# **29-250 DEPARTMENT OF THE SECRETARY OF STATE**

 **BUREAU OF MOTOR VEHICLES**

**Chapter 8: RULES FOR IGNITION INTERLOCK DEVICES**

**SUMMARY**: These rules implement the provisions of 29-A MRSA §2508 which allows the Secretary of State to reinstate the driver’s license of a person convicted of an OUI offense prior to the expiration of the total period of suspension if the person installs an approved ignition interlock device in the motor vehicle the person operates and satisfies all other conditions for license reinstatement.

**§1. Purpose**. The purpose of this rule is to implement the provisions of 29-A MRSA §2508 which authorizes the Secretary of State to reinstate the driver’s license of a person convicted of an OUI offense prior to the expiration of the total period of suspension if the person satisfies all other restoration requirements and installs an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates. The rule establishes testing, certification and installation requirements for ignition interlock devices and sets out conditions for the early restoration of driver’s licenses for persons convicted of an OUI offense.

**§2. Definitions**. For the purposes of these rules, the following definitions apply:

 1. **Alcohol setpoint** means the minimum alcohol concentration at which an ignition interlock device is set to lock a motor vehicle’s ignition. That level is .025% BAC in Maine.

 2. **Certified laboratory** means a laboratory certified by the Department of Health, Department of Human Services, or Department of Health and Human Services of any state, which is properly equipped and staffed to conduct laboratory tests of ignition interlock devices to ensure the devices meet National Highway Traffic Safety Administration guidelines.

3. **Health and Environmental Testing Laboratory** means the Health and Environmental Testing Laboratory of the State of Maine, Department of Health and Human Services.

 4. **Ignition Interlock Device** means ignition interlock device as defined by 29-A MRSA §2401(5-A).

 5. **Installer** means an individual, business or other entity identified by a manufacturer of an approved ignition interlock device as the manufacturer's official representative for the installation, maintenance, monitoring and repair of the devices, and includes agents and employees of the manufacturer.

 6. **License** means license as defined by 29-A MRSA §101(31).

**§3. Certification of manufacturers of ignition interlock devices**

 1. **Certification required**. No ignition interlock device may be leased, sold, installed or used as part of the program outlined in 29-A MRSA §2508 unless the model or type of device has been approved by the Secretary of State in accordance with the provisions of this rule.

 2. **Application for certification**

 A. **General**. A manufacturer may apply for certification of a device by submitting an application to the Secretary of State as set out below. A separate application is required for each model or type of device for which approval is sought. A manufacturer must certify that the device:

 (1) Does not impede the safe operation of a vehicle;

 (2) Minimizes opportunities to bypass;

 (3) Performs accurately and reliably under all normally anticipated circumstances;

 (4) Satisfies the requirements for certification set forth in this rule, and;

 (5) Prevents a person from starting a vehicle when the person has a prohibited alcohol concentration.

 B. **Required information**. An application for certification must include all of the following information:

 (1) The name, address, telephone number and email address of the manufacturer of the device.

 (2) The name and model number of the device.

 (3) A detailed description of the device including the complete written instructions provided to installers for installation, operation, service, repair and removal of devices.

 (4) Complete technical specifications describing the device’s accuracy, reliability, security, data collection and recording, tamper prevention and detection, and environmental features.

 (5) A complete and true copy of data from an independent certified laboratory demonstrating that the device meets or exceeds the minimum federal standards contained in the “Model Specifications for Breath Alcohol Ignition Interlock Devices” adopted by the National Highway Traffic Safety Administration in a Notice in the Federal Register, Vol. 78, No. 89, Wednesday May 8, 2013 (effective May 8, 2014), a copy of which is attached to this rule and adopted as part of this rule.

 (6) A certification from an officer of the laboratory or a certified laboratory technician whom tested the device stating the device was tested in accordance with the federal standards and the device was found to satisfy the requirements of Sections 2 C and 2 D of the “Model Specifications…”.

 (7) A complete listing of the number, location and type (fixed-site or mobile) of all authorized installers located in the State of Maine, where the device may be purchased, installed, serviced, repaired, calibrated, inspected and monitored, including the contact name, location, telephone number, and hours of operation; the relationship between the manufacturer and installer; and the plan for providing service within 100 miles or two hours, whichever is less, of any restricted driver’s residence or place of business or employment. Manufacturers must notify the Secretary of State in writing, within 10 days, of changes in status of any of the authorized installers or future additions or deletions to the list of installers.

 (8) A certificate from an insurance company licensed or authorized to do business in Maine evidencing that the manufacturer holds product liability insurance with minimum liability limits of $1,000,000 per occurrence. The policy must provide coverage on a per occurrence basis, and must include coverage for defects in product design and materials, manufacturing, calibration, installation and removal of devices. The certificate must include a statement from the insurance company that 30 days written notice will be given to the Bureau of Motor Vehicles prior to the cancellation of insurance.

 (9) The manufacturer’s plan to provide financial assistance to those restricted drivers demonstrating financial hardship. The plan must provide for a reduction of the cost, inclusive of the total of all fees and charges assessed to the driver, of at least 50%. Financial hardship is demonstrated by presentation of a person’s most recent federal income tax return showing an adjusted gross household income below the poverty guidelines for the tax year by the United States Department of Health and Human Services for the person’s family size.

 (10) **Bond**. A bond from a surety company authorized to transact business in the State of Maine for the benefit of, and made payable to, the Department of the Secretary of State, Bureau of Motor Vehicles in the amount of $25,000 to ensure faithful compliance with this rule. The bond must be filed with the Bureau of Motor Vehicles within ten days after the manufacturer receives certification approval.

 (11) **Indemnification statement**. A signed statement that the manufacturer must indemnify and hold the State of Maine and the Department of the Secretary of State and his officers, employees and agents from all claims, demands and actions as a result of damage or injury to persons or property which may arise, directly or indirectly, out of any act or omission by the manufacturer relating to the installation, service, repair, use and removal of a device.

3. **Effect of representations made on application for certification**. The representations made by a manufacturer on the application for certification become conditions to the certification when the certification is approved by the Secretary of State. The failure of a manufacturer to comply with those conditions may result in the suspension or revocation of the certification as provided by Section 3(6).

1. **Additional testing**. The Secretary of State may have the laboratory test results reviewed by the State of Maine Health and Human Services, Environmental Testing Laboratory and may require the manufacturer to furnish three units of a device of the same model or type for which certification is being sought from normal production to the State for further testing to determine whether the device meets the requirements for certification. The Secretary of State may require manufacturers to install up to five devices on vehicles approved by the Secretary of State to field test the devices.

 5. **Action on application**. The Secretary of State shall certify, or refuse to certify, a device after receipt of a complete application and after the device is successfully field tested, if such testing is required. The manufacturer will be notified within 15 days of receipt of the application if the application is incomplete, and the manufacturer will be informed of what information or documents are needed to complete the application.

 6. **Denial, suspension or revocation of certification**. The Secretary of State may deny, suspend, or revoke certification of a manufacturer or device for any of the following reasons:

 A. Defects in design, materials, or workmanship causing repeated failures of a device to function as intended.

 B. Termination or cancellation of a manufacturer’s liability insurance or bond.

 C. The manufacturer ceases to manufacture ignition interlock devices.

 D. Voluntary request by a manufacturer to cancel approval of a device.

 E. Violation by a manufacturer, vendor, installer, service provider or agent, employee or independent contractor of any provisions of this rule or conditions to the certification.

 F. Providing materially false or inaccurate information relating to a device’s performance standards by the manufacturer or certifying laboratory.

 G. Modification or alteration of the components, design, or installation and operation instructions in such a way that the requirements of the minimum federal standards are no longer satisfied, unless the modifications have already been certified.

 7. **Effective date of suspension or revocation**. A suspension or revocation is effective 10 days after notification is sent to the manufacturer by regular mail or such later date as may be specified in the notice. The notice must specify the basis for the action.

 8. **Right to hearing**. A manufacturer whose application for certification is denied or whose certification is suspended or revoked may request an administrative hearing before the Secretary of State. The hearing will be held pursuant to 29-A MRSA §§ 111 and 112 and Chapter 2 of the rules of the Secretary of State. The issue at the hearing is whether, by a preponderance of the evidence, the manufacturer can show cause why the decision of the Secretary of State should not be upheld.

 9. **Removal and replacement of devices on suspension or revocation**. Within 90 days of the event of suspension or revocation of certification, the manufacturer is responsible for and must bear the cost for the removal of any and all decertified devices and the replacement with a certified device whether their own or another certified manufacturer’s device.

 10. **Notice of modifications and alterations**. A manufacturer must notify the Secretary of State immediately, in writing, of any material modification or alteration in the components, design or installation and operating instructions of any device approved for use in this state, and must provide the Secretary of State satisfactory proof (to include retesting by an independent laboratory, if required) prior to sale or distribution of the altered or modified device that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of the minimum federal standards contained in the “Model Specifications for Breath Alcohol Ignition Interlock Devices” adopted by the National Highway Traffic Safety Administration. Any device with a material modification or alteration must be re-approved by the Secretary of State.

**§4. Standards and specifications for ignition interlock devices**

1. **Federal standards**. All ignition interlock devices must meet or exceed the standards established by the U.S. Department of Transportation, National Highway Traffic Safety Administration, identified as “Model Specifications for Breath Alcohol Ignition Interlock Devices” 78 Fed. Reg. 89, pp. 26862-26867.
2. **Sufficient breath sample**. The device must indicate by audible or visual means when a sufficient breath sample has been collected and indicate the result by a pass/fail signal.
3. **Preventing starting of a vehicle**. The device must prevent a driver from starting the vehicle when a breath test detects a BAC of .025 or greater and when a driver fails to appear for a scheduled service or violations service within the five day warning period.
4. **Violation reset**. Whenever the device’s service reminder is activated by a violations reset feature the device must place the vehicle in a permanent lock out condition after five days.
5. **Random retest feature**. A random retest feature is required for all devices. The device must require the driver to submit to a random retest within a variable interval ranging from five to fifteen minutes after a driver has passed an initial breath test and started the vehicle. An audible or visual warning must alert the driver of the retest and the driver will have ten minutes to take the random retest. If the driver fails to submit to the retest within ten minutes or the device detects a BAC of .025 or greater, the horn will sound repeatedly until the vehicle is turned off. Once the vehicle is turned off, the device must not allow the driver to restart the vehicle within three minutes without taking an initial breath test. If the vehicle is turned off or accidentally stalls after or during the warning of an impending random retest, but before the driver takes the random retest, the device must prevent the driver from starting the vehicle without taking an initial breath test.
6. A device must be programmed to allow a maximum of three attempts to provide a breath sample on a retest within a ten minute period.

7. A device must record data in its memory in such a manner that data cannot be erased and a hard copy can be printed. The data recorder must be incorporated into a module that cannot be detached and must have a backup system to protect the security of all recorded data in the event the power supply to the device is interrupted or the sample head is disengaged or disconnected. The following information must be stored in the data recorder:

 A. The date and time of any use or attempted use of a vehicle.

 B. The date and time of any attempt to tamper, circumvent or bypass the device.

 C. The date, time and alcohol concentration, in grams per 210 liters, of each breath sample provided to the device.

 D. The date and time of any malfunctions of the device.

 E. The date and time of any failures to provide retest samples.

 F. The date that a “service required” message is issued to the customer.

 G. The date that any service is performed.

 8. **Information provided to driver**. A device must provide all of the following information to a driver.

 A. The device’s readiness for acceptance of a breath sample.

 B. A reminder, seven days prior to a scheduled service date followed by a warning to obtain service within five days.

 9. **Permanent lockout feature**. The device must place the vehicle in a permanent lockout state, if any of the following conditions occur:

 A. Three or more breath samples have an alcohol concentration at or above the alcohol setpoint,

 B. The device detects tampering, circumvention or bypass attempts,

 C. Three refusals to provide a retest sample,

 D. A scheduled service date is missed, or

 E. Service is not obtained within five days of the service reminder.

 10. **Anti-tampering**. A manufacturer shall ensure that a device has adequate electronic anti-tampering features which include the following:

 A. A device must retain its tamper detection capabilities when disconnected from the vehicle’s power supply, or record that it was disconnected.

 B. A device must retain its data memory when disconnected from the vehicle’s power supply.

 C. When a device detects a condition that would be considered tampering, the device must activate a visual and audible indicator.

**§5. Installers of ignition interlock devices**

 1. **Manufacturer responsibilities**

 A. A manufacturer must provide the following information to the Secretary of State:

 (1) a copy of the standard agreement between the manufacturer and installer,

 (2) a copy of the standard agreement between the installer/manufacturer and the driver of the vehicle in which the device is installed,

 (3) the toll free telephone number which the manufacturer provides the public to contact authorized installers, and

 (4) the fee schedule listing the costs assessed to a driver for installation of the device, monthly leasing of the device, scheduled service visit, violations service visit, and removal of the device.

 B. A manufacturer must ensure installers:

 (1) meet the conditions established in Sections 5, 6, 7 and 8.

 (2) possess and maintain all necessary training and skills required to install, examine, troubleshoot, and verify proper operation of devices.

 (3) possess the tools, test equipment and manuals needed to install, inspect, download, calibrate, repair, maintain, service and remove devices.

 (4) provide the restricted driver and all persons who will use the vehicle with written and hands on training in how to operate a vehicle equipped with the device, including

* 1. care, cleaning and maintenance,
	2. identification of vehicle malfunctions and repairs affecting the device and procedures for addressing them, and
	3. a 24-hour emergency telephone number for assistance in the event a device fails to operate properly or a vehicle experiences a problem relating to the installation, operation or failure of a device. Assistance must include technical information, tow service, and/or road service. Emergency assistance related to the failure of a device must be provided within two hours for vehicles located in or near an area with an installation facility. The device must be made functional within 48 hours from when the call for assistance is received or the device must be replaced.

 (5) maintain established business hours with an installer available during those hours.

 (6) conduct business from an enclosed building with a separate waiting area for customers. If installation is done by a mobile unit, the customer must have a separate, enclosed waiting area available. The business premises and mobile units are subject to announced and unannounced inspection by the Bureau of Motor Vehicles.

2. **Requirements for persons employed to install ignition interlock devices**

* 1. **Professional character and reputation**. A person employed as an installer must be of sound and reputable business character and may be required to furnish letters of reference attesting to the person’s good business reputation in the community.
	2. **Criminal convictions, not including traffic offenses**. A person may not be employed as an installer when the person has been convicted of the following category of crimes:
		1. A class A, B or C crime as defined by Maine statute; or
		2. Any crime described in 17-A MRSA Chapters 11, 12, 19, 25, and 37.
	3. **Criminal convictions for major traffic offenses**. A person may not be employed as an installer when the person has been convicted for a major traffic offense unless the conviction occurred more than 10-years prior to the date the person is employed as an installer. Major traffic offenses are those listed in 29-A MRSA Section 2551-A(1)(A)(1)-(4) and (6)-(12).

D. **Other criminal convictions not included in paragraph B or C**. A person may not be employed as an installer when the person has been convicted for a class D or E crime as defined by Maine statute unless the conviction occurred more than five years prior to the date the person is employed as an installer.

1. **Criminal convictions included**. The convictions described in paragraphs B, C, and D include convictions for offenses pursuant to federal law and laws of other jurisdictions, provided the elements of the crimes and the authorized range of sentences are substantially similar to the Maine offenses.
2. **Manufacturer responsibility**. A manufacturer must obtain a criminal history record check to ensure an installer meets the requirements of this section.
3. **Installer’s duty to report convictions**. An installer convicted for an offense described in this rule must notify the manufacturer within five days of the date the conviction occurred.
4. **Approval of installers**. Persons employed as installers are subject to the approval of the Bureau of Motor Vehicles.

**§6. Installation, monitoring, servicing and removal of ignition interlock devices**

 1. **Installation**

 A. **Timeliness**. A device must be installed within 14 days of the request from a person approved by the Bureau of Motor vehicles for installation of a device. An installer must provide proof of installation, including the information required in Section 7B, to the Bureau of Motor Vehicles electronically within 24 hours of the installation.

 B. **Security**. Only installers, manufacturers and representatives of the Bureau of Motor Vehicles may observe the installation and removal of devices. Reasonable security measures must be taken to prevent access by unauthorized persons to devices, and the written materials and hardware and software associated with the devices.

 C. **Examination of vehicle**. An installer shall examine each vehicle before installing the device. The examination must include screening procedures to ensure the vehicle in which the device is to be installed is in a mechanical and electrical condition that will allow the device to meet the specifications contained in these rules. Conditions that the manufacturer has determined would prevent the device from meeting the specifications must be repaired before the device is installed. The person seeking installation is responsible for the costs of any repairs to the vehicle.

 D. **Functional test**. After a device is installed, the vehicle and device must be inspected to ensure that the installation was performed properly, the device is working as required and the device does not interfere with the normal operation of the vehicle.

 E. **Certificate of installation**. An installer must provide a certificate of installation to the person. The certificate must include the information required by Section 7B. The person may present a copy of this certificate to the Bureau of Motor Vehicles when applying for a license pursuant to 29-A MRSA Section 2508.

 F. **Warning label**. A warning label, approved by the Bureau of Motor Vehicles, must be affixed to installed devices. The warning label must contain the following information: “WARNING”- A person removing, tampering with, disconnecting or otherwise circumventing this device may be subject to criminal and civil penalties. 29-A MRSA Section 2508.

 2. **Monitoring and servicing**

1. **Specifications**. An installer must follow the requirements established by this rule and the manufacturer’s specifications for service monitoring, service and repair.

B. **Schedule of service**. A device must be scheduled for service 30 days after initial installation and thereafter at intervals not to exceed 60 days.

C. **Timeliness**. Service must be provided within three business days after the request for service is made.

D. **Service visit inspection requirements**. Each time a device is serviced, the installer must:

1. review the data recorded in the device’s memory and retain a copy in the person’s file,
2. inspect the device for indications of tampering, and
3. calibrate the device.

 3. **Removal**

1. **Prohibition on removal**. Only a manufacturer or installer may remove a device.

B. An installer or manufacturer must notify the Bureau of Motor Vehicles electronically within 24 hours of the removal of a device stating the specific reasons for removal.

C. **Restoration of vehicle**. Whenever a device is removed, the vehicle must be restored to its original condition. All severed wires must be securely reconnected and insulated with heat shrink tubing or its equivalent.

**§7. Reports and records**

1. **Violations reports**

* + 1. **Duty to report**. A manufacturer or installer must electronically notify the Bureau of Motor Vehicles within 24 hours of discovering reliable information showing:

 (1) evidence of circumventing, removing, or tampering with a device;

 (2) a registered BAC during a rolling retest;

 (3) a failure to submit to a retest that results in a permanent lock out condition; or

 (4) a missed service visit.

* + 1. **Content of report**. The report must include the following information:

 (1) name and affiliation (manufacturer and installer) of the person submitting the report;

 (2) reason and basis for the report;

 (3) driver’s full name, date of birth, driver license number and address; and

 (4) registration plate number or name and the vehicle identification number of the vehicle in which the device is installed.

2. **Driver monitoring reports**

A. **Duty to report**. A manufacturer or installer must electronically notify the Bureau of Motor Vehicles within 10 days of the servicing of a device.

B. **Content of report**. The report must include the following information required by Section 7(1) B and the results of the service, including a summary of the information provided by the device’s data recorder.

3. **Six month status reports**

A. **Duty to report**. A manufacturer or installer must electronically provide the Bureau of Motor Vehicles a status report once every six months.

B. **Content of report**. The report must provide the following:

 (1) information required by Section 7(1)(B)(1) and (2);

 (2) standard prices established for installation, calibration, removal, device rental, reinstallation and any other standard charges;

 (3) non-standard charges assessed to any driver, listing the driver’s contact information as provided in Section 7(1)(B)(3) and the amount and reason for the charge;

 (4) number of requests for financial assistance and the number of requests granted and denied;

 (5) list of persons, including the information required by Section 7(1)(B)(3) and (4), whom had a device installed or removed from a vehicle;

 (6) number of devices installed and number of devices that malfunctioned or were defective requiring service, repair or replacement. The serial numbers and the specific problem identified for malfunctioning and defective devices must be included in the report;

 (7) number of service visits that resulted in a charge to a driver, including the information required by Section 7(1)(B)(3), amount of the charge and the reason for the charge; and

 (8) number and a summary of all complaints received and the corrective action, if any, taken by the manufacturer or installer for each model or type of device.

4. **Record retention.** A manufacturer or installer must keep all records relating to the application for approval of a device and all records relating to the installation, service, removal, performance and use of individual devices for a period of three years following the removal of any device.

**§8. Audit and inspection of records and facilities**

 The Bureau of Motor Vehicles may audit and inspect the facilities and records of a manufacturer and installer to verify compliance with the requirements of this rule. Manufacturers and installers must make facilities and records available to the Bureau of Motor Vehicles.

**§9. Driver eligibility requirements for installation of interlock devices**

 1. **Petition for early license reinstatement**. A person convicted of an OUI offense pursuant to 29-A MRSA §2411 and a person whose driver’s license was suspended in accordance with 29-A MRSA §2453 may petition the Secretary of State for license reinstatement prior to the expiration of the total period of suspension, if the person:

 A. Satisfies all other conditions for license reinstatement;

 B. Satisfies the Secretary of State’s driver eligibility criteria; and

* + 1. Installs an ignition interlock device approved by the Secretary of State in the vehicle the person operates.

**2. First offenders.** A first offender’s license may be reinstated after serving 30 days of a 150 day suspension if the person installs a device for the full term of the original suspension.

 3. **Second offenders**. The license of a person with two OUI offenses may be reinstated after 9 months of the suspension period has run if the person has installed for a period of 2 years an ignition interlock device approved by the Secretary of State in the motor vehicle the person operates.

 4. **Third offenders**. The license of a person with three OUI offenses may be reinstated after three years of the suspension period has run if a person has installed for a period of three years an ignition interlock device approved by the Secretary of State in the motor vehicle person operates.

 5. **Fourth and subsequent offenders**. The license of a person with four or more OUI offenses may be reinstated after four years of the suspension period has run if the person has installed for a period of four years an ignition interlock device approved by the Secretary of State in a motor vehicle the person operates.

 6. **Proof of installation**. The Bureau of Motor vehicles must be provided proof of installation of an approved device before a person may be issued a restricted driver’s license.

 7. **Persons licensed by another state**. A person who has been issued a license restricted to operation of a vehicle equipped with an ignition interlock device by another state, and who is otherwise eligible for the issuance of a Maine driver’s license, may be issued a license in accordance with this rule.

 8. **Driver violations**. A person issued a restricted driver’s license pursuant to 29-A MRSA §2508 and this rule violates the terms and conditions of the restricted driver’s license when the person:

 A. Operates a motor vehicle without an ignition interlock device;

 B. Requests or solicits another person to blow into or otherwise activate the device for the purpose of providing the restricted driver with an operable motor vehicle;

 C. Removes, tampers with, disconnects or disables the device or circumvents the operation of the device;

 D. Registers a BAC during a rolling retest;

 E. Fails to submit to a retest that results in a permanent lock out condition;

F. Misses a service visit; or

* 1. Has the device removed from the vehicle by a manufacturer, installer or unauthorized person.

 Violation of any of these conditions must result in the immediate suspension of the person’s license for the time periods set out in 29-A MRSA §2508(4)(B). Except for removal of a device for financial reasons, a person whose license is suspended pursuant to this section is not entitled to the issuance of any type of license until the suspension period has expired.

**§10. Right to hearing**

1. **Denial of petition for early reinstatement**. A person whose request for early license reinstatement pursuant to 29-A MRSA §2508 is denied may request an administrative hearing before the Secretary of State. The hearing will be held pursuant to 29-A MRSA §111 and 2483 and Chapter 2 of the Rules of the Secretary of State. The issue at hearing is whether, by a preponderance of the evidence, the person can show cause why the decision of the Secretary of State should not be upheld.

2. **Violations**. Except for a person who has been convicted or adjudicated of an offense described in 29-A MRSA §2508(2) or (3), a person whose license is suspended for a violation listed in Section 9(7) may request an administrative hearing before the Secretary of State. The hearing will be held pursuant to 29-A MRSA §111 and Chapter 2 of the Rules of the Secretary of State. The issue at the hearing is whether, by a preponderance of the evidence, the person committed a violation listed in Section 9(7).

There will be no fiscal impact to municipalities resulting from the adoption of these rules.

STATUTORY AUTHORITY: 29-A MRSA §153

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 November 13, 1997 - removed comma in §3 sub-§7 ¶D; changed verb tense in §4 sub-§13 par. C.

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