

APA-1
07/04

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control 370 Department or Agency Department of Forensic Sciences
Rule No. Chapter 370-3-1-.01
Rule Title: Ignition Interlock Rules
X New _____ Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? _____ Yes

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare? _____ Yes

Is there another, less restrictive method of regulation available that could adequately protect the public? _____ No

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree? _____ No

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule? _____ No

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? _____ Yes

Does the proposed rule have an economic impact? _____ No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer Michael F. Sparks
Michael F. Sparks
Director

Date 6-14-12
Alabama Department of Forensic Sciences

APA-2
07/04

Alabama Department of Forensic Sciences

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Forensic Sciences

RULE NO. AND TITLE:

Number 370-3-1-.01; Ignition Interlock Rules

INTENDEND ACTION:

To adopt rule number 370-3-1-.01

SUBSTANCE OF PROPOSED ACTION:

Adopt a rule for the proper approval, installation, and use of ignition interlock devices as required by §32-5A-191.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

All interested persons are invited to submit their views in writing addressed to Gregory L. Turner, Ph.D., Alabama Department of Forensic Sciences, 168 Chandalar Place Drive, Pelham, Alabama 35124. Oral comments may be made to Gregory L. Turner, Ph.D. at (205) 620-0399.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

August 3, 2012

CONTACT PERSON AT AGENCY:

Gregory L. Turner, Ph.D.
Alabama Department of Forensic Sciences
168 Chandalar Place Drive
Pelham, AL 35124



Michael F. Sparks
Director

Alabama Department of Forensic Sciences

New

RULES
OF
THE ALABAMA DEPARTMENT OF FORENSIC SCIENCES

CHAPTER 370-3-1
IGNITION INTERLOCK RULES

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370-3-1-.01 Ignition Interlock Rules

370-3-1.01 Ignition Interlock Rules

(1) Purpose

This rule addresses the requirements for the approval, installation, and use of Ignition Interlock Devices, as required in Code of Alabama (1975) §32-5A-191.

(2) Definitions and Abbreviations

(a) *Adjustment.* The act of setting the detector response of the ignition interlock device such that the device is capable of analyzing a breath sample and accurately reporting the result for that analysis.

(b) *Approved Ignition Interlock Provider.* An individual or business which has developed, manufactured, marketed, or provided certified ignition interlock devices which meet all of the minimum requirements as set forth in these rules and have been approved by the Department of Forensic Sciences.

(c) *Calibration Verification.* The use of a known ethanol reference sample to ensure the ignition interlock device is capable of accurately analyzing a breath sample provided by a participant.

(d) *Certificate of Installation.* A certificate issued by the ignition interlock service center at the time of installation, for the purpose of demonstrating that an approved ignition interlock device has been installed on the ignition interlock participant's designated vehicle. This certificate shall include the date of installation, the signature of the technician who installed the device, the vehicle identification number upon which the device was installed, the make and model of the vehicle on which the device was installed, and the signature of the participant acknowledging receipt of an ignition interlock device. A lease agreement can be substituted for a certificate of installation.

(e) *Certified Ignition Interlock Device.* Any Ignition Interlock Device that has been approved for use in the State of Alabama as referred to in Code of Alabama (1975) §32-5A-191.

(f) *Department.* The Alabama Department of Forensic Sciences.

(g) *Director.* The Director of the Alabama Department of Forensic Sciences.

(h) *DPS.* The Alabama Department of Public Safety.

(i) *Dry Gas Standard.* A blended gas reference sample consisting of nitrogen and the analyte of interest (usually ethanol) introduced into an ignition interlock device for the purposes of adjusting and/or verifying the calibration of the device.

(j) *Ignition Interlock Device.* A device which connects a motor vehicle ignition system to a breath alcohol analyzer and prevents a motor vehicle ignition from starting if a driver's blood alcohol level exceeds the calibrated setting on the device.

(k) *Ignition Interlock Device Service Center.* Any person or company engaged in the business of selling, leasing, servicing, repairing, calibrating, monitoring and removing ignition interlock devices.

(l) *Ignition Interlock Participant.* Any individual who has been ordered by a court, pursuant to the provisions of Code of Alabama (1975) §32-5A-191, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.

(m) *Ignition Interlock Service Center Inspector.* An individual authorized by the Department of Public Safety to inspect ignition interlock service centers to ensure adherence to the rules set forth in this title.

(n) *Ignition Interlock Technician.* An individual trained and authorized by an ignition interlock device manufacturer to perform installation, maintenance, service, adjustments, calibration verification, removal, and/or monitoring of said manufacturer's device.

(o) *Lease Agreement.* A document provided by the ignition interlock service center at the time of installation which may be used to show that an approved ignition interlock device has been installed on the participant's vehicle. This document shall be in the name of the participant and shall include the signature of the technician who installed the device, the vehicle identification number for which the vehicle was installed, the make and model of the vehicle on which the device was installed, and the signature of the participant acknowledging receipt of an ignition interlock device.

(p) *Manufacturer.* The actual producer of the ignition interlock device.

(q) *Manufacturer Representative.* The individual designated by the manufacturer to act on behalf of or to represent the manufacturer in all matters regarding device certification.

(r) *Tampering.* Any act or attempt to alter, interfere, meddle, disable, defeat or circumvent the installation or operation of the device.

(s) *Vendor.* An ignition interlock service center designated by the manufacturer of a certified device to act on behalf of or represent the manufacturer in all matters concerning the installation, service, calibration, monitoring, and removal of an approved ignition interlock device.

(3) Ignition Interlock Device Approval Procedure

(a) A manufacturer representative seeking approval of an ignition interlock device shall submit a letter seeking ignition interlock device approval and remit the application fee of two thousand dollars (\$2,000) to the Alabama Department of Forensic Sciences, 1051 Wire Road, Auburn, AL 36830.

(b) A manufacturer representative seeking approval of an ignition interlock device shall provide a lab certification demonstrating the device meets or exceeds the current National Highway Traffic Safety Administration (NHTSA) specifications. (1992 Model Specifications for Breath Alcohol Interlock Devices – 57 FR 11772.) This certification shall be from a laboratory which is independent from the manufacturer and subscribes to the quality code of the International Standards Organization of the American National Standards Institute – or another commensurate laboratory approved by the Department.

(c) A manufacturer representative seeking approval of an ignition interlock device shall provide a certificate of insurance, issued by an insurance company authorized to transact business in the State of Alabama, specifying a product liability policy with current effective date, the name and model number of the device model covered by the policy, policy coverage of at least one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) in the aggregate, the manufacturer as the insured and the State of Alabama as an additional insured, product liability coverage for defects in manufacture, materials, design, calibration, installation, and operation of the device, and the insurance company will notify the Alabama Department of Forensic Sciences at least 30 days before canceling the product liability. Failure of the manufacturer to maintain its policy coverage required in this section will result in removal of all said ignition interlock device(s) from the approved list and will require a new ignition interlock device application.

(d) A manufacturer representative seeking approval of an ignition interlock device will provide to the Department two ignition interlock devices of the model for which certification is requested. In addition to supplying the devices, the manufacturer representative will also supply instructions for the installation, operation, calibration, service, and monitoring of the device along with, upon request, training of Alabama Department of Forensic Sciences personnel in performing these tasks.

(e) A manufacturer representative seeking approval of an ignition interlock device must agree to ensure proper record maintenance and provide testimony relating to any aspect of the installation, service, repair, use, removal, interpretation of any report or

information recorded in the data storage system of a device or performance of any other duties required by this rule at no cost to the State of Alabama or any political subdivision thereof. Proper record maintenance shall consist of maintaining any and all records, to include, but not limited to, installation, calibration, verification, participant tests, maintenance, and removal records for a period of five years from the date of removal, and shall be maintained in an electronic form and produced upon request at no cost to the State of Alabama or any political subdivision, to include, but not limited to, the counties and municipalities of the State of Alabama.

(f) A manufacturer representative seeking approval of an ignition interlock device must agree to provide a twenty-four hour toll free telephone number available for participants to call if a problem occurs with the device.

(g) Only ignition interlock devices which use fuel cell technology shall be approved by the Alabama Department of Forensic Sciences for use in Alabama.

(h) An approved ignition interlock device will not interfere with the safe operation of the vehicle on which it is installed.

(i) An approved ignition interlock device will be able to analyze a breath sample provided by the participant and prevent ignition of the vehicle if the breath alcohol concentration is 0.020 g/210L or higher.

(j) An approved ignition interlock device must be activated at all times, and must include in its programming a mechanism to prevent circumvention or bypassing of the ignition interlock device and the capability to detect and record when such tampering has occurred.

(k) An approved ignition interlock device will be capable of recording and maintaining all daily driving activities for the period of time elapsed from one service and calibration visit to the next. All daily driving activity records in this data storage system shall be maintained by the manufacturer or the service center and shall be available for review by the ignition interlock service center inspector as required in sections 3(e) and 6 of these rules.

(l) An approved ignition interlock device will display tamper seals and a warning label that states: "Any person attempting to physically disable, disconnect or wire around this device or who intentionally fails to return the device upon request by the owner may be guilty of a misdemeanor under Code of Alabama (1975) §32-5A-191."

(m) An approved ignition interlock device will be programmed to require the collection and analysis of a breath sample each and every time the vehicle is started.

(n) An approved ignition interlock device will require a proper deep lung breath sample of at least 1.3 liters of breath for analysis.

(o) An approved ignition interlock device will be capable of reliable operation over the range of automobile environments.

(p) An approved ignition interlock device will be capable of requiring a rolling retest as a mechanism for preventing circumvention of the device, which would be required at randomly variable intervals ranging from five to forty-five minutes during the operation of the vehicle.

(q) A distinct audible and/or visible indicator shall activate to alert the driver that a retest is in progress. Once a retest is in progress, failure to deliver a breath with a result of less than 0.020 grams of ethanol per 210 liters of breath (0.020 g/210IL) within the time frame allowed shall record a retest violation in the data storage system.

(r) An approved ignition interlock device will allow up to five minutes for the retest to be completed.

(s) Upon request by the Alabama Department of Forensic Sciences for each device submitted for approval under this rule, the manufacturer representative agrees to install the device with all proposed anti-circumvention features activated in a vehicle provided by the Department.

(t) The Alabama Department of Forensic Sciences may conduct compliance testing on any device submitted for certification.

(u) In addition to the requirements listed herein, the Department may impose additional requirements, as needed, depending upon design and functional changes in device technology and to ensure that the device functions properly and reliably.

(4) Ignition Interlock Service Centers

(a) Only service centers that are manufacturer vendors may service ignition interlock devices approved for use in the State of Alabama.

(b) A service center shall be located in a fixed facility within the State of Alabama.

(c) Each service center shall be staffed with at least one ignition interlock technician who has been properly trained by the ignition interlock device manufacturer to service the interlock device for which the service center is a vendor.

(d) Each service center shall maintain and make available for inspection records which prove that each ignition interlock technician working at the service center has been properly trained by the ignition interlock device manufacturer to service the interlock device for which the center is a vendor.

(e) Each service center shall provide a designated waiting area that is separate from the installation area for the participant.

(f) Only ignition interlock technicians, representatives from the Department or DPS, or service center inspectors shall be allowed to install or observe the installation of the ignition interlock device.

(g) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to proprietary materials or files of other participants.

(h) The service center should properly and successfully accommodate installation, maintenance, calibration, and removal and any other necessary services related to a specified device.

(i) Each service center shall be inspected at least annually by an ignition interlock inspector or designated representative of DPS.

(j) The vendor shall inform DPS of a change in address within fifteen days of the change.

(k) Ignition interlock devices approved for use within the State of Alabama can only be serviced by service centers located within the State of Alabama.

(l) Mobile service centers are allowed only when they are part of a service center which has a permanent fixed location within the State of Alabama.

(m) Service centers shall make the address of their locations available to DPS and to the court of jurisdiction for the area in which the service center is located.

(n) The service center is responsible for collecting the data stored on the ignition interlock device and providing a list of violations recorded on the device to the appropriate authorities.

(o) Nothing in these rules shall be interpreted to restrict multiple vendors/manufacturers/approved ignition interlock device providers/manufacturers representatives from operating at the same permanent fixed location.

(5) Ignition Interlock Device Installation

(a) Ignition interlock devices approved for use in the state of Alabama shall be installed in an approved service center for the approved device.

(b) Upon installation, the service center shall provide to the participant proof of installation of an approved interlock device in the form of a certificate of installation or a copy of the lease agreement stating that an approved interlock device has been installed on the participant's designated vehicle. This certificate or lease agreement shall include the date of installation, the signature of the technician who installed the device, the vehicle identification number upon which the device was installed, the make and model of the vehicle on which the device was installed, and the signature of the participant acknowledging receipt of an ignition interlock device.

(c) Upon installation and at the time of service anytime thereafter, the service center shall remit one and one-half percent of all payments collected to the Alabama Interlock Indigent Fund in the state treasury.

(6) Ignition Interlock Device Maintenance, Service, Calibration and Monitoring

(a) All ignition interlock participants shall visit an ignition interlock service center every thirty days to have the ignition interlock device serviced.

(b) The ignition interlock device shall enter a hard lockout if the device has not been serviced within sixty-five days subsequent the last service visit, requiring a reset of the ignition interlock device at the service center.

(c) The ignition interlock service center shall download and store the data collected by the ignition interlock device. This data shall be maintained and made available for inspection for five years after removal of the device.

(d) The ignition interlock service center shall report violations to the appropriate authorities, as defined by DPS or the court of jurisdiction. Reportable violations shall include but are not limited to the following:

1. A minimum breath alcohol concentration at or above 0.020 g/210L recorded more than four times during the monthly reporting period;

2. Any tampering, circumvention, or bypassing of the ignition interlock device or attempt thereof; or

3. Failure to comply with the servicing or calibration requirements of the ignition interlock device every thirty days.

(e) During the service visit the ignition interlock service technician shall verify the calibration of the device by utilizing a reference sample with a known ethanol concentration. The device is considered to have passed this calibration verification if the result displayed from the device is within ± 0.010 g/210L of the stated concentration of the reference material used.

(f) The concentration at which the calibration of the ignition interlock device is verified shall be 0.020 grams of ethanol per 210L of breath. This requirement does not prohibit the service center from verifying the accuracy of the device at different ethanol concentrations in addition to the 0.020 g/210L calibration verification.

(g) In the event that the ignition interlock device does not pass the calibration verification, the device shall be adjusted to restore accuracy before the device may be restored to service or shall be replaced with a functional ignition interlock device that passes the calibration verification. A calibration verification shall follow any adjustment.

(h) All data associated with adjustment or calibration verification shall be downloaded from the device and stored for future review.

(i) The reference materials used for calibration and calibration verification shall be dry gas standards purchased from a gas manufacturer.

(j) The reference materials used to adjust and verify calibration of the device shall be used in accordance with the manufacturers' recommendations.

(k) A certificate of analysis shall be supplied by the manufacturer of the dry gas standard stating the concentration of the dry gas in units of grams of ethanol per 210L of breath (g/210L) and that the true concentration is within $\pm 3\%$ of the stated value for dry gas standard.

(l) The service center shall maintain and provide for inspection the certificates of analysis for all dry gas standards used to adjust, calibrate and/or verify calibration of the ignition interlock device. The service center should maintain these records for a period of five years from the end of usage for each respective lot.

(m) If the device fails to meet the requirements of this section the device shall be removed from service and immediately replaced with device that successfully meets these requirements.

(n) All data retrieved at the time of service of the ignition interlock device shall be stored electronically. The data shall be available for inspection and or review upon request of the service center inspector, DPS and/or the court of jurisdiction.

(o) Upon completion of the service visit the service center shall provide to the participant a report showing the service of the device including the results of the calibration verification.

(6) Approved Ignition Interlock Devices

(a) The list of ignition interlock devices approved for use in Alabama can be found by following the link on the Department's web page at www.adfs.alabama.gov.

Author: Gregory L. Turner, Ph.D.

Statutory Authority: Code of Alabama (1975) Section 32-5A-191.

History: Filed June 15, 2012.