

Chapter 308-107 WAC

IGNITION INTERLOCK DRIVER'S LICENSE

WAC

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WAC 308-107-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Authorized service provider" or "ignition interlock vendor" means a person, company, or contractor to a company meeting all qualifications set out in chapter 204-50 WAC and approved and trained by a manufacturer to service, install, monitor, calibrate, and provide information on manufacturer's devices currently certified for use in Washington state.

(2) "Breath or blood alcohol concentration (BAC)" means the amount of alcohol in a person's blood or breath determined by chemical analysis, which shall be measured by grams of alcohol per:

(a) One hundred milliliters of blood; or

(b) Two hundred ten liters of breath.

(3) "Commission" means the Washington traffic safety commission.

(4) "Device" means an ignition interlock device as defined under RCW 46.04.215 and WAC 204-50-030.

(5) "Department" means the department of licensing.

(6) "Event log report" means a compilation of the data downloaded from a device under the provisions of WAC 204-50-080.

(7) "Functioning device" means a device that is properly installed, maintained, and meets the requirements specified in chapter 204-50 WAC.

(8) "Manufacturer" or "ignition interlock company" means the person, company, or corporation who produces an ignition interlock device, and certifies to the Washington state patrol that an authorized service provider is qualified to service, install, monitor, calibrate, and provide information on devices.

[Statutory Authority: RCW 46.01.110 and 46.20.385. 11-01-037, § 308-107-010, filed 12/6/10, effective 1/6/11. Statutory Authority: RCW 46.01.-110, 46.20.385, 46.20.391, and 46.20.745. 08-24-059, § 308-107-010, filed 11/26/08, effective 1/1/09.]

WAC 308-107-020 Ignition interlock driver's license—Application—License term. (1) A person applying for an ignition interlock driver's license must meet the requirements of RCW 46.20.380 and 46.20.385, and submit the following:

(a) A nonrefundable application fee of one hundred dollars;

(12/6/10)

(b) An application on a form provided by the department;

(c) Satisfactory proof of financial responsibility under chapter 46.29 RCW; and

(d) Proof from an installer approved by the department that a functioning ignition interlock device has been installed.

If all the requirements for an ignition interlock driver's license are not met within thirty days after the application has been accepted by the department, the license will be denied.

(2) Reapplication for the ignition interlock driver's license may be required whenever a new administrative suspension or revocation is imposed.

[Statutory Authority: RCW 46.01.110 and 46.20.385. 11-01-037, § 308-107-020, filed 12/6/10, effective 1/6/11; 09-19-086, § 308-107-020, filed 9/18/09, effective 10/19/09. Statutory Authority: RCW 46.01.110, 46.20.-385, 46.20.391, and 46.20.745. 08-24-059, § 308-107-020, filed 11/26/08, effective 1/1/09.]

WAC 308-107-030 Functioning device—Satisfactory proof of installation. For purposes of RCW 46.20.385, satisfactory proof of installation of a functioning device must include:

(1) An ignition interlock status verification form submitted by a manufacturer who has entered into an agreement with the department under WAC 308-107-050(2), or by an authorized service provider associated with such manufacturer, indicating that a device has been installed on a vehicle owned or operated by the driver; and

(2) An event log report periodically submitted by the manufacturer to the commission, as provided by WAC 308-107-080, indicating that the device is being maintained under WAC 204-50-080.

[Statutory Authority: RCW 46.01.110, 46.20.385, 46.20.391, and 46.20.-745. 08-24-059, § 308-107-030, filed 11/26/08, effective 1/1/09.]

WAC 308-107-040 Functioning device—Evidence that device is no longer installed or functioning. (1) For purposes of RCW 46.20.311, 46.20.385, and 46.20.740, the department may determine that a device is no longer installed or functioning in the vehicle(s) driven by a person based on:

(a) An ignition interlock status verification form submitted by a manufacturer, or by an authorized service provider associated with such manufacturer, indicating that a device is no longer installed or functioning;

(b) Notice from the commission that a report received under WAC 308-107-080 indicates that a device is no longer installed or functioning or that the driver has failed to appear for scheduled maintenance;

(c) The termination or expiration without renewal of an agreement entered into between the department and the manufacturer of the device(s) installed in the vehicle(s) driven by the person;

(d) A statement from a law enforcement officer made under RCW 9A.72.085 indicating that a device has been dis-

abled or removed from a motor vehicle operated by the person; or

(e) A conviction under RCW 46.20.740(2) for operating a motor vehicle that is not equipped with a functioning device.

(2) Before making a determination under this section, the department may consider evidence from the person indicating that:

(a) The person is no longer operating the vehicle in which a device is no longer installed or functioning and that another vehicle driven by the person is so equipped; or

(b) The device has been replaced with a functioning device installed by another manufacturer or authorized service provider.

(3) Once the department has determined under this section that a device is no longer installed or functioning, the person must re-establish that a functioning device has been installed before a license may be reinstated or reissued during the remainder of an applicable period of restriction.

[Statutory Authority: RCW 46.01.110, 46.20.385, 46.20.391, and 46.20.745. 08-24-059, § 308-107-040, filed 11/26/08, effective 1/1/09.]

WAC 308-107-050 Ignition interlock device revolving account. (1) As required under RCW 46.20.385 (6)(a), unless determined by the department to be indigent under WAC 308-107-060, a person who is applying for or has been issued an ignition interlock driver's license must pay an additional fee of twenty dollars per month or partial month for which the ignition interlock driver's license is valid to the manufacturer of the device(s) installed in the motor vehicle(s) driven by the person. Payment may be made directly to the manufacturer, or through the authorized service provider, depending upon the manufacturer's business practices.

(2) A manufacturer providing devices to persons who are applying for or have been issued an ignition interlock driver's license, either directly or through an authorized service provider, must enter into an agreement with the department for the collection and transmittal of the twenty dollar monthly fee required under RCW 46.20.385 (6)(a). Any agreement made under this section must include appropriate reporting requirements and accounting practices to permit the department to audit the handling of the fees that must be remitted to the department. The department may terminate an agreement with a manufacturer upon a showing of good cause. Good cause may include, but not be limited to;

(a) Violation of the agreement;

(b) Violation of the laws and rules governing the installation of devices; or

(c) Violation of this chapter.

An agreement between the department and a manufacturer will be valid for no more than four years, provided that the department may extend an agreement for up to an additional four years at its discretion.

(3) As provided by RCW 46.20.385 (6)(b), the department shall deposit the proceeds of the twenty-dollar fee into the ignition interlock device revolving account.

[Statutory Authority: RCW 46.01.110 and 46.20.385. 11-01-037, § 308-107-050, filed 12/6/10, effective 1/6/11. Statutory Authority: RCW 46.01.110, 46.20.385, 46.20.391, and 46.20.745. 08-24-059, § 308-107-050, filed 11/26/08, effective 1/1/09.]

WAC 308-107-060 Indigence—Monetary assistance—Determination of need. (1) An applicant for, or holder of, an ignition interlock driver's license may apply to the department for a determination that he or she is indigent for purposes of RCW 46.20.385 and 46.20.745. The department will determine that a person is indigent if the person is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or Supplemental Security Income; or

(b) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the current federally established poverty level.

In making a determination of indigence under this subsection, the department may request that the applicant provide records or other evidence of public assistance, income, payment of taxes, or other relevant issues.

A person who has been determined to be indigent under this subsection is exempt from paying the additional fee of twenty dollars required under RCW 46.20.385 (6)(a), and may apply for monetary assistance under subsection (2) of this section.

(2) Subject to appropriation by the legislature of funds from the ignition interlock device revolving account and the availability of funds in the ignition interlock device revolving account, a person who has been determined to be indigent under this section may apply to the department for monetary assistance in covering the costs of installing, removing, and leasing an ignition interlock device, and any applicable licensing fees.

(3) Subject to funds appropriated, the department may base the amount of monetary assistance provided to an applicant under subsection (2) of this section on a determination of need. Where possible, a determination of need may be based on such factors as:

(a) Total number of persons in household, including the number of dependants;

(b) The age of the applicant and whether the applicant is a dependant of another person;

(c) Monthly expenses; and

(d) Liquid assets.

(4) A person who has been determined to be indigent under this section must re-apply for a determination of indigence on an annual basis.

[Statutory Authority: RCW 46.01.110, 46.20.385, 46.20.391, and 46.20.745. 08-24-059, § 308-107-060, filed 11/26/08, effective 1/1/09.]

WAC 308-107-070 Ignition interlock driver's license—Hearing. (1) Upon notification by the department that an ignition interlock driver's license has been denied under RCW 46.20.385 the aggrieved person may request a formal hearing to contest the department's decision. No hearing need be granted where the department is prevented from issuing an ignition interlock driver's license by rule or law. A request for a hearing must be submitted in writing.

(2) Upon notification by the department that a determination has been made under WAC 308-107-060 that a person is not indigent, the person may request a formal hearing to contest the department's determination.

(3) Within ten days of receipt of a request for a hearing, the department shall notify the requester in writing of the time and location of the hearing. The hearing may be held either in the person's county of residence or in any county adjoining the person's county of residence, except that all or part of the hearing may, at the discretion of the department, be conducted by telephone or other electronic means.

(4) The hearing shall be conducted by a hearing officer appointed by the director. The director may delegate the authority to render final decisions to the hearing officer.

(5) For a hearing requested under subsection (1) of this section, the scope of the hearing shall be limited to the following issues:

(a) Whether the person had previously been issued a valid Washington state driver's license, or is in the military, stationed in Washington state, and has a valid home state license;

(b) Whether the suspension or revocation giving rise to the application for an ignition interlock driver's license is one for which an ignition interlock driver's license may be issued under RCW 46.20.385;

(c) Whether a device was installed and functioning; and

(d) Whether the person is currently suspended or revoked for any reason for which an ignition interlock driver's license is not available.

(6) The person's official driving record provided to the hearing officer by the department shall be prima facie evidence of the issues contained in subsection (5) of this section unless the person presents clear and convincing evidence to the contrary.

(7) For a hearing requested under subsection (2) of this section, the person shall have the burden of proving by a preponderance of the evidence that the department's determination is in error.

(8) In the event that the person fails to appear for the hearing, no hearing shall be held. The case shall be remanded to the department and the department's previous decision denying the ignition interlock driver's license, or decision determining that the person is not indigent, shall be affirmed.

[Statutory Authority: RCW 46.01.110 and 46.20.385, 11-01-037, § 308-107-070, filed 12/6/10, effective 1/6/11. Statutory Authority: RCW 46.01-110, 46.20.385, 46.20.391, and 46.20.745, 08-24-059, § 308-107-070, filed 11/26/08, effective 1/1/09.]

(c) All attempts to tamper with the ignition interlock device;

(d) All attempts to avoid taking a random retest;

(e) All attempts to circumvent the device;

(f) If no attempts to tamper or circumvent are detected, a statement that the device has been recalibrated and no violations were found;

(g) The total number of events recorded by the data recorder since the last service visit;

(h) The number of vehicle starts; and

(i) The number of failures to start the vehicle.

[Statutory Authority: RCW 46.01.110, 46.20.385, 46.20.391, and 46.20-745, 08-24-059, § 308-107-080, filed 11/26/08, effective 1/1/09.]

WAC 308-107-080 Ignition interlock device compliance—Pilot program. (1) As a part of the pilot program established under RCW 46.20.745, an authorized service provider must forward the event log reports for any device maintained under WAC 204-50-080, or a report that the driver failed to appear for the scheduled maintenance, to the manufacturer of the device. The manufacturer of the device must compile the reports received from their authorized service providers in a form specified by the commission and forward the compilation to the commission on a schedule established by the commission.

(2) For the duration of the pilot program, the event log report must include:

(a) The date, time, BAC of the driver, and success or failure of each attempt to start the vehicle;

(b) The date, time, BAC of the driver, and success or failure of each random retest;