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Hearing Date: 2/12/2024

Today's Date: 2/22/2024

Agency: Ohio Department of Public Safety, Ohio Traffic Safety Office

Rule Number(s): Chapter 4501-45 of the Administrative Code, Ignition Interlock Devices

If no comments at the hearing, please check the box. ☐

List organizations or individuals giving or submitting testimony before, during or after the public hearing and indicate the rule number(s) in question.

1. Stephanie Copley, Intoxalock, written testimony attached, marked Exhibit A
2. Toby Taylor, SmartStart, written testimony attached, marked Exhibit B
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Hearing Summary Report

Consolidated Summary of Comments Received

Please review all comments received and complete a consolidated summary paragraph of the comments and indicate the rule number(s).

Intoxalock

For rules 4501-45-03 and 4501-45-04 Intoxalock thank the Department for working with them on language during the CSI process regarding who disqualifying offenses would apply to.

For Rule 4501-45-04, Intoxalock said they previously and again recommended the triggering of a violation reset upon a failed or missed retest in paragraph (D)(1)(a)(i) to be.

Intoxalock is also seeking clarity on whether prosed language is intended to give the user the entirety of the six minutes to provide a passing sample before a violation is recorded. Meaning is the retest not failed until the six minutes has elapsed, or is the retest failed upon the first failing sample. Intoxalock has suggested language to alleviate this concern.

Intoxalock also suggested changing language regarding if a vehicle is turned off leading to a violation.

Finally Intoxalock would like the requirement of an on-site review to be changed to allow a visual review in rule 4501-45-04(O).

Exhibit A was entered into the record and is attached to this Hearing Summary Report in its totality.

SmartStart

Recommends adding a definition for alcohol setpoint to Rule 4501-45-01, and then inserting that term into in Paragraph (F) in place of "preset level"

These changes lead to a requested change in changes to use this term in 4501-45-04 (D)(1)(a)(i), (D)(1)(a)(iii).

Further, SmartStart supports the sixty seven day calibration interval listed in 4501-45-04 (S), but does not think it should only apply those devices that have internal modems.

Exhibit B was entered into the record and and is attached to this Hearing Summary Report in its totality.

Hearing Summary Report

Incorporated Comments into Rule(s)

Indicate how comments received during the hearing process were incorporated into the rule(s). If no comments were incorporated, explain why not.

The Department is re-filing rules 4501-45-01 and 4501-45-04 with the changes described below.

4501-45-01: The Department added a definition for “Set Point” which indicates the level of BrAC an ignition interlock device should use as a threshold to determine an ignition interlock violation. This is to satisfy the comment from SmartStart in Exhibit B. Clarified the definition of “ignition interlock device” to be consistent with the new definition of “set point”.

The Department added a definition of “failed retest” which indicates when a retest is failed based on the concentration of BrAC in a person’s breath that would have been sufficient enough to prevent the offender from starting the vehicle.

The Department added a definition of “passing sample” which defines the BrAC level that shall be defined to determine whether or not a deep lung breath sample is appropriate to start a vehicle or is considered a passing rolling retest or retest.

4501-45-04(D)(1)(a)(i): The Department added language to clarify device behavior as noted in Exhibit A by Intoxalock and Exhibit B by Smart Start.

4501-45-04(D)(1)(a)(i): The Department will not be adding a violation reset provision as requested in Exhibit A by Intoxalock. Ohio has determined that per R.C. 4510.46, a failed retest or rolling retest is not considered a violation, but rather an event and has subsequently modified the language in 4501-45-04(T) back to the original wording to correlate with the law. Since Ohio does not consider a failed rolling retest or failed retest a violation of law, it cannot programmatically support a violation reset. Instead Ohio is requiring all retests be reported to court or entity of jurisdiction to decide what, if any, additional sanctions should be imposed upon the offender in the event a failed retest or rolling retest is reported. Further, in March 2015, NHTSA expressed their desire to revise the standard for retest to remove the provision that referenced requiring a service call because NHTSA believed states should make programmatic choices. Thus, NHTSA expressed support for recording a failed retest, but not requiring a service call to restart the vehicle.

4501-45-04(O): The Department does not agree with changing the onsite review language. Ohio has current provisions in Ohio Administrative Code regarding the conduct of service centers in the state that are onboarded and operating under the manufacturer’s license. These standards include cleanliness and record keeping, as well as client services and technician standards. Over the course of the 2023 program year, Ohio’s inspection process, which occurs whenever a service center is onboarded by a manufacturer and then on an annual basis thereafter, identified 202 separate issues at service centers across the state. Of these 202 issues, 28 were service center related issues including cleanliness and client service issues (a violation of Ohio Administrative Code 4501-45-04(P)), 83 were record keeping violations including improper record training a violation of Ohio Administrative Code (4501-45-04(L)), 41 instances of improper or incomplete training of technicians or failure to notify the state when a new technician has been trained for IID work (a violation of both Ohio Administrative Code 4501-45-04(L) and (N)), 16 instances of improper training regarding installation and removal of ignition interlock devices (a violation of Ohio Administrative Code 4501-45-04(L)). The Department contends that having

Hearing Summary Report

an onsite visit from a manufacturer before onboarding and at least annually will remedy some of the most common issues and violations that are encountered in the course of annual inspection processes.

4501-45-04(S): The Department is modifying the language to change from “capable of real time reporting” to “utilizing real time reporting.” 4510.46 of the Revised Code indicates an ignition interlock manufacturer should monitor a device installed in an offender’s vehicle, and should report violations to the court or monitoring entity “as soon as practicable.” The Department contends that a 67 day monitoring period is not in the spirit of the law as it is written as a 67 day reporting period without utilization of real time reporting would not be as soon as practicable. If a device is capable of real time reporting and a manufacturer chooses to change their device behavior to real time reporting, they may then move to 67 day monitoring checks. Additionally, Ohio has modified the proposed language to remove the requirement for a permanent lockout if an offender does not report for monitoring as Ohio does not have the statutory authority to impose such a sanction under the Revised Code.

**Intoxalock's Written Testimony Regarding Proposed Changes to Chapter 4501-45
Submitted: February 8, 2024**

On behalf of Consumer Safety Technology, LLC d/b/a Intoxalock, thank you for the opportunity to present written testimony on the proposed rules changes in Chapter 4501-45. Intoxalock is certified as an ignition interlock provider in 46 states and has been an ignition interlock provider for over 25 years. Intoxalock is currently a certified ignition interlock provider in Ohio.

Below you will find Intoxalock's written testimony on the proposed rules, redlined suggested changes for specific sections (if applicable), and the rationale for the recommended changes.

Should you have questions, or need additional information, please contact Stephanie Copley at scopley@intoxalock.com.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Stephanie Copley", written in a cursive style.

Stephanie Copley

Corporate Counsel – State Rules Specialist

4501-45-03 Licensing requirements for manufacturers of ignition interlock devices.

(C) A manufacturer of an ignition interlock device shall not be eligible for licensing if the manufacturer, including, but not limited to the agents, employees, contractors, or installer(s), who work in Ohio, has plead guilty to, or been convicted of, any disqualifying offense in paragraph (C)(10)(a) to (C)(10)(d) in rule 4501-45-05 of the Administrative Code.

A manufacturer of an ignition interlock device may not be eligible for licensing if the manufacturer, including, but not limited to, the agents, employees, contractors, or installer(s), who work in Ohio, has plead guilty to, or been convicted of, any disqualifying offense in paragraph (C)(10)(e) to (C)(10)(t) in rule 4501-45-05 of the Administrative Code.

4501-45-04 Certification requirements for ignition interlock devices.

(c) A manufacturer of an ignition interlock device, is not eligible for certification of its device(s) if the manufacturer, including, but not limited to the agents, employees, contractors, or installer(s), who work in Ohio, has plead guilty to, or been convicted of, any disqualifying offense in paragraph (C)(10)(a) to (C)(10)(d).

A manufacturer of an ignition interlock device may not be eligible for certification of its device(s) if the manufacturer, including, but not limited to, the agents, employees, contractors, or installer(s), work in Ohio, has plead guilty to, or been convicted of, any disqualifying offense in paragraph (C)(10)(e) to (C)(10)(t) in rule 4501-45-05 of the Administrative Code.

COMMENT on 4501-45-03(C) and 4501-45-04(C)

We greatly appreciate and support the addition of the phrase “who work in Ohio” and the re-organization in and distinction of paragraph (C)(10)(e) to (C)(10)(t) in rule 4501-45-05. We believe these changes will more appropriately target relevant individuals and will make it less difficult for vendors to do business in the state of Ohio.

4501-45-04 Certification requirements for ignition interlock devices.

(D) . . . (1) A manufacturer of an ignition interlock device shall file a separate application for certification and renewal for each device model or type that differ in any aspect. The original certification application includes: with the director a separate and complete, original or renewal application for certification, for each ignition interlock device model or type that differ in any aspect, intended for lease, sale or other use in this state.

(a) A certificate from an independent testing laboratory indicating that the ignition interlock device that is the subject of the manufacturer's application meets or exceeds the model specifications of the "National Highway Traffic Safety Administration (NHTSA), Department of Transportation, as published in Volume 78 No. 89 of the Federal Register on May 8, 2013 (78 F.R. 26849, 2013)" attached as an appendix to this rule, and incorporated as if fully rewritten herein, or any modifications thereto, in effect at the time of the director's decision regarding certification of the device. These specifications must include:

(i) Requiring the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A random retest must continue at intervals not to exceed fifteen minutes after the previous retest, and not to exceed four times in one hour, for the duration of the travel. An operator shall have a maximum of six minutes to perform the retest and the device shall accept unlimited samples within the time frame. If six minutes elapses and no passing sample is provided, or if the vehicle is accidentally or intentionally powered off, or if a retest is failed, a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction.

Ohio's Response to Intoxalock's CSI Comments:

"Ohio's Response: Device behavior is already defined. Device behavior: The device should prompt testing after 10 minutes. The device should not prompt a test more than 15 minutes apart, but not to exceed 4 times in an hour. If a retest is failed, six minutes elapses, or the engine is powered off, the device should record a violation. If the retest is failed or missed, the device will reset to the next retest, not to exceed four times in one hour. If the engine is powered off, upon restarting the engine the device will begin prompting a retest after ten minutes. This is based on the NHTSA recommendation."

COMMENTS on 4501-45-04(D)(1)(a)(i) and Ohio's Response:

A. Violation Reset --

In earlier iterations of feedback, Intoxalock recommended adding the triggering of a violation reset upon a failed or missed retest. To date, this recommendation has been rejected, but Intoxalock again raises this recommendation to be consistent with NHTSA model specifications. The NHTSA specifications state in "Test 8. Retest" that a service call is required upon a failed or missed retest.

We therefore recommend adding a violation reset requirement to the rule:

. . . , a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction and the device shall (i) trigger a violation reset . . .

- B. "An operator shall have a maximum of six minutes to perform the retest and the device shall accept unlimited samples within the time frame." – proposed rule language

Intoxalock is seeking clarity as to whether this sentence in the proposed rule is intended to give the user the entirety of the six minutes to provide a passing sample before a violation is recorded. In other words, is the retest not "failed" until the full six minutes has elapsed, or is the retest "failed" upon the first non-passing sample?

The phrase "unlimited samples" suggests the former, but the subsequent sentence in the rule ("If six minutes elapses and no passing sample is provided . . . or if a retest is failed") creates confusion because the "or" suggests that a retest might be failed on the first attempt. We presume the intent is to give a user multiple chances to pass the retest through the entirety of the six minutes before a violation is recorded, but we are seeking confirmation.

Under the method in which a user is given multiple chances to pass, below is our understanding of how the device would behave:

- 1) Device prompts for a retest and starts the 6-minute timer
 - A. User passes the retest → retest timer resets.
 - B. User fails the retest → the device continues prompting for a retest until a passing sample is provided or for the remainder of the 6 minutes, whichever occurs first
 - i. User passes the retest → retest timer resets. No violation recorded.
 - ii. User fails the retest again → go back to step 1.B.
 - iii. User doesn't provide another sample and the 6 minutes runs out → proceed to step 2.
- 2) 6 minutes elapses and no passing sample has been provided → A violation is recorded.

We recommend adding the following into the language of the rule to clarify this behavior:

. . . An operator shall have a maximum of six minutes to perform the retest and the device shall accept unlimited samples within the time frame, **meaning a retest is not deemed "failed" or "missed" until the six minutes elapse without a passing sample.** If six minutes elapses ~~and no passing sample is provided and a retest is failed or missed. . . . or if a retest is failed~~, a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction.

- C. "or if the vehicle is accidentally or intentionally powered off" – proposed rule language

In our experience in other states, it is unusual to record a violation for turning off the vehicle in the middle of a retest. What is more typical is allowing the retest timer to continue running after the engine is off until the timer runs out. For example, if the retest prompt happens as the user pulls into a parking lot, we want the user to be able to turn the engine off and then provide the sample.

We therefore make the following recommendation:

If six minutes elapses ~~and no passing sample is provided and a retest is failed or missed, or if the vehicle is accidentally or intentionally powered off. . . .~~, a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction **If the vehicle is accidentally or intentionally**

powered off during the six minutes allowed for the retest, the operator shall have the remainder of the six minutes to provide a passing sample.

- D. *"If the retest is failed or missed, the device will reset to the next retest, not to exceed four times in one hour."* – language from Ohio feedback to Intoxalock

In our experience in other states, this is highly irregular. When a retest is failed or missed, typically a retest is prompted continually until a clean sample is provided or the vehicle is turned off. To do otherwise means that the user might be driving drunk, with no prompt for a retest, until the next scheduled retest, which could be 15 minutes into the future. In other words, this creates a risk for several minutes of impaired driving.

Under the method in which a user is given multiple chances to pass, below is our understanding of how the device would behave while waiting for the next scheduled retest, which we do not recommend:

- 1) Device prompts for a retest and starts the 6-minute timer
 - A. User passes the retest → retest timer resets.
 - B. User fails the retest → the device continues prompting for a retest until a passing sample is provided or for the remainder of the 6 minutes, whichever occurs first
 - i. User passes the retest → retest timer resets. No violation recorded.
 - ii. User fails the retest again → go back to step 1.B.
 - iii. User doesn't provide another sample and the 6 minutes runs out → proceed to step 2.
- 2) 6 minutes elapses and no passing sample has been provided → A violation is recorded. The device will not prompt for a retest until the next retest.

Because of the risk for impaired driving, we recommend clarifying the proposed rule so that after the 6 minutes elapse without a passing sample, the device continues prompting for a retest until a passing sample is provided or the vehicle is turned off, as set forth below:

- 1) Device prompts for a retest and starts the 6-minute timer
 - A. User passes the retest → retest timer resets.
 - B. User fails the retest → the device continues prompting for a retest until a passing sample is provided or for the remainder of the 6 minutes, whichever occurs first
 - i. User passes the retest → retest timer resets. No violation recorded.
 - ii. User fails the retest again → go back to step 1.B.
 - iii. User doesn't provide another sample and the 6 minutes runs out → proceed to step 2.
- 2) 6 minutes elapses and no passing sample has been provided → A violation is recorded. The device continues prompting for a retest until a passing sample is provided or the vehicle is turned off.

We therefore make the following recommendation:

If six minutes elapses ~~and no passing sample is provided and a retest is failed or missed, or if the vehicle is accidentally or intentionally powered off, or if a retest is failed~~, a violation shall be recorded on the

interlock data logger and reported back to the court or entity of jurisdiction . . . and the device shall (i) trigger a violation reset and (ii) continue prompting for a sample until the engine is turned off or a passing sample has been provided.

E. Within or after 10 minutes – proposed rule vs. feedback language

The proposed rule provides that a retest should be prompted within 10 minutes, while Ohio’s response to Intoxalock stated the retest should be prompted after 10 minutes. Presumably the language in the proposed rule is intended, but we are seeking confirmation.

F. Our recommendation combining all of the above comments:

Requiring the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A random retest must continue at intervals not to exceed fifteen minutes after the previous retest, and not to exceed four times in one hour, for the duration of the travel. An operator shall have a maximum of six minutes to perform the retest and the device shall accept unlimited samples within the time frame, meaning a retest is not deemed “failed” or “missed” until the six minutes elapse without a passing sample. If six minutes elapses ~~and no passing sample is provided and a retest is failed or missed, or if the vehicle is accidentally or intentionally powered off, or if a retest is failed,~~ a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction and the device shall (i) trigger a violation reset and (ii) continue prompting for a sample until the engine is turned off or a passing sample has been provided. If the vehicle is accidentally or intentionally powered off during the six minutes allowed for the retest, the operator shall have the remainder of the six minutes to provide a passing sample.

We then recommend adding the following definition for “violation reset”: “a feature of the ignition interlock device that activates a seven-day lockout countdown due to a violation”

Device behavior map with the above-stated recommendation:

- 1) Device prompts for a retest and starts the 6-minute timer
 - A. User passes the retest → retest timer resets.
 - B. User fails the retest → the device continues prompting for a retest until a passing sample is provided or for the remainder of the 6 minutes, whichever occurs first.
 - i. User passes the retest → retest timer resets. No violation recorded.
 - ii. User fails the retest again → go back to step 1.B.
 - iii. User doesn’t provide another sample and the 6 minutes runs out → proceed to step 2.
- 2) 6 minutes elapses and no passing sample has been provided → A violation is recorded. The vehicle goes into a violation reset, meaning the user has seven days to get the vehicle to a service center before being locked out. The device continues prompting for a retest until a passing sample is provided or the vehicle is turned off.

We appreciate any and all feedback to help us understand the state’s expectations for device behavior as it relates to retests.

4501-45-04 Certification requirements for ignition interlock devices.

~~(N)~~(O) Manufacturers shall complete an onsite review of each installation site prior to becoming operational and at least annually thereafter to ensure that installers are following all applicable laws and rules, and that the installer's operations are consistent with the ~~manufacturer's~~ manufacturer's specifications.

COMMENT on 4501-45-04(O)

We recommend the allowance of a visual review of each installation site as an alternative to the onsite review. While we appreciate DPS' desire to have an "onsite presence," this onsite presence could be satisfied as necessary with any installation sites that are problematic.



February 11, 2024

Ohio Department of Public Safety
Office of Legal Services
1970 West Broad Street, Suite 531C
Columbus, Ohio 43223

Re: Proposed Amendments to 4501-45-01 et seq.

Submitted via email to: rules@dps.ohio.gov

Thank you for the opportunity to respond to your organization's *Notice of Public Hearing* for the purpose of soliciting comments regarding the adoption, amendment and recession of rules related to the Ignition Interlock Device in Ohio. Smart Start submits the following comments:

Recommendation: Please consider adding the following definition to 4501-45-01:

"Alcohol Setpoint" means the line of demarcation between PASS and FAIL of a breath test.

Reasoning: This is a common term used in the ignition interlock industry for the purpose defined.

Recommendation: Please consider modifying the following definition in 4501-45-01:

~~(E)~~ (F) "Ignition interlock device" means a device approved by the director of public safety that connects a breath analyzer to a motor vehicle's ignition system, that is constantly available to monitor the concentration by weight of alcohol in the breath of any a ~~person~~ person's breath in grams of alcohol per 210 liters attempting to start the motor vehicle by using its ignition system, and that deters starting the motor vehicle by use of its ignition system unless the person attempting to start the vehicle provides an appropriate breath sample for the device and the device determines that the concentration by weight of alcohol in the person's breath is below a the alcohol setpoint ~~preset level~~ listed in 4501-45-04(D)(1)(a)(iii) of this chapter.

Reasoning: This incorporates the proposed term "alcohol setpoint." This is intended to clarify the intent of the terms "preset level" used in this section and "calibrated setpoint" used in 4501-45-04(D)(1)(a)(iii).





Recommendation: Please consider the following modification to 4501-45-04(D)(1)(a)(i):

Requiring the operator of the vehicle to submit to a random retest within ten minutes of starting the vehicle. A random retest must continue at intervals not to exceed fifteen minutes after the previous retest, and not to exceed four times in one hour, for the duration of the travel. An operator shall have a maximum of six minutes to perform the retest and the device shall accept unlimited samples within the time frame. If six minutes elapses and no ~~breath test below the alcohol setpoint~~~~passing sample~~ is provided ~~by the operator~~, or if the vehicle is accidentally or intentionally powered off, ~~or if a retest is failed~~, a violation shall be recorded on the interlock data logger and reported back to the court or entity of jurisdiction;

Reasoning: This is intended to clarify the device behavior during the retest. The proposed rule requires “the device shall accept unlimited samples within the time frame” which is helpful with consideration to mouth alcohol. However, the language also requires a violation to be recorded “if a retest is failed” which implies a single breath test failure. We support the operator’s ability to submit multiple breath tests within the time allotted should they choose to do so. This modification also incorporates the new term “alcohol setpoint” and clarifies the intent for the operator to be the person providing the breath test.

Recommendation: Please consider the following modification to 4501-45-04(D)(1)(a)(iii):

The device shall ~~have an be calibrated to a alcohol~~ set-point of ~~at least~~ twenty thousandths percent per gram of breath alcohol concentration to start the vehicle and for retest purposes, with consideration to drivers under twenty-one years of age;

Reasoning: This incorporates the new term “alcohol setpoint” and clarifies the alcohol setpoint level.

Recommendation: Please consider the following modification to 4501-45-04(D)(1)(a)(v):

That the device maintain ~~a~~ minimum ~~a~~ calibration stability period of thirty-seven days (thirty days plus seven-day lockout countdown) or, not to exceed sixty-seven days (sixty days plus seven-day lockout countdown). ~~Sixty-seven days is respective to if the device is capable of real time violation reporting.~~

Reasoning: Smart Start supports extending the calibration interval to sixty-seven days. However, limiting the ability to extend the service interval only to devices that are “capable” of real time violation reporting is vague and favors companies whose devices have internal modems. All devices are capable of real time reporting but there is no statewide mandate that devices either be capable of reporting violations in real time or that violations be reported in real time. Nearly half of U.S. jurisdictions allow a service interval or at least 60 days (plus a lockout countdown) without the requirement for real time violation reporting.





We applaud the state of Ohio for its desire to make programmatic improvements in the ignition interlock program and support your ongoing efforts to reduce the incidence of impaired driving.

We look forward to the opportunity to discuss this and other issues with you and your staff.

Respectfully,

Toby Taylor
Chief Compliance Officer

469.735.4657 (o) 405.630.5205 (c)



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