

STATEMENT OF EMERGENCY
601 KAR 2:233E

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 went into effect on July 1, 2020. Due to multiple comments by stakeholders, the agency decided to create a new emergency regulation in order to clarify specifics with regards to Senate Bill 85. 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 went into effect on July 1, 2020, an ordinary administrative regulation was not sufficient to meet the pending deadline for promulgation of an administrative regulation. This new 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 2:233E. Kentucky Ignition Interlock Program; participants and device providers.

EFFECTIVE: April 12, 2021

RELATES TO: KRS Chapter 45A, 186.010, 186.050, 186.180, 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.380, 189A.400, 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 an applicant 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 participant does not have a device violation.

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

(2) "Cabinet" is defined by KRS 189A.005(2).

(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 review by the Transportation Cabinet of:

(a) The length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070; and

(b) That participant's compliance with the requirements established in KRS 189A.340.

(6) "Compliance period" means the length of time that a person's license to operate a motor vehicle or motorcycle is suspended as established in KRS 189A.070, 189A.340, and this administrative regulation.

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

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

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

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

(11) "Ignition interlock incentive period" or "incentive period" means the period of time as established by KRS 189A.340(4)(b)2 during which an ignition interlock provider certifies that no violations have occurred and is prior to the date by which the cabinet removes the ignition interlock restriction from a person's license.

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

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

(14) "License" is defined by KRS 189A.005(7).

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

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

(17) "Medical accommodation" means that a device 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.

(18) "Month" means calendar month.

(19) "Motor vehicle" is defined by KRS 186.010(4) and includes "motorcycle," which is defined by KRS 186.010(15).

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

(21) "Participant" means a person who has applied and been approved to participate in KIIP.

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

(23) "Retesting" means an additional opportunity to provide a breath sample.

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

(25) "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.

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

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

(28) "Service provider" means an entity that has contracted with an ignition interlock device provider to provide mechanical services related to an ignition interlock device at a service facility.

(28) "Tampering" means acting with the intent to render the ignition interlock device defective as established by KRS 189A.340 and 189A.345.

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

Section 2. Ignition Interlock License. (1) The requirements established in this administrative regulation shall not be applied retroactively.

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

(b) At the time of application, the applicant shall present proof of insurance and valid vehicle registration.

(c) Upon approving an applicant for participation in the Kentucky Ignition Interlock Program, the cabinet shall notify the applicant in writing that the applicant has been approved to participate in KIIP.

(3)(a)1. 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, as established in KRS 189A.340.

2. A device and service provider shall accept the fees determined by the cabinet, as established in paragraph (a) of this subsection, and paid by an applicant or participant as payment in full pursuant to KRS 189A.340(7).

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

4. A device provider shall not prohibit the pre-payment of fees for the device and services.

5. 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.

(b)1. An applicant requesting reduced payment shall file concurrently with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Kentucky Ignition Interlock Program Affordability Application, TC 94-188. An applicant filing a Kentucky Ignition Interlock Program Affordability Application, TC 94-188, shall submit federal tax returns, paychecks, W-2's, or 1099's as part of his or her application.

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

3. The applicant or participant's reduced payment eligibility shall be determined annually.

4. The applicant may re-submit the Kentucky Ignition Interlock Program Affordability Application, TC 94-188, for recalculation by the cabinet.

(4) 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.

(5) An applicant seeking a medical accommodation due to diminished lung capacity shall submit with the Kentucky Ignition Interlock Program Application, TC 94-175, a completed Breath Alcohol Ignition Interlock Physician Statement, TC 94-176.

(6) The cabinet shall issue to the applicant, notice of his or her eligibility or ineligibility for an ignition interlock license based on if:

(a) His or her current driving history record conforms to the eligibility requirements established in KRS Chapter 189A; and

(b) He or she is not ineligible pursuant to KRS 186.560, 186.570, or 205.712.

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

(8) 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 <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>.

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

(10) An applicant approved by the cabinet to participate in KIIP based on the criteria established in this section and determined by the cabinet to be eligible for an ignition interlock device based on the criteria established in this section 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.

(11) An applicant or participant may have devices installed on multiple motor vehicles.

(12)(a) An applicant approved by the cabinet to participate in KIIP pursuant to subsection (10) and this administrative regulation shall pay the applicable fee for installation of the ignition interlock device.

(b) Upon an applicant's payment of the applicable fee for installation and subject to any requirements established in KRS 189A.090, 189A.107, 189A.200, 189A.340(8), and 189A.345, the service provider's technician shall install the device and issue to the applicant an Ignition Interlock Certificate of Installation, TC 94-194.

(13) Before an ignition interlock license is issued, an approved applicant to participate in KIIP, as established in this section of this administrative regulation, and eligible for an ignition interlock license pursuant to this section of this administrative regulation and KRS Chapter 189A shall:

(a) Present the Ignition Interlock Certificate of Installation, TC 94-194, to a department regional field office electronically, via USPS, or in person; and

(b) Pay the reinstatement fee pursuant to KRS 186.531(9). The license shall display an ignition interlock device restriction.

(14) Upon issuance of an ignition interlock license, a participant shall begin to receive day-for-day credit toward the license suspension period pursuant to KRS 189A.070 and the ignition interlock license incentive period pursuant to KRS 189A.340.

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

(16) Subject to recalculation of day-for-day credit, as established in Section 9 of this administrative regulation, a participant may voluntarily have the device removed and reinstalled onto

a different motor vehicle pursuant to subsection (12) of this section and upon payment of the appropriate fees to the device provider.

(17) 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 incentive period established by KRS 189A.070.

(18)(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. The Certificate of Removal for Ignition Interlock Device, TC 94-178, shall be submitted to the cabinet within twenty-four (24) hours electronically or no later than seventy-two (72) hours by mail or fax.

(b) Upon notice that the device has been removed pursuant to subsection (17) of this section or upon expiration of the maximum duration of the participant'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.

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

(20)(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 period.

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 October 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 or services.

(3) An ignition interlock device provider seeking certification to provide devices or services within the Commonwealth shall comply with the requirements of solicitation issued by the cabinet as established in subsection (1) of this section. 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 or 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 provider 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 shall only be removed by the device provider or a service provider contracted with the device provider except if:

1. An agreement is in place between device providers; or

2. The purpose of replacing a participant's device due to the initial device provider's insolvency or business interruption.

(b) In the case of a device 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 if it is reasonably available.

(9) The records required by Section 4(3)(g) 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 removed from the participant's vehicle. The records shall be disposed of in a manner compliant with relevant privacy laws and Section 4(3)(g) of this administrative regulation.

Section 4. Certification of Ignition Interlock Devices, Device Providers, and Service Providers.

(1) The Transportation Cabinet shall issue an RFQ to device providers in order to certify providers 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 NHTSA model specifications; 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 pursuant to subsection (1) of this section shall:

(a) Submit:

1. Evidence that demonstrates successful experience in the development and maintenance of an ignition interlock service program, such as, for example, a resume, evaluation, or letter of recommendation; and

2. 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 device 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 device 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 device 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 device provider's liability insurance shall be expressly considered primary in the policy;

(i) Designate a device 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) A device provider shall, pursuant to KRS 189A.350(4)(f), notify the cabinet within seven (7) days of servicing an ignition interlock device of discovery of a participant's failure, if applicable, to comply with KRS 189A.340(4)(b)2. or 189A.345.

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

(6) Pursuant to KRS 189A.070 or 189A.340, 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 device 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.

(d)(i) Violations of the ninety (90) or one hundred twenty (120) consecutive day requirement shall be as established in KRS 189A.340(4)(b)2.b.

(ii) Violations that constitute a misdemeanor offense shall be established in KRS 189A.345.

(7) Consistent with and pursuant to the process established in the RFQ, a device 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 device provider shall indemnify and hold harmless any unit of the Commonwealth or local government or Commonwealth or local government employees, public officers, or 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 of:

(a) Photo identification;

(b) The vehicle registration or title containing the VIN of the motor 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, incorporated by reference, that is available on the 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, as established in KRS 189A.350(4)(f), within seven (7) days of discovery;

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

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

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

(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 ignition 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 rotating list of certified ignition interlock device providers and approved facilities available at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(b) Maintain a Kentucky Ignition Interlock Application, TC 94-175;

(c) Make available a uniform Ignition Interlock Certificate of Installation, TC 94-194, 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 participants upon receipt of a completed Ignition Interlock Certificate of Installation, TC 94-194, 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 2(18)(b) of this administrative regulation, remove the restriction code on the participant's driving record following receipt and review of the Certificate of Removal for Ignition Interlock Device, TC 94-178.

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

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

(a) A device in use by that device 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, motor 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 device 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 device provider's response or lack of response if deciding to suspend for a period of time or completely revoke the certification of the device provider.

(c) The device 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 suspension or 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 device provider subject to suspension or 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 device provider subject to suspension or revocation shall continue to provide services for currently installed devices. There shall not be a new ignition interlock device installation during the period of suspension.

(6)(a) A device 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 device provider's notification to the cabinet that the device 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 device 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 device provider shall be solely responsible for notifying participants with currently installed devices serviced by the device provider, and shall be solely responsible for charges related to removal and installation of a device by a new device provider.

Section 7. Surrender of Motor Vehicle License Plates. (1) A defendant who does not have an ignition interlock license pursuant to KRS 189A.340, a hardship license under KRS 189A.410, or an exception under KRS 189A.085 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 impounding a license plate pursuant to KRS 189A.085, the cabinet shall suspend the motor vehicle registration. The cabinet shall not suspend the registration of any motor vehicle 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 license plate suspension period has expired, the county clerk shall reissue a motor vehicle license 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. Suspensions and Compliance Periods. As established in KRS 189A.070 and this administrative regulation, the incentive and compliance-based review periods that correspond with the license suspension period 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 or until the participant meets the compliance-based review	90 consecutive days violation free
2nd Offense	18 month	12 month or until the participant meets the compliance-based review	120 consecutive days violation free
3rd Offense	36 month	18 month or until the participant meets the compliance-based review	120 consecutive days violation free
4th Offense or Subsequent	60 month	30 month or until the participant meets the compliance-based review	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.b, KRS 189A.345, and in Section 4(6)(d) of this administrative regulation.

(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(4) of this administrative regulation and KRS 189A.350(4)(f), notify the cabinet of any violations under KRS 189A.340(4)(b)2.b. within seven (7) days of discovery of the occurrence of that violation.

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

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

(5) If an ignition interlock device provider is notified or discovers evidence or information that a participant or others have committed an offense in violation of KRS 189A.345, the ignition interlock device provider shall provide notice of the alleged violation and any corresponding information related to the alleged offense to the cabinet and law enforcement within seven (7) days of discovery of the occurrence pursuant to KRS 189A.350(4)(f). The device 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.

(6) 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 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) Once the participant has complied with the Ignition Interlock Incentive Period, the device provider shall, pursuant KRS 189A.340(4)(b)2.a., 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 pursuant to Section 2(18) and Section 5(10) of this administrative regulation, the cabinet shall issue a removal letter to the participant stating that the ignition interlock device may be removed.

(8) 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.

(9) A participant shall not receive day-for-day credit for days that the person utilizes the employer exemption pursuant to KRS 189A.340(6).

(a) A participant seeking to utilize the employer exemption pursuant to KRS 189A.340(6) shall submit a notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190.

(b) A participant that has applied for the employer exemption pursuant to KRS 189A.340(6) shall be granted the exemption by the cabinet if the applicant tenders a completed and notarized Kentucky Ignition Interlock Program Employer Work Exemption Application, TC 94-190, in satisfaction of KRS 189A.340(6)(a) and (b).

Section 10. Appeals. (1) An appeal of any action taken by the Transportation Cabinet pursuant to KRS 189A.340 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, September 2020;

(b) "Breath Alcohol Ignition Interlock Physician Statement," TC 94-176, July 2020;

(c) "Certificate of Removal for Ignition Interlock Device," TC 94-178, September 2020;

(d) "Kentucky Ignition Interlock Program Affordability Application," TC 94-188, September 2020;

(e) "Kentucky Ignition Interlock Program Employer Work Exemption Application," TC 94-190, September 2020;

(f) "Ignition Interlock Certificate of Installation," TC 94-194, April 2021;

(g) "Certified Ignition Interlock Providers" by the Kentucky Transportation Cabinet, Division of Driver Licensing, is available electronically at <https://drive.ky.gov/driver-licensing/Pages/Ignition-Interlock-Program.aspx#certified-ignition-interlock-providers>;

(h) "Conforming Products List of Calibrating Units for Breath Alcohol Testers" by the National Highway Traffic Safety Administration, revised October 22, 2012, available at <http://www.transportation.gov/odapc/conforming-product-list-calibrating-units-breath-alcohol-testers>; and

(i) "Model Guideline for State Ignition Interlock Programs" by the National Highway Traffic Safety Administration, revised November 2013, available at nhtsa.gov/staticfiles/nti/pdf/811859.pdf.

(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. This material is also available at Transportation Cabinet Regional Field Offices, on the cabinet's web site at <http://drive.ky.gov>, and on the cabinet's Administrative Regulations Filings web site at <https://transportation.ky.gov/LegalServices/Pages/Filings.aspx>.

JIM GRAY, Secretary

MATT COLE, Acting Commissioner

APPROVED BY AGENCY: April 6, 2021

FILED WITH LRC: April 12, 2021 at 12:14 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 10:00 AM on May 25, 2021, at the Transportation Cabinet, Transportation Cabinet Building, 200 Mero Street, Frankfort, Kentucky 40622. In the event the declaration of a State of Emergency in Executive Order 2020-215 and the State of Emergency Relating to Social Distancing in Executive Order 2020-243 are not rescinded by May 25, 2021, this hearing will be done by video teleconference. Members of the public wishing to attend may utilize the following link:

Join from PC, Mac, Linux, iOS or Android:

<https://bluejeans.com/956226725/5068?src=calendarLink&flow=joinmeeting>

Or Telephone:

+1.408.419.1715 (United States (San Jose))

+1.408.915.6290 (United States (San Jose))

Meeting ID: 956 226 725

Participant Passcode: 5068

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 PM on May 31, 2021. Send written notification of intent

to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

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.