompassing 25 miles from the Vermont border.

Commented [JH5]: Does Vermont have reciprocity agreements with MA, NH, and NY when an interlock participant is required to meet an ignition interlock requirement for more than one state simultaneously? If yes, how do those reciprocity agreements impact these rules?

Response

This is irrelevant to the rule.

Comment

(d) "Installer" means an individual, business or other entity identified by a manufacturer of an approved ignition interlock device as the manufacturer's official and exclusive representative in the state of Vermont for the installation, maintenance, monitoring and

Commented [JH6]: Intoxalock spends significant time and effort in training its installers and familiarizing installers with our device and protocols. Intoxalock does not want our time, effort, and best practices to be intertwined with other ME's training and protocols.

Response

Vermont does not agree this should be added to the rule. This is a business process and is best left to the discretion of individual manufacturers.

Comment

(2) An application for certification must include all of the following information:

- i. The name, address, telephone number and email address of the manufacturer of the device.
- ii. The name and model number of the device.

xi. The manufacturer shall agree to provide a performance bond for the benefit of the state of Vermont in the amount of \$200,000.00 issued by a surety company licensed to do business in the state of Vermont to ensure replacement of the manufacturer's ignition interlock devices pursuant to subsection (h) of section 23.

Commented [JH8]: The requirement to have a surety bond would cover the cost of removing all decertified devices and replace with certified devices whether the manufacturer's own or another certified manufacturer's device as set forth in Section 3(h) of these rules.

(4) The representations made by a manufacturer on the application for certification become conditions to the certification when the certification is approved by the Commissioner. The failure of a manufacturer to comply with these conditions may

Response

Vermont does not agree this should be added to the rule. This is a business process and is best left to the discretion of individual manufacturers.

Comment

(e) The Commissioner may deny, suspend or revoke certification of a manufacturer or device for any of the following:

(5) Violation by a manufacturer, vendor, installer, service provider or agent, employee or independent contractor of any provisions of this rule or conditions to the certification.

Commented [JH9]: "Vendor" and "service provider" are not defined terms in these rules. Section 2 of this Rule has to do with certification of the device and it seems punitive to tie the device certification to the actions of individuals who the MFR may have very little to no control over. Rather than revoke the MFR's device certification for the actions of others, it is recommended that the MFR be given notice of any installer, agent, employee, or independent contractor's wrongdoing and provided an opportunity to remedy the situation and provide the remedy to the DMV.

(6) Providing materially false or inaccurate information relating to a device's performance standards by the manufacturer or certifying laboratory.

(7) Modification or alteration of the components, design, or installation and operation instructions so that the requirements of the minimum federal standards are no longer satisfied, unless the modifications have already been certified.

Response

Vermont believes it is appropriate to hold MFR's responsible for their program.

Comment

Section 3. Standards and Specifications for Ignition Interlock Devices.

(a) Except as otherwise provided herein, all ignition interlock devices must meet or exceed the most recently published standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration [~~identified as~~ "Model Specifications for Breath Alcohol Ignition Interlock Devices" (Federal

(c) A device must be able to be adjusted to permit operation with as little as ~~1.0~~ 1.2 liters

6

~~of breath per blow if required to obtain a sufficient sample upon a medical recommendation obtained by the driver and approved by the commissioner.~~

Commented [JH10]: For clarity purposes, the responsibility for obtaining a medical recommendation is the drivers.

Response

Vermont does not agree this is necessary.

Comment

~~(e) Once there is a failed start attempt, require an increasing wait period for subsequent attempts to initially start the vehicle. After a first failed start attempt the wait period is 5 minutes, after a second failed start attempt the wait period is 10 minutes, and for all subsequent failed start attempts within a 2-hour period the wait period is 30 minutes. The device must be capable of notifying the driver of this time period. Acceptable forms of notification are an audible or visual warning.~~

Commented [JH12]: Wording added to provide definition to passing the initial breath test to start the vehicle.

~~(f) A random retest feature is required for all devices. The device must require the driver to submit to a [random] first rolling retest within a variable interval ranging from five to~~

Response

Vermont believes the existing approach is clear and adequate.

Comment

~~retest. An audible or visual warning must alert the driver of the retest and the driver will have ten minutes to take the first rolling [random] retest. If the driver fails to submit to the first rolling retest within ten minutes or the device detects a BAC-BrAC of 0.02 or greater, the horn will sound repeatedly and the headlights or an alternative light source shall flash until an acceptable breath sample has been submitted and the BAC-BrAC is less than 0.02 or the vehicle is turned off. Once the vehicle is turned off, the device must not allow the driver to restart the vehicle [within three minutes] without taking an initial~~

Commented [JH13]: ...
Commented [JH14]: To mitigate expensive damage to newer vehicles and exotic models of vehicles it is recommended that "headlights" be replaced with "alternative light source".

Response

Vermont believes allowing an alternative light source to be unacceptable.

Comment

have ten minutes to take the first rolling [random]-retest. If the driver fails to submit to the first rolling retest within ten minutes or the device detects a BAC-BrAC of 0.02 or greater, the horn will sound repeatedly and the headlights or an alternative light source shall flash until an acceptable breath sample has been submitted and the BAC-BrAC is less than 0.02 or the vehicle is turned off. Once the vehicle is turned off, the device must not allow the driver to restart the vehicle [within three minutes] without taking an initial breath test. If the vehicle is turned off [or accidentally stalls] after or during the warning of an impending rolling [random] retest, but before the driver takes the rolling [random] retest, the device must prevent the driver from starting the vehicle without taking an initial breath test. If the vehicle accidentally stalls the device must not prohibit the operator from starting the vehicle. If this accidental stall occurs during a retest, the retest should proceed from the point of the accidental stall.

Commented [JH13]: ...

Commented [JH14]: ...

Commented [JH15]: Recommend deleting because the sentence just prior to this one states the same thing.

Commented [JH16]: ...

Response

Vermont agrees this section needs clarification. We have removed part of the statement and removed the word "accidental".

Comment

breath test. If the vehicle is turned off [or accidentally stalls] after or during the warning of an impending rolling [random] retest, but before the driver takes the rolling [random] retest, the device must prevent the driver from starting the vehicle without taking an initial breath test. If the vehicle accidentally stalls the device must not prohibit the operator from starting the vehicle. If this accidental stall occurs during a retest, the retest should proceed from the point of the accidental stall.

Commented [JH15]: ...

Commented [JH16]: What is the definition of an "accidental stall"? It is recommended that once a vehicle's ignition is turned off, regardless of the reason, that the driver to restart the vehicle must always take an initial breath test.

~~... A driver must be programmed to allow [a maximum of three] attempted attempts to provide a breath sample on a [retest] retest within [a] [a] ten minute period. [The device~~

Response

We agree this section needs clarification. The word "accidental" has been removed.

Comment

Section 4. **Manufacturer Responsibilities.**

(a) A manufacturer must provide the following information to the Commissioner:

(1) A copy of the agreement between the manufacturer and installer.

(2) A copy of the standard agreement between the installer/manufacturer and the driver of the vehicle in which the device is installed.

(3) The 24-hour toll free emergency service [toll free] telephone number which the manufacturer provides the user driver [public] to contact authorized customer service representatives [installers].

Commented [JH17]: ...

Commented [JH18]: When must this information be provided to the Commissioner? It is recommended that a date be provided (e.g., annually by March 30).

Commented [JH19]: "User" is replaced by "driver" as "driver" is the term consistently used in these rules.

Response

- 18) Vermont has added the following “at initial certification and at each recertification”
- 19) Agree – all references to “user” have been updated to “driver”.

Comment

~~an installation facility. The device must be made functional within 48 hours of the call for maintenance being received or the device must be replaced.~~

iv. ~~Informing the restricted driver that he or she is accountable for all breath samples logged by the device.~~

~~(c) Maintain established business hours with an installer available during those hours.~~

Commented [JH20]: Question: Now that the device is required to include a camera, must the restricted driver only be responsible for his/her own breath samples?

Response

Cameras are not a new requirement. The Vermont rule has always required devices to include a camera.

Comment

(a) Installation:

(1) An installer must provide proof of installation, including the information required in Section 6(a) (2), to the Commissioner electronically within 24 hours or the next business day, ~~excluding state holidays~~ of the installation.

(2) Only installers, manufacturers and representatives of the Commissioner may observe

Commented [JH21]: This acknowledges that the next business day may be a state holiday.

Response

Vermont believes State Holidays are not business days and it is therefore unnecessary to include this language.

Comment

Section 6. Reports and Records.

(a) ~~Violations Reports:~~

(1) A manufacturer or installer must electronically notify the Commissioner ~~and Vermont Department of Corrections~~ within 24 hours or the next business day, ~~excluding state holidays~~ of discovering reliable information showing:

Commented [JH23]: All of the revisions in this Section of the rules is to correspond with Section 8(i) regarding lockouts and Section 8(k) regarding violations of a restricted driver's license.

Response

This section has been updated. Vermont agrees with all except for “Nonpayment of a restricted driver’s device account by 30 days or more”. Extending a suspension for non-payment to a device manufacturer is not supported by statute.

Comment

Section 8. Application for Ignition Interlock Restricted License/Certificate.

(a) A person eligible under 23 VSA §1205(a) (2), §1205(m), §1206(a), §1208 or §1216 may apply for an ignition interlock restricted driver's license/certificate. The application, on a form prescribed by the Commissioner, signed and sworn to by the applicant shall be accompanied by the person's unexpired Vermont operator's driver's license; satisfactory proof of installation of an approved ignition interlock device in ~~any~~ all motor vehicles to be operated by the applicant, ~~and if the applicant does not own the vehicle, written permission from the owner of the vehicle must be provided on the form prescribed by the Commissioner.~~ If the applicant is not the owner of the vehicle the applicant must be named on the installation notice as a driver of this vehicle; ~~and provide proof of financial responsibility [- and proof of enrollment in an alcohol and driving education program].~~ ~~Additionally, if the applicant is not the owner of the vehicle, written permission from the owner of the vehicle must be provided specifically granting the applicant permission to operate this vehicle with the IID.~~

Commented [JH26]: Replacing "any" with "all" ensures that the restricted driver only drives vehicles with an ignition interlock device installed.

Commented [JH27]: Removed the last sentence of subsection (a) to streamline the process by incorporating owner permission on the form prescribed by the Commissioner.

Commented [JH28]: Words added to make a complete sentence.

Response

- 26) Updated language to "any and all"
- 27) There is no form, this sentence is not removed from the rule
- 28) Vermont agrees, language has been corrected.

Comment

(i) A person may request that the ignition interlock device installed in his or her vehicle be adjusted to allow a minimum breath sample of 1. [0] 2 liters of breath volume per blow. The request shall be made on a form furnished by the Commissioner and be accompanied by a ~~certification from a licensed pulmonologist~~ medical recommendation stating that the person has a lung condition that renders him or her incapable of providing a 1.5 liter sample of alveolar air. In the event that the request is granted, the manufacturer will be notified that the device may be adjusted. The manufacturer will in turn notify its installer.

Commented [JH31]: This change corresponds with the rule in Section 3(c).

Response

Vermont agrees, rule has been updated for consistency.

Comment

this rule violates the terms and conditions of the restricted driver's license when the person:

- (1) Operates a motor vehicle without an ignition interlock device.
- (2) Requests or solicits another person to blow into or otherwise activate the device for the purpose of providing the restricted driver with an operable motor vehicle.
- (3) Removes, tampers with, disconnects or disables the device or circumvents the operation of the device.

Commented [JH32]: The rule in Section 6(a) needs to add these as reportable violations since they are violations that result in the immediate extension of the person's RDL requirements.

Response

Vermont agrees, rule has been updated for consistency.

Comment

<p>(5) Fails to submit to [a] three consecutive breath tests that results in a [permanent] lock out state [condition].</p>	<p>Commented [JH33]: The rule in Section 6(a) needs to be changed to align with this rule since these are violations that result in the immediate extension of the person's RDL requirements.</p>
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Response

Vermont agrees, rule has been updated for consistency.

Comment

<p>(6) Misses a service visit and the five day calendar grace period has expired.</p> <p>(7) Has the device removed from the vehicle by a manufacturer, installer or unauthorized person prior to DMV's release? [2].</p> <p>(7)(8) Nonpayment of a restricted driver's device account by 30 days or more.</p>	<p>Commented [JH34]: This change is made to align with the rule in Section 6(a). Missing a service visit would not be a reportable violation since the driver has a five day grace period to go to the service center once the service date is missed.</p>
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Response

Vermont agrees, rule has been updated for consistency.

Comment

<p>(7) Has the device removed from the vehicle by a manufacturer, installer or unauthorized person prior to DMV's release? [2].</p> <p>Nonpayment of a restricted driver's device account by 30 days or more.</p> <p>Violation of any of these conditions must result in the immediate [revoke] extension of the person's RDL requirements [license] for the time periods set out in 23 V.S.A. § 1293(a) and (i).</p> <p>Non-payment of any small period - a person whose RDL has been extended pursuant to this</p>	<p>Commented [JH35]: The rule in Section 6(a) needs to add this as a reportable violation since this is a violation that results in the immediate extension of the person's RDL requirements.</p>
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Response

Vermont agrees, rule has been updated for consistency.

Administrative Procedures – Adopting Page

Instructions:

This form must be completed for each filing made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

Rules Governing Ignition Interlock Program

2. ADOPTING AGENCY:

Agency of Transportation, Department of Motor Vehicles

3. AGENCY REFERENCE NUMBER, IF ANY:

Not Applicable

4. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE**

5. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND LAST DATE OF ADOPTION FOR THE EXISTING RULE*):

Adopted: 01/26/2012

Rule Number: 12002

Rule: Rules Governing Ignition Interlock Program



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: January 8, 2018, Pavilion Building, 5th floor conference room, 109 State Street, Montpelier, VT 05609

Members Present: Chair Brad Ferland, Dirk Anderson, Diane Bothfeld, Clare O'Shaughnessy, John Kessler, Steve Knudson, and Ashley Berliner (via phone)

Members Absent: Jen Duggan and Karen Songhurst

Minutes By: Melissa Mazza-Paquette

- 2:05 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the December 11, 2017 meeting.
 - Motion made to accept the minutes by Diane Bothfeld, seconded by John Kessler, and passed unanimously except for Clare O'Shaughnessy who abstained.
- No additions/deletions to agenda.
 - Motion made to accept agenda as is by John Kessler, seconded by Diane Bothfeld, and passed unanimously.
- No public comments made.
- Presentation of Proposed Rules on pages 2-4 to follow.
 1. Rules Governing Ignition Interlock Program, Agency of Transportation, Department of Motor Vehicles, page 2
 2. Reach First/Reach Up Rules, Agency of Human Services, Department of Children and Families, Economic Services Division, page 3
 3. Vermont Wetland Rules, Agency of Natural Resources, page 4
- Next scheduled meeting is February 12, 2018 at 2:00 p.m.
- Motion made to adjourn by Steve Knudson, seconded by Diane Bothfeld, and passed unanimously.
- 2:55 p.m. meeting adjourned.

Proposed Rule: Rules Governing Ignition Interlock Program, Agency of Transportation,
Department of Motor Vehicles

Presented by: Michael Smith, DMV Director

Also present: Michael Charter, David Evans, Nichole Fandino and Wendy Fleming

Motion made to accept the rule by Diane Bothfeld, seconded by John Kessler, and passed unanimously with the following recommendations:

1. Proposed Rule Coversheet, page 3, #7: In the first sentence add the word 'by' between 'process' and 'which'.
2. Proposed Rule Coversheet, page 3, #7: Second paragraph – define AIIPA and put acronym in parentheses.
3. Proposed Rule Coversheet, page 3, #8: Last sentence – replace the word 'obvious' with another word, such as 'significant', which lends to a more objective statement.
4. Proposed Rule Coversheet, page 4, #10: Include a projected range of participants.
5. Proposed Rule Coversheet, page 5, #14: Include 'Vermont DMV'.
6. Economic Impact Statement, page 2, #5: Clarify statement to include that this is an amendment to the rule adopted in 2012.
7. Public Input Statement, page 1, #4: Include input from the general inmate population.
8. Incorporation by Reference Statement, page 2, #4: Include instructions on where to obtain paper copies.
9. Incorporation by Reference Statement, page 2, #7: 2nd sentence – change 'has' to 'have'.
10. Annotated Text: Be consistent with: whether 'commissioner' is capitalized or not; either spell out 'blood alcohol content' or use 'BAC'; and with the measurement of BAC.

Administrative Procedures – Economic Impact Statement

Instructions:

In completing the economic impact statement, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

Rules affecting or regulating public education and public schools must include cost implications to local school districts and taxpayers in the impact statement (see 3 V.S.A. § 832b for details).

The economic impact statement also contains a section relating to the impact of the rule on greenhouse gases. Agencies are required to explain how the rule has been crafted to reduce the extent to which greenhouse gases are emitted (see 3 V.S.A. § 838(c)(4) for details).

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I conclude that this rule is the most appropriate method of achieving the regulatory purpose. In support of this conclusion I have attached all findings required by 3 V.S.A. §§ 832a, 832b, and 838(c) for the filing of the rule entitled:

Rule Title: Rules Governing Ignition Interlock Program

 _____, on 05/10/2018.
(signature) (date)

Printed Name and Title:

Joe Flynn, Agency of Transportation Secretary

BE AS SPECIFIC AS POSSIBLE IN THE COMPLETION OF THIS FORM, GIVING FULL INFORMATION ON YOUR ASSUMPTIONS, DATABASES, AND ATTEMPTS TO GATHER OTHER INFORMATION ON THE NATURE OF THE COSTS AND BENEFITS INVOLVED. COSTS AND BENEFITS CAN INCLUDE ANY TANGIBLE OR INTANGIBLE ENTITIES OR FORCES WHICH WILL MAKE AN IMPACT ON LIFE WITHOUT THIS RULE.

1. TITLE OF RULE FILING:

Rules Governing Ignition Interlock Program

2. ADOPTING AGENCY:

Agency of Transportation, Department of Motor Vehicles

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

Vermont drivers whose licenses are suspended as a result of driving under the influence of alcohol, Department of Motor Vehicles, Department of Corrections, Law Enforcement, Ignition Interlock Device Manufacturers and Installers.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS:

None

5. COMPARISON:

COMPARE THE ECONOMIC IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

This is an ameendmnet to the original rule approved in 2012.

6. FLEXIBILITY STATEMENT:

COMPARE THE BURDEN IMPOSED ON SMALL BUSINESS BY COMPLIANCE WITH THE RULE TO THE BURDEN WHICH WOULD BE IMPOSED BY ALTERNATIVES CONSIDERED IN 3 V.S.A. § 832a:

There is no burden imposed on small businesses, however, it does bring in business for those

businesses chosen by the ignition interlock device manufacturers as their device installers.

7. GREENHOUSE GAS IMPACT: EXPLAIN HOW THE RULE WAS CRAFTED TO REDUCE THE EXTENT TO WHICH GREENHOUSE GASES ARE EMITTED, EITHER DIRECTLY OR INDIRECTLY, FROM THE FOLLOWING SECTORS OF ACTIVITIES:

A. TRANSPORTATION —

IMPACTS BASED ON THE TRANSPORTATION OF PEOPLE OR PRODUCTS (e.g., “THE RULE HAS PROVISIONS FOR CONFERENCE CALLS INSTEAD OF TRAVEL TO MEETINGS” OR “LOCAL PRODUCTS ARE PREFERENTIALLY PURCHASED TO REDUCE SHIPPING DISTANCE.”):

None

B. LAND USE AND DEVELOPMENT —

IMPACTS BASED ON LAND USE AND DEVELOPMENT, FORESTRY, AGRICULTURE ETC. (e.g., “THE RULE WILL RESULT IN ENHANCED, HIGHER DENSITY DOWNTOWN DEVELOPMENT.” OR “THE RULE MAINTAINS OPEN SPACE, FORESTED LAND AND/OR AGRICULTURAL LAND.”):

None

C. BUILDING INFRASTRUCTURE —

IMPACTS BASED ON THE HEATING, COOLING AND ELECTRICITY CONSUMPTION NEEDS (e.g., “THE RULE PROMOTES WEATHERIZATION TO REDUCE BUILDING HEATING AND COOLING DEMANDS.” OR “THE PURCHASE AND USE OF EFFICIENT ENERGY STAR APPLIANCES IS REQUIRED TO REDUCE ELECTRICITY CONSUMPTION.”):

None

D. WASTE GENERATION / REDUCTION —

IMPACTS BASED ON THE GENERATION OF WASTE OR THE REDUCTION, REUSE, AND RECYCLING OPPORTUNITIES AVAILABLE (e.g., “THE RULE WILL RESULT IN REUSE OF PACKING MATERIALS.” OR “AS A RESULT OF THE RULE, FOOD AND OTHER ORGANIC WASTE WILL BE COMPOSTED OR DIVERTED TO A ‘METHANE TO ENERGY PROJECT’.”):

None

E. OTHER —

IMPACTS BASED ON OTHER CRITERIA NOT PREVIOUSLY LISTED:

None

Run Spell Check

Administrative Procedures – Incorporation by Reference Statement

Instructions:

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and why the full text was not reproduced within the rule.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g. federal or national standards, or regulations).

Copies of incorporated materials will be held by the Office of the Secretary of State until adoption or formal withdrawal of the rule is complete. Materials will be returned to the agency upon completion of the rule.

All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person.

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I certify that the text of the matter incorporated has been reviewed by an official of the agency. I further certify that the agency has the capacity and intent to enforce the rule entitled:

Rule Title: Rules Governing Ignition Interlock Program

 _____, on 05/10/2018.
(signature) (date)

Printed Name and Title:

Joe Flynn, Agency of Transportaion Secretary

1. TITLE OF RULE FILING:

Rules Governing Ignition Interlock Program

2. ADOPTING AGENCY:

Agency of Transportation, Department of Motor Vehicles

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

National Highway Traffic Safety Administration (NHTSA) Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS)

4. OBTAINING COPIES: (*EXPLAIN HOW THE MATERIAL(S) CAN BE OBTAINED BY THE PUBLIC, AND AT WHAT COST*):

This document will be posted on our website with the Proposed Rule and can be downloaded free of charge.

Hard copies are available at no cost in any DMV office.

5. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

No modifications have been made.

6. REASONS FOR INCORPORATION BY REFERENCE (*EXPLAIN WHY THE AGENCY DECIDED TO INCORPORATE THE MATERIALS RATHER THAN REPRODUCE THE MATERIAL IN FULL WITHIN THE TEXT OF THE RULE*):

It is highly recommended that all BAIIDS meet certain standards; those set by the NHTSA. These standards are used by all North American jurisdictions who have ignition interlock legislation/rules. All BAIDDS manufactured for use in North America are produced to meet those standards.

7. THE INCORPORATED MATERIALS HAVE BEEN REVIEWED BY THE FOLLOWING OFFICIAL OF THE AGENCY:

Several individuals within the Department of Motor Vehicles have reviewed the incorporated material which include; Robert Ide, Commissioner; Michael Smith, Director of Operations and our legal counsel; Thomas McCormick, Assistant Attorney General.

8. THE ADOPTING AGENCY REQUESTS THAT ALL COPIES OF
INCORPORATED MATERIALS
BE KEPT WITH THE RULE FILING .

Run Spell Check

Administrative Procedures – Public Input Statement

Instructions:

In completing the public input statement, an agency describes what it did do, or will do to maximize the involvement of the public in the development of the rule. This form must be completed for the following filings made during the rulemaking process:

- Proposed Rule Filing
- Final Proposed Filing
- Adopted Rule Filing
- Emergency Rule Filing

1. TITLE OF RULE FILING:

Rules Governing Ignition Interlock Program

2. ADOPTING AGENCY:

Agency of Transportation, Department of Motor Vehicles

3. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

The proposed Rule will be posted to the DMV website, Facebook page and Twitter feed.

In addition, there will be a public hearing, the details of which are stated on the Proposed Coversheet.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

Department of Corrections, Department of Health, Law Enforcement community, the Traffic Injury Research Foundation and the National Highway Traffic Safety Administration.

Run Spell Check

Ignition Interlock Program Rules

Section 1. Definitions.

For the purposes of these rules, the following definitions apply:

- (a) “Alcohol set point” means the minimum alcohol concentration at which an ignition interlock device is set to lock a motor vehicle’s ignition. That level shall be 0.02 Blood Alcohol Content (BAC) ~~BAC~~.
- (b) “Calibration” means the process of testing and adjusting a device to ensure accuracy set forth in the current National Highway Traffic Safety Administration (NHTSA) Model Specifications for Calibration Units.
- (c) “Certified laboratory” means a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute.
- (d) “Commissioner” means the Commissioner of Motor Vehicles.
- (e) “Ignition Interlock Device” or “IID” means a device capable of measuring a person’s blood alcohol concentration and ~~prevents~~ immobilizes a motor vehicle ~~from being started by a person~~ whose driver’s blood alcohol concentration is 0.02 or greater. The device must be equipped with a camera capable of recording a digital image of the person using the device as well as the front compartment of the vehicle.
- (f) “Ignition interlock restricted driver’s license” or “RDL” or “certificate” means ~~an operator’s~~ driver’s license that has been restricted to limit operation of motor vehicles by a person whose license or privilege to operate has been suspended or revoked pursuant to 23 VSA §1205(a) (2), §1205(m), §1206(a), §1208 or §1216 to motor vehicles installed with an approved ignition interlock device. ~~[A RDL may not be issued to a person under the age of 18 years].~~ A person with a RDL may not operate a commercial motor vehicle as defined in 23 VSA §4103.
- (g) “Inclusion zone” means an area encompassing 25 miles from the Vermont border.
- (h) “Installer” means an individual, business or other entity identified by a manufacturer of an approved ignition interlock device as the manufacturer's official representative in the state of Vermont for the installation, maintenance, monitoring and repair of the devices, and includes agents and employees of the manufacturer.

- (i) “Lockout State” means a condition where the ignition interlock device will not accept a breath test.
- (j) “Motor vehicle” means only pleasure cars and trucks the operation of which do not require a commercial driver license. The term shall not include school buses.
- (k) “State coordinator” means the individual designated by the manufacturer to act on behalf of or represent it in all matters regarding IID’s in Vermont.
- (l) “Ignition Interlock Certificate” means a restricted privilege to operate a motor vehicle issued by the Commissioner allowing a nonresident whose privilege to operate a motor vehicle in Vermont has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration, or for refusing an enforcement officer’s reasonable request for an evidentiary test, to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

Section 2. Certification of manufacturers of ignition interlock devices.

- (a) No ignition interlock device may be leased, sold, installed or used as part of the program outlined in 23 VSA §1213 unless the model or type of device has been approved by the Commissioner in accordance with the provisions of this rule.
- (b) Application for Certification:
 - (1) A manufacturer may apply for certification of a device by submitting an application to the Commissioner every two years. The application shall be prescribed by the Commissioner. A separate application is required for each model or type of device for which approval is sought. A manufacturer must certify the device:
 - i. Does not impede the safe operation of a vehicle.
 - ii. Minimizes opportunities to bypass.
 - iii. Performs accurately and reliably under all normally anticipated circumstances.
 - iv. Satisfies the requirements for certification set forth in this rule.
 - v. Prevents a person from starting a vehicle when the person has a prohibited blood alcohol concentration.

- (2) An application for certification must include all of the following information:
- i. The name, address, telephone number and email address of the manufacturer of the device.
 - ii. The name and model number of the device.
 - iii. A ~~[statement]~~ certification from a Certified Laboratory who tested the device stating the device model meets or exceeds the minimum federal standards contained in the most recently published Model Specifications for Breath Alcohol Ignition Interlock Devices adopted by the National Highway Traffic Safety Administration by a Notice in the Federal Register.
 - iv. ~~A certification from an officer of a laboratory or a certified laboratory technician who tested the device stating the device was tested in accordance with the federal standards and the device was found to satisfy the requirements of the Model Specifications.]~~
 - v. A certification the device is made by a manufacturer who is covered by product liability insurance.
 - vi. A signed statement the manufacturer agrees to indemnify and hold harmless the state of Vermont and the Commissioner and his or her officers, employees and agents from all claims, demands and actions as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use and removal of a device.
 - vii. The manufacturer may submit for consideration evidence of certification obtained in any other jurisdiction.
 - viii. The manufacturer shall agree that any installation or service of an IID performed within the state of Vermont or the inclusion zone shall be in compliance with all requirements of this rule.
 - ix. The manufacturer must agree to provide an expert witness if the performance of the device is an issue in any judicial or administrative proceeding.
 - x. The manufacturer shall agree to provide statewide coverage for installation and service of ignition interlock devices. The use of mobile installations is

permitted provided the requirements set forth in section 5 of this rule are adhered to.

- (c) The representations made by a manufacturer on the application for certification become conditions to the certification when the certification is approved by the Commissioner. The failure of a manufacturer to comply with those conditions may result in the suspension or revocation of the certification as provided by subsection (e) of this section.
- (d) The Commissioner shall certify, or refuse to certify, a device after receipt of a complete application. The manufacturer will be notified within 15 days of receipt of the application if the application is incomplete. The manufacturer will be told what information or documents are needed to complete the application.
- (e) The Commissioner may deny, suspend or revoke certification of a manufacturer or device for any of the following:
 - (1) Defects in design, materials, or workmanship causing repeated failures of a device to function as intended.
 - (2) Termination or cancellation of a manufacturer's liability insurance.
 - (3) The manufacturer ceases to manufacture ignition interlock devices.
 - (4) Voluntary request by a manufacturer to cancel approval of a device.
 - (5) Violation by a manufacturer, vendor, installer, service provider or agent, employee or independent contractor of any provisions of this rule or conditions to the certification.
 - (6) Providing materially false or inaccurate information relating to a device's performance standards by the manufacturer or certifying laboratory.
 - (7) Modification or alteration of the components, design, or installation and operation instructions so that the requirements of the minimum federal standards are no longer satisfied, unless the modifications have already been certified.
- (f) A suspension or revocation is effective 15 days after notification is sent to the manufacturer by ~~regular~~ first class mail or such later date as may be specified in the notice. The notice must specify the basis for the action.
- (g) A manufacturer whose application for certification is denied or whose certification is suspended or revoked may request an administrative hearing. The hearing will be

held pursuant to 23 VSA §§105 – 106. The issue at the hearing is whether, by a preponderance of the evidence, the manufacturer can show cause why the decision of the Commissioner should not be upheld.

- (h) Within 90 days of the event of suspension or revocation of certification, the manufacturer is responsible for and must bear the cost for the removal of any and all decertified devices and the replacement with a certified device whether their own or another certified manufacturer's device.
- (i) A manufacturer must notify the Commissioner immediately, in writing, of any material modification or alteration in the components, design or installation and operating instructions of any device approved for use in this state, and must provide the Commissioner satisfactory proof (to include retesting by an independent laboratory, if required) prior to sale or distribution of the altered or modified device that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of the minimum federal standards contained in the most recently published Model Specifications for Breath Alcohol Ignition Interlock Devices adopted by the National Highway Traffic Safety Administration. Any device with a material modification or alteration must be re-approved by the Commissioner.

Section 3. Standards and Specifications for Ignition Interlock Devices.

- (a) Except as otherwise provided herein, all ignition interlock devices must meet or exceed the most recently published standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration [~~identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" (Federal Register / Vol. 57, No 67 / Tuesday, April 7, 1992 / Notices / NHTSA Docket No. 91-07, Notice 2 pp. 11772-11786)~~]. The device must employ an electrochemical (fuel cell) sensing method of detecting the presence of alcohol.
- (b) A device must indicate by audible or visual means when a sufficient breath sample has been collected and indicate the result by a pass/fail signal.
- (c) A device must be able to be adjusted to permit operation with as little as ~~1.0~~ 1.2 liters of breath per blow ~~if required to obtain a sufficient sample~~ upon a medical recommendation approved by the Commissioner.

- (d) A device must prevent a driver from starting the vehicle when a breath test detects a BAC of 0.02 or greater and when a driver fails to appear for service within the five calendar day warning period.
- (e) A random retest feature is required for all devices. The device must require the driver to submit to a ~~[random]~~ first rolling retest within a variable interval ranging from five to fifteen minutes after a driver has passed an initial breath test and started the vehicle. Subsequent to the first rolling retest, the random rolling retest shall be required within a variable interval ranging from thirty to forty-five minutes after the most recent rolling retest. An audible or visual warning must alert the driver of the retest and the driver will have ten minutes to take the first rolling ~~[random]~~ retest. If the driver fails to submit to the first rolling retest within ten minutes or the device detects a BAC of 0.02 or greater, the horn will sound repeatedly and the headlights shall flash until an acceptable breath sample has been submitted and the BAC is less than 0.02 or the vehicle is turned off. Once the vehicle is turned off, the device must not allow the driver to restart the vehicle ~~[within three minutes]~~ without taking an initial breath test. If the vehicle is turned off ~~[or accidentally stalls]~~ after or during the warning of an impending rolling ~~[random]~~ retest, but before the driver takes the rolling ~~[random]~~ retest, the device must prevent the driver from starting the vehicle without taking an initial breath test. If the vehicle accidentally stalls the device must not prohibit the operator from starting the vehicle. If this accidental stall occurs during a retest, the retest should proceed from the point of the accidental stall.
- (f) A device must be programmed to allow ~~[a maximum of three]~~ unlimited attempts to provide a breath sample on a rolling retest within ~~[a]~~ the ten minute period. ~~[The device shall enter a temporary lockout for a period of 30 minutes if the user fails to provide a sample within the 10 minute period or fails a retest.]~~
- (g) A device must record data in its memory in such a manner that data cannot be erased and a hard copy can be printed. The data recorder must have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected. The ability to transfer the unaltered data electronically must be included. The following information must be stored in the data recorder:

- (1) The date and time of any use or attempted use of a vehicle.
 - (2) The date and time of any attempt to tamper, circumvent or bypass the device.
 - (3) The date, time and alcohol concentration, in grams per 210 liters, of each breath sample provided to the device.
 - (4) The date and time of any malfunctions of the device.
 - (5) The date and time of any failures to provide retest samples.
 - (6) The date and time a “service required” message is issued to the customer by the device.
- (h) A device must provide all of the following information to a driver.
- (1) The device’s readiness for acceptance of a breath sample.
 - (2) A reminder seven days prior to a scheduled service date followed by a warning to obtain service within five days after the scheduled service date.
 - (3) An indication when the device has entered a lockout state.
- (i) A device must place the vehicle in a permanent lockout state, if any of the following conditions occur:
- (1) The device detects tampering, circumvention or bypass attempts.
 - (2) The user fails to provide a breath sample during three consecutive retest periods.
 - (3) A scheduled service date is missed and the five calendar day grace period has expired.
 - (4) [~~Service is not obtained within five days of the service warning.~~]
- (j) A manufacturer shall ensure that a device has adequate electronic anti-tampering features which include the following:
- (1) A device must retain its tamper detection capabilities when disconnected from the vehicle’s power supply, or record that it was disconnected.
 - (2) A device must retain its data memory when disconnected from the vehicle’s power supply.
 - (3) [~~When a device detects a condition that would be considered tampering, the device must activate a visual and audible indicator.~~]
 - (4) A device must include a camera with the capability of capturing and retaining an image of the person providing the breath sample at each vehicle start when taking an

initial breath test, the first rolling retest and all random retests as well as circumvention attempts. Such images shall be included in the reports required in [~~Section 6 of~~] these rules. [~~A person may not cover the camera or otherwise attempt to prevent an image of his or her face from being captured while providing breath samples for vehicle starts or retests.~~]

- (k) Override. A device shall be programmed to allow test free restarts in the case of engine stalls.

Section 4. Manufacturer Responsibilities.

- (a) A manufacturer must provide the following information to the Commissioner:
 - (1) A copy of the agreement between the manufacturer and installer.
 - (2) A copy of the standard agreement between the installer/manufacturer and the driver of the vehicle in which the device is installed.
 - (3) The 24-hour toll free emergency service [~~toll free~~] telephone number which the manufacturer provides the user [~~public~~] to contact authorized customer service representatives [~~installers~~].
 - (4) The fee schedule listing the costs assessed to a driver for installation of the device, monthly leasing of the device, scheduled service visit, violations service visit, and removal of the device.
 - (5) The name, address, telephone number and e-mail address of the state coordinator.
 - (6) A detailed description, including a photograph, drawing or other graphic depiction of the device.
 - (7) Document containing complete written instructions provided to authorize installers for installation, operation, service, repair and removal of the device.
 - (8) Document containing the complete written instructions provided to participants and other operators of a vehicle equipped with the device.
 - (9) A complete list of authorized installers to include [~~including~~] name, business address, phone number, contact person and hours of operation.
 - (10) A floorplan of the installation facilities detailing the work areas and the client waiting area.

- (b) A manufacturer must ensure installers:
- (1) Comply with all requirements of this rule. ~~[Meet the conditions established in §4, §5, §6 and §7.]~~
 - (2) Possess and maintain all necessary training and skills required to install, examine, troubleshoot, and verify proper operation of devices.
 - (3) Possess the tools, test equipment and manuals needed to install, inspect, download, calibrate, repair, maintain, service and remove devices.
 - (4) Provide the restricted driver and all persons who will use the vehicle with written and hands on training in how to operate a vehicle equipped with the device, including
 - i. Care, cleaning and maintenance.
 - ii. Identification of vehicle malfunctions and repairs affecting the device and procedures for addressing them.
 - iii. A 24-hour emergency telephone number for assistance in the event a device fails to operate properly or a vehicle experiences a problem relating to the installation, operation or failure of a device. Assistance must include technical information ~~[,]~~ and assistance in locating a tow company or road service provider. Emergency assistance related to the failure of a device must be provided within two hours for vehicles located near an area with an installation facility. The device must be made functional within 48 hours of the call for assistance being received or the device must be replaced.
 - iv. Informing the restricted driver that he or she is accountable for all breath samples logged by the device.
 - (5) Maintain established business hours with an installer available during those hours.
 - (6) Conduct business from an enclosed building with a separate waiting area for customers. Installations may be conducted by mobile units. If installation is done by a mobile unit, the customer ~~[must have a separate]~~ cannot observe the installation of the device ~~[, enclosed waiting area available].~~ The business premises

and mobile units are subject to announced and unannounced inspection by the Commissioner or his or her agents.

- (7) ~~[Do not employ as installers persons who have been convicted of an alcohol related traffic offense or any offense classified as a felony, within the previous five years.]~~
A person employed as an installer must be at least eighteen years of age.
- (8) ~~Persons employed as installers are subject to the approval of the Commissioner.]~~

Section 5. Installation, Monitoring, Servicing and Removal of Ignition Interlock Devices.

(a) Installation:

- (1) An installer must provide proof of installation, including the information required in Section 6(a) (2), to the Commissioner electronically within 24 hours or the next business day of the installation.
- (2) Only installers, manufacturers and representatives of the Commissioner may observe the installation and removal of devices. Reasonable security measures must be taken to prevent access by unauthorized persons to devices, the written materials and hardware and software associated with the devices.
- (3) An installer shall examine each vehicle before installing the device. The examination must include screening procedures to ensure the vehicle in which the device is to be installed is in a mechanical and electrical condition that will allow the device to meet the specifications contained in these rules. Conditions that the manufacturer has determined would prevent the device from meeting the specifications must be repaired before the device is installed. The person seeking installation is responsible for the costs of any repairs to the vehicle.
- (4) The device's camera must be mounted ~~[on the passenger side of the vehicle]~~ in such a manner as to capture the front compartment of the vehicle. The camera shall capture an image of both the driver and the front passenger area.
- (5) After a device is installed, the vehicle and device must be inspected to ensure that the installation was performed properly, the device is working as required and the device does not interfere with the normal operation of the vehicle.

- (6) An installer must certify that a device has been installed. The certification shall be made on a form prescribed by the Commissioner.
- (7) A warning label, approved by the Commissioner, must be affixed to installed devices. The warning label must contain the following information: “WARNING” - A person ~~removing~~; tampering with, ~~disconnecting~~ or otherwise circumventing this device may be subject to civil penalties. 23 VSA §1213(k).

(b) Monitoring and Servicing:

- (1) An installer must follow the requirements established by this rule and the manufacturer’s specifications for service monitoring, service and repair.
- (2) A device must be scheduled for service [~~30~~] 60 calendar days after [~~initial~~] installation and thereafter at intervals not to exceed [~~37~~] 67 calendar days.
- (3) Calibration [~~S~~]service must be provided within [~~three business~~] five calendar days after the request for service is made.
- (4) Each time a device is serviced, the installer must:
 - i. Review the data recorded in the device’s memory and retain a copy in the person’s file.
 - ii. Inspect the device for indications of tampering.
 - iii. Calibrate the device.
- (5) For those manufacturers who perform “swap outs” at every scheduled service visit, i.e. remove the currently installed device and replace it with a new device, the installer/manufacturer must:
 - i. Review the data recorded in the removed device’s memory and retain a copy in the person’s file.
 - ii. Inspect the removed device for indications of tampering.

(c) Removal:

[The following does not apply to “swap outs” as described in Section 5(b) (5)]

- (1) Only a manufacturer or installer may remove a device.
- (2) An installer or manufacturer must notify the Commissioner electronically within 24 hours or the next business day of the removal of a device stating the specific reasons for removal.
- (3) Whenever a device is removed, the vehicle must be restored to its original condition. All severed wires must be securely reconnected and insulated with heat shrink tubing or its equivalent.

Section 6. Reports and Records.

(a) Violations Reports:

- (1) A manufacturer or installer must electronically notify the Commissioner [~~and Vermont Department of Corrections~~] within 24 hours or the next business day of discovering reliable information showing:
 - i. Evidence of circumventing, removing, or tampering with a device.
 - ii. A registered 0.02 or greater BAC during a first rolling retest or random rolling retests.
 - iii. A failure to successfully complete [~~submit to~~] a retest [~~that results in a permanent lock out condition~~].
 - iv. A [~~missed service visit~~] device entered a lockout state, to include the date, time and the cause of the lockout.
- (2) The report must include the following information:
 - i. Name and affiliation (manufacturer and installer) of the person submitting the report.
 - ii. Reason and basis for the report.
 - iii. Driver's full name, date of birth, driver license number and address.
 - iv. Registration plate number and the vehicle identification number of the vehicle in which the device is installed.

(b) Driver Monitoring Reports:

- (1) A manufacturer or installer must electronically notify the Commissioner within 24 hours or the next business day of the servicing of a device.
- (2) The report must include the information required by subdivision (a) (2) of this section and the results of the service, including a summary of the information provided by the device's data recorder.

(c) Six Month Status Reports:

- (1) An installer must electronically provide ~~[encrypted]~~ data to the manufacturer ~~[once every six months]~~ for the periods of January 1 through June 30 and July 1, through December 31, ~~[F]~~ for each device installed on vehicles to be operated within the state of Vermont, a manufacturer must electronically provide the Commissioner a status report ~~[once every six months]~~.
- (2) The report must provide the following in a format provided by the Commissioner:
 - i. Information required by §6(a) (2) ~~[(i) and (ii)]~~.
 - ii. ~~[Standard prices established for installation, calibration, removal, device rental, reinstallation and any other standard charges.]~~
 - iii. ~~[Non-standard charges assessed to any driver, listing the driver's contact information as provided in §6(a) (2) (iii) and the amount and reason for the charge.]~~
 - iv. Number of requests for financial assistance as set forth in 23 V.S.A. § 1213 (1) (1), 3SquaresVT, LIHEAP or Reach Up.
 - v. List of persons, including the information required by §6(a) (2) (iii) and (iv) who had a device installed or removed from a vehicle.
 - vi. Number of devices installed and number of devices that malfunctioned or were defective requiring service, repair or replacement. The serial numbers and the specific problem identified for malfunctioning and defective devices must be included in the report.
 - vii. ~~[Number of service visits that resulted in a charge to a driver, including the information required by §6(a) (2) (iii), amount of the charge and the reason for the charge.]~~

- viii. Number and a summary of all complaints received and the corrective action, if any, taken by the manufacturer or installer for each model or type of device.
 - ix. The date any service is performed.
 - x. The mileage [~~and hours of operation~~] of the vehicle since the previous service was performed.
- (d) A manufacturer or installer must keep all records relating to the application for approval of a device and all records relating to the installation, service, removal, performance and use of individual devices for a period of three years following the removal of any device.

Section 7. Audit and Inspection of Records and Facilities.

The Commissioner or his or her agents may audit and inspect the facilities and records of a manufacturer and installer to verify compliance with the requirements of this rule. Manufacturers and installers must make facilities and records available to the Commissioner or his or her agents during reasonable business hours.

Section 8. Application for Ignition Interlock Restricted License/Certificate.

- (a) A person eligible under 23 VSA §1205(a) (2), §1205(m), §1206(a), §1208 or §1216 may apply for an ignition interlock restricted driver's license/certificate. The application, on a form prescribed by the Commissioner, signed and sworn to by the applicant shall be accompanied by the person's unexpired Vermont ~~operator's~~ driver's license; satisfactory proof of installation of an approved ignition interlock device in any motor vehicle to be operated by the applicant. If the applicant is not the owner of the vehicle the applicant must be named on the installation notice as a driver of this vehicle; proof of financial responsibility [~~and, proof of enrollment in an alcohol and driving education program~~]. Additionally, if the applicant is not the owner of the vehicle, written permission from the owner of the vehicle must be provided specifically granting the applicant permission to operate this vehicle with the IID. The written permission must identify the vehicle with the same information contained on the Installation Notice.

- (b) A person to whom a RDL has been issued, shall be responsible for all breath tests performed in his or her vehicle.
- (c) A person whose license ~~[has been]~~ is currently suspended pursuant to 23 VSA §1201(a) (3), “under the influence of drugs or a combination of other drugs and alcohol”, may not be issued a RDL.
- (d) When a Vermont ~~operator’s~~ driver’s license is received by the Department of Motor Vehicles in connection with an application for an ignition interlock restricted driver’s license, it will be immediately destroyed upon the issuance of the restricted license ~~[receipt by the Department]~~.
- (e) An ignition interlock restricted driver’s license shall be considered to be a corrected license within the meaning of 23 VSA §613(a).
- (f) A person who has been issued a license restricted to operation of a vehicle equipped with an ignition interlock device by another jurisdiction, and who is otherwise eligible for the issuance of a Vermont license, may be issued a RDL, but not a junior ~~operator’s~~ driver’s license, in accordance with this rule.
- (g) Once a person applying for a RDL pursuant to 23 VSA §1213(e) has met the requirements of that section, an examination as required by 23 VSA §632 shall be administered. A road test may be conducted without the individual having to obtain a learner permit.
- (h) In the case of an initial application only, the ignition interlock RDL shall expire at midnight on the eve of the second anniversary of the date of birth of the applicant after issuance. Thereafter, an ignition interlock RDL must be renewed yearly.
- (i) A person may request that the ignition interlock device installed in his or her vehicle be adjusted to allow a minimum breath sample of 1. ~~[0]~~ 2 liters of breath volume per blow. The request shall be made on a form furnished by the Commissioner and be accompanied by a certification from a licensed pulmonologist stating that the person has a lung condition that renders him or her incapable of providing a 1.5 liter sample of alveolar air. In the event that the request is granted, the manufacturer will be notified that the device may be adjusted. The manufacturer will in turn notify its installer.
- (j) When providing a breath sample, the driver must be seated in the driver’s seat to ensure the device’s camera captures the image of the driver actively providing the breath sample.

A person may not cover the camera or otherwise attempt to prevent an image of his or her face from being captured while providing breath samples for vehicle starts, when taking an initial breath test, first rolling retest and all random rolling retests.

- (k) A person issued a restricted driver's license or certificate pursuant to 23 VSA §1213 and this rule violates the terms and conditions of the restricted driver's license when the person:
- (1) Operates a motor vehicle without an ignition interlock device.
 - (2) Requests or solicits another person to blow into or otherwise activate the device for the purpose of providing the restricted driver with an operable motor vehicle.
 - (3) ~~Removes, +~~ Tampers with, ~~disconnects~~ or disables the device or circumvents the operation of the device.
 - (4) Registers a 0.02 or greater BAC during a first or subsequent rolling retest.
 - (5) Fails to submit to ~~[a]~~ three consecutive breath retests that results in a ~~[permanent]~~ lock out state ~~[condition]~~.
 - (6) Misses a service visit.
 - (7) Has the device removed from the vehicle by a manufacturer, installer or unauthorized person prior to DMV's release? ~~[?]~~

Violation of any of these conditions must result in the immediate ~~[recall]~~ extension of the person's RDL requirements ~~[license]~~ for the time periods set out in 23 VSA §1213(h) and (i). ~~[Upon expiration of any recall period, a person whose RDL has been recalled pursuant to this section may reapply for a RDL in the same manner as the original application.]~~

Section 9. Right to Hearing.

- (a) A person whose application for an ignition interlock RDL is denied may request a hearing. The hearing will be held pursuant to 23 VSA §105 - §107. The issue at hearing is whether, by a preponderance of the evidence, the person can show cause why the decision of the Commissioner should not be upheld.
- (b) A person who has been convicted or adjudicated of an offense described in 23 VSA §1213(h) or (i) resulting in the recall of his or her RDL, may request an administrative hearing for the sole purpose of verifying the record of adjudication or conviction.

Ignition Interlock Program Rules

Section 1. Definitions.

For the purposes of these rules, the following definitions apply:

- (a) “Alcohol set point” means the minimum alcohol concentration at which an ignition interlock device is set to lock a motor vehicle’s ignition. That level shall be 0.02 Blood Alcohol Content (BAC).
- (b) “Calibration” means the process of testing and adjusting a device to ensure accuracy set forth in the current National Highway Traffic Safety Administration (NHTSA) Model Specifications for Breath Alcohol Ignition Interlock Devices (78 FR 26849).
- (c) “Certified laboratory” means a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute.
- (d) “Commissioner” means the Commissioner of Motor Vehicles.
- (e) “Ignition Interlock Device” or “IID” means a device capable of measuring a person’s blood alcohol concentration and immobilizes a motor vehicle whose driver’s blood alcohol concentration is 0.02 or greater. The device must be equipped with a camera capable of recording a digital image of the person using the device as well as the front compartment of the vehicle.
- (f) “Ignition interlock restricted driver’s license” or “RDL” or “certificate” means a driver’s license that has been restricted to limit operation of motor vehicles by a person whose license or privilege to operate has been suspended or revoked pursuant to 23 VSA §1205(a) (2), §1205(m), §1206(a), §1208 or §1216 to motor vehicles installed with an approved ignition interlock device. A person with a RDL may not operate a commercial motor vehicle as defined in 23 VSA §4103.
- (g) “Inclusion zone” means an area encompassing 25 miles from the Vermont border.
- (h) “Installer” means an individual, business or other entity identified by a manufacturer of an approved ignition interlock device as the manufacturer's official representative in the state of Vermont for the installation, maintenance, monitoring and repair of the devices, and includes agents and employees of the manufacturer.

- (i) “Lockout State” means a condition where the ignition interlock device will not accept a breath test.
- (j) “Motor vehicle” means only pleasure cars and trucks the operation of which do not require a commercial driver license. The term shall not include school buses.
- (k) “State coordinator” means the individual designated by the manufacturer to act on behalf of or represent it in all matters regarding IID’s in Vermont.
- (l) “Ignition Interlock Certificate” means a restricted privilege to operate a motor vehicle issued by the Commissioner allowing a nonresident whose privilege to operate a motor vehicle in Vermont has been suspended or revoked for operating under the influence of intoxicating liquor or in excess of legal limits of alcohol concentration, or for refusing an enforcement officer’s reasonable request for an evidentiary test, to operate a motor vehicle, other than a commercial motor vehicle as defined in section 4103 of this title, installed with an approved ignition interlock device.

Section 2. Certification of manufacturers of ignition interlock devices.

- (a) No ignition interlock device may be leased, sold, installed or used as part of the program outlined in 23 VSA §1213 unless the model or type of device has been approved by the Commissioner in accordance with the provisions of this rule.
- (b) Application for Certification:
 - (1) A manufacturer may apply for certification of a device by submitting an application to the Commissioner every two years. The application shall be prescribed by the Commissioner. A separate application is required for each model or type of device for which approval is sought. A manufacturer must certify the device:
 - i. Does not impede the safe operation of a vehicle.
 - ii. Minimizes opportunities to bypass.
 - iii. Performs accurately and reliably under all normally anticipated circumstances.
 - iv. Satisfies the requirements for certification set forth in this rule.
 - v. Prevents a person from starting a vehicle when the person has a prohibited blood alcohol concentration.

(2) An application for certification must include all of the following information:

- i. The name, address, telephone number and email address of the manufacturer of the device.
- ii. The name and model number of the device.
- iii. A certification from a Certified Laboratory who tested the device stating the device model meets or exceeds the minimum federal standards contained in the most recently published Model Specifications for Breath Alcohol Ignition Interlock Devices adopted by the National Highway Traffic Safety Administration by a Notice in the Federal Register.
- iv. A certification the device is made by a manufacturer who is covered by product liability insurance.
- v. A signed statement the manufacturer agrees to indemnify and hold harmless the state of Vermont and the Commissioner and his or her officers, employees and agents from all claims, demands and actions as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use and removal of a device.
- vi. The manufacturer may submit for consideration evidence of certification obtained in any other jurisdiction.
- vii. The manufacturer shall agree that any installation or service of an IID performed within the state of Vermont or the inclusion zone shall be in compliance with all requirements of this rule.
- viii. The manufacturer must agree to provide an expert witness if the performance of the device is an issue in any judicial or administrative proceeding.
- ix. The manufacturer shall agree to provide statewide coverage for installation and service of ignition interlock devices. The use of mobile installations is permitted provided the requirements set forth in section 5 of this rule are adhered to.

(c) The representations made by a manufacturer on the application for certification become conditions to the certification when the certification is approved by the

Commissioner. The failure of a manufacturer to comply with those conditions may result in the suspension or revocation of the certification as provided by subsection (e) of this section.

- (d) The Commissioner shall certify, or refuse to certify, a device after receipt of a complete application. The manufacturer will be notified within 15 days of receipt of the application if the application is incomplete. The manufacturer will be told what information or documents are needed to complete the application.
- (e) The Commissioner may deny, suspend or revoke certification of a manufacturer or device for any of the following:
 - (1) Defects in design, materials, or workmanship causing repeated failures of a device to function as intended.
 - (2) Termination or cancellation of a manufacturer's liability insurance.
 - (3) The manufacturer ceases to manufacture ignition interlock devices.
 - (4) Voluntary request by a manufacturer to cancel approval of a device.
 - (5) Violation by a manufacturer, vendor, installer, service provider or agent, employee or independent contractor of any provisions of this rule or conditions to the certification.
 - (6) Providing materially false or inaccurate information relating to a device's performance standards by the manufacturer or certifying laboratory.
 - (7) Modification or alteration of the components, design, or installation and operation instructions so that the requirements of the minimum federal standards are no longer satisfied, unless the modifications have already been certified.
- (f) A suspension or revocation is effective 15 days after notification is sent to the manufacturer by first class mail or such later date as may be specified in the notice. The notice must specify the basis for the action.
- (g) A manufacturer whose application for certification is denied or whose certification is suspended or revoked may request an administrative hearing. The hearing will be held pursuant to 23 VSA §§105 – 106. The issue at the hearing is whether, by a preponderance of the evidence, the manufacturer can show cause why the decision of the Commissioner should not be upheld.
- (h) Within 90 days of the event of suspension or revocation of certification, the

manufacturer is responsible for and must bear the cost for the removal of any and all decertified devices and the replacement with a certified device whether their own or another certified manufacturer's device.

- (i) A manufacturer must notify the Commissioner immediately, in writing, of any material modification or alteration in the components, design or installation and operating instructions of any device approved for use in this state, and must provide the Commissioner satisfactory proof (to include retesting by an independent laboratory, if required) prior to sale or distribution of the altered or modified device that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of the minimum federal standards contained in the most recently published Model Specifications for Breath Alcohol Ignition Interlock Devices adopted by the National Highway Traffic Safety Administration. Any device with a material modification or alteration must be re-approved by the Commissioner.

Section 3. Standards and Specifications for Ignition Interlock Devices.

- (a) Except as otherwise provided herein, all ignition interlock devices must meet or exceed the most recently published standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration. The device must employ an electrochemical (fuel cell) sensing method of detecting the presence of alcohol.
- (b) A device must indicate by audible or visual means when a sufficient breath sample has been collected and indicate the result by a pass/fail signal.
- (c) A device must be able to be adjusted to permit operation with as little as 1.2 liters of breath per blow upon a medical recommendation approved by the Commissioner.
- (d) A device must prevent a driver from starting the vehicle when a breath test detects a BAC of 0.02 or greater and when a driver fails to appear for service within the five calendar day warning period.
- (e) A random retest feature is required for all devices. The device must require the driver to submit to a first rolling retest within a variable interval ranging from five to fifteen minutes after a driver has passed an initial breath test and started the vehicle. Subsequent to the first rolling retest, the random rolling retest shall be required within a variable interval ranging

from thirty to forty-five minutes after the most recent rolling retest. An audible or visual warning must alert the driver of the retest and the driver will have ten minutes to take the first rolling retest. If the driver fails to submit to the first rolling retest within ten minutes or the device detects a BAC of 0.02 or greater, the horn will sound repeatedly, and the headlights shall flash until an acceptable breath sample has been submitted and the BAC is less than 0.02 or the vehicle is turned off. Once the vehicle is turned off, the device must not allow the driver to restart the vehicle without taking an initial breath test. If the vehicle is turned off after or during the warning of an impending rolling retest, but before the driver takes the rolling retest, the device must prevent the driver from starting the vehicle without taking an initial breath test. If this stall occurs during a retest, the retest should proceed from the point of the stall.

- (f) A device must be programmed to allow unlimited attempts to provide a breath sample on a rolling retest within the ten minute period.
- (g) A device must record data in its memory in such a manner that data cannot be erased and a hard copy can be printed. The data recorder must have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected. The ability to transfer the unaltered data electronically must be included. The following information must be stored in the data recorder:
 - (1) The date and time of any use or attempted use of a vehicle.
 - (2) The date and time of any attempt to tamper, circumvent or bypass the device.
 - (3) The date, time and alcohol concentration, in grams per 210 liters, of each breath sample provided to the device.
 - (4) The date and time of any malfunctions of the device.
 - (5) The date and time of any failures to provide retest samples.
 - (6) The date and time a “service required” message is issued to the customer by the device.
- (h) A device must provide all of the following information to a driver.
 - (1) The device’s readiness for acceptance of a breath sample.
 - (2) A reminder seven days prior to a scheduled service date followed by a warning to obtain service within five days after the scheduled service date.

- (3) An indication when the device has entered a lockout state.
- (i) A device must place the vehicle in a permanent lockout state, if any of the following conditions occur:
 - (1) The device detects tampering, circumvention or bypass attempts.
 - (2) The driver fails to provide a breath sample during three consecutive retest periods.
 - (3) A scheduled service date is missed and the five calendar day grace period has expired.
- (j) A manufacturer shall ensure that a device has adequate electronic anti-tampering features which include the following:
 - (1) A device must retain its tamper detection capabilities when disconnected from the vehicle's power supply, or record that it was disconnected.
 - (2) A device must retain its data memory when disconnected from the vehicle's power supply.
 - (3) A device must include a camera with the capability of capturing and retaining an image of the person providing the breath sample at each vehicle start when taking an initial breath test, the first rolling retest and all random retests as well as circumvention attempts. Such images shall be included in the reports required in these rules.
- (k) Override. A device shall be programmed to allow test free restarts in the case of engine stalls.

Section 4. Manufacturer Responsibilities.

- (a) A manufacturer must provide the following information to the Commissioner at initial certification and at each recertification:
 - (1) A copy of the agreement between the manufacturer and installer.
 - (2) A copy of the standard agreement between the installer/manufacturer and the driver of the vehicle in which the device is installed.
 - (3) The 24-hour toll free emergency service telephone number which the manufacturer provides the driver to contact authorized customer service representatives.
 - (4) The fee schedule listing the costs assessed to a driver for installation of the device, monthly leasing of the device, scheduled service visit, violations service visit, and

removal of the device.

- (5) The name, address, telephone number and e-mail address of the state coordinator.
 - (6) A detailed description, including a photograph, drawing or other graphic depiction of the device.
 - (7) Document containing complete written instructions provided to authorize installers for installation, operation, service, repair and removal of the device.
 - (8) Document containing the complete written instructions provided to participants and other operators of a vehicle equipped with the device.
 - (9) A complete list of authorized installers to include name, business address, phone number, contact person and hours of operation.
 - (10) A floorplan of the installation facilities detailing the work areas and the client waiting area.
- (b) A manufacturer must ensure installers:
- (1) Comply with all requirements of this rule.
 - (2) Possess and maintain all necessary training and skills required to install, examine, troubleshoot, and verify proper operation of devices.
 - (3) Possess the tools, test equipment and manuals needed to install, inspect, download, calibrate, repair, maintain, service and remove devices.
 - (4) Provide the restricted driver and all persons who will use the vehicle with written and hands on training in how to operate a vehicle equipped with the device, including
 - i. Care, cleaning and maintenance.
 - ii. Identification of vehicle malfunctions and repairs affecting the device and procedures for addressing them.
 - iii. A 24-hour emergency telephone number for assistance in the event a device fails to operate properly or a vehicle experiences a problem relating to the installation, operation or failure of a device. Assistance must include technical information and assistance in locating a tow company or road service provider. Emergency assistance related to the failure of a device must be provided within two hours for vehicles located near an area with

an installation facility. The device must be made functional within 48 hours of the call for assistance being received or the device must be replaced.

- iv. Informing the restricted driver that he or she is accountable for all breath samples logged by the device.
- (5) Maintain established business hours with an installer available during those hours.
- (6) Conduct business from an enclosed building with a separate waiting area for customers. Installations may be conducted by mobile units. If installation is done by a mobile unit, the customer cannot observe the installation of the device. The business premises and mobile units are subject to announced and unannounced inspection by the Commissioner or his or her agents.
- (7) A person employed as an installer must be at least eighteen years of age.

Section 5. Installation, Monitoring, Servicing and Removal of Ignition Interlock Devices.

(a) Installation:

- (1) An installer must provide proof of installation, including the information required in Section 6(a) (2), to the Commissioner electronically within 24 hours or the next business day of the installation.
- (2) Only installers, manufacturers and representatives of the Commissioner may observe the installation and removal of devices. Reasonable security measures must be taken to prevent access by unauthorized persons to devices, the written materials and hardware and software associated with the devices.
- (3) An installer shall examine each vehicle before installing the device. The examination must include screening procedures to ensure the vehicle in which the device is to be installed is in a mechanical and electrical condition that will allow the device to meet the specifications contained in these rules. Conditions that the manufacturer has determined would prevent the device from meeting the specifications must be repaired before the device is installed. The person seeking installation is responsible for the costs of any repairs to the vehicle.

- (4) The device's camera must be mounted in such a manner as to capture the front compartment of the vehicle. The camera shall capture an image of both the driver and the front passenger area.
- (5) After a device is installed, the vehicle and device must be inspected to ensure that the installation was performed properly, the device is working as required and the device does not interfere with the normal operation of the vehicle.
- (6) An installer must certify that a device has been installed. The certification shall be made on a form prescribed by the Commissioner.
- (7) A warning label, approved by the Commissioner, must be affixed to installed devices. The warning label must contain the following information: "WARNING" - A person tampering with or otherwise circumventing this device may be subject to civil penalties. 23 VSA §1213(k).

(b) Monitoring and Servicing:

- (1) An installer must follow the requirements established by this rule and the manufacturer's specifications for service monitoring, service and repair.
- (2) A device must be scheduled for service 60 calendar days after installation and thereafter at intervals not to exceed 67 calendar days.
- (3) Calibration service must be provided within five calendar days after the request for service is made.
- (4) Each time a device is serviced, the installer must:
 - i. Review the data recorded in the device's memory and retain a copy in the person's file.
 - ii. Inspect the device for indications of tampering.
 - iii. Calibrate the device.
- (5) For those manufacturers who perform "swap outs" at every scheduled service visit, i.e. remove the currently installed device and replace it with a new device, the installer/manufacturer must:
 - i. Review the data recorded in the removed device's memory and retain a copy in

the person's file.

- ii. Inspect the removed device for indications of tampering.

(c) Removal:

[The following does not apply to "swap outs" as described in Section 5(b) (5)]

- (1) Only a manufacturer or installer may remove a device.
- (2) An installer or manufacturer must notify the Commissioner electronically within 24 hours or the next business day of the removal of a device stating the specific reasons for removal.
- (3) Whenever a device is removed, the vehicle must be restored to its original condition. All severed wires must be securely reconnected and insulated with heat shrink tubing or its equivalent.

Section 6. Reports and Records.

(a) Violations Reports:

- (1) A manufacturer or installer must electronically notify the Commissioner within 24 hours or the next business day of discovering reliable information showing:
 - i. Operates a motor vehicle without an ignition interlock device;
 - ii. Requests or solicits another person to blow into or otherwise activate the device for the purpose of providing the restricted driver with an operable motor vehicle;
 - iii. Evidence of circumventing, removing, or tampering with a device;
 - iv. A registered 0.02 or greater BAC during a first or subsequent rolling retest;
 - v. Has the device removed from the vehicle by a manufacturer, installer, or unauthorized person prior to the DMV's release;
 - vi. A device entered a lockout state, to include the date, time and the cause of the lockout for one of the following reasons.
 - The device detects tampering, circumvention or bypass attempts.

- The restricted driver fails to provide a breath sample during three consecutive retest periods.
- A scheduled service date is missed and the five calendar day grace period has expired

(2) The report must include the following information:

- i. Name and affiliation (manufacturer and installer) of the person submitting the report.
- ii. Reason and basis for the report.
- iii. Driver's full name, date of birth, driver license number and address.
- iv. Registration plate number and the vehicle identification number of the vehicle in which the device is installed.

(b) Driver Monitoring Reports:

- (1) A manufacturer or installer must electronically notify the Commissioner within 24 hours or the next business day of the servicing of a device.
- (2) The report must include the information required by subdivision (a) (2) of this section and the results of the service, including a summary of the information provided by the device's data recorder.

(c) Six Month Status Reports:

- (1) An installer must electronically provide data to the manufacturer for the periods of January 1 through June 30 and July 1, through December 31, for each device installed on vehicles to be operated within the state of Vermont, a manufacturer must electronically provide the Commissioner a status report.
- (2) The report must provide the following in a format provided by the Commissioner:
 - i. Information required by §6(a)(2).
 - ii. Number of requests for financial assistance as set forth in 23 V.S.A. §1213 (1)(1), 3SquaresVT, LIHEAP or Reach Up.
 - iii. List of persons, including the information required by §6(a)(2) (iii) and (iv) who had a device installed or removed from a vehicle.

- iv. Number of devices installed and number of devices that malfunctioned or were defective requiring service, repair or replacement. The serial numbers and the specific problem identified for malfunctioning and defective devices must be included in the report.
 - v. Number and a summary of all complaints received and the corrective action, if any, taken by the manufacturer or installer for each model or type of device.
 - vi. The date any service is performed.
 - vii. The mileage of the vehicle since the previous service was performed.
- (d) A manufacturer or installer must keep all records relating to the application for approval of a device and all records relating to the installation, service, removal, performance and use of individual devices for a period of three years following the removal of any device.

Section 7. Audit and Inspection of Records and Facilities.

The Commissioner or his or her agents may audit and inspect the facilities and records of a manufacturer and installer to verify compliance with the requirements of this rule. Manufacturers and installers must make facilities and records available to the Commissioner or his or her agents during reasonable business hours.

Section 8. Application for Ignition Interlock Restricted License/Certificate.

- (a) A person eligible under 23 VSA §1205(a) (2), §1205(m), §1206(a), §1208 or §1216 may apply for an ignition interlock restricted driver's license/certificate. The application, on a form prescribed by the Commissioner, signed and sworn to by the applicant shall be accompanied by the person's unexpired Vermont driver's license; satisfactory proof of installation of an approved ignition interlock device in any and all motor vehicle(s) to be operated by the applicant. If the applicant is not the owner of the vehicle the applicant must be named on the installation notice as a driver of this vehicle and provide proof of financial responsibility. Additionally, if the applicant is not the owner of the vehicle, written permission from the owner of the vehicle must be provided specifically granting the applicant permission to operate this vehicle with the IID.

- The written permission must identify the vehicle with the same information contained on the Installation Notice.
- (b) A person to whom a RDL has been issued, shall be responsible for all breath tests performed in his or her vehicle.
 - (c) A person whose license is currently suspended pursuant to 23 VSA §1201(a) (3), “under the influence of drugs or a combination of other drugs and alcohol”, may not be issued a RDL.
 - (d) When a Vermont driver’s license is received by the Department of Motor Vehicles in connection with an application for an ignition interlock restricted driver’s license, it will be immediately destroyed upon the issuance of the restricted license.
 - (e) An ignition interlock restricted driver’s license shall be considered to be a corrected license within the meaning of 23 VSA §613(a).
 - (f) A person who has been issued a license restricted to operation of a vehicle equipped with an ignition interlock device by another jurisdiction, and who is otherwise eligible for the issuance of a Vermont license, may be issued a RDL, but not a junior driver’s license, in accordance with this rule.
 - (g) Once a person applying for a RDL pursuant to 23 VSA §1213(e) has met the requirements of that section, an examination as required by 23 VSA §632 shall be administered. A road test may be conducted without the individual having to obtain a learner permit.
 - (h) In the case of an initial application only, the ignition interlock RDL shall expire at midnight on the eve of the second anniversary of the date of birth of the applicant after issuance. Thereafter, an ignition interlock RDL must be renewed yearly.
 - (i) A person may request that the ignition interlock device installed in his or her vehicle be adjusted to allow a minimum breath sample of 1.2 liters of breath volume per blow. The request shall be made on a form furnished by the Commissioner and be accompanied by a medical recommendation stating that the person has a lung condition that renders him or her incapable of providing a 1.5 liter sample of alveolar air. If the request is granted, the manufacturer will be notified that the device may be adjusted. The manufacturer will in turn notify its installer.
 - (j) When providing a breath sample, the driver must be seated in the driver’s seat to ensure

the device's camera captures the image of the driver actively providing the breath sample. A person may not cover the camera or otherwise attempt to prevent an image of his or her face from being captured while providing breath samples for vehicle starts, when taking an initial breath test, first rolling retest and all random rolling retests.

- (k) A person issued a restricted driver's license or certificate pursuant to 23 VSA §1213 and this rule violates the terms and conditions of the restricted driver's license when the person:
 - (1) Operates a motor vehicle without an ignition interlock device.
 - (2) Requests or solicits another person to blow into or otherwise activate the device for the purpose of providing the restricted driver with an operable motor vehicle.
 - (3) Tampered with or disables the device or circumvents the operation of the device.
 - (4) Registers a 0.02 or greater BAC during a first or subsequent rolling retest.
 - (5) Fails to submit to three consecutive breath retests that result in a lock out state.
 - (6) Misses a service visit and the five day calendar grace period has expired.
 - (7) Has the device removed from the vehicle by a manufacturer, installer or unauthorized person prior to DMV's release.

Violation of any of these conditions must result in the immediate extension of the person's RDL requirements for the time periods set out in 23 VSA §1213(h) and (i).

Section 9. Right to Hearing.

- (a) A person whose application for an ignition interlock RDL is denied may request a hearing. The hearing will be held pursuant to 23 VSA §105 - §107. The issue at hearing is whether, by a preponderance of the evidence, the person can show cause why the decision of the Commissioner should not be upheld.
- (b) A person who has been convicted or adjudicated of an offense described in 23 VSA §1213(h) or (i) resulting in the recall of his or her RDL, may request an administrative hearing for the sole purpose of verifying the record of adjudication or conviction.