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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 60-2.060 Device Suspension and Decertification.

PURPOSE: This rule clarifies the conditions for which an ignition interlock device may be suspended or decertified.

(1) Suspension and Decertification. If a manufacturer does not comply with the requirements of 7 CSR 60-2.030 through 7 CSR 60-2.050, then the commission is authorized to suspend and/or decertify the manufacturer's device.

(2) Circumstances warranting suspension and/or decertification include, but are not limited to:

- A. Voluntary request by the manufacturer;
- B. Termination or cancellation of liability insurance;
- C. Modification or alteration of the components, design, installation, and operation instructions in such a way that the device no longer meets or exceeds the standards established by the United States Department of 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. Defects in design, materials, or workmanship that appear to cause repeated device failures;
- E. Documented multiple device malfunctions and/or failures;
- F. Instances of device not meeting the standards and specifications of 7 CSR 60-2.030;
- G. Validated complaints from the operator(s) concerning proper device operation;
- H. Instances of the manufacturer not meeting reporting requirements or any other requirements found in 7 CSR 60-2.030 through 7 CSR 60-2.050; and,
- I. Manufacturer or its agent provides false, inaccurate or misleading information relating to device specifications or performance;

(3) Cost. In the event of suspension or decertification, the manufacturer will be responsible for all compliance costs associated with 7 CSR 60-2.010 through 7 CSR 60-2.060 including, but not limited to:

- A. Contacting operator's regarding suspension or decertification;
- B. Removal of decertified devices from the offender's vehicle;
- C. Installation of a new device on the offender's vehicle;
- D. Transfer of all operators' user records and other applicable documents to a location and in a format as directed by the division;

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(4) Suspension. A suspension will last for at least ninety (90) days after the commission's final decision. During this period, the suspended device cannot be installed in a vehicle in Missouri as a new install or replacement for the same or different device. The division reserves the right to notify operators, if deemed necessary under the circumstances. If device malfunctions and/or failures were the basis for the suspension, then commission's decision may require certification testing before the suspension is lifted. A suspension will not exceed one (1) year.

(5) Decertification. A device may be decertified for reasons listed under paragraph two (2) or if corrective action on a suspended device has not been timely and satisfactorily completed. Within thirty (30) days of a final commission decision to decertify, a manufacturer will notify operators of the decertification and will transfer all operators' user records and other applicable documents to a location and in a format as directed by the division. The division reserves the right to notify operators, if deemed necessary under the circumstances. Within thirty (30) days of a final commission decision to decertify, a manufacturer will submit its written plan explaining the process and timeline for removing the decertified devices and installing a certified device selected by the operator. All decertified devices shall be removed and replacement devices installed within one hundred twenty (120) days of a final commission decision. If a device is decertified, then it is ineligible for certification for a period of one (1) year beginning on the date the last device is removed.

(6) Notice. Notice of a suspension or decertification will be sent by certified mail to the manufacturer's representative at the address on file with the division. The notice is deemed received upon receipt or five (5) business days after mailing, whichever occurs first.

(7) Effective Date. A suspension or decertification decision takes effect seven (7) days after notice is received unless the division, in its sole discretion, determines that the device should be suspended or decertified immediately due to a risk to public safety. In that instance, the suspension or decertification takes effect once notice is received or five (5) business days after mailing, whichever occurs first.

(8) Final Decision. The division's decision becomes the final decision of the commission, unless an informal review is requested. If an informal review is requested, then the review panel's decision becomes the commission's final decision.

(9) Informal Review. Within seven (7) days following receipt of notice of a suspension or decertification, a manufacturer may submit a written request for an informal review of the division's decision. The review will be conducted by a three (3) person panel of department personnel, appointed by the department's Chief Engineer. A member of the review panel cannot be personnel actively involved in the division's decision. If an informal review is requested, then the manufacturer will have ten (10) business days in which to submit relevant facts, arguments in favor of its position and supporting documentation to the panel. Information may be submitted electronically or by U.S. mail. The panel will have ten (10) business days to review the submissions and make a decision. Pending completion of informal review process, the suspended or decertified device cannot be installed in a vehicle as a new install or as a replacement for the same or different device.

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 60-2.060. 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 60-2.060, effective Aug. 28, 2003. Amended: Filed May 7, 2009, effective Dec. 30, 2009. 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: This 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.*