

**STATEMENT OF EMERGENCY
601 KAR 2:232E**

This emergency administrative regulation is being promulgated in order to establish the guidelines and requirements for the implementation and use of ignition interlock devices pursuant to the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly, which goes into effect on July 1, 2020. It is filed to address the risk to the public health, safety, or welfare associated with driving under the influence and to protect human health. Because the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly go into effect on July 1, 2020, an ordinary administrative regulation is not sufficient to meet the pending deadline for promulgation of an administrative regulation. This emergency administrative regulation incorporates the requirements of Senate Bill 85 from the 2019 Regular Session of the General Assembly, including updated payment of fee requirements, forms, procedures for appeal, requirements of manufacturers seeking certification to participate in the Kentucky Ignition Interlock Program (KIIP), and shifts the KIIP from administration through the courts and to the cabinet. This emergency administrative regulation will be replaced by an ordinary administrative regulation, and the companion ordinary administrative regulation is identical to this emergency regulation.

ANDY BESHEAR, Governor
JIM GRAY, Secretary

**TRANSPORTATION CABINET
Department of Vehicle Regulation
Division of Driver Licensing
(New Emergency Administrative Regulation)**

601 KAR 2:232E. Kentucky Ignition Interlock Program.

EFFECTIVE: June 30, 2020

RELATES TO: KRS 45A, 186.010, 186.440, 186.442, 186.480, 186.531, 186.560, 186.570, 189A.005, 189A.010, 189A.040, 189A.045, 189A.070, 189A.085, 189A.090, 189A.103, 189A.105, 189A.107, 189A.200, 189A.220, 189A.240, 189A.250, 189A.340, 189A.345, 189A.350, 189A.370, 189A.400, 189A.410, 189A.420, 189A.440, 205.712, 18 U.S.C. 2721

STATUTORY AUTHORITY: KRS 189A.350

NECESSITY, FUNCTION, AND CONFORMITY: KRS 189A.350 requires the Transportation Cabinet to promulgate administrative regulations to carry out provisions regarding the implementation of the commonwealth's ignition interlock program for motor vehicle drivers who violate KRS 189A.010 or 189A.090. This administrative regulation establishes the duties and responsibilities of ignition interlock device providers wishing to enter into an agreement with the Commonwealth of Kentucky and the Transportation Cabinet for the administration and implementation of the ignition interlock device program and further establishes requirements for certifying ignition interlock devices under this program. This administrative regulation also establishes the requirements for a defendant convicted with a violation of KRS 189A.010 or 189A.090 to obtain an ignition interlock device and license and has the potential benefit of shortening a suspension period if a person convicted of a violation of KRS 189A.010 or 189A.090 doesn't have device violations.

Section 1. Definitions. (1) "Applicant" means a person applying for an ignition interlock license.

(2) "Cabinet" means the Transportation Cabinet.

(3) "Calibration" means the process that ensures an accurate alcohol concentration reading is being obtained on the ignition interlock device.

(4) "Certification" means the approval process required by the Commonwealth of Kentucky for ignition interlock devices and device providers prior to operating within the state.

(5) "Compliance-based review" means the final period of the interlock incentive period.

(6) "Defendant" means an individual who is charged with or convicted of driving while under the influence or convicted of operating a motor vehicle on a suspended license due to a DUI conviction.

(7) "Department" means the Department of Vehicle Regulation in the Kentucky Transportation Cabinet.

(8) "Device" means a breath alcohol ignition interlock device as defined by KRS 189A.005.

(9) "Fail-point" means the level at which the breath alcohol concentration is at or above .02.

(10) "Ignition interlock certificate of installation" is defined by KRS 189A.005(4).

(11) "Ignition interlock device" is defined by KRS 189A.005(3).

(12) "Ignition interlock device provider" or "device provider" is defined by KRS 189A.005(5).

(13) "Ignition interlock incentive period" or "incentive period" means as established by KRS 189A.340.

(14) "Ignition interlock license" is defined by KRS 189A.005(6).

(15) "KIIP" means Kentucky Ignition Interlock Program.

(16) "License" means any driver's or operator's license or any other license or permit to operate a motor vehicle as defined by KRS Chapter 186 or KRS 189A.005.

(17) "Lockout" means a condition where the device will not accept a breath test causing the ignition interlock device to prevent a motor vehicle's engine from starting.

(18) "Manufacturer" means an entity responsible for the design, development, production, and repair of the ignition interlock device.

(19) "Medical accommodation" means of a device that has been adjusted to detect the breath alcohol level of participants who have a medically documented condition of diminished lung capacity requiring a reduced air sample.

(20) "Month" means calendar month.

(21) "Motor vehicle" is defined by KRS 186.010(4) and (15).

(22) "NHTSA" means the National Highway Traffic Safety Administration.

(23) "Participant" means a person who has applied and been approved to participate in KIIP as a "defendant" as defined by subsection (6) of this section.

(24) "Provider representative" means a device provider employee who provides oversight of the provider's ignition interlock operations within the Commonwealth of Kentucky.

(25) "Refusal" means declining to submit to any test or tests pursuant to KRS 189A.103.

(26) "Retest" means an additional opportunity to provide a breath sample.

(27) "RFQ" means a request for qualifications pursuant to KRS Chapter 45A.

(28) "Rolling retest" means a test of the participant's breath alcohol concentration required at random intervals during operation of the motor vehicle.

(29) "Service call" means an on-site remote service of an ignition interlock device, outside of a fixed facility, including for example:

(a) Diagnostic trouble shooting;

(b) Repair or replacement of a malfunctioning device; or

(c) Removal of a device from an inoperable vehicle.

(30) "Service facility" or "service provider" means the physical location contracted by the ignition interlock device provider where the service provider's technicians install, calibrate, or remove ignition interlock devices.

(31) "Service facility inspection" means the process for determining that a service provider and the service provider's technicians are qualified and approved to provide ignition interlock services within the Commonwealth of Kentucky.

(32) "Tampering" means an unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

(33) "Technician" means a service provider employee or contractor who installs, calibrates, and removes ignition interlock devices within the Commonwealth of Kentucky.

(34) "Violation" as defined by KRS 189A.340 and 189A.345.

Section 2. Ignition Interlock License Eligibility and Applications. (1) The requirements established in this administrative regulation shall not be applied retroactively to ignition interlock devices in use prior to July 1, 2020.

(2)(a) Anyone seeking an ignition interlock license pursuant to KRS Chapter 189A shall apply to the cabinet using the Ignition Interlock Application, TC 94-175.

(b) An eligible defendant in compliance with KRS Chapters 186, 189A, and 205 shall receive an order from the court.

(3)(a) The cabinet shall determine if an applicant is eligible for reduced payments pursuant to this administrative regulation, KRS 189A.340, and KRS 189A.350. An applicant found eligible for reduced payments shall pay a proportionate amount of the fees based upon the federal poverty guidelines.

(b) A device provider or service provider shall accept the fees determined by the cabinet and paid by an applicant as payment in full pursuant to KRS 189A.340(7).

(c) The applicant shall remit the fees directly to the device provider as established in KRS 189A.340(7) and the RFQ.

(d) A device provider shall not prohibit the pre-payment of fees, not in excess of any indigency calculations, for the device and services.

(e) The device provider may pursue collection of amounts in arrears, not in excess of any indigency calculations, and recovery of the devices, if applicable. Collection and recovery shall be through separate legal action.

(4) The cabinet shall issue an ignition interlock license for the period established pursuant to KRS Chapter 189A.

(5)(a) An applicant requesting reduced payment shall file concurrently with the Ignition Interlock Application a completed Kentucky Ignition Interlock Program Affordability Application, TC 94-188.

(b) The reduced payment rate shall not extend past the maximum suspension pursuant to KRS 189A.070.

(c) The applicant's eligibility shall be determined annually pursuant to subsection (3) of this section.

(d) The applicant may re-submit the Affordability Application for recalculation by the cabinet.

(6) A pre-existing out-of-state or in-state suspension for the offenses listed in KRS 186.560, 186.570, or 205.712 shall result in the applicant's ineligibility to obtain an ignition interlock license. Eligibility guidelines are incorporated by reference and are available at <http://drive.ky.gov>.

(7) A defendant authorized by the court pursuant to KRS Chapter 189A to participate in KIIP shall submit to the cabinet a completed Ignition Interlock Application, TC 94-175, and proof of insurance and valid vehicle registration.

(8) An applicant seeking a medical accommodation due to diminished lung capacity shall submit with the Ignition Interlock Application a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(9) The cabinet shall issue the applicant notice of his or her eligibility or ineligibility to install an ignition interlock device based on if his or her current driving history record conforms to the eligibility requirements established in KRS Chapters 186, 189A, and 205.

(10) An applicant eligible for device installation shall select and contact a certified device provider of his or her choice from the list maintained on the cabinet's Web site at <http://drive.ky.gov>.

(11) A technician designated by the device provider shall install a certified ignition interlock device on the participant's vehicle upon receipt of the letter of eligibility issued by the cabinet.

(12) An approved applicant shall be required to install an ignition interlock device on at least one (1) primary motor vehicle registered and titled in his or her name or another's motor vehicle with express notarized, written consent of the owner authorizing installation of the device.

(13) A person may install devices on multiple motor vehicles.

(14) Upon an applicant's payment of the applicable fees for installation, the service provider's technician shall install the device and issue to the applicant a Certificate of Installation for Ignition Interlock Device, TC 94-177.

(15) At the time of issuance of an ignition interlock license, an applicant approved pursuant to this administrative regulation shall:

(a) Present the Certificate of Installation for Ignition Interlock Device to a Department of Vehicle Regulation regional field office electronically, via USPS, or in person;

(b) Pay the licensing fee pursuant to KRS 186.531. The license shall display an ignition interlock device restriction; and

(c) Begin to receive day-for-day credit toward their license suspension period and the ignition interlock license incentive period pursuant to KRS 189A.070.

(16) After ten (10) days' written notice to the participant, the provider shall notify the cabinet for nonpayment of fees on an account that is in arrears for thirty (30) days or more.

(17) Subject to recalculation of day-for-day credit, a participant may voluntarily have the device removed and reinstalled onto a different motor vehicle pursuant to subsection (13) of this section and upon payment of the appropriate fees to the provider.

(18) A participant shall have the device removed by an approved service provider and technician designated by the device provider upon completion of the ignition interlock period established by KRS 189A.070.

(19)(a) Upon removal of the device, the service provider shall retain for their records and provide to the cabinet and the participant a Certificate of Removal for Ignition Interlock Device, TC 94-178, documenting the successful removal of the interlock device and the participant's payment of all fees. If a participant has removed the interlock device early and failed to pay all fees, the provider shall send a notice of the removal to the cabinet documenting the early removal of the interlock device and the participant's non-payment of all fees. The Certificate of Removal shall be submitted to the cabinet within twenty-four (24) hours electronically or no later than seventy-two (72) hours by email, mail, or fax.

(b) Upon notice that the device has been removed pursuant to section (18) or upon expiration of the maximum duration of the defendant's suspension under KRS 189A.070, the cabinet shall update the participant's driver history record authorizing the regional field offices to issue the participant a new license without the ignition interlock restriction.

(c) A participant that has completed the program shall pay the appropriate fee for a duplicate or renewal license as established by KRS 186.531.

(20) A participant not participating in the KIIP and with a license suspension or revocation period exceeding twelve (12) months shall be subject to retesting requirements prior to the issuance of a new license pursuant to KRS 186.480.

(21)(a) Unless the person is under eighteen (18) years of age, the Transportation Cabinet shall, pursuant to KRS 189A.070, suspend the driving privileges of a person convicted of an offense established in KRS 189A.010.

(b) As established by KRS 189A.070(1)(b), a person who is under eighteen (18) years of age whose license is suspended pursuant to KRS 189A.070(1)(b) shall be eligible for an ignition interlock license pursuant to KRS Chapter 189A, but that person shall not be eligible for any incentive based suspension reduction as established in KRS 189A.

Section 3. General Requirements for Ignition Interlock Device Providers. (1) The cabinet shall certify ignition interlock device providers for two (2) years utilizing the provisions of KRS Chapter 45A and the terms of the RFQ. Application for new applicants and continuing certification renewals shall open on December 1 in the year prior to expiration.

(2) Ignition interlock device providers certified pursuant to this administrative regulation shall obtain re-certification in compliance with this administrative regulation prior to providing devices and services.

(3) An ignition interlock device provider seeking certification to provide devices and services within the commonwealth shall comply with the requirements of solicitation issued by the cabinet. Non-compliance shall result in a denial of certification.

(4) An ignition interlock device provider may subcontract with a person, firm, LLC, or corporation to provide a device and services if that device is specifically included in the original certification request and is specifically certified by the cabinet pursuant to KRS 189A.350.

(5) An ignition interlock device provider shall provide a representative who shall be assigned to work specifically with the KIIP pursuant to the terms of the RFQ.

(6) An ignition interlock device or service provider shall provide information and training for the operation and maintenance of the device to the participant and other individuals operating a vehicle equipped with a device.

(7)(a) A device or service provider shall not remove a device owned by a different provider unless an agreement is in place or for the purpose of replacing a participant's provider due to that provider's insolvency or business interruption.

(b) In the case of a provider's insolvency or business interruption, the original device provider shall bear the costs associated with the removal of the existing device and installation of the new device.

(8)(a) A device provider shall notify the cabinet within fifteen (15) days of a suspension, revocation, or disciplinary action taken against the device provider by a jurisdiction within or outside the commonwealth. This notification shall include the reason for the disciplinary action and other information as the Kentucky Transportation Cabinet may, pursuant to this administrative regulation, reasonably request. This requirement applies regardless of the existence of an appeal.

(b) Notice shall include a copy of the official correspondence or pleading establishing the reason for the pending action and shall be provided to the cabinet regardless of the existence of an appeal. Pursuant to this administrative regulation and KRS Chapter 189A, the cabinet may request other information at any time and the provider shall provide the information as long as it is reasonably available.

(9) The records required by Section 4(2)(e) of this administrative regulation shall be retained by an ignition interlock device provider for at least five (5) years from the date the device is re-

moved from the participant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and Section 4(2)(e) of this administrative regulation.

Section 4. Certification of Ignition Interlock Devices and Device Providers. (1) The Transportation Cabinet shall issue an RFQ to device manufactures in order to certify manufacturers eligible to provide ignition interlock services and commodities required for the implementation and maintenance of the state's ignition interlock program.

(2) An ignition interlock device provider requesting certification of an ignition interlock device shall submit:

(a) An affidavit that the ignition interlock device complies with specifications and certification requirements established in the RFQ;

(b) Documentation for each model from either an ISO 17025 accredited, independent testing laboratory or the NHTSA testing laboratory that the ignition interlock device meets or exceeds the current NHTSA model specifications and are incorporated by reference; and

(c) Documentation that each ignition interlock device installed shall be equipped with a functional camera that documents the date, time, and photograph of all persons providing breath samples to the ignition interlock device.

(3) An ignition interlock device provider requesting certification shall:

(a) Submit evidence that demonstrates successful experience in the development and maintenance of an ignition interlock service program, such as, for example, a resume or evaluation or letter of recommendation, and a list of jurisdictions served by the device provider;

(b) Provide a description of the training required including its frequency, for persons employed by, contracted with, or permitted by the provider to install, calibrate, remove, and provide continuing support for participants and the devices;

(c) Provide a plan that includes a location map describing the areas and locations of the provider's proposed fixed installation and service facilities. The plan shall include at least one (1) fixed facility in each of the twelve (12) highway districts;

(d) Agree to the random or designated selection process to require coverage in underserved areas as established in the RFQ;

(e) Agree to initial service facility inspections, continuing random inspections, and annual inspections of each service facility by the cabinet or its designee. The provider shall also agree to provide notice to the cabinet or its designee of the opening of new service facilities to permit the inspection of the facility within thirty (30) days of opening;

(f) Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. The official valid business license and tax document shall be posted in a conspicuous place at the service facility immediately upon receipt if applicable;

(g) Provide a plan for the receipt, maintenance, and destruction or return of participant's records consistent with court rules and the confidential maintenance of participant's records as required by the Driver's Privacy Protection Act, 18 U.S.C. 2721 and other applicable statutes;

(h) Provide proof of insurance covering the liability related to the manufacture, operation, installation, service, calibration, and removal of the devices with policy limits as established in the RFQ. The provider's liability insurance shall be expressly considered primary in the policy;

(i) Designate a provider representative authorized to speak on behalf of and bind the device provider and designated to work with the cabinet, the courts, and other agencies in the administration of the ignition interlock program;

(j) Maintain a toll-free twenty-four (24) hour emergency phone service that shall be used by participants to request assistance in the event of operational problems related to the device

and that shall include technical assistance and aid in obtaining a roadside service call if needed;

(k) Demonstrate the ability to maintain sufficient, secure computer hardware and software compatible with the cabinet and court requirements to record, compile, and transmit data and information requested by the cabinet and the Administrative Office of the Courts;

(l) Agree to provide expert or other required testimony in any administrative, civil, or criminal proceedings pursuant to this administrative regulation and KRS Chapters 186 and 189A;

(m) Provide a complete list of any contractual fees that the participant may be required or requested to pay; and

(n) Adhere to the device settings as stated in the RFQ.

(4) Pursuant to Section (5)(8) of this administrative regulation, device providers shall notify the cabinet within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method pursuant to KRS 189A.340 and 189A.345 of a participant's failure, if applicable, to comply with a court order.

(5) Each device provider shall give the cabinet access to independently review the interlock user's activity including images.

(6) A device provider shall send the cabinet notification that the participant has been violation-free for the required compliance period as established in KRS 189A.340.

(a) For a participant who has incurred a first DUI offense within a ten (10) year period, the provider shall send the cabinet notification that the participant has been violation-free within the first ninety (90) consecutive days of the required compliance period.

(b) For a participant who has incurred any subsequent DUI offenses within a ten (10) year period, the provider shall send the cabinet notification that the participant has been violation-free within the first one hundred twenty (120) consecutive days of the required compliance period.

(c) The compliance period shall begin either ninety (90) days prior to the conclusion of the identified incentive period if a participant has incurred a first DUI offense within a ten (10) year period or one hundred twenty (120) days prior to conclusion of the identified incentive period if a participant has incurred any subsequent DUI offenses within a ten (10) year period.

(7) Consistent with and pursuant to the process established in the RFQ, a provider shall provide either an interlock code or bypass capability to automobile mechanics, thereby causing the interlock device to be disabled during vehicle repair and maintenance.

(8) A provider shall indemnify and hold harmless the commonwealth and its employees and agents from all claims, demands, or actions as a result of damages or injury to persons or property, including death, that arise directly or indirectly out of the installation, omission, failure of installation, servicing, calibrating, or removal of an ignition interlock device. If the device provider's report of ignition interlock activities contains a verified error, the cabinet, department, or cabinet or department employees or agents shall be indemnified relevant to the error.

Section 5. Installation, Operation, Calibration, and Removal of Devices. (1) An ignition interlock device shall be installed by or under the direction and supervision of a device provider in conformance with procedures of the device provider.

(2) Prior to installing the device, the provider shall obtain and retain copies from the participant:

(a) Photo identification;

(b) The vehicle registration or title containing the VIN of the vehicle designated as primary by the participant and the name or names of the operators of the motor vehicle; and

(c) Consent of the participant or registered owner to install the device.

(3)(a) The device shall be inspected or calibrated by a technician designated by the device provider within thirty (30) days of installation and every sixty (60) days thereafter.

(b) A participant shall have the option to service the device at thirty (30) day intervals following the initial calibration.

(4) A service provider and technician shall use the calibration units approved by NHTSA, which are hereby incorporated by reference, and appearing on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(5) An ignition interlock device provider shall ensure that technicians installing the device:

(a) Inspect, calibrate, or replace devices with a newly calibrated device at each inspection as required;

(b) Retrieve data from ignition interlock device data logs for the previous period and send the information to the appropriate authority within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method requested by the recipient pursuant to KRS 189A.340;

(c) Record the odometer reading at installation and at service appointments;

(d) Inspect devices and wiring for signs of tampering or circumvention, record suspected violations, and transmit violation reports pursuant to Section 8 of this administrative regulation; and

(e) Conform to other calibration requirements established by the device manufacturer.

(6) If a participant fails to have the device inspected or recalibrated as required by subsection (3)(a) of this section, the ignition interlock device shall be programmed to enter into a lock-out condition, at which time the vehicle shall be required to be returned to the service provider.

(7) The participant shall be responsible for costs related to a service call unless the interlock device failed through no fault of the participant, in which case the device provider shall be responsible for the applicable costs.

(8) Within ninety-six (96) hours of receipt of written notice issued by the cabinet directing removal of the device, a device provider shall, pursuant to this administrative regulation, notify the participant that he or she shall return the vehicle with the installed device for removal.

(9) If an ignition interlock device is removed for any reason, components of the motor vehicle altered by the installation of the device shall be restored to pre-installed conditions.

(10) The cabinet shall:

(a) Maintain a periodically updated, rotating list of certified ignition interlock device providers and approved facilities that is incorporated by reference and available at <http://drive.ky.gov>;

(b) Maintain an Ignition Interlock Application, TC 94-175 that is incorporated by reference and is made available at <http://drive.ky.gov> and in regional field offices and the central office in Frankfort;

(c) Make available a uniform Certificate of Installation for Ignition Interlock Device, TC 94-177, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device installation;

(d) Issue an ignition interlock license to eligible participants upon receipt of a completed Certificate of Installation and in compliance with the requirements of this administrative regulation. The license shall have an in-force status and indicate that it is an ignition interlock license by displaying a restriction code for an ignition interlock device.

(e) Make available a uniform Certificate of Removal for Ignition Interlock Device, TC 94-178, to be printed and distributed by device providers to their approved service providers and technicians documenting successful ignition interlock device removal; and

(f) As established in Section 8(8) of this administrative regulation, remove the restriction code on the participant's driving record following receipt and review of the Certificate of Removal.

Section 6. Provider Suspension, Revocation, Voluntary Facility Closure, or Financial Insolvency.

(1) The cabinet shall indefinitely suspend or revoke certification of an ignition interlock device provider or individual service center contracted by the device provider if:

(a) A device in use by that provider and previously certified by the cabinet is discontinued by the manufacturer or device provider;

(b) The device provider's liability insurance is terminated or cancelled;

(c) The device provider makes materially false or inaccurate information relating to a device's performance standards;

(d) There are defects in design, materials, or workmanship causing repeated failures of a device;

(e) A device provider fails to fully correct an identified service facility deficiency within thirty (30) days after having been notified by the cabinet or its designee to do so;

(f) A service provider impedes, interrupts, disrupts, or negatively impacts an investigation or inspection conducted by the cabinet or its designee involving customer service issues, vehicle damage, or a complaint brought by a third party;

(g) A public safety or client confidentiality issue with an ignition interlock device provider, service facility, or technician is identified;

(h) A provider becomes insolvent or files for bankruptcy;

(i) The device provider requests a voluntary withdrawal; or

(j) The provider fails to comply with the requirements established in the RFQ used to apply for certification.

(2)(a) The device provider shall be given at least thirty (30) days written notice of the existence of one (1) or more of the conditions established in subsection (1) of this section by letter from the Office of Highway Safety, served by certified mail, and an opportunity to respond to the allegations or correct the deficiencies within that period.

(b) The Office of Highway Safety shall consider the provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the provider.

(c) The provider may appeal the decision of the Office of Highway Safety. An appeal shall be made and conducted pursuant to the provisions of KRS Chapter 13B.

(3) A device provider subject to revocation shall be responsible for and bear the costs associated with:

(a) Providing notice to participants; and

(b) The removal of currently installed devices and the installation of a new device by a device provider in good standing.

(4) A provider subject to revocation shall continue to provide services for currently installed devices for a time calculated by the cabinet and based on the remaining ignition interlock period, but no longer than ninety (90) days.

(5) A provider subject to suspension shall continue to provide services for currently installed devices. There shall not be a new ignition interlock installation during the period of suspension.

(6)(a) A provider that terminates certification or goes out of business shall comply with the requirements established in subsection (3) of this section and shall continue to provide services in accordance with this administrative regulation for currently installed devices for ninety (90) days from the date of the provider's notification to the cabinet that the provider will be terminating ignition interlock services.

(b) A provider who terminates certification or goes out of business shall submit plans for transferring existing participants to other providers to ensure continuity of service.

(c) A transfer plan shall be submitted to the cabinet for review by the Office of Highway Safety within thirty (30) days of the initial notification of intent to cease operations in the commonwealth.

(d) The provider shall be solely responsible for notifying participants with currently installed devices serviced by the provider, and shall be solely responsible for charges related to removal and installation of a device by a new provider.

Section 7. Surrender of Motor Vehicle Registration Plates. (1) A defendant who does not qualify for an ignition interlock license shall surrender his or her license plate or plates pursuant to KRS 189A.085.

(2) Upon receipt of a request for a vehicle registration inventory from a court, the cabinet shall:

(a) Conduct a search of the automated vehicle information system;

(b) Identify motor vehicles owned or jointly owned by the person named on the request; and

(c) Return the results of the search to the court by noon Eastern time, the next working day after the request is received, if the request is received by noon Eastern time. A request received after noon Eastern time shall be returned to the court by the close of business the second working day after the request is received.

(3) Upon receipt of a court order suspending a licensee's plate pursuant to KRS 189A.085, the cabinet shall suspend the licensee's registration. The cabinet shall not suspend the registration of any person pursuant to KRS 189A.085 unless a court order has been received.

(4) The court shall return each confiscated license plate to the cabinet. The cabinet shall bear the responsibility for reasonable postage or shipping costs for the return of confiscated license plate.

(5) After the motor vehicle registration suspension period has expired, the county clerk shall reissue a motor vehicle registration plate and registration receipt upon the request of the vehicle owner.

(a) If the registration period of the suspended license plate has not expired, the new registration shall be issued pursuant to KRS 186.180(2).

(b) If the suspended license plate has expired, the registration shall be issued as a renewal registration pursuant to KRS 186.050.

Section 8. Violations and Compliance Periods. As established in KRS 189A.070, the administrative suspension, incentive period, and compliance-based review shall be established in the table in this section.

DUI Offense	DUI Suspension	Ignition Interlock Incentive Period	Compliance-Based Review
1st Offense	6 month	4 month	90 consecutive days violation free
2nd Offense	18 month	12 month	120 consecutive days violation free
3rd Offense	36 month	18 month	120 consecutive days violation free
4th Offense or Subsequent	60 month	30 month	120 consecutive days violation free

Section 9. Monitoring. (1) The Division of Driver Licensing shall monitor the reports provided by the device provider for violations as established in KRS 189A.340(4)(b).

(2) Based on the date provided on the KIIP participation approval letter indicating the beginning of the compliance period, device providers shall, pursuant to Section 4 of this administrative regulation, notify the cabinet of any violations under KRS 189A.340(4)(b) within twenty-four (24) hours of the occurrence of the violation. The start of the compliance period for each offense shall be established in the table in this subsection.

Offense	DUI Suspension	Ignition Interlock Incentive Period	Start of Compliance Period/Violation Reports
1st Offense	6 month	4 month	1 month after ignition interlock license issuance
2nd Offense	18 month	12 month	8 months after ignition interlock license issuance
3rd Offense	36 month	18 month	14 months after ignition interlock license issuance
4th Offense or Subsequent	60 month	30 month	26 months after ignition interlock license issuance

(3) If the Division of Driver Licensing observes a violation, the division shall note the violation on the driving record, and the time credited shall be voided.

(4) Any appeal stemming from these determinations shall be administered pursuant to Section 10 of this administrative regulation.

(5) Law enforcement may, pursuant to KRS Chapter 189A.345, monitor for misdemeanor violations of KRS Chapter 189A.

(6) If ignition interlock providers are notified or discover evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the ignition interlock provider shall provide notice of the alleged violation and any corresponding information related to the alleged offense to the cabinet and law enforcement within twenty-four (24) hours electronically, or no later than seventy-two (72) hours by mail, fax, or other method. The provider shall:

(a) Notify the cabinet of the name of the participant or other offender and the location where the alleged offense occurred;

(b) Notify law enforcement in the county where the offense is alleged to have occurred; and

(c) Provide all evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(7) If the cabinet discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the cabinet shall:

(a) Notify law enforcement in the county where the offense is alleged to have occurred; and

(b) Provide all digital evidence to the law enforcement in the county where the offense is alleged to have occurred, including, for example, documents, photographs, alcohol test results, witness names, and any other information related to the alleged offense.

(8) Once the participant has complied with the Ignition Interlock Incentive Period, the provider shall, pursuant KRS 189A.340(4)(b), issue a final report to the cabinet that verifies that the participant has satisfied the compliance requirements of the Ignition Interlock Incentive Period. Once the cabinet has made a determination regarding the final report, the cabinet shall issue a removal letter to the participant stating that the ignition interlock device may be removed.

(9) A participant shall receive day-for-day credit for days that the person held a valid ignition interlock license or while receiving alcohol or substance abuse treatment in a licensed, inpatient residential facility pursuant to KRS 189A.340(5) and 908 KAR 1:310.

(10) A participant shall not receive day-for-day credit for days that the person utilizes the employer exemption pursuant to 189A.340.

(11) A participant in KIIP requesting removal of the device shall complete the Removal Application, TC 94-189. The application shall be reviewed by the cabinet, and, once the cabinet has verified that the participant has satisfied the time limit without violations, the cabinet shall approve the participant's removal application and notify the participant of the approval to remove the device pursuant to subsection 8 of this section.

(a) The participant shall not receive day-for-day credit for any time the device is removed from the vehicle pursuant to Section 2 of this administrative regulation.

(b) Day-for-day credit shall resume based on the date on the new certificate of installation pursuant to Section 2 of this administrative regulation.

(c) If a participant removes the device without approval for temporary removal, the participant's involvement in KIIP shall be immediately revoked. The participant may appeal this revocation. An appeal shall be made pursuant to Section 10 of this administrative regulation, or the participant may re-apply to KIIP.

(d) Unauthorized removal of a device or the failure to maintain an installed device shall result in starting the ignition interlock incentive period again. The ignition interlock incentive period shall not extend beyond the maximum suspension time; and

(e)1. The participant may request one (1) opportunity to temporarily suspend the day-for-day credits, and the request shall be submitted to the Department of Vehicle Regulation, Division of Driver Licensing, on a completed Removal Application, TC 94-189. The request shall state the specific grounds for the request, the length of time for the requested suspension, and a justification for the length of time for the requested suspension. Failure to complete the form shall result in automatic denial of the participant's request.

2. The Commissioner of the Department of Vehicle Regulation, in concert with the Office of Highway Safety, shall grant or deny the request to temporarily suspend the day-for-day credit based on whether the participant has previously been granted one (1) temporary suspension of the day-for-day credits as established in subsection (e)1. The commissioner shall notify the participant of the decision in writing within thirty (30) days of the participant's request.

3. The Division of Driver Licensing shall note the suspension of day-for-day credits on the participant's driving record.

4. The participant's failure to comply with the granted suspension shall result in revocation from KIIP.

5. The participant shall pay any applicable fees as established in this administrative regulation, KRS Chapter 189A, or the participant's contract with the device provider resulting from the temporary suspension of day-for-day credit.

6. Any denials or grievances resulting from paragraph (e) of this subsection shall not be subject to the appeals process established by Section 10 of this administrative regulation.

Section 10. Appeals. (1) An appeal shall be conducted pursuant to KRS 189A.370.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "Kentucky Ignition Interlock Program Application," TC 94-175, July 2020;
- (b) "Breath Alcohol Ignition Interlock Physician Statement," TC 94-176, July 2020;
- (c) "Certificate of Installation for Ignition Interlock Device," TC 94-177, July 2020;
- (d) "Certificate of Removal for Ignition Interlock Device," TC 94-178, July 2020;
- (e) "Kentucky Ignition Interlock Program Affordability Application," TC 94-188, July 2020;
- (f) "Ignition Interlock Removal Request," TC 94-189, July 2020; and

(g) "Kentucky Ignition Interlock Program Employer Work Exemption Application," TC 94-190, July 2020.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Transportation Cabinet Building, Department of Highways, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8:00 a.m. through 4:30 p.m.

(3) This material is also available at Transportation Cabinet Regional Field Offices and on the cabinet's web site at <http://drive.ky.gov>.

(4) Eligibility guidelines, applications, and medical accommodation forms shall be made available electronically on the cabinet's website at <http://drive.ky.gov> and in printed form through the Department of Vehicle Regulation regional field offices. Regional field office locations and contact information shall be available at <http://drive.ky.gov>.

(5) NHTSA ignition interlock device model specifications are made available electronically at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(6) The calibration units approved by NHTSA are made available electronically on its list of Conforming Products List of Calibrating Units for Breath Alcohol Testers at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>.

(7) A periodically updated, rotating list of certified ignition interlock device providers and approved facilities shall be made available electronically at <http://drive.ky.gov>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

APPROVED BY AGENCY: June 26, 2020

FILED WITH LRC: June 30, 2020 at 1 p.m.

CONTACT PERSON: Jon Johnson, Staff Attorney Manager/Assistant General Counsel, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, Kentucky 40622, phone (502) 564-7650, fax (502) 564-5238, email jon.johnson@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Jon Johnson

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for the administration and implementation of the ignition interlock program.

(b) The necessity of this administrative regulation: This administrative regulation is required by KRS 189A.350.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes forms, creates a uniform certificate of installation for ignition interlock devices, certifies the devices approved for use in the Commonwealth, and creates an ignition interlock license to be issued upon application approval.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will establish the regulatory requirements of KRS 189A.350.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation addresses the shift of the administration of this program from the judicial branch to the Transportation Cabinet.

(b) The necessity of the amendment to this administrative regulation: KRS 189A.350 requires that the Transportation Cabinet to promulgate administration regulations in order to administer this program.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 189A.350 that requires the cabinet to implement the ignition interlock program.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will clarify provisions in the current administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect: companies desiring to provide ignition interlock devices and services within Kentucky; motor vehicle drivers who violate KRS 189A.010 (defendants); the cabinet's Division of Drivers Licensing within the Department of Vehicle Regulation; the cabinet's Office of Highway Safety within the Department of Highways; circuit clerks, and the Administrative Office of the Courts.

(4) Provide an analysis of how the entities identified in the previous question will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions each of the regulated entities have to take to comply with this regulation or amendment: Companies desiring to provide ignition interlock devices and services will apply to the cabinet for device certification and authorization; defendants will apply for both the ignition interlock device and authorization to operate with an ignition interlock license pursuant to court order or conviction pursuant to KRS Chapter 189A; divisions within the department will approve and process the application forms; and ignition interlock licenses will be issued by the appropriate authority.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities: Defendants will pay a DUI service fee assessed by the court in the amount of \$50.

(c) As a result of compliance, what benefits will accrue to the entities: If eligible pursuant to KRS Chapter 186, participants will be approved to drive with an ignition interlock license, pursue the benefits of reduced license suspension time, and obtain immediate driving privileges; businesses desiring to provide ignition interlock devices and services will be granted certification for devices and authority to provide services.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: Inspections, mailing of documents and staff time necessary to begin processing applications is estimated at \$525,000.

(b) On a continuing basis: In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Initially, FHWA-Hazard Elimination Fund; funds collected pursuant to KRS 189A.350.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: While the intent is not for the state to incur costs, an increase in funding will like be needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative fees created herein are pursuant to statute to offset any costs to KYTC.

(9) TIERING: Is tiering applied? No tiering is required for device providers. All device providers meeting or exceeding the qualifications will be treated the same. Tiering for applicants in this program is pursuant to statute.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? KYTC Department of Vehicle Regulation, Division of Driver Licensing, Office of Highway Safety; circuit clerks, Administrative Office of the Courts, county attorneys, law enforcement.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 189A.350.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. For local government, costs should be minimal as the process is administratively driven and the regulatory actions will be performed within the context of DUI prosecutions.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation is not expected to generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation is not expected to generate revenue.

(c) How much will it cost to administer this program for the first year? Up to approximately \$525,000.

(d) How much will it cost to administer this program for subsequent years? In an amount not to exceed the actual cost to the cabinet for issuing the ignition interlock license to the participant.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No revenues will be generated by this program.

Expenditures (+/-): Additional programming to the driver licensing system will need to be implemented. The cost is unknown.

Other Explanation: The cabinet is unsure precisely how many defendants will move for eligibility under this program and whether efficiencies can be achieved if they do.