

39.03.49 – RULES GOVERNING IGNITION INTERLOCK DEVICES

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to Section 18-8008, Idaho Code. (3-31-22)

001. ~~TITLE AND SCOPE.~~

~~The rule is titled IDAPA 39.03.49, “Rules Governing Ignition Interlock Devices,” and the purpose of this~~ **This** rule ~~is to establish~~ **establishes** regulations for certification, installation, repair and removal of ignition interlock breath alcohol devices.

(3-31-22)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Alcohol. The generic class of organic compounds known as alcohols and, specifically, the chemical compound ethyl alcohol. ~~For the purpose of Ignition Interlock Devices, all devices will be specific for ethyl alcohol.~~ (3-31-22)

02. Breath Alcohol Concentration (BrAC). The weight amount of alcohol contained in a unit volume of breath, measured in grams ~~Ethanol~~/two hundred ten (210) liters of breath. (3-31-22)

03. Court (Or Originating Court). The particular Idaho state court that has required the use of an ignition interlock device by a particular individual. (3-31-22)

04. Certification. The approval process required by the Idaho Transportation Department. (3-31-22)

~~**05. Department.** The Idaho Transportation Department.~~ (3-31-22)

06. Device. An ignition interlock device. (3-31-22)

07. Diversion Program Administer or Designee. The prosecuting attorney or an individual or business appointed by a prosecuting attorney of any Idaho county, to administer the diversion program established by the prosecuting attorney on their behalf. (3-31-22)

08. Ignition Interlock Device. An instrument designed to measure the BrAC of an individual equipped with a camera and which prevents a motorized vehicle from starting when the BrAC is greater than or equal to point zero two five (.025). (3-31-22)

09. Independent Testing Laboratory. A laboratory facility that is not subject to the control of the manufacturer or the manufacturer’s representative. (3-31-22)

10. Interlock. The state in which a motor vehicle is prevented from starting by a device. (3-31-22)

11. Lessee. The person ordered by a court to drive only vehicles that have certified devices installed. (3-31-22)

12. Manufacturer. The person, or organization responsible for the design, construction and production of the device. (3-31-22)

13. Manufacturer’s Representative. A company or corporation registered as a business with the Idaho Secretary of State who is designated by the manufacturer to sell, rent or lease a specific device in the State of Idaho and provide installation, maintenance and removal of the device through the operation of service centers. (3-31-22)

14. Circumvention. To bypass the correct operation of a device by starting the motor vehicle or

operating the motor vehicle by any means without first providing a breath test. (3-31-22)

15. Tampering. An attempt to disable, adjust, or otherwise alter the proper operation of a device or camera. “Tampering” does not include disconnecting the handset once the vehicle is turned off. (3-31-22)

16. Ignition Interlock Waiver Liability. If a court grants a driver relief from the requirement of adding an ignition interlock device under the provisions of either Sections 18-8002A, 18-8002 or 18-8008, Idaho Code, the waiver will cover both ignition interlock requirements from the criminal charges and from the civil administrative license suspension. When the Department receives a court order granting the waiver of an ignition interlock requirement, the Department ~~shall~~will not be liable for complying with the court’s order, and no cause of action will accrue against the Department for not enforcing the ignition interlock requirement in the civil administrative license suspension under Section 18-8002A, Idaho Code. (3-31-22)

011. -- 099. (RESERVED)

100. CERTIFICATION PROCESS.

01. Equipment Standards. A device must be produced by a manufacturer who maintains certification to the current International Organization for Standardization (ISO) 9001 Quality Management Systems for aspects related to the design, maintenance and distribution of the device. Written documentation demonstrating compliance with this requirement ~~shall~~will be submitted to the Department by the manufacturer on an annual basis. Additionally, a device must meet or exceed the National Highway Traffic Safety Administration’s (NHTSA) model specifications for breath alcohol ignition interlock devices (BAIIDs) as published in the Federal Register/Vol. 78, No. 89/Wednesday, May 8, 2013 and are subject to subsequent standards published by NHTSA. Written documentation from an independent testing laboratory that is an International Organization for Standardization (ISO) 17025 certified testing laboratory performing the tests as specified, will be accepted as proof of meeting or exceeding the NHTSA Model Specifications for BAIIDs. The documentation from the ISO 17025 certified testing laboratory ~~shall~~will include: the name, physical location, mailing address and phone number of the testing laboratory; a description of the tests performed; copies of the data and results of the testing procedures; and the name of the device being submitted for approval. (3-31-22)

a. A manufacturer must report in writing to the Department a material device modification if there is a material change affecting the customer functionality, customer communication or accuracy of the device. Upon written receipt of a material device modification, the Department within thirty (30) days will determine whether written documentation from an independent testing laboratory that is ISO 170258 accredited will be required prior to implementing device usage in Idaho. (3-31-22)

b. Devices that were certified under less stringent IDAPA rules governing BAIID devices or previous model specifications as published in the Federal Register will be grandfathered for use in the state for a period no longer than one hundred eighty (180) days from the effective date of the most recent published device specifications at which time the Letter of Certification for the device will be revoked pursuant to Subsection 100.05 of these rules, and removed in accordance with Subsection 100.07 of these rules. (3-31-22)

02. Proof of Insurance. The manufacturer ~~shall~~will annually provide to the Department proof of insurance with minimum liability limits of one million dollars (\$1,000,000) per occurrence, with three million dollars (\$3,000,000) aggregate total. The liability covered ~~shall~~will include defects in product design and materials, as well as workmanship during manufacture, calibration, installation and removal. The proof of insurance ~~shall~~will include a statement from the insurance carrier that thirty (30) days’ notice ~~shall~~will be given to the Idaho Transportation Department prior to cancellation. (3-31-22)

03. Hold Harmless. The manufacturer ~~shall~~will provide to the Department a notarized statement that the manufacturer will be totally responsible for product liability and will indemnify the following from any liability resulting from the device or its installation or use: (3-31-22)

a. The state of Idaho; and (3-31-22)

- b. The court that ordered the installation of the device. (3-31-22)
- c. The county, its employees and designees administering the program. (3-31-22)

04. Manufacturer's Reporting Requirements. The manufacturer shall will provide the Department a description of its installation and monitoring procedures, maintenance technician training program, and set of criteria for monitoring and reporting offenders. (3-31-22)

05. Criteria for Certification and/or Revocation. Upon receipt of the required documentation from the Manufacturer as set forth in Subsections 100.01 through 100.04 of these rules the Department shall will issue a Letter of Certification for the device. The Letter of Certification shall will be valid until voluntarily surrendered by the manufacturer or until revoked by the Department for cause. Reasons for revocation include, but are not limited to: (3-31-22)

- a. Evidence of repeated device failures due to gross defects in design, materials and/or workmanship during manufacture, installation or calibration of the device; (3-31-22)
- b. Notice of cancellation of manufacturer's liability insurance is received; or (3-31-22)
- c. Notification that the manufacturer is no longer in business. (3-31-22)
- d. Voluntary request of the manufacturer to remove a device from the certified list; (3-31-22)
- e. Any other reasonable cause to believe the device was inaccurately represented to meet the performance standards; or (3-31-22)
- f. Failure to submit required reports to the Department. (3-31-22)

06. Notice of Revocation. Unless necessary for the immediate good and welfare of the public, revocation shall will be effective twenty-one (21) days after manufacturer's receipt of notice, which shall will be sent via certified mail, return receipt requested. A copy of each Notice of Revocation and final outcome shall will be provided to all originating courts or their designees and lessees utilizing the revoked device with notice to contact the manufacturer for a replacement. (3-31-22)

07. Removal of Revoked Devices. Upon revocation or voluntary surrender of a certified device, a manufacturer shall will be responsible for removal of all like devices from lessees' vehicles. (3-31-22)

a. A manufacturer will be responsible for any costs connected with removal of their revoked devices from lessees' vehicles and the installation of certified replacement devices. (3-31-22)

b. The manufacturer must obtain and maintain a bond in the amount of thirty-five thousand dollars (\$35,000). The bond shall will inure to the benefit of the State of Idaho and shall will be used to reimburse expenses related to the device services incurred by any lessee who is required to equip a vehicle with a device by the State of Idaho because a manufacturer's certification is being refused, suspended, or revoked. The bond must include the following: (3-31-22)

- i. The bond must be issued by a corporate surety licensed to do business within the State of Idaho; (3-31-22)
- ii. The surety shall will have the ability to cancel the bond and give notice that the bond is cancelled for any reason and shall will continue to be liable under the bond until the commissioner of public safety receives notice; (3-31-22)
- iii. The bond must be executed to the State of Idaho; and (3-31-22)

iv. The original bond must be filed and held in the Department's office. (3-31-22)

08. Right to Appeal. Upon voluntary surrender, written notice of or revocation of a Letter of Certification for a manufacturer's device, manufacturers may request a review of the revocation. Such request shall will be submitted to the Department, in writing, within twenty (20) days of receiving the written notice of revocation. (3-31-22)

09. Repository for Letter of Certification. The Department shall will maintain a file of all existing Letters of Certification. (3-31-22)

101. -- 199. (RESERVED)

200. INSTALLATION STANDARDS.

01. Installer. Device must be installed by a manufacturer or manufacturer's representative. (3-31-22)

02. Unauthorized Persons. Lessees or other unauthorized persons shall will not be allowed to watch the installation or removal of the device. (3-31-22)

03. Security. Adequate security measures must be taken to prevent unauthorized persons from accessing secured materials (tamper seals, installation instructions, etc.) (3-31-22)

04. Installation Instructions. Each manufacturer shall will develop written instructions for installation of its device(s). (3-31-22)

05. Vehicle Condition Screen. The installer must screen vehicles for acceptable mechanical and electrical condition, in accordance with the device manufacturer's instructions. (3-31-22)

06. Mandatory Vehicle Maintenance. Conditions that would interfere with the function of the device, (e.g. low battery or alternator voltage, stalling frequent enough to require additional breath tests, etc.) must be corrected to an acceptable level. (3-31-22)

07. Installation Standards. Installations must be made in a workmanlike manner, within accordance to accepted trade standards, and according to the instructions provided by the manufacturer. (3-31-22)

08. Device Removal Standards. When a device is removed, the vehicle must be reasonably restored to its original condition. All severed wires must be permanently reconnected and insulated with heat shrink tubing or its equivalent. (3-31-22)

201. -- 299. (RESERVED)

300. DEVICE MAINTENANCE AND REPORTS.

01. Device Examination Schedule. Each lessee shall will have the device examined by a manufacturer or manufacturer's representative for correct calibration and evidence of tampering every sixty (60) days, or more often as may be ordered by the originating court, or less frequently, as may be ordered by the originating court. (3-31-22)

02. Report of Examination. A report on the results of each check shall will be provided to the trial court administrator or designee of the originating court. The report shall will reflect what adjustments, if any, were necessary in the calibration of the device, any evidence of tampering or circumvention, and any other available information the originating court may order. (3-31-22)

03. Corrective Action Report. Upon request of the originating court, diversion program administrator or their designee complaints by the lessee shall will be accompanied by a statement of the actions taken to correct the

problem(s). Reports of the problem(s) and action(s) taken shall will be submitted to the originating court or its designee within three (3) business days. (3-31-22)

04. Additional Report. Upon request, an additional report will be provided to the Department on a quarterly basis summarizing all periodic checks ordered by the originating court and all complaints received by the manufacturer from the lessee for each model or type of certified device. These reports shall will be categorized by: (3-31-22)

- a. Customer error of operation. (3-31-22)
- b. Faulty automotive equipment other than the device. (3-31-22)
- c. Apparent misuse or attempts to circumvent the device, causing damage. (3-31-22)
- d. Device failure due to material defect, design defect, workmanship errors in construction, installation or calibration. (3-31-22)

301. DEVICE SECURITY.

01. Tampering or Circumvention Precaution. The manufacturer shall will take all reasonable steps necessary to prevent tampering or physical circumvention of the device. (3-31-22)

02. Device Identification. Each device shall will be uniquely serial numbered. All reports to the trial court administrator or designee of an originating court concerning a particular device shall will include the name and address of the lessee, the originating court's file number, and the unique number of the device. (3-31-22)

03. Warning Label. The manufacturer shall will provide a label containing a notice (at least ten (10) point boldface type) on each certified device which is visible to the lessee at all times reading: WARNING: ANY PERSON TAMPERING, CIRCUMVENTING, OR OTHERWISE MISUSING THIS DEVICE MAY BE SUBJECTED TO CRIMINAL SANCTIONS. (Section 18-8009, Idaho Code) (3-31-22)

04. Physical Anti-Tamper Security. (3-31-22)

- a. Use unique, easily identifiable wire, covering or sheathing over all wires used to install the device, which are not inside a secured enclosure. (3-31-22)
- b. Make all connections to the vehicle under the dash or in an inconspicuous area of the vehicle. (3-31-22)
- c. Use unique, easily identifiable tamper seal, epoxy or resin at all openings and exposed electrical connections for the device (except breath or exhaust ports). (3-31-22)

05. Personnel Requirements. Devices must be installed, inspected, tested and maintained by a qualified manufacturer or manufacturer's representative. (3-31-22)

- a. Installers must have the training and skills necessary to install, troubleshoot and check for proper operation of the device, and to screen the vehicle for acceptable operating conditions. (3-31-22)
- b. Installers whose functions and duties include installing, calibrating, performing tamper and circumventions inspections and reporting duties, should not have been convicted of a crime substantially related to the convicted lessee's violation. This includes, persons convicted of: Driving under the influence (DUI) within the last five (5) years; more than one (1) DUI overall; probation violation; and perjury. (3-31-22)
- c. For the purposes of this section, "convicted" shall includes s entering a plea of guilty, nolo contendere, or to have been found guilty or been given a withheld judgment. (3-31-22)

302. -- 399. (RESERVED)

400. MANDATORY OPERATIONAL FEATURES.

Notwithstanding other provisions of this rule, a certified device must comply with the following: (3-31-22)

01. Device Setpoint. The setpoint of each device to interlock when the breath sample is provided point zero two five (.025) or greater (Section 18-8008(2), Idaho Code). The capability to change this setting ~~shall~~will be made secure, by the manufacturer, to prevent unauthorized adjustment of the device. (3-31-22)

02. Camera. Every device currently installed in a vehicle must be equipped with a camera that is not located inside the handset and is mounted to the vehicle in such a way to capture a reference photo at the time of installation and a digital image of the driver sitting in the driver's compartment when a breath sample is submitted, refused, or the device is circumvented. The de-vice must store all data, including the image, time, date, and BrAC of the accepted breath sample each time the individual attempts to use the device. (3-31-22)

a. The device camera must function in all lighting conditions. (3-31-22)

b. All images and data collected between calibration periods must be stored in the device's data storage system and be downloadable at the time of calibration by the device manufacturer or manufacturer's representative in order to ensure proper record maintenance. (3-31-22)

401. OTHER PROVISIONS.

Notwithstanding other provisions of this rule, each manufacturer of a certified device: (3-31-22)

01. Repair Deadline. ~~Shall~~Will guarantee repair or replacement of a defective device within the state of Idaho within a maximum of forty-eight (48) hours of receipt of complaint. (3-31-22)

02. Statement of Charges. The manufacturer or the manufacturer's representative will provide the originating court, diversion program administrator or its designee, and the lessee a statement of all device charges clearly specifying warranty details, purchased cost, and/or monthly lease amount, any additional charges anticipated for routine calibration and service checks, what items (if any) are provided without charge, and under what conditions a lessee is responsible for payment for service calls and/or damage to the device. (3-31-22)

03. Notice of Installation. Upon installation of each device, the manufacturer or its representative will provide the trial court administrator, diversion program administrator or designee of the originating court with a notice of installation that includes the name, address and telephone number of the lessee, the originating court's file number, and the unique number of the device. (3-31-22)

04. Nationwide Service Center Locations. Prior to installation, the manufacturer or manufacturer's representative will provide the following to all lessees: (3-31-22)

a. A list of all calibration/service locations in the continental United States. The list will include the business name, address and telephone number of all locations. (3-31-22)

b. A twenty-four (24) hour telephone number to call for service support for those who may be traveling outside service areas. (3-31-22)

05. Statewide Service Center Locations. Prior to installation, the manufacturer or the manufacturer's representative will provide the following to all lessees: (3-31-22)

a. A list of all calibration/service locations in the state of Idaho. The list will include the business name, address and telephone number of all locations. (3-31-22)

b. Will notify the Department of the location, including address, phone number and contact person, of each service center in Idaho. (3-31-22)

06. Removal of Device. The manufacturer or manufacturer's representative will advise the originating court, diversion program administrator or its designee prior to removing the device under circumstances other than:
(3-31-22)

a. Completion of sentence or other terms of a court order. (3-31-22)

b. Immediate device repair needs. (3-31-22)

09. Substitute Device. Whenever a device is removed for repair and cannot immediately be reinstalled, a substitute device shall will be utilized. Under no circumstances shall will a lessee's vehicle be permitted to be driven without a required device.
(3-31-22)

402. REMOVAL PROCEDURES.

When so notified in writing by the originating court, the manufacturer or the manufacturer's representative shall will remove the device and return the vehicle to normal operating condition. A final report, which includes a summary of all fees paid by the lessee over the life of the contract, shall will be forwarded to the originating court, diversion program administrator or its designee and the Department.
(3-31-22)

403. -- 499. (RESERVED)

500. PRIMARY RESPONSIBILITIES OF AGENCIES/OFFICES MONITORING THIS RULE.

Listed below are some of the primary responsibilities of the indicated offices/agencies, as outlined in this rule.
(3-31-22)

01. Testing Lab. (3-31-22)

a. Test devices for minimum standards. (3-31-22)

b. Submit notarized statement and copy of the Certification Test Report to manufacturer. (3-31-22)

c. Keep log of test results. (3-31-22)

02. Manufacturer or Manufacturer's Representative. (3-31-22)

a. Submit device to lab for testing. (3-31-22)

b. Install, maintain and remove device as required by court. (3-31-22)

c. Set interlock level as established by Idaho Code. (3-31-22)

d. Submit quarterly (or more frequent) maintenance reports to originating court or its designee.
(3-31-22)

e. Upon request, submit quarterly reports to the Department summarizing periodic device examinations and all complaints received. (3-31-22)

f. Provide court, diversion program administrator or its designee, or lessee and Department with statement of charges and/or any additional fees. (3-31-22)

g. Provide lessee with service and repair information. (3-31-22)

h. Provide the Department with proof of insurance annually. (3-31-22)

i. Report any attempt to disconnect any device to originating court, diversion program administrator or its designee. (3-31-22)

j. Advise court, diversion program administrator or its designee before removing any device unless authorized or in need of immediate repair. (3-31-22)

03. Idaho Transportation Department. (3-31-22)

a. Maintain a list of known calibration/service locations in the state. (3-31-22)

b. Issue Letter of Certification for each device model to manufacturer. (3-31-22)

c. When necessary, revoke Letter of Certification. (3-31-22)

d. Maintain file of all letters. (3-31-22)

e. Maintain file of statement of charges (by device model). (3-31-22)

f. Maintain proof of insurance. (3-31-22)

04. Court. (3-31-22)

a. The judge or prosecuting attorney as the diversion program administrator or their designee will order device installation, maintenance and removal. (3-31-22)

b. The trial court administrator, diversion program administrator or their designee of the originating court will receive maintenance reports on each device installed pursuant to court order. (3-31-22)

c. The trial court administrator, diversion program administrator or their designee of the originating court will receive an itemized statement of charges. (3-31-22)

d. The trial court administrator, diversion program administrator or their designee of the originating court will receive manufacturer's reports of attempts to disconnect any device. (3-31-22)

e. The trial court administrator or diversion program administrator or their designee will receive reports and a declaration from the lessee's ignition interlock vendor, on a form provided or approved by the diversion program administrator or their designee, certifying that none of the following incidents occurred while the system was installed in the lessee's vehicle(s): (3-31-22)

i. Attempt to start vehicle with a BAC of zero point zero four (0.04) or more; (3-31-22)

ii. Failure of the lessee to take any random test; or (3-31-22)

iii. Failure of the lessee to pass any random retest with a BAC of zero point zero two five (0.025) or lower. (3-31-22)

iv. Failure of the lessee to appear when required at vendor's place of business for maintenance, repair, calibration, monitoring, inspection or replacement of the system. (3-31-22)

05. Lessee. (3-31-22)

a. Have device installed and maintained as ordered by court. (3-31-22)

b. Receive itemized statement of charges and remit fees as scheduled. (3-31-22)

c. Receive and comply with guidelines regarding repairing and maintaining the vehicle in good working order. (3-31-22)

501. -- 999. (RESERVED)