

WSR 22-01-068

PERMANENT RULES

WASHINGTON STATE PATROL

[Filed December 9, 2021, 2:24 p.m., effective January 9, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changes to WAC 204-50-030, 204-50-070, and 204-50-110 are needed to coincide with legislative changes to the alcohol set point in RCW 46.20.720, which will become effective January 1, 2022. Additionally, there is a need to clean up, update, and move some of the definitions in WAC 204-50-030 to conform to language in other rules. Finally, updates to WAC 204-50-070 are needed to clean up existing language to provide clarity and consistency in terms to ensure the rule references and complies with current laws in the state of Washington.

Citation of Rules Affected by this Order: Amending WAC 204-50-030, 204-50-070, and 204-50-110.

Statutory Authority for Adoption: RCW 43.43.395, 46.37.005, 46.04.215.

Adopted under notice filed as WSR 21-21-073 on October 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: A number of nonsubstantive changes were made between the proposed and adopted rule versions. Many of the changes was [were] inserted, deleted, or replaced to clarify the meaning of the rule and to avoid confusion for the ignition interlock vendors and the public. The following clarifying changes were made upon adoption of the rule:

WAC 204-50-030 (5)(g): Replaced "excess breath alcohol" with "a BrAC equal to or higher than the alcohol set point."

WAC 204-50-070(5): Replaced "section" with "chapter."

WAC 204-50-110 (1)(k): Replaced "exceeds the lower of .020 BrAC or the alcohol concentration as prescribed by the originating court" with "is equal to or higher than the alcohol set point" and replaced "at a level the lower of .020 BrAC or the maximum allowable alcohol concentration as set by the originating court" with "with a result lower than the alcohol set point."

WAC 204-50-110(5): Replaced "an alcohol concentration equal to or higher than .020 BrAC or a level ordered by the originating court" with "a BrAC equal to or higher than the alcohol set point."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 9, 2021.

John R. Batiste
Chief

OTS-3379.6

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-030 Definitions. The ~~((following definitions will))~~ definitions in this section apply throughout this chapter:

(1) "Alcohol" ((-)) means the unique chemical compound ethyl alcohol or ethanol. ~~((For the purpose of ignition interlock devices, all devices will be specific for ethyl alcohol.~~

~~(2) Bogus sample — Any air sample that is altered, diluted, contaminated, stored, or filtered human breath, or which is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanical device, and is provided by an individual attempting to start or continue to operate a vehicle equipped with an ignition interlock device.~~

~~(3)) (2) "Breath alcohol concentration" or "BrAC" ((— Is the amount of alcohol in a person's breath determined by chemical analysis, which shall be measured by grams of alcohol per 210 liters of breath))~~ has the same meaning as in RCW 46.04.015(1).

~~((4)) (3) "Certification" ((-)) means the testing and approval process required by RCW ((46.04.215,)) 43.43.395 and chapter 204-50 WAC.~~

~~((5)) (4) "Chief" ((-)) means the chief of the Washington state patrol ((or his or her designee)).~~

~~((6)) (5) "Circumvent" or "circumvention" ((-)) means the attempted or successful bypass of the proper functioning of an ignition interlock device by any means including, but not limited to:~~

(a) The operation of a vehicle without a properly functioning ignition interlock device;

(b) The push start of a vehicle with ~~((the))~~ an ignition interlock device;

(c) The alteration or disconnection of any part of the ignition interlock device including the control head while the vehicle is in operation ~~((or alteration of the ignition interlock device));~~

(d) The intentional introduction of ~~((a bogus))~~ an air sample ~~((other than a deep-lung sample from the driver of the vehicle))~~ that is altered, diluted, contaminated, stored, or filtered, or that is obtained from an air compressor, hot air dryer, balloon, manual air pump, or other mechanic device, to start or continue to operate a vehicle;

(e) The ~~((introduction of an intentionally contaminated or altered breath sample))~~ intentional introduction of an air sample from an individual who is not the driver of the vehicle to start or continue to operate the vehicle;

(f) The intentional disruption or blocking of a digital image identification device or global positioning system;

(g) The continued operation of the interlock equipped vehicle after the ignition interlock device detects ~~((excess breath alcohol))~~ a BrAC equal to or higher than the alcohol set point.

~~((7)) (6) "Court" ((+) or "originating court ((+))")~~ means the particular ((Washington state)) court, if any, that has required the use of an ignition interlock device by a particular individual or has responsibility for the ((preconviction)) pretrial or postconviction supervision of an individual required to use or using the ignition interlock device.

(7) "Designee" means a person designated by the chief of the Washington state patrol.

(8) "DOL" ((-)) means the Washington state department of licensing ((of the state of Washington)).

(9) ((Fail level — The BrAC of .025 g/210L or a level set by the originating court, if lower, at which the ignition interlock device will prevent the operator from starting the vehicle, and/or once the vehicle is started, the level at which the operator must record a test below.

(10)) "Fee" ((-)) means a nonrefundable administrative fee set by schedule and paid to the patrol by the manufacturer through electronic funds transfer.

((11)) (10) "Ignition interlock device" ((—An electronic device that is installed in a vehicle which requires submitting to a BrAC test prior to the starting of the vehicle and at periodic intervals after the engine has been started. If the ignition interlock device detects a BrAC test result below the alcohol setpoint, the ignition interlock device will allow the vehicle's ignition switch to start the engine. If the ignition interlock device detects a BrAC test result above the alcohol setpoint, the vehicle will be prohibited from starting)) means the same as that term is defined in RCW 46.04.215.

((12)) (11) "Ignition interlock technician" ((-)) or "technician" means a person employed by the ignition interlock device manufacturer ((or)), vendor or service center and certified by the impaired driving section to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state.

((13)) (12) "Impaired driving section" ((-)) means the section of the Washington state patrol that has been designated by the chief ((of the Washington state patrol)) to coordinate and regulate ignition interlock devices, service centers and technicians.

((14) Initial start failure — A breath sample introduced into an ignition interlock device when a restricted operator is attempting to start a vehicle with a BrAC higher than .025 g/210L or the alcohol concentration as prescribed by the originating court.

(15)) (13) "Lessee" ((-)) means a person who has entered into an agreement with a manufacturer, vendor, or service center to lease an ignition interlock device.

((16)) (14) "Letter of certification" ((-)) or "certificate" means a letter issued by the Washington state patrol that authorizes:

(a) A manufacturer's ignition interlock device to be installed and used ((as an ignition interlock device under)) in Washington state as provided in this chapter; ((or))

(b) An ignition interlock technician to install, service, calibrate, remove and monitor certified ignition interlock devices in Washington state; or

(c) A service center ((location)) to service, install, monitor, and calibrate ignition interlock devices currently certified ((for use)) in Washington state.

((17)) (15) "Lockout" ((-)) means a period of time where the ignition interlock device will not allow a breath sample to be delivered or a vehicle's engine to be started.

((18)) (16) "Manufacturer" ((—The)) means a person, company, or corporation ((who)) that produces ((the)) an ignition interlock device ((, and certifies to the impaired driving section that a service center, vendor, or ignition interlock technician is qualified to service, install, monitor, calibrate, remove, instruct, and provide information on the manufacturer's ignition interlock device)).

~~((19))~~ (17) "OAC" (~~(-Office of the administrator)~~) means the administrative office of the courts.

~~((20))~~ (18) "Patrol" (~~(-)~~) means the Washington state patrol as that term is defined in RCW 43.43.010.

~~((21))~~ (19) "Restricted operator" (~~(-)~~) means a person whose driving privileges are restricted by court order or the department of licensing to operating only motor vehicles equipped with (~~an approved,~~) a functioning certified ignition interlock device.

~~((22))~~ (20) "Service center" (~~(-)~~) is the same as service provider as referenced in RCW 43.43.395 and means a location certified by the impaired driving section to service, install, monitor, remove and calibrate certified ignition interlock devices in Washington state.

~~((23))~~ (21) "Tamper" or "tampering" (~~(-)~~) means any act or attempt to disable or circumvent the legal operation of an ignition interlock device.

~~((24))~~ (22) "Vendor" (~~(-)~~) means an impaired driving section approved company, business, or distributor who is contracted by a manufacturer to manage a service center (~~(s and/or technicians)~~), a technician, or both.

~~((25))~~ (23) "Violation reset" (~~(-An unscheduled service of the ignition interlock device which includes the following:~~

~~(a) Calibration as outlined in WAC 204-50-080 (3)(a);~~

~~(b) Visual inspection of wiring harness;~~

~~(c) Download of the ignition interlock device's data storage system))~~ means a feature of the ignition interlock device that activates a service reminder due to a violation.

~~((26))~~ (24) "Wet bath simulator" (~~(-)~~) means a device (~~(which)~~) that provides a vapor sample of a known alcohol concentration when filled with a certified alcohol and water (~~(simulator)~~) solution(~~(,)~~) and maintained at a (~~(known)~~) specific temperature(~~(, provides a vapor sample of a known alcohol concentration)~~).

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-030, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-030, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-030, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-030, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-030, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-030, filed 12/9/87.]

OTS-1097.6

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-070 (~~(Variable calibration)~~) Alcohol set point of an ignition interlock device. (~~(To be certified,)~~) (1) An ignition interlock device must be capable of being preset (~~(, by only)~~) by the manufacturer (~~(, at any fail level from .02 through .09 g/210L BrAC (plus or minus .005 g/210L BrAC).~~) The actual setting of each ignition

~~interlock device, unless otherwise mandated by the originating court, must be .025 g/210L BrAC.)) to an alcohol set point from .020 to .070 BrAC.~~

(2) The alcohol set point of each ignition interlock device must be set at .020 BrAC, unless otherwise mandated by the originating court.

(3) The capability to change ((this setting)) the set point must be made secure((r)) by the manufacturer.

(4) The manufacturer must notify the impaired driving section in writing within seven calendar days of installing an ignition interlock device with an alcohol set point other than .020 BrAC.

(5) As used in this chapter, "alcohol set point" means the BrAC level at which the ignition interlock device will prevent the operator from starting the vehicle, and once the vehicle is started, the level below which the operator must record a test.

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-070, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-070, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-070, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-070, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-070, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-070, filed 12/9/87.]

OTS-3373.3

AMENDATORY SECTION (Amending WSR 12-17-153, filed 8/22/12, effective 10/1/12)

WAC 204-50-110 Mandatory requirements for an ignition interlock device. (1) Notwithstanding other provisions of this chapter, a certified ignition interlock device must:

(a) Be designed to permit a "restart" within two minutes of a stall or when the ignition has been turned off, except a "restart" will not be permitted during a violation reset condition.

(b) Automatically and completely purge residual alcohol before allowing subsequent tests.

(c) Allow a minimum of 1500 ml or 1.5 L of breath for an acceptable breath sample.

(d) Allow a minimum of three minutes and a maximum of six minutes for random breath tests to be initiated prior to an indication of a missed test and a violation reset. The device must be capable of notifying the restricted driver of this time period. Acceptable forms of notification are use of an indicator light, audible tone, voice modulation and/or countdown timer.

(e) Be installed in such a manner that it will not interfere with the normal operation of the vehicle after it has been started.

(f) Include a supply of two disposable mouth pieces upon installation, designed to minimize the introduction of saliva into an igni-

tion interlock device, and an additional mouth piece with every (~~sixty to sixty-five~~) 60 to 65 day calibration period.

(g) Have all primary components as identified by the impaired driving section uniquely serial numbered, which includes, but may not be limited to, the storage device, handset, and camera.

(h) Uniquely identify and record each time the vehicle is attempted to be started and/or started, the results of all tests, retests or failures as being a malfunction of the device or from the operator not meeting the requirements, how long the vehicle was operated, and any indication of bypassing or tampering with the ignition interlock device, or tests.

(i) (~~On or before June 10, 2015,~~) Require a restricted operator to wait five minutes before attempting to start the vehicle a second or third time and (~~thirty~~) 30 minutes prior to the fourth or subsequent attempts to initially start the vehicle when the initial start failure occurs.

(j) Require the operator of the vehicle to submit to a random retest within (~~ten~~) 10 minutes of starting the vehicle. A random retest must continue at variable intervals ranging from (~~ten to forty-five~~) 10 to 45 minutes after the previous retest for the duration of the travel. If a bypass is recorded at start up, the random breath testing procedure will continue for the duration of travel.

(k) Be equipped with a method of immediately notifying law enforcement officers if a violation reset occurs from a random retest or the result of the retest (~~exceeds the lower of .025 g/210L BrAC or the alcohol concentration as prescribed by the originating court~~) is equal to or higher than the alcohol set point or any disconnection of the ignition interlock device control head for longer than one minute after vehicle start up. Acceptable forms of notification are repeated honking of the vehicle's horn or the use of an audible signaling device. Such notification may be disabled only by switching the engine off, or by the achievement of a retest (~~at a level the lower of .025 g/210L BrAC or the maximum allowable alcohol concentration as set by the originating court~~) with a result lower than the alcohol set point.

(l) Enter into violation reset when the restricted operator has:

(i) Recorded a random test failure;

(ii) Disconnected the control head after start up;

(iii) Failed to submit to a random retest;

(iv) Failed to have the ignition interlock device serviced within the time period described in this chapter.

(m) Enter into a lockout if a violation reset occurs unless the vehicle is serviced at a mobile or fixed site service center by a certified technician where it will be calibrated, downloaded and the wiring harness physically inspected within five days of when the violation reset occurred.

(n) When reasonably available, contain a digital image identification device as prescribed in RCW 43.43.395. The digital image device will not distract or impede the driver in any manner from safe and legal operation of the vehicle and will:

(i) Encode a digital or photographic image of the vehicle driver including the time, date and BrAC level of all breath attempts. All images and data for a (~~sixty-five~~) 65 day use period must be stored in the device's memory to be downloaded and stored by the manufacturer for three years.

(ii) Capture a digital image or photograph of the driver:

(A) Within five seconds after starting the vehicle.

(B) Upon initial notification that a random retest is required.

(C) When a violation reset condition is initiated.

(D) Randomly at the discretion of the manufacturer.

(iii) Produce a digital image, identifiable verification or a photograph of the restricted driver in all lighting conditions; extreme brightness, darkness and low light conditions.

(2) The digital image identification device reference in subsection (1)(n) of this section and RCW 43.43.395 is considered reasonably available in the area of Washington state. The digital image identification device must be incorporated into:

(a) Any new ignition interlock device installation and any user in violation of RCW 46.20.720(4) by January 1, 2013.

(b) Any ignition interlock device issued to a user under a five or (~~ten~~) 10 year restriction by June 10, 2013.

(c) All ignition interlock devices by June 10, 2015.

(3) The manufacturer, vendor, ignition interlock technician or service center shall notify the originating court (if any) of such violation reset conditions within five days of servicing the ignition interlock device in a format acceptable to the originating court. The manufacturer, vendor or service center must provide notification to DOL and impaired driving section in an acceptable electronic format should DOL or impaired driving section promulgate rules requiring such notification of a violation reset condition.

(4) In addition to any other information required by DOL, the impaired driving section, or by an originating court, all reports to DOL, the impaired driving section or to an originating court concerning a particular ignition interlock device must include:

(a) The full name, address, and driver's license number of the restricted operator, lessee, and registered owner;

(b) The vehicle license registration number of the single vehicle in which the ignition interlock device was installed;

(c) The unique serial number of the ignition interlock device;
and

(d) The toll free telephone number, and certification number of the installing service center and ignition interlock technician who installed and prepared the report for the ignition interlock device.

(5) As used this section, "initial start failure" means the failure of the vehicle to start following the introduction of a breath sample into an ignition interlock device when an operator is attempting to start a vehicle with a BrAC equal to or higher than the alcohol set point.

[Statutory Authority: RCW 43.43.395, 46.37.005, and 46.04.215. WSR 12-17-153, § 204-50-110, filed 8/22/12, effective 10/1/12; WSR 10-24-074, § 204-50-110, filed 11/30/10, effective 1/1/11. Statutory Authority: RCW 46.37.005 and 46.04.215. WSR 09-18-073, § 204-50-110, filed 8/31/09, effective 10/1/09. Statutory Authority: RCW 46.61.688(2). WSR 05-17-065, § 204-50-110, filed 8/11/05, effective 9/11/05. Statutory Authority: RCW 46.04.215 and 46.37.005. WSR 99-01-156, § 204-50-110, filed 12/23/98, effective 1/1/99. Statutory Authority: 1987 c 247. WSR 88-01-020 (Order 87-05-ESR), § 204-50-110, filed 12/9/87.]