

## TRANSPORTATION

(a)

### MOTOR VEHICLE COMMISSION

#### Installation and Use of Ignition Interlock Devices

#### Adopted Amendments: N.J.A.C. 13:19-6.4, 6.5, 6.9, 6.10, and 6.11

Proposed: February 3, 2020, at 52 N.J.R. 137(a).

Adopted: June 4, 2020, by the Motor Vehicle Commission, B. Sue Fulton, Chair and Chief Administrator.

Filed: June 18, 2020, as R.2020 d.070, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 39:2-3, 39:2A-28, 39:4-50, 39:4-50.16 et seq., 39:4-50.17 et seq., 39:4-50.21, 39:5-30, 39:5D-4, and P.L. 2019, c. 248.

Effective Date: July 20, 2020.

Expiration Date: April 26, 2025.

#### Summary of Public Comments and Agency Responses:

The written comments received by the Motor Vehicle Commission (Commission) regarding its February 3, 2020, notice of proposal at 52 N.J.R. 137(a), are available for inspection at the Office of the Chief Administrator, Legal and Regulatory Affairs, Motor Vehicle Commission, 225 East State Street, 9th Floor, Trenton, New Jersey.

The following individuals submitted timely written comments to the Commission regarding the notice of proposal, which comments are addressed below: Jason Goberman, Owner of Interlock Device of New Jersey; and Jake Heard, attorney and legislative analyst of Consumer Safety Technology, LLC d/b/a/ Intoxalock.

1. COMMENT: Mr. Goberman submitted an email regarding the change to N.J.A.C. 13:19-6.5(d), which proposes reducing the interlock device manufacturer service interval from 67 days to 60 days. Mr. Goberman suggests the service interval should remain 67 days or should be reduced to 37 days, allowing for more maintenance and calibration checks for the device, but still permitting for a period for unforeseen events while assuring the integrity of the final 30 days of the ignition interlock installation period remains intact.

RESPONSE: Based on the wealth of knowledge the ignition interlock manufacturers and installers have as to the functionality of the ignition interlock device, as well as customer service, the Commission has considered the comment and determined that the retention of the original 67 days for the service interval is appropriate.

2. COMMENT: Mr. Heard submitted a comment regarding the proposed change to N.J.A.C. 13:19-6.9(c) suggesting that the reporting requirements for ignition interlock manufacturers should be clarified as to deadlines for the submission of required reports to the Commission. Mr. Heard also proposes the elimination of N.J.A.C. 13:19-6.9(c)2 as proposed, which requires the ignition interlock manufacturer to submit a report detailing the number of individuals who removed their ignition interlock device due to their inability to afford continued installation.

RESPONSE: The Commission has considered the comments regarding clarification as to the timing of reporting to the Commission required by the new law and believes the times set forth in the comment are reasonable and should be adopted. As to the suggestion of not adopting proposed N.J.A.C. 13:19-6.9(c)2, the reporting of the number of individuals who removed an ignition interlock device due to their inability to afford continued installation was language specifically included in the language of P.L. 2019, c. 248.

3. COMMENT: Mr. Heard proposes additional language to amend N.J.A.C. 13:19-6.4(d) that would permit an ignition interlock manufacturer to remove an ignition interlock device prior to completion of the offender's sentence, at the request of the offender, and the requirement to notify the Commission of such removal. The language suggested would permit a manufacturer to allow early removal at the request of an offender, so long as the manufacturer reports the removal to the Commission.

RESPONSE: Pursuant to N.J.S.A. 39:4-50.17, the ignition interlock device shall remain installed for the period ordered by the court. Early removal of the ignition interlock device is not permitted under the applicable statutes and, therefore, the rules cannot state that early removal of the ignition interlock device is permissible. The Commission should continue to be notified if any individual prematurely removes their ignition interlock device.

4. COMMENT: Mr. Heard proposes a transition provision for ignition interlock devices installed on or after December 1, 2019. Mr. Heard notes that since the compliance forms were not provided by the Commission until after December 1, 2019, some information may not have been captured between the time the new law became effective and the time the forms were provided by the Commission. Mr. Heard recommends a transition period be provided for manufacturers during the first six months of the implementation of the new law to ensure proper implementation of policies and practices now required rather than taking action against manufacturers.

RESPONSE: The Commission does not believe it is necessary to include such language with the understanding that the Commission and ignition interlock manufacturers work collaboratively. The Commission will apply the rules with the understanding that the compliance forms were not supplied until a date after the new law went into effect.

5. COMMENT: Mr. Heard proposes an amendment to the language of N.J.A.C. 13:19-6.11(b)18i(12) to bring the language into compliance with N.J.S.A. 39:4-50.18.c. Currently, this section of the proposed amendments provides that the actions outlined will prevent an offender from receiving a certification of no violations upon completing their interlock sentence period. Mr. Heard notes that the failure to comply with maintenance, calibration, monitoring, and inspection requirements should not be limited to the final 30 days of installation but rather that those actions have to be verified by the manufacturer for the entire duration for which the interlock device was installed. He notes that N.J.A.C. 13:19-6.11(b)18i(11) has the correct format for the language and he suggests mirroring this language at N.J.A.C. 13:19-6.11(b)18i(12).

RESPONSE: The offender is responsible for compliance with maintenance, calibration, monitoring, and inspection requirements during the entire duration of the ignition interlock device installation and not just during the final 30 days of the installation period. The change has been made to this section as it is required to fix a drafting error and is consistent with the statute.

6. COMMENT: Mr. Heard proposes more specificity be provided to N.J.A.C. 13:19-6.11(b)18i(11) and (12) to clarify that offenses during the final 30 days of the ignition interlock device includes both initial start-up of the vehicle, as well as random re-tests required by the ignition interlock device. Proposed language would clarify the word "test" from N.J.S.A. 39:4-50.18.c to include both the initial vehicle start-up test and random re-tests. Mr. Heard notes that the ignition interlock device requires an individual to provide a passing breath sample when starting their vehicle (the initial start-up test) and also requires an individual to provide breath samples at random intervals when the vehicle is being operated (random re-tests) to ensure there has been no consumption after the vehicle was started. Mr. Heard notes that N.J.S.A. 39:5-50.18.c and the proposed rules do not differentiate between the initial start-up test and random re-tests, which creates ambiguity as to whether a failed or missed random re-test could be a violation for the purposes of the compliance/non-compliance certification required by the Commission. The proposed language would remove the ambiguity and require both initial start-up and random re-test results to be counted toward any potential violations and create conformity within the industry as to what "test" counts towards a violation, so that all manufacturers are reporting the same activities as violations.

RESPONSE: The statutory language related to the need for a person to pass random tests is very clear. "Notwithstanding the provisions of section 2 of P.L. 1999, c.417 (C.39:4-50.17), an ignition interlock device shall be removed on the date the person completes the installation period only if the person submits to the chief administrator a certification from the vendor that: (1) during the final 30 days of the installation period there was not more than one failure to take or pass a test with a blood alcohol concentration of 0.08% or higher unless a re-test conducted within five minutes of the initial test indicates a blood alcohol concentration of less

than 0.08%.” Therefore, the Commission has determined to make the suggested clarification and add specificity to N.J.A.C. 13:19-6.11(b)18i(11) and (12) that will provide additional clarity such that the offenders and ignition interlock manufacturers will better be able to comply with the law. The language suggested by the commenter clarifies the term test to allow for a better understanding for all parties as to what will be required for successful completion of the ignition interlock sentence. The Commission made the clarification.

#### Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments were not proposed to implement, comply with, or participate in any program established under Federal law or standards or under a State law that incorporates or refers to Federal law, standards, or requirements.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

### SUBCHAPTER 6 INSTALLATION AND USE OF IGNITION INTERLOCK DEVICES

#### 13:19-6.4 Requirements for use of BAIIDS installed to meet sentencing requirements

(a) In order to have a driver license restored, an offender required by the court to have a BAIID installed as part of a sentence imposed under N.J.S.A. 39:4-50 and 39:4-50.17:

1. For an offense committed prior to December 1, 2019 or after January 1, 2024, shall have installed, in the motor vehicle principally operated by the offender during and following the expiration of the period of license suspension imposed, a BAIID that has been certified by the Chief Administrator under N.J.A.C. 13:19-6.7, and for the duration of the court’s order, an offender shall drive no vehicle other than one in which an interlock device has been installed pursuant to the order.

2. For an offense committed on or after December 1, 2019 through January 1, 2024, shall have installed, in one motor vehicle the person owns, leases, or principally operates, whichever the person most operates, pursuant to the sentence imposed by the court under N.J.S.A. 39:4-50 and pursuant to N.J.S.A. 39:4-50.17, a BAIID that has been certified by the Chief Administrator under N.J.A.C. 13:19-6.7. For the duration of the court’s order, an offender shall not drive any vehicle other than the one in which an ignition interlock device has been installed pursuant to the order.

(b)-(c) (No change.)

(d) A BAIID installed as part of a sentence:

1. For an offense committed prior to December 1, 2019 or after January 1, 2024, imposed under N.J.S.A. 39:4-50 and 39:4-50.17, shall not be removed until the date of the completion of the offender’s interlock sentence as designated on the driver license document, unless the offender first surrenders his or her driver’s license to the Commission.

2. For an offense committed on or after December 1, 2019 through January 1, 2024, imposed under N.J.S.A. 39:4-50 and 39:4-50.17, shall not be removed until the date of the completion of the offender’s interlock sentence and submission of the certification of compliance to the Commission, pursuant to N.J.S.A. 39:4-50.18 and N.J.A.C. 13:19-6.11, unless the offender first surrenders his or her driver’s license to the Commission.

#### 13:19-6.5 Specifications for BAIIDS

(a)-(c) (No change.)

(d) The manufacturer’s required service interval shall not exceed **\*[60]\* \*67\*** days.

#### 13:19-6.9 Reports required from manufacturer after BAIID certification

(a)-(b) (No change.)

(c) Beginning December 1, 2019, and through January 1, 2024, the manufacturer of a BAIID certified under N.J.A.C. 13:19-6.7, shall maintain records and provide, **\*[on January 1 and July 1 of each year,]\*** to the Commission, in either computerized or hard copy form, or both, the following:

1. A report detailing the number of persons, categorized by county of offender residence, who qualified for a BAIID at a reduced monthly rental

rate in accordance with N.J.S.A. 39:4-50.17a and N.J.A.C. 13:19-6.14 during the reporting period.

2. A report detailing the number of persons who removed a BAIID due to their inability to afford continued installation, during the reporting period.

**\*(d) The first report provided to the Commission pursuant to (c) above shall be provided by January 15, 2021, and shall contain the requested information from December 1, 2019 through December 31, 2020.**

**1. Every year thereafter, reports shall be provided to the Commission according to the following schedule:**

**i. Reports containing information for the period of January 1 through June 30, shall be provided to the Commission by July 15; and**

**ii. Reports containing information for the period of July 1 through December 31, shall be provided to the Commission by January 15 of the following year.\***

#### 13:19-6.10 Revocation of certification of BAIID

(a) The Chief Administrator shall revoke certification of a BAIID, and remove it from the list of approved BAIIDS, upon one or more of the following grounds:

1.-4. (No change.)

5. Evidence that the manufacturer is not in compliance with the provisions of this subchapter;

6. Evidence that the manufacturer repeatedly is not in compliance with the provisions of this subchapter;

7.-8. (No change.)

(b)-(c) (No change.)

#### 13:19-6.11 Service center requirements

(a) (No change.)

(b) Each service center shall:

1.-6. (No change.)

7. Monitor BAIIDS periodically, at intervals of no more than 60 days;

8.-14. (No change.)

15. Provide the program participant with a certificate of installation on a form provided by the Commission upon completion and delivery of the BAIID installation;

i. The certificate of installation shall contain the following information:  
(1)-(4) (No change.)

(5) The name and address of the person required by the court to have the BAIID installed, if different than the owner;

(6) (No change.)

(7) The date of the offense for which the BAIID is being installed; and  
(8) The name and address of the court ordering the BAIID installation;

ii. (No change.)

16. Provide user orientation, training, and support;

i.-iii. (No change.)

iv. The service center shall provide the program participant with its 24-hour emergency telephone number and a list of service providers’ locations and telephone numbers;

17. Provide periodic servicing and calibration to ensure proper operation of the device and its tamper-detection capabilities that shall include:

i.-iii. (No change.)

iv. If a service center observes that a BAIID is inoperable in any respect, confirmation that the BAIID is in fully operating condition, and restoration to fully operating condition;

18. Provide the program participant with a certification, on a form provided by the Commission, upon satisfactory completion of the ignition interlock installation period ordered by the court;

i. The certification shall contain, at a minimum, the following information:

(1) The service center’s name, address, and telephone number;

(2) The name, title, and signature of the person completing the certification;

(3) The date of completion of the certification;

(4) The name and address of the registered owner of the vehicle in which the device was installed;

(5) The name and address of the person required by the court to have the BAIID installed, if different than the vehicle owner;

(6) The driver's license number of the person required by the court to have the BAIID installed;

(7) The make, model, year, vehicle identification number, and license plate number of the vehicle in which the BAIID was installed;

(8) The date of the offense for which the BAIID was installed;

(9) A statement that the BAIID remained installed for the duration of the court-ordered installation period;

(10) The name and address of the court ordering the BAIID installation.

(11) A statement that:

(A) During the final 30 days of the installation period the program participant did not have more than one failure to take \*[a test]\* **\*an initial start-up test or random retest upon being prompted for a random retest sample at specified intervals after the vehicle engine is in operation\***;

(B) During the final 30 days of the installation period the program participant did not have more than one **\*initial start-up\* test \*or random retest\*** with a resulting BrAC of 0.08 percent or higher unless a **\*[retest]\* \*subsequent test\*** conducted within five minutes of the initial **\*start-up\* test \*or random retest\*** indicated a BrAC of less than 0.08 percent; and

(C) The program participant complied with all required maintenance, repair, calibration, monitoring, and inspection requirements related to the BAIID;

(12) If, during the final 30 days of the installation period, the program participant had more than one failure to take \*[a test]\* **\*an initial start-up test or random retest\***, more than one **\*[test]\* \*initial start-up or random retest\*** with a resulting BrAC of 0.08 percent or higher, unless a retest conducted within five minutes of the initial test indicated a BrAC of

less than 0.08 percent, or **\*if, during the installation period the program participant\*** failed to comply with all required maintenance, repair, calibration, monitoring, and inspection requirements related to the BAIID, the service center shall provide the violation information on the certification provided by the Commission to the Chief Administrator and the court that ordered the installation of the BAIID. At a minimum, this form shall include the information required by this subparagraph, and any reason(s) for non-compliance, including the date and time of any BAIID test that resulted in a BrAC of 0.08 percent or higher during the final 30 days of the installation period, evidence of more than one failure to take a required test during the final 30 days of the installation period, and evidence of failure to comply with all required maintenance, repair, calibration, monitoring, and inspection requirements related to the BAIID **\*during the installation period\***. Upon receipt, the court, or the Chief Administrator, if the offense was committed in another state or jurisdiction, shall determine whether to extend the period of BAIID installation for up to 90 days. The court may, alternatively, issue, to the Chief Administrator, a certification indicating compliance with the program requirements; if the offense was committed in another state or jurisdiction, the Chief Administrator may alternatively determine if the offender is compliant; and

19. The falsification of any information on the certification shall subject the service center and manufacturer to revocation of the BAIID certification, pursuant to N.J.A.C. 13:19-6.10, and any additional applicable civil and criminal penalties.

(c) (No change.)

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