

RULE 11 INTERLOCK-RESTRICTED LICENSES

Basis: These rules are promulgated pursuant to sections 24-4-103, 42-1-204, and 42-2-132.5, C.R.S.

Purpose: These rules regulate the issuance of Interlock-Restricted Licenses, the monitoring of driver compliance with Interlock-Restricted Licenses, the extension of interlock restrictions, and the revocation of Interlock-Restricted Licenses for non-compliance.

1. Definitions

- 1.1. Administrative Record – Includes, but is not limited to, incident reports ~~filed provided~~ pursuant to section 42-2-132.5(10), C.R.S., court records, law enforcement records, ~~motor vehicle government~~ records, and reports provided by ~~a- Manufacturer- Interlock Provider~~.
- 1.2. Alcohol-Related Revocation—A license revocation taken against a driving privilege based at least in part on a violation of sections 42-2-126, 42-4-1301, or 42-4-1301.1, C.R.S.
- ~~1.3. BAC Event—An interruption or prevention of the normal operation of a motor vehicle by an Ignition Interlock Device due to excess breath alcohol content, exclusive of positive readings as the result of mouth alcohol and/or contaminants.~~
- 1.3 Circumvention— ~~Means~~ ~~o~~Operating a motor vehicle ~~other than a motor vehicle equipped with an approved~~ ~~without an~~ Ignition Interlock Device, or attempting to or successfully circumventing the proper use of an approved Ignition Interlock Device ~~operating an Interlock Vehicle by avoiding the proper functioning of the Ignition Interlock Device~~ by any means, including, but not limited to: ~~intercepting, bypassing, or interfering with an Ignition Interlock Device~~; unauthorized emergency bypass; operating an Interlock Vehicle with an Ignition Interlock Device that is not properly functioning; push starting an Interlock Vehicle; ~~the~~ introduction of a breath sample other than a current sample from the driver of the Interlock Vehicle; ~~the~~ introduction of an intentionally contaminated or altered breath sample; continued operation of an Interlock Vehicle without providing a breath sample from the driver when required; or continued operation of an Interlock Vehicle after the Ignition Interlock Device detects an alcohol level above the level ~~established by the department of public health and environment. recommended by the National Highway Traffic Safety Administration (NHTSA) and as established by the Department.~~
- 1.4 Department – The Colorado Department of Revenue
- 1.5 Early Reinstatement—Reinstatement authorized by section 42-2-132.5(4), C.R.S.
- 1.6 Excessive BAC Event—~~An~~ ~~The~~ interruption or prevention of the ~~normal~~ operation of a motor vehicle by an Ignition Interlock Device due to excessive breath alcohol content, ~~excludingsive of~~ positive readings as the result of mouth alcohol and/or contaminants.
- ~~1.7 Excessive Breath Alcohol Content—For purposes of this Rule, Excessive Breath Alcohol Content means the level of breath alcohol established by the Department at which an Ignition Interlock Device should prevent or discontinue normal operation of a motor vehicle or otherwise indicate a violation. An alcohol level above the level established by the department of public health and environment.~~
- 1.8 Financial Assistance—Monetary credits against the cost of an Ignition Interlock Device provided by the Department to persons who are unable to pay the full cost of an approved Ignition Interlock device as provided in section 42-2-132.5(4)(a)(II)(C), C.R.S.

~~1.9 Ignition Interlock Agreement Affidavit—An affidavit filed by a person pursuant to section 42-2-132.5(5)(a), C.R.S., stating that the person has obtained a signed lease agreement for the installation and use of an approved Ignition Interlock Device in every motor vehicle on which the person's name appears on the registration and any other motor vehicle that the person may drive, and the written consent of all other owners, if any, of each motor vehicle in which an approved Ignition Interlock Device is installed.~~

1.10 Ignition Interlock Device—A device as defined in section 42-2-132.5(9), C.R.S.

1.11 Interlock-Restricted License—A license issued under the provisions of section 42-2-132.5, C.R.S., that restricts the driver to driving only motor vehicles equipped with a properly functioning Ignition Interlock Device.

1.12 Interlock Provider—A contractor designated by the Department to be a provider of Ignition Interlock Devices.

1.13 Interlock Vehicle—A vehicle equipped with an Ignition Interlock Device installed by an Interlock Provider.

1.14 Motor Vehicle — A vehicle as defined in section 42-2-102(58), C.R.S.

1.15 Non-owner Affidavit—An affidavit filed by a person affirming that the person is not the registered owner or co-owner of any motor vehicle in Colorado and does not have access to a motor vehicle in Colorado in which to install an Ignition Interlock Device.

1.13 Owner Affidavit—An affidavit filed by a person pursuant to section 42-2-132.5(5)(a), C.R.S., stating that the person has obtained a signed lease agreement for the installation and use of an approved Ignition Interlock Device in every motor vehicle on which the person's name appears on the registration and any other motor vehicle that the person may drive, and the written consent of all other owners, if any, of each motor vehicle in which an approved Ignition Interlock Device is installed.

1.16 Proof of Financial Responsibility—A valid SR-22 form obtained from an insurance company, or other proof of financial responsibility as defined in section 42-7-103(14), C.R.S.

1.17 Reporting Period—A calendar month.

1.18 Tampering – Means physically intercepting, bypassing, or interfering with or aiding another person ~~into~~ physically intercepting, bypassing, or interfering with an Ignition Interlock Device for the purpose of preventing or hindering the lawful operation or purpose of the Ignition Interlock Device.

2. Reinstatement ~~With Requiring~~ Ignition Interlock Restriction

2.1. A person who is required to hold an Interlock-Restricted License pursuant to section 42-2-132.5(1), C.R.S., ~~and who:~~ (1) whose privilege to drive is eligible for reinstatement; ~~has served the duration of his or her required revocation;~~ (2) is not seeking Early Reinstatement; and (3) does not have access to a vehicle, may be issued an Interlock-Restricted License if the person:

2.1.1. Files ~~a~~ Non-Owner Affidavit with the Department;

2.1.2. Satisfies all licensing conditions imposed by law; and

2.1.3. Applies for an Interlock-Restricted License.

2.2. A person who is required to hold an Interlock-Restricted License pursuant to section 42-2-132.5(1), C.R.S., and who has served the duration of his or her required revocation or is eligible for Early Reinstatement may be issued an Interlock-Restricted License if the person:

2.2.1. Files an **Ignition Interlock Owner** Affidavit with the Department; **that complies with section 42-2-132.5(5)(a);**

2.2.2. Satisfies all other licensing conditions imposed by law; and

2.2.3. Applies for an Interlock-Restricted License.

2.3. A person who is required to hold an Interlock-Restricted License pursuant to section 42-2-132.5(1), C.R.S., **and (1) whose driving privilege is eligible for reinstatement; (2) who does not reside in Colorado; and (3) who is not requesting issuance of a Colorado driver license, may apply for reinstatement of their driving privilege without acquiring an Interlock-Restricted License if the person: and who: (1) has served the duration of his or her required revocation; (2) does not reside in Colorado; and (3) is not requesting a license, may reinstate their driving privilege without acquiring an Interlock-Restricted License if the person:**

2.3.1. Files a Non-Owner Affidavit with the Department;

2.3.2. Files an Out-of-State Residency Affidavit; and

2.3.3. Satisfies all other licensing conditions imposed by law.

2.4. A person who reinstates his or her driving privilege under subsection 2.3 (out-of-state resident) shall not operate a motor vehicle in the State of Colorado from the date of reinstatement until the date the Colorado interlock requirement is set to expire, unless the motor vehicle is equipped with a properly functioning **approved** Ignition Interlock Device. ~~;~~ The person is subject to all of the monitoring requirements and provisions that apply to a Colorado Interlock-Restricted License.

2.5. A person whose Colorado license has an interlock restriction **is remains** subject to compliance monitoring, reporting, and sanction pursuant to section 42-2-132.5, C.R.S. and these rules, regardless of the person's state of residence or physical location.

2.6. A person with an Interlock-Restricted License shall not, during the interlock restriction period, operate a motor vehicle that is not equipped with a properly functioning **approved** Ignition Interlock Device.

2.7. A person whose Interlock-Restricted License **was issued** is based on **the submission of** a Non-owner Affidavit, is not required to complete a test of driving skills until expiration of his or her interlock restriction.

2.8. A person **required to hold an Interlock-Restricted License shall who has a Colorado interlock requirement can** not be issued **any type of** driver's license, other than an Interlock-Restricted license, until the interlock requirement has been satisfied.

3. Early Reinstatement with an Interlock-Restricted License

3.1. A person whose license is subject to one or more Alcohol-Related Revocations and who is eligible for Early Reinstatement under section 42-2-132.5(4), C.R.S. may be issued an Interlock-Restricted License upon completion of the required minimum period of revocation as set forth in 42-2-132.5(4)(a), C.R.S. if he or she:

3.1.1. Files an **Ignition Interlock** Affidavit with the Department;

3.1.2. Provides Proof of Financial Responsibility to the Department in the person's name;

3.1.3. Satisfies all other conditions for reinstatement imposed by law; and

3.1.4. Satisfies all licensing conditions imposed by law.

4. Monitoring Compliance with the Interlock Restriction

4.1. ~~Interlock Manufacturers Providers~~ shall provide monthly monitoring reports to the Department for each Ignition Interlock Device installed in an Interlock Vehicle.

4.1.1. ~~Manufacturers Interlock Providers~~ shall download the information stored in the Interlock Device every month, and shall analyze the information to determine whether there have been any ~~Excessive BAC Events, or Circumventions or attempted Circumvention, or Tampering~~ since the prior inspection.

4.1.2. ~~Manufacturers Interlock Providers~~ may notify the motor vehicle owner and the Interlock-Restricted driver of any detected ~~Excessive BAC Events, or Circumventions, or Tampering. Notification by Whether or not an Interlock Provider a Manufacturer is not required prior to the so notifies an Interlock-Restricted driver does not prevent the~~ Department ~~from~~ taking action based on ~~Excessive BAC Events, or Circumventions, or Tampering.~~

4.2. ~~An Interlock Provider shall check and notify the Department regarding each Ignition Interlock Device and its installation in the Interlock Vehicle as provided in section 42-2-132.5(6), C.R.S. An Interlock Provider A Manufacturer~~ that detects Tampering shall notify the Department of that fact within five calendar days using a form provided by the Department.

4.3. The Department may notify appropriate law enforcement and other authorities of any violation of title 42.

4.4. Three monthly reports showing ~~Excessive~~ BAC Events in any twelve consecutive Reporting Periods will result in an extension of the interlock restriction for an additional twelve months after the expiration of the existing interlock restriction, subject to the provisions of section 5.3.1.

4.4.1. Section 4.4 also applies to a person whose period of interlock restriction expired during a Reporting Period, if the report for that Reporting Period shows that ~~an Excessive~~ BAC Event occurred before the interlock restriction expired.

5. Interlock-Restricted License Hearings

5.1. A person whose Interlock-Restricted License is revoked ~~upon receipt of notice of based on a~~ conviction under section 42-2-132.5(10), C.R.S., is entitled to a hearing pursuant to section 42-2-132.5(7)(a), C.R.S. A request for a hearing will not postpone revocation of the Interlock-Restricted License.

5.1.1. The only issues considered at a hearing on the revocation are whether ~~the revocation is sustained there is a valid record of a conviction~~ and the calculation of the length of the ineligibility. The Hearing Officer has no discretion to shorten the revocation period prescribed in section 42-2-132.5(7)(a), C.R.S.

5.2. A person whose Interlock-Restricted License is revoked, or who has received notice that his or her Interlock-Restricted License ~~may~~ will be revoked, based on an Administrative Record other than a notice of conviction is entitled to a hearing pursuant to section 42-2-132.5(7)(b), C.R.S. Upon receipt of a request for a hearing ~~that is prior to the suspension date~~, the Department shall ~~extend the suspension date until the hearing is scheduled. Thereinstate an~~ Interlock-Restricted License ~~that has been revoked, in which case the Interlock-Restricted License will remain active will~~

remain active unless and until a Hearing Officer determines the Interlock-Restricted License should be revoked.

5.2.1. The only issues considered at a hearing pursuant to this rule 5.2 are whether the Administrative Record establishes that the person operated a motor vehicle without an Ignition Interlock Device or circumvented or attempted to circumvent the proper use of an Ignition Interlock Device and, if so, calculation of the length ~~whether the term~~ of the revocation ~~was properly calculated~~. A Hearing Officer has no discretion to shorten the revocation period prescribed in section 42-2-132.5(7)(b), C.R.S.

5.3. A person whose interlock license restriction is extended pursuant to 4.4 above is entitled to a hearing pursuant to section 42-2-132.5(7)(d), C.R.S.

5.3.1. The Hearing Officer shall determine whether an Excessive BAC Event occurred in three months of any twelve consecutive Reporting Periods and, if so, shall determine an appropriate extension period for the Interlock-Restricted License not to exceed twelve months.

5.3.2. A single Excessive BAC Event may not be used ~~as a basis~~ to impose more than one extension of an Interlock-Restricted License.

5.3.3. A Hearing Officer may consider the following as aggravating factors for the purpose of determining an appropriate extension period:

5.3.3.1. Three or more Excessive BAC Events in any one Reporting Period;

5.3.3.2. Excessive BAC Events in more than three of the consecutive Reporting Periods under consideration at the hearing;

5.3.3.3. A reported breath or blood alcohol level in excess of 0.05 grams of alcohol per 210 liters of breath or 100 milliliters of blood;

5.3.3.4. Three or more readings consistent with attempted drinking and driving regardless of whether such readings contributed to an Excessive BAC Event.

5.3.3.5. Excessive BAC Events occurring in each of the final six Reporting Periods of an Interlock Restriction period;

5.3.3.6. A prior extension or renewal of an Interlock-Restricted License.

5.3.4. A Hearing Officer may consider the following as mitigating factors for the purpose of determining an appropriate extension period:

5.3.4.1. ~~An isolated (one)~~ A single Excessive BAC Event (attempted start), indicating the driver with the Interlock-Restricted License did not reattempt a start after the initial Excessive BAC Event;

5.3.4.2. A driver's initiation of voluntary or enhanced alcohol treatment or therapy after the last BAC Event;

5.3.4.3. More than one year remaining on the Interlock Restriction; and

5.3.4.4. Any other factors that a person with an Interlock-Restricted License may submit in mitigation.

6. Qualification for Ignition Interlock Financial Assistance

6.1 Any **eligible** person (“Applicant”) who is unable to pay the full cost of an Ignition Interlock Device may apply for financial assistance. In order to be eligible for financial assistance, the Applicant must:

6.1.1 Be a first-time offender; or

6.1.2 Meet the definition of a persistent drunk driver in section 42-1-102(68.5)(a), and the initial installation of an Ignition Interlock Device on his or her motor vehicle must have occurred on or after January 1, 2014; and

6.1.3 Have filed a Colorado Income Tax Return within the immediately preceding calendar year demonstrating an inability to pay, or otherwise establish an inability to pay the full cost of an Ignition Interlock Device as described in 6.2.

6.2 Financial Assistance is awarded based upon the Federal Adjusted Gross Income (FAGI) and a factor of the most current Poverty Guidelines established by the Department of Health and Human Services (aspe.hhs.gov/poverty-guidelines). If a person’s FAGI falls within the factor and funds are available, financial assistance may be awarded.

6.3 The Department may adjust the factor described in 6.2 above based on the availability of funds and current funding commitments. The current factor will be available upon request.

6.4 An Applicant who meets the requirements set forth in 6.1 above, and who is denied financial assistance, may request a review and reconsideration of the denial by providing one of the following to the Department:

6.4.1 A copy of the person’s current IRS Tax Transcript showing a FAGI within the current factor; or

6.4.2 If the Applicant has not filed a tax return because the Applicant’s income is below the filing threshold, a copy of a determination letter issued by the Division of Human Services showing current coverage in one of the PEAK programs including food, medical, or cash assistance; or

6.4.3 A copy of a Court’s Declaration of Indigency issued in a criminal proceeding within the preceding twelve months.

6.5. If the Department denies financial assistance after review and reconsideration pursuant to 6.4, the Department will promptly issue a Notice of Denial to the Applicant, who may request a hearing as provided in 7.1 below.

6.6. Financial Assistance may be awarded in an amount set by the Department, **per for a valid** Interlock-Restricted License, regardless of the initial length of the interlock restriction or of any extension of the interlock restriction. Financial Assistance is distributed only as incremental credits against the interlock fees charged by the **ManufacturerInterlock-Provider**. The Department will not provide funds directly to the **Applicantdriver**. In order to receive credit up to the driver’s full award of financial assistance, **an Applicant driver** must remain compliant with all ignition interlock program requirements, and must hold and maintain a valid Interlock-Restricted License.

7. Denial of Financial Assistance Hearing

7.1 An Applicant denied financial assistance after review and reconsideration pursuant to 6.4 may, within 60 days of the date of mailing of the Notice of Denial, request a hearing on the denial by filing a written request for hearing with the Hearings Division of the Department at 1881 Pierce St. #106, Lakewood, CO 80214.

7.2 Hearings shall be held in accordance with the provisions of the State Administrative Procedure Act and the provisions of title 42 of Colorado Revised Statutes.

7.3 The only issue at hearing will be whether the Applicant is unable to pay the full cost of an Ignition Interlock Device.

7.3.1 The Hearing Officer may consider any reasonable evidence, whether documents, witnesses, or other evidence.