

STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

PROPOSED ORDER AMENDING PERMANENT RULE

The Wisconsin Department of Transportation proposes an order to:

Create ss. Trans 313.03(3m), 313.03(4m), 313.03(14m), 313.03(16g), 313.03(16g) (note), 313.03(16m), 313.03(16r), 313.03(20m), 313.03(21m), 313.03(22m), 313.03(23m), 313.03(24), 313.03(26m), 313.03(26m)(note), 313.04(1)(b), 313.04(2)(b)8., 313.04(2)(b)9., 313.04(2)(b)10., 313.04(2)(b)11., 313.04(2)(b)12., 313.04(2)(b)13., 313.04(2)(b)14., 313.04(2)(b)15., 313.04(2)(b)16., 313.04(2)(b)17., 313.04(2)(b)18., 313.04(2)(b)18. (note), 313.04(2)(b)19., 313.04(2)(b)20., 313.04(2)(c), 313.04(3m), 313.04(4)(d), 313.04(4)(e), 313.04(5)(bm), 313.04(5)(ce), 313.04(5)(ce) (note), 313.04(5)(cm), 313.04(5)(cs), 313.04(5)(d)2m, 313.04(5)(d)3m, 313.04(5)(d)8, 313.04(5)(dm), 313.04(5)(dm) (note), 313.04(5)(e)3 (note), 313.04(5)(e)4, 313.04(5)(f), 313.04(5)(g), 313.04(5)(h), 313.04(5)(h) (note), 313.04(5)(i), 313.04(5)(j), 313.04(5)(k), 313.04(5)(l), 313.04(5)(m), 313.04(5)(n), 313.04(5)(o), 313.04(6), 313.04(6) (note), 313.07(1) (note), 313.10(1)(b)1 (note), 313.10(1)(c), 313.10(3) (e) (note), 313.10(4)(e), 313.10(9)(b), 313.10(10), 313.10(11), 313.105, 313.13(2)(b), 313.13(2)(b) (note), 313.14(2) (note), 313.14(3), and 313.16 ; **amend ss.** Trans 313.01, 313.02, 313.03(7), 313.03(8), 313.03(9), 313.03(10), 313.03(17), 313.03(20), 313.03(21), 313.03(26), 313.03(27), 313.04(2)(a), 313.04(2)(b), 313.04(2)(b)3, 313.04(2)(b)4, 313.04(2)(b)5, 313.04(2)(b)5(note), 313.04(2)(b)6, 313.04(3), 313.04(4)(a), 313.04(4)(b), 313.04(5), 313.04(5)(a), 313.04(5)(c), 313.04(5)(d), 313.04(5)(d)3., 313.04(5)(e), 313.04(5)(e)2., 313.04(5)(e)3., 313.06, 313.07(2), 313.07(3), 313.07(4), 313.10(1)(a), 313.10(1)(b), 313.10(1)(b)1, 313.10(4)(a), 313.10(4)(c), 313.10(4)(d), 313.10(5)(b), 313.10(5)(c), 313.10(6)(b), 313.10(7), 313.10(8), 313.12, 313.13(1), 313.13(2), 313.13(3), 313.13(4), and 313.15; **repeal ss.** Trans 313.01 (note), 313.03(14) 313.03(19), 313.03(25), 313.04(5)(e)1., 313.10(6)(b) (note), and 313.11; **repeal and recreate ss.** Trans 313.04(5)(b), 313.07, 313.08, 313.09, 313.10(2), 313.10(3)(e), and 313.14(1); **renumber and amend s.** Trans 313.01(1)(a); and to renumber s. 313.10(9)

The Statement of Scope for this Permanent Rule, SS 111-18, was approved by the Governor on November 7, 2018, published in Register No. 755A2 on November 12, 2018, and approved by Secretary of the State of Wisconsin Department of Transportation (“Department”) Dave Ross, as required by s. 227.135 (2), Stats, on February 1, 2017. The analysis below was prepared by the Department.

ANALYSIS

Statutes Interpreted: Wis. Stat. ss. 110.10, 343.10(2)(f), 343.10(5)(a)3., 343.10(7)(cm), 343.10(8), 343.13(3), 343.301, 343.38(5), 347.413, and 940.09(1d).

Statutory Authority: Wis. Stat. ss. 110.10, 85.16(1), 227.10(1), 343.02, 343.06(1)(d) and (h), and 343.305(11).

Explanation of Agency Authority: Wis. Stat. s. 110.10 charges the Department of Transportation with the responsibility of promulgating rules for the implementation of an ignition interlock device program that will be conveniently available to persons throughout this state. The statute also mandates that the rules include provisions regarding all of the following:

- (1) Selecting persons to install, service and remove ignition interlock devices from motor vehicles.
- (2) Periodically reviewing the fees charged to a vehicle owner for the installation, service and removal of an ignition interlock device.
- (3) Requiring ignition interlock device providers operating in this state to establish pilot programs involving the voluntary use of ignition interlock devices.
- (4) Requiring ignition interlock device providers operating in this state to provide the department and law enforcement agencies designated by the department with installation, service, tampering and failure reports in a timely manner;
- (5) Requiring ignition interlock device providers operating in this state to accept, as payment in full for equipping a motor vehicle with an ignition interlock device and for maintaining the ignition interlock device, the amount ordered by the court under s. 343.301(3)(b), if applicable.
- (6) Requiring ignition interlock device providers to notify the department of any ignition interlock device tampering, circumvention, bypass or violation resets, including all relevant data recorded in the device's memory.

(7) Requiring the department, upon receiving notice from a device provider related to an event described in (6), to immediately provide the notice and data from that event to the assessment agency that is administering the violator's driver safety plan.

Wis. Stat. s. 85.16 provides authority for the department to make reasonable and uniform orders and rules deemed necessary to the discharge of the powers, duties and functions vested in the department. It also allows the department to prescribe forms for applications, notices and reports required by law to be made to the department or which are deemed necessary to the efficient discharge of all powers, duties and functions, and to prescribe the format and content of the forms and the mechanism or manner by which those applications, notices and reports may be filed or submitted to the department.

Wis. Stat. s. 227.10(1) requires all state agencies to promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. This rulemaking sets forth general policies and interpretations of statutes related to the ignition interlock program in this state.

Wis. Stat. s. 343.02 directs the department to administer and enforce chapter 343, Stats., and provides authority for the department to promulgate rules the secretary considers necessary for that purpose. Any rules promulgated may not conflict with and must be at least as stringent as standards set by the federal commercial motor vehicle safety act, 49 USC 31301 to 31317 and the regulations adopted under that act. The statute also documents that the state of Wisconsin assents to the provisions of those federal laws and regulations, and declares that the state will make provisions to implement and enforce those laws and regulations so as to ensure receipt by this state of any federal highway aids that have been or may be allotted to the state under 23 USC 104 (b) (1), (2), (5) and (6), including all increased and advanced appropriations.

Related Statute or Rule: Section 343.301 establishes the basis for court-ordered installation of breath-alcohol ignition interlock devices ("BAIIDs") in Wisconsin. Courts are required to order a person's operating privilege restricted to operating BAIID-equipped vehicles if the driver refused chemical tests or

is convicted of repeatedly operating while intoxicated or having an alcohol concentration of 0.15 or more as a first offender. s. 343.301(1g), Stats. Courts are also required to order the driver to install a BAIID on each of his or her vehicles, but can exclude vehicles such as motorcycles on which a device cannot currently be installed, or exclude vehicles due to the financial burden installation would cause the driver. s. 343.301(1g)(am) and (1m), Stats. The statute specifies that the BAIID operating restriction begins upon entry of the court order and length of time it remains effective. s. 343.301(2m), Stats. The statute also provides that the court may limit the expense to impoverished consumers to one-half the cost per day of installing and maintaining the device. s. 343.301(3)(b), Stats.

Section 343.10, Stats., and Ch. Trans 117, Wis. Admin. Code, which deal with the issuance of occupational licenses, are also related to this proposed rulemaking. Subdivision 343.10(5)(a)3., Stats., provides that if a court orders a driver's operating privilege restricted to operating breath alcohol ignition interlock device ("BAIID") equipped vehicles, any occupational license the department issues must include that restriction. s. 343.10(7)(cm), Stats., prohibits the department from issuing such an occupational license until the applicant proves that the motor vehicle the applicant will be permitted to operate has been equipped with a functioning BAIID. Court authority to issue BAIID orders is found in s. 343.301, Stats.

Other licenses issued to drivers subject to a BAIID order also must contain a BAIID restriction. ss. 343.13(3) and 343.38(5), Stats.

Behavioral requirements related to BAIIDs and penalties for violations of those requirements are established in s. 347.413, Stats.

Plain Language Analysis: This rulemaking is intended to update Ch. Trans 313 to reflect changes in legislation, accommodate changes in ignition interlock design, features, performance, programming capability of, consider best practices recommended by the American Ignition Interlock Program Administrators (AIIPA) and the American Association of Motor Vehicle Administrators (AAMVA) and consider changes that have been implemented by neighboring states.

Chapter Trans 313 was first adopted in 1993, when installation of a breath alcohol ignition interlock device ("BAIID") was one option allowed to reinstate operating privilege after conviction for operating a

motor vehicle while intoxicated. In 1999, Wisconsin Act 109 added voluntary installation of an ignition interlock device as an alternative to vehicle immobilization. At that time, the chemical testing section took a more active role to approve devices for use by offenders.

The early BAIIDs were prone to interference from chemicals other than alcohol, had limited functionality, and could be easily bypassed. Over time, BAIID providers incorporated anti-circumvention sampling techniques to reduce the likelihood that a pump or other air supply could be substituted for human breath. At that time, accessing the data stored in the device required removal of the handset from the vehicle and physically printing pages and pages of data that was not easily read or interpreted. At that time, there were no requirements to ensure a device was properly calibrated, a maintenance requirement that must be met in order for a device to provide a reliable chemical analysis result. Early devices did not provide a means of determining who submitted a breath sample or who was operating the vehicle at the time the test was provided. Because 60 days or longer could pass between the time a sample was submitted and the time the results were retrieved from the device, it was very difficult to determine who was responsible for the failed sample. Accordingly, the devices and reports from the devices provided limited value to law enforcement and treatment providers.

Modern BAIIDs make use of electrochemical fuel cells to measure alcohol. Unlike the earlier devices, these devices do not identify other compounds as if they are alcohol. The internal workings of modern BAIIDs can incorporate technology that evaluates a sample to determine whether detected values for humidity, temperature, or the chemical composition of the sample are consistent with human breath. Those technologies make successful circumvention more challenging. Instead of multi-color lights and scrolling LEDs, modern devices have liquid crystal and full-color displays. Devices can now incorporate cell phone, wi-fi, or other electronic communication technologies to upload data remotely for official use and storage in an online reporting system. Virtually all devices currently marketed in the U.S. have an option to mount a small camera in the vehicle, which has the advantage of allowing positive identification of the person submitting a breath sample or attempting to circumvent the BAIID.

In this rulemaking, the department proposes to update ch. Trans 313 to incorporate these technological advances and adopt best practices of consortium groups that result in more uniform device and reporting requirements nationwide. Each of the surrounding states, Minnesota, Iowa, Illinois, and Michigan have updated their rules and regulations to incorporate these improvements in recent years. While drafting the proposed rule, we incorporated many of these improvements, particularly in the areas of applications for approval, device function, and data reporting.

This rulemaking also proposes to amend s. Trans 313.01 to update statutory references in that section. The Wisconsin statutes related to BAIIDs in Wisconsin have been significantly changed since the Department promulgated Ch. Trans 313 in 1993.

The department proposes to update the definitions contained in s. Trans 313.03 to reflect changes in how ignition interlock devices function, current industry trends, to adopt industry-standard vocabulary, and to incorporate best practices recommended by the American Ignition Interlock Program Administrators (AIIPA) and the American Association of Motor Vehicle Administrators (AAMVA).

New definitions included in this section include 313.03(3m), which adds a definition for “alert mode” to address automotive technology advances. Older vehicles had standard headlights and horns that could be activated by direct electrical connection to the vehicle’s lights and horn systems. Many vehicles today utilize a controller area network (CAN bus) through which microcontrollers regulate various vehicle components, including the horn. This modification eliminates traditional wiring for the horn, and greatly complicates the ability to use the horn as a signal that a driver has failed a required BAIID test while driving. Other technological advances in vehicles, including those with motors that are powered by electricity, or a combination of fuel products and electricity, have resulted in changes to language to reflect engine or vehicle operation and are no longer limited to the traditional “ignition.” For example, Trans 313.03(20) now defines “restart” to include activation of electric and hybrid vehicles as well as traditional combustion engine vehicles.

Section Trans 313.03(16g) is proposed to add a definition for “minimum sample acceptance criteria.” Each manufacturer evaluates breath quality in order prevent circumvention of the device. This may include the capacity to monitor for volume, flow, temperature, humidity or any combination of those factors, or to chemically analyze the sample for consistency with the chemical composition of human breath. Each breath sample is assessed to determine whether it is being provided by a human being and to evaluate the sample’s alcohol concentration.

At the time the existing rule was written, a mechanical purge, literally pulling outside air through the device, was required. This has been replaced by automatic clearing and establishing baseline before notifying the user they can provide a breath sample. As a result, the definition for “purge,” in s. Trans 313.03(19), is being deleted as unnecessary.

The existing rule definition for tampering in s. 313.03(9) considered *any* disruption of power to the device to qualify as prohibited tampering. Proposed revisions to that definition and the creation of s. Trans 313.04(5)(k) in this rulemaking would specifically allow removal of the handset when the vehicle is turned off, for vehicle repair and service, and for calibration of BAIID. Allowing the device to be removed when the vehicle is turned off is beneficial in cold weather because it will allow the device to warm up and measure a breath sample more quickly than a device that is stored in a cold car. It will also reduce battery drain required to preheat the device before measuring a sample in cold weather.

Additional new defined terms in proposed s. Trans 313.03(21m), 313.03(16r), 313.03(20m) and 313.03(23m) for “sample sequence,” “passing breath sample,” “result” and “Start sequence” clarify various operations performed by the device and differentiate between functions used when starting a vehicle and those used when it is being operated.

The current rule assumes that manufacturers produce and market BAIIDs and that they employ service centers to install and service the devices and that they would apply for device approval in this state. This rule takes a broader view of the market place and attempts to allow for future development of the industry. Manufacturers produce and repair devices, and those devices must be approved by the Department under this proposed rule. The department uses the term “vendor” to identify the person that markets the

device. Finally, a service center may install or provide limited service for a device, such as exchanging the handset, but may not open the device to service it. Any of these entities may apply to have a device approved for use in the State of Wisconsin. Definitions of “applicant,” “vendor,” manufacturer and “service provider” in amended s. Trans 313.03 reflect this approach.

While the existing rule requires each service center to be at a fixed location, changes to the definition of “service center” in this rulemaking also makes it clear that the state will allow service of BAIIDs by mobile service centers.

Industry standard and AIPA standard vocabulary terms proposed for inclusion as defined terms in the rule are the definition for calibration in Trans 313.03(7), for “violation” in Trans 313.03(26m) and for “permanent lockout” Trans 313.03(17).

Under existing Ch. Trans 313, repeated failed breath alcohol tests can result in a “temporary lockout” that prevents anyone from attempting to start the vehicle for 15 minutes. The department has received numerous complaints regarding this requirement over the years, and it is not a requirement in most states. The department proposes in this rulemaking to eliminate the 15-minute lockout requirement. The department believes the requirement is especially punitive for individuals that struggle to provide samples. A forced delay in starting the car may be problematic or dangerous in sub-zero temperatures. Finally, inadvertent consumption of small amounts of alcohol from a beverage, food, or personal hygiene product, will not result in a significant delay to the driver under the proposed amendments. A person should be able to rinse his or her mouth with fresh water, pass the chemical analysis test, and operate the vehicle. A BAIID will prevent vehicle operation when a subject’s alcohol concentration is above the device’s setpoint. The required delay does nothing to improve that performance.

Other changes or deletions in the definitions will align the chapter with court-ordered sanctions, to properly indicate the name of the unit that is responsible for approval of ignition interlock devices, delete a term that was not included in the chapter (filtering agents) and correct grammatical errors.

The requirements currently contained in section Trans 313.04 include sections on the application, a time for decision, the evaluation process, and standards and specifications. The proposed changes will

more clearly define the application process, adopt the most recent federal model specifications, and, by reorganizing content, more clearly specify requirements for device function and reporting.

One area that has been problematic for the last decade has been ensuring that the operating system (software, firmware, configuration files, and device settings) has not been modified by the manufacturer. The proposed rule requires the device to provide its configuration information as part of its reporting function. This reporting will make it easier for service providers, law enforcement and the department to track modifications made to the device.

Subsection Trans 313.04(1) is proposed to be split into two sections to ensure that any person distributing a device in this state does so with a compliant BAIID program. Accordingly, the proposed rule makes device approval personal to the applicant. If an applicant sells or transfers its business to a third party, that third party needs to re-apply for device approval in this state. Retesting of the device is not required, provided it is unchanged, but review of the new applicant's practices, procedures and policies is undertaken so that the state can be satisfied that the devices will continue to be distributed and serviced in a manner conforming to the requirements of Wisconsin law by the new applicant.

Section Trans 313.04 describes the application process for approval of a BAIID in Wisconsin. This rulemaking proposes a number of changes to the rule consistent with best practice recommendations of both AAMVA and AIIIPA. The application process as defined by the proposed rule, requires a standard set of materials be submitted as part of the application. These materials are used by the department to determine whether a proposed device meets the requirements contained in this chapter.

As proposed to be amended by this rulemaking, s. Trans 313.04 would require applicants for BAIID approval to provide various information as part of that application. Operating instructions, training materials, repair and quality assurance protocols, and maintenance and removal instructions are provided as part of the application to facilitate testing of the device consistent with its intended operation and maintenance procedures and to provide a basis for determining whether service providers for the device are following manufacturer-specified protocols in their service procedures. The department proposes to require program participants to submit copies of contracts or other agreements used between the program

participant and its customer. Access to these documents and participant charges for device installation, use and removal will enable the department to better respond to citizen questions and complaints. It should also reduce complaints from citizens about alleged unscrupulous practices by some providers. The department believes that transparency in contract provisions and fees should enhance competition in the BAID marketplace.

Other materials required are proof that the device has met federal regulatory testing protocol requirements and authorization to obtain information from other states that have reviewed a device. These materials will reduce the need for Wisconsin to repeat testing conducted by other states or labs and assist in the evaluation of the suitability of a device for use in this state. Evidence of an applicant's valid legal status to conduct business in this state and contact information for its registered agent, if any, is also required.

The BAID device applicant must agree to provide testimony in court if its participation is needed for prosecution of a BAID restricted driver who violates the laws related to installation or use of the device. State employees overseeing the interlock program would probably not qualify as expert witnesses under s. 907.02, Stats.

Finally, the proposed rule requires the applicant to promptly respond to questions or requests for information. The primary reason for this requirement is to keep an evaluation moving along as quickly as possible to reduce delay for other applicant devices waiting to be tested. To facilitate orderly processing of applications, the rule proposes to create a queue of pending applications and a procedure to promptly work through requests for approval in queue order. This should provide more predictability for applicants regarding the expected timeframe for department evaluation of a device.

The evaluation process may be the most important portion of the device approval process. Department staff verifies device performance, functionality, and reporting requirements contained in this chapter by testing one or more standalone units in a laboratory and then, after ensuring proper function, in a state-owned vehicle. The only way to successfully and uniformly conduct some of these tests is to deactivate settings that identify attempts to circumvent the device. This section specifies that the applicant

must provide test devices with differing configurations to facilitate this testing. It requires that the department have immediate access to test data in order to speed up the evaluation process. In the event a device does not pass, s. Trans 313.04(4)(e) provides for a 6-month waiting period before re-evaluation can be started. The department believes that period allows ample time for an applicant to address deficiencies in their device revealed in earlier testing. This will hopefully result in an approval from the department at the following evaluation and provide an opportunity for the department to evaluate other instruments in the queue.

The standards and specifications for ignition interlock approval by the department have been updated to incorporate the current (2013) NHTSA Model Specification and update the street address of the program. The current regulation incorporates 1992 Federal Standards that are far out of date.

Consistent with adopting industry standards, this proposed rule would allow a driver to attempt an unlimited number of tests within a specified timeframe. By not limiting the number of attempts our program will become consistent with industry standards and national trends and regional requirements. The current regulation allows maximum of three sample attempts in a five-minute interval, which has proven to be a problematic feature for device manufacturers to program into devices. This regulatory change will make Wisconsin's program consistent with those of our neighboring states as well as AIIPA and AAMVA best practices related to this issue.

Another industry standard proposed for adoption as a new requirement is to obtain confirmation samples for failed retests. This provides for a driver who appears to have submitted a failing sample with an opportunity to provide another sample to verify alcohol concentration. These confirmation samples are especially helpful to distinguish between what is commonly referred to as false positive samples (an alcohol result from eating, drinking, or environmental contamination) and actual alcohol consumption. It is not uncommon for samples to be aborted if a user faces traffic that requires his or her full attention or some other event, such as sneezing, interrupts the sample process. Consistent with requirements in other states, the department proposes that devices not enter alert mode until a confirmation sample is obtained or refused.

The initial start sequence for a BAIID-equipped vehicle is proposed to be modified in similar fashion. Like retest samples, the user will be allowed an unlimited number of attempts to start the vehicle. This rule also proposes to permit or require devices to incorporate a number of technological advances that have been made in the past decade, such as wireless transmission of data, the use of vehicle-mounted cameras to identify the individual providing samples, and providing online access to uploaded interlock data. These proposed changes are all consistent with current industry standards and similar requirements of Wisconsin's neighboring states. Moreover, they will allow the Wisconsin program to meet the statutory requirements of s. 110.10(4) and (5), Stats. Ideally, access to the data will provide a mechanism for probation and parole agents, treatment officials and the courts, to provide better supervision of those in the program and a means to address noncompliance in a timely manner.

One area where Wisconsin's program would vary from minimum requirements under the federal regulations is that Wisconsin proposes to allow only alcohol-specific devices in this state. Manufacturers that previously distributed semiconductor-based devices have withdrawn them from BAIID use in this state and Wisconsin sees no benefit of allowing that outdated technology to return. Those old technology devices can falsely report alcohol when other interferents are present, such as acetone. In light of the increased value of reporting under the proposed new program, elimination of those old less-reliable devices is important.

This proposed rule updates requirements related to attempts to bypass the device, restarting the vehicle and tamper detection, consistent with current industry standards. It does require devices to correctly report the time at which such events occur.

Because Wis. Stat. s. 343.301 only calls for restriction of class D operating privileges of drivers, it has been possible for drivers subject to an BAIID restriction to legal operate motorcycles without the device. Nonetheless, consistent with now repealed federal law, s. 343.301 also required offenders to install the devices in all of their vehicles including motorcycles. The creation of s. 343.301(1m)(b) by 2019 Act 70 allow courts to refrain from ordering installation of BAIIDs on motorcycles until there is a practical way to accomplish that end. The department proposes to require any motorcycle-installed device to be

weatherproof and to permit hands-free device operation while starting and driving the autocycle or motorcycle. These features will protect the driver and the public, as well as ensure data quality. Unless and until such a device is available and marketed in Wisconsin, s. 343.301(1m)(b) will not require a court to order a motorcycle owner to do the impossible -- install a device on a motorcycle.

The requirements for an ignition interlock data system, Trans 313.04(6) are the department's proposed mechanism for implementing the requirements of data collection and reporting set forth in s. 110.10(4), Stats. The department proposes to initially leverage current industry data collection and reporting systems to provide data access to persons involved in the OWI law enforcement process such as courts, police agencies, corrections, probation and parole agents, assessment agencies, treatment providers, the department, and academic researchers. Whether uploaded at a service appointment or wirelessly transmitted, data is stored in the manufacturer or vendor's data system, who may grant permission to access the data to authorized officials. Those officials would not be granted access to GPS or location data, if collected, unless the customer authorizes its release, a search warrant authorizes it, or for academic research. The regulation also provides an opportunity for development of a more centralized data warehouse to facilitate access to the data. If such a system is developed, BAIID providers would be required to transmit data to that warehouse but would not be required to provide online access to data any longer.

Provisions of the rule related to the possible denial, suspension or revocation of device approval are updated in this rulemaking. Violation of Ch. Trans 313 provisions has always been a basis for such action; this proposed rulemaking would add violation of any state statute as a basis for denial, suspension or revocation of device approval.

Other additional bases for denial, suspension or revocation of device approval include:

- Failing to provide service in an assigned service area.
- Failing to provide notice of service center location changes or discontinuance.
- Failing to maintain an inventory of parts needed to perform needed repairs to devices.

- Failing to provide a device at the cost required under s. 343.301(3)(b), Stats.

Section 110.10(intro), Stats., requires the department to make the BAIID program “conveniently available to persons throughout this state.” Proposed s. Trans 313.09 of this rulemaking would accomplish that statutory requirement adopting a methodology used by neighboring states. If there are geographical areas where service is not provided, an authorized vendor will be selected at random to provide service in that area. A BAIID provider cannot be selected more than once until all providers have been assigned a service area at least once. The rule will allow service to be provided by a mobile unit. Failure to provide service as required is therefore included in the list of offenses that can lead to revocation or suspension of device approval.

For approval for use in Wisconsin, the manufacturer must provide evidence of a sufficient system for maintaining the devices. If the devices become unrepairable due to the passage of time, or are being replaced by newer models, authorization for the old or unrepairable device may be revoked.

Section 343.301(3)(b), Stats., sets requirements BAIID providers must meet with respect to providing service to lower income individuals. The proposed rule requires compliance with the statute as a condition of device being eligible for use in Wisconsin, allowing denial of approval or revocation or suspension of approval if a provider does not comply with the law. The proposed rule also requires the provider of an authorized BAIID to pay the costs related to removal and replacement of any device for which authorization is revoked or suspended.

This rulemaking proposes to update communication requirements between device manufacturers and the department consistent with requirements of Iowa, Illinois and Michigan law. Material modifications made to approved devices need to be communicated to the department. If the manufacturer seeks to avoid this state retesting the modified device, submission of test data substantiating that the modifications do not materially affect device performance is required.

Proposed subsection Trans 313.08(1)(e) makes clear that only a manufacturer or its authorized repair agents may repair the internal components of any device. Section Trans 343.10 is updated to reflect the duties expected of service providers by manufacturers today. They inspect devices for tampering or

circumvention, calibrate devices, exchange components as needed, and maintain the tools and devices needed to carry out those tasks. They do not open the components unless they are a manufacturer-authorized device repair facility. The rule makes clear that service providers are not required to install BAIIDs on motorcycles or commercial motor vehicles, but that they are required to retain evidence and notify the department if they observe indications of tampering or circumvention while servicing a device. Service providers are required to provide instruction on operation of the device and to make sure the customer knows how to and can start their vehicle using the BAIID as part of their device installation protocol. Finally, the rule requires sufficient mouthpieces be available to customers for them to use the device without danger of viral or other pathogen contamination.

Proposed section Trans 313.10(11) would authorize service providers to meet customer needs with mobile service centers. It does require mobile service centers to keep the department apprised of their operations so that the department can audit and review the mobile service center's operation.

Section 347.413, Stats. provides that "No person may remove, disconnect, tamper with, or otherwise circumvent the operation of an ignition interlock device." In s. Trans 313.14, the department makes clear that it interprets this provision as applying to unauthorized removal of the device. The rule allows customers to request a service provider remove a device in order to obtain a different device. It also allows service providers to remove devices of persons who intentionally damage a device, who don't pay for it or otherwise comply with their contract, or whose behavior is offensive or abusive.

Finally, proposed s. Trans 313.16 outlines other conduct that is prohibited as part of a BAIID program. Persons may not discriminate in providing service, cannot change the breath volume required for a sample to less than 1.5 liters of air, change the device programming, configuration, or components of a device, repair a device without manufacturer authorization, or provide information to the customer that results in a lockout and requires the customer to pay fees to service the device. Subsection Trans 313.16(6) proposes to provide that a manufacturer or vendor cannot prohibit a service provider from offering service for another manufacturer's device. Service providers under this rule could service more than one manufacturer's device in the same manner that mechanics may repair any make of automobile. Nothing in

the rule would exempt service providers from any of the training and service requirements a manufacturer or vendor imposes on all service providers.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

The United States Department of Transportation, National Highway Traffic Safety Administration (NHTSA) adopted and published Model Specifications for Breath Alcohol Ignition Interlock Devices (“BAIID”) in 1992. (57 FR 11772) Federally provided model specifications were meant to standardize BAIID certification requirements across jurisdictions. Included in the model specifications document are requirements for device functionality, measurement accuracy and precision including extreme temperature performance, calibration stability, and rolling retesting features. Although many states incorporated NHTSA’s model specifications into their BAIID certification requirements, significant variability remained. Trans 313 was drafted in 1993 and incorporated requirements from NHTSA’s 1992 Model Specifications for BAIIDs

Prompted by widespread requirement variability across jurisdictions and rapidly evolving BAIID technology, NHTSA updated the Model Specifications document, soliciting comments in 2006 and 2010. (71 FR 8048 and 75 FR 61824, respectively). In 2013, NHTSA adopted and published their Model Specifications for BAIIDs. NHTSA’s 2013 Model Specifications for BAIIDs includes changes to device functionality, test procedures, and performance requirements. (78 FR 26853) This revision of Trans 313 proposes to adopt NHTSA’s 2013 Model Specifications for BAIIDs.

Comparison with Rules in Adjacent States:

Illinois, Iowa, Michigan, and Minnesota all have ignition interlock device programs similar to Wisconsin’s. Links to relevant laws, regulations or program materials are provided below and summarized in the table that follows.

Illinois:

- Section 1001.441 Procedures for Breath Alcohol Ignition Interlock Device Conditioned RDPs
<http://www.ilga.gov/commission/jcar/admincode/092/092010010D04410R.html>.
- Section 1001.442 BAIID Provider Certification Procedures and Responsibilities; Certification Procedures and Responsibilities; Certification of BAIIDs; Inspections; BAIID Installer's Responsibilities; Decertification of a BAIID Provider
<http://www.ilga.gov/commission/jcar/admincode/092/092010010D04420R.html>.
- Section 1001.443 Breath Alcohol Ignition Interlock Device Multiple Offender – Compliance with Interlock Program
<http://www.ilga.gov/commission/jcar/admincode/092/092010010D04430R.html>.

Iowa:

- Chapter 158: Ignition Interlock Devices <https://breathalcohol.iowa.gov/files/661.158.pdf>.

Michigan:

- Michigan Vehicle Code Act 300 of 1949, 257.625k Ignition interlock device manufacturer; certification; approval; requirements; rules; cost; notice to department by certifying laboratory; list of manufacturers; BAIID manufacturer; approval of BAIID service center; inspections; prohibited conduct by individual; installation requirements; installer qualifications and requirements; approval; renewal.
[http://www.legislature.mi.gov/\(S\(jcivly55zk2h4yi0itwrkqn4\)\)/documents/mcl/pdf/mcl-257-625k.pdf](http://www.legislature.mi.gov/(S(jcivly55zk2h4yi0itwrkqn4))/documents/mcl/pdf/mcl-257-625k.pdf).
- Michigan Vehicle Code Act 300 of 1949, 257.625l Ignition interlock device; warning label; prohibited conduct; violation as misdemeanor; penalty; impoundment of motor vehicle.
[http://www.legislature.mi.gov/\(S\(uu2x4xuy2fvx1bguz3xbwghh\)\)/documents/mcl/pdf/mcl-257-625l.pdf](http://www.legislature.mi.gov/(S(uu2x4xuy2fvx1bguz3xbwghh))/documents/mcl/pdf/mcl-257-625l.pdf).

- Michigan Vehicle Code Act 300 of 1949, 257.625m Operation of commercial motor vehicle by person with certain alcohol content; arrest without warrant; violation as misdemeanor or felony; sentence; suspension of term prohibited; prior conviction.
[http://www.legislature.mi.gov/\(S\(uu2x4xuy2fvx1bguz3xbwghh\)\)/documents/mcl/pdf/mcl-257-625m.pdf](http://www.legislature.mi.gov/(S(uu2x4xuy2fvx1bguz3xbwghh))/documents/mcl/pdf/mcl-257-625m.pdf).
- Michigan Vehicle Code Act 300 of 1949, 257.625o Ignition interlock device; sale, lease, or installation in vehicle; surety bond.
[http://www.legislature.mi.gov/\(S\(uu2x4xuy2fvx1bguz3xbwghh\)\)/documents/mcl/pdf/mcl-257-625o.pdf](http://www.legislature.mi.gov/(S(uu2x4xuy2fvx1bguz3xbwghh))/documents/mcl/pdf/mcl-257-625o.pdf).
- Michigan Vehicle Code Act 300 of 1949, 257.625q Compliance with MCL 257.625k; investigation and determination by secretary of state; decertification of installer; notice to manufacturer; violation; penalty; suspension or revocation of manufacturer certification; removal from list of approved certified BAIIDs; summary suspension or revocation; hearing; rules.
[http://www.legislature.mi.gov/\(S\(uu2x4xuy2fvx1bguz3xbwghh\)\)/documents/mcl/pdf/mcl-257-625q.pdf](http://www.legislature.mi.gov/(S(uu2x4xuy2fvx1bguz3xbwghh))/documents/mcl/pdf/mcl-257-625q.pdf).

Minnesota:

- Minnesota Administrative Rules 7503.1650 Ignition Interlock Device Program; Qualification
<https://www.revisor.mn.gov/rules/7503.1650/>.
- Minnesota Administrative Rules 7503.1675 Ignition Interlock Device Program; Termination
<https://www.revisor.mn.gov/rules/7503.1675>.
- Minnesota Administrative Rules 7503.1725 Ignition Interlock Device Program; Rehabilitation <https://www.revisor.mn.gov/rules/7503.1725>.

Minnesota Administrative Rules 7503.1775 Employment Exemption

<https://www.revisor.mn.gov/rules/7503.1775>.

A side-by-side comparison of program requirements for Wisconsin and its neighboring states is provided on the following table:

Item	Illinois	Iowa	Michigan	Minnesota
Overview				
Annual Recertification	Required		Required	Required
Calibration & Download	67 days	real time or 67 days		30 days or real time 67 days
Camera	Required	Required	Required	Required
Days to lockout	5	5		5
Fee	\$30 per month			
GPS				If court ordered
Install on CMV	Not Allowed			Not Allowed
Install on motorcycle	Not Allowed			Not Allowed
Medical Exemption	Yes, with rules			Yes, with rules
Oversight Department	Secretary of State	Department of Public Safety	Secretary of State	Driver and Vehicle Services
Real-time reporting	Allowed	Allowed *if used with fuel cell and pass additional testing, can calibrate every 187 days		Allowed
Reciprocity	Yes, with rules			Yes, with rules
Report logs to state	Within 7 days	As requested, 30 days tamper, 10 days missed calibration		
Set-point	0.025	0.025	0.025	0.02
Work Exemption	Yes with rules			Yes with rules
Application Requirements				
Item	Illinois	Iowa	Michigan	Minnesota
Anti-Circumvention	Required, blow pattern or hum			
BAIID Installer Certification			Required	
Data format	State decides			
Dead Zone	75 miles		50 miles	
Fee Schedule reported	Required			

Item	Illinois	Iowa	Michigan	Minnesota
Indemnify State	Required		Required	
Indigent	Required			
Journal	Required		Suggested	
Liability Insurance	Required	Required	Required	
List where operate(d)	Required	List where revoked		
Maintain customer service number	Monday - Friday, normal business hours	24/7/365		
Mobile Install	Allowed with rules			
NHTSA Tests	2013	1992	2013	2013
Provide State Staff Training	> 10 hours			
Provide Testimony	Required			
Purge before sample		Required		
Record Retention	3 years after removal	5 years after removal		
Rectify malfunctioning device	48 hours			
Report (de)install to state	7 days			
Send in part of BAID for calibration/download	allowed			
Service Center certification		Required	Required	
Share all documents (P&P, QC, contract, etc)	Required			
Soft/firm-ware modifications	Pre-approved	Pre-approved	Pre-approved	
Technology Requirements	Not Solid-State	Fuel Cell		
Functionality				
Item	Illinois	Iowa	Michigan	Minnesota
Calibration Window	30 days 1st, 67 days thereafter	67 days or more frequently		
IRT	5-15 min	10 min	15 min	5-7 min
RRT	2 per hour within 45 minutes of IRT	2 per hour	15-45 min	15-45 min
Sample window			5 min, multiple attempts	10 min

Item	Illinois	Iowa	Michigan	Minnesota
Free Restart		Yes, unless in RT or failed	Yes, unless failed	
Horn and/or light	didn't provide RT sample	>0.025	>0.025	
	>0.05			
	tamper			
	circumvent			
Lockout	3 > 0.05 30 min	didn't provide RT sample		
	tamper	RT > 0.025		
	circumvent	1 violation		
	calibration due			
	5 violations 60 days			
	inspection due			
Violation	>10 start fails	fail to complete RT	>0.025	fail start, 5 min lockout, 10 min to provide pass
	fail to complete RT	>0.025	3 start fails (minor)	fail to pass RT
	> 0.05 *	bypass	miss calibration (minor)	refuse RT 3x in 7 days
	Tamper *	tamper	fail to complete RT	Tamper
	Circumvent *		OWI arrest	Circumvention
	Miss Calibration		Tampering	Operate without BAIID
	Operate without BAIID *		Circumvention	≥0.02
	BAIID removed *		3 minor violations	Obstruct image capture
	OWI or alcohol-related charge *		Remove Device	If cancelled license, failure to provide 30 start samples a month
			Operate without BAIID	
Penalty	* = revocation		Minor = 3 month extension	1st = 180-day extension
	1st = 3-month suspension		Major = revocation	2nd = 1-year extension
	2nd = 6-month suspension			3rd + = 545-day extension
	3rd + = 12-month suspension			

Summary of the Factual Data and Analytical Methodologies:

Section 110.10, Stats., charges the department with responsibility for implementing a breath alcohol ignition interlock device (BAIID) program that will be conveniently available to persons throughout the state. The statute requires that the program include approval criteria for BAIID installation, service, and removal, provisions for reporting BAIID installation, use, and a periodic review of fees customers are charged. It also requires that BAIIDs be available to customers without a court order and that courts may order a lower fee structure for those determined to be indigent. The statute directs the department to adopt rules that implement the statute. The decision to promulgate rules in this environment is therefore legislatively directed.

The basic goal of an BAIID program is to improve traffic safety through clearly developed standards that outline the establishment of, participation in, and compliance with the program as well as device functionality requirements. Four main issue areas make up the program: device functionality requirements, provider oversight, participant oversight, and a standardized reporting process. Coleman, Angela, et. al.: *Ignition Interlock Program Best Practices Guide*, American Association of Motor Vehicle Administrators (2018).

While installed, BAIIDs reduce recidivism and improve traffic safety. Kaufman, Elinore and Wiebe, Douglas: *Impact of State Ignition Interlock Laws on Alcohol-Involved Crash Deaths in the United States*, American Journal of Public Health (2016); Teoh, Eric, et. al.: *State Alcohol Ignition Interlock Laws and Fatal Crashes*, Insurance Institute for Highway Safety (2018); Fleming, Susan: *Alcohol Ignition Interlocks Are Effective While Installed; Less is Known About How to Increase Installation Rates*, United States Government Accountability Office (2014). BAIIDs are designed to prevent a driver from operating a vehicle when the driver's breath alcohol concentration is at or above a prohibited alcohol concentration (PAC). BAIIDs also require drivers to provide breath samples periodically while operating the vehicle to ensure that their breath alcohol concentration remains below the PAC. Pre-approval of devices and oversight of their providers ensures consistent BAIID functionality and administration throughout the state.

Ciccel, De Carlo: *Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)*, National Highway Traffic Safety Administration (2013). The department has administered the BAIID program since the 1990's and found it to be effective.

Analysis Regarding Rule's Effect on Small Businesses:

The department has polled companies that manufacture devices currently approved in Wisconsin to determine what modifications or costs they expect would be associated this proposed rulemaking and that would affect small businesses, such as independent service providers. The department has relied on their expertise in preparing this small business analysis.

Effect on Small Business:

The proposed rule would require BAIIDs installed in Wisconsin to include features not currently required in this state, such as a camera and communications technology. Local service centers would be required to train their installers and service professionals on how to install and service these new features. The businesses would need to make modifications to their installation procedures to implement installation of devices with these new features. The department expects this would have a one-time effect on small businesses that act as service providers.

Because the proposed rule would change many of the Wisconsin program's requirements and procedures, the department expects all persons involved in the ignition interlock program including manufacturers, service providers, police, assessment and treatment agencies, courts and department personnel will need to learn about the program changes that result from implementation of any rulemaking related to ignition interlocks.

Agency Contact Person:

Diane Brockley-Drinkman
Chemical Test Section
3502 Kinsman Blvd,
Madison 53704-2549

Phone: 608-243-2952
E-mail: DOTAdminRules@dot.wi.gov

Place Where Comments Should be Submitted, and Deadline: Comments may be submitted to the agency contact person listed above, or through the Legislature’s Administrative Rules website <http://docs.legis.wisconsin.gov/code> until the deadline given in the forthcoming notice of public hearing.

TEXT OF PERMANENT RULE

SECTION 1. Trans 313.01 is amended to read:

Trans 313.01 Purpose. The purpose of this chapter is to ~~establish specifications and requirements of court-ordered ignition interlock devices and their calibration, installation and maintenance as required by s. 347.413 (2), Stats.~~ implement the Wisconsin ignition interlock program consistent with the mandate of s. 110.10, Stats., and consistent with the provisions of ss. 343.10, 343.13(3), 343.301, 343.38(5), 347.413, 940.09(1d), and 940.25(1d) Stats.

SECTION 2. Trans 313.01 (note) is repealed.

SECTION 3. Trans 313.02 is amended to read:

Trans 313.02 Applicability. This chapter applies to all law enforcement agencies, manufacturers, vendors, service providers and other persons engaged in ~~court-ordered~~ ignition interlock device program administration in this state.

SECTION 4. Trans 313.03 (3m) is created to read:

Trans 313.03(3m) “Alert mode” means that the device causes the horn or other pronounced emergency signal audible to other drivers and law enforcement to sound, and the vehicle’s emergency lights or visible secondary visual signals apparent to other drivers and law enforcement to flash.

SECTION 5. Trans 313.03 (4m) is created to read:

Trans 313.03(4m) “Applicant” means any person seeking the approval of a device by going through the device approval procedure described in s. Trans 313.04.

SECTION 6. Trans 313.03 (7) is amended to read:

Trans 313.03(7) “Calibration” means the ~~processes~~process ~~which~~ of testing and adjusting a device to ensure an accurate the device is accurately measuring the alcohol concentration reading on a of a breath sample provided to the device.

SECTION 7. Trans 313.03 (8) is amended to read:

Trans 313.03(8) “Chief of the chemical ~~test~~ testing section” means the person assigned the responsibility for the administration and supervision of the breath alcohol testing, approval and permit program of the department.

SECTION 8. Trans 313.03 (9) is amended to read:

Trans 313.03(9) “Circumvention” means an unauthorized, intentional overt act or attempt to start, drive, or operate a vehicle equipped with a device, without the driver of the vehicle providing all required breath samples. Circumvention includes the provision of bogus samples, tampering, the provision of air samples that enable a driver with a prohibited alcohol concentration to start, drive, or operate a vehicle equipped with a device, and failure to complete any required servicing. Circumvention does not include disconnecting the device from its power source during vehicle or device service, nor disconnection of a handset as authorized under s. Trans 313.04(5)(k).

SECTION 9. Trans 313.03 (10) is amended to read:

Trans 313.03(10) “Customer” means a person who ~~is required by court order to have~~ has a device installed in a vehicle.

SECTION 10. Trans 313.03 (14) is repealed.

SECTION 11. Trans 313.03 (14m) is created to read:

Trans 313.03(14m) “Fixed, permanent service center” means a facility in a permanent building at which device services can be provided.

SECTION 12. Trans 313.03 (16g) and (16m) are created to read:

Trans 313.03(16g) “Minimum sample acceptance criteria” means the sample meets the criteria established by the manufacturer for detection of whether a given breath sample has been provided by a human being.

Trans 313.03(16m) “Mobile service center” means a service center that operates out of a motor vehicle or trailer.

SECTION 13. Trans 313.03 (16m) (note) is created to read:

Trans 313.03(16g) (note) Note: Mobile service centers typically drive to locations at which they are able to provide convenient service to customers.

SECTION 14. Trans 313.03 (16r) is created to read:

Trans 313.03(16r) “Passing breath sample” means a breath sample below a device’s alcohol setpoint and that meets all minimum sample acceptance criteria for that device.

SECTION 15. Trans 313.03 (17) is amended to read:

Trans 313.03(17) “Permanent lockout” means a feature condition of a in which the device in which a prevents a person from operating the vehicle will not start and will not accept a breath sample until the device is reset by a service provider, except as provided in s. Trans 313.04(5)(i).

SECTION 16. Trans 313.03 (19) is repealed.

SECTION 17. Trans 313.03 (20) is amended to read:

Trans 313.03(20) “Restart” means a feature of a device in which a vehicle is successfully started or operated and, when the engine or electric propulsion system stops for any reason, including stalling, the ~~engine~~ vehicle may be restarted within a 2-minute period, without requiring any additional breath samples.

SECTION 18. Trans 313.03 (20m) is created to read:

Trans 313.03(20m) “Result” means a piece of data that categorizes whether a breath sample is provided to the device and, if provided, whether it meets the device’s minimum sample acceptance criteria for breath quality and alcohol concentration.

SECTION 19. Trans 313.03 (21) is amended to read:

Trans 313.03(21) “Retest” means a feature of a device which will require ~~the driver to provide a subsequent breath sample 5 minutes after the engine first starts and additional breath samples at random intervals of 5 to 30 minutes thereafter, while the engine is running~~ sample sequences to be provided while the vehicle is operable.

SECTION 20. Trans 313.03 (21m) is created to read:

Trans 313.03(21m) “Sample sequence” means a list of device-related events beginning with the time a device requests a sample until and including the time a result is recorded and displayed. Device-related events include requests for tests, failure to provide a breath sample or adequate breath sample, measurements made by the device, images taken, and the final result of the sequence.

SECTION 21. Trans 313.03 (22m) is created to read:

Trans 313.03(22m) “Service center” means a location at which service is provided to install, inspect, repair, replace, remove or calibrate devices. The term includes fixed, permanent service center and mobile service centers.

SECTION 22. Trans 313.03 (23m) is created to read:

Trans 313.03(23m) “Start sequence” means the sample sequence initiated when the vehicle is not in operation.

SECTION 23. Trans 313.03 (24) is amended to read:

Trans 313.03(24) “Tampering” means an unauthorized, intentional overt act or attempt to remove, bypass, adjust, alter the settings of, or disable a device or to disconnect a device from its power source. Tampering does not include disconnecting the device from its power source during vehicle or device service, nor disconnection of a handset as authorized under s. Trans 313.04(5)(k).

SECTION 24. Trans 313.03 (25) is repealed.

SECTION 25. Trans 313.03 (26) is amended to read:

Trans 313.03(26) “Vendor” means ~~an approved~~ a retail or wholesale supplier of an approved device, and may include a service provider.

SECTION 26. Trans 313.03 (26m) is created to read:

Trans 313.03(26m) “Violation” means one or more of the following:

- (a) a breath sample that is above the alcohol setpoint.
- (b) failure to provide a passing breath sample within the 5-minute retest window.

SECTION 27. Trans 313.03 (26m) (note) is created to read:

Trans 313.03 (26m) (note) Note: Violation does not include disconnecting the device from its power source during vehicle or device service, nor disconnection of a handset as authorized under s. Trans 313.04(5)(k).

SECTION 28. Trans 313.03 (27) is amended to read:

Trans 313.03 (27) “~~Violations~~ Violation reset” means a feature of a device in which a service reminder is activated due to one of the following reasons: that a device enters a status in which a reminder

is provided to the device user that the device will enter permanent lockout mode unless taken to a service provider by the 7th day following the device entering violation reset status.

SECTION 29. Trans 313.04 (1) amended to read:

Trans 313.04 (1) APPROVAL REQUIREMENT.

(a) No device may be leased, sold, serviced, repaired, installed or used unless the model ~~or type of device has~~ and system software have been approved by the department in accordance with the requirements of this chapter.

SECTION 30. Trans 313.04 (1) (b) is created to read:

Trans 313.04 (1) (b) Device approval is personal to an applicant and cannot be assigned or transferred. Upon sale of production rights to a device, change in ownership of a manufacturer or vendor, or other change resulting in a new person seeking to distribute devices in this state, the successor owner must apply for device approval. The department may waive some or all of the testing of the device portion of the approval process if the new applicant is able to demonstrate that no substantive changes to the device have been made since the prior approval.

SECTION 31. Trans 313.04 (2) (a) is amended to read:

Trans 313.04 (2) (a) ~~A manufacturer~~ An applicant may apply for approval of a device by submitting a written application to the department in the manner prescribed in this chapter on the department's form, and shall certify that the device:

SECTION 32. Trans 313.04 (2) (b) is amended to read:

Trans 313.04 (2) (b) ~~An~~ The applicant shall ~~application for certification shall~~ include all of the following information in an application for device approval:

SECTION 33. Trans 313.04 (2) (b) 3. is amended to read:

Trans 313.04 (2) (b) 3. A detailed description of the device including complete instructions for installation, operation, service, repair and removal, including all documents used as training materials or manuals for installation, maintenance or removal of the device.

SECTION 34. Trans 313.04 (2) (b) 4. is amended to read:

Trans 313.04 (2) (b) 4. Complete description of device functionality including technical specifications describing the device's accuracy, reliability, security, data collection and recording, tamper detection, alert mode and environmental features.

SECTION 35. Trans 313.04 (2) (b) 5. is amended to read:

Trans 313.04 (2) (b) 5. A complete and accurate copy of ~~data from~~ an independent laboratory ~~demonstrating~~ report issued to the applicant substantiating that the device meets or exceeds the minimum federal standards adopted in sub. (5). The report shall be submitted with a notarized certification from the independent laboratory and shall include copies of the laboratory's certificates of accreditation.

SECTION 36. Trans 313.04 (2) (b) 5 (note) is created to read:

Trans 313.04 (2) (b) 5 (note) Note: Wisconsin requires devices to maintain calibration stability over a period of at least 67 days so that the devices may be relied upon as accurate from service date to service date.

SECTION 37. Trans 313.04 (2) (b) 6. is amended to read:

Trans 313.04 (2) (b) 6. A description of the ~~manufacturer's~~ applicant's present or planned provisions for distribution and service of the device in Wisconsin. The ~~manufacturer~~ applicant shall, within 6 months of receipt by the department of an application for approval of a device, provide the ~~chief of the~~ chemical test testing section with a list of all locations in Wisconsin where the device may be purchased, installed, removed, serviced, repaired, calibrated, inspected and monitored.

SECTION 38. Trans 313.04 (2) (b) 8. is created to read:

Trans 313.04 (2) (b) 8. Description of the manner in which the devices are repaired, whether the manufacturer or approved manufacturer-authorized device repair facility, or both, will repair handsets and vehicle modules and the identity and qualifications of manufacturer repair technicians and approved manufacturer-authorized device repair facility repair technicians.

SECTION 39. Trans 313.04 (2) (b) 9. is created to read:

Trans 313.04 (2) (b) 9. Copies of all contracts, lease agreements, and other form documents used by the service providers to enter into a contractual relationship with a customer.

SECTION 40. Trans 313.04 (2) (b) 10. is created to read:

Trans 313.04 (2) (b) 10. A list of all other jurisdictions, as defined in s. 340.01(41m), Stats., in which the applicant applied for approval of the device in that jurisdiction and a statement as to whether the application was approved, denied, withdrawn, remains pending, or was subject to some other disposition. If the application was denied, withdrawn, or subject to some other disposition, the applicant shall provide an explanation for that action on the application and copies of all documents from the jurisdiction documenting the decision in that state and the reasons for that decision.

SECTION 41. Trans 313.04 (2) (b) 11. is created to read:

Trans 313.04 (2) (b) 11. A release authorizing the other jurisdictions to share with the department any and all tests or evaluations of the device, data derived therefrom, and all materials provided to the other jurisdiction in support of that other application.

SECTION 42. Trans 313.04 (2) (b) 12. is created to read:

Trans 313.04(2) (b) 3. A certificate of authority or registration, obtained from the Wisconsin Department of Financial Institutions, in accordance with ss. 180.1501, 183.1004, Stats., or a copy of the articles of incorporation for any cooperative filed in accordance with s. 185.82, Stats., for all manufacturers,

vendors and service providers anticipating to lease, sell, service, repair, install or uninstall the device in Wisconsin.

SECTION 43. Trans 313.04 (2) (b) 13. is created to read:

Trans 313.04 (2) (b) 13. All relevant manufacturer, vendor and service provider documents relating to the quality assurance of the calibration procedure and device verification checks.

SECTION 44. Trans 313.04 (2) (b) 14. is created to read:

Trans 313.04 (2) (b) 14. An affirmation, on the department's form, of all the following:

a. That the applicant will provide, at the request of the state, or any prosecutor in this state, testimony that is sought in any civil or criminal proceeding or administrative hearing regarding the device, its manufacture, use, or function, its installation, repair or removal, interpretation of any recorded report or information from or about the device, or the performance of any duties required under this chapter, without cost to the state, county, municipality, town, police agency, or prosecutor.

b. That the manufacturer will provide statewide service for the device in accordance with s. Trans 313.09(1).

SECTION 45. Trans 313.04 (2) (b) 15. is created to read:

Trans 313.04 (2) (b) 15. Contact information for its registered agent for service of process in this state. The applicant shall notify the department if its registered agent changes.

SECTION 46. Trans 313.04 (2) (b) 16. is created to read:

Trans 313.04 (2) (b) 16. All relevant documents relating to selecting authorized service providers and any training materials provided to authorized service providers.

SECTION 47. Trans 313.04 (2) (b) 17. is created to read:

Trans 313.04 (2) (b) 17. Any other information required on the department's form.

SECTION 48. Trans 313.04 (2) (b) 18. is created to read:

Trans 313.04 (2) (b) 18. If the device has previously been evaluated by the department, an explanation of all modifications made to the hardware and software of the device since that evaluation, a data supported explanation as to why the applicant believes that the modifications made to the device should result in the successful evaluation of the device, and any test results for the device the applicant has performed.

SECTION 49. Trans 313.04 (2) (b) 18 (note) is created to read:

Trans 313.04 (2) (b) 18 (note) Note: This provision is intended to reduce waste by eliminating a requirement to re-evaluate a device that failed testing previously, unless the applicant can explain and demonstrate with evidence the basis for believing the device will pass if retested.

SECTION 50. Trans 313.04 (2) (b) 19. is created to read:

Trans 313.04 (2) (b) 19. A document that clearly describes the manufacturer's or vendor's quality control process for resolving noncompliance with the requirements of ch. Trans 313 by its service providers.

SECTION 51. Trans 313.04 (2) (b) 20. is created to read:

Trans 313.04 (2) (b) 20. An explanation of responsibility for responding to consumer questions and complaints, as required by s. Trans 313.10(2)(c).

SECTION 52. Trans 313.04 (2) (c) is created to read:

Trans 313.04 (2) (c) An applicant shall respond to all the department's inquiries into any deficiency of the applicant's application in a timely manner. If an applicant fails to respond to and remedy any application deficiency brought to its attention by the department within 90 calendar days, the application is considered incomplete and the applicant shall restart the application process.

SECTION 53. Trans 313.04 (3) is amended to read:

Trans 313.04 (3) TIME FOR DECISION. The department shall approve or disapprove a device not later than ~~90~~ 30 days after receipt of all required application materials and completion of all equipment testing.

SECTION 54. Trans 313.04 (3m) is created to read:

Trans 313.04 (3m) EVALUATION QUEUE.

(a) Once the department receives an application with all the information required in sub. (2), the department shall place that application in an evaluation queue maintained by the department.

(b) The department shall evaluate devices in the order its corresponding application is placed in the evaluation queue, except as provided in par. (d).

(c) The department shall notify an applicant at the time its device reaches the point in the evaluation queue that the department is prepared to begin testing the device.

(d) The department may require installation of devices under sub. (4)(b) by a prescribed deadline. Failure to install devices by that deadline may result in the device evaluation being delayed. If an applicant fails to install devices by any required deadline, the department may provide notice to the next applicant in the evaluation queue and evaluate that other device.

SECTION 55. Trans 313.04 (4) (a) is amended to read:

Trans 313.04 (4) (a) ~~At least one model or type of each device~~ The applicant shall be submitted by the manufacturer submit at least two devices, as specified in the application, to the department for evaluation. The department may require different functions or features to be activated for the two devices.

SECTION 56. Trans 313.04 (4) (b) is amended to read:

Trans 313.04 (4) (b) The ~~manufacturer~~ applicant, or its agent on its behalf, shall install the device in a vehicle provided by the department. When applicable, the ~~manufacturer~~ applicant shall provide the department with an adequate supply of disposable mouthpieces ~~with saliva traps~~.

SECTION 57. Trans 313.04 (4) (d) is created to read:

Trans 313.04 (4) (d) During the evaluation period, the applicant shall provide the department with a computer or that has all software needed or some other mechanism that provides the department the ability to access test data from the device in real-time or no later than 24-hours after a test is performed.

SECTION 58. Trans 313.04 (4) (e) is created to read:

Trans 313.04 (4) (e) If the department disapproves a device based on a failed evaluation, an application for the device may not be placed in the evaluation queue under sub. (3m)(a) nor evaluated for 6 months.

SECTION 59. Trans 313.04 (5) is amended to read:

Trans 313.04 (5) STANDARDS AND SPECIFICATIONS. An applicant shall ensure that any device that it distributes for use in the state of Wisconsin meets all the following requirements:

SECTION 60. Trans 313.04 (5) (a) is amended to read:

Trans 313.04 (5) (a) MINIMUM FEDERAL STANDARDS FOR DEVICES. All devices shall meet or exceed the standards established by the U.S. department of transportation, national highway traffic safety administration, identified as "Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIID)" 57 78 Fed. Reg. 67 89, pp. 41772-41787 26849-26867 (April 7, 1992 May 8, 2013). This federal standard is available from the Department of Transportation, Division of State Patrol, Chemical ~~Test~~ Testing Section, ~~4802 Sheboygan Avenue, Room 551, Madison, WI 53707-7912~~ 3502 Kinsman Blvd, Madison 53704-2549.

SECTION 61. Trans 313.04 (5) (b) is repealed and recreated to read:

Trans 313.04 (5) (b) RETEST FEATURE. The device shall be programmed to have a retest feature. The retest feature shall require the driver to submit to a sample sequence no more than 5 minutes after the vehicle is made operable following a successful start sequence. The retest feature shall require additional tests at random intervals of 5 to 30 minutes thereafter until the vehicle ceases operation.

SECTION 62. Trans 313.04 (5) (bm) is created to read:

Trans 313.04 (5) (bm) FAILED RETESTS. The device's retest feature shall be programmed to include these features:

1. **ACTIVATION OF ALERT.** A driver's failure to provide a breath sample that is less than the device's alcohol setpoint shall trigger confirmation retest, as described in subd. 2. If the driver does not provide a passing breath sample in response to the first sample sequence administered as part of a confirmation retest, the device shall activate the device's alert mode until the earlier of the time the vehicle is shut off, or the time the driver provides a passing breath sample to the device.

2. **CONFIRMATION RETEST.** Upon activation of a two-minute retest under subd. 1., a device shall continue to request tests at intervals of no more than 5 minutes until the earlier of the time the vehicle is shut off, or the time the driver provides a passing breath sample to the device.

Note: If the vehicle is shut off before a passing breath sample is provided, a passing breath sample shall be required to restart the vehicle. See par. (j)2. and 3.

3. **FAILURE TO PROVIDE A BREATH SAMPLE.** The device shall be programmed to activate the device's alert mode if the customer fails to provide a passing breath sample within the 5-minute period after a retest sample is required.

SECTION 63. Trans 313.04 (5) (c) is amended to read:

Trans 313.04 (5) (c) TESTING PROTOCOL FEATURE. Whenever the device demands a breath sample, the device shall be programmed to allow a maximum of 3 multiple attempts, but no fewer than

~~3 attempts, to provide a breath sample within a 5-minute period; and to cause the vehicle to enter a permanent lockout condition when service is not completed within 7 days of a service reminder.~~

SECTION 64. Trans 313.04 (5) (ce) is created to read:

Trans 313.04 (5) (ce) START SEQUENCE. The device shall be programmed to allow the customer to operate the vehicle if the device records a passing breath sample during the start sequence. If the device fails to record a passing breath sample in the start sequence, then the device shall prevent the customer from operating the vehicle.

SECTION 65. Trans 313.04 (5) (ce) (note) is created to read:

Trans 313.04(5) (ce) (note) Note: This paragraph does not require a time period to elapse between start sequences. “Temporary lockouts” that were required under prior law are eliminated.

SECTION 66. Trans 313.04 (5) (cm) is created to read:

Trans 313.04 (5) (cm) PERMANENT LOCKOUT FEATURE. The device shall be programmed to cause the vehicle to enter a permanent lockout condition when service is not completed within 7 days of a service reminder.

SECTION 67. Trans 313.04 (5) (cs) is created to read:

Trans 313.04 (5) (cs) VIOLATION RESET. The device shall be programmed to have a violation reset feature that is triggered by any of the following:

1. Three violations.
2. Detection of a one or more tampering or circumvention attempts.

SECTION 68. Trans 313.04 (5) (d) is amended to read:

Trans 313.04 (5) (d) RECORDED DATA. A device shall record data ~~in its memory~~ in such a ~~manner~~ a format that allows the data to be wirelessly transmitted or a hard copy can be printed ~~which and~~ that includes all of the following ~~information~~:

SECTION 69. Trans 313.04 (5) (d) 2m is created to read:

Trans 313.04 (5) (d) 2m. The date and time of any sample reported by the device.

SECTION 70. Trans 313.04 (5) (d) 3. is amended to read:

Trans 313.04 (5) (d) 3. The result of any request for a sample made by the device including, if a breath sample was provided, the date, time and alcohol concentration, in grams per 210 liters, of each breath sample provided to the device.

SECTION 71. Trans 313.04 (5) (d) 3m. is created to read:

Trans 313.04 (5) (d) 3m. Date and time of any activation or deactivation of the device's alert mode.

SECTION 72. Trans 313.04 (5) (d) 8. is created to read:

Trans 313.04 (5) (d) 8. All images captured by the device, including the date and time those images were captured.

SECTION 73. Trans 313.04 (5) (dm) is created to read:

Trans 313.04 (5) (dm) ELECTRONIC TRANSFER OF DATA. The device shall provide a means of electronically transferring the data collected under par. (d) to the database described in sub. (6). Data shall be transmitted as follows:

1. Real time reporting of violations via electronic transmission as provided in par. (m).
2. Downloaded report of all required data fields at time of service for the service interval.
3. In the format specified by the department.

SECTION 74. Trans 313.04 (5) (dm) (note) is created to read:

Trans 313.04 (5) (dm) (note) Note: Under s. Trans 313.07(1)(e), device approval for use in the state of Wisconsin may be revoked, suspended or denied if an entity fails to transmit data in the manner described in this paragraph.

SECTION 75. Trans 313.04 (5) (e) is amended to read:

Trans 313.04 (5) (e) INFORMATION PROVIDED TO CUSTOMER. A device must provide all of the following information to a customer:

SECTION 76. Trans 313.04 (5) (e) 1 is repealed.

SECTION 77. Trans 313.04 (5) (e) 2. is amended to read:

Trans 313.04 (5) (e) 2. ~~A reminder~~ Reminder of the date for service, beginning 7 days prior to a scheduled service date as part of each start sequence.

SECTION 78. Trans 313.04 (5) (e) 3. is amended to read:

Trans 313.04 (5) (e) 3. ~~A warning~~ Reminder as part of each start sequence to obtain service within 7 ~~by the seventh day following the date if any of the following conditions occur a violation reset is initiated.~~

SECTION 79. Trans 313.04 (5) (e) 3. (note) is created to read:

Trans 313.04 (5) (e) 3. (note) Note: See s. Trans 313.03(27).

SECTION 80. Trans 313.04 (5) (e) 4. is created to read:

Trans 313.04 (5) (e) 4. The result of each breath sample.

SECTION 81. Trans 313.04 (5) (f) is created to read:

Trans 313.04 (5)(f) CAMERA FEATURE. A camera feature is required for all devices. The device shall capture a clear and accurate image of the person providing a sample and the entire front seat including

any pass through area to rear positions of the vehicle, so that it is possible to determine whether circumvention is being attempted or utilized. The device shall also capture clear and accurate images of the driver at random intervals while the vehicle is in operation and in all lighting conditions.

SECTION 82. Trans 313.04 (5) (g) is created to read:

Trans 313.04 (5) (g) ALCOHOL QUANTIFICATION SENSOR. The device shall use an alcohol-specific quantification sensor that provides an accurate and reliable measure of alcohol in the breath sample.

SECTION 83. Trans 313.04 (5) (h) is created to read:

Trans 313.04(5) (h) BYPASS SWITCH. Except as provided in pars. (i) and (j), the device may not contain a bypass switch or mechanism that allows a person to bypass, circumvent or manually override the device in any manner, which would allow a person to operate the vehicle without providing a passing breath sample.

SECTION 84. Trans 313.04 (5) (h) (note) is created to read:

Trans 313.04(5) (h) (note) Note: Allowing a person to operate a vehicle using a lockout code in accordance with s. Trans 313.04(5)(i) or to restart a vehicle in accordance with s. Trans 313.04(5)(j) does not violate this requirement.

SECTION 85. Trans 313.04 (5) (i) is created to read:

Trans 313.04(5) (i) LOCKOUT CODE FEATURE. The device may be programmed to allow a person to operate the vehicle by using a lockout code provided by the manufacturer, at its discretion, with the following requirements:

1. A lockout code may only be used to operate the vehicle once in any 60-day service interval.
2. The lockout code is functional only when the device is in permanent lockout.

3. The lockout code is functional for one use only and expires 24 hours after the manufacturer provides the lockout code to a person.

4. The lockout code shall enable the device to accept a breath sample, and if the vehicle is started, the device must operate in accordance with this section.

5. The device shall revert to permanent lockout mode if the lockout code expires.

6. The device shall revert to permanent lockout mode if the lockout code is used, the vehicle is turned off and the restart period described in s. Trans 313.03(20) expires.

SECTION 86. Trans 313.04 (5) (j) is created to read:

Trans 313.04(5)(j) RESTART FEATURE. The device shall be programmed to have a restart feature with the following functions:

1. If the vehicle stalls or is turned off following a successful test and before a retest is required under par. (b), the device shall permit the vehicle to restart without requiring a breath sample during the 2-minute period following the vehicle stalling or being turned off. The restart feature under this subd. may not alter the time interval required for the next retest.

2. If the most recently provided breath sample was above the alcohol setpoint, then the restart feature may not function until the customer provides a passing breath sample.

3. If the device has prompted the customer for a retest, then the restart feature may not function until the customer provides a passing breath sample.

SECTION 87. Trans 313.04 (5) (k) is created to read:

Trans 313.04(5) (k) REMOVABLE HANDSET. A device that has a removable handset may be programmed to permit a customer to disconnect the handset of the device, when the vehicle is turned off, without triggering the device's tamper detection feature or causing the device to record a violation.

SECTION 88. Trans 313.04 (5) (l) is created to read:

Trans 313.04(5) (l) DAYLIGHT SAVINGS FEATURE. The device shall be programmed to automatically adjust for daylight savings time.

SECTION 89. Trans 313.04 (5) (m) is created to read:

Trans 313.04(5) (m) REAL-TIME REPORTING FEATURE. The device shall be programmed to have a real-time reporting feature. Each time the device records a violation, the device must electronically transmit the 10 sample sequences leading up to the violation, the violation, and a maximum of 10 subsequent sample sequences to the database established under par. (6) once the device is within range of wifi, cellular service or other wireless electronic transmission system.

SECTION 90. Trans 313.04 (5) (n) is created to read:

Trans 313.04(5) (n) SECURITY FEATURES. The device shall include the following security features:

1. A unique and easily identifiable tamperproof seal or connector on all wired connections used to install the device.
2. Connections to the vehicle shall be under the dash or in an inconspicuous area of the vehicle.
3. A unique and easily identifiable tamperproof seal, on the control box and handset.

SECTION 91. Trans 313.04 (5) (o) is created to read:

Trans 313.04(5) (o) MOTORCYCLE AND AUTOCYCLE REQUIREMENTS. A device installed on a motorcycle or autocycle shall meet all of the following requirements:

1. Be weatherproof.
2. Permit hands-free starting and operation of the device while driving the motorcycle.
3. Meet all other requirements of this subsection.

SECTION 92. Trans 313.04 (6) is created to read:

Trans 313.04 (6) IGNITION INTERLOCK DATA SYSTEM.

(a) The manufacturer or vendor shall establish a computerized database to store all information collected under sub. (5)(d).

(b) The manufacturer or vendor shall provide remote access to that database for all of the following:

1. The department.
2. Any law enforcement agency.
3. Assessment agencies.
4. Treatment providers.
5. Department of Corrections officials.
6. Probation and parole officials.
7. Courts.
8. Any university or research group engaged in a study approved by the department.

(c) The manufacturer or vendor shall design the system to permit the authorized users to login to a secure website and review or download the data stored under par. (a).

(d) The manufacturer or vendor shall:

1. Make data available by device ID or serial number, by customer name, or by Wisconsin driver license number.
2. Allow for sorting or filtering of data.
3. Make data available in its entirety for department-approved academic or department study purposes.

(e) The manufacturer or vendor shall make the system allow an authorized user to request alerts if a particular customer commits a violation. Alerts may be provided by electronic mail, text message, or other delivery service. Log-in to the system may be required to review digital images, digital videos, or confidential information related to a violation.

(f) If the manufacturer or vendor's system stores GPS or location data related to a violation, the system may not permit access to that GPS or location data to any of the persons described in par. (b)1. to 7. unless the party seeking the information has one of the following:

1. Permission from the customer who installed the device permitting the party to access that customer's GPS or location data.

2. A search warrant authorizing the party access to the GPS or location data.

For purposes of this paragraph, an image of a particular location shown in the background of an image captured under sub. (5)(f) may not be considered location data.

(g) For research-related purposes, location data may be shared with an academic or research institution approved by the department under subd. (b)8., provided that the research entity creates a mechanism to prevent disclosure of the location information to third parties, including law enforcement, and stores the data in a manner and for a purpose approved by the department.

(h) If the department establishes a centralized database for ignition interlock data, the department may require manufacturers and vendors to upload data collected under sub. (5)(d) and reported under sub. (5)(dm). Reporting shall be accomplished using a department defined data dictionary and in a format and in the frequency established by the department. Issuance of an order by the department under this paragraph and a manufacturer or vendor's uploading to the centralized database shall relieve the manufacturer or vendor from having to comply with pars. (b) to (e) of this subsection.

SECTION 93. Trans 313.04 (6) (note) is created to read:

Trans 313.04(6) (note) Note: See ss. 110.10(4) and (5), Stats.

SECTION 94. Trans 313.06 is amended to read:

Trans 313.06 List of approved devices. A complete list of devices approved by the department shall be maintained by ~~the chief of the chemical test~~ testing section.

SECTION 95. Trans 313.07 is repealed and recreated to read:

Trans 313.07 Denial, suspension or revocation of device approval.

(1) The department may deny, suspend or revoke approval of a device, and remove it from the list of approved devices, for any of the following reasons:

- (a) Defects in design, materials or workmanship causing repeated failures of a device.
- (b) Termination or cancellation of a manufacturer's liability insurance.
- (c) Discontinuance in the business of manufacturing devices.
- (d) Voluntary request by a manufacturer to cancel approval of a device.
- (e) Violation by a manufacturer, vendor, or service provider of any of the provisions of this chapter or any Wisconsin Statute, any federal law, or the law of another jurisdiction if that violation in the other jurisdiction would have been a basis for denial, suspension or revocation of device approval in this state.
- (f) Provision of materially false or inaccurate information relating to a device's performance standards, by a manufacturer, vendor, or service provider.
- (g) Modification or alteration of the components, design or installation and operation instructions for an approved device without complying with the provisions of s. Trans 313.08(1) or in a manner that causes the device to not satisfy the requirements of this chapter.
- (h) Failure to provide service in an area assigned to a manufacturer, vendor or service provider under s. Trans 313.09(2).

(i) Failure to provide notice of a service center location change or mobile service center discontinuance in accordance with s. Trans 313.09(3) or (4).

(j) Failure to maintain a system of manufacturer authorized repair or an inventory of parts needed to effect repairs or replacement of a model of device.

(k) Failure to provide ignition interlock installation and service for one half the cost of equipping and maintaining the device upon receipt of a court order issued under s. 343.301(3)(b), Stats.

SECTION 96. Trans 313.07 (1) (note) is created to read:

Note: See s. 110.10(4m), Stats.

SECTION 97. Trans 313.07 (2) is amended to read:

Trans 313.07 (2) A suspension or revocation is effective 15 days after notification is sent to the registered agent of the manufacturer, vendor or service provider that applied for approval of the device under s. Trans 313.04 at the address provided pursuant to s. Trans 313.04(2)(b)15. or the address of the registered agent on file with the Department of Financial Institutions by certified mail.

SECTION 98. Trans 313.07 (3) is amended to read:

Trans 313.07 (3) A manufacturer or vendor may appeal a denial, suspension or revocation of a device under sub. (1). This request The person appealing shall be submitted submit its request for appeal to the department, in writing, within 15 calendar days of the receipt of a notice of denial, suspension or revocation.

SECTION 99. Trans 313.07 (4) is amended to read:

Trans 313.07 (4) ~~After denial, suspension, revocation or voluntary surrender of an approval, a manufacturer~~ If approval of a device is denied, suspended, revoked or voluntarily surrendered, the person that applied for approval under s. Trans 313.04 shall be responsible for any costs connected with the

removal of its devices from ~~customer's~~ customers' vehicles and the installation of a new ~~device~~ devices in those customers' vehicles from the department's list of approved devices.

SECTION 100. Trans 313.08 is repealed and recreated to read:

Trans 313.08 (1) MODIFICATIONS. A manufacturer shall meet all of the following requirements:

(a) Notify the department 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. For purposes of this paragraph, a modification shall be considered material if the modification affects device operation, data collection or transmission, reporting, or is a modification of any device programming.

(b) Provide the department satisfactory proof that modifications or alterations for which notice is provided under par. (a) do not adversely affect the ability of the device to satisfy the requirements of s. Trans 313.04.

(c) Upon the department's request, provide any new or updated materials related to quality assurance of the calibration procedure and device calibration checks provided under s. Trans 313.04(2)(b)13.

(d) Upon the department's request, provide sample modified devices the department may inspect or test for continued acceptability under this chapter.

(e) Provide for the repair of the internal components of handsets and vehicle modules through its own technicians or an approved manufacturer-authorized device repair facility. Manufacturer-authorized device repair facilities shall demonstrate the technical competence to repair handsets and vehicle modules as a condition of device approval.

Note: See s. Trans 313.04(2)(b)8.

(2) MOUTHPIECES. A manufacturer shall provide an adequate supply of mouthpieces or other replaceable breath receptor devices to the service provider.

(3) ANTI-TAMPERING. A manufacturer shall ensure that a device has adequate electronic anti-tampering features which include all of the following:

(a) A device shall retain its tamper detection capabilities when disconnected from the vehicle's power supply, or record that it was disconnected.

(b) A device shall retain its data memory when disconnected from the vehicle's power supply.

(c) When a device detects a condition that would be considered tampering, the device shall activate a visual and audible indicator.

Note: Detected tampering must be reported and evidence retained under s. Trans 313.105(7).

(4) TRAINING.

(a) For each device model a manufacturer or vendor seeks to have approved under s. Trans 313.04, upon the department's request, the device manufacturer shall provide a total of at least 10 hours of training to the department's employees at no cost to the State of Wisconsin. For each device that is approved by the department, upon the department's request, the device manufacturer shall provide ongoing training. The manufacturer shall hold training sessions at reasonable times and locations within the State designated by the department. The manufacturer's training shall familiarize the department's employees with the installation, operation, service, repair and removal of the devices and with the training and instructions that the manufacturer will give to service providers and customers. The manufacturer shall also provide the department, upon request, all materials intended for distribution to service providers or customers related to installation, operation, repair or removal of the device.

(b) The manufacturer or vendor shall loan the department, free of charge, a demo unit for each approved device that department personnel may use for training staff, court officials, law enforcement

officers, or others. The manufacturer or vendor shall provide service for the loaned device free of charge at the chemical testing section Madison office or at the closest service center thereto.

(c) The manufacturer shall develop device installation instructions for service provider use and share them with the department upon request.

(5) **DISABLING A LOCKOUT.** A manufacturer may provide a lockout code for the purpose of disabling a lockout event in accordance with s. Trans 313.04(5)(i).

SECTION 101. Trans 313.09 is repealed and recreated to read:

Trans 313.09 Statewide Service.

(1) In order to ensure that devices are available to persons in all areas of the state, as a condition of approval and use in the state of Wisconsin, each device must include an affirmation from the device manufacturer, vendor of the device, or a service provider that it will agree to take assignments to unserved areas of the state of Wisconsin in accordance with this section.

(2) The department shall monitor the service center sites throughout Wisconsin. If the department determines that any place in Wisconsin is not within 75 miles of a service center, the department shall randomly select one of the entities that made an affirmation under sub. (1) and require that entity to establish a service center or provide a mobile center in the unserved area. If a second or subsequent area of Wisconsin is determined not to be within 75 miles of a service center, the department shall randomly select an entity that made an affirmation under sub. (1) other than the ones selected previously and require that entity to establish a service center or provide a mobile service in the unserved area. If all entities that make affirmations under sub. (1) have been required to provide service centers under this subsection, the process of randomly selecting entities shall be repeated.

(3) A service provider shall notify the department in writing at least 7 days before a service center closes or a service center moves to another address. In the event a service center moves, the service provider

shall provide the department with the address of the new service center location at least 7 days before the scheduled service center move.

(4) A service provider shall provide the department with at least 7 days advance notice of discontinuing mobile service to any part of the state. Service may not be discontinued to any location assigned to an affirmant under sub. (2) unless the affirmant can show that a different entity is providing service in that area.

Note: Under s. Trans 313.07(1)(h), device approval for use in the state of Wisconsin may be revoked, suspended or denied if an entity that made a service provider affirmation under sub. (1) fails to provide reasonable service in an area assigned to the service provider under sub. (2).

SECTION 102. Trans 313.10 (1) (a) is amended to read:

Trans 313.10 (1) (a) A service provider shall inspect and calibrate a device when it is installed to ensure that it is functioning properly, reliably and accurately. ~~Self diagnostic features shall also be inspected.~~

SECTION 103. Trans 313.10 (1) (b) is amended to read:

Trans 313.10 (1) (b) ~~Tamper inspections~~ A service provider shall be conducted conduct tamper inspections any time that a device is ~~given routine inspection, maintenance or repair serviced.~~ Tamper inspections shall include all of the following:

SECTION 104. Trans 313.10 (1) (b) 1. is amended to read:

Trans 313.10 (1) (b) 1. Inspection of all external wiring insulation, connections, and sheathing for the device and locations where the device connects to the vehicle. ~~A service provider shall retain relevant evidence, document and photograph any perforations, cuts or other indications of possible tampering.~~

SECTION 105. Trans 313.10 (1) (b) 1 (note). is created to read:

Trans 313.10 (1) (b) (note) Note: Detected tampering must be reported and evidence retained under s. Trans 313.105(7).

SECTION 106. Trans 313.10 (1) (c) is created to read:

Trans 313.10 (1) (c) A service provider shall cause all of its service centers and mobile service centers to have all the tools, test equipment and manuals needed to service devices and shall perform basic troubleshooting related to device installation and operation.

SECTION 107. Trans 313.10 (2) is repealed and recreated to read:

Trans 313.10 (2) SERVICE LOCATIONS AND HOURS. A manufacturer, vendor or service provider shall provide the following minimum service:

(a) Repair or replace the device within 3 business days after service is requested.

(b) A reasonable number of service centers within the state. If a service provider has a fixed, permanent service center, it may install and service devices using mobile service centers in this state in accordance with s. Trans 313.10(11). Service centers must establish and maintain reasonable business hours.

(c) A 24-hour toll-free telephone number to answer questions, and to deal with mechanical problems and emergencies related to the device.

Note: Nothing in this par. is intended to prohibit a manufacturer, vendor or service provider from providing additional alternative communication mechanisms. Explanation of responsibility for responding to telephone inquiries and other communications is required as part of an application filed under s. Trans 313.04(2)(b)20.

SECTION 108. Trans 313.10 (3) (e) is repealed and recreated to read:

Trans 313.10 (3) (e) A service provider may not access or alter the internal components of a handset or vehicle module.

SECTION 109. Trans 313.10 (3) (e) (note) is created to read:

Trans 313.10 (3) (e) (note) Note: Internal repairs of handsets and vehicle modules are performed by the manufacturer or an approved manufacturer-authorized device repair facility.

SECTION 110. Trans 313.10 (4) (a) is amended to read:

Trans 313.10 (4) (a) Installation of a device must be completed within ~~30~~ 10 days of ~~a court order~~ or a customer request, ~~whichever is later.~~

SECTION 111. Trans 313.10 (4) (c) is amended to read:

Trans 313.10 (4) (c) After a device is installed, the service provider shall inspect the vehicle and device ~~shall be inspected~~ to ensure that the installation was performed properly and that it does not interfere with the normal operation of the vehicle.

SECTION 112. Trans 313.10 (4) (d) is amended to read:

Trans 313.10 (4) (d) A service provider ~~shall~~ may provide a certificate, in the format prescribed by the department, of installation or removal to the customer. The customer shall present a copy of this certificate to the department as a condition for obtaining a license, when required by law. ~~The service provider shall provide a copy of this certificate to the sheriff of the county where the customer resides. The certificate shall be in the format provided by DMV.~~

SECTION 113. Trans 313.10 (4) (e) is created to read:

Trans 313.10 (4) (e) The service provider is not required to install devices on the following types of motor vehicles:

1. Motorcycles or autocycles.

2. Commercial motor vehicles.

3. Vehicles for which installation instructions for ignition interlock devices do not exist.

Note: A vehicle's inclusion in this paragraph is not a determination as to whether a device is capable of being installed on a vehicle. See s. 343.301(1m)(b), Stats.

SECTION 114. Trans 313.10 (5) (b) is amended to read:

Trans 313.10 (5) (b) All devices shall be scheduled for service and calibration at intervals not to exceed 60 days. Any failure ~~to report for~~ of a customer to obtain required servicing service or calibration shall be reported to the ~~sheriff of the county where the customer resides~~ department in the manner prescribed by the department.

SECTION 115. Trans 313.10 (5) (c) is amended to read:

Trans 313.10 (5) (c) Each time a device is serviced, the service provider shall ~~review the~~ extract the data recorded in the device's memory and retain, and transmit a copy of the data to the manufacturer for retention in the customer's file and reporting to the department. ~~Any tampering, circumvention, bypass or violation resets shall be immediately reported to the sheriff in the county where the customer resides.~~

SECTION 116. Trans 313.10 (6) (b) is amended to read:

Trans 313.10 (6) (b) A ~~certificate~~ service provider, vendor or manufacturer shall transmit proof of installation or removal shall be mailed by a service provider to the DMV compliance and restoration unit and to the sheriff of the county where the customer resides, department in the manner prescribed by the department within 3 working days after the installation or removal of a device.

SECTION 117. Trans 313.10 (6) (b) (note) is repealed.

SECTION 118. Trans 313.10 (7) is amended to read:

Trans 313.10 (7) TRAINING. A service provider shall provide an orientation to the ignition interlock device ~~only~~ to the driver and any family members or others ~~with an ownership interest in the vehicle~~ who may drive the vehicle. The ~~orientation~~ service provider shall include information on all service locations, procedures for regular servicing and emergency situations, and a minimum of two successful start sequences performed by the customer in the vehicle as part of the orientation.

SECTION 119. Trans 313.10 (8) is amended to read:

Trans 313.10 (8) MOUTHPIECES. A service provider shall supply an adequate number of mouthpieces, breath receptors or other sample components to the customer upon initial installation and each time the device is serviced. The service provider shall supply each customer with at least one mouthpiece, breath receptor or other sample component per day, per person authorized to operate the vehicle, free of charge. The service provider shall supply additional mouthpieces, breath receptors or other sample components to the customer at cost upon request.

SECTION 120. Trans 313.10 (9) is renumbered to (9)(a):

Trans 313.10 (9) (a) To ensure compliance with the requirements of this section, the service provider shall make any service location and any device at the service location available for inspection by the department during the service provider's normal business hours.

SECTION 121. Trans 313.10 (9) (b) is created to read:

Trans 313.10 (9) (b) The department may attend service calls made by a service center or mobile service center, may inspect service centers and mobile service centers, and may audit work performed by service centers and mobile service centers.

SECTION 122. Trans 313.10 (10) is created to read:

Trans 313.10 (10) CALIBRATION.

(a) A service provider shall calibrate a device using the calibration procedure for that device established by the manufacturer and approved by the department.

(b) No person, including a service provider, may use a wet bath simulator for the calibration of any device.

(c) Calibration shall ensure that the device accurately measures alcohol concentration. A device shall be considered properly calibrated if it measures a dry gas sample at or below 0.050 g/210L within a range of ± 0.005 g/210L.

SECTION 123. Trans 313.10 (11) is created to read:

Trans 313.10 (11) MOBILE SERVICE CENTERS.

(a) All provisions of this chapter pertaining to service centers are applicable to mobile service centers.

Note: Of special import are the requirements of pars. (1)(c) and (3)(a).

(b) Service providers shall provide the department with a schedule for mobile services 24 hours before the services occur in a manner prescribed by the department. The service provider shall cause the schedule to contain the name of the customer, the name of the manufacturer or vendor, the name of the service provider, the location where the service will occur, and the anticipated date and time of the service.

SECTION 124. Trans 313.105 is created to read:

Trans 313.105 Shared responsibilities.

(1) CALIBRATION. A manufacturer, vendor or service provider shall follow the procedures approved by the department to calibrate a device.

(2) ERASING DATA. A manufacturer, vendor or service provider shall follow the procedures approved by the department to erase any data from a device, including erasing all data from a device that is removed from a vehicle in preparation for reuse in a different vehicle.

(3) DEVICE CONFIGURATION. A manufacturer or vendor may load approved Wisconsin device configuration files onto an approved device.

(4) WARNING LABEL.

(a) A manufacturer or vendor shall cause a warning label, approved by the department, to be affixed to all approved devices installed in vehicles in a manner that will be conspicuous to any person using the device. The warning label shall contain the following information: "WARNING"—Any person removing, tampering with, disconnecting or otherwise circumventing this device may be fined up to \$2500 or imprisoned for up to 12 months, or both. ss. 343.44(2)(ar)2., 347.50, Stats." No other information may be included on the label.

Note: Maximum penalties for violation of an occupational license restriction under ss. 343.10(5)(a)3. and 343.44(2)(ar)2., Stats., are shown on the label. Lesser penalties apply to violations of s. 347.413(1) under s. 347.50(1s), Stats. See s. 347.413(3), Stats.

(b) The label may be printed in any of the following formats:

1. 1" x 2" in size and printed in an 8-point sans serif font such as Helvetica, Calibri or Arial.
2. 1" x 2.5" in size and printed in a 9-point sans serif font such as Helvetica, Calibri or Arial.

(c) The custom warning label design must meet all of the following requirements:

1. Contain the language described in sub. (a).
2. Attach permanently to the handset.
3. Be weatherproof.

4. Be water and solvent resistant.
5. Be conspicuous.
6. Contain a yellow background and black print.

(d) A manufacturer or vendor may use a custom warning label design, other than the design described in pars. (b) and (c), only if the custom warning label design is approved by the department.

(5) SERVICE PROVIDER QUALITY CONTROL PROCESS. A manufacturer or vendor shall have a quality control process for resolving service provider noncompliance with the requirements of ch. Trans 313. The manufacturer or vendor shall provide a means to receive complaints from customers regarding service provider noncompliance and a means for the department to refer complaints it receives from customers to the manufacturer or vendor. If a manufacturer or vendor receives a complaint directly from a customer, the manufacturer or vendor shall notify the department of the complaint. For each complaint the manufacturer or vendor receives relating to noncompliance by its service providers, the manufacturer or vendor shall resolve the complaint within 30 calendar days and provide the department with an explanation as to how the complaint was resolved.

(6) EVIDENCE RETENTION AND TAMPER REPORTING. If tampering is detected, the service provider, vendor, manufacturer, or manufacturer-authorized device repair facility that detects the tampering shall do all of the following:

(a) Retain relevant evidence, including the device, wires, seals, or other equipment, that demonstrates the tampering for 30 days unless released to a law enforcement agency as evidence.

(b) Document and photograph any perforations, cuts or other indications of possible tampering.

(c) Retain any evidence of unauthorized changes made to the software or operating system of the device.

(d) Immediately report any tampering, circumvention, or bypass attempts to the department in the manner prescribed by the department.

Note: See s. 110.10(5), Stats.

(7) VIOLATION RESET REPORTING. A manufacturer, vendor, or service provider shall immediately report any violation reset to the department in the manner prescribed by the department.

(8) TESTIMONY. A manufacturer, vendor, or service provider shall provide at no cost to the State any testimony requested by the State or any prosecutor in this State, described in the affirmation made pursuant to s. Trans 313.04(2)(b)14.

SECTION 125. Trans 313.11 is repealed.

SECTION 126. Trans 313.12 is amended to read:

Trans 313.12 List of authorized service providers. A manufacturer shall provide the department with a list of all service providers in Wisconsin who are authorized by the manufacturer to install, service, repair and remove the manufacturer's devices. The manufacturer shall cause the list to clearly state the price charged by the service provider for installation, maintenance, calibration, violation reset service, removal of the device, and disclose any additional fees or charges that may be imposed on the customer. If insurance for the device is made available to the customer, the list shall include the cost to replace the device and the monthly cost for the insurance. The department shall make this list available to all Wisconsin courts and to the public on its internet website. ~~The courts shall make this list available to customers.~~

SECTION 127. Trans 313.13 (1) is amended to read:

Trans 313.13 (1) Notice The clerk of court or a court shall report the issuance of all any court orders order requiring the installation and use of a device ~~shall be reported by the clerk of court~~ to the department in one of the following ways:

Note: ~~The conviction report is DOC-20.~~

SECTION 128. Trans 313.13 (2) is amended to read:

Trans 313.13 (2) (a) All court orders requiring the installation and use of a device on one or more vehicles shall include the beginning and ending dates for the restriction, and shall identify each vehicle ~~requiring installation of a device~~ to which the order applies.

SECTION 129. Trans 313.13 (2) (b) is created to read:

Trans 313.13 (2) (b) All orders imposing an ignition interlock restriction on a person's operating privilege shall include the date on which the order was issued and the length of time that the ignition interlock restriction shall be effective, consistent with the requirements of ch. 343, Stats.

SECTION 130. Trans 313.13 (2) (b) (note) is created to read:

Trans 313.13 (2) (b) (note) Note: The length of the IID restriction periods for vehicles and operating privileges are set in s. 343.301(2m)(a) and (b), Stats. Operating privilege restrictions extend from the date of the order for a period of time that extends from the date the person next obtains a license from the department to a date in the future. The length of the IID restriction period, from the date the driver obtains a license from DMV, is determined by the court, and is not less than one year nor longer than the maximum revocation period resulting from the offense. The maximum periods of revocation that can be ordered as a result of an OWI conviction are set forth in ss. 343.30(1q)(b), 343.31(2) and 343.31(1m), Stats. IID operating privilege restriction periods may be extended. s. 347.50(1t), Stats.

SECTION 131. Trans 313.13 (3) is amended to read:

Trans 313.13 (3) When the department is notified ~~by a court~~ that a device has been ordered as a condition of licensing, the department shall place a restriction on the customer's driver record, requiring that the customer operate only vehicles equipped with a device. This restriction will appear on any license issued to the customer during the restriction period.

SECTION 132. Trans 313.13 (4) is amended to read:

Trans 313.13 (4) ~~A court shall notify a customer that~~ who has been ordered to install a device shall be installed in the customer's a vehicle, and that proof of installation shall be provided provide proof of installation to the department before ~~a~~ the customer may ~~apply for~~ be issued an operator or occupational license. A service provider may provide this proof on the customer's behalf in accordance with s. Trans 313.10(4)(d).

SECTION 133. Trans 313.14 (1) is repealed and recreated to read:

Trans 313.14 (1) No customer or service provider may remove a device from a vehicle before the restriction period has elapsed, unless the customer does one of the following:

- (a) Requests that the device be removed from the vehicle.
- (b) Intentionally damages the device.
- (c) Fails to pay for installation, service or calibration of the device, or other charges assessed to the person and authorized under this chapter.
- (d) Behaves with an offensive or abusive personality toward manufacturer, vendor or service provider personnel.
- (e) Fails to comply with a contract with the manufacturer, vendor or service provider.

(2) The department may cancel any license that has been issued to the customer if a device is removed prior to completion of the restriction period. The customer is responsible for all fees and costs associated with the license cancellation.

SECTION 134. Trans 313.14 (2) (note) is created to read:

Trans 313.14 (2) (note) Note: If a service provider removes a device, it is required to promptly notify DMV so that appropriate license actions may be taken. See s. Trans 313.10(6)(b).

SECTION 135. Trans 313.14 (3) is created to read:

Trans 313.14(3) A service provider that installs a device shall remove it at no cost to the customer. Another service provider may charge not more than its ordinary and reasonable time and materials charges for removing a device.

SECTION 136. Trans 313.15 is amended to read:

Trans 313.15 Audit authority. The department may audit and inspect the facilities and records of a manufacturer, vendor or service provider, including mobile service locations, to verify compliance with the requirements of this chapter. Manufacturers, vendors and service providers shall retain all records relating to an application for approval, installation, service, removal and use of a device, for at least 3 years, and shall make these records available to the department for inspection and copying upon request.

SECTION 137. Trans 313.16 is created to read:

Trans 313.16 Other prohibited conduct.

(1) NONDISCRIMINATION. No manufacturer, vendor or service provider may discriminate for or against a person by reason of sex, race, creed, color, sexual orientation, national origin or ancestry, gender, gender expression, age, disability, marital status, or military status in any of its activities or operations.

Note: See s. 227.10(3)(a), Stats.

(2) DEEP LUNG AIR REQUIREMENT. No person, manufacturer, vendor or service provider may modify, alter, or adjust the settings or programming of any device so as to require less than 1.5 liters of air per breath sample.

Note: Reducing the volume of air required to use the device is not considered a reasonable accommodation of any disability because a sample of that size is required for the device to reliably and properly perform its intended function of measuring alcohol concentration.

(3) ALTERATION OF SETTINGS OR PROGRAMMING. No person may modify, alter, or adjust the settings or programming of any device, except as provided in s. Trans 313.105(3).

(4) REPAIRS. No person may repair handsets or vehicle modules unless it is a manufacturer or is an approved manufacturer-authorized device repair facility.

(5) ADVICE LEADING TO LOCKOUT MODE. No manufacturer, vendor or service provider may advise or counsel a person to violate any law or take any action that will result in a device to enter into a lockout mode or need service.

Note: The department will review and provide feedback within 3 business days of being provided a copy of any proposed communication to Department of Transportation, Division of State Patrol, Chemical Testing Section, 3502 Kinsman Blvd, Madison, WI 53704–2549.

(6) SERVICE PROVIDER AUTHORIZATION. No manufacturer or vendor may refuse to authorize, or revoke authorization, of any service provider solely on the basis that the service provider services devices from other manufacturers or vendors.

SECTION 138. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22 (2) (intro.), Stats.

(END OF RULE TEXT)

Signed this ____ day of _____ 2020.

Craig Thompson

Secretary

State of Wisconsin Department of Transportation