

MAR 09 2018

SECRETARY OF STATE  
ADMINISTRATIVE RULES

**Title 7—DEPARTMENT OF TRANSPORTATION**  
**Division 60—Highway Safety and Traffic Division**  
**Chapter 2—Breath Alcohol Ignition Interlock Device Certification and Operational Requirements**

**PROPOSED RULEMAKING**

**7 CSR 60-2.040 Responsibilities of Manufacturers.**

**COPY**

*PURPOSE: This rule clarifies the manufacturer's responsibilities in regard to ignition interlock devices certified for use in Missouri.*

(1) A manufacturer shall:

(A) Carry product liability insurance with minimum liability limits of one (1) million dollars per occurrence and three (3) million dollars aggregate total that includes coverage for defects in device design and materials as well as device manufacturing, calibration, installation, and removal;

(B) Indemnify and hold harmless the state of Missouri and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the manufacturer or its authorized service providers relating to device installation, service, repair, use, or removal;

(C) Review all data downloaded from a device for any evidence, within the designated monitoring period, of violations reset, tampering, and/or circumvention as those terms are defined in 7 CSR 60-2.010;

(D) Provide testimony in any civil, criminal, or administrative proceeding or hearing on device manufacturing, function, testing protocol(s) and any report or information provided to the division, Department of Revenue or court supervising authority;

(E) Retain all information obtained as a result of each calibration or inspection for a minimum of three (3) years from the date of device removal;

(F) Retain records of installation, calibration, downloads, service, removal and their associated invoices for a minimum of three (3) years from the date of device removal;

(G) Provide, upon request and at no cost, informational materials on devices to the Division of Probation and Parole, the Circuit Courts, and the Department of Revenue for distribution to operators;

(H) Create a printed price list reflecting any and all fees related to ignition interlock services that are not covered in the lease agreement; and

(I) Document any evidence of tampering and circumvention and notify court supervising authority.

(2) A manufacturer shall provide to the division the following:

(A) Proof of insurance that also includes a statement from the insurance company that thirty (30) days' notice will be given to the division prior to cancellation of any insurance required under this rule;

(B) Written notice of any modification or alteration in the components, design, or installation and operating instructions of any certified device;

(C) Satisfactory proof that any modifications or alterations do not adversely affect the device's ability to meet or exceed the standards established by the United States Department of

JOINT COMMITTEE ON

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Transportation, National Highway Traffic Safety Administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices" 78 FR 26849-26867 as published in the *Federal Register* on May 8, 2013 by the National Highway Traffic Safety Administration, 1200 New Jersey SE, Washington, DC 20590 and effective March 8, 2014, and 80 FR 16720-16723 as published in the *Federal Register* on March 30, 2015 and effective March 30, 2015, which are hereby incorporated by reference and made a part of this rule. This paragraph does not incorporate any subsequent amendments or additions to this publication;

(D) A quarterly status report for each certified device that is sent electronically and received by the division on or before the fifteenth (15<sup>th</sup>) of the month immediately following the end of the quarter, and that contains for that quarter the total number of:

1. Devices that were in operation, devices installed during the quarter, devices voluntarily installed during the quarter, devices removed during the quarter, devices that malfunctioned or were defective;
2. Breath tests conducted and breath tests resulting in a BrAC at or above the alcohol set point;
3. Attempts at device circumvention as that term is defined in 7 CSR 60-2.010;
4. Vehicle starts and miles driven between download and calibration appointments; and
5. Number of devices that resulted in a service lockout during the quarter;

The first quarter of each year shall be January 1 through March 31;

(E) Within one (1) business day, electronic notice of any change to the list of authorized service providers for the manufacturer to include any additions, deletions or other changes. Include the company name, location, phone number, contact name for each provider, indicate if the provider is a mobile site or fixed site, and which services are provided at each location (e.g., installation, calibration, removal);

(F) Upon request and at no cost, provide the division or its designee, a copy of all operator files and records;

(G) Notice of and explanation when a device has not transmitted data as outlined in 7 CSR 60-2.030 (1)(I) real-time reporting. Electronic notice will be made once the operator has been contacted or device calibration has occurred, whichever occurs first;

(H) Upon request and at no cost, provide the division or its designee, three (3) devices for periodic compliance testing once a device is certified. One (1) device will be installed in a vehicle and tested for a period of thirty (30) days. The manufacturer will install the device with all anti-circumvention features activated in a vehicle provided by the division, or its designee, and programmed according to the standards and specifications found in 7 CSR 60-2.030 and capable of meeting the requirements found in 7 CSR 60-2.040 through 7 CSR 60-2.050;

(I) Written notification if a certified device is the subject of a proposed sanction, disapproval, suspension, revocation or cancellation of a device by another state or jurisdiction and written notice of the final decision regarding the sanction, disapproval, suspension, revocation, or cancellation by another state or jurisdiction;

(3) A manufacturer shall provide electronic notice to the Missouri Department of Revenue, in a format as determined by the director of revenue, within one (1) working day of device installation, service lockout condition, device removal, and completion of the designated monitoring period.

(4) A manufacturer shall provide to the court ordered supervising authority by a method and in a format as determined by the court ordered supervising authority:

(A) Notice, before the end of the next business day, with the exception of federal holidays, of any instance of operator noncompliance such as any lockout condition, circumvention, violations reset, BrAC at or above the alcohol set point, missed scheduled service date, device removal and other instances of operator noncompliance as determined by the referring court;

(B) Reports every thirty (30) days that contain a summary of violations, the number of starts, the number of miles driven since last calibration, and all instances of tampering, circumvention, violations reset, BrAC at or above the alcohol set point, missed scheduled service date, device removal and other instances of operator noncompliance as determined by the referring court;

(C) Provide to the court ordered supervising authority, upon request, additional reports to include, but not be limited to, records of installation, calibrations, maintenance checks, and usage records.

(5) A manufacturer shall provide to the operator:

(A) Written instructions and hands-on training on how to use and maintain the device;

(B) Written instructions on what type of vehicle malfunctions or repairs may affect the device and what to do when vehicle repairs are necessary;

(C) A twenty-four (24) hour toll-free telephone number for technical information and tow and/or road service in the event of a device malfunction or failure;

1. A call will be answered by a device technician or returned by a device technician within thirty (30) minutes of the original call time;

2. Assistance related to the malfunction or failure of a device should be provided within two (2) hours of the original call time;

3. The device must be made functional or replaced within twenty-four (24) hours from the original call time. In the event of a device malfunction or failure on a federal holiday, the device will be repaired or replaced on the following business day;

(D) Restoration of the vehicle to its original condition after removal of the device;

(E) Access to a separate, enclosed waiting area during device installation and removal; and,

(F) Notification when the device has not transmitted data, as outlined in 7 CSR 60-2.030 (1)(I) real-time reporting, for a consecutive ten (10) day period.

*AUTHORITY: sections 302.060, 302.304, 302.309, 302.440-302.462, RSMo, and 302.525, RSMo Supp. 2013, sections 577.041, 577.600-577.614, RSMo 2000 and RSMo Supp. 2013, and section 226.130, RSMo 2000. \* This rule originally filed as 11 CSR 60-2.040. Emergency rule filed Feb. 5, 1996, effective Feb. 15, 1996, expired Aug. 12, 1996. Original rule filed Feb. 16, 1996, effective Aug. 30, 1996. Moved to 7 CSR 60-2.040, effective Aug. 28, 2003. Emergency amendment filed May 7, 2009, effective July 1, 2009, expired Dec. 30, 2009. Amended: Filed May 7, 2009, effective Dec. 30, 2009. Emergency amendment filed Sept. 12, 2013, effective Oct. 1, 2013, expired March 29, 2014. Amended: Filed Sept. 12, 2013, effective March 30, 2014. Rescinded and Readopted: Filed on March 9, 2018.*

*\*Original authority: 577.600-577.614, see Missouri Revised Statutes and 226.130, RSMo 1939, amended 1993, 1995.*

*PUBLIC COST: This proposed rulemaking will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate.*

*PRIVATE COST: The proposed rulemaking will not cost private entities more than five hundred dollars (\$500) in the aggregate.*

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rulemaking with the Missouri Department of Transportation, Pamela J. Harlan, Secretary to the Commission, PO Box 270, Jefferson City, MO 65102 or Pamela.Harlan@modot.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*