

## Chapter Trans 313

### BREATH ALCOHOL IGNITION INTERLOCK DEVICES

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**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.

**Note:** Section 347.413 (2), Stats., was repealed eff. 1-1-02. Section 110.10, Stats. authorizes rulemaking "... providing for the implementation of an ignition interlock device program that will be conveniently available to persons throughout this state."

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**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.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.03 Definitions.** As used in this chapter:

- (1) "Alcohol" has the meaning in s. 340.01 (1q), Stats.
- (2) "Alcohol concentration" has the meaning in s. 340.01 (1v), Stats.
- (3) "Alcohol setpoint" means the minimum alcohol concentration at which a device is set to lock a motor vehicle's ignition.
- (4) "Alveolar air" means deep lung air or alveolar breath; an air sample which is the last portion of a prolonged, uninterrupted exhalation.
- (5) "Bogus sample" means any air sample which is altered, diluted or filtered human breath and which is provided by a person who is starting or driving a vehicle equipped with a device. Bogus samples also include air provided by air compressors, hot air dryers, balloons, and manual air pumps.
- (6) "Breath sample" means expired human breath containing primarily alveolar air.
- (7) "Calibration" means the processes which ensure an accurate alcohol concentration reading on a device.
- (8) "Chief of the chemical test section" means the person assigned the responsibility for the administration and supervision of the breath alcohol testing, approval and permit program of the department.
- (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.
- (10) "Customer" means a person who is required by court order to have a device installed in a vehicle.
- (11) "Department" means the department of transportation.
- (12) "Device" means an ignition interlock device.
- (13) "DMV" means the division of motor vehicles of the department of transportation.

(14) "Filtering agent" means any material that can be used in an attempt to remove alcohol from a human breath sample. Filtering agents include, but are not limited to, silica gel, drierite, cat litter, cigarette filters, water filters, and cotton.

(15) "Ignition interlock device" has the meaning in s. 340.01 (23v), Stats.

(16) "Manufacturer" means a person, company or corporation who produces a device.

(17) "Permanent lockout" means a feature of a device in which a vehicle will not start until the device is reset by a service provider.

(18) "Prohibited alcohol concentration" has the meaning in s. 340.01 (46m), Stats.

(19) "Purge" means to cleanse or remove a previous breath sample and residual alcohol from a device.

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

(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.

(22) "Security" means the protection and safeguards incorporated into a device to ensure proper performance and to prevent failure caused either by inherent defects in the device or tampering.

(23) "Service provider" means an approved dealer, distributor, supplier, or service center of a device.

(24) "Tampering" means an unauthorized, intentional overt act or attempt to remove, bypass, disable or disconnect a device from its power source.

(25) "Temporary lockout" means a feature of a device in which a vehicle will not start for 15 minutes after 3 failed or aborted attempts to start the vehicle are made within a 5-minute period.

(26) "Vendor" means an approved retail or wholesale supplier of an approved device, and may include a service provider.

(27) "Violations reset" means a feature of a device in which a service reminder is activated due to one of the following reasons:

- (a) Three breath samples above the alcohol setpoint.
- (b) Three consecutive retest refusals.
- (c) The device detects a tampering or circumvention attempt.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

#### Trans 313.04 Device approval procedure.

(1) **APPROVAL REQUIREMENT.** No device may be leased, sold, serviced, repaired, installed or used unless the model or type of device has been approved by the department in accordance with the requirements of this chapter.

**(2) APPLICATION.** (a) A manufacturer may apply for approval of a device by submitting a written application to the department in the manner prescribed in this chapter, and shall certify that the device:

1. Does not impede the safe operation of a vehicle;
2. Minimizes opportunities to bypass the device;
3. Performs accurately and reliably under all circumstances;
4. Minimizes inconvenience to customers and other vehicle operators;
5. Satisfies the requirements for certification set forth in this section, and;
6. Prevents a customer from starting a vehicle when the customer has a prohibited alcohol concentration.

(b) An application for certification shall include all of the following information:

1. The name and address of the manufacturer of the device.
2. The name and model number of the device. A separate application is required for each model or type of device.
3. A detailed description of the device including complete instructions for installation, operation, service, repair and removal.
4. Complete technical specifications describing the device's accuracy, reliability, security, data collection and recording, tamper detection, and environmental features.
5. A complete and accurate copy of data from an independent laboratory demonstrating that the device meets or exceeds the minimum federal standards adopted in sub. (5).
6. A description of the manufacturer's present or planned provisions for distribution and service of the device in Wisconsin. The manufacturer shall, within 6 months of receipt by the department of an application for approval of a device, provide the chief of the chemical test section with a list of all locations in Wisconsin where the device may be purchased, installed, removed, serviced, repaired, calibrated, inspected and monitored.
7. A certificate from an insurance company licensed in Wisconsin evidencing that the manufacturer holds product liability insurance as required in s. Trans 313.05.

**(3) TIME FOR DECISION.** The department shall approve or disapprove a device not later than 90 days after receipt of all required application materials.

**(4) EVALUATION.** (a) At least one model or type of each device shall be submitted by the manufacturer to the department for evaluation.

(b) The manufacturer shall install the device in a vehicle provided by the department. When applicable, the manufacturer shall provide the department with an adequate supply of disposable mouthpieces with saliva traps.

(c) The department shall independently evaluate each device to ensure compliance with the requirements in sub. (5). The evaluation criteria include, but are not limited to, repeated testing of alcohol-laden samples, filtered samples, circumvention attempts and tampering.

**(5) STANDARDS AND SPECIFICATIONS.** (a) 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" 57 Fed. Reg. 67, pp. 11772-11787 (April 7, 1992). This federal standard is available from the Department of Transportation, Division of State Patrol, Chemical Test Section, 4802 Sheboygan Avenue, Room 551, Madison, WI 53707-7912.

(b) A retest feature is required for all devices. The date, time and alcohol concentration of all retest samples shall be recorded in the device's memory. Three breath samples above the alcohol setpoint or 3 consecutive refusals of a driver to provide a retest sample will result in a violations reset. Any breath sample above the alcohol setpoint or any failure to provide a retest sample shall

activate the vehicle's horn and cause the vehicle's emergency lights to flash until the engine is shut off. Whenever a device's service reminder is activated by a violations reset feature, the device shall place the vehicle in a permanent lockout condition after 7 days.

(c) A device shall be programmed to allow a maximum of 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.

(d) A device shall record data in its memory in such a manner that a hard copy can be printed which includes all of the following information:

1. The date and time of any use or attempted use of a vehicle.
2. The date and time of any attempt to tamper, circumvent or bypass the device.
3. The date, time and alcohol concentration, in grams per 210 liters, of each breath sample provided to the device.
4. The date and time of any malfunctions of the device.
5. The date and time of any failures to provide retest samples.
6. The date that a "service required" message is issued to the customer.
7. The date that any service is performed.

(e) A device must provide all of the following information to a customer:

1. The device's readiness for acceptance of a breath sample.
2. A reminder, 7 days prior to a scheduled service date.
3. A warning to obtain service within 7 days if any of the following conditions occur:
  - a. Three or more breath samples have an alcohol concentration at or above the alcohol setpoint,
  - b. The device detects tampering, circumvention or bypass attempts,
  - c. Three consecutive refusals to provide a retest sample, or
  - d. A scheduled service date is missed.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.05 Financial responsibility.** **(1) LIABILITY INSURANCE.** A manufacturer shall carry product liability insurance with minimum liability limits of \$1 million per occurrence, with \$3 million aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as in the manufacturing, calibration, installation, and removal of devices. The proof of insurance shall include a statement from the insurance company that 30 days notice will be given to the department before cancellation of the insurance.

**(2) INDEMNIFICATION.** A manufacturer shall indemnify and hold harmless the state of Wisconsin, the department and its officers, employees, and agents from all claims, demands, actions, and costs whatsoever which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use and removal of a device.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**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 section.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**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.

(f) Provision of materially false or inaccurate information relating to a device's performance standards, by a manufacturer, vendor, or service provider.

(g) Violation of s. 347.413, Stats., by a manufacturer, vendor, or service provider.

(h) Modification or alteration of the components, design or installation and operation instructions in such a way that the requirements of s. Trans 313.04 (5) are no longer satisfied.

(2) A suspension or revocation is effective 15 days after notification is sent to the manufacturer by certified mail.

(3) A manufacturer may appeal a denial, suspension or revocation. This request shall be submitted to the department, in writing, within 15 days of the receipt of a notice of denial, suspension or revocation.

(4) After denial, suspension, revocation or voluntary surrender of an approval, a manufacturer shall be responsible for any costs connected with the removal of its devices from customer's vehicles and the installation of a new device from the department's list of approved devices.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.08 Manufacturer responsibilities.**

(1) MODIFICATIONS. A manufacturer shall 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; and shall provide the department satisfactory proof that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of s. Trans 313.04.

(2) MOUTHPIECES. A manufacturer shall provide an adequate supply of mouthpieces and repair parts to the service provider.

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

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.09 Vendor responsibilities.** INDEMNIFICATION. A vendor shall indemnify and hold harmless the state of Wisconsin, the department and its officers, employees and agents from all claims, demands, actions, and costs whatsoever that may arise, directly or indirectly, out of any act or omission by the manufacturer which results in damage to persons or property.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.10 Service provider responsibilities.**

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

(b) Tamper inspections shall be conducted any time that a device is given routine inspection, maintenance or repair. Tamper inspections shall include the following:

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.

2. Documentation of any electronic indications of tampering to the device's memory record.

3. Inspection of all tamper seals for breaks, tears or other evidence of tampering.

4. Inspection of the device's tamper detection capabilities.

(2) SERVICE LOCATIONS AND HOURS. A service provider shall provide the following minimum service:

(a) Repair and calibration within 3 business days after service is requested.

(b) A reasonable number of installation and service facilities within the state. 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.

(3) SECURITY. A service provider shall comply with all of the following security requirements:

(a) Only authorized employees of a service provider, manufacturer or the department may observe the installation of a device. Reasonable security measures must be taken to prevent the customer from observing the installation of a device, or obtaining access to installation materials.

(b) A service provider is prohibited from assisting or facilitating any tampering, circumvention or bypass of a device.

(c) A service provider may not install a device on a vehicle owned or operated by any of its employees.

(d) A service provider shall install any security device provided by the manufacturer.

(e) Security features for devices shall include all of the following:

1. A unique and easily identifiable wire, or a covering or sheathing over all wires, used to install the device, which are not inside a secured enclosure.

2. A unique and easily identifiable covering, seal, epoxy or resin at all exposed electrical connections for the device.

3. Connections to the vehicle shall be under the dash or in an inconspicuous area of the vehicle.

4. A unique and easily identifiable tamper seal, epoxy or resin at all openings, except the breath and exhaust ports, of the hand-held unit, control and support units.

(4) INSTALLATION. A service provider shall comply with all of the following installation service requirements:

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

(b) A service provider shall inspect each vehicle before installing the device. The inspection must include screening procedures to ensure the vehicle in which the device is to be installed is in a mechanical and electrical condition that will allow the device to meet the specifications in s. Trans 313.04 (5). Conditions that the manufacturer has determined would prevent the device from meeting the specifications of s. Trans 313.04 must be repaired before the device is installed. The customer shall be responsible for all the costs of any repairs to the vehicle.

(c) After a device is installed, 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.

(d) A service provider shall provide a certificate 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.

**Note:** The certificate of installation or removal is DMV form number MV-3598.

**(5) SERVICE REQUIREMENTS.** A service provider shall be responsible for all of the following:

(a) A service provider shall follow the manufacturer's specifications for service and repair.

(b) All devices shall be scheduled for service at intervals not to exceed 60 days. Any failure to report for required servicing shall be reported to the sheriff of the county where the customer resides.

(c) Each time a device is serviced, the service provider shall review the data recorded in the device's memory and retain a copy of the data in the customer's file. Any tampering, circumvention, bypass or violation resets shall be immediately reported to the sheriff in the county where the customer resides.

**(6) REMOVAL.** (a) Whenever a device is removed, the vehicle must be restored to its original condition. All severed wires must be securely reconnected and insulated with heat shrink tubing or its equivalent.

(b) A certificate 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, within 3 working days after the removal of a device.

**Note:** The address for the DMV Compliance and Restoration Unit is P.O. Box 7917, Madison, WI 53707-7917. The certificate of installation or removal is DMV form number MV-3598.

**(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 shall include information on all service locations, procedures for regular servicing and emergency situations.

**(8) MOUTHPIECES.** A service provider shall supply an adequate number of mouthpieces to the customer upon initial installation and each time the device is serviced.

**(9) INSPECTION.** 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.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.11 Warning label.** A warning label, approved and provided by the department, shall be affixed to all approved devices. 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 \$1000 or imprisoned for up to 6 months, or both. Wis. Stats. 347.50 (1s).

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**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 department shall make this list available to all Wis-

consin courts. The courts shall make this list available to customers.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.13 Administrative procedures.** (1) Notice of all court orders 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:

(a) In the comments section of the uniform traffic citation.

**Note:** The Uniform Traffic Citation is DMV form number MV-4016.

(b) On the conviction status report.

**Note:** The conviction status report is DMV form MV-3435.

(c) In the miscellaneous section of the conviction report.

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

(d) On the petition for occupational license.

**Note:** The petition for occupational license is DMV form MV-3027.

(2) All court orders requiring the installation and use of a device shall include the beginning and ending dates for the restriction, and shall identify each vehicle requiring installation of a device.

(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.

(4) A court shall notify a customer that a device shall be installed in the customer's vehicle, and that proof of installation shall be provided to the department before a customer may apply for an operator or occupational license.

(5) A customer may contact any of the manufacturers, vendors or service providers on the department's approved list. The customer is responsible for obtaining a device and for all costs associated with the installation, service, repair and removal of the device.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.14 Restrictions on removing device.**

(1) No customer or service provider may remove a device from a vehicle before the restriction period has elapsed, unless the customer surrenders to the department all operator and occupational licenses in his or her possession.

(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.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.

**Trans 313.15 Audit authority.** The department may audit and inspect the facilities and records of a manufacturer, vendor or service provider 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.

**History:** Cr. Register, August, 1993, No. 452, eff. 9-1-93.