CONTINUING LEGAL EDUCATION
Winter 2011

January 10, 2011

Ignition Interlock Device Program

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IGNITION INTERLOCK DEVICE PROGRAM

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January 10, 2011

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Handling the DWI Case in New York by
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§ 48:1 In general

Effective August 15, 2010, every person who is convicted of common law DWI, per se DWI, or per se Aggravated DWI (*i.e.*, VTL §

1192(2), (2-a) or (3)) -- committed on or after November 18, 2009 -- will be required to install an ignition interlock device in any vehicle that the person owns or operates (with the exception of certain employer-owned vehicles) for at least 6 months. See VTL § 1193(1)(b)(ii); VTL § 1193(1)(c)(iii). See also VTL § 1198; PL § 65.10(2)(k-1). This chapter addresses various issues associated with the ignition interlock device requirement.

§ 48:2 What is an ignition interlock device?

VTL § 119-a defines "ignition interlock device" (a.k.a. "IID") as:

> Any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator's equivalent breath alcohol level does not exceed the calibrated setting on the device as required by [VTL § 1198].

See also 9 NYCRR § 358.3(l); 10 NYCRR § 59.1(g); 15 NYCRR § 140.1(b)(1).

An ignition interlock device is required to be calibrated to a "set point" of .025% BAC. See 9 NYCRR § 358.5(c)(2); 9 NYCRR § 358.5(c)(10)(i); 9 NYCRR § 358.5(d)(6); 10 NYCRR § 59.10(c)(2). The term "set point" means "a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating." 9 NYCRR § 358.3(y).

§ 48:3 Rules and regulations regarding IIDs

The Department of Health ("DOH") is required to publish a list of approved ignition interlock devices. See VTL § 1198(6)(a). In addition, both the Division of Probation and Correctional Alternatives ("DPCA") and the DOH are required to promulgate regulations regarding ignition interlock devices. See VTL § 1193(1)(g); VTL § 1198(6)(b). Such regulations must require, at a minimum, that ignition interlock devices:

> (1) have features that make circumventing difficult and that do not interfere with the normal or safe operation of the vehicle;
>
> (2) work accurately and reliably in an unsupervised environment;
>
> (3) resist tampering and give evidence if tampering is attempted;

(4) minimize inconvenience to a sober user;

(5) require a proper, deep, lung breath sample or other accurate measure of blood alcohol content equivalence;

(6) operate reliably over the range of automobile environments;

(7) correlate well with permissible levels of alcohol consumption as may be established by the sentencing court or by any provision of law; and

(8) [be] manufactured by a party covered by product liability insurance.

VTL § 1198(6)(b).

The relevant DOH regulations are contained in 10 NYCRR Part 59. The relevant DPCA regulations are contained in 9 NYCRR Part 358 (a copy of which is set forth at Appendix 64).

§ 48:4 Definitions

Relevant definitions pertaining to the ignition interlock device program are contained in the DPCA regulations, see 9 NYCRR § 358.3, and, to a lesser extent, in the DOH regulations. See 10 NYCRR § 59.1. In this regard, 9 NYCRR § 358.3 provides as follows:

(a) The term "blood alcohol concentration" or "BAC" shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.

(b) The term "certificate of completion" shall mean a document issued by the monitor after the conclusion of the ignition interlock period, including any extensions or modifications as may have occurred since the date of sentence which shows either completion of the operator's sentence or a change in the conditions of probation or conditional discharge no longer requiring the need for a device.

(c) The term "circumvent" shall mean to request, solicit or allow any other person to

blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges [are] so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.

(d) The term "conviction" shall mean the entry of a plea of guilty or a verdict of guilty to a crime or youthful offender adjudication for a crime involving a violation of [VTL § 1192(2), (2-a) or (3),] or any crime defined by the Vehicle and Traffic Law or Penal Law of which an alcohol-related violation of any provision of [VTL § 1192] is an essential element.

(e) The term "county" shall mean every county outside of the city of New York, and the City of New York as a whole.

(f) The term "county executive" shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.

(g) The term "division" shall mean the division of probation and correctional alternatives.

(h) The term "drinking driver program" shall mean an alcohol and drug rehabilitation program established pursuant to [VTL § 1196].

(i) The term "failed tasks" shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.

(j) The term "failed tests" shall mean a failed start-up re-test, failed rolling re-test, or missed rolling re-test.

(k) The term "failure report recipients" shall mean all persons or entities required to

receive a report from the monitor of an operator's failed tasks or failed tests pursuant to a county's plan which may include, but is not limited to[,] the sentencing court, district attorney, operator's alcohol treatment provider, and the drinking driver program, where applicable.

(l) The term "ignition interlock device" shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator's equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the [DOH].

(m) The term "installation/service provider" shall mean an entity approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.

(n) The term "lockout mode" shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator's vehicle to become inoperable if not serviced within [5] calendar days.

(o) The term "monitor" shall mean the local probation department where the operator is under probation supervision or any person(s) or entity (ies) designated in the county's ignition interlock program plan for any operator granted conditional discharge.

(p) The term "operator" shall mean a person who is subject to installation of an ignition interlock device following a conviction of a violation of [VTL § 1192(2), (2-a) or (3),] or any crime defined by the Vehicle and Traffic Law or Penal Law of which an alcohol-related violation of any provision of [VTL § 1192] is an essential element.

(q) The term "qualified manufacturer" shall mean a manufacturer or distributor of an ignition interlock device certified by the [DOH] which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the [DPCA]

in the designated region where the county is located.

(r) The term "region" shall mean counties comprising an area within New York State designated by the [DPCA] where a qualified manufacturer is authorized and has agreed to service.

(s) The term "start-up test" shall mean a breath test taken by the operator to measure the operator's blood alcohol concentration prior to starting the vehicle's ignition.

(t) The term "start-up re-test" shall mean a breath test taken by the operator to measure the operator's blood alcohol concentration required within [5] to [15] minutes of a failed start-up test.

(u) The term "rolling test" shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.

(v) The term "rolling re-test" shall mean a breath test, taken by the operator while the vehicle is running, within [1] to [3] minutes after a failed or missed rolling test.

(1) The term "failed rolling re-test" shall mean a rolling re-test in which the operator's BAC is at or above the set point.

(2) The term "missed rolling re-test" shall mean failure to take the rolling re-test within the time period allotted to do so.

(w) The term "service period" shall mean the length of time between service visits.

(x) The term "service visit" shall mean a visit by the operator to[,] or with[,] the installation/service provider for purposes of having the ignition interlock device inspected, monitored, downloaded, recalibrated, or maintained. It shall also mean[,] where applicable, the act by any operator of sending the portion of the interlock device that contains the data log

> and the breath testing module to the qualified manufacturer for the purposes of downloading the data, reporting to the monitor, and recalibrating the device.
>
> (y) The term "set point" shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.
>
> (z) The term "STOP-DWI" shall mean special traffic options program-driving while intoxicated.
>
> (aa) The term "tamper" shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

§ 48:5 Scope of IID program

VTL § 1198(1) provides as follows:

> Applicability. The provisions of this section shall apply throughout the state to each person required or otherwise ordered by a court as a condition of probation or conditional discharge to install and operate an ignition interlock device in any vehicle which he or she owns or operates.

See also 9 NYCRR § 358.2.

§ 48:6 Who *must* be required to install and maintain an IID?

Effective August 15, 2010, literally everyone who is convicted of an alcohol-related misdemeanor or felony DWI, or any other crime in either the VTL or the Penal Law of which an alcohol-related violation of VTL § 1192 is an essential element, is required to install and maintain an IID. In this regard, VTL § 1198(2) provides:

> In addition to any other penalties prescribed by law, the court shall require that any person who has been convicted of a violation of [VTL § 1192(2), (2-a) or (3)], or any crime defined by this chapter or the penal law of which an alcohol-related violation of any provision of [VTL § 1192] is an essential element, to install and maintain, as a condition of probation or conditional

> discharge, a functioning ignition interlock device in accordance with the provisions of this section and, as applicable, in accordance with the provisions of [VTL §§ 1193(1) and (1-a)]; provided, however, the court may not authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked except as provided herein. For any such individual subject to a sentence of probation, installation and maintenance of such ignition interlock device shall be a condition of probation.

In addition, VTL § 1193(1)(b)(ii) provides:

> In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of [VTL § 1192(2), (2-a) or (3)] to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of [VTL § 1198], an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of [VTL § 1192] and in no event for less than six months.

Similarly, VTL § 1193(1)(c)(iii) provides:

> In addition to the imposition of any fine or period of imprisonment set forth in this paragraph, the court shall also sentence such person convicted of a violation of [VTL § 1192(2), (2-a) or (3)] to a period of probation or conditional discharge, as a condition of which it shall order such person to install and maintain, in accordance with the provisions of [VTL § 1198], an ignition interlock device in any motor vehicle owned or operated by such person during the term of such probation or conditional discharge imposed for such violation of [VTL § 1192] and in no event for a period of less than six months.

Furthermore, pursuant to VTL § 1193(1-a), where a defendant is convicted of DWI in violation of VTL § 1192(2) or (3) after having been previously convicted of DWI in violation of VTL § 1192(2) or

(3) within the preceding 5 years, the sentencing Court must, *inter alia*:

> [O]rder the installation of an ignition interlock device approved pursuant to [VTL § 1198] in any motor vehicle owned or operated by the person so sentenced. Such devices shall remain installed during any period of license revocation required to be imposed pursuant to [VTL § 1193(2)(b)], and, upon the termination of such revocation period, for an additional period as determined by the court.

VTL § 1193(1-a)(c)(i).

Moreover, "[a]ny person ordered to install an ignition interlock device pursuant to [VTL § 1193(1-a)(c)] shall be subject to the provisions of [VTL § 1198(4), (5), (7), (8) and (9)]." VTL § 1193(1-a)(c).

§ 48:7 Who *may not* be required to install and maintain an IID?

The IID program only applies to people who have been convicted of a violation of VTL § 1192(2), (2-a) or (3), or any other crime in either the VTL or the Penal Law of which an alcohol-related violation of VTL § 1192 is an essential element. See PL § 65.10(2)(k-1) ("The court may require [the IID] condition only where a person has been convicted of a violation of [VTL § 1192(2), (2-a) or (3)], or any crime defined by the [VTL] or this chapter of which an alcohol-related violation of any provision of [VTL § 1192] is an essential element"). See also VTL § 1198(2)(a); VTL § 1198(3)(d); 9 NYCRR § 358.1; 15 NYCRR § 140.2.

Thus, a defendant who has been convicted of DWAI in violation of VTL § 1192(1), DWAI Drugs in violation of VTL § 1192(4), or DWAI Combined Influence in violation of VTL § 1192(4-a), cannot be ordered to install and maintain an IID. See also VTL § 1198(2)(c) ("Nothing contained in [VTL § 1198] shall authorize a court to sentence any person to a period of probation or conditional discharge for the purpose of subjecting such person to the provisions of [VTL § 1198], unless such person would have otherwise been so eligible for a sentence of probation or conditional discharge").

§ 48:8 Cost, installation and maintenance of IID

The cost of installing and maintaining the ignition interlock device is the responsibility of the defendant:

> [U]nless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to

> a payment plan or waived. In the event of such waiver, the cost of the device shall be borne in accordance with regulations issued under [VTL § 1193(1)(g)] or pursuant to such other agreement as may be entered into for provision of the device.

VTL § 1198(5)(a). See also 9 NYCRR § 358.8(a).

In this regard, every qualified IID manufacturer must:

> [A]gree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the [DPCA].

9 NYCRR § 358.5(c)(3).

Although the cost of an IID is considered a fine for purposes of CPL § 420.10(5), it does not replace, but rather is in addition to, any fines, surcharges or other costs imposed by law. See VTL § 1198(5)(a).

The installer/service provider of the ignition interlock device is responsible for the installation, calibration and maintenance of such device. See VTL § 1198(5)(b).

§ 48:9 IID installer must provide defendant with fee schedule

An ignition interlock device installer must:

> [P]rovide to all operators, at the time of

> device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device.

9 NYCRR § 358.5(d)(2).

§ 48:10 What if defendant is unable to afford cost of IID?

As is noted in the previous section, the cost of installing and maintaining the ignition interlock device is the responsibility of the defendant "unless the court determines such person is financially unable to afford such cost whereupon such cost may be imposed pursuant to a payment plan or waived." VTL § 1198(5)(a). See also 9 NYCRR § 358.5(c)(3); 9 NYCRR § 358.8(a). In this regard, the DPCA has promulgated a form entitled "Financial Disclosure Report" to be used in determining a person's ability to afford the cost of an IID. This form (a copy of which is set forth at Appendix 65) only has to be completed by people seeking a payment plan or a full waiver of the costs of an IID.

Where the defendant claims an inability to afford the costs of an IID, 9 NYCRR § 358.8(b) provides that:

> Any operator who claims financial inability to pay for the device shall submit in advance of sentencing [3] copies of his or her financial disclosure report, on a form prescribed by the [DPCA], to the sentencing court[,] which shall distribute copies to the district attorney and defense counsel. The report shall enumerate factors which may be considered by the sentencing court with respect to financial inability of the operator to pay for the device and shall include, but not be limited

> to[,] income from all sources, assets, and expenses. This report shall be made available to assist the court in determining whether or not the operator is financially able to afford the cost of the ignition interlock device, and[,] if not[,] whether to impose a payment plan. Where it is determined that a payment plan is not feasible, the court shall determine whether the fee/charge for the device shall be waived.

9 NYCRR § 358.4(d)(3) addresses the issue of how IID manufacturers should divide the costs of providing IIDs to indigent defendants:

> [I]n the event more than one qualified manufacturer does business within its region, the county shall establish an equitable procedure for manufacturers to provide ignition interlock devices without costs where an operator has been determined financially unable to afford the costs and has received a waiver from the sentencing court. The equitable procedure should be based upon proportion of ignition interlock devices paid to each qualified manufacturer by operators in the county.

§ 48:11 Notification of IID requirement

Where a Court imposes the IID condition upon a defendant, the Court must notify DMV of such condition. See VTL § 1198(4)(b). In addition, every County must:

> [E]stablish a procedure whereby the probation department and any other monitor will be notified no later than [5] business days from the date an ignition interlock condition is imposed by the sentencing court, any waiver of the cost of the device granted by the sentencing court, and of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor. Such procedure shall also establish a mechanism for advance notification as to date of release where local or state imprisonment is imposed.

9 NYCRR § 358.4(d)(5). See also 9 NYCRR § 358.7(a)(1).

Furthermore, IID installers must "notify the monitor and county probation department when an ignition interlock device has

been installed on an operator's vehicle(s) within [3] business days of installation." 9 NYCRR § 358.5(d)(16).

§ 48:12 Defendant must install IID within 10 business days of sentencing

Every defendant sentenced to the IID requirement must:

> [H]ave installed and maintain a functioning ignition interlock device in any vehicle(s) he or she owns or operates within [10] business days of the condition being imposed by the court or[,] if sentenced to imprisonment[,] upon release from imprisonment, whichever is applicable.

9 NYCRR § 358.7(c)(1).

In this regard, IID installers are required to install an IID within 7 business days of a defendant's request that the device be installed. See 9 NYCRR § 358.5(d)(1). Notably, where the defendant's vehicle needs repairs before installation can take place, the 7-day installation period commences when such repairs are completed. See 9 NYCRR § 358.5(d)(12).

§ 48:13 Defendant must provide proof of compliance with IID requirement within 3 business days of installation

Every defendant who has an IID installed must, "within [3] business days of installation, submit proof of installation to the court, county probation department, and any other designated monitor." 9 NYCRR § 358.7(c)(1). See also VTL § 1198(4)(a). If the defendant fails to provide proof of installation, the Court may, absent a finding of good cause for the failure which is placed in the record, revoke, modify or terminate the defendant's sentence of probation or conditional discharge. See VTL § 1198(4)(a).

§ 48:14 DMV will note IID condition on defendant's driving record

Where a Court notifies DMV that it has imposed the IID condition upon a defendant, DMV must note such condition on the defendant's driving record. VTL § 1198(4)(b). See also VTL § 1198(3)(f).

§ 48:15 How often does defendant have to blow into IID?

The operator of a vehicle equipped with an ignition interlock device is not merely required to blow into the device to start the vehicle. Rather:

> [T]he operator after passing the start-up test allowing the engine to start, [must] submit to

> an initial rolling test within a randomly variable interval ranging from [5] to [15] minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed [30] minutes for the duration of the travel. A start-up re-test shall be required within [5] to [15] minutes of a failed start-up test. A rolling re-test shall be required within [1] to [3] minutes after a failed or missed rolling test.

9 NYCRR § 358.5(c)(2).

§ 48:16 Lockout mode

When an ignition interlock device goes into "lockout mode," it causes the operator's vehicle to become inoperable if not serviced within 5 calendar days. See 9 NYCRR § 358.3(n). "An ignition interlock device shall enter into a lockout mode upon the following events: [1] failed start-up retest, [1] missed start-up re-test, [1] failed rolling re-test or [1] missed rolling re-test within a service period, or [1] missed service visit." 9 NYCRR § 358.5(c)(2).

§ 48:17 Circumvention of IID

It is a class A misdemeanor:

> (a) for a defendant subject to the ignition interlock device requirement to request, solicit or allow any other person to either (i) blow into an ignition interlock device, or (ii) start a motor vehicle equipped with an ignition interlock device, for the purpose of providing the defendant with an operable motor vehicle;
>
> (b) for a person to either (i) blow into an ignition interlock device, or (ii) start a motor vehicle equipped with an ignition interlock device, for the purpose of providing a person sentenced to the ignition interlock device requirement with an operable motor vehicle;
>
> (c) to tamper with or circumvent an otherwise operable ignition interlock device; and/or
>
> (d) for a defendant subject to the ignition interlock device requirement to operate a motor vehicle without such device.

VTL § 1198(9)(a)-(e).

Every ignition interlock device is required to have a label affixed to it "warning that any person tampering, circumventing, or otherwise misusing the device is guilty of a misdemeanor and may be subject to civil liability." VTL § 1198(10). See also 10 NYCRR § 59.12(f).

§ 48:18 Duty of IID monitor to report defendant to Court and District Attorney

9 NYCRR § 358.7(d)(1) provides, in pertinent part, that:

> Upon learning of the following events:
>
> > (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
> >
> > (ii) that the operator has not complied with service visits requirements;
> >
> > (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;
> >
> > (iv) a report of a failed start-up re-test;
> >
> > (v) a report of a missed start-up re-test;
> >
> > (vi) a report of a failed rolling re-test;
> >
> > (vii) a report of a missed rolling re-test; and/or
> >
> > (viii) a report of a lockout mode;
>
> the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to Part 352. With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan.

In this regard:

> *At a minimum, any monitor shall notify the appropriate court and district attorney, within [3] business days, where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates, where the operator has not complied with a service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof, any report of a lock-out mode, and/or any report of a failed test or re-test where the BAC is .05 percent or higher.*

Id. (emphasis added).

As part of its report to the Court and District Attorney:

> The monitor may recommend modification of the operator's condition of his or her sentence or release whichever is applicable as otherwise authorized by law, including extension of his/her ignition interlock period, a requirement that the operator attend alcohol and substance abuse treatment and/or drinking driver program, referral to [DMV] to determine whether [DMV] may suspend or revoke the operator's license, or recommend revocation of his/her sentence or release.

9 NYCRR § 358.7(d)(2).

"Where the operator is under supervision by the division of parole, the monitor shall coordinate monitoring with the division of parole and promptly provide the parole agency with reports of any failed tasks or failed tests." 9 NYCRR § 358.7(d)(3).

§ 48:19 Use of leased, rented or loaned vehicles

Where a defendant is subjected to the ignition interlock device requirement, such requirement applies to every motor vehicle operated by the defendant including, but not limited to, vehicles that are leased, rented or loaned. See VTL § 1198(7)(a). In this regard, a defendant who is sentenced to the ignition interlock device requirement must "notify any other person who rents, leases or loans a motor vehicle to him or her of such driving restriction." VTL § 1198(7)(b).

A violation of VTL § 1198(7)(a) or (b) is a misdemeanor. See VTL § 1198(7)(c). It is also a misdemeanor for a person to knowingly rent, lease or lend a motor vehicle to a person known to be subject to the ignition interlock device requirement unless such

vehicle is equipped with an IID. See VTL § 1198(7)(b), (c).

§ 48:20 Use of employer-owned vehicles

Where a defendant who is sentenced to the ignition interlock device requirement is required to operate a motor vehicle owned by the defendant's employer for work-related purposes, the defendant is allowed to operate such vehicle without an ignition interlock device under the following conditions:

1. Only in the course and scope of the defendant's employment;

2. Only if the employer has been notified that the defendant is subject to the ignition interlock device requirement;

3. Only if the defendant has provided the Court and the Probation Department with written proof indicating that the defendant's employer is aware of the ignition interlock device requirement and has granted the defendant permission to operate the employer's vehicle without an ignition interlock device only for business purposes; and

4. The defendant has notified the Court and the Probation Department of his or her intention to so operate the employer's vehicle.

VTL § 1198(8). See also 15 NYCRR § 140.5(c); 9 NYCRR § 358.7(c)(5).

A motor vehicle owned by a business entity that is wholly or partly owned or controlled by a defendant subject to the ignition interlock device requirement does not qualify for the "employer vehicle exemption." See VTL § 1198(8); 15 NYCRR § 140.5(c); 9 NYCRR § 358.7(c)(5).

§ 48:21 Pre-installation requirements

Prior to installing an IID, an installer must "obtain and record the following information from every operator":

> (i) photo identification;
>
> (ii) the name and policy number of his/her automobile insurance;
>
> (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or

driven by the operator; and

(iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator.

9 NYCRR § 358.5(d)(13). See also 9 NYCRR § 358.7(c)(3).

§ 48:22 Mandatory service visit intervals

Every defendant sentenced to the IID requirement must:

> [S]ubmit to service visits within [30] calendar days of prior installation or service visits for the collection of data from the ignition interlock device and/or for inspection, maintenance, and recalibration purposes where the device does not automatically transmit data directly to the monitor; and submit to an initial service visit within [30] calendar days of installation and service visits within [60] calendar days of prior service visits where the device either automatically transmits data directly to the monitor for inspection, maintenance, or recalibration purposes or the device head is sent to the qualified manufacturer every [30] calendar days for such purposes, including data download.

9 NYCRR § 358.7(c)(2).

§ 48:23 Accessibility of IID providers

A qualified ignition interlock device manufacturer must:

> [A]gree to service every county within [its] region and ensure that there shall be an installation/service provider within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest[,] and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility

requirements are met and a specific mobile servicing unit with regular hours is indicated.

9 NYCRR § 358.5(c)(4).

§ 48:24 Frequency of reporting by IID providers

A qualified ignition interlock device manufacturer must:

> [G]uarantee that an installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within [30] calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such information and in such format as determined by the [DPCA].

9 NYCRR § 358.5(c)(5).

In addition, the manufacturer must:

> Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within [3] business days of knowledge or receipt of data, indicating:
>
> > (i) installation of a device on an operator's vehicle(s);
> >
> > (ii) report of a failed start-up re-test;
> >
> > (iii) report of a missed start-up re-test;
> >
> > (iv) report of a failed rolling re-test;
> >
> > (v) report of a missed rolling re-test;
> >
> > (vi) report of the device entering lockout mode;
> >
> > (vii) failure of an operator to appear at a scheduled service visit; or

> (viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by [VTL § 1198(9)(a), (c) or (d)], or an attempt thereof.

Id.

§ 48:25 Defendant entitled to report of his/her IID usage history

An ignition interlock device manufacturer must:

> [P]rovide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make [1] request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope.

9 NYCRR § 358.5(c)(6).

§ 48:26 IID providers must safeguard personal information

A qualified ignition interlock device manufacturer must:

> [A]gree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and any of its installation/service providers with respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9.

9 NYCRR § 358.5(c)(7). See also 9 NYCRR § 358.5(c)(10)(vii).

> Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law[,] to appropriate law enforcement authorities, district attorney, treatment agencies, licensed or certified treatment providers, the judiciary, for law enforcement and/or case management purposes relating to criminal investigations and/or execution of warrants, supervision and/or monitoring of ignition interlock conditions, and treatment

> and/or counseling. Personal information in any financial disclosure report shall only be accessible to the monitor, court, and district attorney for purposes related to determination of financial affordability. Case record information is not to be used for noncriminal justice purposes and shall otherwise only be available pursuant to a court order. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access.

9 NYCRR § 358.7(e).

§ 48:27 Post-revocation conditional license

When the ignition interlock device program first came into effect, it had limited applicability. For example, the program only applied to defendants who were placed on probation for DWI, and thus it generally only applied to recidivist drunk drivers. See generally People v. Letterlough, 86 N.Y.2d 259, 268-69, 631 N.Y.S.2d 105, 110 (1995). Such defendants generally were either ineligible for, and/or were in any event prohibited from obtaining, a regular conditional license during the mandatory license revocation period. However, DMV was authorized to grant such defendants a "post-revocation conditional license" for use during the remainder of the term of probation. See VTL § 1198(3)(a).

Now that literally everyone who is convicted of an alcohol-related misdemeanor or felony DWI, or any other crime in either the VTL or the Penal Law of which an alcohol-related violation of VTL § 1192 is an essential element, will be required to obtain an ignition interlock device -- regardless of whether they are on probation and regardless of whether they are repeat offenders -- the concept of the post-revocation conditional license has become outdated. In this regard, DMV's position is that, for purposes of determining eligibility for a conditional license, it will treat a defendant subject to the IID requirement the same as it would have treated him/her prior to August 15, 2010. See Chapter 50, *infra*. In other words, defendants who would be eligible for a conditional license if they were not subject to the IID requirement (e.g., most first offenders) will still be eligible for a conditional license after August 15, 2010, notwithstanding the language of VTL § 1198(3)(a).

To the extent that a "post-revocation conditional license" is still a relevant concept, such a license is akin to a regular conditional license. It allows the defendant to drive:

> (1) enroute to and from the holder's place of

> employment,
>
> (2) if the holder's employment requires the operation of a motor vehicle then during the hours thereof,
>
> (3) enroute to and from a class or course at an accredited school, college or university or at a state approved institution of vocational or technical training,
>
> (4) to and from court ordered probation activities,
>
> (5) to and from [DMV] for the transaction of business relating to such license,
>
> (6) for a [3] hour consecutive daytime period, chosen by [DMV], on a day during which the participant is not engaged in usual employment or vocation,
>
> (7) enroute to and from a medical examination or treatment as part of a necessary medical treatment for such participant or member of the participant's household, as evidenced by a written statement to that effect from a licensed medical practitioner,
>
> (8) enroute to and from a class or an activity which is an authorized part of the alcohol and drug rehabilitation program and at which participant's attendance is required, and
>
> (9) enroute to and from a place, including a school, at which a child or children of the participant are cared for on a regular basis and which is necessary for the participant to maintain such participant's employment or enrollment at an accredited school, college or university or at a state approved institution of vocational or technical training.

VTL § 1198(3)(b). See also 15 NYCRR § 140.5(b).

A person is ineligible for a post-revocation conditional license if he or she has either (a) "been found by a court to have committed a violation of [VTL § 511] during the license revocation period," VTL § 1198(3)(a), or (b) been "deemed by a court to have violated any condition of probation set forth by the court relating to the operation of a motor vehicle or the consumption of alcohol." Id. See also 15 NYCRR § 140.4(a).

DMV cannot deny an application for a post-revocation conditional license "based solely upon the number of convictions for violations of any subdivision of [VTL § 1192] committed by such person within the [10] years prior to application for such license." VTL § 1198(3)(a). See also 15 NYCRR § 140.4(b). By contrast:

> A post-revocation conditional license shall be denied to any person if a review of such person's driving record, or additional information secured by [DMV], indicates that any of the following conditions apply:
>
> (1) The person has been convicted of homicide, assault, criminal negligence or criminally negligent homicide arising out of the operation of a motor vehicle.
>
> (2) The conviction upon which eligibility is based involved a fatal accident.
>
> (3) The person has been convicted more than once of reckless driving within the last [3] years.
>
> (4) The person has had a series of convictions, incidents and/or accidents or has a medical or mental condition, which in the judgment of [DMV] tends to establish that the person would be an unusual and immediate risk upon the highway.
>
> (5) The person has been penalized under section [VTL § 1193(1)(d)(1)] for any violation of [VTL § 1192(2), (2-a), (3), (4) or (4-a)].
>
> (6) The person has had a post-revocation conditional license within the last [5] years.
>
> (7) The person has other open suspension or revocation orders on their record, other than for a violation of [VTL § 1192(1), (2), (2-a), (3), (4) or (4-a)].
>
> (8) The person has [2] convictions of a violation of [VTL § 1192(3), (4) or (4-a)] where physical injury has resulted in both instances.
>
> (9) The person has been convicted of an offense arising from the same event which

> resulted in the current alcohol-related conviction, which conviction, aside from the alcohol-related conviction, resulted in the mandatory revocation of the person's license for leaving the scene of an accident involving personal injury or death.
>
> (10) The person has had [2] or more revocations and/or suspensions of his driver's license, other than the revocation or suspension upon which his eligibility for the rehabilitation program is based[,] within the last [3] years. This subdivision shall not apply to suspensions which have been terminated by performance of an act by the person, nor to a suspension or revocation resulting from a chemical test refusal, if the person had been convicted of a violation of [VTL § 1192] arising out of the same incident.
>
> (11) The person was the holder of a limited DJ or limited MJ license at the time of the violation which resulted in the revocation.

15 NYCRR § 140.4(c).

A post-revocation conditional license may be revoked by DMV for "sufficient cause," including, but not limited to, "failure to comply with the terms of the condition[s] of probation or conditional discharge set forth by the court, conviction of any traffic offense other than one involving parking, stopping or standing[,] or conviction of any alcohol or drug related offense, misdemeanor or felony[,] or failure to install or maintain a court ordered ignition interlock device." VTL § 1198(3)(c). See also 15 NYCRR § 140.5(d).

"Upon the termination of the period of probation or conditional discharge set by the court, the person may apply to [DMV] for restoration of a license or privilege to operate a motor vehicle in accordance with this chapter." VTL § 1198(3)(a). In this regard, 15 NYCRR § 136.10 provides that:

> Upon the termination of the period of probation set by the court, the holder of a post-revocation conditional license may apply to the commissioner for restoration of a license or privilege to operate a motor vehicle. An application for licensure shall be approved if the applicant demonstrates that he or she:
>
> (a) has a valid post-revocation conditional

license; and

(b) has demonstrated evidence of rehabilitation as required by this Part.

§ 48:28 *Intrastate transfer of probation/conditional discharge involving IID requirement*

9 NYCRR § 358.7(b) addresses the situation where a defendant subject to the ignition interlock device requirement either (a) resides in another County at the time of sentencing, or (b) desires to move to another County subsequent to sentencing. Where the defendant is on probation:

> Where the operator is under probation supervision and resides in another county at the time of sentencing or subsequently desires to reside in another county, upon intrastate transfer of probation, the receiving county probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the receiving county probation department from a qualified manufacturer in the operator's region of residence. Where intrastate transfer occurs after sentencing and the installation of a different device is required as a result of the transfer, the device shall be installed within [10] business days of relocation. All intrastate transfer of probation shall be in accordance with Part 349.

9 NYCRR § 358.7(b)(1).

Where the defendant is subject to a conditional discharge:

> Where an operator has received a sentence of conditional discharge and resides in another county at the time of sentencing or thereafter, the receiving county monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence. The receiving county monitor shall perform monitor services

> and the sentencing court retains jurisdiction of the operator. Upon knowledge, the monitor of the sentencing county shall provide necessary operator information in advance to the receiving county monitor. The receiving county monitor shall notify the sentencing court and county district attorney pursuant to paragraph (d) of this section.

9 NYCRR § 358.7(b)(2).

§ 48:29 *Interstate* transfer of probation/conditional discharge involving IID requirement

9 NYCRR § 358.7(b)(3) and (4) address the situation where a defendant subject to the ignition interlock device requirement either (a) resides in another State at the time of sentencing, or (b) desires to move to another State subsequent to sentencing. In such a situation:

> (3) Where an operator, subject to probation supervision or a sentence of conditional discharge, resides or desires to reside out-of-state and is an offender subject to the interstate compact for adult offender supervision pursuant to [Executive Law 259-mm], the governing rules of such compact shall control. Additionally, Part 349 shall apply with respect to transfer of supervision of probationers. Where transfer is permitted, the receiving state retains its authority to accept or deny the transfer in accordance with compact rules. Where an operator is subject to probation supervision and is granted reporting instructions and/or acceptance by a receiving state, the sending probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state. Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the sending county probation department from a qualified manufacturer in the receiving state region. The device shall be installed prior to relocation or return where feasible. A qualified manufacturer shall make necessary arrangements to ensure the county monitor in New York State and the receiving state receive timely reports from the manufacturer and/or installation/service provider; and

> (4) Where an operator resides or desires to reside out-of-state, is not subject to the interstate compact for adult offender supervision and such compact's governing rules, and has been given permission to return or relocate by the sentencing court or monitor, the same provisions with respect to selection specified in paragraph [3] of this subdivision applies and the device shall be installed prior to relocation or return. A qualified manufacturer shall make necessary arrangements to ensure the county monitor receives timely reports from the manufacturer and/or installation/service provider. *Pursuant to the compact, an operator convicted of his or her first DWI misdemeanor is not subject to the compact.*

(Emphasis added).

§ 48:30 VTL § 1198 does not preclude Court from imposing any other permissible conditions of probation

PL § 60.36 provides that:

> Where a court is imposing a sentence for a violation of [VTL § 1192(2), (2-a) or (3)] pursuant to [PL §§ 65.00 or 65.05] and, as a condition of such sentence, orders the installation and maintenance of an ignition interlock device, the court may impose any other penalty authorized pursuant to [VTL § 1193].

See also VTL § 1198(3)(e) ("Nothing contained herein shall prevent the court from applying any other conditions of probation or conditional discharge allowed by law, including treatment for alcohol or drug abuse, restitution and community service").

§ 48:31 Imposition of IID requirement does not alter length of underlying license revocation

"Imposition of an ignition interlock condition shall in no way limit the effect of any period of license suspension or revocation set forth by the commissioner or the court." VTL § 1198(3)(d).

§ 48:32 IID requirement runs consecutively to jail sentence

PL § 60.21 provides that whenever a person is sentenced to imprisonment for a conviction of VTL § 1192(2), (2-a) or (3), the Court is also required to both (a) sentence the person to either probation or a conditional discharge, and (b) order the person to

install an ignition interlock device. Such period of probation or conditional discharge is required to run *consecutively* to any period of imprisonment, and to commence immediately upon the person's release from imprisonment. Specifically, PL § 60.21 provides that:

> Notwithstanding [PL § 60.01(2)(d)], when a person is to be sentenced upon a conviction for a violation of [VTL § 1192(2), (2-a) or (3)], the court may sentence such person to a period of imprisonment authorized by [PL Article 70] and shall sentence such person to a period of probation or conditional discharge in accordance with the provisions of [PL § 65.00] and shall order the installation and maintenance of a functioning ignition interlock device. Such period of probation or conditional discharge shall run consecutively to any period of imprisonment and shall commence immediately upon such person's release from imprisonment.

It seems clear that this statute, which was enacted as part of a series of statutes and statutory amendments collectively known as "Leandra's Law," see Chapter 496 of the Laws of 2009, was intended to be read in conjunction with the ignition interlock device requirement. In other words, the intent of PL § 60.21 is to preclude a person from receiving credit for "time served" on the IID portion of his or her sentence while the person is incarcerated. The statute should not be read to allow a DWI defendant to receive the maximum allowable jail sentence followed by a full term of probation. Indeed, if the statute were so construed, then there could be no penalty for violating the terms of probation (as the maximum jail sentence would already have been served).

§ 48:33 Applicability of IID requirement to parolees

Executive Law § 259-c(15-a) requires that everyone who is released from State Prison on parole or conditional release after serving a sentence for felony DWI or Vehicular Assault/Vehicular Manslaughter must install an ignition interlock device in any vehicle that they own or operate during the term of such parole or conditional release. Specifically, Executive Law § 259-c(15-a) provides that:

> Notwithstanding any other provision of law, where a person is serving a sentence for a violation of section 120.03, 120.04, 120.04-a, 125.12, 125.13 or 125.14 of the penal law, or a felony as defined in [VTL § 1193(1)(c)], if such person is released on parole or

> conditional release the board shall require as a mandatory condition of such release, that such person install and maintain, in accordance with the provisions of [VTL § 1198], an ignition interlock device in any motor vehicle owned or operated by such person during the term of such parole or conditional release for such crime. Provided further, however, the board may not otherwise authorize the operation of a motor vehicle by any person whose license or privilege to operate a motor vehicle has been revoked pursuant to the provisions of the vehicle and traffic law.

§ 48:34 IID cannot be removed without "certificate of completion" or "letter of de-installation"

An IID installer can "remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized pursuant to section 358.7 of this Part." 9 NYCRR § 358.5(d)(4). In this regard, 9 NYCRR § 358.7(a)(2) provides that "[w]here a monitor learns that the operator no longer owns or operates a motor vehicle in which an ignition interlock device has been installed, the monitor may issue a letter of de-installation directly to the installation/service provider which authorizes removal of the device."

APPENDIX 1

N.Y. Comp. Codes R. & Regs. tit. 10, § 59. 1

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 10. Department of Health
Chapter II. Administrative Rules and Regulations
Subchapter D. Laboratories
Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 1. Definitions**

EMERGENCY REGULATION

(a) *Techniques and methods* means the collection, processing and determination of the alcoholic content of body fluids such as human blood, saliva or urine, and of breath or alveolar air by protocols and/or instruments determined by the commissioner to be acceptable.

(b) *Per centum by weight of alcohol* as used in the Vehicle and Traffic Law and the Environmental Conservation Law means percent weight per volume, that is, grams of alcohol per 100 milliliters of whole blood.

(c) *Chemical tests/analyses* include breath tests conducted on breath analysis instruments approved by the commissioner in accordance with section 59.4 of this Part.

(d) *Training agency or agencies* means the Office of Public Safety of the Division of Criminal Justice Services, the Division of State Police, the Nassau County Police Department, the Suffolk County Police Department, and/or the New York City Police Department.

(e) *Commissioner* means the New York State Commissioner of Health.

(f) *Department* means the New York State Department of Health.

(g) *Ignition interlock device* means any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator's equivalent breath alcohol level does not exceed the calibrated setting on the device as required by standards in this Part.

(h) *Blood alcohol concentration (BAC)* means the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/100 ml blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.

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(i) *Testing laboratory* means a nationally recognized, independent materials testing laboratory that is not affiliated with, and operates autonomously from, any ignition interlock device manufacturer, is properly equipped and staffed to carry out test procedures required by this Part, and is independently accredited in accordance with requirements for the competence of testing and calibration laboratories promulgated as a standard by the International Organization for Standardization (ISO), or other commensurate standard acceptable to the department.

(j) *Breath analysis instrument* means a device that complies with section 59.4 of this Part.

(k) *Saliva* means oral fluid.

(l) *Calibration* means the activity of verifying that a value generated by the instrument is in acceptable agreement with the assigned value for a traceable and/or certified reference standard, including any adjustment to the instrument to bring it into acceptable agreement.

Sec. filed: Nov. 29, 1965; repealed, new filed Dec. 10, 1970; amd. filed March 31, 1971; renum. 58-2.1, new filed Dec. 28, 1971; amds. filed: March 28, 1972; Dec. 29, 1982; May 30, 1986 as emergency measure, expired 60 days after filing; Aug. 12, 1986; June 5, 1987; Aug. 19, 1988 as emergency measure, expired 60 days after filing; Nov. 7, 1988 as emergency measure, expired 60 days after filing; Feb. 7, 1989 as emergency measure, expired 60 days after filing; April 10, 1989 as emergency measure; April 18, 1989 as emergency measure, expired 90 days after filing; July 10, 1989; Dec. 22, 1989; July 17, 1990 as emergency measure; Dec. 28, 1990 as emergency measure, expired 60 days after filing; April 16, 1991 as emergency measure; June 14, 1991; Nov. 5, 1991 as emergency measure, expired 90 days after filing; June 1, 1992 as emergency measure, expired 60 days after filing; Aug. 11, 1992; March 11, 1996 as emergency measure, expired 60 days after filing; June 4, 1996 as emergency measure; July 30, 1996 as emergency measure; Sept. 3, 1996; March 1, 2000 as emergency measure; May 26, 2000 as emergency measure; June 30, 2000 eff. July 19, 2000. Amended (c), Amd. eff. April 17, 2007; as emergency measure eff. July 13, 2007; emergency rulemaking eff. Oct. 10, 2007, expired Jan. 7, 2008; emergency rulemaking eff. Jan. 8, 2008, expired Apr. 6, 2008; emergency rulemaking eff. Apr. 8, 2008, expired July 6, 2008; emergency rulemaking eff. July 7, 2008, expired Oct. 4, 2008; emergency rulemaking eff. Oct. 6, 2008, expired Jan. 3, 2009; emergency rulemaking eff. Jan. 5, 2009, expired Mar. 5, 2009; amd. filed Feb. 6, 2009 eff. Feb. 25, 2009; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 1, 10 NY ADC 59. 1

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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APPENDIX 1

N.Y. Comp. Codes R. & Regs. tit. 10, § 59. 2

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 10. Department of Health
Chapter II. Administrative Rules and Regulations
Subchapter D. Laboratories
Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 2. Techniques and methods for determining blood and urine alcohol**

EMERGENCY REGULATION

(a) All blood and urine alcohol determinations shall be made by quantitative methods and reported as whole blood alcohol concentration (BAC) to the second decimal place as found; for example, 0.137 percent found shall be reported as 0.13 percent weight per volume. If specimens other than whole blood are analyzed, the following conversions shall apply:

(1) three fourths of the determined concentration of alcohol in the urine shall be equivalent to the corresponding BAC; and

(2) nine tenths of the determined concentration of alcohol in the serum or plasma shall be equivalent to the corresponding BAC.

(b) Analytical procedures for blood and urine alcohol analysis shall include the following controls in conjunction with any sample or series of 10 samples analyzed sequentially or simultaneously:

(1) a blank analysis as appropriate; and

(2) analysis of a suitable reference sample of known alcoholic content greater than or equal to 0.08 percent weight per volume, the result of which analysis shall agree with the reference sample value within the limits of plus or minus 0.01 percent weight per volume or such limits as specified by the commissioner.

(c) An analysis of urine shall be made upon two specimens collected at least 30 minutes apart.

(d) If a blood specimen is to be collected for analysis, an aqueous solution of a nonvolatile antiseptic shall be used on the skin. Alcohol or phenol shall not be used as a skin antiseptic.

(e) Specimens shall be clearly identified at the time of collection.

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APPENDIX 1

N.Y. Comp. Codes R. & Regs. tit. 10, § 59. 2

Sec. filed Nov. 29, 1965; renum. 58-2.2, new filed Dec. 28, 1971; amds. filed: March 28, 1972; Dec. 4, 1972; June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 2, 10 NY ADC 59. 2

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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APPENDIX 1

N.Y. Comp. Codes R. & Regs. tit. 10, § 59. 3

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 10. Department of Health
Chapter II. Administrative Rules and Regulations
Subchapter D. Laboratories
Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 3. Blood, urine and saliva alcohol analysis; permits**

EMERGENCY REGULATION

(a) Individuals performing chemical analyses for blood, urine and saliva alcohol content may apply to the commissioner for a permit.

(b) A permit for the performance of chemical analyses for blood, urine and saliva alcohol content shall be issued by the commissioner to an applicant who:

(1) is a high school graduate and has one year of laboratory experience acceptable to the commissioner; or

(2) has satisfactorily completed two years of college study and has six months of laboratory experience acceptable to the commissioner; and

(3) demonstrates to the satisfaction of the commissioner proficiency in the chemical analyses of the alcoholic content of blood and any other sample type that the commissioner requires; and

(4) has access to appropriate laboratory facilities for the performance of such analyses.

(c) The applicant shall demonstrate proficiency in the techniques and methods of analysis by correctly analyzing and reporting results, within limits of accuracy established by the commissioner, for 75 percent of the samples for each set of proficiency tests issued by the commissioner.

(d) A permit shall be issued for a period of one year and may be renewed annually thereafter. A permit shall not be issued or renewed if, for two consecutive sets of proficiency tests, the applicant or permit holder:

(1) does not meet the proficiency requirements of this section; or

(2) fails to report proficiency test results; or

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(3) reports results after three weeks from the date of distribution of proficiency test samples, except that the commissioner, for good cause, may extend such time on request made during such three-week period.

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; amd. filed March 31, 1971: renum. 58-2.3, new filed Dec. 28, 1971; renum. 59.4, new filed March 28, 1972; amds. filed: Dec. 4, 1972; June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 3, 10 NY ADC 59. 3

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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Subchapter D. Laboratories
Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 4. Breath analysis instruments**

EMERGENCY REGULATION

(a) The commissioner approves, for use in New York State, breath analysis instruments found on the Conforming Products List of Evidential Breath Alcohol Measurement Devices as established by the U.S. Department of Transportation/National Highway Traffic Safety Administration (NHTSA), published in the Federal Register on March 11, 2010 (75 Fed. Reg. 11624-11627, available for public inspection and copying at the Department of Health Records Access Office, Corning Tower, Empire State Plaza, Albany, NY 12237). A facsimile of that list is set forth in subdivision (b) of this section. At the request of a training agency, the commissioner may approve a breath analysis instrument that has been accepted by NHTSA but is not on the Conforming Products List published in the Federal Register on March 11, 2010, if the commissioner determines that approval of such instrument is appropriate.

(b) Conforming Products List of Evidential Breath Measurement Devices

Federal Register / Vol. 75, No. 47 / Thursday, March 11, 2010 / Notices

CONFORMING PRODUCTS LIST OF EVIDENTIAL BREATH MEASUREMENT DEVICES

Manufacturer and model	Mobile	Nonmobile
Alcohol Countermeasure Systems Corp., Mississauga, Ontario, Canada:		
Alert J3AD [FN*]	X	X
Alert J4X.ec	X	X
PBA3000C	X	X
BAC Systems, Inc., Ontario, Canada:		
Breath Analysis Computer [FN*]	X	X

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CAMEC Ltd., North Shields, Tyne and Ware, England:		
IR Breath Analyzer [FN*]	X	X
CMI, Inc., Owensboro, Kentucky:		
Intoxilyzer Model:		
200	X	X
200D	X	X
240 (aka: Lion Alcolmeter 400+ outside the U.S.)	X	X
300	X	X
400	X	X
400PA	X	X
1400	X	X
4011 [FN*]	X	X
4011A [FN*]	X	X
4011AS [FN*]	X	X
4011AS -A [FN*]	X	X
4011AS -AQ [FN*]	X	X
4011 AW [FN*]	X	X
4011A27 -10100 [FN*]	X	X
4011A27 -10100 with filter [FN*]	X	X
5000	X	X
5000 (w/Cal. Vapor Re-Circ.)	X	X
5000 (w/3/8" ID Hose option)	X	X
5000CD	X	X
5000CD/FG5	X	X
5000EN	X	X
5000 (CAL DOJ)	X	X
5000VA	X	X
8000	X	X
PAC 1200 [FN*]	X	X
S -D2	X	X
S -D5 (aka: Lion Alcolmeter SD -5 outside the U.S.)	X	X
Draeger Safety, Inc. (aka: National Draeger) Irving, Texas:		
Alcotest Model:		
6510	X	X
6810	X	X
7010 [FN*]	X	X
7110 [FN*]	X	X
7110 MKIII	X	X
7110 MKIII -C	X	X
7410	X	X

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7410 Plus	X	X
7510	X	X
9510	X	X
Breathalyzer Model:		
900	X	X
900A [FN*]	X	X
900BG [FN*]	X	X
7410	X	X
7410 -II	X	X
EnviteC by Honeywell GmbH, Fond du Lac, Wisconsin:		
AlcoQuant 6020	X	X
Gall's Inc., Lexington, Kentucky:		
Alcohol Detection System-A.D.S. 500	X	X
Guth Laboratories, Inc., Harrisburg, Pennsylvania:		
Alcotector BAC -100	X	X
Alcotector C2H5OH	X	X
Intoximeters, Inc., St. Louis, Missouri:		
Photo Electric Intoximeter [FN*]		X
GC Intoximeter MK II [FN*]	X	X
GC Intoximeter MK IV [FN*]	X	X
Auto Intoximeter [FN*]	X	X
Intoximeter Model:		
3000	X	X
3000 (rev B1) [FN*]	X	X
3000 (rev B2) [FN*]	X	X
3000 (rev B2A) [FN*]	X	X
3000 (rev B2A) w/FM option [FN*]	X	X
3000 (Fuel Cell) [FN*]	X	X
3000 D [FN*]	X	X
3000 DFC [FN*]	X	X
Alcomonitor		X
Alcomonitor CC	X	X
Alco-Sensor III	X	X
Alco-Sensor III (Enhanced with Serial Numbers above 1,200,000)	X	X
Alco-Sensor IV	X	X
Alco-Sensor IV XL	X	X
Alco-Sensor V	X	X
Alco-Sensor AZ	X	X
Alco-Sensor FST	X	X
Intox EC/IR	X	X

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Intox EC/IR II	X	X
Intox EC/IR II (Enhanced with serial number 10,000 or higher)		X
Portable Intox EC/IR	X	X
RBT -AZ	X	X
RBT -III	X	X
RBT III -A	X	X
RBT IV	X	X
RBT IV with CEM (cell enhancement module)	X	X
Komyo Kitagawa, Kogyo, K.K., Japan:		
Alcolyzer DPA -2 [FN*]	X	X
Breath Alcohol Meter PAM 101B [FN*]	X	X
Lifeloc Technologies, Inc., (formerly Lifeloc, Inc.), Wheat Ridge, Colorado:		
PBA 3000B	X	X
PBA 3000-P [FN*]	X	X
PBA 3000C	X	X
Alcohol Data Sensor	X	X
Phoenix	X	X
Phoenix 6.0	X	X
EV 30	X	X
FC 10	X	X
FC 20	X	X
Lion Laboratories, Ltd., Cardiff, Wales, United Kingdom:		
Alcolmeter Model:		
300	X	X
400	X	X
400+ (aka: Intoxilyzer 240 in the U.S.)	X	X
SD -2 [FN*]	X	X
SD -5 (aka: S -D5 in the U.S.)	X	X
EBA [FN*]	X	X
Intoxilyzer Model:		
200	X	X
200D	X	X
1400	X	X
5000 CD/FG5	X	X
5000 EN	X	X
Luckey Laboratories, San Bernardino, California:		
Alco-Analyzer Model:		

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1000 [FN*]		X
2000 [FN*]		X
Nanopuls AB, Uppsala, Sweden:		
Evidenzer	X	X
National Patent Analytical Systems, Inc., Mansfield, Ohio:		
BAC DataMaster (with or without the Delta-1 accessory):		
BAC Verifier DataMaster (w/or without the Delta-1 accessory)	X	X
DataMaster cdm (w/or without the Delta-1 accessory)	X	X
DataMaster DMT	X	X
Omicron Systems, Palo Alto, California:		
Intoxilyzer Model:		
4011 [FN*]	X	X
4011AW [FN*]	X	X
PAS International, Fredericksburg, Virginia:		
Mark V Alcovisor	X	X
Plus 4 Engineering, Minturn, Colorado:		
5000 Plus 4 [FN*]	X	X
Seres, Paris, France:		
Alco Master	X	X
Alcopro	X	X
Siemans-Allis, Cherry Hill, New Jersey:		
Alcomat [FN*]	X	X
Alcomat F [FN*]	X	X
Smith and Wesson Electronics, Springfield, Massachusetts:		
Breathalyzer Model:		
900 [FN*]	X	X
900A [FN*]	X	X
1000 [FN*]	X	X
2000 [FN*]	X	X
2000 (non-Humidity Sensor) [FN*]	X	X
Sound-Off, Inc., Hudsonville, Michigan:		
AlcoData	X	X
Seres Alco Master	X	X

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Seres Alcopro	X	X
Stephenson Corp.:		
Breathalyzer 900 [FN*]	X	X
Tokai-Denshi Inc., Tokyo, Japan:		
ALC -PRO II (US)	X	X
U.S. Alcohol Testing, Inc./Protection Devices, Inc., Rancho Cucamonga, California:		
Alco-Analyzer 1000		X
Alco-Analyzer 2000		X
Alco-Analyzer 2100	X	X
Verax Systems, Inc., Fairport, New York:		
BAC Verifier [FN*]	X	X
BAC Verifier Datamaster	X	X
BAC Verifier Datamaster II [FN*]	X	X

[TFN*] Instruments marked with an asterisk (*) meet the Model Specifications detailed in 49 FR 48854 (December 14, 1984) (i.e., instruments tested at 0.000, 0.050, 0.101, and 0.151 BAC.) Instruments not marked with an asterisk meet the Model Specifications detailed in 58 FR 48705 (September 17, 1993), and were tested at BACs = 0.000, 0.020, 0.040, 0.080, and 0.160. All instruments that meet the Model Specifications currently in effect (dated September 17, 1993) also meet the Model Specifications for Screening Devices to Measure Alcohol in Bodily Fluids.

(c) No law enforcement agency shall use a breath analysis instrument unless the training agency has verified that representative samples of the specific make and model perform properly. Maintenance shall be conducted as specified by the training agency, and shall include, but shall not be limited to, calibration at a frequency as recommended by the device manufacturer or, minimally, annually.

(d) Training agencies shall be responsible for maintaining records pertaining to verification and maintenance (including calibration) of breath analysis instruments and standards; provided, however, that record keeping maintenance may be delegated, in whole or in part, to the law enforcement agency using the breath analysis instrument(s).

Sec. filed Nov. 29, 1965; amd. filed April 12, 1967; renum. 58-2.4, new filed Dec. 28, 1971; renum. 59.5, new added by renum. 59.3, filed March 28, 1972; amds. filed: Dec. 29, 1982; May 30, 1986 as emergency measure, expired 60 days after filing; Aug. 12, 1986; June 5, 1987; Aug. 19, 1988 as emergency measure, expired 60 days after filing; Nov. 7, 1988 as emergency measure, expired 60 days after filing; Feb. 7, 1989 as emergency measure, expired 60 days after filing; April 10, 1989 as emergency measure; July 10, 1989; July 17, 1990 as emergency measure, expired 90 days after filing; Dec. 28, 1990 as emergency measure, expired 60 days after filing; April 16, 1991 as emergency measure; June 14,

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1991; Nov. 5, 1991 as emergency measure, expired 90 days after filing; June 1, 1992 as emergency measure, expired 60 days after filing; Aug. 11, 1992; March 11, 1996 as emergency measure, expired 60 days after filing; June 4, 1996 as emergency measure; July 30, 1996 as emergency measure; Sept. 3, 1996; March 1, 2000 as emergency measure; May 26, 2000 as emergency measure; June 30, 2000 eff. July 19, 2000. Amended (b), amd. eff. April 17, 2007; as emergency measure eff. July 13, 2007; emergency rulemaking eff. Oct. 10, 2007, expired Jan. 7, 2008; emergency rulemaking eff. Jan. 8, 2008, expired Apr. 6, 2008; emergency rulemaking eff. Apr. 8, 2008, expired July 6, 2008; emergency rulemaking eff. July 7, 2008, expired Oct. 4, 2008; emergency rulemaking eff. Oct. 6, 2008, expired Jan. 3, 2009; emergency rulemaking eff. Jan. 5, 2009, expired Mar. 5, 2009; amd. filed Feb. 6, 2009 eff. Feb. 25, 2009; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 4, 10 NY ADC 59. 4

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 5. Breath analysis; techniques and methods**

EMERGENCY REGULATION

The following breath analysis techniques and methods shall be a component of breath analysis instrument operator training provided by training agencies and shall be used by operators performing breath analysis for evidentiary purposes:

(a) A breath sample shall be collected at the direction and to the satisfaction of a police officer and shall be analyzed with breath analysis instruments meeting the criteria set forth in section 59.4 of this Part.

(b) The subject shall be observed for at least 15 minutes prior to the collection of the breath sample, during which period the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked, or have placed anything in his/her mouth; if the subject should regurgitate, vomit, smoke or place anything in his/her mouth, an additional 15-minute waiting period shall be required.

(c) A system purge shall precede both the testing of each subject and the analysis of the reference standard.

(d) The result of an analysis of a reference standard with an alcoholic content greater than or equal to 0.08 percent must agree with the reference standard value within the limits of plus or minus 0.01 percent weight per volume, or such limits as set by the commissioner. An analysis of the reference standard shall precede or follow the analysis of the breath of the subject in accordance with the test sequence established by the training agency. Readings for the reference standard, a blank and the subject's breath, shall be recorded.

Sec. filed Nov. 29, 1965; renum. 58-2.5, filed Dec. 28, 1971; new added by renum. 59.4, filed March 28, 1972; amds. filed: Dec. 4, 1972; Aug. 29, 1974; Aug. 6, 1976; Dec. 23, 1982; June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

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→ **Section 59. 6. Breath analysis permit program**

EMERGENCY REGULATION

Training agencies shall submit an application for approval of a breath analysis permit program or a training program for breath analysis to the commissioner. Other agencies seeking approval of such programs shall submit an application to the commissioner through the Office of Public Safety of the Division of Criminal Justice Services. The application shall include:

(a) a description of the techniques and methods to be utilized;

(b) the make and model of the breath analysis instruments used;

(c) an outline of the material presented in the breath analysis instrument operator and technical supervisor training program;

(d) the name of the individual primarily responsible for each training program and for the breath analysis pro- gram;

(e) the name and qualifications of one or more individuals meeting the requirements for technical supervisor under section 59.9 of this Part; and

(f) such other information as the commissioner shall require.

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; renum. 58-2.6, filed Dec. 28, 1971; new filed Dec. 4, 1972; amd. filed June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 6, 10 NY ADC 59. 6

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→ **Section 59. 7. Breath analyzer operator permits**

EMERGENCY REGULATION

(a) A permit valid for two years shall be issued by the commissioner to breath analysis instrument operators who have completed an approved program based upon standards acceptable to the training agency and certified by the commissioner. Such program shall consist of a minimum of 24 hours of instruction and training with identified learning objectives, supervised by one or more individuals certified as technical supervisors, and shall in- clude:

(1) three hours of instruction on the effects of alcohol on the human body;

(2) five hours of instruction on operational principles of the selected techniques and methods, including a functional description and a detailed operational description of the breath analysis instrument(s) with a demonstration;

(3) five hours of instruction on the legal aspects of chemical tests generally, and of the particular techniques and methods to be employed;

(4) three hours of instruction on supplemental information to include nomenclature appropriate to the field of chemical tests for alcohol;

(5) six hours of laboratory participation using approved breath analysis instruments and simulators, or other reference standards;

(6) a passing score on a one-hour formal examination designed to evaluate whether the operator has met the course learning objectives; and

(7) a demonstration of analytical proficiency on each breath analysis instrument for which the operator is seeking certification.

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(b) A permit as a breath analysis instrument operator shall be renewed for a two-year period, provided that, within the 120 calendar days preceding the permit's expiration date, the operator: completes a retraining program that minimally includes an instructional course in breath analysis designed to refresh and update the operator's knowledge in areas described in subdivision (a) of this section; satisfactorily meets the course's learning objectives as determined by a technical supervisor; demonstrates analytical proficiency on each breath analysis instrument for which the operator is seeking permit renewal; and attains a passing score on a formal examination; or, in lieu of such formal retraining, with the concurrence of the responsible training agency, provided that the operator and his/her superior officer submits to the training agency, a written declaration that the operator has performed six or more breath analyses on subjects in accordance with this Part on each breath analysis instrument for which the operator is seeking permit renewal during the 24 months preceding permit expiration. Notwithstanding such a submission, every four years all operators shall participate successfully in the retraining course described in this subdivision.

(c)(1) Whenever a breath analysis instrument operator's permit is not renewed prior to the expiration date, the commissioner may extend such expiration date for 30 calendar days, provided that the training agency and operator jointly submit a written request for such extension, describing the reasons for the failure to renew in a timely manner. The operator's permit shall remain valid during the 30-day extension period.

(2) If the operator fails to meet the conditions for permit renewal pursuant to subdivision (b) of this section within the extension period authorized pursuant to paragraph (1) of this subdivision, the permit shall become void and not renewable; an operator whose permit becomes void may apply for a new permit by repeating the requirements of subdivision (a) of this section;. and the effective date of any such new permit shall be the date of commissioner approval, without back dating to the date on which the prior permit became void.

(d) A training agency shall submit to the commissioner documentation of breath analysis instrument operator training for initial issuance and renewal of a permit in a format designated by the commissioner.

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; renum. 58-2.7, filed Dec. 28, 1971; new filed Dec. 4, 1972; amds. filed: Dec. 29, 1982; June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 7, 10 NY ADC 59. 7

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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→ **Section 59. 8. Revocation or suspension of permits**

EMERGENCY REGULATION

(a) The commissioner or the training agencies may at any time and from time to time require breath analysis instrument operators or technical supervisors to demonstrate their ability to operate properly the breath analysis instrument(s) for which they hold a permit.

(b) The operator's permit may be revoked by the commissioner based on information acquired by the commissioner, or a training agency, that the operator does not conduct breath tests in accordance with techniques and methods as instructed by the training agency, that the operator's performance is unreliable, or the operator is incompetent. Upon revocation, the operator shall return any and all permits to the commissioner.

(c) The training agency may suspend the permit of any operator under its supervision when, in its judgment, the operator does not conduct breath tests in accordance with techniques and methods as established by the training agency, the operator's performance is unreliable or the operator is incompetent. The training agency shall immediately notify the commissioner in writing of any such suspension and furnish a copy of such notice to the suspended operator, who shall not be permitted to operate the breath analysis instrument until such time as the suspension is removed.

(d) An operator whose permit has been suspended by the training agency may appeal to the commissioner who shall decide whether suspension shall be affirmed or set aside. The commissioner may reinstate the permit of the operator making such appeal under such conditions as the commissioner deems necessary.

(e) An operator whose permit has been revoked shall not be eligible for a new permit within 12 months from the date of revocation or at such other time as may be determined by the commissioner.

Sec. filed Nov. 29, 1965; renum. 58-2.8, filed Dec. 28, 1971; new filed Dec. 4, 1972; amds. filed: Dec. 29, 1982; June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

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→ **Section 59. 9. Technical supervisor; qualifications and certification**

EMERGENCY REGULATION

(a) The commissioner may authorize certification of an applicant as technical supervisor for a period of four years, provided such applicant submits satisfactory evidence through the training agency that he/she meets the following qualifications:

(1) thirty semester hours of college credits, including eight semester hours of chemistry;

(2) certification as an operator of the breath analysis instrument(s) to be supervised, or possession of equivalent experience or training to qualify as an operator; and

(3) satisfactory completion of a technical supervisor's course, the content of which shall include:

(i) advanced survey of current information concerning alcohol and its effect on the human body (one hour);

(ii) operational principles and theories applicable to the program (two hours);

(iii) breath analysis instrument maintenance and calibration (two hours);

(iv) legal aspects of chemical testing (one hour); and

(v) principles of instruction (two hours); or

(4) training and experience equivalent to a technical supervisor's course and acceptable to the commissioner.

(b) A technical supervisor's certificate may be terminated by the commissioner based on documented evidence

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that the technical supervisor's performance is not in keeping with the best interests of the breath alcohol testing program.

(c) A technical supervisor shall have responsibility for:

(1) breath analysis instrument operator training, competency evaluation, and periodic examination to ensure maintenance of technical knowledge and proficiency;

(2) maintenance, including calibration of breath analysis instruments and equipment under his/her supervision and preparation and standardization of chemicals used for testing and/or evaluation of such chemicals, by direct performance of such tasks or by delegating performance to another person with demonstrated competency, but who need not be qualified as a technical supervisor; provided, however, whenever such tasks are so delegated, the technical supervisor shall review the work product to ensure that the assigned designee's performance meets expectations; and

(3) periodic inspection of breath analysis instrument performance.

(d) A technical supervisor's certificate may be renewed for a period of four years upon submission of a written application and statement that he/she has carried out his/her duties in accordance with this Part. Suspension or revocation pursuant to section 59.8 of this Part of a breath analysis instrument operator's permit held by a technical supervisor shall result in suspension or revocation, respectively, of the individual's certification as a technical supervisor.

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; renum. 58-2.9, filed Dec. 28, 1971; new filed Dec. 4, 1972; amd. filed June 5, 1987 eff. June 5, 1987; emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 9, 10 NY ADC 59. 9

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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→ **Section 59. 10. Certification criteria for ignition interlock devices**

EMERGENCY REGULATION

(a) A manufacturer of ignition interlock devices shall apply to the department to certify a device for use in New York State. The application shall be on a form or format specified by the department with documents appended as necessary to provide the requisite information, and shall include, but not be limited to:

(1) name and address of the manufacturer, and contact information, including identification of a person to respond to department inquiries;

(2) name and model of the ignition interlock device;

(3) a detailed description of the ignition interlock device, including: instructions for its installation and operation; technical specifications, including, but not limited to, accuracy; calibration stability; data security; and capability for data collection and recording, tamper detection, and retesting; and unsupervised operation in a range of environmental conditions;

(4) the manufacturer's statement that all ignition interlock devices of the same make and model sold or offered for sale or lease, for which certification is sought, meet the requirements of this Part; and

(5) a certificate or other document from an insurance carrier licensed in New York State demonstrating that the manufacturer holds product liability insurance with minimum liability limits of one million dollars per occurrence and three million dollars aggregate. The documentation shall include the issuing company's statement that at least thirty (30) days notice will be provided to the department whenever the issuing company intends to cancel the insurance before the policy's expiration date. Liability coverage shall include defects in product design and materials, as well as in manufacture, calibration, installation and removal of devices.

(b) The manufacturer shall provide the testing laboratory with:

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(1) six representative instruments of each ignition interlock device model for which certification is sought, from which the testing laboratory shall select at least two for testing;

(2) instructions for device installation and operation; and

(3) a description of the device's capabilities, including, but not limited to: security; data collection and recording; tamper detection; circumvention prevention; retesting; and unsupervised operation in a range of environmental conditions.

(c) At the request of a manufacturer of ignition interlock devices, the commissioner shall certify the ignition interlock device for use in New York State, provided the manufacturer:

(1) demonstrates, through arrangements with a testing laboratory, that the model meets or exceeds the model specifications for breath alcohol ignition interlock devices adopted by NHTSA and published in the Federal Register on April 7, 1992 (57 Fed. Reg. 11772 - 11787, available for public inspection and copying at the Department of Health Records Access Office, Corning Tower, Empire State Plaza, Albany, NY 12237);

(2) demonstrates, through arrangements with a testing laboratory, that the device meets the model specifications specified in paragraph (1) of this subdivision when calibrated to a set point of 0.025% BAC;

(3) has requested certification for a device that employs fuel cell technology or another technology with demonstrated comparable accuracy and specificity;

(4) has demonstrated that the certified device can and would be installed to allow normal operation of the vehicle after it is started, except as specifically approved by the department; and

(5) has demonstrated compliance with all the requirements of this Part.

(d) Certification shall be effective as of the date of its issuance.

(e) Certified ignition interlock devices installed in vehicles shall be uniquely serial-numbered.

(f) Each certification shall cover only one model of ignition interlock device. Modifications to a model of a device, without regard to the manufacturer's assigning a new model number, shall be reported to the department as required in section 59.12 of this Part.

(g) The department may deny, suspend or revoke the certification of an ignition interlock device for reasons including:

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(1) the device does not meet the requirements for certification specified in this Part, including but not limited to, the commissioner's determination that the testing laboratory misrepresented a device's meeting such requirements;

(2) the manufacturer has failed to comply with any requirement of this Part or of Part 358 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York;

(3) substantial evidence exists that devices manufactured, sold, leased, offered for sale or leased, or installed in vehicles do not function in accordance with the specifications in this Part or are easily circumvented or tampered with;

(4) substantial evidence exists that the manufacturer has not made adequate provision for effective and timely maintenance, inspection, calibration and repair of installed devices;

(5) the manufacturer is no longer in the business of manufacturing devices;

(6) the manufacturer fails to retain the required product liability insurance, including through cancellation or non-renewal;

(7) the manufacturer has been convicted of a crime or offense related to fraud; or

(8) the ignition interlock device does not meet federal model specifications for breath alcohol ignition interlock devices adopted by NHTSA after the specifications referred to in paragraph (1) of subdivision (c) of this section are adopted.

(h) Notice of an ignition interlock device's certification, discontinuation, suspension and revocation shall be published in the State Register, and shall be provided promptly to the Division of Probation and Correctional Alternatives. The commissioner shall make available a list of certified ignition interlock devices upon request.

Sec. filed Nov. 29, 1965; renum. 58-2.10, filed Dec. 28, 1971; new filed April 18, 1989 as emergency measure, expired 90 days after filing; amd. filed Dec. 22, 1989 eff. Jan. 12, 1990; rep. and new added by emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 10, 10 NY ADC 59. 10

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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N.Y. Comp. Codes R. & Regs. tit. 10, § 59. 11

Compilation of Codes, Rules and Regulations of the State of New York Currentness
Title 10. Department of Health
Chapter II. Administrative Rules and Regulations
Subchapter D. Laboratories
Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
Section 59. 11. Testing of ignition interlock devices

EMERGENCY REGULATION

(a) The department may require a testing laboratory, as defined in section 59.1 of this part, to submit its credentials for department review prior to accepting any report submitted by the testing laboratory in support of an ignition interlock device manufacturer's application for certification.

(b) The testing laboratory shall provide, directly to the department, a detailed report of test data and findings of the ignition interlock device's performance on each standard, generated by the testing laboratory, documenting that at least two representative instruments of an ignition interlock device model have successfully met the requirements of subdivision (c) of section 59.10 of this Part.

(c) The testing laboratory's report shall minimally include: a description of tests performed; data and findings for each test conducted, with numerical readouts as appropriate; a description of the effectiveness of the ignition interlock device's security provisions, if any, for detection and recording of attempted tampering and preventing circumvention; the reliability of the device's data recording features; and a description of the effectiveness of the device over a range of environmental conditions. The report shall include a dated and signed attestation by the person supervising such testing that identifies the ignition interlock device model and manufacturer, and states that all tests on the named device model were conducted in accordance with NHTSA specifications.

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; renum. 58-2.11, filed Dec. 28, 1971; new filed April 18, 1989 as emergency measure, expired 90 days after filing; amd. filed Dec. 22, 1989 eff. Jan. 12, 1990; rep. and new added by emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 11, 10 NY ADC 59. 11

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Part 59. Chemical Analyses of Blood, Urine, Breath or Saliva for Alcoholic Content (Refs & Annos)
→ **Section 59. 12. Continued ignition interlock device certification**

EMERGENCY REGULATION

(a) An ignition interlock device certification shall remain in effect until:

(1) the manufacturer files a written request for discontinuance;

(2) the department issues to the manufacturer a written notice of suspension or revocation of approval; or

(3) the manufacturer modifies the device so that it does not meet the federal model specifications for breath alcohol ignition interlock devices in effect when it was certified.

(b) No manufacturer who makes an operational modification to a model of an ignition interlock device that has been certified pursuant to this Part shall release the modified device for use pursuant to Vehicle and Traffic Law Section 1198 without having obtained the express approval of the department. Manufacturers shall submit to the department a description of the intended operational modification(s), and the commissioner shall determine either that the existing certification shall continue in effect for the ignition interlock device as modified or that the manufacturer must apply for separate certification for the modified device. For purposes of this section, "operational modification" means any change to product design or function that would or could affect the device's anti-circumvention, anti-tampering or analytical features, as determined by the department.

(c) A manufacturer shall ensure that the department is provided with documentation of current insurance by notifying the department in writing of each renewal of coverage, each change of issuing company, and each change in liability limits.

(d) The department may require manufacturers whose devices are certified pursuant to this Part to periodically renew the certifications. Information required for renewal of certification shall minimally include:

(1) verification that information on file with the department, including, but not limited to, manufacturer's address and contact person, is current;

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APPENDIX 1

(2) an attestation that the department has been notified of any operational modification made to the certified model, or that no modification was made; and

(3) documentation of current insurance coverage.

(e) Each device shall be provided with a supply of disposable spit-trap mouthpieces, and the manufacturer shall ensure availability of additional mouthpieces.

(f) A manufacturer shall provide to installation/service providers that install its certified device(s) a sufficient number of labels to label each device installed and replace labels as needed. The label shall contain a notice printed in at least 10-point boldface type, reading as follows: "WARNING - ANY PERSON TAMPERING, CIRCUMVENTING OR OTHERWISE MISUSING THE DEVICE IS GUILTY OF A MISDEMEANOR AND MAY BE SUBJECT TO CIVIL LIABILITY."

Sec. filed Nov. 29, 1965; repealed, new filed Dec. 10, 1970; renum. 58-2.12, filed Dec. 28, 1971; new filed April 18, 1989 as emergency measure, expired 90 days after filing; amd. filed Dec. 22, 1989 eff. Jan. 12, 1990; rep. and new added by emergency rulemaking eff. Apr. 23, 2010, expired July 21, 2010; emergency rulemaking eff. July 22, 2010, expires Oct. 19, 2010.

10 NYCRR 59. 12, 10 NY ADC 59. 12

Current through amendments included in the New York State Register, Volume XXXII, Issue 37, dated September 15, 2010.

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APPENDIX 2

NEW YORK STATE

IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT

CONFIDENTIAL

FINANCIAL DISCLOSURE INSTRUCTIONS

IN ORDER TO BE PROCESSED AS AN APPLICATION FOR JUDICIAL CONSIDERATION OF FINANCIAL AFFORDABILITY, ALL INFORMATION REQUESTED ON THIS REPORT MUST BE COMPLETELY, PROPERLY AND ACCURATELY PROVIDED. DATED SIGNATURE OF THE DEFENDANT IS ALSO REQUIRED.

QUALIFYING INFORMATION SECTION *

DEFENDANT'S NAME LAST, FIRST, MI (MIDDLE INITIAL): ENTER DEFENDANT'S NAME.

ADDRESS: ENTER DEFENDANT'S MAILING ADDRESS

DEFENDANT'S LICENSE NUMBER: ENTER DEFENDANT'S DRIVER LICENSE NUMBER.

DATE OF BIRTH: ENTER DEFENDANT'S BIRTHDATE

LIVING ARRANGEMENTS AND LENGTH OF TIME IN CURRENT ARRANGEMENT: DESCRIBE THE DEFENDANT'S PRESENT LIVING ARRANGEMENT AND THE LENGTH OF TIME IN THIS LIVING ARRANGEMENT (E.G. HOMELESS, MARRIED LIVING WITH SPOUSE AND/OR CHILD(REN), SINGLE/DIVORCED/WIDOWED LIVING ALONE, SINGLE/DIVORCED/WIDOWED LIVING WITH CHILD(REN), SINGLE/DIVORCED/WIDOWED LIVING WITH PARENTS WITH OR WITHOUT CHILD(REN), CO-HABITATING, LIVING WITH RELATIVE(S) OTHER THAN SPOUSE OR PARENT).

LIST OTHER PEOPLE IN HOUSEHOLD: LIST ANY OTHER PEOPLE WHO LIVE IN THE SAME HOUSEHOLD WITH THE DEFENDANT, INCLUDING SPOUSE AND ANY DEPENDENTS.

EMPLOYMENT STATUS: CHECK THE APPROPRIATE RESPONSE. IF EMPLOYED, PROVIDE ALL INFORMATION REQUESTED IN THE "EMPLOYED" SECTION ONLY AND PROCEED TO THE "FINANCIAL REPORTING SECTION". DOCUMENTS THAT CAN BE USED AS VERIFICATION OF EMPLOYMENT INCLUDE A RECENT PAY STUB OR A COMPANY OR EMPLOYER LETTER. IF UNEMPLOYED, PROVIDE ALL INFORMATION REQUESTED IN THE "UNEMPLOYED" SECTION AND PROCEED TO THE "FINANCIAL REPORTING SECTION". DOCUMENTS THAT CAN BE USED AS VERIFICATION OF UNEMPLOYMENT INCLUDE BENEFITS STATEMENT/CHECK STUB FOR UNEMPLOYMENT BENEFITS, EMPLOYER LETTER, OR DISABILITY VERIFICATION.

FINANCIAL REPORTING SECTION **

DO NOT LEAVE ANY SPACES BLANK. PLACE A ZERO IN THE APPROPRIATE SPACE IF THE DEFENDANT HAS NO SUCH INCOME OR EXPENSES.

A - MONTHLY INCOME FROM WAGES: ENTER TOTAL GROSS FOR ALL WAGES. THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: PAY CHECK STUB, W-2 FORM OR EMPLOYER STATEMENT.

B - MONTHLY INCOME FROM OTHER SOURCES: ENTER ALL INCOME RECEIVED FROM SOURCES OTHER THAN EMPLOYMENT. ("RENTAL INCOME" REFERS TO INCOME RECEIVED FROM RENTAL PROPERTY THAT IS OWNED BY THE DEFENDANT.) THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: PAYMENT STUB, MOST RECENT STATE OR FEDERAL TAX RETURN, BANK STATEMENT, COURT RECORDS, LETTERS FROM THE BENEFIT OFFICE REGARDING MONTHLY BENEFIT AMOUNT, ETC.

C - MISCELLANEOUS INCOME DURING PAST 12 MONTHS: SPECIFY ALL OTHER INCOME, REGARDLESS OF SOURCE.

D - CURRENT BALANCES: SPECIFY ALL TYPES AND AMOUNTS.

E - PERSONAL PROPERTY: LIST THE MARKET VALUE OF ALL PERSONAL PROPERTY OWNED.

F - MONTHLY EXPENSES: ENTER ALL MONTHLY EXPENSES AS APPROPRIATE. THE FOLLOWING DOCUMENTS CAN BE USED AS VERIFICATION: EXPENSE RECEIPTS, PAYMENT BOOK, MOST RECENT BILL.

SUBMIT 3 COPIES OF THIS COMPLETED REPORT TO THE SENTENCING COURT

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NEW YORK STATE
IGNITION INTERLOCK DEVICE PROGRAM - FINANCIAL DISCLOSURE REPORT
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QUALIFYING INFORMATION SECTION *

DEFENDANT'S LAST NAME _____ FIRST NAME _____ MI _____

DEFENDANT'S LICENSE NUMBER _____ DATE OF BIRTH _____

HOME ADDRESS _____

CITY _____ STATE _____ ZIP

MAILING ADDRESS IF DIFFERENT _____

CITY _____ STATE _____ ZIP

PROVIDE INFORMATION FOR EACH VEHICLE OWNED

**IF MORE THAN 3 VEHICLES PLEASE ATTACH ADDITIONAL SHEET WITH REQUIRED INFORMATION*

	YEAR	MAKE	MODEL	VALUE
VEHICLE ONE				
VEHICLE TWO				
VEHICLE THREE				

DESCRIBE LIVING ARRANGEMENTS _____

LENGTH OF TIME IN CURRENT ARRANGEMENT _____

OTHER PEOPLE LIVING IN HOUSEHOLD:

NAME	AGE	RELATIONSHIP	NAME	AGE	RELATIONSHIP

EMPLOYMENT STATUS (CHECK ONE)

EMPLOYED ☐ UNEMPLOYED ☐

PLACE OF EMPLOYMENT _____

ADDRESS _____

POSITION _____

LENGTH OF TIME _____

VERIFICATION DOCUMENT (SPECIFY & ATTACH) _____

LENGTH OF UNEMPLOYMENT _____

LAST PLACE OF EMPLOYMENT _____

LAST EMPLOYMENT FROM _____ TO _____

VERIFICATION DOCUMENT (SPECIFY & ATTACH) _____

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FINANCIAL REPORTING SECTION **

A: MONTHLY INCOME FROM WAGES

SELF $ _____

SPOUSE $ _____

OTHER HOUSEHOLD MEMBERS $ _____

$ _____

HOW OFTEN IS DEFENDANT PAID? _____
(WKLY, BI-WKLY, MNTHLY, BI-MNTHLY)

B: MONTHLY INCOME FROM OTHER SOURCES

PENSION INCOME $ _____

RENTAL INCOME $ _____

CERTIFICATES OF DEPOSIT $ _____

TRUSTS/STOCKS/BONDS $ _____

CHILD SUPPORT $ _____

SPOUSAL MAINTENANCE/ALIMONY $ _____

LEGAL SETTLEMENTS/AWARD $ _____

AFDC/FOOD STAMPS/RENTAL ASSISTANCE $ _____

WORKERS COMP $ _____

UNEMPLOYMENT COMP $ _____

COUNTY/CITY WELFARE $ _____

OTHER: _____ $ _____

_____ $ _____

_____ $ _____

C: MISCELLANEOUS INCOME DURING PAST 12 MONTHS

LOTTERY $ _____

SWEEPSTAKE(S) $ _____

DISABILITY INSURANCE $ _____

BONUS $ _____

WAGERING $ _____

LEGAL SETTLEMENT/AWARD $ _____

ANNUITY $ _____

	SPECIFY	AMOUNTS
OTHER		$
		$
		$

D: CURRENT ACCOUNT BALANCES

SAVINGS ACCOUNT $ _____

CHECKING ACCOUNT $ _____

INDIVIDUAL RETIREMENT ACCOUNT $ _____

DEFERRED COMPENSATION ACCOUNT $ _____

TRUST ACCOUNT $ _____

OTHER ACCOUNTS (SPECIFY & AMOUNT) $ _____

E: PERSONAL PROPERTY

DO YOU OWN:

REAL ESTATE

LOCATION _____ VALUE $ _____

LOCATION _____ VALUE $ _____

LOCATION _____ VALUE $ _____

REC VEHICLE/CAMPER

MAKE _____ VALUE $ _____

ATV 3/4 WHEEL

MAKE _____ VALUE $ _____

MOTORCYCLE

MAKE _____ VALUE $ _____

BOAT

MAKE _____ VALUE $ _____

MAKE _____ VALUE $ _____

PERSONAL PROPERTY (ELECTRONICS, ART, JEWELRY, FURNITURE, ETC.)

APPROXIMATE VALUE _____

F: MONTHLY EXPENSES

RENT/MORTGAGE $ _____

HOME ELECTRIC/GAS $ _____

TELEPHONE (LANDLINE) $ _____

HEALTH/LIFE INSURANCE $ _____

AUTOMOBILE INSURANCE(S) $ _____ SPECIFY NUMBER _____

AUTOMOBILE LOAN(S) $ _____ SPECIFY NUMBER _____

SPOUSAL MAINTENANCE/ALIMONY $ _____

INTERNET SERVICE $ _____

BEEPERS/PAGERS $ _____ SPECIFY NUMBER _____

WATER/SEWER $ _____

FOOD $ _____

TELEPHONE (CELL) $ _____

CHILD CARE $ _____

AUTOMOBILE FUEL/GAS $ _____

ALCOHOL $ _____

CIGARETTES/OTHER TOBACCO PRODUCTS $ _____

CABLE TELEVISION $ _____

SATELLITE TV/RADIO $ _____

MEDICAL PRESCRIPTIONS $ _____

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F: MONTHLY EXPENSES CONTINUED *

	SPECIFY BELOW:	AMOUNTS
CREDIT CARD CHARGE(S)/OTHER LOAN AMOUNT(S)	_____	$ _____
	_____	$ _____
	_____	$ _____
	_____	$ _____
	_____	$ _____
WORK RELATED TRAVEL	_____	$ _____
RECREATION	_____	$ _____
	_____	$ _____
	_____	$ _____
OTHER EXPENSES	_____	$ _____
	_____	$ _____
	_____	$ _____

* ATTACH ADDITIONAL SHEET WITH REQUIRED INFORMATION IF MORE SPACE IS NECESSARY.

THE INFORMATION PRESENTED HEREIN IS TRUTHFUL AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

_____ DEFENDANT SIGNATURE

_____ DATE

_____ PRINT NAME