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39.03.49 - Rules Governing Ignition Interlock Breath Alcohol Devices

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**IDAPA 39
TITLE 03
CHAPTER 49**

39.03.49 - RULES GOVERNING IGNITION INTERLOCK BREATH ALCOHOL DEVICES

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to Section 18-8008, Idaho Code. (12-26-90)

001. TITLE AND SCOPE.

The purpose of this rule is to establish regulations for certification, installation, repair and removal of ignition interlock breath alcohol devices. (12-26-90)

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, there is no requirement expressed or implied that the device be specifically for ethyl alcohol. (12-26-90)

02. Breath Alcohol Concentration (BAC). The weight amount of alcohol contained in a unit volume of breath, measured in grams Ethanol/two hundred ten (210) liters of breath. (12-26-90)

03. Court (Or Originating Court). The particular Idaho state court that has required the use of an ignition interlock breath alcohol device by a particular individual. (12-26-90)

04. Certification. The approval process required by the Idaho Transportation Department. (12-26-90)

05. Department. The Idaho Transportation Department. (7-1-96)

06. Device. An breath alcohol ignition interlock device. (7-1-96)

07. Ignition Interlock Device. An instrument designed to measure the BAC of an individual and which prevents a motorized vehicle from starting when the BAC exceeds a predetermined and preset level. (7-1-96)

08. Independent Testing Laboratory. A laboratory facility that is not subject to the control of the manufacturer of the device. (7-1-96)

09. Interlock. The state in which a motor vehicle is prevented from starting by a device. (12-26-90)

10. Lessee. The person ordered by a court to drive only vehicles which have certified devices installed. (12-26-90)

11. Manufacturer or Manufacturer's Representative. The person, company or corporation who produces the device, or a recognized representative who sells, rents, leases, installs, maintains and removes the device. (7-1-96)

011. -- 099. (RESERVED).

100. CERTIFICATION PROCESS.

01. Equipment Standards. To be certified, a device must meet or exceed the federal National Highway Traffic Safety Administration's (NHTSA) model specifications for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register/Vol. 57, No.67/Tuesday, April 7, 1992 and are subject to any subsequent standards published by NHTSA. Only a notarized statement and a copy of the Certification Test Report, from an independent testing laboratory performing the tests as specified, will be accepted as proof of meeting or exceeding the standards. The statement shall include the calibration dates and the name and signature of the person in charge of

the tests under the following sentence: All tests on two (2) samples of (model names) _____ manufactured by _____ were conducted in accordance with specifications listed in [the above referenced Federal Register]. (7-1-96)

a. A manufacturer must report to the Department any changes in the design of the device along with a notarized re-certification statement from an independent testing laboratory thirty (30) days prior to implementing device usage in Idaho. (7-1-96)

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. (7-1-96)

02. Proof of Insurance. The manufacturer shall annually provide to the Idaho Transportation 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 include defects in product design and materials, as well as workmanship during manufacture, calibration, installation and removal. The proof of insurance shall include a statement from the insurance carrier that thirty (30) days' notice shall be given to the Idaho Transportation Department prior to cancellation. (7-1-96)

03. Hold Harmless. The manufacturer shall provide to the Idaho Transportation 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: (7-1-96)

a. The state of Idaho; and (7-1-96)

b. The court that ordered the installation of the device. (7-1-96)

c. The county, its employees and designees administering the program. (7-1-96)

04. Manufacturer's Reporting Requirements. The manufacturer shall provide the Department a description of its installation and monitoring procedures, maintenance technician training program, and set of criteria for monitoring and reporting offenders. (7-1-96)

05. Criteria for Certification and/or Revocation. Upon receipt of a statement from a testing laboratory that two (2) samples of a device have successfully passed the test procedures specified in this rule, the required documentation, and the certificate of insurance, the Department shall issue a Letter of Certification for the device. The Letter of Certification shall 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: (7-1-96)

a. Evidence of repeated device failures due to gross defects in design, materials and/or workmanship during manufacture, installation or calibration of the device; (12-26-90)

b. Notice of cancellation of manufacturer's liability insurance is received; or (12-26-90)

c. Notification that the manufacturer is no longer in business. (12-26-90)

d. Voluntary request of the manufacturer to remove a device from the certified list; (7-1-96)

e. Any other reasonable cause to believe the device was inaccurately represented to meet the performance standards; or (7-1-96)

f. Failure to submit required reports to the Department. (7-1-96)

06. Notice of Revocation. Unless necessary for the immediate good and welfare of the public, revocation shall be effective ten (10) days after manufacturer's receipt of notice, which shall be sent via certified mail, return receipt requested. A copy of each Notice of Revocation shall be provided to all originating courts or their designees and lessees utilizing the revoked device with notice to contact the manufacturer for a replacement. (7-1-96)

07. Removal of Revoked Devices. Upon revocation or voluntary surrender of a certified device, a manufacturer shall be responsible for removal of all like devices from lessees' vehicles. (7-1-96)

a. A manufacturer shall be responsible for any costs connected with removal of their revoked devices from lessees' vehicles and the installation of certified replacement devices. (7-1-96)

08. Right to Appeal. Upon voluntary surrender, or revocation of a Letter of Certification for a manufacturer's device, manufacturers may request a review of revocation. Such request shall be submitted to the Department, in writing, within twenty (20) days of revocation. (7-1-96)

09. Repository for Letter of Certification. The Idaho Transportation Department shall maintain a file of all existing Letters of Certification. The Department shall provide the administrative office of the courts and each trial court administrator or designee of the court with a copy of each Letter of Certification. (7-1-96)

101. TEST SPECIFICATIONS FOR CERTIFICATION.

A device must meet or exceed the federal National Highway Traffic Safety Administration's safety specifications and safety tests for breath alcohol ignition interlock devices (BAIID) as published in the Federal Register/Vol.57, No.67/ Tuesday, April 7, 1992 and are subject to any subsequent standards published by NHTSA. (7-1-96)

01. Ground Elevation Accuracy. The BAIID must maintain accuracy to ground elevations up to two and one half (2.5) km. (7-1-96)

02. High Altitude and Low Temperature Accuracy. The BAIID must maintain accuracy in combined situations of high altitude (two and one half kilometers (2.5 km.)) and low temperature (minus forty degrees Centigrade (-40° C)). (7-1-96)

102. -- 199. (RESERVED).

200. INSTALLATION STANDARDS.

01. Installer. Device must be installed by a manufacturer or its representative. (12-26-90)

02. Unauthorized Persons. Lessees or other unauthorized persons shall not be allowed to watch the installation of the device. (12-26-90)

03. Security. Adequate security measures must be taken to prevent unauthorized persons from accessing secured materials (tamper seals, installation instructions, etc.) (12-26-90)

04. Installation Instructions. Each manufacturer shall develop written instructions for installation of his device(s). (12-26-90)

05. Vehicle Condition Screen. The installer must screen vehicles for acceptable mechanical and electrical condition, in accordance with the device manufacturer's instructions. (12-26-90)

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. (12-26-90)

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. (12-26-90)

08. Device Removal Standards. Whenever 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. (12-26-90)

201. -- 299. (RESERVED).

300. DEVICE MAINTENANCE AND REPORTS.

01. Device Examination Schedule. Each lessee shall have the device examined by a manufacturer or its 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 to a maximum of one hundred and twenty (120) days. (12-26-90)

02. Report of Examination. A report on the results of each check shall be provided to the trial court administrator or designee of the originating court. The report shall reflect what adjustments, if any, were necessary in the calibration of the device, any evidence of tampering, and any other available information the originating court may order. (7-1-96)

03. Corrective Action Report. Complaints by the lessee shall be accompanied by a statement of the actions taken to correct the problem(s). Reports of the problem(s) and action(s) taken shall be submitted to the originating court or its designee within three (3) business days. (7-1-96)

04. Additional Report. An additional report shall be provided to the Idaho Transportation 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 be categorized by: (7-1-96)

- a. Customer error of operation. (12-26-90)
- b. Faulty automotive equipment other than the device. (12-26-90)
- c. Apparent misuse or attempts to circumvent the device, causing damage. (12-26-90)
- d. Device failure due to material defect, design defect, workmanship errors in construction, installation or calibration. (12-26-90)

301. DEVICE SECURITY.

01. Tampering Precaution. The manufacturer shall take all reasonable steps necessary to prevent tampering or physical circumvention of the device. These steps shall include special locks, seals and installation procedures that prevent and/or record evidence of tampering and/or circumvention attempts. (12-26-90)

02. Device Identification. Each device shall be uniquely serial numbered. All reports to the trial court administrator or designee of an originating court concerning a particular device shall include the name and address of the lessee, the originating court's file number, and the unique number of the device. (7-1-96)

03. Warning Label. The manufacturer shall provide a label containing a notice (at least ten (10) point boldface type) on each certified device reading: **WARNING: ANY PERSON TAMPERING, CIRCUMVENTING, OR OTHERWISE MISUSING THIS DEVICE MAY BE SUBJECTED TO CRIMINAL SANCTIONS.** (Section 18-8009, Idaho Code) (12-26-90)

- a. The label shall be capable of being affixed to the device. (12-26-90)
- b. The manufacturer shall provide an area on the outside of the device where the label is most likely to be seen by the operator of the vehicle. (12-26-90)
- c. The label must be affixed to the device at all times while installed in the lessee's vehicle. (12-26-90)

04. Physical Anti-Tamper Security. (7-1-96)

- a. Use unique, easily identifiable wire, covering or sheathing over all wires used to install the device,

which are not inside a secured enclosure. (12-26-90)

b. Use unique, easily identifiable covering, seal, epoxy or resin at all exposed electrical connections for the device. (12-26-90)

c. Make all connections to the vehicle under the dash or in an inconspicuous area of the vehicle. (12-26-90)

d. Use unique, easily identifiable tamper seal, epoxy or resin at all openings (except breath or exhaust ports). (12-26-90)

05. Personnel Requirements. Devices must be installed, inspected, tested and maintained by a qualified manufacturer or its representative. (12-26-90)

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 condition. (12-26-90)

b. Personnel whose functions and duties include installing, calibrating, and performing tamper inspections and reporting duties, should not have been convicted of a crime substantially related to the convicted lessee's violation. This may include, but is not limited to, persons convicted of: Driving under the influence (DUI) within the last five (5) years; more than one (1) DUI overall; probation violation; and perjury. (7-1-96)

c. For the purposes of this section, "convicted" shall include entering a plea of guilty, nolo contendere, or to have been found guilty or been given a withheld judgment. (12-26-90)

302. -- 399. (RESERVED).

400. MANDATORY OPERATIONAL FEATURES.

Notwithstanding other provisions of this rule, a certified device must comply with the following: (12-26-90)

01. Device Setpoint. The actual setpoint of each device to interlock when the breath sample is provided shall be determined by the originating court. The capability to change this setting shall be made secure, by the manufacturer, to prevent unauthorized adjustment of the device. (7-1-96)

401. OTHER PROVISIONS.

Notwithstanding other provisions of this rule, each manufacturer of a certified device: (12-26-90)

01. Repair Deadline. Shall 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. (12-26-90)

02. Statement of Charges. Shall provide the originating court or its designee and the lessee a statement of 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. (7-1-96)

03. Notice of Installation. Upon installation of each device, the manufacturer or its representative will provide the trial court 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. (7-1-96)

04. Notice of Charges. Shall provide written notice to the Idaho Transportation Department and each trial court administrator or designee of the court a statement of charges for each device model. (7-1-96)

05. Nationwide Service Locations. Shall provide to all lessees at the time of installation: (12-26-90)

a. A list of all calibration/service locations in the continental United States. The list shall include the business name, address and telephone number of all such locations. (12-26-90)

b. A twenty-four (24) hour telephone number to call for service support for those who may be traveling outside service areas. (12-26-90)

06. Statewide Service Locations. Shall provide to all lessees at the time of installation: (7-1-96)

a. A list of all calibration/service locations in the state of Idaho. The list shall include the business name, address and telephone number of all such locations. (7-1-96)

b. Shall notify the Idaho Transportation Department of the location, including address, phone number and contact person, of each installation station in Idaho. (7-1-96)

07. Attempts to Disobey Court Order. Shall report to the originating court or its designee any requests to disconnect or circumvent, without court order, any device of their own or another manufacturer. (7-1-96)

08. Removal of Device. Shall advise the originating court or its designee prior to removing the device under circumstances other than: (7-1-96)

a. Completion of sentence or other terms of a court order. (12-26-90)

b. Immediate device repair needs. (12-26-90)

09. Substitute Device. Whenever a device is removed for repair and cannot immediately be reinstalled, a substitute device shall be utilized. Under no circumstances shall a lessee's vehicle be permitted to be driven without a required device. (12-26-90)

402. REMOVAL PROCEDURES.

When so notified in writing by the originating court, the manufacturer shall 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 be forwarded to the originating court or its designee and the Idaho Transportation Department. (7-1-96)

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. (12-26-90)

01. Testing Lab. (12-26-90)

a. Test devices for minimum standards. (12-26-90)

b. Submit notarized statement and copy of the Certification Test Report to manufacturer. (7-1-96)

c. Keep log of test results. (12-26-90)

02. Manufacturer. (12-26-90)

a. Submit device to lab for testing. (12-26-90)

b. Install, maintain and remove device as required by court. (12-26-90)

c. Set interlock level as established by court. (12-26-90)

d. Submit quarterly (or more frequent) maintenance reports to originating court or its designee. (7-1-96)

- e.** Submit quarterly reports to Idaho Transportation Department summarizing periodic device examinations and all complaints received. (7-1-96)
- f.** Provide court, lessee and Idaho Transportation Department with statement of charges and/or any additional fees. (12-26-90)
- g.** Provide lessee with service and repair information. (12-26-90)
- h.** Provide Idaho Transportation Department with proof of insurance annually. (7-1-96)
- i.** Report any attempt to disconnect any device to originating court or its designee. (7-1-96)
- j.** Advise court or its designee before removing any device unless authorized or in need of immediate repair. (7-1-96)
- 03. Idaho Transportation Department.** (12-26-90)

 - a.** Maintain a list of known calibration/service locations in the state. (7-1-96)
 - b.** Issue Letter of Certification for each device model to manufacturer (copy to courts or their designees). (7-1-96)
 - c.** When necessary, revoke Letter of Certification (copy to courts or their designees). (7-1-96)
 - d.** Maintain file of all letters. (12-26-90)
 - e.** Maintain file of statement of charges (by device model). (12-26-90)
 - f.** Maintain proof of insurance. (12-26-90)
- 04. Court.** (12-26-90)

 - a.** The judge will order device installation (including interlock setting), maintenance and removal. (12-26-90)
 - b.** The trial court administrator or designee of the originating court will receive maintenance reports on each device installed pursuant to order. (7-1-96)
 - c.** The trial court administrator or designee of the originating court will receive statement of charges. (7-1-96)
 - d.** The trial court administrator or designee of the originating court will receive manufacturer's reports of attempts to disconnect any device. (7-1-96)
- 05. Lessee.** (12-26-90)

 - a.** Have device installed and maintained as ordered by court. (7-1-96)
 - b.** Receive statement of charges and remit fees as scheduled. (7-1-96)
 - c.** Receive and comply with guidelines regarding repairing and maintaining the vehicle in good working order. (7-1-96)
- 501. -- 999. (RESERVED).**

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