

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 12-13-12
Rule ID(s): 5351-5352
File Date: 12-17-12
Effective Date: 5-31-13

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Tennessee Department of Safety
Division: Highway Patrol Division
Contact Person: Gerry Crownover, Staff Attorney
Address: 1150 Foster Avenue, Nashville, TN
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|----------------------------------|---|
| 1340-03-06 1340-01-14 | Rules of Ignition Interlock Device Program |
| Rule Number | Rule Title |
| 1340-03-06-.01 1340-01-14-.01 | Purpose and Scope |
| 1340-03-06-.02 1340-01-14-.02 | Definitions |
| 1340-03-06-.03 1340-01-14-.03 | Application Procedures |
| 1340-03-06-.04 1340-01-14-.04 | General Requirements |
| 1340-03-06-.05 1340-01-14-.05 | Approved Ignition Interlock Device Requirements |
| 1340-03-06-.06 1340-01-14-.06 | Ignition Interlock Installer – Owner/Personnel Requirements |
| 1340-03-06-.07 1340-01-14-.07 | Ignition Interlock Installation Requirements |
| 1340-03-06-.08 1340-01-14-.08 | Orientation of Program Participant |
| 1340-03-06-.09 1340-01-14-.09 | Proof of Installation of Ignition Interlock Devices |
| 1340-03-06-.10 1340-01-14-.10 | Monitoring Requirements |
| 1340-03-06-.11 1340-01-14-.11 | Repair or Replacement of Ignition Interlock Device |
| 1340-03-06-.12 | Program Status Report |

| | |
|----------------|---|
| 1340-01-14-.12 | |
| 1340-03-06-.13 | Fees |
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| 1340-03-06-.14 | Financial Responsibility Requirements |
| 1340-01-14-.14 | |
| 1340-03-06-.15 | Liability |
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| 1340-03-06-.17 | Suspension, Revocation or Denial of Certification |
| 1340-01-14-.17 | |
| 1340-03-06-.18 | Administrative Hearings |
| 1340-01-14-.18 | |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1340-01-14, Rules of Ignition Interlock Device Program is repealed.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

Chapter 1340-03-06, Rules of Ignition Interlock Device Program is proposed as new:

Rules
of
Tennessee Department of Safety
Highway Patrol Division

Chapter 1340-03-06
Rules of Ignition Interlock Device Program

1340-03-06-.01 Purpose and Scope.

To establish uniform, statewide, minimum standards for ignition interlock devices and for the certification of ignition interlock device installers and the approval of such installers pursuant to T.C.A. § 55-10-412.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.02 Definitions.

- (1) Approved Ignition Interlock Device Installer means an individual or business which has been approved and certified by the Department as meeting all of the minimum requirements set forth in these rules.
- (2) Commissioner means the commissioner of the Tennessee Department of Safety.
- (3) Department means the Tennessee Department of Safety.
- (4) Ignition Interlock Device means 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.
- (5) Ignition Interlock Device Provider means a person or company engaged in the business of manufacturing, selling, leasing, servicing and/or monitoring ignition interlock devices.
- (6) Ignition Interlock Device Installer means a person or company, affiliated with an Ignition Interlock Device Provider and engaged in the installation, monitoring, maintaining, and removal of ignition interlock devices.
- (7) Ignition Interlock Device Installer Certificate means a certificate provided by the Department, once the Department is satisfied that the Ignition Interlock Device Installer complies with all of the minimum requirements set forth in this rule.

- (8) Ignition Interlock Program means the Department of Safety's system of regulating ignition interlock devices, installers, and providers.
- (9) Ignition Interlock Program Participant means an individual who has been ordered by a court, pursuant to the provisions of T.C.A. § 55-10-412, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.03 Application Procedures.

- (1) Any individual or business shall make application to be an approved and certified Ignition Interlock Device Installer using forms supplied by the Department.
 - (a) The application shall be completed in full and shall include the following:
 - 1. Name and physical address of individual or business applying to be an Approved Ignition Interlock Device Installer;
 - 2. The physical addresses of planned installation locations in Tennessee;
 - 3. A list of the names of the persons who will be installing, servicing or removing the ignition interlock devices;
 - 4. Three (3) or more business references;
 - 5. Information pertaining to the business' or individual's experience in providing the services of installing, servicing and removing ignition interlock devices in other jurisdictions.
 - 6. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI);
 - 7. A copy of the current fee schedule for installation, monitoring, servicing, leasing, maintaining, and removal of devices; and
 - 8. The name and address of the Ignition Interlock Device Provider that the applicant intends to be affiliated with (installing that provider's device).
- (2) Upon receipt of the application, the Department will process the application and conduct an on-site inspection; and
- (3) The applicant will be notified by U.S. mail of the approval or denial of the application. If the application is approved, the applicant shall receive the Ignition Interlock Installer Certificate, which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason.
- (4) An entity desiring to become an approved installer must apply separately for each Ignition Interlock Device Provider that they intend to be affiliated with, including submission of an application and all required information under (1)(a).

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.04 General Requirements.

- (1) The rules, regulations and requirements established herein are minimums, and may be exceeded by the Approved Ignition Interlock Device Installer and Provider.
- (2) The Approved Ignition Interlock Device Installer and Provider shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (3) An Approved Ignition Interlock Device Installer and Provider shall have the ability to carry out the requirements as stated in this rule.
- (4) An Approved Ignition Interlock Device Installer shall provide and maintain a service center within the geographical boundaries of the state of Tennessee, which is easily accessible and open during normal

business hours.

- (5) An Approved Ignition Interlock Device Installer shall comply with all minimum requirements for installation and any other state and federal laws applicable to ignition interlock devices or providers.
- (6) In order to continue as an Approved Ignition Interlock Device Installer, the Ignition Interlock Device Provider shall submit to the Department an application to renew the installer's certification and criminal history background checks on all installers sixty (60) days before the expiration of its certificate. The Department shall notify the Ignition Interlock Device Installer and Provider of its decision before the expiration date of the current certificate. If re-approved, the Approved Ignition Interlock Installer and Provider shall receive a certificate valid for one (1) year. If re-certification is denied, the Department will make a written finding of the reason for denial. The Ignition Interlock Provider shall have ten (10) days from the date of notification to correct any deficiencies and notify the Department in writing of such correction. The Ignition Interlock Provider may also request a hearing pursuant to Rule 1340-03-06-.18.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.05 Approved Ignition Interlock Device Requirements.

- (1) Only ignition interlock devices that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all devices meet or exceed the manufacturing standards established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register/Vol. 57, No. 67/ Tuesday, April 7, 1992. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute – or another commensurate laboratory approved by the Department.
- (2) A breath alcohol content (BAC) of .02 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (3) All installed devices must cause the vehicle's horn to blow and the lights to flash upon a violation of a rolling retest, and stopping only upon the ignition being turned off or a passed retest.
- (4) A violation will be recorded for any of the following reasons:
 - (a) The engine is started without passing a breath test or while in a lockout state;
 - (b) The user fails or refuses to take a rolling retest;
 - (c) The user delivers a breath sample at or above the violation level of .02; and
 - (d) The user tampers with the device.
- (5) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lock out and prevent the vehicle from starting.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.06 Ignition Interlock Installer – Owner/Personnel Requirements.

- (1) Owner(s) of an Approved Ignition Interlock Device Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Personnel who work for an Approved Ignition Interlock Device Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license, and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The applicant must not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two or more times within ten (10) years from the date of the application, and that none of such convictions must have occurred within five years from the date of application or renewal.

- (3) Falsification of any applications submitted by an Installer or Provider shall be sufficient grounds for denial of the application and suspension of all Ignition Interlock Device Installer certificates issued to the same Ignition Interlock Device Installer company.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.07 Ignition Interlock Installation Requirements.

- (1) An ignition interlock device shall be installed, serviced and removed in all makes and models of motor vehicles only by personnel who have been certified by the manufacturer of the ignition interlock device in the installation, servicing and removal of such device. The Ignition Interlock Device Provider shall train all personnel in a timely manner to ensure the proper installation, servicing and removal of the device. The certified personnel shall only install, service or remove the approved ignition interlock devices at fixed facilities that have been inspected and approved by the Department.
- (2) Under no circumstances will the Ignition Interlock Program Participant be allowed to watch the installation of the ignition interlock device. Adequate security measures shall be taken to ensure that areas where installations of ignition interlock devices occur shall not be visible to participants. Participants shall be confined to enclosed areas within the facility.
- (3) A reference and problem-solving guide, developed by the Approved Ignition Interlock Device Provider, shall be given to the Ignition Interlock Program Participant at the time of the installation. This guide shall include information on the correct operation of the ignition interlock device, location of service centers, service and procedures, emergency procedures, and how the ignition interlock device can detect non-compliance with the Ignition Interlock Program Participant's court order and device requirements.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper seals, installation instructions, and files of other Ignition Interlock Program Participants.
- (5) The Approved Ignition Interlock Device Installer shall follow all written instructions from the manufacturer of the ignition interlock device for device installation and removal.
- (6) The Approved Ignition Interlock Device Installer will furnish hours of operation and a twenty-four (24) hour phone number to all Ignition Interlock Program Participants for use in the event of emergencies with the ignition interlock device.
- (7) The Approved Ignition Interlock Device Installer is required to inspect all vehicles prior to installation and determine if the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, no ignition interlock device will be installed until and unless the vehicle is capable of supporting such installation. The Approved Interlock Ignition Device Installer and Provider shall maintain a log of such inspections and use the vehicle's inspection in the removal process.
- (8) Installations shall be executed in a professional manner, according to accepted trade standards and the manufacturer's instructions.
- (9) Removal of ignition interlock devices shall be carried out so that the ignition may be operated, reasonable wear and tear excepted, in the same manner as before installation of the ignition interlock device. All severed wires will be permanently soldered and insulated with heat-shrink-wrap or its equivalent.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.08 Orientation of Program Participant.

- (1) The Approved Ignition Interlock Device Installer shall conduct an orientation on the correct use of the ignition interlock device for the Ignition Interlock Program Participant and for any family member or friend who may drive the vehicle. Ignition Interlock Program Participants will be informed of the need to ensure that all vehicle users are adequately trained which may require a subsequent visit.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.09 Proof of Installation of Ignition Interlock Devices.

- (1) Within two (2) working days of installation of the ignition interlock device, the Ignition Interlock Device

Provider shall complete the appropriate form as designated by the Department, and submit it to the Department as proof of installation by mail, electronic transmission or facsimile. This notice shall include:

- (a) Name, address and telephone number of the Ignition Interlock Program Participant;
 - (b) Owner, make, model, year, Vehicle Identification Number (VIN), license plate number, and insurance information of the vehicle to which the interlock ignition device is installed;
 - (c) Serial number of the ignition interlock device installed; and
 - (d) Length of ignition interlock device term, date of monitoring checks, and payment schedule.
- (2) When an Ignition Interlock Program Participant arrives at the installation location after having been ordered to install an ignition interlock device on their vehicle, the installer or provider shall inspect the restricted license order and ascertain the reason that the device is required. This information MUST be included on the installation report that is sent to the Department.
 - (3) If the restricted license order does not contain this information, the customer shall be refused service by the installer and told to return to the court of jurisdiction to have the form completed properly. This shall ensure that the data can be properly acquired.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.10 Monitoring Requirements.

- (1) Servicing, inspection, and monitoring of each ignition interlock device shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The Ignition Interlock Provider shall maintain records on every Ignition Interlock Program Participant, including the results of every monitoring check. Violations or evidence of non-compliance and the reasons for such will be reported to the Department by mail, electronic transmission or facsimile within forty-eight (48) hours of detection.
- (2) Within two (2) working days of performing a monitoring check, the Ignition Interlock Device Provider shall send to the Department by mail, electronic transmission or facsimile, the following:
 - (a) Name of Ignition Interlock Program Participant whose device was monitored;
 - (b) Number of miles driven during the monitoring period;
 - (c) Charges for monitoring visit;
 - (d) Date of next scheduled monitoring visit;
 - (e) Any type of repair work performed on the ignition interlock device and probable cause for its need; and
 - (f) Any areas of discussion with the Ignition Interlock Program Participant concerning problems or questions with the device or the status of the Participant.
- (3) Within two (2) working days of performing a monitoring check, the Ignition Interlock Device Provider shall report to the Department by mail, electronic transmission or facsimile any evidence of:
 - (a) Altering, tampering with, bypassing, or removal of the ignition interlock device;
 - (b) Failure to abide by the terms and conditions of the court order or lease agreement, including failure to appear for a monitoring visit;
 - (c) Lockouts or violations and reasons for such;
 - (d) Indications of non-compliance, such as failure to take a random or time test; and/or
 - (e) Data indicating that the Ignition Interlock Program Participant has attempted to start the vehicle while under the influence of alcohol.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.11 Repair or Replacement of Ignition Interlock Device.

- (1) The Approved Ignition Interlock Installer or Provider shall respond to all service inquiries by phone within one (1) hour of initial contact, during normal business hours. Repair or replacement of an ignition interlock device shall be conducted within forty-eight (48) hours of initial contact. The Ignition Interlock Device Provider shall notify the Department of any changes in the ignition interlock device (i.e., Serial #, Type, etc.) by facsimile or electronic transmission within forty-eight (48) hours.
- (2) The Approved Ignition Interlock Device Installer or Provider shall be available to answer questions and to troubleshoot any mechanical problems relating to the ignition interlock device in the vehicle, or to repair/replace an inoperable or malfunctioning ignition interlock device during normal business hours.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.12 Program Status Report.

- (1) At the half-way point at which the ignition interlock device is installed in the Ignition Interlock Program Participant's vehicle, the Ignition Interlock Device Provider shall submit a status report to the Department's Research, Planning, and Development Section by mail, electronic transmission or facsimile, which summarizes all problems related to the monitoring and servicing of the ignition interlock device, as well as any written complaints received concerning the ignition interlock device or the Ignition Interlock Device Provider. The reports shall include the following categories:
 - (a) Ignition Interlock Program Participant error in operation and reasons for such;
 - (b) Faulty automotive equipment;
 - (c) Apparent misuse or attempts to circumvent the ignition interlock device, which did or did not cause damage, and the reasons for such; and
 - (d) Ignition interlock device failure due to material defect, design defect, and/or workmanship errors in construction, installation, or calibration.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.13 Fees.

- (1) The fees for leasing or buying, monitoring, servicing, installation and removal of the ignition interlock device shall be at a reasonable rate.
- (2) The fee for installation of ignition interlock devices shall not exceed \$150.00.
- (3) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$100 per month for leasing, monitoring, and maintaining devices.
- (4) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$75 for the removal of devices.
- (5) The above fee rates shall be posted in a conspicuous place at the Approved Ignition Interlock Installer's office. The Approved Installer shall file a copy of the installation company's current fee schedule with the Department.

Authority: T.C.A. §§ 4-3-2009, 55-10-412 and 55-10-423.

1340-03-06-.14 Financial Responsibility Requirements

- (1) The Ignition Interlock Device Provider shall maintain comprehensive general liability insurance in the amount of at least \$1,000,000.00 per occurrence with a \$3,000,000.00 aggregate total liability that shall cover defects or problems in or with product design and materials, workmanship during manufacture, calibration, installation and removal, and use thereof. Such policies shall provide the Department with a forty-five (45) day prior written notice of cancellation, material change, or intent to lapse.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.15 Liability.

- (1) The Approved Ignition Interlock Device Installer and Provider shall protect, save and hold harmless the State, all State Departments, Agencies, Boards and Commissions, as well as all Officials, Employees, Agents and Servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of an omission by the Approved Ignition Interlock Device Installer or Provider in the performance of its duties set forth in the law or these rules.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.16 Audits and Inspections.

- (1) Approved Ignition Interlock Device Installers shall be subject to unannounced reviews and inspections of all records and subject to suspension or revocation if sufficient cause exists as determined by the Department that the Approved Ignition Interlock Device Installer does not meet the requirements of any applicable law or these rules.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.17 Suspension, Revocation or Denial of Certification

- (1) Failure to comply with any requirements set forth in the law or these rules may result in the denial, suspension or revocation of the Ignition Interlock Device Installer Certification. Other reasons for denial, suspension or revocation may include, but are not limited to the following:
 - (a) Non-compliance with any of the minimum requirements stated in this rule;
 - (b) Providing false or inaccurate information to the Department;
 - (c) Assisting in or providing information that will enable the Ignition Interlock Program Participant to circumvent or tamper with the ignition interlock device; or
 - (d) Voluntarily request that such action be taken.
 - (e) Installing devices other than those supplied by the Provider referenced on the approved application.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.18 Administrative Hearings

- (1) An Approved Ignition Interlock Device Installer or Provider may request in writing an administrative hearing within ten (10) days of written notification of any proposed denial, suspension or revocation. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|--------------|-----|----|---------|--------|-------------------------|
| | | | | | |

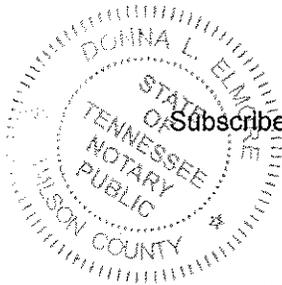
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Safety on 10/29/2012, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10-29-2012

Signature: *Darrell Miller*

Name of Officer: Darrell Miller

Title of Officer: Captain, Tennessee Highway Patrol



Subscribed and sworn to before me on: 10-29-12

Notary Public Signature: *Donna L. Elmore*

My commission expires on: 1-26-2014

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert V. Cooper, Jr.
Robert V. Cooper, Jr.
Attorney General and Reporter
12-9-12
Date

Department of State Use Only

Filed with the Department of State on: 12-17-12

Effective on: 5-31-13

Tre Hargett
Tre Hargett
Secretary of State

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REGISTRATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. 4-5-401, et seq., the Department of Safety submits the following regulatory flexibility analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local government rules:

The proposed rule does not overlap, duplicate or conflict with other federal, state or local government rules.
- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.
- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule establishes flexible compliance and/or reporting requirements for small businesses.
- (4) The establishment of friendly compliance and reporting requirements for small businesses:

The proposed does establish friendly compliance and/or reporting requirements for small businesses.
- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

The proposed rule consolidates and simplifies compliance and/or reporting requirements for small businesses.
- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The proposed rule does not establish performance standards for small businesses as opposed to design or operational standards.
- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rule does not unnecessarily create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule does not have any projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule establishes uniform, statewide, minimum standards for ignition interlock devices and for the approval and certification of persons and/or entities that provide and/or install such devices. The existing rule is being repealed so that the new amended rule can be placed under the Chapter for the Tennessee Highway Patrol. Revisions to the new amended rule include the maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining the ignition interlock device, and requirements that ensure that certified ignition interlock installers operate within established guidelines and have the ability to provide devices to any resident in the state.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 55-10-412 requires persons and/or entities that provide for the installation, monitoring and removal of functioning ignition interlock devices to be approved and certified by the Department of Safety. The statute does not mandate the promulgation of any rule or the establishment of any guidelines relevant thereto. T.C.A. § 55-10-423 mandates the promulgation of rules that establish the maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining the ignition interlock device, and requirements that ensure that certified ignition interlock installers operate within established guidelines and have the ability to provide devices to any resident in the state.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons and/or businesses engaged in the manufacturing, selling, leasing, servicing, monitoring, installation, and removal of ignition interlock devices.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No effect on revenues.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Trooper Ehrin Ehlert; Gerry Crownover, Staff Attorney

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Trooper Ehrin Ehlert; Gerry Crownover, Staff Attorney

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Trooper Ehrin Ehlert
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 12-13-12
Rule ID(s): 5351-5352
File Date: 12-17-12
Effective Date: _____

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Tennessee Department of Safety
Division: Highway Patrol Division
Contact Person: Gerry Crownover, Staff Attorney
Address: 1150 Foster Avenue, Nashville, TN
Zip: 37243
Phone: (615) 251-5277
Email: Gerry.Crownover@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

| Chapter Number | Chapter Title |
|---|---|
| 1340-03-06 1340-01-14 | Rules of Ignition Interlock Device Program |
| Rule Number | Rule Title |
| 1340-03-06-.01 1340-01-14-.01 | Purpose and Scope |
| 1340-03-06-.02 1340-01-14-.02 | Definitions |
| 1340-03-06-.03 1340-01-14-.03 | Application Procedures |
| 1340-03-06-.04 1340-01-14-.04 | General Requirements |
| 1340-03-06-.05 1340-01-14-.05 | Approved Ignition Interlock Device Requirements |
| 1340-03-06-.06 1340-01-14-.06 | Ignition Interlock Installer – Owner/Personnel Requirements |
| 1340-03-06-.07 1340-01-14-.07 | Ignition Interlock Installation Requirements |
| 1340-03-06-.08 1340-01-14-.08 | Orientation of Program Participant |
| 1340-03-06-.09 1340-01-14-.09 | Proof of Installation of Ignition Interlock Devices |
| 1340-03-06-.10 1340-01-14-.10 | Monitoring Requirements |
| 1340-03-06-.11 1340-01-14-.11 | Repair or Replacement of Ignition Interlock Device |
| 1340-03-06-.12 | Program Status Report |

| | |
|--|---|
| 1340-01-14-12 | |
| 1340-03-06-13 1340-01-14-13 | Fees |
| 1340-03-06-14 1340-01-14-14 | Financial Responsibility Requirements |
| 1340-03-06-15 1340-01-14-15 | Liability |
| 1340-03-06-16 1340-01-14-16 | Audits and Inspections |
| 1340-03-06-17 1340-01-14-17 | Suspension, Revocation or Denial of Certification |
| 1340-03-06-18 1340-01-14-18 | Administrative Hearings |

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1340-01-14, Rules of Ignition Interlock Device Program is repealed.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

Chapter 1340-03-06, Rules of Ignition Interlock Device Program is proposed as new:

Rules
 of
 The Tennessee Department of Safety
 Driver Control Division
 Highway Patrol Division

 Chapter 1340-01-14
 Chapter 1340-03-06
 Rules of Ignition Interlock Device Program

1340-03-06-.01 Purpose and Scope.

To establish uniform, statewide, minimum standards for ignition interlock devices and for the certification of ignition interlock device providers installers and the approval of such providers installers pursuant to T.C.A. § 55-10-412(e)(5).

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.02 Definitions.

- (1) Approved Ignition Interlock Device Provider Installer means an individual or business which has been approved and certified by the Department as meeting all of the minimum requirements set forth in these rules.
- (2) Commissioner means the commissioner of the Tennessee Department of Safety.
- (3) Department means the Tennessee Department of Safety.
- (4) Ignition Interlock Device means 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.
- (5) Ignition Interlock Device Provider means a person or company engaged in the business of manufacturing, selling, leasing, servicing and/or monitoring ignition interlock devices.
- (6) Ignition Interlock Device Installer means a person or company, affiliated with an Ignition Interlock Device Provider and engaged in the installation, monitoring, maintaining, and removal of ignition interlock devices.

- (7) Ignition Interlock Device ~~Provider~~ Installer Certificate means a certificate provided by the Department, once the Department is satisfied that the Ignition Interlock Device Installer complies with all of the minimum requirements set forth in this rule.
- (8) Ignition Interlock Program means the Department of Safety's system of regulating ignition interlock devices, installers, and providers.
- (9) Ignition Interlock Program Participant means an individual who has been ordered by a court, pursuant to the provisions of T.C.A. § 55-10-412, to operate a motor vehicle which has been equipped with a functioning ignition interlock device.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.03 ~~Ignition Interlock Device Provider~~ Application Procedures.

- (1) Any individual or ~~corporation~~ business shall make application to be an approved and certified Ignition Interlock Device Installer ~~on~~ using forms supplied by the Department.
 - (a) The application shall be completed in full and shall include the following:
 - 1. Name and physical address of individual or business applying to be an Approved Ignition Interlock ~~Provider~~ Device Installer; ~~The addresses of planned locations in Tennessee.~~
 - 2. The physical addresses of planned installation locations in Tennessee;
 - 3. A list of the names of the persons who will be installing, servicing or ~~uninstalling~~ removing the ignition interlock devices;
 - 4. Three (3) or more business references;
 - 5. Information pertaining to the business' or individual's experience in providing the services of installing, servicing and ~~uninstalling~~ removing ignition interlock devices in other jurisdictions;
 - 6. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI);
 - 7. A copy of the current fee schedule for installation, monitoring, servicing, leasing, maintaining, and removal of devices.
 - 8. The name and address of the Ignition Interlock Device Provider that the applicant intends to be affiliated with (installing that provider's device).
- (2) Upon receipt of the application, the Department will process the application and conduct an on-site inspection; and
- (3) The applicant will be notified by U.S. mail of the approval or denial of the application. If the application is approved, the applicant shall receive the Ignition Interlock ~~Provider~~ Installer Certificate, which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason.
- (4) An entity desiring to become an approved installer must apply separately for each Ignition Interlock Device Provider that they intend to be affiliated with, including submission of an application and all required information under (1)(a).

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.04 General Requirements.

- (1) The rules, regulations and requirements established herein are minimums, and may be exceeded by the Approved Ignition Interlock Device Installer and Provider.
- (2) The Approved Ignition Interlock Device Installer and Provider shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.

- (3) An Approved Ignition Interlock Device Installer and Provider shall have the ability to carry out the requirements as stated in this rule.
- (4) An Approved Ignition Interlock Device Provider Installer shall provide and maintain a service center within the geographical boundaries of the state of Tennessee, which is easily accessible and open during normal business hours.
- (5) An Approved Ignition Interlock Device Provider Installer shall comply with all minimum requirements for installation and any other state and federal laws applicable to ignition interlock devices or providers.
- (6) In order to continue as an Approved Ignition Interlock Device Provider Installer, the Approved Ignition Interlock Device Provider shall submit to the Department an application to renew its—the installer's certification and criminal history background checks on all installers sixty (60) days before the expiration of its certificate. The Department shall notify the Approved Ignition Interlock Device Installer and Provider of its decision before the expiration date of the current certificate. If re-approved, the Approved Ignition Interlock Installer and Provider shall receive a certificate valid for one (1) year. If re-certification is denied, the Department will make a written finding of the reason for denial. The Approved Ignition Interlock Provider shall have ten (10) days from the date of notification to correct any deficiencies and notify the Department in writing of such correction. The Approved Ignition Interlock Provider may also request a hearing pursuant to Paragraph 1340-1-14-18 Rule 1340-03-06-18.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.05 Approved Ignition Interlock Device Requirements.

- (1) Only ignition interlock devices that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all devices meet or exceed the manufacturing standards established by the National Highway Traffic Safety Administration (NHTSA) in the Federal Register/Vol. 57, No. 67/ Tuesday, April 7, 1992. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute – or another commensurate laboratory approved by the Department.
- (2) A breath alcohol content (BAC) of .02 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (3) All installed devices must cause the vehicle's horn to blow and the lights to flash upon a violation of a rolling retest, and stopping only upon the ignition being turned off or a passed retest.
- (4) A violation will be recorded for any of the following reasons:
 - (a) The engine is started without passing a breath test or while in a lockout state;
 - (b) The user fails or refuses to take a rolling retest;
 - (c) The user delivers a breath sample at or above the violation level of .02; and
 - (d) The user tampers with the device.
- (5) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lock out and prevent the vehicle from starting.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.06 Ignition Interlock Provider Installer – Owner/Personnel Requirements.

- (1) Owner(s) of an Approved Ignition Interlock Device Provider Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Personnel who work for an Approved Ignition Interlock Device Provider Installer business shall not be an employee of the Department, shall have no conviction for a felony or any crime involving violence, dishonesty, deceit, fraud or indecency, shall have and maintain a valid driver license, and shall comply

with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The applicant must not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two or more times within ten (10) years from the date of the application, and that none of such convictions must have occurred within five years from the date of application or renewal.

- (3) Falsification of any applications submitted by an Installer or Provider shall be sufficient grounds for denial of the application and suspension of all Ignition Interlock Device Installer certificates issued to the same Ignition Interlock Device Installer company.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.07 Ignition Interlock Installation Requirements.

- (1) An ignition interlock device shall be installed, serviced and ~~uninstalled~~ removed in all makes and models of motor vehicles only by personnel who have been certified by the manufacturer of the ignition interlock device in the installation, ~~uninstallation~~ servicing and removal and ~~servicing~~ of such device. The Ignition Interlock Device Provider shall train all personnel in a timely manner to ensure the proper installation, servicing and removal of the device. The certified personnel shall only install, service or ~~uninstall~~ remove the approved ignition interlock devices at fixed facilities ~~fixed or mobile~~, that have been inspected and approved by the Department.
- (2) Under no circumstances will the Ignition Interlock Program Participant be allowed to watch the installation of the ignition interlock device. Adequate security measures shall be taken to ensure that areas where installations of ignition interlock devices occur shall not be visible to participants. Participants shall be confined to enclosed areas within the facility.
- (3) A reference and problem-solving guide, developed by the Approved Ignition Interlock Device Provider, shall be given to the Ignition Interlock Program Participant at the time of the installation. This guide shall include information on the correct operation of the ignition interlock device, location of service centers, service and procedures, emergency procedures, and how the ignition interlock device can detect non-compliance with the Ignition Interlock Program Participant's court order and device requirements.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper seals, installation instructions, and files of other Ignition Interlock Program Participants.
- (5) The Approved Ignition Interlock Device ~~Provider~~ Installer shall follow all written instructions from the manufacturer of the ignition interlock device for device installation and ~~uninstallation~~ removal.
- (6) The Approved Ignition Interlock Device ~~Provider~~ Installer will furnish hours of operation and a twenty-four (24) hour phone number to all Ignition Interlock Program Participants for use in the event of emergencies with the ignition interlock device.
- (7) The Approved Ignition Interlock Device ~~Provider~~ Installer is required to inspect all vehicles prior to installation and determine if the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, no ignition interlock device will be installed until and unless the vehicle is capable of supporting such installation. The Approved Interlock Ignition Device Installer and Provider shall maintain a log of such inspections and use the vehicle's inspection in the ~~uninstallation~~ removal process.
- (8) Installations shall be executed in a professional manner, according to accepted trade standards and the manufacturer's instructions.
- (9) ~~Uninstallation~~ Removal of ignition interlock devices shall be carried out so that the ignition may be operated, reasonable wear and tear excepted, in the same manner as before installation of the ignition interlock device. All severed wires will be permanently soldered and insulated with heat-shrink-wrap or its equivalent.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.08 ~~Provider~~ Orientation of Program Participant.

- (1) The Approved Ignition Interlock Device ~~Provider~~ Installer shall conduct an orientation on the correct use of the ignition interlock device for the Ignition Interlock Program Participant and for any family member or

friend who may drive the vehicle. Ignition Interlock Program Participants will be informed of the need to ensure that all vehicle users are adequately trained which may require a subsequent visit.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.09 Proof of Installation of Ignition Interlock Devices.

- (1) Within two (2) working days of installation of the ignition interlock device, the Approved Ignition Interlock Device Provider shall complete the appropriate form as designated by the Department, and submit it to the Department as proof of installation by mail, electronic transmission or facsimile. This notice shall include:
 - (a) Name, address and telephone number of the Ignition Interlock Program Participant;
 - (b) Owner, make, model, year, Vehicle Identification Number (VIN), license plate number, and insurance information of the vehicle to which the interlock ignition device is installed;
 - (c) Serial number of the ignition interlock device installed; and
 - (d) Length of ignition interlock device term, date of monitoring checks, and payment schedule.
- (2) When an Ignition Interlock Program Participant arrives at the installation location after having been ordered to install an ignition interlock device on their vehicle, the installer or provider shall inspect the restricted license order and ascertain the reason that the device is required. This information MUST be included on the installation report that is sent to the Department.
- (3) If the restricted license order does not contain this information, the customer shall be refused service by the installer and told to return to the court of jurisdiction to have the form completed properly. This shall ensure that the data can be properly acquired.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.10 Monitoring Requirements.

- (1) Servicing, inspection, and monitoring of each ignition interlock device shall occur thirty (30) days after the initial installation and at least every ~~sixty (60)~~ thirty (30) days thereafter. The Approved Ignition Interlock Provider shall maintain records on every Ignition Interlock Program Participant, including the results of every monitoring check. Violations or evidence of non-compliance and the reasons for such will be reported to the Department by mail, electronic transmission or facsimile within forty-eight (48) hours of detection.
- (2) Within two (2) working days of performing a monitoring check, the Approved Ignition Interlock Device Provider shall send to the Department by mail, electronic transmission or facsimile, the following:
 - (a) Name of Ignition Interlock Program Participant whose device was monitored;
 - (b) Number of miles driven during the monitoring period;
 - (c) Charges for monitoring visit;
 - (d) Date of next scheduled monitoring visit;
 - (e) Any type of repair work performed on the ignition interlock device and probable cause for its need; and
 - (f) Any areas of discussion with the Ignition Interlock Program Participant concerning problems or questions with the device or the status of the Participant.
- (3) Within two (2) working days of performing a monitoring check, the Approved Ignition Interlock Device Provider shall report to the Department by mail, electronic transmission or facsimile any evidence of:
 - (a) Altering, tampering with, bypassing, or removal of the ignition interlock device;
 - (b) Failure to abide by the terms and conditions of the court order or lease agreement, including

failure to appear for a monitoring visit;

- (c) Lockouts or violations and reasons for such;
- (d) Indications of non-compliance, such as failure to take a random or time test; and/or
- (e) Data indicating that the Ignition Interlock Program Participant has attempted to start the vehicle while under the influence of alcohol.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.11 Repair or Replacement of Ignition Interlock Device.

- (1) The Approved Ignition Interlock Installer or Provider shall respond to all service inquiries by phone within ~~forty-five (45) minutes~~ one (1) hour of initial contact, during normal business hours. Repair or replacement of an ignition interlock device shall be conducted within forty-eight (48) hours of initial contact. The Approved Ignition Interlock Device Provider shall notify the Department of any changes in the ignition interlock device (i.e., Serial #, Type, etc.) by facsimile or electronic transmission within forty-eight (48) hours.
- (2) The Approved Ignition Interlock Device Installer or Provider shall be available to answer questions and to troubleshoot any mechanical problems relating to the ignition interlock device in the vehicle, or to repair/replace an inoperable or malfunctioning ignition interlock device during normal business hours.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.12 Program Status Report.

- (1) At the half-way point at which the ignition interlock device is installed in the Ignition Interlock Program Participant's vehicle, the Approved Ignition Interlock Device Provider shall submit a status report to the Department's Planning & Research, Planning, and Development Section by mail, electronic transmission or facsimile, which summarizes all problems related to the monitoring and servicing of the ignition interlock device, as well as any written complaints received concerning the ignition interlock device or the Ignition Interlock Device Provider. The reports shall include the following categories:
 - (a) Ignition Interlock Program Participant error in operation and reasons for such;
 - (b) Faulty automotive equipment;
 - (c) Apparent misuse or attempts to circumvent the ignition interlock device, which did or did not cause damage, and the reasons for such; and
 - (d) Ignition interlock device failure due to material defect, design defect, and/or workmanship errors in construction, installation, or calibration.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.13 Fees.

- (1) The fees for leasing or buying, monitoring, servicing, installation and ~~uninstallation~~ removal of the ignition interlock device shall be at a reasonable rate. ~~The court may establish a payment schedule pursuant to T.C.A. § 55-10-412.~~
- (2) The fee for installation of ignition interlock devices shall not exceed \$150.00.
- (3) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$100 per month for leasing, monitoring, and maintaining devices.
- (4) Approved Ignition Interlock Installers shall charge reasonable and customary fees, not to exceed a total of \$75 for the removal of devices.
- (5) The above fee rates shall be posted in a conspicuous place at the Approved Ignition Interlock Installer's office. The Approved Installer shall file a copy of the installation company's current fee schedule with the Department.

Authority: T.C.A. §§ 4-3-2009, 55-10-412 and 55-10-423.

1340-03-06-.14 Financial Responsibility Requirements

- (1) The Approved Ignition Interlock Device Provider shall maintain comprehensive general liability insurance in the amount of at least \$1,000,000.00 per occurrence with a \$3,000,000.00 aggregate total liability that shall cover defects or problems in or with product design and materials, workmanship during manufacture, calibration, installation and ~~uninstallation~~ removal, and use thereof. Such policies shall provide the Department with a forty-five (45) day prior written notice of cancellation, material change, or intent to lapse.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.15 Liability.

- (1) The Approved Ignition Interlock Device Installer and Provider shall protect, save and hold harmless the State, all State Departments, Agencies, Boards and Commissions, as well as all Officials, Employees, Agents and Servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of an omission by the Approved Ignition Interlock Device Installer or Provider in the performance of its duties set forth in the law or these rules.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.16 Audits and Inspections.

- (1) Approved Ignition Interlock Device Providers Installers shall be subject to unannounced audits reviews and inspections of all records and subject to suspension or revocation if sufficient cause exists as determined by the Department that the Approved Ignition Interlock Device Provider Installer does not meet the requirements of any applicable law or these rules.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-03-06-.17 Suspension, Revocation or Denial of Certification

- (1) Failure to comply with any requirements set forth in the law or these rules may result in the denial, suspension or revocation of the Ignition Interlock Device Provider Installer Certification. Other reasons for denial, suspension or revocation may include, but are not limited to the following:
 - (a) Non-compliance with any of the minimum requirements stated in this rule;
 - (b) Providing false or inaccurate information to the Department;
 - (c) Assisting in or providing information that will enable the Ignition Interlock Program Participant to circumvent or tamper with the ignition interlock device; or
 - (d) Voluntarily request that such action be taken.
 - (e) Installing devices other than those supplied by the Provider referenced on the approved application.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

1340-01-14-.18 Administrative Hearings

- (1) An Approved Ignition Interlock Device Installer or Provider may request in writing an administrative hearing within ten (10) days of written notification of any proposed denial, suspension or revocation. Such hearing shall be held in accordance with the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-3-2009 and 55-10-412.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

| Board Member | Aye | No | Abstain | Absent | Signature (if required) |
|--------------|-----|----|---------|--------|-------------------------|
| | | | | | |

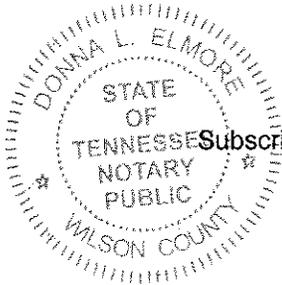
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Safety on 10/29/2012, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 10-29-2012

Signature: *Darrell Miller*

Name of Officer: Darrell Miller

Title of Officer: Captain, Tennessee Highway Patrol



Subscribed and sworn to before me on: 10-29-12

Notary Public Signature: *Donna L. Elmore*

My commission expires on: 1-26-2014

All proposed rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper Jr

Robert E. Cooper, Jr.

Attorney General and Reporter

12-9-12

Date

Department of State Use Only

Filed with the Department of State on: 12-17-12

Effective on: 5-31-13

Tre Hargett
Secretary of State

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REGISTRATIONS

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 2007, T.C.A. 4-5-401, et seq., the Department of Safety submits the following regulatory flexibility analysis:

- (1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local government rules:

The proposed rule does not overlap, duplicate or conflict with other federal, state or local government rules.
- (2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rule exhibits clarity, conciseness, and lack of ambiguity.
- (3) The establishment of flexible compliance and reporting requirements for small businesses:

The proposed rule establishes flexible compliance and/or reporting requirements for small businesses.
- (4) The establishment of friendly compliance and reporting requirements for small businesses:

The proposed does establish friendly compliance and/or reporting requirements for small businesses.
- (5) The consolidation or simplification of compliance or reporting requirements for small businesses:

The proposed rule consolidates and simplifies compliance and/or reporting requirements for small businesses.
- (6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The proposed rule does not establish performance standards for small businesses as opposed to design or operational standards.
- (7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rule does not unnecessarily create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rule does not have any projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rule establishes uniform, statewide, minimum standards for ignition interlock devices and for the approval and certification of persons and/or entities that provide and/or install such devices. The existing rule is being repealed so that the new amended rule can be placed under the Chapter for the Tennessee Highway Patrol. Revisions to the new amended rule include the maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining the ignition interlock device, and requirements that ensure that certified ignition interlock installers operate within established guidelines and have the ability to provide devices to any resident in the state.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 55-10-412 requires persons and/or entities that provide for the installation, monitoring and removal of functioning ignition interlock devices to be approved and certified by the Department of Safety. The statute does not mandate the promulgation of any rule or the establishment of any guidelines relevant thereto. T.C.A. § 55-10-423 mandates the promulgation of rules that establish the maximum fees that may be charged for installing, leasing, purchasing, monitoring, removing and maintaining the ignition interlock device, and requirements that ensure that certified ignition interlock installers operate within established guidelines and have the ability to provide devices to any resident in the state.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Persons and/or businesses engaged in the manufacturing, selling, leasing, servicing, monitoring, installation, and removal of ignition interlock devices.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

No effect on revenues.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Trooper Ehrin Ehlert; Gerry Crownover, Staff Attorney

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Trooper Ehrin Ehlert; Gerry Crownover, Staff Attorney

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None