

540 CMR: REGISTRY OF MOTOR VEHICLES

540 CMR 25.00: CERTIFICATION, INSTALLATION, USE AND MAINTENANCE OF IGNITION INTERLOCK DEVICES

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25.01: Purpose

The purpose of 540 CMR 25.00 is to establish guidelines and procedures for the certification, installation, use and maintenance of Ignition Interlock Devices.

25.02: Scope and Applicability

540 CMR 25.00 shall apply in all cases in which a Hardship License or right to operate has been granted pursuant to M.G.L. c. 90, § 24(1)(c), (2), (3) and (3½), or M.G.L. c. 90, § 24D, either by the Registrar or ordered by the Board of Appeal on Motor Vehicle Liabilities, Policies and Bonds (hereafter “the Board”). 540 CMR 25.00 shall also apply to any person seeking issuance or reinstatement of a license or right to operate on or after January 1, 2006, who has two or more motor vehicle violations for operating under the influence of intoxicants. Motor vehicle violations include convictions under M.G.L. c. 24G(b); M.G.L. c. 24L; M.G.L. c. 265, § 13½; M.G.L. c. 90B, § 8(a); M.G.L. c. 90B, § 8A or 8B, assignments to alcohol or controlled substance abuse education, treatment, or rehabilitation programs, or any like offenses or assignments from other jurisdictions. 540 CMR 25.00 shall also apply in cases in which the Board orders a Hardship License or reinstatement on a suspension or revocation pursuant to: M.G.L. c. 90, § 24(c)(1), (3¾), M.G.L. c. 90, § 24L, or M.G.L. c. 90, § 24G and c. 263, § 13½. 540 CMR 25.00 shall also apply in cases where a chemical test refusal license suspension of five years or greater is reinstated pursuant to the provisions of M.G.L. c. 90, § 24(1)(f)(1) or § 24N.

Any person seeking issuance or reinstatement on or after January 1, 2006 of a license or right to operate a motorcycle, as required under M.G.L. c. 90, § 2, who has two or more motor vehicle violations for operating under the influence of intoxicants, shall not be eligible for Hardship License or full reinstatement until the Ignition Interlock Restriction has been removed from his license or right to operate. Such person may apply for privileges to operate a Class D Vehicle, and the terms and conditions of the Ignition Interlock Restriction shall apply.

540 CMR 25.00 shall apply to any person seeking issuance or reinstatement on or after January 1, 2006 of a license or right to operate a Commercial Motor Vehicle (CMV), defined in federal regulations 49 CFR 383.5 and 390.5, who has two or more motor vehicle violations for operating under the influence of intoxicants, only to the extent that 540 CMR 25.00 permits such person to apply for privileges to operate a Class D Vehicle, under the terms and conditions of an Ignition Interlock Restriction.

An operator who does not hold a Massachusetts license who incurs a motor vehicle violation involving intoxicants while driving in Massachusetts is subject to the same penalties and restrictions on his right to operate as a driver who is licensed in Massachusetts.

25.03: Definitions

Blood Alcohol Concentration (BAC). Percentage, by weight, of alcohol in a person's blood, as measured by a test of the person's breath or blood.

Circumvention. An overt, conscious attempt to bypass the Ignition Interlock Device by providing samples other than the natural unfiltered breath of the operator, or by starting the car without using the ignition switch, or any other act intended to allow the vehicle to start or continue to operate without the operator first taking and passing a breath test.

Failed Rolling Retest. A breath test taken by the operator of an IID-equipped vehicle while the vehicle is running that shows the operator has a BAC greater than .02.

Failed Start-up Test. A breath test taken by the operator of an IID-equipped vehicle prior to starting the vehicle's ignition, registering a BAC greater than .02.

Hardship License. Any driver's license or right to operate authorized by the Registrar or the Board during a period of license suspension or revocation that allows a person to drive for limited hours during the remaining period of revocation or suspension.

Ignition Interlock Device (IID). An alcohol sensing instrument mounted in an automobile and connected to the ignition system to prevent the vehicle from starting, unless the driver first provides a satisfactory deep lung air sample. The device analyzes the deep lung air sample to determine the BAC of the operator. If the measured BAC is above .02, the device prevents the vehicle from starting. Certified IIDs meet the requirements set out in 540 CMR 25.05.

Ignition Interlock Restriction. The limitation imposed by the Registrar on an individual's license or right to operate prohibiting operation of any motor vehicle in the Commonwealth without an Ignition Interlock Device, subject to the terms and conditions set out in M.G.L. c. 90, and 540 CMR 25.00.

Lockout. A multiple-step process resulting from an infraction of the Ignition Interlock Restrictions, including a period during which the operator cannot start the vehicle.

Missed Rolling Retest. Failure to take the Rolling Retest within the time period allotted by the IID. If the breath test is taken after the time period allotted and demonstrates a BAC greater than .02, it shall be deemed a Failed Rolling Retest.

Passed Test. A breath test taken by the operator of an IID-equipped vehicle prior to starting the ignition or while the vehicle is running that shows the operator's BAC is equal to or less than .02.

Registrar. The Registrar of Motor Vehicles for the Commonwealth of Massachusetts or his or her designee.

Rolling Retest. A breath test, administered at random intervals, taken by the operator of an IID-equipped vehicle while the vehicle is running.

Service Period. The time between Service Visits, which shall be at least 25 days, but not more than 30 days.

Service Provider. An entity approved by the Registrar that installs and services the operator's Ignition Interlock Device.

25.03: continued

Service Visit. A required visit to the Service Provider by the operator to have the Ignition Interlock Device inspected, monitored or maintained. An initial Service Visit shall be conducted within 30 days of IID installation, and regularly thereafter in Service Periods of 25 - 30 days.

Start-up Test. A breath test taken by the operator of an IID-equipped vehicle to measure the operator's BAC prior to starting the vehicle's ignition.

Tamper. An overt, conscious attempt to physically disable or otherwise disconnect the Ignition Interlock Device from its power source and thereby allow a person to start the engine or continue to operate a motor vehicle without a Passed Test.

25.04: Model Specifications for Breath Alcohol Ignition Interlock Devices

(1) A manufacturer or other entity seeking approval of any type of Ignition Interlock Device in order that it might be used to monitor compliance with Massachusetts Ignition Interlock Restrictions must demonstrate to the satisfaction of the Registrar that the device meets the conditions established in Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs), National Highway Traffic Safety Administration, *Federal Register*, Vol. 78, No. 89, May 8, 2013. The Registrar shall certify such qualifying types of devices and shall publish a list of certified types of devices.

(2) Standards for certification shall include provisions for setting a minimum and maximum calibration range and shall also include, but not be limited to, requirements that the devices:

- (a) Prevent an IID-restricted operator from starting an IID-equipped vehicle without a Passed Test;
- (b) Work accurately and reliably in an unsupervised environment;
- (c) Require at least one Rolling Retest during any operation of an IID-equipped vehicle lasting ten minutes or longer.
- (d) Require Rolling Retests to be conducted at random intervals during operation of the vehicle.
- (e) Notify the operator when a Rolling Retest is required and permit an operator five minutes to blow into the Ignition Interlock Device after the notification.
- (f) Have features that make Circumvention difficult and that do not interfere with the normal or safe operation of the vehicle;
- (g) Resist Tampering and give evidence if Tampering is attempted;
- (h) Operate reliably over the range of automobile environments;
- (i) Effect a Lockout when an operator violates an IID Restriction, as described in 540 CMR 25.09; and
- (j) Are manufactured by a party covered by product liability insurance.

25.05: Installation of Ignition Interlock Devices

(1) An Entity under contract to install and maintain any type(s) of certified IIDs may apply to the Registrar to become an approved Service Provider.

(2) The Registrar shall approve only those Service Providers that meet the terms and conditions set out in 540 CMR 25.00.

(3) Each Service Provider shall notify the Registrar of every site from which the Service Provider intends to install, monitor and maintain devices, in a format specified by the Registrar. Every site must comply with the requirements set forth in 540 CMR 25.00, as may be determined through site inspection(s) by Registry of Motor Vehicles staff. It shall be the responsibility of the Service Provider to notify the Registrar within 30 days of any change in the information previously provided.

(4) A Service Provider who installs Ignition Interlock Devices in vehicles shall comply with the following conditions:

- (a) Not allow customers or other unauthorized persons to observe the installation of the devices.
- (b) Have all tools, test equipment and manuals needed to install devices and screen vehicles for acceptable mechanical and electrical conditions. These include, but are not necessarily limited to, the following:

25.05: continued

1. tools to make electrical connections in a competent manner and in accordance with accepted trade standards;
 2. heat gun if heat shrink tubing or heat set labels are used;
 3. volt/ohmmeter;
 4. test light;
 5. battery testing equipment and servicing tools;
 6. electrical wiring diagrams and/or reference guide for electrical systems on import and domestic vehicles, 20 years old or less, necessary for the installation and operation of the device; and
 7. tools and equipment listed by the device manufacturer(s) to properly install devices.
 8. Provide adequate security measures to prevent unauthorized persons from accessing materials key to the integrity of the IID system including, but not limited to, tamper seals and installation instructions.
- (c) Appropriately install IIDs on vehicles taking into account each vehicle's mechanical and electrical conditions, following accepted trade standards and the device manufacturer's instructions, and correcting conditions which interfere with the proper functioning of the device.
- (d) Not install devices in a manner that could adversely affect the performance of the device or impede the safe operation of the vehicle.
- (e) Verify that a device is functioning properly after it has been installed in the vehicle.
- (f) Attach a warning label, approved by the Registrar, in a conspicuous place on the Ignition Interlock Device, informing the person to whom the Ignition Interlock Restriction applies of the penalties for tampering with or attempting to circumvent operation of the device. The label shall be produced at the expense of the Service Provider. This label shall also warn other individuals of the penalties for blowing into the device on behalf of the restricted operator. On each and every service visit the monitoring entity shall inspect this label, and if it is found to be damaged, loose, obscured or in any other way not clearly legible, replace the label with a new one.
- (g) Restore the affected mechanical and electrical systems to their original configurations or, if this is not possible, minimally to working order when an IID is removed. All severed wires must be permanently and safely reconnected and insulated.
- (h) Provide monthly reports to the Registrar on the status of its clients.
- (i) Provide timely reports to the Registrar of any operator Lockout or IID Violations.
- (j) Abide by any policies established by the Registrar governing the removal of the device(s).
- (k) Provide appropriate training to operators on the use and safe operation of the IID.
- (5) The Registrar shall maintain and publish a list of all approved Service Providers within the Commonwealth. Any Service Provider found not to be in compliance with any of the provisions of 540 CMR 25.00 may be subject to suspension or revocation of approval for any or all its sites, after a hearing before the Registrar. The Registrar may take into account the nature and extent of the violation(s) and the past performance of the Service Provider.
- (6) A Service Provider must agree to provide all mandatory program costs, including installation, maintenance and removal of the IID, at no cost to a person who presents documentation issued by the Registrar that such cost would cause a grave and serious hardship to the offender or the offender's family.

25.06: Cost and Maintenance

- (1) The operator shall pay the cost of installing, monitoring, and maintaining the Ignition Interlock Device(s), except when the Registrar has issued a written determination that such costs would cause a grave and serious hardship to the offender or the offender's family.

25.06: continued

(2) At the time an interlock restriction is imposed, the Registrar shall provide written notice to each operator that he or she may obtain a certified ignition interlock device, including installation, maintenance, and removal services at no cost if such cost would cause a grave and serious hardship to the offender or the operator's family. The Registrar shall issue a finding of hardship upon presentation of documentation in a form which is consistent with St. 2005, c. 122, § 19 and approved by the Registrar, and which is sufficient to show grave and serious hardship to the operator or the operator's family. The operator shall be responsible for all costs associated with damage to the unit, failure to have the unit properly serviced or maintained, violations of the interlock program or unexcused lockouts.

(3) The operator will be required to appear at the Service Provider's location for a Service Visit within 30 days of the installation of the device, and regularly thereafter in Service Periods of 25 - 30 days, for as long as the device is required by the Registrar. 25 days after each Service Visit, the unit shall alert the operator of the requirement for another Service Visit. In the event of a missed Service Visit, the unit shall immediately lock out without further warning, as provided in 540 CMR 25.08(2).

25.07: Conditions of Hardship Licenses and License Reinstatements

(1) Any person whose license has been suspended or revoked because of two or more motor vehicle violations for operating under the influence of intoxicants shall have an Ignition Interlock Device installed on every vehicle he owns, leases, or operates, as a condition of the reinstatement of his license or right to operate. This requirement applies to both full reinstatements and Hardship Licenses.

(1A) Any person whose license has been suspended or revoked following a first conviction or assignment to an alcohol treatment program of operating under the influence of intoxicants, and who operated a motor vehicle with a percentage, by weight, of alcohol in their blood of fifteen one-hundredths or greater, shall have an interlock restriction imposed on any hardship license issued by either the Registrar or the Board of Appeal pursuant to M.G.L. c. 90, § 24(1)(c)(1) and/or M.G.L. c. 90, § 24D.

(2) Any operator subject to 540 CMR 25.00 shall operate a vehicle only if it is equipped with an Ignition Interlock Device. This requirement applies to all vehicles owned by the operator, as well all other vehicles operated by the individual including, but not limited to, any vehicles that are leased, rented, loaned, or used in employment.

(3) No operator of an IID-equipped vehicle shall be permitted to start the vehicle without a Passed Test.

(4) It shall be a condition of any license issued with an Ignition Interlock Restriction, that the operator notify any other person who rents, leases, loans, or permits him to operate a motor vehicle during his employment, or otherwise, of the Ignition Interlock Restriction.

(5) Before receiving a license or having licensure privileges restored, any individual to whom an Ignition Interlock Restriction applies shall execute a form, promulgated by the Registrar, which clearly indicates the penalties for violating the laws and regulations pertaining to Ignition Interlock Devices. The form shall be signed by the individual under the pains and penalties of perjury. The form shall also require the individual to list each and every licensed driver in the household.

(6) Each such person listed pursuant to 540 CMR 25.08(5) shall execute, under the pains and penalties of perjury, a statement that he understands that the individual to whom the Ignition Interlock Restriction applies must not operate any vehicle without an Ignition Interlock Device, and that blowing into the device on behalf of any IID-restricted driver is punishable by incarceration. The Registrar, in his or her discretion, may also list other applicable penalties on this acknowledgement.

25.07: continued

(7) The Registrar shall apply an Ignition Interlock Restriction code to the license, permit, or right to operate of anyone subject to the terms and conditions of 540 CMR 25.00, signifying that the operator is only licensed to operate motor vehicles that have an Ignition Interlock Device installed.

(8) In all cases in which an operator must have an Ignition Interlock Device as a condition of hardship, the requirement shall remain in effect for the balance of the revocation or suspension. Once the period of hardship restriction has ended, the operator may apply for full license reinstatement absent the hardship hours restriction, however the Ignition Interlock Restriction shall remain in effect for no less than two years thereafter if required by M.G.L. c. 90, § 24½.

(9) In cases in which an Ignition Interlock Device is required by 540 CMR 25.00, and a person does not seek or is not granted a Hardship License, the operator will be subject to the requirements of 540 CMR 25.00 upon reinstatement for no less than a two-year period. This requirement shall not apply to persons reinstating their license following a first conviction or program assignment pursuant to M.G.L. c. 90, § 24(1)(c) or § 24D.

(10) An operator subject to the Ignition Interlock Restriction who lives in or moves to another state or jurisdiction may participate in the Massachusetts IID program as an out-of-state resident. If the operator demonstrates successful completion of the Massachusetts IID program, he or she may apply to have the Ignition Interlock Restriction removed.

(11) Subject only to the exception listed in 540 CMR 25.08(12), an IID-restricted operator who removes the Ignition Interlock Device from his or her vehicle(s) before successfully completing the IID program, shall have his or her license or right to operate immediately returned to a suspended or revoked status.

(12) An operator subject to the Massachusetts Ignition Interlock Restriction who moves to another state or jurisdiction and does not participate in or does not continue to participate in the Massachusetts IID program may, at the discretion of the Registrar, have the status of his license or right to operate changed to enable him or her to acquire a legal driver's license in the new state or jurisdiction. The Registrar shall:

- (a) Require the operator to provide proof of out-of-state residency;
- (b) Require the operator to execute a form acknowledging that the operator is not, under any circumstances, permitted to drive a motor vehicle in Massachusetts, unless it is equipped with an IID;
- (c) Require the operator to execute a form acknowledging that the operator understands the Registrar will notify the destination state or jurisdiction of the operator's motor vehicle offenses and license restrictions; and
- (d) Notify the destination state or jurisdiction of the operator's motor vehicle offenses and license restrictions.

The Registrar may, on a case by case basis, impose additional conditions he or she deems necessary to protect public safety.

25.08: Lockouts

(1) A Lockout shall commence for any of the following infractions of the Ignition Interlock Restriction:

- (a) Two Failed Start-up Tests within one Service Period;
- (b) One Failed Rolling Retest;
- (c) One missed Service Visit; and
- (d) Two Missed Rolling Retests within one Service Period;

25.08: continued

(2) When an infraction of the Ignition Interlock Restriction triggers a Lockout, the operator is immediately notified that a Lockout is in progress and that he or she has 48 hours to bring the vehicle to the Service Provider for inspection. As at all other times, the operator is prohibited from starting the vehicle until his BAC registers .02 or below on the IID; the IID effects this restriction by disabling the vehicle's ignition. If the operator fails to bring the vehicle to the Service Provider for inspection within 48 hours following the triggering of a Lockout, the vehicle's ignition is permanently locked and only the Service Provider is permitted to release it. The operator is responsible for any and all charges associated with getting the vehicle to the Service Provider in a lawful manner, in addition to any reset charges incurred for the Lockout. Lockouts for One Missed Service Visit shall begin on the day following the 30th day of the last service period, and shall immediately result in the vehicle's ignition being permanently locked, with only the Service Provider being permitted to release it.

(3) The Service Provider shall provide immediate notice of any Lockout to the Registrar.

(4) If an IID-restricted operator believes a Lockout is unjustified, he or she may request a hearing with the Registry of Motor Vehicles within 30 days of the Lockout. If the Registrar finds the Lockout was not justified, the Lockout shall be excused.

25.09: Ignition Interlock Violations (IID Violations)

An Ignition Interlock Violation consists of any of the following:

- (1) Operating a motor vehicle without an Ignition Interlock Device;
- (2) Soliciting or allowing any other person to blow into an Ignition Interlock Device, or to start an IID-equipped vehicle for the purpose of providing the person so restricted with an operable motor vehicle;
- (3) Using any means other than blowing a breath directly from the operator's mouth into the device, in order to supply an air sample to the device;
- (4) An attempt to Tamper with or Circumvent the IID;
- (5) A Failed Rolling Retest in which the operator's BAC registered at or above .05;
- (6) Two Failed Rolling Retests within one Service Period in which the operator's BAC registered between .02 and .05;
- (7) Two Lockouts due to Missed Rolling Retests;
- (8) Two missed Service Visits; and
- (9) Two Lockouts due to Failed Start-up Tests.

25.10: Sanctions

(1) An operator who is identified as having committed an Ignition Interlock Violation is entitled to a hearing to determine, by a preponderance of the evidence, whether such violation occurred. The Registrar shall notify the operator of this right, and may take into account any and all information he or she deems relevant. Nothing in 540 CMR 25.10, however, limits the right of the Registrar to take immediate action pursuant to M.G.L. c. 90, § 22, as warranted by the need to protect public safety.

(2) Except as provided in 540 CMR 25.10(3), if the operator is determined to have committed an Ignition Interlock Violation while operating under the limited privileges of a Hardship License, the Registrar shall revoke the Hardship License for the balance of the original revocation period, and shall not issue any new license or reinstate the operator's right to operate for an additional ten years thereafter. If the operator is determined to have committed an Ignition Interlock Violation while operating under an otherwise fully reinstated license or right to operate, the Registrar shall revoke said license or right to operate for ten years. During such period, the operator shall not be eligible for any hardship license.

25.10: continued

(3) If the operator is determined to have committed an Ignition Interlock Violation for two lockouts due to failed start-up tests (540 CMR 25.09(9)), the Registrar shall revoke any Hardship License for the balance of the original revocation period, and shall not issue any new license or reinstate the operator's right to operate for six months for a first offense, five years for a second offense, or ten years for a third or subsequent offense. During such period, the operator shall not be eligible for any hardship license.

(4) In the event of any two Ignition Interlock Violations based on Failed Rolling Retests, the revocation shall be for life.

25.11: Removal of Ignition Interlock Restrictions

An operator applying to have his or her Ignition Interlock Restriction removed must demonstrate that he or she has had no Ignition Interlock infractions and no Ignition Interlock Violations for the six months immediately preceding his or her application, excluding any periods during which the operator's license was inactive or suspended. If he or she cannot so prove, the Ignition Interlock Restriction will be extended until he or she makes a reapplication that meets this requirement as well as all other licensure requirements. If the operator's Ignition Interlock Restriction was originally imposed for a period of less than six months, then an operator applying to have his or her Ignition Interlock Restriction removed must demonstrate that he or she has had no Ignition Interlock infractions and no Ignition Interlock Violations for the entire period during which that restriction was in place. If he or she cannot so prove, the Ignition Interlock Restriction will be extended for six months from the date of the most recent infraction or violation.

25.12: Reinstatement of Licenses by Order of the Court

When the Court orders the reinstatement of a license that was suspended due to a chemical test refusal, pursuant to M.G.L. c. 90, § 24(1)(f)(1) or § 24N, the Registrar shall, absent any other reason for the license suspension, honor said order for reinstatement.

25.13: Registrations

If after a hearing the Registrar determines that the scope and nature of an operator's violation(s) of the provisions of 540 CMR 25.00 are significant, and the interests of public safety are at risk, the Registrar may also revoke any vehicle registration(s) in the name of the operator, as well as the registration(s) of vehicles that the Registrar has cause to believe the operator may have access to, pursuant to the provisions of M.G.L. c. 90, §§ 12, 22(a) and 24X, and prevent further registrations from issuing.

REGULATORY AUTHORITY

540 CMR 25.00: M.G.L. c. 90, § 24(1)(c), (2), (3) and (3½); c. 90, § 24D; c. 90, § 24S; c. 90, § 24T; c. 90, § 24U; c. 90, § 28; c. 90, § 31 and St. 2005, c. 122, § 19.